

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable G.D. Morgan, Jr., Circuit Court Judge

ASHLEY L. HAMMITT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001230

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Ashley Louise Hammitt,) 2017-GS-42-3779
6 Defendant.) January 10, 2018
7 Spartanburg, South Carolina

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B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE; and a jury

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

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Attorney for the State

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Linda D. Moffitt
Circuit Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	D.V.D.	54	70
S-2	Drugs	54	108

(No transcript of D.V.D.)

1 (Proceedings January 10, 2018)

2 THE COURT: All right. Ashley Louise Hammitt.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: That's you? She's charged with what?

5 MR. HUNTER: Distribution of methamphetamine third
6 offense.

7 THE COURT: Distribution of methamphetamine third
8 offense. And have there been any offers in the case?

9 MR. HUNTER: Yes, Your Honor.

10 Prior to today -- I believe after second appearance --
11 Mr. Poole representing -- I made an offer of distribution.

12 The lowest offer was a distribution-of-meth-
13 first-offense offer. She had that up until yesterday.

14 Mr. Poole knew the basics of the C.I. information but
15 did not want to know the name, because I told him as soon
16 as he learned the name that the offer was going to be
17 rejected.

18 THE COURT: Okay.

19 MR. HUNTER: He called me yesterday and stated that
20 she had rejected the distribution-of-meth-first-offense
21 recommendation and wanted a trial today.

22 I -- Mr. Barnette approached Mr. Poole and said she
23 can obviously plead straight up, even though that's not a
24 really -- a plea offer. And I don't believe that she's
25 going to plead straight up and would prefer a trial.

1 THE COURT: Okay.

2 MR. POOLE: May we have a sidebar, Your Honor?

3 THE COURT: Sure.

4 (Bench conference held off the record in the presence
5 of the jury.)

6 (D.V.D. marked State's Exhibit No. 1 for
7 Identification; methamphetamine marked State's Exhibit No. 2
8 for Identification.)

9 THE COURT: All right. You are Ashley Hammitt.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Ms. Hammitt, you're charged with
12 distribution of methamphetamine.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I'm told that an offer was previously
15 made, that you rejected that offer and you now wish to have
16 a jury make that determination. Is that true?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Ms. Hammitt, did you have plenty of
19 time to talk to Mr. Poole about the offer?

20 THE DEFENDANT: No, sir.

21 THE COURT: You didn't have time to talk to him about
22 the offer that was made?

23 THE DEFENDANT: The offer, yes, sir.

24 THE COURT: That's what I'm asking.

25 THE DEFENDANT: As far as -- as far as the case, no,

1 sir.

2 THE COURT: Okay. But you had plenty of time to talk
3 to him about the offer that was made?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you rejected the offer?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. All right. Any other matters we
8 need to address before the jury panel is brought around?

9 THE DEFENDANT: Yes, sir. I believe -- I believe
10 wholeheartedly that he did not do to the best of his -- he
11 simply I feel -- I believe as though he pushed me into
12 wanting me to take the plea. This is a time where I know
13 I'm innocent. And he told me that the best for me was to
14 take the plea.

15 THE COURT: Okay.

16 THE DEFENDANT: And I don't believe that it was
17 correct.

18 THE COURT: All right. And who left the decision up
19 to -- and who had had the final decision on that?

20 THE DEFENDANT: I -- I did have the final decision.

21 THE COURT: Right.

22 THE DEFENDANT: You're correct. But I feel as though
23 he was pushing me into it because he simply -- he rushed
24 me. He told me you have until -- he called me on Thursday.
25 I got the paper two days previous to that. I had been

1 trying to contact him so I could come to your courtroom
2 prepared.

3 I also had a death in the family, and I asked could I
4 at least have a continuance, because we was trying to get
5 my grandmother's stuff squared away. He said that he asked
6 for it and it was denied.

7 But in the same instance, I tried to contact him
8 numerous times throughout the months that we've had to do
9 this. I have tried to contact him, and I have not received
10 a phone call.

11 He cannot say that he didn't have no contact or no way
12 to contact me. He had my mother-in-law's number which has
13 not changed in ten years. And my mother-in-law gives me
14 every message that she ever gets for me. And I know that
15 to be a fact.

16 THE COURT: All right. Well, Ms. Hammitt, understand
17 I hear this a lot, and, you know, and so it's fairly
18 common. And I don't understand it, but it's common. So,
19 obviously, a lot of people involved in that are doing the
20 same thing that you're doing but -- or are complaining
21 about the same thing. But when a lawyer gets an offer from
22 the prosecution the lawyer has to present that offer to
23 you. It doesn't matter whether you like it --

24 THE DEFENDANT: No, no, no.

25 THE COURT: Let me finish, please.

1 THE DEFENDANT: Yes, sir, yes, sir. I apologize.

2 THE COURT: It doesn't matter whether you like it or
3 you don't like it.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: He has to give you the offer. He has to
6 present it to you.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You're the one that gets to make the
9 decision.

10 Now, in this case from that I understand you're
11 charged with distribution of methamphetamine.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: The solicitor claims that it's a third or
14 subsequent offense.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And that means there's a mandatory minimum
17 sentence that has to be imposed if you're convicted.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Poole, I'm told, says that you were
20 offered to be allowed to plead guilty to a distribution
21 first offense.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Distribution first offense carries up to
24 15 years, but there is no minimum. It's zero. You could
25 get probation --

1 THE DEFENDANT: Yes, sir.

2 THE COURT: -- for first offense.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So Mr. Poole has to give you his -- in
5 other words, he knows what the evidence is; he knows what
6 the state's going to present; he knows what the jury is
7 going to see and hear during the trial; and he makes a
8 professional, considered, educated judgment as to what he
9 thinks might happen if that evidence is presented to the
10 jury.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And I'm guessing he thought it was
13 sufficient that the jury was likely to find you guilty.
14 And so that's why he recommended that you take a plea
15 offer. But that doesn't mean he doesn't want to represent
16 you or doesn't want to present your case in court. It just
17 means that's his opinion.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You can have your own opinion. And of
20 course you're the person that's charged. And so you're the
21 one that gets to make the decision.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You can reject any decision. And he can
24 say, look, if you don't plead guilty you're going to get 30
25 years. You can say, well, I'm not guilty, I'm not going to

1 plead guilty. That's fine. You don't have to. That's up
2 to you. It's your decision.

3 Okay. So as I understand it, you've rejected the
4 offer and you want to have a jury trial.

5 THE DEFENDANT: I do, but I don't want him to
6 represent me because I feel he's not representing me
7 correctly.

8 THE COURT: Why isn't he, just because he recommended
9 that you take the plea?

10 THE DEFENDANT: No. He didn't just recommend it. He
11 tried to force me into it.

12 THE COURT: Okay.

13 THE DEFENDANT: He tried to tell me take this or you
14 will get, pretty much.

15 THE COURT: Okay.

16 THE DEFENDANT: I mean, he tried to tell me that -- I
17 mean, y'all, I -- I do know. I've been in a courtroom
18 before. And I do know that we are asked. Do we feel we
19 are forced, coerced into something or offered something.

20 THE COURT: Yeah.

21 THE DEFENDANT: Okay. And I feel as though he really
22 did seriously try to force me into it.

23 THE COURT: Okay. But you didn't do it. You're here
24 today having a jury trial.

25 THE DEFENDANT: You're right. I didn't.

1 THE COURT: Okay.

2 THE DEFENDANT: But okay. He didn't give me no time
3 to prepare whatsoever. Like I said, I tried to contact him
4 so I could be prepared. I tried to contact him not any --
5 not that it was fixing to come to court, and then I tried
6 to do it. I tried to well before my grandmother passed
7 away.

8 THE COURT: Excuse me just a minute.

9 I've got somebody back there who's interrupting.

10 And, sir, I don't know what you're doing in here. But
11 if you interrupt this court one more time you're going to
12 jail. Do you understand?

13 JIMMY DYSON: Yes, sir, I do.

14 THE COURT: Okay. All right. Excuse me, Ms. Hammitt.
15 Who is that? Is he with you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Who is he?

18 THE DEFENDANT: My boyfriend.

19 THE COURT: Who is he?

20 THE DEFENDANT: Jimmy Dyson.

21 THE COURT: Okay.

22 THE DEFENDANT: But either way, I tried to be
23 prepared, like I -- I tried contacting him, because, like
24 you said in the previous one just a minute ago, well, it's
25 your job to get in touch with them. Okay. I did. I even

1 went up to the office trying to get in touch with him, and
2 every time he was not in the office.

3 I understand he has court -- completely. I understand
4 the holidays just passed and all of that. But I tried. I
5 did everything to my means possible to try to contact him
6 to see what was going on in my case, to see how things were
7 going, was anything offered. But the point of it is, is I
8 am innocent and his -- his best advice to me is plead
9 guilty because of your past record.

10 Okay. I didn't do it. I know -- I know what I did
11 was wrong. Don't get me wrong. But I didn't do what that
12 paper says I did.

13 THE COURT: Okay.

14 THE DEFENDANT: And, I mean, and I feel like he's
15 not --

16 THE COURT: That's why we're here.

17 THE DEFENDANT: I feel he's not -- he's not on my side
18 as far as the defense goes. He's not done everything to --
19 I feel he didn't defend me. I feel like he doesn't have my
20 best heart.

21 THE COURT: Well, he hasn't defended you yet because
22 we haven't started yet.

23 THE DEFENDANT: You're right. He hasn't. In my
24 opinion the way he tells like he's not even going to defend
25 me that way.

1 THE COURT: Okay. Well, that's --

2 THE DEFENDANT: I'm just being honest.

3 THE COURT: All right. Well, I understand.

4 So are you telling me that you've made arrangements
5 for some other lawyer to come in here and represent you in
6 this case?

7 THE DEFENDANT: I would like if I can get time.

8 THE COURT: Did you understand my question? Did you
9 understand the question?

10 THE DEFENDANT: Could you repeat it?

11 THE COURT: Okay. So am I to understand that you have
12 made arrangements now for some other lawyer to come in to
13 represent you in this case?

14 THE DEFENDANT: No, sir. I haven't.

15 THE COURT: All right.

16 THE DEFENDANT: I was going to ask for -- which I had
17 already asked -- because of everything that was going on, I
18 asked for a continuance so I could get -- I'm asking you
19 can I get legal -- a continuance to get better legal
20 advice.

21 THE COURT: To get who?

22 THE DEFENDANT: To get better legal advice.

23 THE COURT: Who are you going to get it from?

24 THE DEFENDANT: I'm going to hire a private lawyer.

25 THE COURT: Who are you going to hire?

1 THE DEFENDANT: That I'm not sure yet, but if I'm not
2 mistaken it was Andrew Johnston.

3 THE COURT: You're prepared to pay him right now?

4 THE DEFENDANT: Not at the exact moment.

5 THE COURT: Well, then how is he going to represent
6 you? I'll get him over here and see if he'll represent
7 you, but you're going to have to pay him before he does it.

8 THE DEFENDANT: I understand that.

9 THE COURT: Unless he's going to do it for free like
10 Mr. Poole.

11 THE DEFENDANT: He -- I paid the forty. I understand
12 you. I get what you're saying. Either way I --

13 THE COURT: Do I need to get him over here?

14 THE DEFENDANT: No. I don't have the money to pay him
15 right now.

16 THE COURT: Okay. Then that's not an option.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. So you have Mr. Poole. That
19 is an option. If you don't want him, then the other option
20 is what?

21 THE DEFENDANT: Represent myself.

22 THE COURT: All right. Do you want to do that?

23 THE DEFENDANT: No, sir.

24 THE COURT: Okay. That's a good choice too. I'm glad
25 you and Mr. DeJesus at least understand that you can't

1 represent yourself.

2 THE DEFENDANT: No. And I understand that, but I feel
3 like I am being forced into something, which now the plea's
4 not on the table.

5 THE COURT: Well, you are being forced into something.

6 THE DEFENDANT: Okay. I understand. I'm being asked
7 to plead guilty.

8 THE COURT: Let me just say this.

9 You are being forced into something to the extent that
10 you have to come to court and go to trial. That's just the
11 way it is.

12 THE DEFENDANT: Yeah. But I didn't do this one. I
13 know I did the others.

14 THE COURT: That's why we're having the trial.

15 THE DEFENDANT: And my past record is supposed to
16 reflect on this when I was changing and I was doing better?

17 THE COURT: Well, that's why we're having a jury. You
18 say you didn't do it.

19 THE DEFENDANT: But if my defense is not doing his job
20 on -- in mind, I mean, if he's not helping me, then what is
21 it?

22 THE COURT: He's going to help you.

23 THE DEFENDANT: He is?

24 THE COURT: That's why he's here.

25 THE DEFENDANT: That's the reason why he would get

1 irritated with me when I was simply asking questions about
2 my case to begin with?

3 THE COURT: Well, it might be, Ms. Hammitt, that he
4 thinks you are making bad decisions.

5 THE DEFENDANT: Okay.

6 THE COURT: And there's nothing wrong with a lawyer
7 telling somebody that just like a doctor --

8 THE DEFENDANT: I understand that.

9 THE COURT: Just like a doctor tells their patient.
10 If you make bad decisions, your doctor might get mad at you
11 and tell you you're making bad decisions. But that doesn't
12 mean your doctor ain't going to help you. Do you
13 understand?

14 So what do you want to do with your case now? Do you
15 want -- do you want them to talk about an offer again or do
16 you want to have a jury trial?

17 THE DEFENDANT: I would like a continuance to get
18 better prepared, but it's not my decision --

19 THE COURT: Okay. I'm going to deny your request.
20 Ma'am?

21 THE DEFENDANT: I understand, I said, but it's not my
22 decision, and I understand that.

23 THE COURT: Well, nothing wrong with asking. If you
24 don't ask, you don't get. But, nevertheless, I've heard
25 everything and I'm going to deny your request to continue

1 it.

2 Now, what else would you like to do?

3 THE DEFENDANT: I don't want to defend myself.

4 THE COURT: All right. So Mr. Poole's going to defend
5 you.

6 Now the question is do you want to plead guilty or do
7 you want to have a jury trial.

8 THE DEFENDANT: Not guilty.

9 THE COURT: Ma'am?

10 THE DEFENDANT: Not guilty.

11 THE COURT: All right. You want to plead not guilty.
12 So you want to have a jury trial?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Do you want to have a bench trial?

15 THE DEFENDANT: Which one's going to do me better?

16 That's what I'm saying. That's why we're all here.

17 THE COURT: I can't predict that.

18 THE DEFENDANT: I asked my lawyer which one was
19 better. He said pleading guilty is my best bet because of
20 my past.

21 THE COURT: Well, that's what he's recommending.

22 THE DEFENDANT: I understand that. But if you're
23 going to tell me to plead guilty when I'm actually
24 innocent on --

25 THE COURT: Ma'am, I'm not telling you to do anything.

1 THE DEFENDANT: I know you're not. I'm -- I'm saying
2 that was his advice to me, plead guilty even though I'm
3 innocent. But isn't that what this is for, is to find the
4 innocent innocent and the guilty guilty?

5 THE COURT: No, ma'am. We're not going to determine
6 innocence today. What we're going to determine is whether
7 or not the state can prove you guilty of a crime beyond a
8 reasonable doubt.

9 If they can, a jury will find you guilty. If they
10 can't prove it beyond a reasonable doubt, they'll find you
11 not guilty. That doesn't mean you're innocent. It means
12 they haven't proven you to be guilty. We don't decide
13 innocence in here.

14 THE DEFENDANT: But, I mean, you got what I was
15 saying. Understand what I'm saying.

16 THE COURT: Well, I might.

17 THE DEFENDANT: The justice system is supposed to --
18 you're supposed to get justice, right? I mean, that's --

19 THE COURT: Yes, ma'am. You are.

20 THE DEFENDANT: Okay. I've changed. Well, I've
21 changed. I did. I did that. A poor decision on my end
22 put me in a situation where I didn't do it.

23 THE COURT: Well, justice -- Ms. Hammitt, understand
24 that justice today means that you either plead guilty or we
25 have a jury trial and they, the state, presents their

1 evidence and the jury decides if you have been proven
2 guilty beyond a reasonable doubt. And whatever their
3 decision is, then that's justice in this case.

4 THE DEFENDANT: It's not -- okay.

5 THE COURT: Well, you don't know what it is. The jury
6 hasn't made a decision yet.

7 THE DEFENDANT: I know. I'm sorry.

8 THE COURT: See, I think that's part of the problem.
9 See, you're jumping way ahead. You're not listening to
10 your lawyer, and you've already made up your mind that
11 you're not getting justice, and we haven't even started
12 yet.

13 THE DEFENDANT: But telling me to plead guilty.
14 That's what he -- that's what he advised me because of my
15 past.

16 THE COURT: Well, I guess that's what he recommended
17 based upon the evidence, based upon what the state's going
18 to present and based upon the charges and based upon your
19 history. He's supposed to be making recommendations to
20 you.

21 THE DEFENDANT: You're right, and I understand the
22 recommendation. And I have had public defender before and
23 I -- and they've made recommendations too. But none of
24 them ever got agitated with me because I was simply asking
25 because I didn't understand. And that happened.

1 THE COURT: Who did you have before?

2 THE DEFENDANT: Andrea Price.

3 THE COURT: And she didn't get agitated with you?

4 Because Mr. DeJesus was really agitated with her.

5 THE DEFENDANT: No, she didn't. And I've heard good
6 things about Mr. Poole.

7 THE COURT: Right.

8 THE DEFENDANT: I've heard amazing things about him.

9 THE COURT: I have too.

10 THE DEFENDANT: I'm not saying that he does his job
11 wrong. I'm just saying in this case this time I feel he's
12 made poor decisions on his part.

13 THE COURT: What poor decision has he made? He -- do
14 you mean his recommendation to you?

15 THE DEFENDANT: The way he treated me.

16 THE COURT: Okay. All right.

17 THE DEFENDANT: And I understand it ain't about
18 feelings, but it's the way I was treated. It made me feel
19 as though he was pushing me into something even though I'm
20 sitting here telling him I innocent. And, yes, I know what
21 I did and I know what I did was wrong but that I was
22 innocent.

23 THE COURT: Right.

24 THE DEFENDANT: And because of my past --

25 THE COURT: You know what the evidence is. He's told

1 you about the evidence that they have, hasn't he?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. So you know what the state's going
4 to present in court.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. All right. Anything else?

7 MR. POOLE: No, sir.

8 THE COURT: So I understand now you do not wish to
9 fire Mr. Poole?

10 THE DEFENDANT: No.

11 THE COURT: Okay. All right. Ready we ready for the
12 jury now?

13 MR. HUNTER: May Mr. Poole and I approach?

14 THE DEFENDANT: Yes, sure.

15 MR. HUNTER: We're ready for the jury.

16 (Bench conference held off the record.)

17 (D.V.D. marked State's Exhibit No. 1 for
18 Identification; methamphetamine marked State's Exhibit No. 2
19 for Identification.)

20 THE COURT: All right. We're ready to bring the jury
21 panel around?

22 Mr. Dyson, if you're a witness you'll need to come and
23 sit behind Mr. Poole there.

24 JIMMY DYSON: I was just going to leave the courtroom,
25 sir, to try to see if there's something I could do about

1 something.

2 THE COURT: If what?

3 JIMMY DYSON: I was going to leave the courtroom and
4 see -- see about something about this case already, sir.

5 THE COURT: Something about what?

6 JIMMY DYSON: This case so far. If you don't mind, if
7 I may leave for a moment and come back.

8 THE COURT: Oh, well, I don't know if you'll be able
9 to come back.

10 He is under subpoena? Is he a witness for you?

11 MR. POOLE: He is a potential witness, Your Honor.

12 THE COURT: Okay.

13 MR. POOLE: He's not under subpoena.

14 THE COURT: All right. Well, you're a potential
15 witness, and so you've got to be introduced to the jury.

16 JIMMY DYSON: Yes, sir.

17 THE COURT: Otherwise, they won't know who you are.
18 So that's why I've got to have you stay.

19 JIMMY DYSON: Yes, sir.

20 THE COURT: And after that you can talk to Mr. Poole
21 about leaving. I don't know. He may need you as a
22 witness. If he doesn't, then you can leave.

23 Okay. All right. Bring the jury around, please.

24 (The following takes place in the presence of the jury
25 venire.)

Jury qualification

1 THE COURT: Good morning, ladies and gentlemen.

2 We ready to begin with jury selection in the next case
3 that's going to require some of your participation. The
4 title of the case is the State vs. Ashley Louise Hammitt.

5 Mr. [sic] Hammitt has been accused by the prosecutor
6 by way of the indictment with having committed the crime of
7 distribution of methamphetamine.

8 The state alleges by way of this indictment that
9 Ashley Louise Hammitt did here in Spartanburg County on or
10 about October the 6th of 2016, did manufacture, distribute,
11 dispense, deliver, purchase or otherwise aid, abet, attempt
12 or conspire to manufacture, to distribute, dispense or
13 deliver or purchase, or did possess with intent to
14 manufacture, distribute, dispense or deliver a quantity of
15 methamphetamine which is a Controlled II substance under
16 the law of this state.

17 As to those allegations and as to that charge the
18 defendant has entered a plea of not guilty. And, as you
19 know, that plea of not guilty places upon the state the
20 burden of proving the allegations that they have made by
21 way of this indictment, the burden of proving each of the
22 essential elements of the crime charged; and therefore the
23 burden is upon the state to establish the defendant's guilt
24 to the satisfaction of 12 jurors beyond a reasonable doubt
25 before a verdict of guilty could be found.

Jury qualification

1 I'm going to be introducing some folks to you. The
2 purpose of the introductions is to find out if you have any
3 connection with anybody involved in the case or any offices
4 for which they are employed. And so as I recite the
5 persons involved in this case, a list of those persons,
6 please stand if you have any sort of connection by blood or
7 marriage, employment, church attendance, school attendance,
8 social interaction or any connection whatsoever.

9 First of all, as I've told you, the defendant, the
10 person accused of this offense, is Ashley Louise Hammitt.

11 Ms. Hammitt, if you will, stand and face the jury
12 panel so that they may see who you are.

13 (Whereupon, the defendant stood.)

14 THE COURT: Thank you, ma'am.

15 Ms. Hammitt is represented by Roger Poole. He's an
16 assistant public defender in the Seventh Judicial Circuit
17 Public Defender's Office.

18 (Whereupon, Mr. Poole stood.)

19 THE COURT: Presenting the case on behalf of the state
20 is Eddie Hunter. He's an assistant circuit solicitor for
21 the Seventh Judicial Circuit.

22 (Whereupon, Mr. Hunter stood.)

23 THE COURT: Potential witnesses include John Schafer
24 with the sheriff's department; Robert Rosenberg with the
25 sheriff's department; Holly Tobias with the sheriff's

Jury qualification

1 department; and Brady Rhodes. What's Brady Rhodes'
2 connection?

3 MR. HUNTER: Your Honor, he is the one who purchased
4 the methamphetamine.

5 THE COURT: Okay. Brady Rhodes is a material witness
6 in the case.

7 And also Jimmy Dyson.

8 Mr. Dyson, if you will, stand and face the jury panel
9 so that they can see who you are.

10 (Whereupon, the witness stood.)

11 THE COURT: All right. Thank you.

12 All right. So does any juror know anybody who's just
13 been identified, or do you know anybody else who's employed
14 in the solicitor's office or the public defender's office?
15 If so, please stand.

16 All right. Give me your name and number, please.

17 JUROR NO. 72: Lara Harrill, 72. Again, I used to
18 share office space with Roger Poole when I worked for Gary
19 Poliakoff.

20 THE COURT: All right. Would that have any bearing on
21 your decision?

22 JUROR NO. 72: No.

23 THE COURT: Thank you. Be seated.

24 Yes, ma'am.

25 JUROR NO. 5: Juror No. 5, Lucy Barry. My daughter

Jury qualification

1 works in the solicitor's office.

2 THE COURT: And would that have any bearing in your
3 decision?

4 JUROR NO. 5: No, sir.

5 THE COURT: Thank you. Be seated.

6 This is an event which the state alleges occurred on
7 October the 6th of 2016.

8 And where does the state contend this event occurred?

9 MR. HUNTER: The Brookwood Inn right off of Business
10 85, Your Honor.

11 THE COURT: The state alleges this occurred at the
12 Brookwood Inn located off of Business 85 on October 6th of
13 2016.

14 Does any juror think you might know something about
15 this case? Have you heard anything about it from any
16 source? If so, please stand.

17 (No response.)

18 THE COURT: Understanding what the allegations are, is
19 there anything about the nature of the case that would
20 prevent any juror from being able to be fair and impartial
21 if you were selected to serve as a juror in this case? If
22 so, please stand.

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 belongs to any type of organization whose agenda or goal is

Jury qualification

1 for the legalization of substances which are now controlled
2 such as marijuana or any other? If so, please stand.

3 (No response.)

4 THE COURT: Does any juror know of any reason
5 whatsoever, understanding who is involved in the case,
6 understanding what the case is about, understanding what
7 the charge is -- does any juror know of any reason
8 whatsoever why you believe that you could not be fair and
9 impartial if selected to serve as a juror in this case? If
10 so, please stand.

11 (No response.)

12 THE COURT: Any other questions?

13 Well, excuse me.

14 Yes, ma'am.

15 JUROR NO. 118: I have a question. 118.

16 I work for Spartanburg County at the Forrester Center.

17 THE COURT: Right.

18 JUROR NO. 118: I know a lot of people are sentenced
19 to come there if they're found guilty.

20 THE COURT: Okay. All right. Well, that's way past
21 where we are. Right now the purpose of this is to
22 determine if someone is guilty of something or not.

23 JUROR NO. 118: Okay.

24 THE COURT: So do you think your position there would
25 have any influence in that decision?

Jury qualification

1 JUROR NO. 118: No, no.

2 THE COURT: Okay. Thank you. And your juror number
3 was 118?

4 JUROR NO. 118: Eighteen.

5 THE COURT: Okay. Thank you.

6 Anybody else?

7 (No response.)

8 THE COURT: All right. Any other questions requested?

9 MR. POOLE: No, sir.

10 MR. HUNTER: Nothing from the state, Your Honor.

11 THE COURT: Okay. The computer is going to select the
12 list, and then we'll call you up for a potential selection.

13 Mr. Poole, remind your witnesses there that they can't
14 talk while we're having jury selection.

15 Please come forward as your name is called. You'll be
16 instructed if you're to be seated for service or excused
17 from service in the case. If you are excused just go back
18 and have a seat there on the back row.

19 THE CLERK: Juror No. 15, Rose Boisvert.

20 What say the state?

21 MR. HUNTER: Please present this juror.

22 THE CLERK: What say the defense?

23 MR. POOLE: Please seat the juror.

24 THE CLERK: Juror No. 76, Susan Hayes.

25 What say the state?

Jury qualification

1 MR. HUNTER: Please present this juror.

2 THE CLERK: What say the defense?

3 MR. POOLE: Please seat the juror.

4 THE CLERK: Juror No. 142, Dale Robinson.

5 What say the state?

6 MR. HUNTER: Please excuse this juror.

7 THE CLERK: Juror No. 5, Lucy Barry.

8 What say the state?

9 MR. HUNTER: Please present this juror.

10 THE CLERK: What say the defense?

11 MR. POOLE: Please excuse this juror.

12 THE CLERK: Juror No. 157, Deidra Smith.

13 What say the state?

14 MR. HUNTER: Please present this juror.

15 THE CLERK: What say the defense?

16 MR. POOLE: Please seat the juror.

17 THE CLERK: Juror No. 30, Adam Campbell.

18 What say the state?

19 MR. HUNTER: Please present this juror.

20 THE CLERK: What say the defense?

21 MR. POOLE: Please seat the juror.

22 THE CLERK: Juror No. 118, Pamela Newman.

23 What say the state?

24 MR. HUNTER: Please present this juror.

25 THE CLERK: What say the defense?

Jury qualification

1 MR. POOLE: Please seat the juror.

2 THE CLERK: Juror No. 150, Matthew Satterfield.

3 What say the state?

4 MR. HUNTER: Please present this juror.

5 THE CLERK: What say the defense?

6 MR. POOLE: Please seat the juror.

7 THE CLERK: Juror No. 53, Vanessa Fields.

8 What say the state?

9 MR. HUNTER: Please present this juror.

10 THE CLERK: What say the defense?

11 MR. POOLE: Please seat the juror.

12 THE CLERK: Juror No. 155, Tammy Simpson.

13 What say the state?

14 MR. HUNTER: Please present this juror.

15 THE CLERK: What say the defense?

16 MR. POOLE: Please seat the juror.

17 THE CLERK: Juror No. 12, Annette Boan.

18 What say the state?

19 MR. HUNTER: Please present this juror.

20 THE COURT: What say the defense?

21 MR. POOLE: Please seat the juror.

22 THE CLERK: Juror No. 81, Alexander Hollis.

23 What say the state?

24 MR. HUNTER: Please present this juror.

25 THE CLERK: What say the defense?

Jury qualification

1 MR. POOLE: Please seat the juror.

2 THE CLERK: Juror No. 143, Zanzi Robinson.

3 What say the state?

4 MR. HUNTER: Please present the juror.

5 THE CLERK: What say the defense?

6 MR. POOLE: Please seat the juror.

7 THE CLERK: Juror No. 175, Scottie Watson.

8 What say the state?

9 MR. HUNTER: Please present this juror.

10 THE CLERK: What say the defense?

11 MR. POOLE: Please seat the juror.

12 THE CLERK: For the alternate, Juror No. 94, Michael

13 Keller.

14 What say the state?

15 MR. HUNTER: Please excuse this juror.

16 THE CLERK: Juror No. 137, Rita Pruitt.

17 What say the state?

18 MR. HUNTER: Please present this juror.

19 THE CLERK: What say the defense?

20 MR. POOLE: Please seat the juror.

21 (Whereupon, a jury was impaneled.)

22 THE COURT: Those who are selected, please go with the
23 bailiff to a jury room. I'll bring you back in a few
24 minutes to begin.

25 (The following takes place outside the presence of the

Jury qualification

1 jury.)

2 THE COURT: Are there any matters to be addressed
3 regarding jury selection by the state?

4 MR. HUNTER: None from the state, Your Honor.

5 THE COURT: By the defendant?

6 MR. POOLE: No, sir.

7 (Whereupon, the remaining members of the jury venire
8 were excused.)

9 THE COURT: All right. Any matters we need to address
10 before the jury is sworn?

11 MR. POOLE: No, sir.

12 MR. HUNTER: Nothing from the state, Your Honor.

13 THE COURT: All right. Bring them in, and ask Juror
14 155, that's Ms. Simpson. Ask her to take the foreperson's
15 seat.

16 Mr. Dyson, you can be excused now if you need to be,
17 but you need to let Mr. Poole know what's going on because
18 he might need to call you as a witness.

19 JIMMY DYSON: Thank you, Your Honor.

20 THE COURT: Okay.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: All right. Ladies and gentlemen, we are
24 ready to begin with the trial of the case for which you
25 have been selected.

1 And, Ms. Simpson, I'm going to ask you to serve as the
2 foreperson of the jury. As the foreperson you have three
3 specific duties that the other jurors will not have.

4 Number one, you'll serve as the spokesperson for the
5 jury. And that just means if during the trial something
6 arises that needs to be brought to my attention -- you or a
7 fellow juror has some difficulty, problem or question --
8 you're going to be the person to let me know of that fact.
9 You'll do it directly if you're in the courtroom. You do
10 it through the bailiff if you're outside the courtroom.

11 Secondly, you will preside over jury deliberations
12 when that time comes. That of course won't be until the
13 end of the trial after the evidence has been received and
14 I've instructed you on the law that's applicable in the
15 case. But when the time does come for jury deliberations
16 you will preside over that process in the jury room simply
17 to ensure that those deliberations are carried out in some
18 orderly fashion.

19 And, thirdly, you're going to actually write the
20 verdict or the decision of the jury, and you'll do that on
21 a verdict form that I'll provide you when you go back to
22 deliberate on which you'll indicate the jury's unanimous
23 decision.

24 Now, the foreperson has those duties that I've just
25 indicated. That doesn't mean that she's any more important

1 than any of you other jurors, and that's because the
2 decision of a jury is the unanimous consensus opinion of
3 all 12 jurors. And so all of you and each of you will have
4 an equal say and an equal vote in what the ultimate
5 decision will be in this case.

6 Someone simply has to be delegated those
7 responsibilities that I've just indicated, and I have
8 delegated those to Ms. Simpson in appointing her as the
9 foreperson. But all of you jurors are equally important so
10 far as the ultimate decision in this case is concerned,
11 because, as I've stated, the verdict has to be unanimous.
12 All of you must be in agreement.

13 Ms. Pruitt, you've been selected as an alternate
14 juror, and the function of an alternate is to take the
15 place of one of these 12.

16 If during the trial for some reason one of these
17 cannot continue to serve, then you would be called upon to
18 take that person's place. In that event you would become
19 the twelfth juror, and in that event you participate
20 throughout the trial, including the jury deliberations at
21 the trial's conclusion.

22 If however when the time does come for jury
23 deliberations if all of the original 12 are able to
24 participate, then your service ends and you don't
25 participate any further. That's because the decision of

Jury sworn

1 the jury is that of 12. No more than 12 can engage in that
2 deliberation process. But it is important that you pay
3 just as careful attention as we ask of all of the jurors
4 because it does occur from time to time for one reason or
5 another one of these 12 may be unable to continue. In that
6 event you become the twelfth.

7 So we do appreciate your participation as an alternate
8 juror, just as we appreciate the participation of each of
9 you jurors who have been selected for the purpose of
10 deciding the verdict in this particular case.

11 You may swear the panel.

12 (Whereupon, the jury was duly sworn.)

13 THE COURT: All right. Ladies and gentlemen, as you
14 know, you've been selected to decide the verdict in the
15 case of the State vs. Ashley Louise Hammitt.

16 As you also know, prior to your selection I told you
17 that Ms. Hammitt was charged with the crime of distribution
18 of methamphetamine. The indictment alleges that occurred
19 back on October the 6th of 2016 here in Spartanburg County.

20 As you also know, she has entered a plea of not guilty
21 to that charge. And that plea of not guilty places upon
22 the state the burden of proving the allegations that they
23 have made, the burden of proving each of the essential
24 elements of the crime that they have alleged against the
25 defendant; and therefore the burden is upon the state to

1 establish the defendant's guilt to the satisfaction of you
2 12 jurors beyond a reasonable doubt before any verdict of
3 guilty could be returned.

4 Every person accused of a crime -- it doesn't matter
5 how serious the offense might be for which that person
6 stands charged -- a person charged with a crime is always
7 presumed to be innocent of that charge.

8 That presumption of innocence remains with any
9 defendant, as it does with this defendant, from the time
10 that she is placed under arrest and throughout the course
11 of the criminal process and even throughout the course of
12 the actual trial in the case.

13 That presumption of innocence will be with Ms. Hammitt
14 even at the time that you go back at the trial's conclusion
15 to begin with your deliberations in this case.

16 That presumption of innocence will be with her in that
17 jury room, and it'll be with her forever unless you 12
18 jurors determine that she's no longer entitled to that
19 presumption of innocence.

20 In other words, after you've considered all of the
21 evidence in the case, and from that evidence you've been
22 able to determine what you believe to be the facts as they
23 relate to these allegations, and after deciding those facts
24 you apply the law that I will have provided you, if you 12
25 jurors unanimously determine that her guilt has been proven

1 beyond a reasonable doubt, then she would no longer be
2 entitled to the presumption of innocence. But it is only
3 if, unless and until you are convinced of her guilt beyond
4 a reasonable doubt that the presumption of innocence would
5 no longer be applicable.

6 Now, the way the trial will proceed is that in a
7 moment the lawyers are going to address you in what are
8 referred to as opening statements.

9 After the evidence is received the lawyers will
10 address you in what are called closing statements.

11 Understand the statements of the lawyers are not
12 evidence. They don't know anything about the case of their
13 own personal knowledge or perception like witnesses will be
14 testifying to when they take the witness stand.

15 The lawyers aren't going to take the witness stand.
16 They're not going to be placed under oath. They're not
17 going to be subjected to direct and cross-examination like
18 witnesses will be. And so what they tell in their
19 statements is not to be considered by you as any evidence
20 upon which you will base your decision. But you should
21 listen to what they have to say because the statements
22 serve a purpose.

23 The opening statements serve to provide you with a
24 basic understanding as to what this case is about from both
25 the perspective of the state, as well as the defendant, so

1 that you'll have some context in which to place the
2 evidence that we will be receiving shortly thereafter.

3 The closing statements occur after the evidence is
4 received. And, again, those statements are not evidence,
5 but it does afford the lawyers an opportunity to discuss
6 with you the evidence that you have seen and heard during
7 the trial. And through that discussion each will be trying
8 to persuade you or to convince you that the evidence in the
9 case does or does not support a particular decision.

10 The evidence upon which you will base your decision
11 comes in between the opening and the closings statements.

12 The state goes forward first in their presentation,
13 because, as you know, they have the burden of proof. They
14 have to establish the defendant's guilt beyond a reasonable
15 doubt. And therefore they have to present evidence in
16 order to do that.

17 A person charged with a crime is never under any
18 obligation to prove anything. A defendant doesn't have to
19 testify during the trial, doesn't have to call any witness,
20 doesn't have to produce any evidence.

21 The burden is not upon a defendant to prove that he or
22 she is not guilty or to prove that he or she is innocent
23 because in many cases that might not be possible.

24 The burden is always upon the state to establish that
25 person's guilt because they made the charge, they brought

1 the accusation.

2 But while a defendant does not have to testify or
3 produce evidence, a defendant is afforded an opportunity to
4 testify or present evidence if he or she wishes to do so.
5 But if a defendant doesn't take the witness and testify you
6 can't hold that against them. You can't allow that fact to
7 weigh in the slightest degree against any defendant,
8 because, as I say, the burden is not upon them to prove
9 anything. The burden is upon the state to prove guilt.

10 After the evidence is received and after the lawyers
11 give you their final summations I will instruct you on the
12 law fully as it relates to the criminal law generally and
13 as it relates to this particular crime specifically.

14 And then you'll be asked to go back and begin
15 deliberations. Through that process you'll examine all of
16 the evidence, you'll evaluate the credibility of witness
17 testimony. You hopefully will be in a position to be able
18 to decide what the facts are as they relate to this charge
19 and these allegations.

20 If you're able to decide the facts, you then apply the
21 law as I will have provided it to you. And you determine
22 whether or not the defendant has been proven guilty beyond
23 a reasonable doubt. And if she has, then your verdict's
24 guilty. And if she has not, then your verdict is not
25 guilty.

Opening statements

1 It's important that you keep an open mind during the
2 trial. Give every witness the same degree of attention and
3 consideration so that when you do go back you'll be in a
4 proper position to be able to fairly evaluate the case and
5 to render a fair and impartial decision.

6 I do want to thank you in advance for your
7 participation, as well as for your careful attention. I
8 would ask that you please give the lawyers your attention
9 now as they give you their opening statements.

10 Mr. Hunter.

11 MR. HUNTER: May it please the Court.

12 Ladies and gentlemen of the jury, my name is Eddie
13 Hunter with the solicitor's office. I'm the drug
14 prosecutor. And we're here today because I'm going to
15 prove that Ashley Hammitt sold methamphetamine on
16 October 6th of 2016 out of Brookwood Inn, which is one of
17 those inns right off Business 85 near Fairforest.

18 You're going to see a video. You're going to see that
19 our informant had a watch that had a video camera on it.
20 You're going to see him approach the hotel. You're going
21 to see Ms. Hammitt standing outside the hotel.

22 You're going to see them go into the room. You're
23 actually going to see Ms. Hammitt ask the informant if he's
24 an informant. You'll hear her say that.

25 You'll see her look at the watch trying to see if

Opening statements

1 there's a camera in the watch. You will see her act a
2 little sketchy, and you'll hear her say that she only has a
3 little bit and she'll try to get more for him, because the
4 original deal was for a hundred dollars for one gram of
5 methamphetamine. But she didn't have a full gram. She
6 only had a little bit. And you'll hear them talk about
7 this.

8 Then for about 15 or 20 minutes the informant sits in
9 the hotel room while she's going around trying to find more
10 meth before finally he takes what she has and leaves the
11 hotel.

12 She gets the hundred dollars; he gets the meth and
13 walks out. And you'll see that.

14 Now, for distribution of meth it doesn't matter if you
15 give it away, sell it, take it, dispense it, deliver it or
16 help set up the transaction. He took the meth and she took
17 the money. There's no hand-to-hand transaction. I'm not
18 going to -- you're not going to see that on the video.
19 You'll see it was actually on the nightstand. She says
20 take it because she thinks this is sketchy. But she keeps
21 the money, and that's distribution of meth.

22 Now, he brings it back to Investigator Schafer and
23 Investigator Lachica. They place it in a BEST bag, which
24 is what you'll see over there. And you'll actually be able
25 to see it and hold it in your hands.

Opening statements

1 They submit that to evidence. Evidence then takes the
2 BEST bag that has the meth in it and submits it to the
3 chemist lab at the sheriff's office.

4 You'll hear from Holly Tobias who has a chemistry
5 degree, I believe, from Wofford. She tests the substance.
6 She first does a presumptive test to make sure that it is
7 methamphetamine. But that's just presumptive. It's just a
8 spot test.

9 Once that comes back as meth she then puts it into a
10 machine to do a chemical test, and that machine pointed out
11 that this was also meth.

12 So we have to prove that, one, she sold, delivered,
13 dispensed, distributed, gave away meth, took it from her
14 possession to someone else's possession. That's all we
15 have to prove. And then that the substance that was
16 actually given was meth. So that's why you'll hear from
17 Holly and hear from the evidence technician that the
18 substance the sheriff's office brought back to --
19 investigators brought back to the sheriff's office was, in
20 fact, meth.

21 Now, you won't hear from Investigator Lachica today.
22 His daughter's boyfriend was killed in a car accident last
23 night, so I told him he didn't have to come here today.
24 You'll only hear from Investigator Schafer.

25 You'll hear from Brady Rhodes who was the informant on

Opening statements

1 that case. You'll hear that he was paid money to do this
2 buy. He was working for the sheriff's office as an
3 informant, as a paid informant. He wasn't working on
4 charges. He was getting paid to buy drugs.

5 Now, I'll love if it we could put Trey Gowdy or LeBron
6 James or somebody famous who we all know and all trust to
7 buy drugs, because then they'd get up on the stand and talk
8 to you and say, yeah, I bought drugs from this person. We
9 have to put somebody who is in the drug game.

10 Investigator Schafer can't go up to Ashley Hammitt and
11 buy drugs. She's not going to sell it to him. We have to
12 send somebody who she will sell it to. So you'll hear from
13 Brady, because he is going to come down and going to
14 testify. And that's why we put a video on him. That's why
15 officers search both him and his car before he leaves.
16 Officers searched the car after he gets back.

17 And you'll see that on October 6th of 2016 Mr. Rhodes
18 purchased methamphetamine from the defendant. And I'm
19 confident at the end of this you'll come back with a guilty
20 verdict. Thank you.

21 MR. POOLE: May it please the Court.

22 THE COURT: Mr. Poole.

23 MR. POOLE: Solicitor.

24 Madam forelady, ladies and gentlemen, good morning. I
25 see some familiar faces from yesterday morning. It's good

Opening statements

1 to see you again. And for the new ones, good morning and
2 thank you for being here, although I know that you don't
3 have much of a choice.

4 I want to follow up with one thing with what
5 Mr. Hunter said as far as this seedy business of drug
6 activity is concerned.

7 When you're dealing with what is called in a so-called
8 control buy when somebody goes in as an informant,
9 introduces themselves as someone who's interested in buying
10 drugs, they're doing it for a reason, and those reasons are
11 not honorable.

12 Okay. They're doing it for one of two reasons.
13 They're either working for the sheriff's office in order to
14 work off charges that they have incurred, usually drug
15 related or otherwise. There can be any type of charge.
16 And if they do a good enough job, then those charges are
17 forgiven or dismissed.

18 Or they do it solely for money. Now, where that money
19 goes, we don't know. We don't know if it's to support a
20 habit in this ongoing drug addiction problem that we've got
21 going throughout the country or if they're using it for
22 legitimate purposes.

23 But, nevertheless, either way it's going into an
24 environment representing and misrepresenting yourself
25 saying I want to buy some drugs and I am such and such and

Opening statements

1 I want this drug for such and such reason and I'm here and
2 I've got cash money.

3 Okay. Now, Ms. Hammitt, as Judge Cole said, is
4 innocent of all charges until the state has proven her
5 guilt beyond a reasonable doubt.

6 And what we have here in this case is a young lady who
7 is very desperate and down on her means and doesn't have
8 any money or any wherewithal to survive and is desperate
9 for some money. But she's not involved in the drug trade.

10 And I just want you to keep an open mind throughout
11 the entire testimony, throughout the production of all of
12 the documents from what you see and what you don't see on
13 that video.

14 For instance, you won't see any methamphetamine on the
15 video. And I don't think you're going to find any money on
16 the video. And you're going to see all of this material
17 and you're going to hear this testimony.

18 And I'm asking you to return a verdict that speaks the
19 truth, and that is that Ashley Hammitt is primarily just an
20 individual that's a victim of circumstance and is not a law
21 breaker. She is not in the business of distributing
22 methamphetamine or any other type of drug.

23 I hope you'll agree with me at the end of this case.
24 I appreciate you being here. I appreciate your time and
25 your attention. And I just ask that you extend a fair

John Schafer
Direct examination by Mr. Hunter

1 trial to my defendant, Ms. Hammitt. Thank you.

2 THE COURT: Mr. Hunter.

3 MR. HUNTER: Your Honor, the state would call
4 Investigator John Schafer.

5 JOHN SCHAFFER, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. HUNTER.

8 Q Can you please give us your full name?

9 A John Schafer.

10 Q How are you employed?

11 A With the Spartanburg County Sheriff's Office.

12 Q How long have you been employed by the Spartanburg
13 County Sheriff's Office?

14 A Approximately ten years.

15 Q And what have you done over those ten years, your
16 duties at the sheriff's office?

17 A I worked uniform patrol approximately three years, and
18 the last seven years I worked undercover narcotics and
19 recently transitioned to violent crimes and also newly
20 appointed polygraph technician.

21 Q How long were you in narcotics?

22 A Approximately seven years.

23 Q Okay. From?

24 A Just under seven years.

25 Q Two thousand?

John Schafer
Direct examination by Mr. Hunter

1 A 2010 until just this past year.

2 Q Okay. And in your time at the narcotics unit did you
3 have a chance to work undercover controlled buys?

4 A I did, yes, sir.

5 Q Explain how those are supposed to go down.

6 A In an undercover buy traditionally I would do it as
7 where I have a confidential reliable informant come, and
8 we'll meet them at a predetermined location within the
9 county.

10 Sometimes a deal might already be set up as we can't
11 control phone calls from a dealer to a confidential
12 informant about a drug deal. But sometimes they may
13 already be set up before we can get there to record phone
14 calls in the ideal situations.

15 So typically we'll meet with that informant. If they
16 do not have a vehicle we provide a vehicle for them. And
17 if the vehicle, whether they bring one or whether we
18 provide one, the vehicle will be searched for any kind of
19 contraband, any kind of illegal narcotics, and so will that
20 particular informant, before anything is done.

21 If they have any kind of monies on their persons,
22 personal money, we will go ahead and take that during the
23 time of this transaction.

24 Once they're searched and no contraband has been
25 located we'll go ahead and provide them with currency and

John Schafer
Direct examination by Mr. Hunter

1 some type of recording device and go ahead and continue on
2 with the transaction.

3 They'll go and make the transaction. They'll come
4 back to a predetermined location within the county. Then
5 we'll go ahead and recover whatever contraband we purchased
6 that day and go ahead and debrief them and go ahead and
7 search the car and the C.R.I. at that time.

8 Q Okay. And why do you search the informant?

9 A For any kind of contraband to eliminate the fact that
10 they brought drugs to a drug deal because we -- we have had
11 that happen before and they've been arrested.

12 Q All right. So on October 6th of 2016, who were you
13 working with that day?

14 A Investigator Lachica.

15 Q And who was the informant that day?

16 A Brady Rhodes.

17 Q All right. And how did you come to know Mr. Rhodes?

18 A It was a long time ago. I'm not -- I'm not exactly
19 sure how -- how we came around because sometimes these guys
20 will work for other investigators. And I can't determine
21 exactly when we met.

22 Q Was that the first buy you had done with Mr. Rhodes?

23 A It is not.

24 Q Okay. Do you know how much Mr. Rhodes made from that
25 buy?

John Schafer
Direct examination by Mr. Hunter

1 A I do not.

2 Q Okay. I'll give you something to refresh your memory
3 by.

4 A Thank you.

5 Q Just look over it, and I will ask the question again.

6 A Okay.

7 (Pause.)

8 Q Do you remember now how much money Mr. Rhodes received
9 from the sheriff's office?

10 A Yes, sir. It was \$50.

11 Q Okay. Now, that's -- when does he receive that \$50?

12 A Once a completion of the transaction is done and if we
13 have the capability of reviewing the video at that time,
14 we'll go ahead and review it to make sure that we have a
15 good case before we go ahead and pay the informant.

16 Q So Mr. Rhodes, the informant in this case, was paid
17 \$50 in the case against Ms. Hammitt.

18 A Yes, sir.

19 Q Okay. Do you remember where y'all met?

20 A I can describe it, but I am not sure of the road. It
21 was very close to the incident location.

22 Q Okay. And what happened when you and Investigator
23 Lachica got with Mr. Rhodes?

24 A When we initially met?

25 Q When you initially met, yes.

John Schafer
Direct examination by Mr. Hunter

1 A Okay. We initially met. We told him where to meet.
2 It was a dead-end industrial area. We meet down there. I
3 go ahead and search the C.I., and the C.I.'s vehicle is
4 searched for contraband. No contraband was located. At
5 that time --

6 Q Before you go into that, what type of search do you
7 do?

8 A I search their person's pretty detailed. I'll search
9 their pockets, socks, in the cabin of the vehicle, anywhere
10 that they can go ahead and try to stash something or hide
11 something. I'll search to the best of our abilities to
12 determine and make sure there's no contraband that has been
13 brought to a drug deal. It'd be kinda counterproductive.

14 Q So in this case did you search -- did you and
15 Investigator Lachica search Mr. Rhodes and the vehicle he
16 was driving?

17 A Yes, sir.

18 Q Did you find any contraband or anything that was out
19 of the ordinary?

20 A No, sir.

21 Q Okay. If you had would you have even gone through
22 with the deal?

23 A No, sir.

24 Q Okay. After he's searched, what do you do then?

25 A Then we go ahead and we equip him with the money and

John Schafer
Direct examination by Mr. Hunter

1 the audio/video recording equipment. And we go ahead and
2 conduct basically a brief recording that says what we're
3 about to do and the transaction dates and times and
4 everything else.

5 Q All right. And the recording device you used on this
6 date was what?

7 A It was a watch, an audio and video recording watch.

8 Q Does the informant know how to turn it on and off?

9 A No, sir.

10 Q Who turns it on and off?

11 A On this particular occasion, I did.

12 Q Okay. After he's searched he's given the money and
13 the recording device. What's supposed to happen?

14 A He's supposed to go and -- go to the incident location
15 and exchange the recorded funds for whatever substance that
16 we're buying on that particular date and time.

17 Q Okay. Where do you and Investigator Lachica go?

18 A We conduct physical surveillance up to the point of
19 the parking lot, and we can't get in that hotel because of
20 where it's located at.

21 So at that point we go ahead, and we pull back and try
22 to find a farther spot with elevated position where we
23 could still observe the back of the hotel to the best of
24 our abilities.

25 Q So you try to stay close, but you don't want to --

John Schafer
Direct examination by Mr. Hunter

1 A Correct.

2 Q -- ruin the deal?

3 A That's correct.

4 Q Okay. And you did that in this case.

5 A Yes, sir.

6 Q Do you remember if you ever talked to Mr. Rhodes while
7 he was at the hotel?

8 A I'm not a hundred percent sure, but he was in there
9 quite some time. And I'm not sure if there was
10 conversation. Typically, I'll send a text. You don't want
11 to call an informant during the deal because they could get
12 flustered. I believe I might have sent a text, but I don't
13 want to swear that I sent a text here.

14 Q Did you observe him entering the hotel?

15 A We observed him in the parking lot walking through the
16 hotel.

17 Q Okay. Now, what happened after he leaves the hotel?

18 A He calls on the phone and says that the deal is done,
19 and he knows where to meet because we meet back at the same
20 location that we had started that deal from.

21 Q Okay. And when you meet back at that location, what
22 do you do?

23 A I go ahead and debrief him. I recover the quantity of
24 crystal rock-like substance and search him and search his
25 vehicle for any additional contraband.

John Schafer
Direct examination by Mr. Hunter

1 Q Okay. You and Investigator Lachica?

2 A Correct.

3 Q Why do you search him again?

4 A To ensure that he hasn't taken any of the contraband
5 that he just bought.

6 Q Okay.

7 A Or monies -- or monies.

8 Q Did he?

9 A No.

10 Q Did you find any U.S. currency when he got back to
11 your location?

12 A No.

13 Q Did you find any methamphetamine or any other drugs
14 when he got back to your location?

15 A No.

16 Q And that's to ensure that he didn't steal any of that
17 money or drugs?

18 A Correct.

19 Q Did you have a conversation with him when you get
20 back?

21 A We asked him what occurred when he went to the
22 location, yes, sir.

23 (D.V.D. marked State's Exhibit No. 1 for
24 Identification; methamphetamine marked State's Exhibit No. 2
25 for Identification.)

John Schafer
Direct examination by Mr. Hunter

1 Q Okay. Show you what's been premarked State's

2 Exhibit 1. Do you recognize that D.V.D.?

3 A Yes, sir, I do.

4 Q And how do you recognize that D.V.D.?

5 A That's a D.V.D. where it has an undercover buy, video,
6 on that D.V.D.

7 Q Okay. Did you have a chance to review that video
8 today?

9 A Yes, sir, I did.

10 Q And how do you know that you reviewed that specific
11 video?

12 A Because we had the informant to sign his initials on
13 this D.V.D.

14 Q And that's the video he signed his initials on?

15 A Correct.

16 Q Okay. Now, is that the video that you got from a
17 watch?

18 A Yes, sir.

19 Q Okay. Does that fairly and accurately depict the
20 scene? Obviously, you weren't there during the buy. But
21 before and after.

22 A That's correct. It does.

23 Q Okay. Show you what's been premarked State's
24 Exhibit 2. Do you recognize that item?

25 A Yes, sir, I do.

John Schafer
Direct examination by Mr. Hunter

1 Q How do you recognize that item?

2 A That is the methamphetamine we purchased on this date
3 and time.

4 Q Who did you receive that from?

5 A From Brady Rhodes, the informant.

6 Q Once you and Investigator Lachica receive it, what do
7 y'all do?

8 A We go ahead and place it in the BEST bag and submit it
9 to the Spartanburg County Sheriff's Office, take it in the
10 office, to confirm what it is.

11 Q Can you explain that whole process?

12 A As far as filling paperwork out?

13 Q Filling the paperwork out. How?

14 A Basically, so when this -- this particular case
15 informant comes back, I recover the quantity of crystal
16 rock-like substance, which is in here. I recover -- fill
17 out all of the paperwork and fill out a chain of custody
18 which goes from me to evidence. And then the lab
19 technician will, in turn, take it and test it.

20 Q Did you do that in this case?

21 A Yes, sir, I did.

22 Q And do you know when you turned it into evidence?

23 A The same day.

24 Q Okay. Do you have the informant or Mr. Rhodes also
25 fill out a form?

John Schafer
Cross-examination by Mr. Poole

1 A Form as to what, sir, the money?

2 Q The chain-of-evidence form.

3 A That's correct.

4 Q Okay. So basically anybody who touches that or moves
5 that also fills out -- or anybody who moves the evidence
6 fills out a form.

7 A Correct. He would do a B form and then we'll do
8 subsequent C forms after that.

9 Q Okay. And so last time you, other than today, were
10 dealing with those drugs is when you submitted it into
11 evidence.

12 A That's correct.

13 Q And is it in the same or substantially the same
14 condition as when you handled it on October the 6th?

15 A Yes, sir.

16 Q Obviously, the heat-sealed bag and BEST bag are
17 covering it, right? Is that what it normally looks in most
18 all of your drug cases?

19 A Yes, sir.

20 Q Okay. Please answer any questions Mr. Poole may have
21 for you.

22 CROSS-EXAMINATION

23 BY MR. POOLE

24 Q Investigator Schafer, with what department are you
25 associated with now?

John Schafer
Cross-examination by Mr. Poole

1 A Criminal investigation division.

2 Q Okay. And how long have you been in law enforcement
3 altogether?

4 A Approximately 17 years.

5 Q And that was starting in 2010?

6 A 2001 with a different sheriff's office. I worked
7 Spartanburg County Sheriff's Office from 2007 until now.

8 Q Okay. In 2010 and 2017 you worked in narcotics?

9 A 2010 to 2017, yes, sir, last year.

10 Q Okay. And you have used confidential reliable
11 informants during the whole course of that time?

12 A Yes, sir.

13 Q And these reliable informants, about how many have you
14 dealt with in the past?

15 A I'm not sure. There's been quite a few in that amount
16 of time, yes, sir.

17 Q A thousand?

18 A Close to it.

19 Q Close to a thousand C.R.I.

20 A Yeah.

21 Q Okay. And some of them, you testified, would bring
22 drugs to a drug dealer, is that right?

23 A I said if they had. I haven't personally dealt with
24 any experience like that. There's been other investigators
25 that have had that experience happen with them. So it's

John Schafer
Cross-examination by Mr. Poole

1 something that's commonly shared. A situation like that
2 that occurs, we want to make sure it doesn't occur, so make
3 sure we're doing everything we can do.

4 Q But it has occurred in the past.

5 A Yes, sir.

6 Q And how many dealings have you had with Brady Rhodes?

7 A Quite a few.

8 Q Approximately how many times?

9 A I would say probably anywhere from 25 to 50.

10 Q Twenty-five to 50? And on each one of those dealings
11 with him did you sign a document that was shown to you to
12 refresh your memory where he received money from a
13 transaction?

14 A Yes, sir. I did along with whatever investigator
15 would be with me.

16 Q Okay. How much money over the course of time did he
17 receive from you?

18 A I'm not sure. I'd have to have the receipts to add it
19 up. I'm not quite sure.

20 Q Well, how many times did you say you dealt with him?

21 A I mean, it's a large range of 25 to 50 times. But
22 sometimes he was paid more than \$50; sometimes he was paid
23 less; or sometimes he was not paid at all if he didn't get
24 what we needed for a prosecutable case.

25 Q Okay. So the times that he was paid, he was paid

John Schafer
Cross-examination by Mr. Poole

1 anywhere from twenty-five to fifty?

2 A Not always \$50. Anywhere from forty to above,
3 depending on what he did. And I can't put a number on it.
4 If I had all the receipts I could add it up.

5 Q Did he deal with anybody else in narcotics?

6 A He did, yes, sir, if I was unavailable.

7 Q Okay. So he was spending a lot of time doing this
8 type of business, wasn't he?

9 A That's correct.

10 Q And how many years did he do it?

11 A I'm not sure.

12 Q Okay. He made a lot of money doing this, didn't he?

13 A Everybody has a different definition of a lot of
14 money. I can't make that decision for him and what he
15 thinks is a lot of money.

16 Q Do you know if he has any other means of support?

17 A I do not.

18 Q Okay. Was this the last transaction that you had to
19 deal with him?

20 A I can't answer that question. Once I have all of the
21 receipts to see, because it's been some time since this
22 transaction happened.

23 Q Okay. All right. Thank you, Investigator Schafer.

24 MR. HUNTER: Just briefly, Your Honor.

25

John Schafer
Redirect examination by Mr. Hunter

1 REDIRECT EXAMINATION

2 BY MR. HUNTER

3 Q Mr. Poole asked about your previous law enforcement
4 experience. What did you do before coming into law
5 enforcement?

6 A I got out of high school and went in the United States
7 Marine Corps for approximately four years.

8 Q And over your seven years of narcotic experience
9 you've dealt with, obviously, hundreds of informants.

10 A Correct.

11 Q Not all your informants, correct?

12 A No. We always -- we always travel in pairs as
13 investigators.

14 Q Okay. And so even though it may not have been your
15 case, you also helped other informants?

16 A Correct.

17 Q And in your seven years you never had someone that you
18 were able to find brought drugs or other contraband.

19 A No, sir.

20 Q And you searched them very thoroughly.

21 A Correct.

22 Q And in this case you searched Mr. Rhodes and his car
23 very thoroughly.

24 A Correct.

25 Q And found none.

John Schafer
Recross-examination by Mr. Poole

1 A Correct.

2 Q Thank you.

3 RECROSS-EXAMINATION

4 BY MR. POOLE

5 Q Investigator Schafer, is there any such thing as a
6 perfect search?

7 A What is the definition of a perfect search?

8 Q Do you look in the ears?

9 A Okay.

10 Q Look in the nose?

11 A Are you asking me if I looked in his ears and nose?

12 Q Yes, sir.

13 A I don't believe I did. I searched all of his clothing
14 and everywhere that something can easily be stashed or
15 recovered from.

16 Q External.

17 A Correct.

18 Q Not internal or otherwise.

19 A No, sir.

20 Q Thank you.

21 MR. HUNTER: That's it for Investigator Schafer.

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

23 MR. HUNTER: May we approach?

24 (Bench conference held off the record in the presence
25 of the jury but out of the hearing of the jury.)

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 THE COURT: Ladies and gentlemen, let me ask you to
2 please go to your jury room. I'm going to take a short
3 break. Don't discuss the case. I'll bring you back after
4 that break.

5 (Whereupon, a recess was taken.)

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: All right. Are we ready for the jury?

9 MR. HUNTER: Yes, from the state, Your Honor.

10 THE COURT: Are we ready? Are y'all ready?

11 MR. POOLE: Yes, sir.

12 THE COURT: Bring them in.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: All right. We'll continue with the
16 state's presentation.

17 MR. HUNTER: Your Honor, at this time the state would
18 call Brady Rhodes.

19 BRADY DONALD RHODES, having
20 been first duly sworn, testified as follows:

21 THE COURT: You might have to adjust that microphone,
22 but get close to it and speak loudly so we can hear.

23 DIRECT EXAMINATION BY MR. HUNTER

24 Q Brady, the court reporter is sitting there in red
25 shirt. She's got to make sure that she's going to be able

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 to hear everything you say. She's taking a recording of
2 what's said. Okay?

3 A Okay.

4 Q So please state your full name.

5 A Brady Donald Rhodes.

6 Q Please speak a little bit more into the microphone so
7 we can all hear you. Okay?

8 THE COURT: Or louder.

9 A Brady Donald Rhodes.

10 Q And how are you old?

11 A I'm 30.

12 Q Okay. Are you currently employed?

13 A No, not at the moment.

14 Q Why not?

15 A I usually travel and go out of town, and right now
16 it's my off time. So I'm just waiting to be called to go
17 back out of town at the end of the month.

18 Q All right. Doing what though?

19 A I work for Strom Corp Engineering. They do labor
20 strikes when companies go on strike. These companies hire
21 temporary workers and they'll fill in the shoes and keep
22 the jobs running.

23 Q How did you come to know Investigator Schafer?

24 A I don't know what I should say.

25 Q Well, how did you meet Investigator Schafer?

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 A How I met him?

2 Q Yes.

3 A I don't remember.

4 Q Did you -- did you have charges pending against you,
5 criminal charges?

6 A Oh, at the very beginning, yes. I was working off a
7 charge.

8 Q Okay. And was that in April of 2015?

9 A Yes, it was.

10 Q And was that a D.U.S. and receiving stolen goods?

11 A Yes, it was receiving stolen goods and obtaining
12 property under false pretense.

13 Q And a D.U.S. with the city?

14 A Yes, yes, yes.

15 Q So that's how you initially became an informant?

16 A Yes.

17 Q Okay. That was in April of 2015.

18 A Yes.

19 Q This case happened in October 6th of 2016. What were
20 you doing with the sheriff's office at that point?

21 A I was continuing to make different buys, drug buys.

22 Q Okay. But by that time you were being paid to make
23 those buys?

24 A Yes.

25 Q Did you make \$50 in this case?

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 A I don't remember, but most of the time. Every time is
2 about \$50, yes.

3 Q Okay. But you've done multiple cases for Investigator
4 Schafer and other investigators?

5 A Yes.

6 Q And you were still working up until recently --

7 A Yes.

8 Q -- for the sheriff's office?

9 A Yes.

10 Q Since you've obviously done multiple buys, how does
11 the situation usually occur starting with meeting the
12 officers?

13 A Well, I would make a call to somebody and I would ask
14 them, you know, what they're holding. And then I would
15 proceed to tell them that I'm going to come and buy a
16 certain amount of drugs. And then I would let them know
17 what -- what they're holding and how much they're charging.
18 And then I would proceed to go meet them to get the money.
19 And then I would go make the purchase and then come back to
20 them and let them know what I did.

21 Q All right. Did you do that with Ashley Hammitt?

22 A Yes, I did.

23 Q When you arranged the drug deal with the officers
24 there at that point --

25 A Yes.

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 Q -- what did you arrange?

2 A I arranged to purchase a gram of methamphetamine.

3 Q For what price?

4 A I think it was a hundred dollars.

5 Q Okay. You've done multiple buys with Investigator
6 Schafer.

7 A Yes.

8 Q What does he do when you first meet him before the
9 buy?

10 A He searches my car and he searches me.

11 Q How -- what does he search?

12 A He turns my pockets inside out. He checks my socks,
13 my hats, turns them all inside out and makes sure I'm not
14 holding any contraband or any other money or anything along
15 those lines.

16 Q But this October 6th of 2016 buy, this was not your
17 first time buying from the sheriff's office?

18 A No, it was not my first.

19 Q So you don't -- you know not to bring anything.

20 A Yes, correct.

21 Q Have you ever brought anything, any drugs or money,
22 other than what they hand to you in any of the buys?

23 A No, never.

24 Q Investigator Schafer, Investigator Harvey? Anybody
25 ever found anything on you during a search, before or after

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 the buys?

2 A Nobody.

3 Q Okay. why is that?

4 A I'm not here to screw anybody over. I'm just here to
5 do a job and help take drugs off the street.

6 Q Okay. On October 6th of 2016, do you remember meeting
7 Investigator Schafer and Lachica?

8 A Yes.

9 Q Were you searched?

10 A Yes, I was searched before the buy and after the buy.

11 Q Did you have any contraband, any illegal contraband,
12 on you that day?

13 A No.

14 Q Okay. Did you have any of your own money on you that
15 day?

16 A If I did, I don't remember. But most of the time with
17 these, no, I don't.

18 Q Okay. Once you're searched what are you given?

19 A Can you repeat the question?

20 Q Once you're searched and nothing's found, what do they
21 give you?

22 A They give me recorded funds of how much the purchase
23 or the buy is going to be.

24 Q For a hundred-dollar buy, you get a hundred dollars
25 from Investigator Schafer?

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 A For that particular buy they did give me a
2 hundred-dollar bill.

3 Q Are you equipped with any audio-video recording
4 devices?

5 A Yes, I am.

6 Q Do you remember on that day what the device was?

7 A Yes. It was a watch.

8 Q Do you turn those on and off?

9 A I do not touch it, no, besides putting it on my wrist.

10 Q So who turns it on and off?

11 A Mr. Schafer did.

12 Q Have you been able to watch the video from that watch?

13 A Yes, I have.

14 Q I want to show you what's been premarked State's
15 Exhibit 1. Let me go ahead and take it out of the sleeve.

16 Do you recognize that D.V.D.?

17 A Yes.

18 Q How do you recognize that D.V.D.?

19 A Because I wrote my initials on it.

20 Q So those are your initials on it?

21 A Yes.

22 Q And you put those initials on it?

23 A Yes, I did.

24 Q And do those videos fairly and accurately depict the
25 scene as you remember on October 6th of 2016?

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 A Yes. One hundred percent.

2 Q I know this is going to be a basic question, but what
3 county did the buy occur in?

4 A Spartanburg County.

5 Q Okay. Thank you.

6 MR. HUNTER: Your Honor, at this time permission to
7 publish.

8 Actually, Your Honor, at this time the state would
9 offer State's Exhibit 1 into evidence.

10 MR. POOLE: No objection.

11 THE COURT: It's admitted.

12 (D.V.D. marked State's Exhibit No. 1.)

13 MR. HUNTER: Permission to publish.

14 THE COURT: You may.

15 Now, while that's being played are you going to be
16 asking this witness any questions?

17 MR. HUNTER: I may ask two or three, but I'll pause it
18 before I ask the question.

19 THE COURT: Okay. Be sure that you use that
20 microphone.

21 You may need to look at the screen. But if you look
22 at the screen, when you respond to a question use the
23 microphone.

24 THE WITNESS: Yes, sir.

25 (Pause.)

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 (Whereupon, State's Exhibit No. 1 was played for the
2 jury.)

3 Q Real quick. I'm going to fast forward a little bit.
4 Did you make any stops after leaving Investigator
5 Schafer before showing up at the hotel?

6 A No. I went straight there.

7 Q Okay.

8 (Whereupon, State's Exhibit No. 1 was played for the
9 jury.)

10 Q Do you recognize the female in that video?

11 A Yes, I do.

12 Q How do you recognize that female?

13 A That is Ashley.

14 Q All right. Can you point her out in the courtroom?

15 A Right there.

16 Q A little different color hair?

17 THE COURT: Excuse me just a minute.

18 When you say right there, where is right there?

19 THE WITNESS: Sitting at this table next to her public
20 defender, slash, lawyer.

21 THE COURT: Okay. Thank you.

22 (Whereupon, State's Exhibit No. 1 was played for the
23 jury.)

24 Q Who is that talking?

25 A I was talking. I was talking to Ashley.

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 Q Okay. who specifically said you're acting informant?

2 A Ashley was.

3 Q Why was she asking you those questions?

4 A I assume she--

5 MR. POOLE: Objection, Your Honor. That's
6 speculation.

7 THE COURT: Rephrase it.

8 Q You heard those questions. what were those questions
9 about?

10 A The questions were asking me if I was -- if I was
11 working as an informant or working as a police officer or
12 working somewhere along those lines.

13 Q I know we all probably know this, but what's a wire?

14 A What's a wire?

15 Q Yes.

16 A A wire is, I guess, a piece of wire attached to a
17 recording device captured on video.

18 Q And she said a gram of clear. what is clear?

19 A Clear is methamphetamine.

20 (Whereupon, State's Exhibit No. 1 was played for the
21 jury.)

22 Q When you first enter the hotel room what do you give
23 the defendant?

24 A Money.

25 Q Okay. So that's the hundred dollars?

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 A Yes. In that case it was a hundred-dollar bill and I
2 handed it to her.

3 Q Are you sure it was a hundred-dollar bill?

4 A Yes, positive.

5 Q Why are you left in the room alone?

6 A Because she was attempting to get more of product of
7 methamphetamine because she did not have the whole gram
8 like she told me she had in the beginning.

9 Q Okay. So you were expecting a gram, but she didn't
10 have it?

11 A Correct.

12 Q Do you know how much she had?

13 A Between \$20 and \$30 worth.

14 Q So a very small amount?

15 A Yes.

16 Q Now, you're in the room by yourself quite a while, is
17 that correct?

18 A Yes. I am.

19 Q Did you go anywhere on the other side of the bed for
20 these first 15 minutes?

21 A No. For the first 10 or 15 minutes I sat right there
22 in that chair.

23 Q Okay. Where was the methamphetamine that she had?

24 A It was on the other side of the bed on the little
25 coffee table.

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 Q Okay. So on the other side of the bed from you right
2 now.

3 A Yeah. The complete other side of the room.

4 Q To save time I'm going to forward, fast forward, while
5 you're sitting there.

6 A Okay.

7 (Whereupon, State's Exhibit No. 1 was played for the
8 jury.)

9 Q She said she's not going to try to bring heat to her
10 here. What is heat?

11 A Heat is in my terms extra attention, more people
12 coming around the area to see what was going on.

13 Q All right.

14 (Whereupon, State's Exhibit No. 1 was played for the
15 jury.)

16 Q You said thought you already had the stuff. What
17 stuff are you talking about?

18 A I was talking about the gram of methamphetamine.

19 Q What was she talking about when she said it's here?

20 A She was referring to her \$20 or \$30 methamphetamine
21 setting on the table.

22 (Whereupon, State's Exhibit No. 1 was played for the
23 jury.)

24 Q What are you asking her to put in the bag?

25 A That amount of methamphetamine that she had on that

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 table to put in the bag.

2 Q what she referred to as dope?

3 A Yes.

4 Q Is there anybody else? Just to make sure, there's
5 nobody else in the room but the two of y'all, is that
6 correct?

7 A Yeah. There's nobody but me and her.

8 (Whereupon, State's Exhibit No. 1 was played for the
9 jury.)

10 Q what is she looking for?

11 A She keeps looking for a scale.

12 Q What do you use the scale for?

13 A To -- to weigh the methamphetamines that she had on
14 hand that was setting on that table.

15 (Whereupon, State's Exhibit No. 1 was played for the
16 jury.)

17 Q At this point you know she doesn't have the full gram.
18 Why are you asking for just a half gram so you can go?

19 A Because I don't like to wait around, and to me it's
20 just a bunch of nonsense trying to wait around to
21 hopefully -- or to wait and you don't even know if you're
22 going to get what you want. I thought it was already
23 there. So I'm just trying to take what I can get so I can
24 go.

25 Q Because you know you're not going to be using this.

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 A Yeah. I'm not going to use it either way.

2 (Whereupon, State's Exhibit No. 1 was played for the
3 jury.)

4 Q Do you know who she's outside talking to?

5 A No, I do not. Actually, I do. It's the guy that I --
6 when I just walked up to her, the guy that was standing
7 there to the left. I don't know his name. Presumably, I
8 think that was him because she told me she was getting the
9 rest of the clear, the meth, from him.

10 (Whereupon, State's Exhibit No. 1 was played for the
11 jury.)

12 Q So at this point she has the money.

13 A Yes.

14 Q All right. She doesn't hand you the meth, does she?

15 A No, she does not.

16 Q You have to pick it up yourself?

17 A Yes. I had --

18 Q Did she give you the money back?

19 A No, nor did I get any change back.

20 Q Okay. Did you end up going back and getting anything
21 else?

22 A No. I did not.

23 Q Now, the last second we heard, "You tore my picture."

24 I want to show you what's been premarked State's Exhibit 2.

25 Do you recognize that item?

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 A Yeah. That is what I tore off to put the
2 methamphetamine in.

3 Q Okay.

4 A So I wouldn't lose it.

5 Q So that's this piece of paper right here.

6 A Yes. That white sheet of paper.

7 Q What we just heard her say, "You tore my picture,"
8 that's the picture she was talking about?

9 A Yes.

10 Q So you put the methamphetamine in that. And what do
11 you do at that point?

12 A At that point I folded it up and I walked out the door
13 and got back in the truck and I called Mr. Schafer and told
14 him I was done and I was going back to the location to meet
15 him and hand him over what I got.

16 Q You will agree that that's not even close to a hundred
17 dollars worth of meth.

18 A No. Not at all. I knew it was only \$20 or \$30 worth.
19 I didn't have a scale, so I couldn't weigh it myself. So
20 honestly I don't know, but it did look like \$20 or \$30.

21 Q Did you make any stops or see anybody else on your way
22 back to Investigator Schafer and Lachica?

23 A No. I went straight there and straight back to them.
24 (Whereupon, State's Exhibit No. 1 was played for the
25 jury.)

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 (The following takes place during the playing of
2 State's Exhibit No. 1.)

3 Q On the way there you only had a hundred dollars?

4 A Yes. A hundred-dollar bill.

5 Q And on the way back all you had was --

6 THE COURT: Excuse me just a minute.

7 Don't start it back. I'm not certain about the jury,
8 but I know I can't and the court reporter can't hear his
9 answers or your questions while that thing is being played.

10 MR. HUNTER: Yes, Your Honor.

11 THE COURT: So can't have a lot of things going at the
12 same time.

13 BY MR. HUNTER

14 Q On the way there the only thing you possessed was the
15 hundred dollars?

16 A Yes.

17 Q And on the way back the only thing you possessed was
18 the meth from the hotel room.

19 A Yes.

20 Q Now, this was 15 months ago.

21 A Roughly, yes.

22 Q Could you have had five twenties instead of a hundred?

23 A I could've, yes.

24 Q So you're not completely sure about that. You just
25 know it was a hundred dollars?

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 A Yeah. I just know it was a blue hundred-dollar bill.

2 Q But it could've -- what I'm saying is it could have
3 been twenty-dollar bills and fives or five twenty-dollar
4 bills.

5 A It could have been, but it wasn't.

6 (Whereupon, State's Exhibit No. 1 was played for the
7 jury.)

8 Q After they turned off that video did Investigator
9 Lachica and Schafer search you again?

10 A Yes, they did.

11 Q Did they find anything?

12 A No, they did not.

13 Q Did they search your car again?

14 A Yes. They searched my truck.

15 Q Okay. Did they find anything?

16 A No, they did not.

17 Q I know the video kind of stuck a little bit, and I'll
18 play it later for the jury.

19 Did you owe her money before that day?

20 A I did owe her \$40.

21 Q Why did you owe her \$40?

22 A Because she did front me some methamphetamine about a
23 year ago.

24 MR. POOLE: Objection, Your Honor. I don't think this
25 is relevant to the case at hand.

Brady Donald Rhodes
Direct examination by Mr. Hunter

1 MR. HUNTER: Your Honor, may we approach?

2 THE COURT: Yes.

3 (Bench conference held off the record in the presence
4 of the jury but out of the hearing of the jury.)

5 THE COURT: I sustain the objection.

6 Q I know it's not that much, but who did you purchase
7 this methamphetamine from?

8 A I called Ashley Fowler to purchase that
9 methamphetamine.

10 Q Who did you purchase it from?

11 A Ashley Fowler.

12 Q Please answer any questions Mr. Poole may have for
13 you.

14 THE COURT: All right. It's a good time to break for
15 lunch, so we're going to do that.

16 Let me ask the jury to keep in mind you can't talk
17 about the case with anybody, even among yourselves, until
18 you're involved in jury deliberations. And that time has
19 not come. So no discussions about the case.

20 We'll recess for lunch. I'll ask you to please report
21 back to the jury assembly room, and they'll take you from
22 there to the jury room.

23 Report back there at 2:15, 2:15 this afternoon. Okay.
24 Have a good lunch. I'll see you at 2:15.

25 You stay right where you are.

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: All right. You can step down from the
4 witness stand.

5 During the lunch recess -- you're still on the witness
6 stand. You're not completed. You have not completed your
7 examination. So you cannot discuss your testimony with
8 anyone during the lunch recess. Do you understand?

9 THE WITNESS: Yes, sir.

10 THE COURT: Step down.

11 Let me see y'all just a minute.

12 (Bench conference held off the record.)

13 THE COURT: All right. We're going to recess for
14 lunch. Court is in recess until 2:15.

15 (Whereupon, a recess was taken.)

16 THE COURT: All right. Are we ready for the jury?

17 MR. HUNTER: Yes, from the state.

18 MR. POOLE: Yes, sir.

19 THE COURT: Bring them in.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: Good afternoon.

23 As you know, when we recessed for lunch the witness,
24 Mr. Rhodes, had completed his direct examination by the
25 prosecutor. So we're going to continue with that

Brady Donald Rhodes
Cross-examination by Mr. Poole

1 examination by defense counsel.

2 Mr. Rhodes, if you will, take your seat on the witness
3 stand. And you of course are still under oath. Use the
4 microphone.

5 Mr. Poole.

6 MR. POOLE: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. POOLE

9 Q How are you doing today, Mr. Rhodes?

10 A I'm doing good. How about you?

11 Q Fine. Thank you.

12 Mr. Rhodes, you started your testimony a little while
13 ago before lunch stating that you had a new job, as doing
14 some temporary work, is that right?

15 A Yes.

16 Q And where was that place?

17 A I work for Strom Corp Engineering. They -- what they
18 do is they hire temporary workers for when the Union goes
19 on strike to keep the jobs going. And right now I am
20 waiting for the next job. So that's why I'm home.

21 Q How long have you worked there?

22 A I've been working on and off there for the past three
23 years.

24 Q And how long -- do you live in Spartanburg?

25 A Yes. I live in Boiling Springs.

Brady Donald Rhodes
Cross-examination by Mr. Poole

1 Q Okay. And how long have you had a relationship with
2 the sheriff's department or any other law enforcement
3 agency?

4 A I want to say since I was about 17 or 18 years old.

5 Q How old are you now?

6 A I'm 30.

7 Q Okay. And during -- let's say, that's, what, 13
8 years?

9 A Roughly, yes.

10 Q Did you work as an informant during that entire 13
11 years?

12 A No.

13 Q Okay. How long did you work as an informant during
14 those 13 years?

15 A About the past two and a half years.

16 Q Two and a half years.

17 A Between two and two and a half years. I don't know
18 the exact dates.

19 Q Okay. And you, like a lot of other people that are in
20 this court and everywhere else, you've had your own
21 personal problems, haven't you?

22 A Yes. Just like everyone growing up.

23 Q And you've been convicted of four felonies in the
24 past, have you not?

25 A Yes. When I was 18 years old.

Brady Donald Rhodes
Cross-examination by Mr. Poole

1 Q And when you first started working for the sheriff's
2 office as an informant, you began working in order to work
3 off some charges that you incurred, is that correct?

4 A Yes.

5 Q Okay. What were those charges?

6 A Those charges were receiving stolen goods and
7 obtaining property under false pretense in, I think,
8 April of 2015.

9 Q Okay. Were they ultimately resolved?

10 A Yes, they are resolved.

11 Q Did they result in your incarceration?

12 A Yes.

13 Q You were in prison?

14 A No. Just the county.

15 Q Just the county?

16 A Yeah.

17 Q You didn't go to the Department of Corrections?

18 A No.

19 Q Okay. And so after you worked off those charges did
20 you not start working with law enforcement in order to get
21 paid money?

22 A Yes.

23 Q And I have been given some information in the process
24 of obtaining discovery from the solicitor's office that
25 shows certain activities that you participated in in order

Brady Donald Rhodes
Cross-examination by Mr. Poole

1 to get paid by law enforcement, specifically or more
2 particularly, Spartanburg County Sheriff's Office.

3 Did you work for any other law enforcement agencies or
4 departments?

5 A Yes. I worked for the city as well.

6 Q Spartanburg City Public Safety.

7 A I worked for city and county.

8 Q Okay. Anywhere else?

9 A No, not outside of Spartanburg County, no.

10 MR. HUNTER: Your Honor, I think the jury has a
11 question for you.

12 THE FOREPERSON: We have a juror that is in
13 immediate --

14 THE COURT: I'm sorry. I can't hear you.

15 THE FOREPERSON: We seem to have a juror that is in an
16 immediate need.

17 THE COURT: Oh, yes. Please excuse yourself.

18 Show her where she can --

19 UNIDENTIFIED JUROR: I'm sorry.

20 THE COURT: That's all right.

21 Give her a private restroom.

22 Let me ask the rest of the jurors, please, go to your
23 jury room. Don't discuss the case. I'll bring you back
24 shortly.

25 (The following takes place outside the presence of the

Brady Donald Rhodes
Cross-examination by Mr. Poole

1 jury.)

2 THE COURT: Mr. Rhodes, you can step down. Don't
3 discuss your testimony during the break.

4 THE WITNESS: Okay.

5 THE COURT: We'll be at ease while we determine the
6 probable continuation of the juror's ability to serve.

7 (Whereupon, a recess was taken.)

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Do you feel okay?

11 UNIDENTIFIED JUROR: I think so.

12 THE COURT: Okay. Well, if you need to be excused,
13 just let us know. Okay.

14 UNIDENTIFIED JUROR: Sorry about that.

15 THE COURT: That's all right.

16 All right. Resume your seat on the witness stand.

17 Mr. Poole will continue with his examination.

18 MR. POOLE: Thank you.

19 BY MR. POOLE

20 Q Mr. Rhodes, I was asking you about your prior
21 involvement with the Spartanburg County Sheriff's Office as
22 an informant, and you said for about two, two and a half to
23 three years you worked as an informant for them, is that
24 correct?

25 A Yes, that is correct.

Brady Donald Rhodes
Cross-examination by Mr. Poole

- 1 Q And to begin with you were working off some charges.
- 2 A Yes. That's how I started.
- 3 Q And then later on you worked for money.
- 4 A Yes.
- 5 Q During that two and a half to three-year period how
- 6 much money did you make by being an informant?
- 7 A I don't know the exact amount.
- 8 Q Can you give us an estimate?
- 9 A I want to say at least -- at least \$750 to a thousand,
- 10 somewhere in that range.
- 11 Q \$750?
- 12 A At least. I'm not sure.
- 13 Q Well, at least. Okay. Well, now, how many
- 14 transactions did you participate in?
- 15 A A good bit. Between, somewhere between, 30, 40, 30
- 16 and 40. Maybe more than that. I'm not sure.
- 17 Q Okay. So it could be as many as 50 to 75.
- 18 A It could be. I don't keep count.
- 19 Q All right. But you made more than \$750 on 75
- 20 transactions, didn't you?
- 21 A Now that I think about it, yeah, it's probably a
- 22 little over a thousand.
- 23 Q Okay.
- 24 A Maybe going on over two thousand.
- 25 Q Well, for instance, I'm looking at your receipt for

Brady Donald Rhodes
Cross-examination by Mr. Poole

1 funds, which is not complete. But in April you received
2 funds from an undercover purchase of heroin. Does that
3 sound about right? April of 2015.

4 A I don't remember.

5 Q You received some money, a hundred dollars, in April
6 of 2015 for purchase of heroin. That was the same month
7 for a hundred dollars.

8 A Yeah. I do. I kind of sort of have lost memory. I
9 honestly don't remember it.

10 Q Okay. You're not saying that I am in error. You're
11 saying you just don't remember, is that right?

12 A That's correct -- that's correct.

13 Q Okay. I'm looking at another receipt in April of '13
14 that you received \$50 for a purchase.

15 MR. HUNTER: I'm going to object to this. This is
16 outside the scope of this case, Your Honor.

17 THE COURT: Well, let me see y'all just a minute.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 Q As a matter of clarification, Mr. Rhodes, on some of
21 the first ones that I mentioned to you, you were initially
22 working off charges, is that correct?

23 A Yes.

24 Q So you may not have received any money.

25 A I did not receive any money at all.

Brady Donald Rhodes
Cross-examination by Mr. Poole

1 Q That's a fair statement, isn't it?

2 A Yes.

3 Q Okay. But after you worked off those cases you did
4 receive some money, is that correct?

5 A Yes. Once I was done working off the charges I did
6 start working for money.

7 Q Okay. And a lot of the charges, whether or not you
8 were working off the charges or getting money, they were
9 for heroin, is that right, purchase of heroin?

10 A I don't understand what you're saying. The money I
11 received, are you saying that I purchased heroin with it?

12 Q Yes.

13 A No. It's not true.

14 Q You were not involved in any undercover operations
15 involving the purchase of heroin?

16 A Yes. I have made buys to purchase heroin.

17 Q Okay. So that's what I'm saying.

18 A Okay. I misunderstood you.

19 Q And you got paid for that, right?

20 A Yes, yes.

21 Q And I'm looking at at least seven to eight instances
22 of where your name is on sheets that reflect the fact that
23 you purchased heroin in undercover operations.

24 A Yes. That sounds about right.

25 Q All right. These are the ones that I have.

Brady Donald Rhodes
Cross-examination by Mr. Poole

1 How many are there out there where you participated in
2 the purchase of heroin?

3 A I'm not sure.

4 Q Well, you gave us an estimate awhile ago. Could it be
5 30?

6 A I never kept count. I made -- I made a lot of buys.
7 I just never have kept count.

8 Q Well, apparently on the samples that I've got it's
9 predominantly heroin. Were you predominantly a purchaser
10 of heroin?

11 A Yes.

12 Q Okay. So the majority of drugs that you purchased for
13 the Spartanburg County Sheriff's Department was heroin, is
14 that right?

15 A Mainly, yes.

16 Q All right. And you got paid for that.

17 A Yes.

18 Q Whatever the amount it was.

19 A Yes.

20 Q Let me ask you this, sir. Do you have an addiction
21 problem?

22 A I did, still do, but not like it used to be.

23 Q Did you have an addiction problem when you were
24 purchasing heroin?

25 A Yes.

Brady Donald Rhodes
Cross-examination by Mr. Poole

1 Q And was your addiction heroin?

2 A Yes.

3 Q And that's where you tie up and inject, is that
4 correct?

5 A Yes.

6 Q Have you received treatment for that?

7 A Yes, I have.

8 Q Now, on the day in question, October 6th of 2016, you
9 -- your testimony was that you made contact with the
10 defendant, Ms. Hammitt, and you went to visit her for the
11 purpose of purchasing crystal meth.

12 A Yes.

13 Q And that was one gram.

14 A Supposed to be, yes.

15 Q All right. And you further testified -- and I think
16 you're very strong in your testimony -- that you were given
17 a hundred-dollar bill for that.

18 A Yes.

19 Q Now, also in my discovery that criminal defense
20 attorneys routinely get upon request as a matter of
21 entitlement before court in cases like this, we have
22 printouts of monies that were distributed to you for this
23 particular purchase. And that shows five twenty-dollar
24 bills.

25 How do you explain the discrepancy in your testimony of

Brady Donald Rhodes
Cross-examination by Mr. Poole

1 you having a hundred-dollar bill and you being given five
2 twenty-dollar bills?

3 A If that is the actual copy of the paper it might have
4 been five twenties, but I thought it was a hundred-dollar
5 bill.

6 Q This purports to be a copy of the marked bills that
7 were given to you.

8 A For that date?

9 Q Yes, sir.

10 A Okay. Well, then it was five twenties.

11 Q Five twenties instead of a one-hundred-dollar bill.

12 A Yes. That was my mistake.

13 Q So your testimony's changing on that point.

14 A Yes, sir, if that's the copy. Like I said, I don't
15 really remember. I do so many it's hard to keep count of
16 what I do and who I'm doing with and what's -- how much
17 money is coming through my hands and/but if that is the
18 paper of the money that was given to me, then that is
19 correct. That is five twenties.

20 Q Okay. And so you had these five twenties on your
21 person as you walked into that hotel room, is that correct?

22 A Yes.

23 Q And you testified further that there was less than one
24 gram in that hotel room on a bench or somewhere in there,
25 right?

Brady Donald Rhodes
Cross-examination by Mr. Poole

1 A Yes. On the coffee table next to the bed.

2 Q And that you took that. Was it in a plastic bag?

3 A No. It was just setting -- setting on the table.

4 Q It was on the table?

5 A Uh-huh.

6 Q Well, did you pick it up with your fingers?

7 A I believe I took the -- the picture and broke it in
8 half and I scooped it into the picture.

9 Q Okay. So you're the one that took a picture, scooped
10 the alleged drugs onto the picture, crumbled it up and put
11 it in your pocket.

12 A Yes. She told me to because she said she wasn't going
13 to hand it to me.

14 Q Okay. But you're the one that did it, right?

15 A Yes, I did.

16 Q And you didn't get \$100 worth of meth, did you?

17 A No. I did not.

18 Q Okay. So why -- why did you leave the entire five
19 twenties there?

20 A She wouldn't give me the change back.

21 Q So she stole from you.

22 A Well, she told me that she had given the money off to
23 the next person, she didn't have the money. Once I walked
24 out of that room she didn't have the rest of the money.

25 Q Well, why didn't you just reach down and give -- take

Brady Donald Rhodes
Cross-examination by Mr. Poole

1 back three twenties, which would have been more accurate,
2 for the true value of the -- of the drugs that you were
3 actually taking?

4 A Well, because when I was in there I was trying to wait
5 five or ten minutes. I think the whole time I was there
6 was about 15 or 20 minutes. I was trying to give her time
7 to get me the whole gram. But I just got impatient, and I
8 didn't like what was going on. So I just took what was
9 there and proceeded to go ahead and leave.

10 Q Well, where was the money while you were waiting?

11 A As soon as I walked in the door I gave it to Ashley.

12 Q Okay. So you gave her the money.

13 A All five twenties.

14 Q Okay. And so she stole money from you.

15 A Pretty much.

16 Q I mean, we're just talking about anything in any type
17 of business.

18 A Well, I didn't really --

19 Q If you're a willing buyer and I'm a willing seller and
20 I take more money than what the item is worth, then I'm
21 stealing from you. Aren't I?

22 A Pretty much, yes.

23 Q Okay. Well, you're saying that she stole from you.

24 A Yes.

25 Q Okay. You further testified that one of the reasons

Brady Donald Rhodes
Redirect examination by Mr. Hunter

1 that you were doing this was to help keep drugs off the
2 street.

3 A Yes, sir.

4 Q Yet you are -- you do admit that while you were making
5 some of these heroin purchases you yourself were addicted
6 to heroin.

7 A Yes.

8 Q So they weren't getting off the street, were they?

9 A Yeah, for the most part. I was trying to do my best
10 to get them off the streets, but it's a cat-and-mouse game.
11 It's a never -- never ending game.

12 Q Thank you.

13 MR. HUNTER: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. HUNTER

16 Q I just want to be crystal clear. Who did you give the
17 money to?

18 A I gave the money to Ashley.

19 Q And who told you to take the meth on the nightstand
20 beside the bed?

21 A Ashley.

22 Q Thank you.

23 THE COURT: Step down.

24 MR. HUNTER: Your Honor, may Mr. Rhodes be excused?

25 THE COURT: Any objection?

Robert Rosenberg
Direct examination by Mr. Hunter

1 MR. POOLE: No, sir.

2 THE COURT: He may be.

3 (Whereupon, the witness was excused.)

4 MR. HUNTER: Your Honor, at this time the state would
5 call Officer Robert Rosenberg.

6 ROBERT ROSENBERG, having been
7 first duly sworn, testified as follows:

8 MR. HUNTER: Your Honor, at this time the state and
9 the defense have a stipulation I'd like to announce to the
10 Court.

11 THE COURT: Okay.

12 MR. HUNTER: Based upon conversation with Mr. Poole,
13 and Mr. Poole with his client, the state and defense both
14 stipulate that that is Ashley Hammitt in the video that was
15 seen earlier in court today.

16 THE COURT: Is that true, Mr. Poole?

17 MR. POOLE: That is correct.

18 THE COURT: Is that correct, Ms. Hammitt?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay.

21 MR. HUNTER: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MR. HUNTER

23 Q I'm going to show you what's been premarked State's
24 Exhibit 2.

25 Can you please state your name for the record?

Robert Rosenberg
Direct examination by Mr. Hunter

1 A I'm Officer Robert Rosenberg.

2 Q And what are your duties at the sheriff's office?

3 A Currently I'm assigned as an evidence custodian at the
4 sheriff's office.

5 Q And were you assigned that way in October of 2016?

6 A Yes, sir, I was.

7 Q And what are your duties as they pertain to drug cases
8 as evidence custodian?

9 A What we do, we have a -- outside our office we have
10 lock boxes. Officers will collect the evidence and they'll
11 put it in one of the lock boxes.

12 Back then it was a drop box. It was like a mailbox
13 reinforced with steel that would lock. We'd go out and
14 take it out.

15 We -- the other evidence officers and myself were the
16 only ones that had a key. It's in a restricted area. We'd
17 go out, remove it and bring it into the office and enter it
18 into the computer and put it in the back in the -- in our
19 lab room or our drug room.

20 Q And did you do that with State's Exhibit 2?

21 A Yes, sir.

22 Q And how do you know that?

23 A Because that's what -- that's all protocol. That's
24 what we do.

25 Q Okay. Does your name show up anywhere, or did you

Robert Rosenberg
Direct examination by Mr. Hunter

1 write any handwriting on the BEST bag?

2 A On the BEST bag, the only thing I did was I wrote the
3 suspect's name down here. And when I entered it into the
4 computer I put a computer sticker on here.

5 Q Now, is that bag in the same or substantially the same
6 condition as when you found it?

7 A Yes, sir. It comes in a brown Manila envelope with
8 paperwork shown with a chain, a legal chain.

9 Q Okay. And you signed that chain?

10 A Yes, sir.

11 Q And what do you do with the evidence?

12 A I put everything in it into the evidence, I mean, in
13 the evidence envelope and put it in the drug room until the
14 lab technicians pick it up.

15 Q And do you know when the lab technicians pick it up?

16 A Usually I'm in there one -- myself or another evidence
17 officer would be in there.

18 Q Okay. Are you able to tell when you first receive the
19 evidence if the bag has been tampered with or not?

20 A No. I mean, I could tell when it's not.

21 Q That specific bag has been opened, but you're able to
22 tell if it's tampered with or not.

23 A Oh, yes, yes.

24 Q Would you accept a piece of evidence if it appears to
25 have been tampered with?

Holly Deann Tobias
Direct examination by Mr. Poole

1 A No, I would not.

2 Q Okay. Did it appear that way in this case?

3 A No. It does not.

4 Q So then after you receive it you place it in the
5 computer, place it in the drug room before testing.

6 A Yes.

7 Q Is that what you did in this case?

8 A Yes, sir.

9 Q Okay. Please answer any questions Mr. Poole may have
10 for you.

11 MR. POOLE: I have no questions.

12 THE COURT: You may step down.

13 MR. HUNTER: Your Honor, may Officer Rosenberg be
14 excused?

15 THE COURT: He may be.

16 (Whereupon, the witness was excused.)

17 MR. HUNTER: Your Honor, at this time the state would
18 call Holly Tobias.

19 HOLLY DEANN TOBIAS, having
20 been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. HUNTER

22 Q Please make sure you speak up loudly so the court
23 reporter and judge and the jury can hear you. Okay?

24 A Okay.

25 Q You might have to either bring the microphone to you

Holly Deann Tobias
Direct examination by Mr. Poole

1 or speak out a little bit into it.

2 A Okay.

3 Q Please state your full name for the record.

4 A Holly Deann Tobias.

5 Q And how are you employed?

6 A I'm a forensic chemist with the Spartanburg County
7 Sheriff's Office.

8 Q And how long have you been a forensic chemist at the
9 sheriff's office?

10 A I have been a chemist for a little over two years now.

11 Q Where did you get your undergraduate degree?

12 A I went to Wofford College where I received a bachelor
13 of science degree in chemistry and a minor in accounting.

14 Q Okay. When you first went to the sheriff's office
15 were you certified in marijuana analysis?

16 A Before I came to the sheriff's office, I was not.

17 Q I'm saying once you got to the sheriff's office in
18 your position.

19 A Yes. That is correct.

20 Q And what does that certification entail?

21 A To become marijuana certified you receive reference
22 material and have to take a handwritten test where you have
23 to pass the test with a hundred. And you also have to
24 perform a hundred samples that are a mixture of actual
25 plant, marijuana plant, material or not. And I have to say

Holly Deann Tobias
Direct examination by Mr. Poole

1 if it is or is not marijuana.

2 Q Okay. Did you get all of those correct?

3 A I did.

4 Q And were you certified as a marijuana analyst?

5 A That is correct.

6 Q Okay. Do you have any certifications dealing with
7 meth labs?

8 A Yes. I went to a certification class on meth labs.

9 Q Okay. What -- what does that class entail? How long
10 is it and where is it and what do you do?

11 A That class was a week-long class at the emergency
12 services academy where they covered reference material, as
13 well as videos, of what meth is, what it's made of and how
14 to make it and how to safely secure the area and clean the
15 area once a meth lab is made.

16 Q So you received dual certifications in that class.

17 A That is correct.

18 Q Which is what? What were the two certifications you
19 received in that?

20 A I received a certification in responding to meth and
21 drug labs, as well as sight and safety plan.

22 Q Are you a police officer?

23 A I am a class three officer.

24 Q So did you pass the South Carolina Criminal Justice
25 Academy legal program?

Holly Deann Tobias
Direct examination by Mr. Poole

1 A I did.

2 Q What type of training -- who has done your training as
3 far as forensic chemistry once you started with the
4 sheriff's office after undergrad?

5 A Once I started at the sheriff's office my boss,
6 Lieutenant Melissa Hendrix, performed my in-house training.

7 Q Okay. And how many years experience does she have?

8 A She has over 24 years experience as a forensic
9 chemist.

10 Q And that's at SLED Columbia -- Spartanburg?

11 A This is correct.

12 Q The state agencies, county agencies.

13 A That is correct.

14 Q All right. Please go into detail about what that
15 training entailed in order for you to be able to test
16 substances.

17 A The training --

18 MR. POOLE: Your Honor, for what it's worth, I will be
19 glad to stipulate to the status of this particular witness.

20 MR. HUNTER: Your Honor, that's fine.

21 At this time the state would offer Holly Tobias as an
22 expert in forensic chemistry and controlled substances.

23 THE COURT: No objection to that?

24 MR. POOLE: No, sir.

25 THE COURT: All right. She is so qualified.

Holly Deann Tobias
Direct examination by Mr. Poole

1 Q All right. Do you have State's Exhibit 2 in front of
2 you? Do you recognize that item?

3 A I do.

4 Q And how do you recognize that item?

5 A It has my initials on the bag.

6 Q Okay. When you say your initials on the bag, which
7 bag?

8 A My initials are on the heat-sealed bag, as well as
9 the -- each piece within.

10 Q Okay. That bag with the blue writing, what is that?

11 A That is a BEST bag.

12 Q What does that stand for?

13 A Best evidence sample testing, which was granted by
14 SLED.

15 Q Is that a tamper-proof bag, a tamper evident bag?

16 A It is a tamper-evident bag.

17 Q What does that mean?

18 A That means if it is -- someone tried to get into it we
19 would be able to tell. But that doesn't mean, obviously,
20 if they take a knife or scissors, you know, they'd still be
21 able to get into it, but we could tell that they -- someone
22 was in it before us.

23 Q Did it appear when you received that item that it had
24 never been tampered with?

25 A It appeared that it had not been tampered with.

Holly Deann Tobias
Direct examination by Mr. Poole

1 Q Okay. So did you accept that item?

2 A I did accept this item.

3 Q Would you please tell the jury what a chemical test
4 is?

5 A A chemical test is -- shorter term is a color test.
6 It'll change it, change to a specific color.

7 Q Is that a presumptive test?

8 A That is a presumptive test.

9 Q What does that mean?

10 A Presumptive means that it will give us an idea of what
11 it could possibly be, but it's not a confirmatory. It will
12 not tell us one hundred percent that is what that item is.

13 Q How do you decide what presumptive tests or chemical
14 tests to perform?

15 A Based on our training, we have an idea of what example
16 certain substance could be, what they would look like. And
17 so we would start with the reagents we know would react
18 with a substance we believe it might be.

19 Q Okay. And when you first received that substance what
20 did you believe it is?

21 A It was a crystal substance, and crystal is normally
22 indicative of methamphetamine.

23 Q So did you do a chemical test for methamphetamine?

24 A I did.

25 Q And what is that test?

Holly Deann Tobias
Direct examination by Mr. Poole

1 A The chemical test for methamphetamine is a marquetry
2 agent, which is sulphuric acid and formaldehyde solution.

3 Q And so what do you do with that solution?

4 A We would take a very small sample of the substance,
5 put onto a plate where we would put a drop or two of the
6 solution onto the substance and will turn it color.

7 Q And for methamphetamine, what color are you looking
8 for?

9 A It will turn orange.

10 Q Did you perform that test in this case?

11 A I did.

12 Q What color did the substance turn?

13 A It turned orange.

14 Q Okay. Now, you actually -- the substance in front of
15 you is not the substance, the full substance, that you
16 tested, is that correct?

17 A That's correct.

18 Q So you take a small sample of what's in front of you
19 and test it.

20 A Yes.

21 Q What happens for a chemical test? What happens to
22 what you tested?

23 A It is destroyed once it's test.

24 Q Okay. So it would not go into the final weight of the
25 substance when you weigh it.

Holly Deann Tobias
Direct examination by Mr. Poole

1 A This is correct.

2 Q Since you done a confirmatory or a presumptive
3 chemical test, what's the secondary confirmatory test that
4 you do?

5 A The confirmatory test that we do is a gas
6 chromatograph/mass spectrometer, also known as the G.C.M.S.
7 That is the main confirmatory that we use.

8 Q And how does that machine work?

9 A We extract a very small sample of the substance, and
10 the extracted solution will be injected into the
11 instrument.

12 It will go into the column where the modules will
13 stick onto the column. As the instrument heats up the
14 compounds will be released from the column and will fall
15 off. That will give us a retention time for that specific
16 compound.

17 Then it will go into the mass spectrum where a
18 fingerprint just like all of us have our own unique
19 fingerprints, each substance has its own unique
20 fingerprint.

21 Q And you obviously -- you and Melissa know what the
22 fingerprints are for the controlled substances.

23 A This is correct.

24 Q And did you perform that test on the bag in front of
25 you or the substance in front of you?

Holly Deann Tobias
Direct examination by Mr. Poole

- 1 A Yes, I did.
- 2 Q And what did it test for?
- 3 A It tested for methamphetamine.
- 4 Q Explain how you weigh the substances.
- 5 A We weigh the substance on a calibrated scale or
- 6 balance that we have in our lab.
- 7 Q Okay. How do you calibrate that scale?
- 8 A We have standardized weights. And at the beginning of
- 9 each month we make sure that those weights match what
- 10 they're supposed to.
- 11 Q Does anybody else come and calibrate the scale during
- 12 the year?
- 13 A Each year we have an outside contractor who will come
- 14 and clean and service and calibrate our instruments.
- 15 Q So back in -- let's see. When this substance was
- 16 tested were the scales calibrated?
- 17 A This is correct.
- 18 Q And in your expert opinion how much did the substance
- 19 weigh?
- 20 A The weight I got or --
- 21 Q Yes. So in your expert opinion how much did the
- 22 substance weigh?
- 23 A It was determined to be 0.03 grams.
- 24 Q of?
- 25 A . Methamphetamine.

Holly Deann Tobias
Cross-examination by Mr. Poole

1 Q And what schedule is that?

2 A That is a Controlled II substance.

3 Q And once again. It's .03 when you weigh it, but
4 you've already done two tests. So you've lost some weight.

5 A There was a very small amount of weight taken for
6 testing.

7 MR. HUNTER: Your Honor, at this time the state would
8 offer State's Exhibit 2 into evidence.

9 MR. POOLE: No objection.

10 THE COURT: It's admitted.

11 (Drugs marked State's Exhibit No. 2.)

12 Q Please answer any questions Mr. Poole may have for
13 you.

14 CROSS-EXAMINATION

15 BY MR. POOLE

16 Q Just a couple out of curiosity primarily.

17 Ms. Tobias, did you take organic chemistry at Wofford
18 College?

19 A I did.

20 Q What year did you graduate?

21 A I graduated in 2014.

22 Q Okay. Did they still speak of the notorious Dr.
23 William P. Kenan, organics?

24 A Could you repeat the name, please?

25 Q William P. Kenan in the organic chemistry department.

Holly Deann Tobias
Cross-examination by Mr. Poole

1 A I don't recall.

2 Q Okay. Well, I just had to ask that. He was mine.

3 Thank you.

4 A No problem.

5 MR. HUNTER: May she be excused, Your Honor?

6 THE COURT: You may step down.

7 (Whereupon, the witness was excused.)

8 MR. HUNTER: Your Honor, at this time the state would
9 rest.

10 THE COURT: Before we go further I've got some matters
11 I'll need to address with the lawyers. It should take only
12 a few minutes. So we'll take a short break for me to do
13 that. And then we'll bring you back.

14 Keep in mind you still can't talk about the case.
15 It's not been submitted for deliberation.

16 (The following takes place outside the presence of the
17 jury.)

18 THE COURT: Mr. Poole, am I to assume from your
19 question that you took organic chemistry at Wofford
20 College?

21 MR. POOLE: Yes, sir. I did.

22 THE COURT: Is that how you ended up in law school?

23 MR. POOLE: Well, I took two years of pre-med, and
24 then I had had enough.

25 THE COURT: I see.

1 MR. POOLE: And then I went to the more liberal arts
2 philosophy, English, et cetera.

3 THE COURT: That's when you took Philosophy 101?
4 Okay. Any motions or other matters to address?

5 MR. POOLE: Yes, sir.

6 As usual at this time in the case I make my motion for
7 a directed verdict based upon the ground that this is not a
8 case of distribution of methamphetamine.

9 It's basically at best in the light of the evidence
10 most favorable to the state a case where the two people
11 met, where Ms. Hammitt stole money from the informant and
12 he took the drugs from inside the room. And there was no
13 distribution on her part. And that's simply my motion.

14 THE COURT: All right. Mr. Hunter.

15 MR. HUNTER: Your Honor, based on the facts and
16 evidence most favorable to the state I believe the facts as
17 he stated would be most favorable for the defense.

18 We, obviously, heard -- saw the video and heard
19 testimony where Mr. Rhodes said he gave her the money and
20 received the drugs in exchange for that money. So we'd ask
21 that this motion be denied.

22 THE COURT: All right. I find there is sufficient
23 evidence to make it a jury issue, so your motion for a
24 directed verdict is denied.

25 Anything else?

1 MR. POOLE: No, sir.

2 THE COURT: Have you talked to Ms. Hammitt about her
3 right to testify or not?

4 MR. POOLE: Yes, sir, I have.

5 THE COURT: And has she indicated to you a preference?

6 MR. POOLE: She prefers to testify.

7 THE COURT: Okay. Is that right, Ms. Hammitt?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You understand that when you're charged
10 with a crime you have an absolute right to remain silent,
11 which of course means nobody can make you testify, nobody
12 can require that you give any statement, nobody can require
13 that you answer any questions --

14 THE DEFENDANT: Yes, sir.

15 THE COURT: -- when you're charged with a crime.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: At least not those that might implicate
18 you in a crime.

19 At the same time, if you want to testify during the
20 trial you've got a right to do so. It's up to you. You
21 have to make that decision.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If you choose not to testify I'll instruct
24 the jury, as I already have -- but I'll instruct them
25 again -- they can't hold that against you, they can't

1 consider it in any way in their deliberations.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Or in their determination as to your
4 guilt.

5 At the same time, if you elect to testify you've got
6 to answer not only your lawyer's questions but you've got
7 to answer the prosecutor's questions even if the responses
8 to those questions might tend to prove you guilty of some
9 crime they claim you committed.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you and Mr. Poole discussed the
12 advantages and disadvantages of testifying, as well as not
13 testifying?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you appreciate what those
16 advantages and disadvantages are?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And have you had time to reflect upon your
19 decision about whether or not you will testify?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And have you arrived at a decision?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And what is that decision?

24 THE DEFENDANT: To testify.

25 THE COURT: And is that a decision that you made of

1 your own free will and accord?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you satisfied with that decision?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did anybody force you into it?

6 THE DEFENDANT: No, sir.

7 THE COURT: Anybody suggest it for you?

8 THE DEFENDANT: No, sir.

9 THE COURT: You made it on your own?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And are you happy with it?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. We'll take ten minutes and
14 then we'll continue.

15 I need to see the lawyers too before you go.

16 (Whereupon, a recess was taken.)

17 THE COURT: All right. Anything we need to address
18 before the jury is brought in?

19 MR. HUNTER: Nothing from the state, Your Honor.

20 MR. POOLE: Nothing here, Your Honor.

21 THE COURT: All right. Bring them in.

22 (The following takes place in the presence of the
23 jury.)

24 THE COURT: All right. As you know, the state has
25 concluded with their presentation. So we'll now proceed

Ashley Louise Hammitt
Direct examination by Mr. Poole

1 with any to be offered by the defendant.

2 Mr. Poole.

3 MR. POOLE: Your Honor, at this time we would call
4 Ashley Hammitt to the witness stand.

5 ASHLEY LOUISE HAMMITT, having
6 been first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. POOLE

8 Q State your name for the record, please, ma'am.

9 A Ashley Hammitt.

10 Q Spell last name.

11 A H-A-M-M-I-T-T.

12 Q And I think you're going to have to speak up so
13 everybody can hear you.

14 A H-A-M-M-I-T-T.

15 Q Okay. And do you live here in Spartanburg County,
16 Ashley?

17 A Yes, sir.

18 Q How old are you?

19 A Thirty-one.

20 Q How far did you go in school?

21 A Tenth grade.

22 Q Do you have any children?

23 A No, sir.

24 Q Okay. Are you married?

25 A Yes.

Ashley Louise Hammitt
Direct examination by Mr. Poole

1 Q Okay. Now, are you the defendant in this case?

2 A Yes, sir.

3 Q Do you recall what happened on October 6th of last
4 year?

5 A Yes, sir.

6 Q Excuse me. 2016.

7 A Yes, sir.

8 Q And is that you on that video there?

9 A Yes, sir, it is.

10 Q Would you tell this jury what happened on that day and
11 your dealings with the informant in this case?

12 A Yes, sir. I got kicked outta my home I had went to
13 because I needed to get out of the hotel life. I had got
14 in previous trouble, and I didn't want to get into it any
15 more. And when I went to the motel I only had enough to
16 stay for one night. He called me and he asked me for a
17 large amount. I just did what I knew best.

18 THE COURT: Excuse me just a minute, now.

19 You're going to have to slow down a little bit and
20 speak up because we're having a hard time hearing.

21 THE WITNESS: It's my voice.

22 THE COURT: I understand.

23 A I did what I knew best, and that was I knew I could
24 get him to hand me his money. He had stolen from me in
25 past several times. He'd gotten money from me. He had

Ashley Louise Hammitt
Direct examination by Mr. Poole

1 stolen cell phones, etc. Anything that I had out he would
2 steal.

3 I knew him as a heroin addict. And, I mean, I wasn't
4 no better because I was in the same lifestyle. I don't
5 deny that.

6 But when he -- when he called me and he had asked for
7 it I said, okay, yeah, come on. Yeah. I told him I was
8 going to get him drugs.

9 As you seen on the video, I was talking about it. The
10 whole reason I was talking about it was just so he would
11 think that I was going to get them for him so he wouldn't
12 take the money back. That was it.

13 I just wanted to pay for my room. I didn't give him
14 anything. He knew I didn't -- he did tear up one of my
15 pictures. It was an actual picture he tore. It wasn't --
16 I don't know what it was, but it was an actual picture. I
17 don't know why, but he did it. I stole his money. I had
18 to have a place to stay. I panicked.

19 Q Was it your intent to sell drugs for money?

20 A No, sir.

21 Q Okay. Well, elaborate a little but on it, on all of
22 this. I mean, you know, tell us about -- about what time
23 you got there and --

24 A I'm not exactly sure.

25 Q -- what y'all talked about and all of that. Just go

Ashley Louise Hammitt
Direct examination by Mr. Poole

1 into detail and tell us then.

2 A I'm not exactly sure what time he got there, but it
3 was probably around noon.

4 I had two -- what it was, around 2:00 o'clock because
5 I had like two hours left. The office manager had given me
6 permission, granted me enough time to try to come up with
7 the money. I had about two hours left.

8 And, like I said, I was panicking and I was scared to
9 death. I didn't have nowhere to go. I didn't have family
10 left.

11 I did everything I could to come up with the money. I
12 had actually took a job cleaning. And what I thought I was
13 going to get paid, I didn't get paid. So that's the reason
14 why the manager allotted the time, is because he knew that
15 I had actually went to work that day to come up with the
16 money.

17 Whenever I couldn't come up with money, Brady got
18 there around, it was around, 2:00, 2:30-ish, so to speak.
19 He said that I kept going in and out of the room telling
20 him that I was waiting on it, hold on, you know, I'm going
21 to get it, hold on, it's here, it's here. I was saying
22 it's here at the hotel and somewhere around the hotel. I
23 wasn't going to tell him exactly.

24 And I just waited around until he just was ready to
25 go. I knew Brady. I've known Brady for a couple of years.

Ashley Louise Hammitt
Direct examination by Mr. Poole

1 Brady gets -- he gets real agitated. He gets real scared
2 easy. I used to terrorize him. That I did. Not
3 intentionally, just I thought he was a cop.

4 So naturally I'm still around the same thing that I
5 always thought he was. I used to make him take his shirt
6 off and leave his backpack. Y'all heard me, the jewelry
7 thing. Y'all heard me. I used to make him take everything
8 off and leave at the front door. I wouldn't even let him
9 bring it in my rooms -- watches, rings and all of that.

10 why I didn't that time is because I know I was just
11 trying to take his money. That is all -- that's all it
12 was, because I was trying to take his money. I had been in
13 trouble, and I didn't want to get in any more trouble.
14 That's the last thing I wanted to do. I knew that it would
15 be a third. I knew I would be in deep trouble if I got in
16 any more trouble. I did steal his money, and I'm not
17 saying one crime is better than another crime. I didn't
18 mean to. I wouldn't have done it. I guess it's just
19 instinct to try to survive.

20 Brady Rhodes. He did the same thing. He did the same
21 thing, instinct to survive. It wasn't on purpose and I
22 didn't mean to hurt anybody, no intentions of ever hurting
23 anybody.

24 Q while you left the room and you were walking around
25 the hotel were you actively seeking to find drugs to give

Ashley Louise Hammitt
Direct examination by Mr. Poole

1 to him?

2 A No, no. The two people that -- there was a room with
3 two -- two rooms down he knew what I had planned, and I had
4 one room down beside me. He knew what I had planned.

5 I mean, they were friends of mine. And I told them
6 that Brady had called me and I didn't trust him and that
7 either way I didn't have nothing to give him and I didn't
8 have nobody to get it from any more. I'd already been in
9 trouble with it. I didn't have nobody I could call to get
10 it any more.

11 And I said, well, what -- what would you do. And
12 they -- you know, the -- the one person, he's not exactly
13 the best one to take advice from him. He said he would've
14 done it and he would took the money. So I told him okay.

15 I was, like, will you help me do it, and he said no.
16 He said just do this. And he's one that told me what to do
17 as far as how to get the money from him and how to act
18 whenever he got there, because he knew who Brady Rhodes was
19 too.

20 Q So did you -- once again, did you sell him drugs for
21 money?

22 A No, sir, not on that day.

23 Q Did he take the drugs?

24 A They was no drugs.

25 Q Okay.

Ashley Louise Hammitt
Cross-examination by Mr. Hunter

1 A Not to my knowledge, there wasn't. I mean, I didn't
2 have any drugs is what I'm saying.

3 Q You didn't have any there with you?

4 A I didn't give him any drugs. Huh?

5 Q You didn't have any with you?

6 A I didn't have any drugs.

7 Q Okay.

8 A I was walking around looking for scales acting like I
9 was getting something.

10 Q Okay. But you did take his money.

11 A Yes, sir, I did take his money.

12 Q Okay. Answer any questions Mr. Hunter may have.

13 MR. HUNTER: May Mr. Poole and I approach?

14 THE COURT: You may.

15 (Bench conference held off the record in the presence
16 of the jury but out of the hearing of the jury.)

17 CROSS-EXAMINATION

18 BY MR. HUNTER

19 Q Now, you said you weren't going to give him anything,
20 you were just going to take his hundred dollars.

21 A Yes, sir.

22 Q Okay. If you weren't going to give him anything why
23 did you ask him if he was an informant?

24 A Because it's a natural question.

25 Q Is it a natural question?

Ashley Louise Hammitt
Cross-examination by Mr. Hunter

1 A It is in that lifestyle.

2 Q If you weren't going to give him anything why did you
3 look to see if the watch was fake or real?

4 A Because it's natural in the lifestyle.

5 Q You also said you used to make him take his clothes
6 off.

7 A Yes, sir.

8 Q What would you make him take his clothes off for?

9 A Because of him being an informant. I told you I
10 didn't trust him from the beginning.

11 Q Well, why would you make him take his clothes off?
12 What would that prove?

13 A He didn't take his clothes off. He'd take his shirt
14 off.

15 Q But you said you used to. Why would --

16 A I used to make him take his shirt off.

17 Q For what?

18 A Because if he didn't have a shirt on, he didn't have
19 jewelry on, he didn't have nothing -- there was no way he'd
20 have a camera on. No different than being searched.

21 Q Well, why would he have a camera on --

22 A Because I thought --

23 Q -- when he's talking to you? Why would he have a
24 camera on if he's talking to you?

25 A Because he called me to get drugs, period. I mean,

Ashley Louise Hammitt
Cross-examination by Mr. Hunter

1 it's natural. I mean, if I wouldn't have done it he
2 would've assumed something too, and he wouldn't have gave
3 me the money.

4 Q Now, you -- you watched the video. You were in here
5 with all of us, correct?

6 A Yes, sir.

7 Q Do you remember hearing you say the dope's right
8 there?

9 A I told you I acted it all out. I walked -- I said all
10 of it. I said I did.

11 Q So your testimony is that you didn't have any dope,
12 but on video you said you do.

13 A No. I said -- I said the dope's here, is what I said,
14 the dope's here.

15 Q And then you told him to take it, you were not going
16 to hand it to him.

17 A Exactly. I -- I didn't give him any dope.

18 Q You didn't give him any dope.

19 A No, sir.

20 Q But there was dope there.

21 A I didn't give it to him.

22 Q But you're saying you're not guilty because you --

23 A No. I'm not saying I'm not guilty because I didn't
24 give him any dope. My intentions --

25 Q You took the hundred dollars.

Ashley Louise Hammitt
Cross-examination by Mr. Hunter

1 A No. My intentions was to take his money, and that's
2 what I did.

3 Q But you took a hundred dollars.

4 A I didn't --

5 Q And had dope. Did you have dope? And there was dope
6 in the room.

7 A No. I said the dope is here.

8 Q So you're saying --

9 A Here. I was talking about here at the hotel -- here
10 at the hotel.

11 Q So this State's Exhibit 2 was not in the room.

12 A I said he tore my picture. He tore my picture. He
13 was in my room, and he did tear my picture.

14 Q And he had meth.

15 A Well, I mean, I didn't give it to him.

16 Q I didn't say you handed it to him.

17 A No. I --

18 Q There was meth in your room.

19 A I didn't give him meth.

20 Q You didn't hand him meth.

21 A I didn't give him meth.

22 Q But you took his hundred dollars.

23 A I took his hundred dollars.

24 Q And you complained about the fact that the meth over
25 there was not worth a hundred dollars.

Ashley Louise Hammitt
Cross-examination by Mr. Hunter

1 A Do what?

2 Q You said that the meth over there was not worth a
3 hundred dollars.

4 A No.

5 Q Why was he wanting to leave if he wasn't getting his
6 hundred dollars worth? That's from you on the video.

7 A I -- yeah. Okay. I'm not saying I don't do meth
8 myself. I said 20, 30, 50 is not worth a hundred dollars.
9 Why would you be willing to take it, is what I said.

10 Q So he's working for the police and he just left -- I'm
11 sorry. Go ahead.

12 A I mean, I -- it's natural in that. In that lifestyle
13 you're going to asking those questions.

14 Q That's not what I was asking about.

15 A Okay. You said --

16 Q He gave you a hundred dollars for a gram of meth.

17 A And I said that amount is not worth it. We were
18 talking about amounts. That's it.

19 Q Yeah. The amount that's in State's Exhibit 2 is not
20 worth that hundred dollars.

21 A I didn't --

22 Q I think we all agreed to that.

23 A I didn't give him that.

24 Q Please answer any questions Mr. Poole may have for
25 you.

1 MR. POOLE: I don't have any further questions, Your
2 Honor.

3 THE COURT: Step down.

4 MR. POOLE: Your Honor, may I be excused for a minute
5 to see if a potential witness is outside?

6 THE COURT: Okay.

7 (Pause.)

8 MR. POOLE: No further witnesses.

9 THE COURT: Okay. Any reply?

10 MR. HUNTER: Not from the state, Your Honor.

11 THE COURT: All right. What's left are the final
12 summations and my instruction and your deliberations.

13 Before we do that I've got to talk to the lawyers
14 about something. So I'll ask you to please go to your jury
15 room. Don't talk about the case. I'll bring you back in
16 just a few minutes.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: Motions or other matters?

20 MR. POOLE: Oh, yes, Your Honor. At this time I renew
21 my previous motion for a directed verdict.

22 THE COURT: All right. That's denied.

23 Any instruction requests?

24 MR. POOLE: I can't think of anything other than your
25 usual, Your Honor.

1 MR. HUNTER: Same from the state, Your Honor.

2 THE COURT: How much time do you need?

3 MR. HUNTER: I'll try to be brief because I'm not
4 feeling well. I don't think anybody in here is feeling
5 well. So I won't need much time.

6 THE COURT: What's brief?

7 MR. HUNTER: Ten or fifteen minutes.

8 MR. POOLE: The same.

9 THE COURT: All right. Are you ready to go?

10 MR. HUNTER: Yes, Your Honor.

11 THE COURT: All right. Bring them back in.

12 MR. HUNTER: I don't plan on showing the video. I'm
13 just going to -- you like to send a clean computer back.

14 THE COURT: Oh, yeah.

15 MR. HUNTER: So I'll just send the video back. I'm
16 not going to show anything during closing.

17 THE COURT: Okay. Let me see y'all just a minute.

18 (Bench conference held off the record.)

19 THE COURT: Bring them in.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: All right. The evidence is in. You're
23 going to hear the final summations of the lawyers. I'm
24 going to give you the law and then you'll go back and
25 deliberate. So please give the lawyers your attention now

Closing arguments

1 as they give you their final summations.

2 MR. HUNTER: May it please the Court.

3 Ladies and gentlemen of the jury, I stood up before
4 you this morning and told you I was going to prove that she
5 distributed meth on October 6th of 2016 at Brookwood Inn
6 here in Spartanburg County.

7 You've seen the video, heard from the witnesses,
8 haven't seen the drugs. I'm going to go ahead and show
9 this to you now. And, again, it's not that much. Pass it
10 around.

11 You heard from Investigator Schafer about how C.I.
12 buys go down. They meet at a location where he and another
13 officer searched the informant as well as the vehicle.
14 They do that to ensure that no other monies or illegal
15 substances are brought to the deal.

16 A long time ago they didn't have video. They probably
17 didn't search people. Something happened, so they start
18 searching people. Now we have C.S.I. and C.I.S. and all of
19 these T.V. shows where people expect D.N.A., fingerprints,
20 video. So now they video these buys.

21 In this case he searched Mr. Rhodes' car, searched
22 Mr. Rhodes, check any place where you could hide drugs or
23 money. Mr. Rhodes has been doing this for a while. He
24 knows not to bring it. Nothing is found. Nothing.

25 He then goes to the Brookwood Inn. You saw the video.

Closing arguments

1 He pulls up. You see behind him as he walks out to Ashley
2 Hammitt. He knew her as Ashley Fowler -- she admitted it
3 was her on the video, stipulated to that -- standing at the
4 doorway. You saw them enter the hotel room.

5 Now, you don't see him handing her money, but you saw
6 her admit on the stand she took the money.

7 For a while the first thing they argued about, are you
8 an informant, are you wearing a wire. They are talking
9 about the grams have cleared. She's not doing that because
10 she wants to steal his money. She's doing that because she
11 doesn't want to get caught selling drugs. She's not doing
12 that because that's the lifestyle. She's doing that
13 because she knows if she gets caught for selling drugs
14 she's in trouble, that if she's on video selling drugs
15 she's in trouble.

16 So then they start talking about she doesn't have the
17 full gram there. She wants him to wait. He doesn't want
18 to wait. You heard on the video. He doesn't want to wait.
19 He's ready to leave. Why is he going to be waiting if
20 she's just wanting to steal money? Why not just let her
21 have the money? She's waiting because she only had that
22 small amount in her room and she was trying to get the rest
23 of the gram to the room.

24 That's why she says, oh, just wait three more minutes,
25 it'll be here, three more minutes. Starts naming you know

Closing arguments

1 this person, you know this person, talk to this person.

2 This computer back here doesn't have any internet
3 access. It just has some programs to play the video on.
4 You'll receive the drugs, as well as the D.V.D., to go back
5 to the jury room with you.

6 You can watch the D.V.D., just the 12 of y'all
7 watching. We don't watch it out here. We'll watch it.
8 Usually I show it again. Sometimes during closing. But
9 I'm going to let y'all watch it. Y'all have the option to
10 if you want to look at it.

11 The whole time that she's the in room -- actually in
12 the room, not outside trying to find the drugs -- they're
13 talking about buying a gram of meth. That's all they talk
14 about.

15 You'll see her ask for scales. You'll hear her ask
16 for scales. You'll see her even talk about the dope on the
17 nightstand, the dope that's in that bag. She talks about
18 it. And, yes, it's not a lot, and, yes, she did not give
19 it to him.

20 But I don't have to prove that there was a
21 hand-to-hand transaction beyond a reasonable doubt. I
22 don't even have to prove that there was a hand-to-hand
23 transaction.

24 I have to prove that she had drugs in her possession
25 and that they were transferred to his possession for

Closing arguments

1 distribution. You can sell it; you can deliver it; you can
2 give it away.

3 Someone is driving down the interstate with a kilo of
4 cocaine in a car and they drop the car off at a location
5 and someone else picks the car up that person is just as
6 guilty as someone who does a hand-to-hand transaction.

7 If it transfers from her possession to his possession,
8 she's guilty of the distribution of meth. And it doesn't
9 matter that it was a full gram and she got a hundred
10 dollars but he only got \$20 worth of meth. The money
11 amounts don't matter.

12 Now, you get to use your common sense when watching
13 that video and reviewing this evidence, and you also get to
14 look at all of the witnesses that testified. You get to
15 decide who was telling the truth. You get to decide who
16 was willing, who had a reason to lie.

17 You can believe all of what a witness says, some of
18 what a witness says or none of what a witness says. That's
19 up to you, not up to Mr. Poole and I. It's up to you.

20 Use your common sense. Remember the video. Watch it
21 if you don't remember some of it, because it is long, and a
22 lot of it is just him sitting in the room.

23 But if he's stolen from her in the past, she leaves
24 him in the room, why didn't he go steal something? You see
25 him. And I know I fast forward through some of it. He

Closing arguments

1 sits by that window for a good ten to twelve minutes
2 waiting for the more meth to show up. He doesn't steal
3 anything.

4 Again, I just want to reiterate to y'all for
5 distribution of meth it just has to go from her possession
6 to his. And that's not actual possession.

7 I have friends that are sitting in my house right now.
8 I have a 4-month-old. He has a crib in his room. If my
9 mom comes and takes that crib to her house it went from my
10 possession to her possession. I wasn't there. I didn't
11 sell it to her. But it was in my constructive possession,
12 which meant that I had knowledge that it was there and I
13 had dominion and control over what happens to that.

14 So she knew that the meth was on the table and she had
15 the power to either let him take it or let him leave.
16 You'll hear on the video, take it. Why would she be
17 telling him to take it if she just said there was nothing
18 there? You can't take nothing that's not -- excuse me for
19 the double negative. You can't nothing that's not there.
20 Why tell him to take something that's not there? Who's
21 telling the truth?

22 He was searched after he got back. No more money
23 found on him, no meth. And the reason I played him driving
24 back and not driving there, so that you could see, you
25 know, no stops.

Closing arguments

1 He talked on the phone with Investigator Schafer the
2 entire time. He made no hurry of movement to try to hide
3 anything. And the car ride was about three or four minutes
4 from the hotel to the meeting location.

5 They've done this multiple times. And, like I said
6 the first time, they love to have people that aren't in the
7 drug game to do drug buys. It happens sometimes.
8 Sometimes Schafer can -- can buy from somebody. But most
9 of the time you have to use somebody who is in the drug
10 game, someone who's had charges. In this case he worked
11 those off and is making money. I don't love it, but that's
12 how you find out who the drug dealers are.

13 So please watch the video. Come to the conclusion
14 that she's guilty. Thank you.

15 MR. POOLE: May it please the Court.

16 THE COURT: Yes, sir.

17 MR. POOLE: Like I said this morning, some people find
18 themselves in situations that are just probably outside of
19 our realm of comprehension and our realm of understanding.
20 And so today you have the exposure to the seedy world of
21 drug activity and how the buys and sells go down, what a
22 controlled buy is, how it operates. Money's given to an
23 informant, the informant goes to a place, tries to make a
24 transaction, and then they come into court and they
25 testify.

Closing arguments

1 who's got clean hands here? No one. Who's telling
2 the truth? That's something you're going to have to
3 decide, because you can't decide what a fact is unless you
4 understand what -- whether or not an allegation is true.

5 And what is important in this case is whether the
6 allegation that Ashley Hammitt on October the 6th of 2016
7 distributed the drug in question.

8 Now, Mr. Hunter paints a picture that is a lot clearer
9 than the picture I've seen painted in this courtroom today,
10 this video. We don't see anything about drugs in them. We
11 don't see any money in the video.

12 We hear a lot of talk. A lot of it is garbled; a lot
13 of it is unintelligible; a lot of it is profane; a lot of
14 it is irrelevant. I don't see anything that's very gainful
15 in the video.

16 And as far as the testimony of the informant is
17 concerned, what we have here is a person who -- I wish him
18 well in the future -- has a past that he has some problems
19 with.

20 He was in trouble with the law. He worked off his
21 charges so he could get a clean slate, but he was unable to
22 keep that slate clean because he had an addiction to
23 heroin, and that's the worst opioid that is on the market
24 today. And he says he's an addict. And he was doing all
25 of these transactions for the sheriff's department,

Closing arguments

1 purchasing heroin, so that he could help secure convictions
2 so that he could tie off, inject himself and get a high.
3 He testified that he would use while he was working for the
4 sheriff's department.

5 Now, is this man completely believable? I suggest
6 not. Did he take this from the room -- that is the drugs
7 from the room -- and give it to the officer? Maybe.

8 There's no such thing as a perfect search. You can
9 put a small amount of drugs anywhere you want to put it on
10 yourself and get away with it. It's done all of the time.
11 It's done in prisons; it's done in armed forces; it's done
12 in jails. It's done with anybody that could do these
13 things.

14 And even if it was, let's say -- let's assume for the
15 sake of argument that there was this tiny amount of crystal
16 meth in that room where Ashley Hammitt was.

17 That doesn't take away from the fact that she needed
18 money. That doesn't take away from the fact that she
19 needed money to be able to pay that hotel room right then
20 and right there with a couple of hours of extension. That
21 doesn't take away from the fact that she stated that she
22 was walking around the hotel to give the impression, to
23 give the mere impression, to the informant that she was
24 trying to find some more or additional or some crystal meth
25 to be able to match the hundred dollars just to keep him

Closing arguments

1 occupied and keep him there to give him the wrong
2 impression.

3 If she was deceitful, that's -- that's all fine. And
4 if there was that drug there and he took it and she didn't
5 give it to him, she did not distribute. Okay. She did not
6 distribute it. It was there. He said he took it. He said
7 he picked it up with his fingers.

8 That's the first time I've heard on one of those cases
9 where somebody, an informant, picks up the drug that's
10 particularly particles and it's going to get diminished.
11 Some is going to get absorbed; some is going to be dropped;
12 and it's not going to be a fair amount.

13 He picks it up with his fingers and tears the picture
14 up and makes a holder out of it and then takes it. So if
15 he takes it, even if it was there, what is she guilty of?
16 Possession. Not the possession with intent to distribute,
17 not distribution of methamphetamine. That's the worst case
18 scenario if you believe that she is lying about no drugs
19 being there.

20 But I'm telling you there's no reason to believe, one,
21 that this informant overheard, because you saw her. She's
22 an upset young lady. She's still having difficulties
23 getting through life, and we all do. And we do the best we
24 can. And most of us have the maturity and the resources
25 and the spiritual ability and the learning, I hope, to be

Closing arguments

1 able to deal with everything that comes our way. But
2 sometimes people are weaker than others and they succumb to
3 these -- these products.

4 I'm not -- I'm asking you for one thing, and that's
5 she's asking for you to give her the benefit of the doubt.
6 And to the extent that you could find yourself able to give
7 her the benefit of that doubt it will be appreciated.

8 I appreciate your time, your attention during this
9 case, and I ask that you return a verdict of not guilty
10 against Ashley Hammitt. Thank you.

11 MR. HUNTER: I'll keep this very brief, Your Honor.

12 He just got up here and said you could find her guilty
13 of possession. In order to prove possession you have to
14 have knowledge.

15 She got on the stand and said she didn't know it was
16 there. How is she guilty of possession if she didn't know
17 it was there? She knew that was there. She took the
18 hundred dollars and he got the meth. That simple.

19 Distribution of meth. And, yes, he's right. There is
20 no perfect search. They're not going to cavity search and
21 strip search informants. We can't do that. That is
22 unreasonable. We're not going to look in the nose and the
23 ears he has. It's unreasonable.

24 And remember I have to prove beyond a reasonable doubt
25 today that she distributed meth. Reasonable doubt. In

Jury charge

1 other words, I have to firmly convince you of her guilt.

2 That doesn't mean I have to prove beyond all doubt.

3 If you have a doubt because he didn't search in an ear,

4 that's not a reasonable burden. Notice that ear, but

5 because he didn't search in the nose or the ear, that's not

6 a reasonable doubt. That may be a doubt but that's not

7 reasonable.

8 The video's clear. She took a hundred dollars in

9 exchange for meth, not to steal it. But she may have

10 needed it to pay her rent. I don't know. But he's working

11 for police. He's not going to come back without the

12 hundred dollars and no drugs. She told him to take it.

13 She took the money. That's distribution. Simple. Thank

14 you.

15 THE COURT: All right. Ladies and gentlemen, you have

16 heard and seen all of the evidence. You have now heard the

17 final summations of the lawyers. So I'm going to instruct

18 you now on the law that's applicable in the case. Then

19 you'll go back and begin deliberations and determine the

20 facts, apply the law and arrive at a fair and just

21 decision, whatever that decision might be.

22 It is your exclusive duty to determine what the facts

23 are. You do that through your own common sense examination

24 and evaluation of all of the testimony and other evidence

25 received during the course of the trial.

Jury charge

1 You 12 jurors alone will decide what weight, value and
2 effect to give to any particular evidence or any particular
3 testimony from a witness. Your sole objective of course is
4 to simply render a fair and impartial decision, whatever
5 that decision may be, but based upon the evidence presented
6 and the law that's applicable as I will have given it to
7 you.

8 Now, as you know, in this case the state through the
9 prosecutor has charged the defendant by way of this
10 indictment with the crime of distribution of
11 methamphetamine.

12 The state alleges the defendant has violated Section
13 44-53-375 of the Code of Laws of South Carolina. The state
14 alleges that Ashley Louise Hammitt did here in Spartanburg
15 County on or about October the 6th of 2016, did
16 manufacture, distribute, dispense, deliver, purchase or did
17 otherwise aid, abet, attempt or conspire to manufacture,
18 distribute, dispense, deliver or purchase or possess with
19 intent to manufacture, distribute, dispense, deliver, or
20 did purchase a quantity of methamphetamine, a Schedule II
21 controlled substance.

22 As to the allegations contained in that indictment the
23 defendant has entered a plea of not guilty. As you know,
24 that plea of not guilty has placed upon the state the
25 burden of proving the allegations made by way of the

Jury charge

1 indictment, the burden of proving each of the essential
2 elements of the crime alleged against the defendant; and
3 therefore the burden is upon the state to establish her
4 guilt to the satisfaction of you 12 jurors beyond a
5 reasonable doubt before any verdict of guilty could be
6 returned.

7 As I think I've stated, but if not I'll state it
8 again, the indictment is not evidence in the case, doesn't
9 prove anything, doesn't establish anything. It's merely
10 the charging paper. It's the means by which any person
11 accused of a crime in this court is brought here in order
12 to respond to the charge. The indictment will be in the
13 jury room, but the only reason it's there is because it
14 serves as the verdict form.

15 On the back of the indictment, Madam Forelady, in the
16 lower left-hand corner -- or if it's folded it's at the
17 bottom -- you'll see the word verdict. And it's beneath
18 that word that you'll indicate the jury's decision
19 whatever, that decision may be. Then you'll sign your name
20 as the foreperson. You're the only juror that needs to
21 sign the verdict form. And you'll also place the
22 appropriate date.

23 As you know, the defendant has entered a plea of not
24 guilty. It is a vital, important and cardinal rule of law
25 that every defendant in a criminal trial, doesn't matter

Jury charge

1 how serious the offense is for which they stands charged --
2 they stand charged, that person shall always be presumed
3 innocent of the charge.

4 That presumption of innocence remains with any
5 defendant, as it does with this defendant, from the time
6 that she is placed under arrest and throughout the course
7 of the criminal process and even throughout the course of
8 the trial.

9 That presumption of innocence will be with her even as
10 you go back to begin with your deliberations in the case.
11 And, as I said, that presumption will be with her there,
12 and it'll be with her forever unless you 12 jurors
13 determine that she's no longer entitled to that presumption
14 of innocence.

15 In other words, after you've considered all of the
16 evidence and from that evidence you're able to determine
17 the facts as they relate to the allegations, and upon
18 deciding the facts you apply the law that I'm going to
19 provide you, if you 12 jurors unanimously determine that
20 her guilt as to a particular crime has been proven beyond a
21 reasonable doubt, then she would no longer be entitled to
22 the presumption of innocence. But it's only if, unless and
23 until you are satisfied of her guilt beyond a reasonable
24 doubt that the presumption of innocence would no longer be
25 applicable.

Jury charge

1 The burden is never upon a defendant to prove that he
2 or she is not guilty or to prove that he or she is innocent
3 because in some cases that might not be possible.

4 The state has the burden of proving the defendant's
5 guilt to your satisfaction beyond a reasonable doubt. That
6 doesn't mean that the state has to prove her guilt beyond
7 all doubt or beyond any possible doubt, but it does require
8 the state to prove her guilt to your satisfaction beyond a
9 reasonable doubt.

10 The term reasonable doubt should be given its plain
11 and ordinary meaning. A reasonable doubt is the kind of
12 doubt that would cause a reasonable person to hesitate to
13 act upon the information provided. And a defendant is
14 entitled to any reasonable doubt that arises from the
15 evidence or lack of evidence in a case.

16 And if, upon any factual issue essential to a finding
17 of a verdict of guilty you have some reasonable doubt as to
18 how that issue should be resolved, it would be your duty to
19 resolve that doubt in favor of the defendant. And
20 therefore if upon your consideration of the whole case you
21 have a reasonable doubt as to her guilt as to any charge,
22 it would be your duty to resolve that doubt in her favor
23 and to return a verdict of not guilty.

24 And, at the same time, after considering the evidence
25 and determining the facts and applying the law, if you have

Jury charge

1 no reasonable doubt as to her guilt as it relates to a
2 particular charge, it would be your corresponding duty to
3 find her guilty where that guilt has been proven beyond a
4 reasonable doubt.

5 Proof beyond a reasonable doubt is proof that leaves
6 you firmly convinced of the defendant's guilt. There are
7 very few things in this world that we know with absolute
8 certainty. And in criminal cases the law does not require
9 proof that overcomes every possible doubt. And if based on
10 your consideration of the evidence, you are firmly
11 convinced that the defendant is guilty of a crime with
12 which she is charged, then you must find her guilty of that
13 crime.

14 And if, on the other hand, you think there is a real
15 possibility that the defendant is not guilty of some crime
16 with which she stands charged, then you must give her the
17 benefit of that doubt and to return a verdict of not guilty
18 as to that charge.

19 Now, as I told you, you are the judges of the facts in
20 the case. You therefore necessarily the sole judges of the
21 credibility or the believability of each witness that has
22 testified during the trial.

23 You 12 jurors alone will decide what weight, value and
24 effect to give to any particular witness' testimony, or
25 even portions of that testimony.

Jury charge

1 You may believe one witnessed as opposed to several,
2 or several as opposed to one. You may believe some portion
3 of a witness' testimony and reject some other portion of
4 that same witness' testimony.

5 You simply have to carefully evaluate a witness'
6 testimony and consider the likelihood of that credibility
7 and the believability based upon a number of factors. I am
8 going to list those factors for you.

9 Consider the demeanor of the witness. That is how the
10 witness appeared to you while the witness was testifying
11 from the stand. Was the witness straightforward in
12 responding questions, or was the witness hesitant or
13 evasive in responding to questions that were asked of the
14 witness.

15 Simply put, did the witness appear to you to be
16 telling the truth and to have knowledge of the facts to
17 which that witness has testified.

18 You should consider whether or not the testimony of a
19 witness is consistent, or is it inconsistent, with that
20 witness' own testimony or with other testimony or other
21 evidence received during the trial.

22 You should also consider how the witness came to know
23 the facts to which that witness has testified. In other
24 words, what was that witness' opportunity and ability to
25 perceive the existence of those facts to which that witness

Jury charge

1 has testified by having previously used his or her senses.
2 And then what is that witness' ability to be able to come
3 into court and to accurately recollect to you as to what
4 they have previously perceived.

5 You should also consider any bias or prejudice or
6 interest that a witness might have in the outcome of the
7 case if you determine -- in other words, is there some
8 reason that a particular witness would testify one way or
9 another to help or hurt one side or the other. And you
10 should consider whether or not a particular witness has an
11 interest in the outcome. And if you determine that that
12 witness does have an interest in the outcome and you find
13 that that interest would bear upon that particular witness'
14 credibility, then, again, you may consider it. And you may
15 believe or disbelieve what the witness has testified to.

16 And you should also consider whether or not the
17 testimony of a witness has been strengthened or weakened by
18 other testimony or other evidence received during the
19 trial.

20 Because you are the judges of the facts and because
21 you are the judges of the credibility of each witness'
22 testimony, as I say, you may believe everything that they
23 testify to. You may choose to believe none of it.

24 You simply have to determine what's the most credible
25 evidence by considering all of the evidence in its entirety

Jury charge

1 and then applying your good judgment and common sense to it
2 in order to arrive at your determination as to what is most
3 credible and believable information that you have been
4 provided.

5 Again, your sole objective is to simply render a fair
6 and impartial decision, whatever that decision may be,
7 based upon the evidence presented and the law that's
8 applicable as I will have given it to you.

9 Now, the same law that provides that you are the
10 judges of the facts also provides that I am the judge of
11 the law, and that simply means that nobody's going to tell
12 you how to arrive at your determination of fact in this
13 case. You do that, as I've already stated, through the
14 exercise of good judgment and common sense conscientiously
15 applied to the testimony and evidence received during the
16 course of the trial.

17 You 12 jurors alone will decide what weight and value
18 and effect to give that testimony or other evidence.

19 You must however accept the law as I provide it to you
20 as being the law that you are to apply in the case. In
21 other words, you're never to concern yourself with what you
22 thought the law was before you came to serve as a juror
23 this week, nor should you concern yourself with what you
24 think the law ought to be.

25 Under your oath as a juror you must simply accept the

Jury charge

1 law as I provided to you as being the law that you are to
2 apply. And then you take that law and you apply it to the
3 facts as you 12 jurors determine those facts to be based
4 upon your exercise of good judgment and common sense.

5 Now, as you know, the defendant is charged in the
6 indictment with a violation of Section 44-53-375. And you
7 can read the indictment if you want to when you get back
8 there. There's some of that language in the indictment
9 that tracks the statute, but some of that language is not
10 applicable to the case. And so I'm going to read the
11 relevant parts of the statute to you that the defendant is
12 alleged to have violated.

13 That statute in its pertinent and relevant parts
14 provides that it shall be unlawful for any person to
15 distribute, to dispense, to deliver or to possess with the
16 intent to distribute, to dispense or deliver
17 methamphetamine.

18 Section -- in violation of Section 44-53-375 and
19 44-53-370, and 44-53-370 provides that it shall be unlawful
20 for any person to distribute, dispense or deliver, or to
21 possess with intent to distribute, dispense or deliver a
22 controlled substance except when authorized by law pursuant
23 to a valid prescription or order of a licensed professional
24 practitioner such as a physician, a dentist, a pharmacist
25 or other person authorized by law to distribute or to

Jury charge

1 dispense controlled substances while acting in the regular
2 course of his or her professional practice and in
3 accordance with all other legal requirements.

4 44-53-370(c) provides that it shall be unlawful for
5 any person to knowingly or to intentionally possess a
6 controlled substance unless obtained directly from or
7 pursuant to a valid prescription or an order of a
8 practitioner who is authorized by law to dispense a
9 controlled substance while acting in the course of his or
10 her professional practice.

11 And within the meaning of the law a controlled
12 substance means a drug or other substance which is
13 classified in Schedules I through V in the South Carolina
14 Code sections which classify various types of drugs.

15 Methamphetamine is classified by Section 44-53-210 of
16 the Code of Laws as a Schedule II drug, and therefore
17 methamphetamine is declared to be a controlled substance
18 under the law.

19 Before a person may be found guilty of possessing a
20 controlled substance it must be proven beyond a reasonable
21 doubt that that person did knowingly or intentionally have
22 in her actual or constructive possession the controlled
23 substance which is alleged to have been possessed. And in
24 this case that's methamphetamine.

25 The weight of any controlled substance includes the

Jury charge

1 weight of a substance in its pure form or any compound or
2 mixture which contains that substance.

3 Knowingly means having knowledge of that fact.

4 Intentionally means purposefully, that is by aim or design
5 and not by accident or inadvertence.

6 Actual possession of a substance occurs when the
7 substance is proven to have been in the actual physical
8 custody or control of the person who is charged with
9 possession and with knowledge of its presence.

10 Constructive possession of a substance occurs when a
11 person, although not in actual physical custody of the
12 substance, exercises dominion and control over the
13 substance or has the right to exercise dominion and control
14 over that substance even though it's not actually in their
15 physical possession.

16 A person has possession of a substance within the
17 meaning of the law when he or she has both the power and
18 the intent to control the disposition or use of the
19 substance.

20 The act of possession, as well as the elements of
21 knowledge and intent, may be proven by either direct
22 evidence or by circumstantial evidence from which such
23 might reasonably be inferred or by a combination of both
24 direct evidence and circumstantial evidence.

25 You are permitted to infer the act of possession of a

Jury charge

1 substance, as well as the elements of knowledge and intent,
2 from evidence of acts, declarations or conduct of the
3 person charged with its possession, as well as any other
4 circumstances established by the evidence in the case from
5 which you might reasonably infer such possession, knowledge
6 and/or intent.

7 In order for the defendant to be found guilty of a
8 violation of the statute under the theory of possession
9 with intent to distribute in this case not only must the
10 state prove beyond a reasonable doubt that the defendant
11 did either actually or constructively possess the
12 methamphetamine, but the state must also prove beyond a
13 reasonable doubt that the defendant did have a specific
14 intent to unlawfully distribute or to deliver the
15 controlled substance.

16 To distribute or to deliver means to actually or
17 constructively transfer or to attempt to transfer a
18 controlled substance from one person to another, whether or
19 not in exchange for money or any other consideration or
20 thing of value.

21 Intent is a state of mind which operates jointly with
22 an act in the commission of a crime. Intent is the state
23 of a person's mind which directs his or her actions towards
24 a specific object or goal. In this case it would be an
25 intent to distribute, dispense or deliver methamphetamine.

Jury charge

1 In determining whether or not the defendant intended
2 to distribute a controlled substance you should consider
3 all of the evidence in the case including the circumstances
4 surrounding the defendant's possession in the event you
5 find she did possess the controlled substance, the amount
6 of the substance which was possessed, the manner in which
7 it was possessed, as well as any other facts or
8 circumstances which you find reasonably relevant and
9 probative on the issue of any intent.

10 Intent may be proven by direct evidence or by
11 circumstantial evidence or a combination of the two, just
12 as any other element may be established.

13 In this case the state is alleging that the defendant
14 did violate the statute which is alleged in the indictment
15 by possessing with intent to distribute methamphetamine, as
16 well as by actually or constructively distributing a
17 quantity of methamphetamine to a person working in an
18 undercover capacity for the county sheriff's department.

19 So if the evidence in this case has proven that the
20 defendant did unlawfully possess methamphetamine with the
21 intent to distribute it or the state has proven by the
22 evidence in this case that the defendant did actually or
23 constructively distribute methamphetamine, then the
24 defendant would be -- would have been proven guilty of a
25 violation of Section 44-53-375 as is alleged in the

Jury charge

1 indictment.

2 If the state has failed to prove beyond a reasonable
3 doubt that the defendant did distribute methamphetamine or
4 that she possessed methamphetamine with the intent to
5 distribute it but the state has proven beyond a reasonable
6 doubt that she did unlawfully possess methamphetamine, then
7 she may be found guilty of only the lesser included offense
8 of possession of methamphetamine.

9 If the state has failed to prove that the defendant
10 did actually or constructively possess methamphetamine,
11 then she must be found not guilty.

12 Ladies and gentlemen, I am not in any way concerned
13 with what your decision is, but I do tell you that the
14 verdict of the jury must be unanimous. All 12 of you have
15 to be in agreement.

16 And so, Madam Forelady, as you know, you're going to
17 be presiding over jury deliberations in the jury room
18 simply to ensure that those are carried out in some orderly
19 fashion.

20 All jurors are expected to participate, because the
21 verdict is the unanimous and consensus opinion of all 12.

22 So, Madam Forelady, after you and your fellow jurors
23 have decided the case, once you've reached a decision, you
24 indicate it on the indictment on the back, if you'll knock
25 on the door, tell the bailiff you've reached the decision,

Jury charge

1 and we'll bring you back to receive that decision.

2 Now, you're going to have in addition to any evidence
3 introduced, you'll have a computer which has the disc with
4 the video on it. And so you can look at that if you want
5 to. If you need to, look at it all you want to. If you
6 can't get it to work or can't figure it out for some
7 reason, let me know and we'll have someone assist you with
8 that.

9 If at any time you have a question about evidence,
10 testimony and the like, I'm never permitted to comment on
11 the facts of the matter, and therefore I'm never permitted
12 to comment on evidence or answer questions that relate to
13 evidence in the case.

14 Now that you're going back no additional evidence can
15 be received. Even if it existed, it can't be introduced
16 now. So don't ask for anything that has not been
17 introduced.

18 If for some reason you have a question about testimony
19 that was received during the trial, I can bring you back
20 into the courtroom to have a witness' testimony replayed in
21 its entirety or just in part if that's all you need.

22 I don't have transcripts to send back, but, as I say,
23 if you need to have -- rehear witness testimony, I can
24 bring you back for that purpose.

25 If at any time you have a question about the law

Jury charge

1 that's applicable, I am always permitted to answer those
2 questions. So if you need for me to provide you a
3 reinstruction or if you need an explanation or
4 clarification of some law that I have provided, if you'll
5 let me know of that fact I'll be happy to provide you with
6 that reinstruction, that additional explanation or that
7 clarification.

8 Madam Forelady, if at any time you have some matter
9 that needs to be addressed to me, if you'll write it on a
10 piece of paper, give it to the bailiff, and then we'll --
11 he'll give it to me and I'll respond accordingly.

12 Otherwise, when you reach a decision you'll indicate
13 it on the indictment. Knock on the jury room door.

14 You will maintain possession of the verdict form.
15 I'll receive that from you when you come back into the
16 courtroom. So while you may give the evidence to the
17 bailiff, you hold onto the verdict form.

18 Now, based upon the law that I've provided you in this
19 case you have three potential verdict forms.

20 If the state has proven to your satisfaction beyond a
21 reasonable doubt that the defendant did actually or
22 constructively distribute methamphetamine or the state has
23 proven that the defendant did possess methamphetamine with
24 the intent to distribute it, then under those circumstances
25 the defendant would be guilty of the crime charged in the

Jury charge

1 indictment.

2 If that's the case, then the verdict form would be
3 guilty, meaning guilty of either distributing or possessing
4 with intent to distribute methamphetamine.

5 If the state has failed to prove one of the essential
6 elements of that offense or those offenses but the state
7 has proven beyond a reasonable doubt that the defendant
8 knowingly and intentionally possessed methamphetamine, then
9 under those circumstances the verdict form would be guilty
10 of simple possession. You'd have to write that out.

11 And if the state has failed to prove that the
12 defendant distributed methamphetamine, possessed with
13 intent to distribute methamphetamine, or possessed
14 methamphetamine, then the verdict form would be not guilty.

15 So again the three potential forms are guilty, which
16 means guilty of distributing and/or possessing with intent
17 to distribute methamphetamine; second potential verdict
18 form is guilty of simple possession of methamphetamine; and
19 the third verdict form is not guilty.

20 So whatever that decision is, indicate it, sign your
21 name, date it, knock on the door, tell the bailiff you've
22 reached a decision, and we'll bring you back to receive
23 that decision.

24 I'm going to need the 12 primary jurors -- ma'am, are
25 you okay to deliberate now?

Jury charge

1 UNIDENTIFIED JUROR: I think so.

2 THE COURT: You think so.

3 Okay. I'm going to ask the 12 primary jurors to go to
4 your jury room. I've got to address some matters with the
5 lawyers. If I need to bring you back for any reason, I
6 will. If I don't need to bring you back for any reason
7 I'll instruct the bailiff to tell you to begin
8 deliberations. In that event he'll bring to the jury room
9 the exhibits.

10 And to you, Madam Forelady, he'll bring the indictment
11 which serves as the verdict form.

12 So please retire but don't begin deliberations until I
13 send you word to do so.

14 (Whereupon, the jury retired to deliberate at
15 4:26 p.m.)

16 (Whereupon, the alternate juror was excused.)

17 THE COURT: Are there any exceptions taken to the
18 instruction or requests for additions to the instruction by
19 the state?

20 MR. HUNTER: If you will, hold on one second, Your
21 Honor.

22 (Pause.)

23 MR. HUNTER: May we approach?

24 (Bench conference held off the record.)

25 MR. HUNTER: No objections from the state.

Jury charge

1 THE COURT: All right. You can take the exhibits back
2 and tell the jury to begin deliberations and notify us when
3 they've concluded.

4 Tell them when you take that back, tell them not to
5 open that sealed bag, if for some reason they need to open
6 it to let me know.

7 Tell them to go ahead and start.

8 We'll send the computer back.

9 No exceptions, no objections, no requests for
10 additions?

11 MR. HUNTER: Not from the state, Your Honor.

12 MR. POOLE: None here.

13 THE COURT: All right. Tell the jury to begin
14 deliberations and notify us when they've concluded.

15 We'll be at ease while the jury is deliberating.

16 (Whereupon, a recess was taken.)

17 THE COURT: I'm told the jury has a decision. Are we
18 ready to receive it?

19 MR. HUNTER: The state is ready, Your Honor.

20 MR. POOLE: Yes, sir.

21 THE COURT: Okay. Bring them in. Bring the alternate
22 too.

23 (Whereupon, the jury returned to the courtroom at
24 4:47 p.m. to report its decision.)

25 THE COURT: Madam forelady, have you and your fellow

Verdict

1 jurors reached a unanimous decision?

2 THE FOREPERSON: We have, Your Honor.

3 THE COURT: Did you reflect it on the verdict form?

4 THE FOREPERSON: I did.

5 THE COURT: Did you sign it and date it?

6 THE FOREPERSON: I didn't date it. I forgot to date
7 it. I'm sorry.

8 THE COURT: Today is the 10th. You don't get paid if
9 you don't date it.

10 (Pause.)

11 THE COURT: If you will, hand that form up by way of
12 the bailiff, please.

13 You may publish the verdict.

14 THE CLERK: The State of South Carolina, County of
15 Spartanburg, in the Court of General Sessions, the State
16 vs. Ashley Louise Hammitt, indictment for distribution of
17 methamphetamine, 2017-GS-42-3779, we, the jury, find the
18 defendant guilty. Signed by the foreperson, Tammy Simpson,
19 this date, January 10th of 2018.

20 Ladies and gentlemen of the jury, if this is your
21 verdict and still your verdict, please raise your right
22 hand.

23 (Whereupon, all jurors responded in the affirmative.)

24 THE CLERK: So say you all.

25 THE COURT: Does the defendant wish to have the jury

Verdict

1 polled?

2 MR. POOLE: No, sir.

3 THE COURT: All right. Any other matters we need to
4 address with the jury present?

5 MR. POOLE: No, sir.

6 (Whereupon, the trial jury was excused.)

7 THE COURT: All right. Any other matters we need to
8 address prior to imposition of sentence?

9 MR. HUNTER: Nothing from the state, Your Honor.

10 MR. POOLE: Judge Cole, I would like to make a motion
11 for a judgment of not guilty, notwithstanding the verdict
12 of guilty. And I would like to make a motion for a new
13 trial based upon my prior motions made and the state's case
14 at the end of presentation of all of the evidence.

15 THE COURT: Each of those motions are denied.

16 Mr. Poole, does Ms. Hammitt need a few minutes to
17 compose herself before we continue?

18 (Pause.)

19 MR. POOLE: We're ready.

20 THE COURT: Okay. Y'all come around.

21 Anything further from the state?

22 MR. HUNTER: Yes, Your Honor, just her prior record.

23 2014, she has a manufacturing meth conviction.

24 In 2016, I believe it's in August, so about two months
25 before this incident happened, she pled guilty to two

Sentence

1 counts of distribution of methamphetamine.

2 I believe she also has an attempt to purchase Sudafed
3 charge and I believe a shoplifting and a P.D.C. from
4 earlier.

5 THE COURT: Okay. Mr. Poole.

6 MR. POOLE: Your Honor, as you know, Ms. Hammitt is in
7 her earlier 30s. She doesn't have any children. She only
8 has a tenth grade education. And you've heard something
9 about her background from the testimony that she gave from
10 the witness stand. She's had some tough times.

11 We know what the Court has to do. There's a probation
12 matter that needs to be taken up. And we simply ask that
13 the -- that Your Honor impose judgment tempered with mercy
14 to the extent you can find it.

15 THE COURT: Do you have a citation or something to
16 serve on her?

17 PROBATION AGENT: We do, a courtroom citation. Judge,
18 this is a violation -- of the conviction.

19 THE COURT: Okay.

20 PROBATION AGENT: Just for the new conviction, is a
21 violation of the probation.

22 THE COURT: Is the only violation this conviction?

23 PROBATION AGENT: Yes. That's all. She doesn't have
24 to sign anything.

25 THE COURT: Okay. Well, the violation of probation is

Sentence

1 this conviction. That's what they're alleging. So I'm
2 going to consider the probation matter too.

3 what does she have?

4 PROBATION AGENT: She's looking at three years.

5 THE COURT: What was the sentence?

6 PROBATION AGENT: Three years suspended to time served
7 and 18 months probation. And that was for distribution of
8 meth.

9 THE COURT: She had two of them?

10 PROBATION AGENT: Yes. She only received probation
11 for one, I believe. Actually it was suspended.

12 THE COURT: Do you have copies of those sentencing
13 sheets?

14 PROBATION AGENT: I do. I believe it was suspended
15 during probation.

16 THE COURT: Can I look at those?

17 PROBATION AGENT: Yes, Your Honor.

18 (Pause.)

19 THE COURT: Do you know how much time she has served
20 is?

21 PROBATION AGENT: Fourteen days.

22 THE COURT: Fourteen days?

23 PROBATION AGENT: Yes, sir.

24 THE COURT: Okay. All right. Do you want to address
25 the probation matter? Do you need to?

Sentence

1 MR. POOLE: Your Honor, if it's her only violation
2 that's all that can be said.

3 THE DEFENDANT: I did my drug classes.

4 THE COURT: Ms. Hammitt, I'm going to let you tell me
5 whatever you want to in addition to Mr. Poole. What do you
6 want to tell me?

7 THE DEFENDANT: I was starting -- I started my drug
8 classes for my probation. I've done a lot better,
9 including when this started. That was just when I got put
10 on probation. I was doing better.

11 I've -- I have a home, a foundation to build on. We
12 remodeled completely. We tore the inside out. I've been
13 doing well. Just have mercy on my soul.

14 I mean, I was actually -- I mean, I've got goals to
15 move forward, and I didn't want to -- I certainly didn't
16 want this setback. And it wasn't that the police -- they
17 okay. Don't get me wrong. It's not that they weren't
18 okay. It's just that I don't feel I was -- I didn't get
19 him anything in my opinion, but it doesn't matter. I mean,
20 I'm just saying.

21 THE COURT: Well, I mean, the jury has found you
22 guilty.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So I've got to consider you being guilty.

25 THE DEFENDANT: Yes, sir.

Sentence

1 THE COURT: And of course this is your third time.
2 This is a third distribution, I mean.

3 THE DEFENDANT: I mean, third. I understand that, but
4 I was working to do better. I have been working to do
5 better. I was wanting to become a better person just like
6 all of y'all.

7 I didn't have family to help me. That's the reason
8 why I got put in the drug world.

9 THE COURT: Well, let me ask you this.
10 During your testimony -- am I correct -- that you
11 stated that you didn't have any drugs in the room, you
12 didn't know there were any drugs in the room?

13 THE DEFENDANT: I said I didn't have any. I said I
14 didn't give him any drugs, is what I said. He asked the
15 question, and I said I didn't give him any drugs.

16 THE COURT: I heard that part. I'm talking about
17 didn't you also deny there being drugs in the room?

18 THE DEFENDANT: I said I didn't give him. He asked it
19 again, and I said I didn't give him any drugs as far as --
20 as far as I remember. I'm not sure. I could be wrong, but
21 as far as I remember. I do apologize if I am wrong. I'm
22 not trying to lie.

23 THE COURT: Okay. I think your memory is faulty, but
24 maybe not.

25 what else do you want to tell?

Sentence

1 THE DEFENDANT: That's all.

2 THE COURT: As for the probation matter, based upon
3 the conviction I find she has failed to comply. Revoke
4 those sentences in the entirety.

5 PROBATION AGENT: Thank you, Your Honor.

6 THE COURT: Indictment 2017-3779, that's an indictment
7 for violation of Section 44-53-370(b), distribution and/or
8 possession with intent to distribute methamphetamine,
9 wherein the jury has found you guilty of that offense, the
10 Sentence of the Court is you, Ashley Louise Hammitt, be
11 confined to the South Carolina Department of Corrections
12 for a period of 15 years.

13 Ms. Hammitt, you have a right to appeal the decision
14 of the jury and the Sentence of the Court. You must file
15 your notice of intent to appeal those decisions within ten
16 days of today's date. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay.

19 END OF REQUESTED TRANSCRIPT OF RECORD
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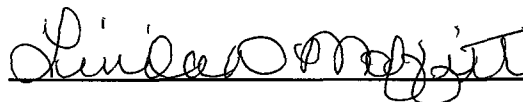
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 10th day of January 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 15, 2018



Linda D. Moffitt
Circuit Court Reporter

165

WITNESSES

SENTENCE MADE ☒
REPORTED ☒
CARD FILED ☒
SPTG. CO SHERIFF'S OFFICE ☒
INDEXED ☒
CHECKED WARRANTS ☒
CHECKED SIGNATURES ☒
ASSESSMENT AND FINE CARD MADE ☒
TRANSMITTED WITH COPY ☒

ARREST WARRANT NUMBER

2016/4210104148

ACTION OF GRAND JURY

QE True Bill

Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Petit Jury
Date: 1/10/18

DOCKET NO. 17-CS-12-3779

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 21 2017

TERM

THE STATE
vs.

ASHLEY LOUISE HAMMITT

Indictment for

DISTRIBUTION OF METHAMPHETAMINE
SC Code: 44-53-375

CLERK OF COURT
JUL 26 2017

2017 JUL 26 AM 10:13

M. HOFFE BLACKLEY

17

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

JUL 21 2017

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

DISTRIBUTION OF METHAMPHETAMINE

That Ashley Louise Hammitt did in Spartanburg County on or about October 6, 2016, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Methamphetamine, a schedule II controlled substance under provisions of § 44-53-375, *THE 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.


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

County of GreenwoodAshley Louise Hammitt 362283

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2020 MAY 22 AM 10:03
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

2020CP4201699

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Leath Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg County District Court Spartanburg SC 29303
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-65-42-3779 Distribution of methamphetamine 3rd offense
 - (b) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) January 10, 2018 - 15 years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty Jury trial

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. State of S.C. Court of Appeals

ii. ~~_____~~

iii. ~~_____~~

(b) the result in each such Court to which you appealed:

i. Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. Feb. 12, 2020

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Error by Trial Judge
- (c) Prosecutorial Misconduct
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? SC Court of Appeals
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Sc. Court of Appeals, Columbia, SC
- ii. _____
- iii. _____
- iv. _____

FILED
2020 MAY 22 AM 10:03
CLERK OF COURT
SPARTANBURG COUNTY
ALY W. CDX

(c) the disposition thereof:

- i. Dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Feb. 12, 2020
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

2020 MAY 22 AM 10:03
CLERK OF COURT
SPARTANBURG COUNTY
ALAY W. COX

FILED

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. J. Roger POOLE Atty
Spartanburg County Public Defender Office
 ii. Adam Sinclair Kuffin Appellate Defender SCCID
P.O. Box 11589 Columbia SC 29211-1589
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. trial
 ii. Sentencing
 iii. Appeal

2010 MAY 22 AM 10:23
 CLERK OF COURT
 SPARTANBURG COUNTY
 MAY 11, 2010
 Revised 2003

FILED

19. State clearly the relief you seek in filing this application:

Sentence to be Vacated and a new trial
or Re-sentencing hearing to modify Current
with Credit for time served

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Greenwood)

VERIFICATION

I, Ashley L. Hammitt, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Ashley L. Hammitt

SWORN to and subscribed before me this 19th
 day of May, 2020

Mandy K. Lamb (L.S.)
Notary Public

My Commission Expires: 2-13-2029

FILED
 2020 MAY 22 AM 10:04
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Ashley Hammett, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Ashley D. Hammett
Applicant

SWORN or affirmed to and subscribed before me this

19th day of May, 2020

Mandy L. Lamb
Notary Public

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11. A. Ineffective Assistance of Counsel

1. Failure to prepare for trial with Client.
2. Failure to have alternative trial strategy by pointing holes in the evidence or creating doubt.
3. Failure to file motion to Suppress Evidence of DVD (Date, Time, Year - Not Noted on Scene) which was a State Exhibit used against defendant.
4. Failure to recognize defendant's Constitutional Rights (Mitigating Circumstances) based on the facts and circumstances surrounding said crime of methamphetamines distribution.
5. Failure to call witnesses on the issues of drug addiction experts, extreme emotional disturbance due to death of grandmother, prior or current ~~character~~ character of defendant. A Criminal defendant's right to present witnesses is protected by the Compulsory Process Clause of the Sixth Amendment.
6. Failure to investigate said motel room, which was not in defendant's name. The drugs could have belonged to whoever paid for the room or the room of said individual.

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I.A. Continued

7. Failure to note And Address Issue of how the controlled purchase was conducted And said "Undercover Buy Report" not Signed by Confidential Informant. (Brady Donald Rhodes)
8. Failed to Object to Credibility Of informant Or Question Said Informant if he was using drugs or under the influence Of drugs during Said controlled purchase and during his testimony.
9. 0.03 grams (This is Clearly a Simple possession quantity) not a distribution quantity - failed to suppress evidence of same.

II.B. Trial Judge's error

1. Failed to question defendant if she was under the influence Of drugs at the trial (being her record clearly shows she is an addict)

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11.B. Continued

2. Defendant's request to ~~be~~ release her Attorney Mr. J. Roger Poole Public Defender and the request of a Continuance being denied prejudiced defendant.

3. Judge denied motion for directed Verdict Concerning Said drugs / money Not Seen on CTS DVD

11.C. Prosecutorial Misconduct

1. Prosecutor failed to note in Rule 5 Motion of Discovery evidence Submitted to defense had Numerous errors to include DVD and Said "Under Cover Buy Report" not filled out properly and signed by Informant.

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Ashley L. Hammitt, #362283,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-42-01699

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter "PCR") application filed on May 22, 2020, by Ashley L. Hammitt (hereafter "Applicant"). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. In July 2017, the Spartanburg County Grand Jury indicted Applicant for distribution of methamphetamine (2017-GS-42-3779). Applicant was represented by J. Roger Poole, Esquire. Assistant Solicitor James E. Hunter, Esquire, of the Seventh Circuit Solicitor's Office prosecuted the case. On January 10, 2018, Applicant proceeded to trial before the Honorable J. Derham Cole, circuit court judge, and a jury. Applicant was found guilty as charged and Judge Cole sentenced Applicant to fifteen years imprisonment.

Applicant filed a timely Notice of Appeal on January 16, 2018, that was perfected by Lanelle C. Durant, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished

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opinion. *State v. Hammit*, 2020-UP-037 (S.C. Ct. App. filed Feb. 12, 2020). The Remittitur was issued on February 28, 2020.

II. Statement of Facts

On October 6, 2016, a scheduled drug buy occurred between Applicant and the confidential informant, Brady Rhodes. (Tr. 49). Rhodes was equipped with audio and video recording equipment. (Tr. 51-52). The drug sale occurred at a hotel. (Tr. 53). Rhodes was equipped with fifty dollars and bought a crystal rock-like substance from Applicant. (Tr. 50, 53). Methamphetamine was the drug purchased during this transaction. (Tr. 56). Though Rhodes originally met with Applicant to obtain a full gram of methamphetamine, it was tested to only weigh 0.03 grams. (Tr. 94, 107).

III. Current Action before the Court

In her *pro se* PCR application, Applicant alleges she is detained unlawfully for the following reasons (excerpts verbatim):

1. "Ineffective assistance of counsel."
 - a. "Failure to prepare for trial with client."¹
 - b. "Failure to have alternative trial strategy by painting holes in the evidence, creating doubt."
 - c. "Failure to file motion to suppress evidence of DVD (date, time, place, not noted on same) which was a state exhibit used against defendant."
 - d. "Failure to recognize defendant's constitutional rights (mitigating circumstances) based on the facts and circumstances surrounding said crime of methamphetamines distribution."
 - e. "Failure to call witnesses (on the issues of drug addiction experts, extreme emotional disturbance due to death of grandmother, prior or current character of defendant. A criminal defendant's right to present witnesses is protected by the compulsory process clause of the Sixth Amendment)."
 - f. "Failure to investigate. Said motel room which was not in defendant's name. The drugs could have belonged to whomever paid for the room or the name of said individual."

¹ Respondent interprets this allegation to be an ineffective assistance of counsel claim for failure to prepare with Applicant through failing to meet, communicate and otherwise discuss evidence and trial strategy with Applicant.

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- g. "Failure to note and address issue of how the controlled purchase was conducted and said 'undercover buy report' not signed by confidential informant (Brady Donald Rhodes)."
 - h. "Failed to object to credibility of informant or question said informant if he was using drugs or under the influence of drugs during said controlled purchase and during his testimony."
 - i. "0.03 grams (This is clearly a simple possession quantity) not a distribution quantity – failed to suppress evidence of same."
2. "Trial Judge erred."²
- a. "Failed to question defendant if she was under the influence of drugs at the trial (being her record clearly shows she is an addict)."
 - b. "Defendant's request to release her attorney Mr. J. Roger Poole, Public Defender and the request of a continuance being denied prejudiced defendant."
 - c. "Judge denied motion for direct verdict concerning said drugs/money not seen on CI's DVD."
3. "Prosecutorial Misconduct."
- a. "Prosecutor failed to note in Rule 5 Motion of Discovery evidence submitted to defense had numerous errors to include DVD and said 'undercover buy report' not filled out properly and signed by informant."

Attached to and incorporated herein are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the Record on Appeal, and the current PCR application. Respondent reserves the right to amend this Return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied

² Respondent interprets point 2(a) as an ineffective assistance of counsel claim for failure to raise the issue of addiction as a mitigating factor in sentencing Respondent interprets points 2(b) and 2(c) as ineffective assistance of counsel claims for failure to successfully secure a granted motion for continuance, motion to relieve counsel and proceed *pro se*, and motion for directed verdict.

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upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 690.

The court makes this determination based upon the totality of the evidence. *Id.* at 695.

Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Prepare for Trial with Applicant

Applicant alleges counsel was ineffective for “failure to prepare for trial with client.” Respondent interprets this allegation to mean Counsel allegedly failed to meet and communicate with Applicant about the case leading up to trial. “[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating “how additional preparation or communication would have resulted in a different outcome.” *Id.* See *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

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Applicant has not stated with specificity any facts regarding this allegation that illustrate what Counsel did that was deficient or how she was prejudiced by the alleged deficiency of Counsel. Thus, more information is needed to determine if this allegation has merit. Consequently, Respondent respectfully requests this Court to require Applicant, through Counsel, to file an amendment with greater specificity regarding claims in the original application.

Failure to Succeed on Motions

Applicant claims Counsel was ineffective for failure to succeed on the motion to relieve counsel, motion for a directed verdict, and the motion to continue. However, she does not state how Counsel's failure to file fell below the standard of reasonableness, or how failure to file "proper" motions prejudiced her at trial. Thus, a more definite statement is needed for Respondent to ascertain whether or not this allegation has merit.

Failure to Develop Trial Strategy/Defense

Applicant alleges Counsel was ineffective for failing to develop and utilize an "alternative trial strategy by painting holes in the evidence or creating doubt." Whether failure to assert a defense constitutes deficient performance ultimately hinges on if failure to explore the decision was a strategic decision. *Strickland*, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a "reasonably substantial investigation" into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. *Id.* "[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial." *Id.* at 681 *Id.* (quoting

Washington v. Strickland, 693 F.2d at 1255). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Regarding failure to alert the Applicant of a defense specifically, Counsel will not be found ineffective if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. See *McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not ineffective when the applicant denied any wrongdoing); *Arnette v. State*, 306 S.C. 556, 413 S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); *Robinson v. State*, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that Counsel was not ineffective when failing to state a defense that was not recognized by the Court until six years later and was just recently acknowledged by the scientific community).

Applicant does not state what this defense or strategy would have consisted of, what substantiating facts, testimony, or evidence existed surrounding this strategy or defense, why Counsel was deficient for failing to raise it at trial, or how she was prejudiced by Counsel's alleged deficiency. Thus, a more definite statement is needed for Respondent to ascertain whether or not this allegation has merit.

Failure to File Motion to Suppresses

Applicant alleges Counsel was ineffective for failure to move to suppress the State's DVD used against Applicant at trial and the quantity of methamphetamine sold. However, she does not show why these items should have been suppressed, if there was a legal basis for

suppressing them, how Counsel's alleged failure to move to suppress was deficient, or how Applicant was prejudiced by Counsel's alleged deficiency. Thus, a more definite statement is needed for Respondent to ascertain whether or not the allegation has merit.

Failure to Address Addiction History

Applicant alleges Counsel was ineffective for failing to raise the issue of addiction as a mitigating factor in sentencing. However, she does not state why Counsel was deficient on this ground why that would have made a difference in sentencing. Thus, a more definite statement is needed for Respondent to ascertain whether or not this allegation has merit.

Failure to Call and Confront Witnesses

Applicant claims Counsel was ineffective for failing to call witnesses who could testify on the issues of drug addiction experts, extreme emotional disturbance due to death of grandmother, or the prior or current character of defendant. A criminal defendant's right to present witnesses is protected by the compulsory process clause of the Sixth Amendment. At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. *Ard v. Caloe*, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

"in most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular

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witness against the identifiable risks." *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. See e.g. *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. See e.g. *Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); *Edwards v. State*, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); *Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was in deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

Applicant states Counsel was ineffective for failure to call witnesses. She does not, however, state who these witnesses are, what exactly they would testify to, why Counsel

deficient for failing to call said witnesses, and how Applicant was prejudiced by this deficiency. Thus, a more definite statement is needed for Respondent to ascertain whether or not this allegation has merit.

Failure to Recognize Constitutional Rights

Applicant claims Counsel was ineffective for “failure to recognize defendant’s constitutional rights.” However, she does not state what these rights are, how Counsel failed to recognize them, why Counsel was deficient for failing to recognize them, or how Applicant was prejudiced by this deficiency. Thus, a more definite statement is needed for Applicant to ascertain whether or not the allegation has merit.

Failure to Investigate

Applicant alleges ineffective assistance of counsel for “failure to investigate.” She goes on to say “[s]aid motel room which was not in defendant’s name. The drugs could have belonged to whomever paid for the room or the name of said individual.” *Strickland* makes clear that Defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* That said, counsel is required to, at minimum, “interview potential witnesses and make an independent investigation of the facts and circumstances of the case”, *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff’d*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government’s forensic evidence and conducting analyses of all other available forensic evidence.” *Id.*

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(quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

Counsel is not obligated to “investigate lines of defense that he has chosen not to employ at trial.” *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693 F.2d 1243, 1255 (5th Cir. 1982)). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Here, Applicant shows no facts indicating that any failure to investigate on the part of Counsel occurred, let alone was unreasonable. Counsel had no obligation to investigate every conceivable defense available in the case; only to engage in reasonable investigation. Applicant has made no showing that Counsel’s alleged inaction regarding investigations fell outside the zone of reasonableness, nor has Applicant specifically stated what exactly Counsel failed to investigate or how the alleged deficiency prejudiced her at trial. Thus, Respondent requests a more specific statement regarding this claim to ascertain the merit, or lack thereof, of the allegation.

Failure to Note and Address Controlled Purchase,

Applicant claims Counsel was ineffective for failure to “note and address issue of how the controlled purchase was conducted and said ‘undercover buy report’ not signed by confidential informant.” However, she does not state why Counsel was deficient for failing to address this issue, how she thinks the issue should have been addressed, or how Counsel’s deficiency prejudiced Applicant at trial. Thus, a more definite statement is needed for Respondent to ascertain whether or not the allegation has merit.

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Failure to Object

Applicant claims Counsel was ineffective for failing to “object to credibility of informant or question said informant if he was using drugs or under the influence of drugs during said controlled purchase and during his testimony.” Whether failure to object constitutes deficient performance generally hinges on whether or not a valid trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where “counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel”).

Applicant claims Counsel was ineffective to question one of the State’s witnesses about drug use. However, Applicant does not state why failing to object on this basis was unreasonable or deficient, nor state how the alleged deficiency prejudiced her at trial. Thus, a more definite statement is needed for Respondent to ascertain whether or not the allegation has merit.

However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

Prosecutorial Misconduct

Applicant claims the State engaged in prosecutorial misconduct because they “failed to note in Rule 5 Motion of Discovery evidence submitted to defense had numerous errors to

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include DVD and said 'undercover buy report' not filled out properly and signed by informant." A "prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." *Giglio v. United States*, 405 U.S. 150, 153 (1972). "The failure to correct false evidence is as reprehensible as its presentation." *Riddle v. Ozmint*, 369 S.C. 39, 47-48, 631 S.E.2d 70, 75 (2006). The court has granted post-conviction relief when a prosecutor failed correct false testimony at trial after the State discovered the testimony was false. *Id.*

Applicant states the State engaged in misconduct. However she fails to state what the errors were, if State was aware the errors existed, how substantive the errors were, if they properly constitute false evidence or testimony as opposed to facial defects on the paper itself, and if they made any difference in the conviction. Thus, a more definite statement is needed to ascertain whether or not the allegation has merit.

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant's allegations. Applicant alleges that plea counsel was constitutionally ineffective for a number of reasons and that the State engaged in prosecutorial misconduct. However, she does not explain exactly what Counsel did that constituted ineffective assistance of counsel nor what the State did that properly constitutes prosecutorial misconduct. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle her to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDonell*, 246 S.C.

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258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief." Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of her claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in Applicant's PCR application not explicitly admitted, qualified, or explain in this Return is hereby denied by the Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims she intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRPC and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Cl. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive

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documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRPC (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

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VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: /s Chelsey F. Marto
ATTORNEYS FOR RESPONDENT

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September 22, 2020

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL
	)	CIRCUIT
Ashley L. Hammitt, #362283	)	
	)	Case No.: 2020-CP-42-01699
Applicant,	)	
	)	
v.	)	Certificate of Service
	)	
State of South Carolina	)	
	)	
Respondent,	)	
_____	)	

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020), "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the Return and Motion for More Definite Statement in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS;

Susannah C. Ross, Esquire
susannah@rossenderlin.com

DATED this 22nd Day of September, 2020.

/s Chelsey F. Marto
 Chelsey F. Marto
 Assistant Attorney General
 Office of the Attorney General
 Post Office Box 11549
 Columbia, SC 29211
 (803) 734-3737
ChelseyMarto@scag.gov

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 SPARTANBURG COUNTY
 AMY W. COX



ALAN WILSON
ATTORNEY GENERAL

September 22, 2020

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
Post Office Box 3483
Spartanburg, South Carolina 29304-3483

Re: Ashley L. Hammitt, #362283 v. State of South Carolina
2020-CP-42-01699

Dear Ms. Cox:

Enclosed please find the original Return and Motion for a More Definite Statement in the above-captioned case for filing in your office.

Sincerely,

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General

CFM/ec
Enclosures

cc: Susannah Ross, Esquire

FILED
2020 SEP 22 AM 11:01
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
ASHLEY HAMMETT,	)	AMENDED APPLICATION
APPLICANT.	)	
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2020-CP-42-1699
	)	

This matter comes before the Court by way of application of post conviction relief filed May 22, 2020, alleging ineffective assistance of trial counsel and prosecutorial misconduct. A Return and Motion for a More Definite Statement was made on September 22, 2020. In addition to the allegations in her initial application, Ms. Hammitt alleges Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution due to ineffective assistance of trial counsel for:

1. failing to prepare and review trial testimony with the Applicant;
2. failing to argue in closing that the case was attempt to distribute rather than arguing possession which was counter to the Applicant's trial testimony that she did not know any drugs were in the room; (Tr. p. 136) and
3. failing to move for a mistrial when the Solicitor elicited testimony about a prior drugs sale. (Tr. p. 79, l. 21)

Respectfully submitted,


 Susannah Ross #11205
 Attorney for the Applicant
 330 E. Coffee St,
 Greenville, SC 29601
 (864) 242-0029

Greenville, South Carolina
 This 31 day of January, 2022.

State of South Carolina	)	
	)	
County of Spartanburg	)	
Ashley Hammitt,	)	2020-CP-42-01699
	)	
Applicant,	)	
	)	
v.	)	Transcript
	)	
The State of SC,	)	of
	)	
Defendant.	)	Post-conviction
	)	Relief Hearing
	)	
	)	
	)	
	)	
	)	
	)	
	)	

Date: April 20, 2022

Time: 2:56 p.m.

Location: Spartanburg County Courthouse

180 Magnolia St.

Spartanburg, SC 29306

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable G.D. Morgan Jr.

For the Plaintiff: Susannah Ross, Esq.
Ross and Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

For the State: Chelsey Marto, Esq.
1000 Assembly St., Room 519
Columbia, SC 29201

Also Present: J. Roger Poole, Esq.
Eddie Hunter, Esq.

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EXHIBITS

There were no exhibits marked during this hearing.

1 PROCEEDINGS

2 THE COURT: All right. Everybody ready to
3 proceed?

4 MS. MARTO: Yes, Your Honor.

5 THE COURT: All right. Ms. Ross, you ready?

6 MS. ROSS: Yes, Your Honor.

7 THE COURT: All right. We're here for the
8 case of Ashley Hammitt, 2020-CP-42-01699. Ms.
9 Marto?

10 MS. MARTO: Yes, Your Honor. Thank you. And
11 may it please the Court. Applicant is
12 presently confined in the South Carolina
13 Department of Corrections pursuant to orders
14 of commitment from the Spartanburg County
15 Clerk of Court.

16 In July 2017, she was indicted for
17 distribution of methamphetamine, and was
18 represented by J. Roger Poole. Assistant
19 Solicitor, James E. Hunter from the 7th
20 Circuit Solicitor's office, prosecuted the
21 case.

22 On January 10th, 2018, applicant
23 proceeded at trial before the Honorable J.
24 Derham Cole and a jury, and she was found
25 guilty as charged, and Judge Cole sentenced

1 her to 15 years imprisonment. She filed a
2 timely notice of appeal January 16th, 2018.
3 It was perfected by LaNelle DuRant when filing
4 a brief pursuant to "Anders vs. California."
5 The South Carolina Court of Appeals dismissed
6 applicant's appeal by unpublished opinion.
7 The remittitur was issued February 28th, 2020.
8 The application was filed May 22nd, 2020, and
9 the State's return was made September 22nd,
10 2020. And with that, I'll turn it over to Ms.
11 Ross.

12 THE COURT: All right. Ms. Ross?

13 MS. ROSS: Thank you, Your Honor. May it
14 please the Court. Ashley Hammitt went to
15 trial on -- on her charges. She's a failed --
16 she's alleged ineffective assistance of
17 counsel for failing to prepare and review the
18 testimony with her lawyer, failing to argue in
19 closing that the case was attempt to
20 distribute rather than arguing possession,
21 which was countered to the applicant's trial
22 testimony. And her testimony was that she did
23 not know there were any drugs in the room, and
24 that's in the transcript on Page 136. Failing
25 to move for a mistrial when the solicitor

1 elicited testimony about prior drug sales, and
2 that's Transcript Page 79, Line 21. Failing
3 to move to suppress the video, failing to
4 investigate who rented the room, failing to
5 challenge the undercover buyer report, or
6 questioned the credibility of the C.I.,
7 failing -- ineffective assistance in an unfair
8 trial, lack of due process for failing to
9 allow her to fire her attorney, which she
10 wished to do, and proceeding forward at the
11 trial when she alleged she was sick and -- and
12 on drugs, you know, not --

13 THE COURT: (To Ms. Ross) At the trial?

14 MS. ROSS: At the trial. With this, I call
15 Ashley Hammitt.

16 THE COURT: All right Ms. Hammitt. Come up
17 here and be sworn.

18 (WHEREUPON, the applicant was sworn.)

19 THE COURT: (To the applicant) You can take
20 your mask down if you want to.

21 THE APPLICANT: Okay.

22 **DIRECT EXAMINATION OF ASHLEY HAMMITT**

23 BY MS. ROSS:

24 Q Okay, Ms. Hammitt. Now, do you understand if you
25 win, you're back in the position you were in before

1 your trial?

2 A Yes, ma'am.

3 Q Okay. And you still wish to go forward?

4 A Yes, ma'am.

5 Q All right. Just -- let's talk briefly about that
6 day of the trial that your -- your case was called.
7 What was going on with you at that time as far as
8 your physical well-being and mental -- mental
9 health?

10 A I was sick and I was high. I let Roger Poole know
11 that I was sick and high. I mean, I had been
12 taking cough medication. I let him know that it
13 was over-the-counter medication. I had told him
14 that -- that I wasn't ready to take the stand
15 because he hadn't prepared me because I had tried
16 to get in touch with him, and he was sick and that
17 was the reason and then he turned around and then I
18 had ended up being sick and I had asked for a
19 continuance and he said that they denied it. He
20 wouldn't even -- he got hostile with me and went --
21 that was the reason why.

22 When I had come (as spoken) into court, I was
23 like, "Well, I just want to fire him, because he
24 was just hostile with me." I mean, I was sick, of
25 course. And in my transcripts, like, there was

1 many times they told me to speak up, because they
2 couldn't even hear me.

3 Q Okay. And -- and did you -- so you wanted to fire
4 him and the Judge gave you -- did he give you any
5 choice about that?

6 A Yeah. He told me I could defend -- he said that I
7 could defend myself.

8 Q Okay. Were you prepared to do that?

9 A No, ma'am. I wasn't prepared to defend myself.

10 Q Okay. Now, let's talk about your allegations of
11 ineffective assistance of counsel about how the --
12 the trial went. There was a -- there was a lot of
13 evidence at the trial that was presented.

14 A Uh-huh.

15 Q Why were you pleading not guilty to distribution?

16 A Because I didn't give him any drugs.

17 Q And what was your understanding of the definition
18 of distribution?

19 A It would be to give -- to -- to give him drugs.

20 Q Now, did Mr. Poole ever go over case law or
21 anything like that with you in his efforts to try
22 to sort of --

23 A No.

24 Q -- get you to plead guilty to it?

25 A Absolutely not. He came in. The only time that I

1 even met with him was he told me Thursday -- the
2 Thursday before -- and I -- I mean, I can't even
3 remember the date. He told me the Thursday before
4 that I was going to trial, to be at court Monday,
5 and I said, "Well, I need my transcripts." So
6 Friday, he rushed me to come and get the
7 transcripts, because he had to hurry up and leave.
8 I came and got the --

9 Q The transcripts or the discovery?

10 A Yeah. The discovery. I apologize. The discovery.
11 The Motion of Discovery. He rushed me to come and
12 get the Motion of Discovery. I left, and I had,
13 like, ten minutes, literally, to get to him from
14 Lynwood Drive. I got a Motion of Discovery.

15 That Monday morning, I spoke with him for ten
16 minutes, and then he had to go into court, and he
17 came back out of court and said, "Oh, well, you're
18 not being seen today. I'll call you and let you
19 know after court today." That's the only I --
20 that's the only amount of time that I seen him.

21 Q And did you -- did he ever print out a copy of what
22 the actual law was with --

23 A No, ma'am.

24 Q -- what was your understanding of you're being
25 charged with distribution of drugs? What -- what

1 was your understanding to that -- what that meant?

2 A I mean, I was being charged with drugs. I mean, I
3 had looked it up myself, and that I knew I could
4 get prison time, of course, but I thought that that
5 meant that I had to actually sell them drugs, but I
6 didn't give him any drugs. Like, I brought him to
7 my room to rob him. I mean, me and him -- me and
8 this boy had history. He had stole (as spoken)
9 from me before, and I had brought him to my room,
10 because I knew that it would be easy to get the
11 money. I took the money from him, and in return,
12 did not give him anything. He left my room. That
13 was it.

14 Q Who are you talking about had taken your picture?

15 A He ripped my picture. There was a picture on my
16 table and he ripped the picture. Like a coloring
17 page; it was a coloring page, and he ripped the
18 picture. It was the corner of the picture.

19 Q And took it with him?

20 A Yes, ma'am.

21 Q Were you in the room at that time?

22 A Yes, ma'am.

23 Q And did he take anything else with the picture?

24 A Not to my knowledge.

25 Q And now you reviewed all the case, what was the

1 weight of the drugs that they got out of your room
2 supposedly wrapped in --

3 A From what the -- from what the paperwork says, it
4 says a "0.03." But from what my motion of -- from
5 what my transcripts say, it says a "20 to a 30
6 bag." But a 0.03 is \$3 in dope.

7 Q Okay.

8 A So there's a whole lot of drugs missing if that's
9 the case.

10 Q And I know it's a bad history, but the reason you
11 know -- but what would that look like as far as
12 that amount? What did it -- what would 0.003 (as
13 spoken) look like, say, sitting on that table right
14 there?

15 A Dust.

16 Q It would like look like dust?

17 A Yeah. Literally like if -- if you've ever seen,
18 like, dust just pile up, like, from a day. Dust.

19 Q And did you feel because you never gave anybody
20 that dust that you testified at trial you didn't
21 know was there, did you think because of that
22 reason you couldn't be found guilty of
23 distribution?

24 A Yes, ma'am.

25 Q And no discussions -- you know, there weren't

1 enough discussions with your lawyer to correct

2 that --

3 A Yes, ma'am.

4 Q -- I understand? Okay.

5 Now -- let's see. And you testified at your

6 trial. Was your testimony truthful at your trial?

7 A Yes, ma'am.

8 Q Now, during your trial, the solicitor started

9 talking about prior sales/prior distributions; is

10 that right?

11 A Yes, ma'am.

12 Q And what -- did your lawyer object or try to keep

13 that out?

14 A No, ma'am.

15 Q And -- and do you think that hurt your credibility

16 even -- well, let me put it this way: You

17 testified later on at trial, didn't you?

18 A I testified in trial, yeah.

19 Q And you admitted you use drugs and had used

20 drugs --

21 A Yes, ma'am.

22 Q -- in the past?

23 A Yes, ma'am. I admitted that me and him -- me and

24 the C.I. even used drugs together, yes, ma'am.

25 Q All right. But that was about using drugs?

- 1 A Yes, ma'am. Correct.
- 2 Q And did you feel like testimony about prior sales
3 of drugs coming in without objection of hurting
4 your case?
- 5 A Yes. Oh, yes, ma'am.
- 6 Q Let's talk about the credibility of the C.I. Who
7 was the -- the confidential informant in this case?
- 8 A Brady Rhodes.
- 9 Q Okay. And y'all had had dealings in the past?
- 10 A Yes, ma'am.
- 11 Q Do you feel like your lawyer did a good job to
12 challenge -- challenging that history?
- 13 A No, ma'am.
- 14 Q Okay. Did he -- did he have any questions about
15 that, or did it just --
- 16 A I mean, he -- he brought it up, but, I mean, as far
17 as pushing the issue, the fact that the boy had
18 stole from me before and, I mean, it was a
19 retaliation. I mean, that was -- that was the
20 biggest deal. It was a retaliation, you know. We
21 had both stolen from each other before. Because, I
22 mean, of course, being in that lifestyle, I mean,
23 that's what happens, you know. It's not just
24 selling drugs, it's also people steal from each
25 other, and, you know, and that's what happened that

- 1 day. And the boy also had a crush on me, you know
2 what I'm saying, and I had turned him down, so, of
3 course, he was angry with me, and he did something
4 and, you know, because I had told him no; so I felt
5 like that was part of it, too. And, you know,
6 there was a -- there was just a lot with him, you
7 know. A lot between me and him. A lot of history.
- 8 Q And even in his testimony he didn't -- like not
9 only the -- the setup in the first place, but in
10 his testimony at trial, as well; is that correct?
- 11 A Yes, ma'am.
- 12 Q And did he move to suppress the video in any way?
- 13 A No, ma'am. And in the video, the video said
14 "October the 6th, 2009," and the date of the crime
15 was October the 6th, 2016. I know it's -- I know
16 it's only years, but I also know that they had time
17 -- they -- they set it up. It was a setup buy --
- 18 Q Uh-huh.
- 19 A -- so they had time to make sure that the date was
20 correct on it, as well.
- 21 Q All right. And then how about who rented that
22 room?
- 23 A Summer and Russell Donahue (phonetic).
- 24 Q And that didn't come out that you didn't?
- 25 A No, ma'am. And I -- that was brought to his

1 attention, as well. It was also brought to his
2 attention that I was paid in \$20 bills and the
3 prosecutor even tried to sway Brady Rhodes and say,
4 "Are you sure that you paid her with a hundred-
5 dollar-bill, or could it have been twenties?"

6 And he said, "No. I'm 100 percent positive I
7 gave her a \$100 bill," and it was only twenties.

8 Q And hadn't -- had Brady messaged you that day or
9 contacted you the day of trial or around that time?

10 A He messaged me -- like I said, Roger Poole let me
11 know Thursday that I had court. That Saturday,
12 Brady Rhodes messaged me, and I know it wasn't a
13 controlled buy, because our friends were around --
14 our mutual friend --

15 Q Uh-huh.

16 A -- and he messaged me and asked me for drugs, and I
17 told him that I wasn't in that line of business
18 anymore. And then I tried to also bring that to
19 court, as well. I tried to enter that into
20 evidence, and I was told that -- by Roger Poole --
21 that the judge would not allow my cell phone in the
22 courtroom because cell phones were not allowed in
23 the courtroom. But the only way I could show that
24 evidence was on my cell phone with a Facebook
25 message.

1 Q So you were actually trying to bring in some
2 evidence that you thought would help your trial --

3 A Yes, ma'am.

4 Q -- and you weren't allowed to bring that in?

5 A Yes, ma'am.

6 Q And your -- you told your lawyer what you were
7 trying to do, and he didn't --

8 A Yes, ma'am.

9 Q -- make any -- okay.

10 And how about the undercover buy report? Were
11 there any issues with that that you recall?

12 A (No response.)

13 Q Did your lawyer challenge it?

14 A No. He didn't -- I mean, he didn't -- he didn't
15 really challenge any part of it.

16 Q That's all the questions I have for you. Do you
17 have anything else you'd like to add at this point?

18 A I would like to show the pictures of -- this was
19 days -- this is the days (as spoken) previous to me
20 coming to court. I was sick, again, and high.
21 And, also, my grandmother had just passed away. In
22 one of the pictures, my grandmother is also in one
23 of the pictures. I mean, it just basically shows
24 that --

25 THE APPLICANT: (To Mr. Ross.) Do I need to

1 give them to him --

2 MS. ROSS: Well --

3 THE APPLICANT: -- okay.

4 MS. ROSS: -- I think you can just show it. I
5 don't think I want to make --

6 THE APPLICANT: Okay.

7 MS. ROSS: -- them exhibits, because you'll
8 lose --

9 THE APPLICANT: Okay.

10 MS. ROSS: -- your pictures.

11 THE COURT: Ms. Ross, can you hand those up?
12 Let me see them.

13 MS. ROSS: Okay.

14 **DIRECT EXAMINATION OF ASHLEY HAMMITT CONTINUES**

15 BY MS. ROSS:

16 Q And did the picture -- the first picture, that's
17 your grandmother and you just lost her?

18 A That's my mother in the first picture.

19 Q Okay.

20 A My grandmother's the one in the hospital bed. And
21 I had asked for the continuance, because my
22 grandmother had died on the -- on the 31st, and we
23 were getting all of her things in order. And, yes,
24 I mean, of course, I was high and stuff, as well,
25 but I was going through a lot, as well.

1 Q Do you think being in -- and this was all through
2 the time that you were deciding whether to go to
3 trial or plea? You were going through that, and --

4 A Yes, ma'am.

5 Q All right. Anything else?

6 A No, ma'am.

7 MS. ROSS: (To the applicant) Please answer
8 any questions the A.G. has for you.

9 **CROSS-EXAMINATION OF ASHLEY HAMMITT**

10 BY MS. MARTO:

11 Q Good afternoon, ma'am.

12 A Good afternoon.

13 Q So after telling the Court that you wanted to
14 relieve Mr. Poole, did you ultimately wind up
15 deciding not to fire him?

16 A I mean, only because basically I was told I didn't
17 have a choice.

18 Q You were told that your options were to proceed pro
19 se or to keep him as your attorney, correct?

20 A I was told to either keep him or defend myself,
21 yes, ma'am.

22 Q Right. And so you decided to keep him?

23 A Versus defending myself? Yeah.

24 Q And when you were on the stand, you admitted you
25 have a long history of drug use, correct?

- 1 A Yes, ma'am.
- 2 Q And you wanted to enter text stating that you used
3 to deal, but you don't anymore; is that correct?
- 4 A I wanted to show a message that their C.I. that was
5 testifying against me was trying to still get drugs
6 from me, and I wasn't dealing.
- 7 Q But you -- so you didn't rent the hotel room,
8 correct?
- 9 A No, ma'am.
- 10 Q But you --
- 11 A It wasn't my room.
- 12 Q But you were inside the room at the time, correct?
- 13 A I was inside the room.
- 14 Q Okay. And do you recall if the C.I. was equipped
15 with any video?
- 16 A He had a watch on.
- 17 Q That had video?
- 18 A It had video and audio.
- 19 Q Okay. Now, is it your understanding that a drug
20 deal is a hand-to-hand transaction?
- 21 A Yes, ma'am.
- 22 Q So if you were to leave drugs on the table and he
23 were to pick them up, that would no longer be a
24 drug deal?
- 25 A But I didn't have any drugs. That's what I'm

- 1 saying, though, is I didn't have any drugs. I
2 didn't give him any drugs. If there was drugs in
3 the room, it wasn't my room, and I didn't have
4 anything is what I was saying. That was what I was
5 saying in my testimony then, and that's what I'm
6 saying now is I didn't have any.
- 7 Q Was anybody else in the hotel room with you?
- 8 A No.
- 9 Q Okay. And did you talk to the confidential
10 informant before you arrived?
- 11 A Yes. Yes, ma'am. I did.
- 12 Q Did you tell him to go over to that hotel room?
- 13 A Yes, ma'am. I was bringing him there.
- 14 Q Because he wanted to buy?
- 15 A I was bringing him there -- yes. But it was to set
16 him up so I could steal his money.
- 17 Q So you -- you wanted to rob him; is that --
- 18 A Yes, ma'am.
- 19 Q Okay. And it was your decision to go to trial,
20 correct?
- 21 A Yes, ma'am.
- 22 Q Did you have any conversations with Mr. Poole at
23 all about testifying at trial?
- 24 A Five minutes before court.
- 25 Q And what did those conversations entail?

1 A He just tried to get me to take a plea. That was
2 it. And when I wouldn't agree with what he wanted,
3 he got aggravated with me.

4 Q But you didn't have any conversations about
5 testifying at trial during that conversation?

6 A No. We talked, and he tried to get me to take a
7 plea. I said, "No." I didn't want to take a plea,
8 I wanted to take a trial.

9 He said, "That wouldn't be smart."

10 And I said that's what I wanted to do, because
11 I knew that I wasn't guilty and that was it.

12 And he said, "All right. Well, we're going
13 into court." And we came to court.

14 Q And he told you to take a plea instead of going to
15 trial, because he thought you would be found guilty
16 at trial?

17 A Yes, ma'am.

18 Q And you were found guilty at trial?

19 A Yes, ma'am.

20 MS. MARTO: No further questions, Your Honor.

21 THE COURT: All right. (To Ms. Ross.) Any
22 redirect?

23 MS. ROSS: Yes.

24 **REDIRECT EXAMINATION OF ASHLEY HAMMITT**

25 BY MS. ROSS:

- 1 Q Now, there was a DVD put into evidence -- submitted
2 into evidence after it was played for the C.I., and
3 was put in after, I believe, Mr. Poole testified --
4 not Mr. Poole. I'm sorry. Donald (phonetic)
5 Rhodes?
- 6 A Uh-huh. Yes, ma'am.
- 7 Q And what did that -- did that show the table with
8 drugs on it or anything?
- 9 A The only thing it showed was the ceiling and the
10 wall.
- 11 Q And did it show -- yeah. You didn't indicate --
- 12 A The only thing --
- 13 Q -- to the table.
- 14 A No, ma'am. The only thing that it showed was when
15 he walked in, it showed me, as he was walking in
16 the door, me standing outside the hotel room. And
17 then he walked in, and then you could see it went
18 straight up to the ceiling, and you could hear us
19 talking. And then it came down off of the ceiling
20 and down the wall and then back up to the ceiling.
21 And that's the most that it showed until he got up
22 and left.
- 23 Q Now, when you -- when you sell drugs, are they
24 just, "Here's a little piece on the table," or do
25 you -- are they in a baggie or something like that?

- 1 A It's in a baggie.
- 2 Q So they're just not loose and out?
- 3 A No.
- 4 Q And -- and you testified that you wouldn't have
- 5 left it out on -- you didn't know anything was on
- 6 the table?
- 7 A No, ma'am.
- 8 Q And that was the point you were trying to make at
- 9 your trial where you kept saying, "He ripped up my
- 10 picture and just scooped up this piece of dust on
- 11 the table and ran out with it?"
- 12 A Yes, ma'am.
- 13 Q Okay. And that was not you indicating there was a
- 14 piece of dust, I'm selling it to you?
- 15 A Yeah.
- 16 Q And your lawyer didn't really explain that very
- 17 well or at all to the jury to understand --
- 18 A No, ma'am.
- 19 Q -- what your testimony was? And -- and had he
- 20 explained that do you think that would have
- 21 supported your argument that, "I didn't actually
- 22 distribute drugs?"
- 23 A Yes, ma'am.
- 24 Q Okay.
- 25 MS. ROSS: (To the Court) Nothing further.

1 MS. MARTO: No further questions, Your Honor.

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

3 THE APPLICANT: Thank you.

4 (WHEREUPON, the witness was excused.)

5 THE COURT: All right. (To Ms. Ross) Next
6 witness?

7 MS. ROSS: That's our case. I would just --
8 I'll be happy to go -- the DVD would be over
9 at the clerk's office if you request to see
10 it, but I'd just ask you take notice that
11 that's her testimony of what it showed.

12 THE COURT: What the DVD would show?

13 MS. ROSS: Yeah.

14 THE COURT: Or did show?

15 MS. ROSS: Yes.

16 THE COURT: Okay. All right, Ms. Marto?

17 MS. MARTO: Yes, Your Honor. We would call
18 Mr. Roger Poole to the stand please.

19 (WHEREUPON, the witness was sworn.)

20 **DIRECT EXAMINATION OF ROGER POOLE, ESQ.**

21 BY MS. MARTO:

22 Q Good afternoon, sir.

23 A Hello.

24 Q So you represented Ms. Hammitt during trial?

25 A That's correct.

1 Q Did you have the case from its inception?

2 A Pardon me?

3 Q Do you recall if you had the case from the
4 beginning, or if you remember?

5 A I -- I recall the case very well.

6 Q Okay. And what -- can you give us a background of
7 what the State alleged happened?

8 A Well, it was a controlled buy. A C.R.I. case. She
9 was staying at a hotel or motel, and the C.R.I. was
10 going to testify as to the tape. I reviewed the
11 tape before trial, and an offer was made that she
12 could plead to first offense. This was the third
13 or subsequent offense of drugs, so there was a
14 mandatory minimum.

15 If she had pled -- because she admitted that
16 she was there. She admitted that she contacted
17 C.R.I. before he came there, and she admitted that
18 he -- that she took money. She was standing on the
19 principle that although she did not actually
20 transfer hand-to-hand the drugs that therefore she
21 couldn't be found guilty. And so, she was wrong.
22 And I knew that, and I advised her to take the
23 offer, because she wouldn't be sitting where she is
24 now if she had listened to what I said. So that's
25 it in a nutshell.

- 1 Q Okay.
- 2 A You know, it was a clear-cut case.
- 3 Q What did you think your chances of success at trial
- 4 were?
- 5 A Slim, if any.
- 6 Q And she rejected your advice concerning a plea
- 7 offer, correct?
- 8 A Outright.
- 9 Q Now, did she request from the Court that she
- 10 relieve you as counsel?
- 11 A She did.
- 12 Q And what came of that request?
- 13 A Typically, the way that that request goes down
- 14 before Judge Cole, denied.
- 15 Q Okay. So did she decide to proceed forward with
- 16 you as her --
- 17 A She did.
- 18 Q Now, did you move -- you did not move for a
- 19 mistrial concerning testimony concerning her prior
- 20 convictions?
- 21 A Well, what occurred there, based upon my recent
- 22 review of the transcript of the trial, the
- 23 assistant solicitor, Mr. Eddie Hunter, asked a
- 24 question, which evoked an answer that basically the
- 25 C.R.I. said that he stole some meth or took some

1 meth from her or owed her some money for meth on a
2 prior occasion. When that came out, I objected
3 immediately to it, and the judge sustained my
4 objection. I did not move for a mistrial. Once
5 again, I know Judge Cole well enough to know that
6 he was not going to grant a mistrial for that.

7 Q Did you discuss her decision to testify at trial
8 with Ms. Hammitt?

9 A Pardon me? I'm sorry.

10 Q Did you discuss her -- Ms. Hammitt's decision to
11 testify at trial with her?

12 A Well, I talked to her about her right to testify,
13 and she wanted to testify.

14 Q Okay. Did you give her any advice when it came to
15 testifying, or no?

16 A Just to tell the truth.

17 Q Okay. And then, did you -- why didn't you argue in
18 closing that the case was attempt to distribute
19 rather than arguing possession?

20 A Well, it never occurred to me. It doesn't occur to
21 me now.

22 Q Do you think it would have been appropriate to
23 argue?

24 A I don't know. I'd have to think about it.

25 Q So the -- the State's theory of the case, though,

1 was that she intended to distribute drugs to the
2 confidential informant, correct?

3 A Yes. And judging by the circumstances, that is the
4 case.

5 Q Now -- and what evidence was the State able to
6 bring out at trial?

7 A Again, I'm sorry. I'm hard of hearing.

8 Q What evidence was the State able to bring out at
9 trial concerning video or testimony or --

10 A They had the video there. Not the best video in a
11 case like this, but it was a video that showed
12 contact between the seller, the defendant that is,
13 and the C.R.I. They had the methamphetamines. It
14 was three-hundredths of a gram of meth --
15 nevertheless it was meth. And that was basically
16 it, and the testimony of the C.R.I., of course.

17 Q And the confidential informant testified at trial,
18 correct?

19 A Right.

20 Q Did Ms. Hammitt ever mention to you that she was
21 both sick and high at trial?

22 A I don't recall that.

23 Q Did she come across as being high during your
24 interactions with her at trial?

25 A No. Not really. I mean, she was -- she engaged in

1 dialogue with me and with the Court on her motion
2 to continue and having it excused.

3 Q Based upon your conversations with her and her
4 testimony, did she seem clear minded?

5 A To me, I couldn't tell.

6 Q Now, is there really any dispute that Ms. Hammitt
7 had a long history with both drug use and drug
8 dealing?

9 A She had a history, yes.

10 Q Did you see any reason to further investigate who
11 rented the hotel room?

12 A No. Not really. Like I said, I viewed this as a
13 controlled buy case. A garden variety. You know,
14 the common type.

15 Q So who rented it would have been irrelevant to the
16 securing a conviction in your opinion?

17 A That's right, because nobody else was around either
18 on the video or not.

19 MS. MARTO: No further questions, Your Honor.

20 THE COURT: All right. (To Ms. Ross) Cross?

21 **CROSS-EXAMINATION OF ROGER POOLE, ESQ.**

22 BY MS. ROSS:

23 Q Just going back. If -- if someone else had rented
24 the room, wouldn't that have been something that
25 you could show to support her testimony that she

1 didn't even realize there were drugs in the room?
2 That she was running around -- that her testimony
3 was she was running around trying to find some
4 drugs to sell, that she really couldn't, and that
5 she didn't know that there were any drugs in the
6 room?

7 A It could be, but, you know, that's really hindsight
8 looking, and they -- she was running around looking
9 for drugs, because it was acknowledged that the
10 amount that was on the table was less than a
11 hundred dollars worth. And -- and it came across
12 that she was looking for some more to substantiate
13 it more.

14 Q Okay. And I haven't seen the video. That's in the
15 video, that's your testimony, that she's saying
16 here's some on the table that -- just left out, and
17 I'm -- let me run and get some more?

18 A I -- I don't think I can go that far, because I
19 don't remember --

20 Q Okay.

21 A -- the details.

22 Q Okay. And as far as -- was this -- were you
23 expecting this case to go to trial?

24 A Well, after -- yeah. After I talked with her right
25 before and saw that she was intending for it to go

1 to trial, it had to go to trial.

2 Q All right. But your opinion was that really was no
3 case -- or no -- no real defense that it was the
4 classic victim?

5 A Well, it always some sort of hope -- a case that
6 you hope to be able to make some sort of case out
7 of it.

8 Q Now, as far as the -- the -- the C.I., did Ms.
9 Hammitt talk to you about the prior experience with
10 the confidential informant or the fact that she
11 even had texted with him --

12 A I want to say, but, again, I can't remember all
13 these details.

14 Q Okay. But that didn't -- you weren't able to
15 present -- or she couldn't bring her phone in to
16 present any texts or anything between the
17 confidential informant --

18 A Well, I --

19 Q -- into the courtroom?

20 A If that existed, I -- I didn't see the benefit of
21 it. I don't see how she could've benefitted from
22 it on the day of trial?

23 Q Could she have possibly used that to attack the
24 credibility of the confidential informant?

25 A Possibly, but I don't think it would go very far.

1 Q Okay.

2 MS. ROSS: (To the Court) I have no further
3 questions.

4 THE COURT: All right. (To the State) Any
5 redirect?

6 MS. MARTO: Yes, Your Honor. Just briefly.

7 **REDIRECT EXAMINATION OF ROGER POOLE, ESQ.**

8 BY MS. MARTO:

9 Q Was it -- is it your opinion that the audio
10 recording from the confidential informant was
11 incriminatory towards Ms. Hammitt in her case?

12 A Was it incriminating --

13 Q Yeah.

14 A -- or exculpatory?

15 Q Was it incriminating?

16 A Well, yes. It is -- it's incriminating to the
17 extent this showed them together, yes.

18 Q And do you think that text between her and the
19 confidential informant saying she doesn't deal
20 anymore could have hurt her in the end at the
21 trial?

22 A I see that distinctly.

23 MS. MARTO: No further questions, Your Honor.

24 THE COURT: All right. (To Ms. Ross) Any
25 recross?

1 MS. ROSS: No, Your Honor.

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

3 Thank you.

4 THE WITNESS: Thank you.

5 (WHEREUPON, the witness was excused.)

6 THE COURT: All right. Anything else from
7 that State?

8 MS. MARTO: Yes, Your Honor. We would call
9 Eddie Hunter.

10 THE COURT: All right. Mr. Hunter?

11 (WHEREUPON, the witness was sworn.)

12 **DIRECT EXAMINATION OF EDDIE HUNTER, ESQ.**

13 BY MS. MARTO:

14 Q Good afternoon, sir.

15 A Good afternoon.

16 Q So you prosecuted this case, correct?

17 A I did.

18 Q And what evidence did you have concerning this
19 case?

20 A As Mr. Poole stated, we had the testimony of the
21 officer handling Mr. Rhodes. Mr. Rhodes, as well
22 as the evidence technician and the chemist who
23 tested the drugs. As far as evidence submitted in
24 the trial, we had the video from Mr. Rhodes's watch
25 that captured the incident, as well as the drugs,

1 the 0.03 grams of meth.

2 Q Do you recall on what the audio consisted of?

3 A Yes. And I actually have a part of her testimony
4 on Page 122, the biggest part, starting with Lines
5 7 all the way down to 17, where I asked her about
6 what she said. And I asked her, "Do you remember
7 hearing you say the dope's right there?"

8 She answered, "I told you I acted it all out.
9 I walked. I said all of it. I said I did."

10 So I asked her again, "So your testimony is
11 that you didn't have any dope, but on video you
12 said you did?"

13 "No. I said -- I said the dope's here is what
14 I said. The dope's here."

15 And then I asked, "And then you told him to
16 take it, and you were -- you were not going to hand
17 it to him?"

18 She responded, "Exactly. I didn't give him
19 any dope." So she admitted that the dope was on
20 the table, but she was not going to hand it to him.

21 Q Okay. And that was, of course, incriminating
22 evidence?

23 A Yes. That -- that's her admitting that she knew
24 drugs were present. She's already admitted taking
25 the hundred dollars, so that's a drug deal right

1 there. Based on those facts alone, she would've
2 been guilty.

3 Q Now, did you elicit testimony concerning prior drug
4 sales?

5 A I -- I did attempt to ask a question of Mr. Rhodes
6 that, obviously, Mr. Poole then objected as soon as
7 Mr. Rhodes started answering about money that was
8 fronted. Obviously, my -- I tried to tell the
9 judge why I wanted to ask those, and that's in a
10 bench conference. He sustained the objection, and
11 I did not go into that any further.

12 Q Did you think there was any basis for an attempt to
13 distribute charge -- jury charge or closing rather
14 than arguing possession?

15 A No. As in her cross-examination, based on the
16 video and audio, which is the same -- the same DVD,
17 she admitted to knowing that there was dope in the
18 room. She was taking the hundred dollars. And,
19 yes, the hundred dollars and the 0.03 grams do not
20 match up, but she also admitted that she was acting
21 like she was looking for dope, but she really
22 wasn't, but I think the jury saw through that, and,
23 no, there was -- there was no chance to even ask
24 for that.

25 The evidence was clear that this was not an

1 attempt, but an actual -- just because you didn't
2 hand it to his -- hand-to-hand doesn't mean that
3 you didn't complete the sale.

4 Q And did you think that who actually rented the
5 hotel room would have been a factor and considered
6 whether or not --

7 A I would love to know that just because I know
8 exactly who those people are dealing in the drug
9 game for a while. However, this time, as Mr. Poole
10 stated, she was the only one present when Mr.
11 Rhodes showed up. Further in her testimony, she
12 talked about how she was renting the room and that
13 she was looking for money to pay for the next
14 night, so if someone else rented it, why is she
15 looking for money? I just think -- you know, her
16 testimony at the time of trial and testimony now is
17 -- are two different things. So, no, it would not
18 have -- ultimately it wouldn't have mattered, and
19 probably would've been irrelevant at the time.

20 MS. MARTO: No further questions, Your Honor.

21 THE COURT: All right. (To Ms. Ross) Cross?

22 **CROSS-EXAMINATION OF EDDIE HUNTER, ESQ.**

23 BY MS. ROSS:

24 Q But would you agree she looks a bit different now
25 then she did then as far as her --

1 A She looks healthier.

2 Q Okay.

3 A She does. She looks like she's off drugs.

4 Q And she seemed like she was on drugs at the time of
5 the trial?

6 A Actually, at the time of trial, I can't tell you,
7 because, as Mr. Poole said, she spoke. She didn't
8 tell me she was high or sick, but, you know, just
9 as I see people who come back from prison for PCRs
10 or any other thing, where they're in a controlled
11 environment where drugs aren't present, they tend
12 to gain weight, which she has. They -- they tend
13 to look better.

14 Q All right.

15 MS. ROSS: (To the Court) Nothing further.

16 THE COURT: All right. (To the State) Any
17 redirect?

18 MS. MARTO: No further questions, Your Honor.

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

20 (WHEREUPON, the witness was excused.)

21 THE COURT: Any additional witnesses?

22 MS. MARTO: No further witness, Your Honor.

23 THE COURT: All right. Anything from the
24 parties?

25 MS. ROSS: Judge, nothing beyond my

1 introduction of what -- what I'd said out
2 there. Ms. Hammitt really feels that she
3 didn't understand what she was getting into,
4 and then she got a pretty hefty sentence for
5 her 0.03 grams, and then attempted to be
6 honest to the -- to the Court today and then
7 at the time of trial.

8 THE COURT: All right. Thank you. (To the
9 State) Anything?

10 MS. MARTO: Nothing further, Your Honor.

11 THE COURT: All right. Thank you, both. I'll
12 take it under advisement, and I'll let you
13 know of my decision. Thank you.

14 MS. MARTO: Thank you, Your Honor.

15 MS. ROSS: (To the Court) Thank you.

16 (Whereupon the within hearing was
17 concluded at 3:34 p.m.)

18 (*This transcript may contain quoted material.
19 Such material is reproduced as read or quoted
20 by the speaker.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina on April the 20th, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Amber J. Payne, CVR

Date: 11/5/2022
Notary public for South Carolina
My commission expires August 12, 2029

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	FOR THE SEVENTH JUDICIAL CIRCUIT
)	
Ashley L. Hammitt, #362283,)	Case No.: 2020-CP-42-01699
Applicant,)	
)	
v.)	ORDER OF DISMISSAL
)	
State of South Carolina,)	
Respondent.)	

This matter comes before this Court by way of Applicant's post-conviction relief application filed May 22, 2020. Respondent made its return on September 22, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 20, 2022, at the Spartanburg County Courthouse. Susannah C. Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on her own behalf at the evidentiary hearing. Counsel J. Roger Poole, Esquire, and Assistant Solicitor James E. Hunter, Esquire, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In July 2017, the Spartanburg County Grand Jury indicted Applicant for distribution of methamphetamine (2017-GS-42-3779). Applicant was represented by J. Roger Poole, Esquire. Assistant Solicitor James E. Hunter, Esquire, of the Seventh Circuit Solicitor's Office prosecuted the case. On January 10, 2018, Applicant proceeded to trial before the Honorable J. Derham Cole, circuit court judge, and

a jury. Applicant was found guilty as charged and Judge Cole sentenced Applicant to fifteen years' imprisonment.

Applicant filed a timely notice of appeal on January 16, 2018, that was perfected by Lanelle C. Durant, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Hammitt*, 2020-UP-037 (S.C. Ct. App. filed Feb. 12, 2020). The remittitur was issued on February 28, 2020.

Summary of Relevant Facts

On October 6, 2016, a scheduled drug buy occurred between Applicant and the confidential informant, Brady Rhodes. (Tr. 49). Rhodes was equipped with audio and video recording equipment. (Tr. 51-52). The drug sale occurred at a hotel. (Tr. 53). Rhodes was equipped with fifty dollars and bought a crystal rock-like substance from Applicant. (Tr. 50, 53). Methamphetamine was the drug purchased during this transaction. (Tr. 56). Though Rhodes originally met with Applicant to obtain a full gram of methamphetamine, it was tested to only weigh 0.03 grams. (Tr. 94, 107).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Ineffective assistance of counsel."
 - a. "Failure to prepare for trial with client."¹
 - b. "Failure to have alternative trial strategy by painting holes in the evidence or creating doubt."
 - c. "Failure to file motion to suppress evidence of DVD (date, time, year – not noted on same) which was a state exhibit used against defendant."

¹ Respondent interprets this allegation to be an ineffective assistance of counsel claim for failure to prepare with Applicant through failing to meet, communicate and otherwise discuss evidence and trial strategy with Applicant.

- d. "Failure to recognize defendant's constitutional rights (mitigating circumstances) based on the facts and circumstances surrounding said crime of methamphetamines distribution."
- e. "Failure to call witnesses (on the issues of drug addiction experts, extreme emotional disturbance due to death of grandmother, prior or current character of defendant. A criminal defendant's right to present witnesses is protected by the compulsory process clause of the Sixth Amendment)."
- f. "Failure to investigate. Said motel room which was not in defendant's name. The drugs could have belonged to whomever paid for the room or the name of said individual."
- g. "Failure to note and address issue of how the controlled purchase was conducted and said 'undercover buy report' not signed by confidential informant (Brady Donald Rhodes)."
- h. "Failed to object to credibility of informant or question said informant if he was using drugs or under the influence of drugs during said controlled purchase and during his testimony."
- i. "0.03 grams (This is clearly a simple possession quantity) not a distribution quantity – failed to suppress evidence of same."
- 2. "Trial Judge erred."²
 - a. "Failed to question defendant if she was under the influence of drugs at the trial (being her record clearly shows she is an addict.)"
 - b. "Defendant's request to release her attorney Mr. J. Roger Poole, Public Defender and the request of a continuance being denied prejudiced defendant."
 - c. "Judge denied motion for direct verdict concerning said drugs/money not seen on CI's DVD."
- 3. "Prosecutorial Misconduct."
 - a. "Prosecutor failed to note in Rule 5 Motion of Discovery evidence submitted to defense had numerous errors to include DVD and said 'undercover buy report' not filled out properly and signed by informant."

Applicant, through PCR Counsel, made their amended application on January 31, 2022, alleging:

- 1. Ineffective assistance of counsel for:
 - a. Failing to prepare and review trial testimony with the Applicant;
 - b. Failing to argue in closing that the case was attempt to distribute rather than arguing possession which was counter to the Applicant's trial testimony and that she did not know any drugs were in the room; and
 - c. Failing to move for a mistrial when the Solicitor elicited testimony about a prior drugs sale.

² Respondent interprets point 2(a) as an ineffective assistance of counsel claim for failure to raise the issue of addiction as a mitigating factor in sentencing Respondent interprets points 2(b) and 2(c) as ineffective assistance of counsel claims for failure to successfully secure a granted motion for continuance, motion to relieve counsel and proceed *pro se*, and motion for directed verdict.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective Assistance of Counsel:
 - a. Failure to move for a continuance.
 - b. Failure to prepare Applicant to testify at trial.
 - c. Failure to address drug weight discrepancy.
 - d. Failure to point out Applicant did not rent the hotel room.
 - e. Failure to move for a mistrial.
 - f. Failure to enter phone evidence at trial.
 - g. Failure to use defense that Applicant did not intend to deal to the confidential informant.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant stated she understood the PCR proceedings. She stated she was sick and high when she testified at trial. She stated she requested Counsel move for a continuance, but that this was denied. She also stated she wanted to fire Counsel, but that this was denied. Applicant stated she was unwilling to plead because she was not guilty. She stated she did not discuss the proceedings and discovery with Counsel, but that he rushed her to get the discovery. She stated that the State said the drugs weighed .03 grams in a motion and a different weight was stated at trial. She stated she did not speak with Counsel about this discrepancy. She stated she testified that she used drugs in the past. Applicant stated that there was a set up buy between her and the confidential informant and that they had stolen from each other before. She stated that the drugs were paid for in twenty-dollar bills and that she told Applicant this. Applicant stated that Counsel told her that she could not bring in evidence from her phone.

On cross-examination, Applicant stated she told the Court she wanted to continue with her representation by Counsel because she did not want to proceed forward *pro se*. She stated she

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had a history of drug use and dealing. She stated she thought a drug deal was hand-to-hand but confirmed she did not have drugs in the hotel room. She stated she called the confidential informant to her hotel room to rob him, not to deal to him. Applicant stated she did not want to plead, despite Counsel's advice to plead. She stated she decided to go to trial instead. On re-direct, Applicant stated video footage of the buy was entered at trial.

Counsel Testimony

Counsel testified he recalled the case very well and that it was a controlled buy case. Counsel testified that Applicant admitted to contacting the confidential informant. Specifically, he stated that the State's theory of the case was that Applicant intended to sell drugs to the confidential informant. At trial, Counsel stated that regarding evidence, the State had video footage of the deal, they had the drugs, and the testimony of the confidential informant. Counsel testified that the issue of who rented the hotel room was irrelevant.

Applicant was made a plea offer, but Applicant refused to plead. Counsel testified he thought the chances of success at trial were slim. Counsel testified he did not move for a mistrial in the case and did not think that motion would be successful. Concerning testifying, Counsel stated he told Applicant to tell the truth.

Counsel testified he did not remember Applicant stating she was high at trial, but that he could not tell if she was clear minded at trial. Counsel testified that Applicant had a history of drugs and that this was undisputed.

On cross-examination, Counsel testified that it would be speculation to state that the issue of who rented the hotel room was important. Counsel testified that one can always present a defense at trial. He stated that he did not think Applicant's phone evidence was beneficial at trial. On re-direct, Counsel testified that the texts in question were incriminating.

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Prosecutor Testimony

The prosecutor stated that evidence consisted of a video and audio recording of the drug deal, the drugs themselves, and the chemist's report. He stated that evidence showed that the drugs were on the table and that the deal was not hand-to-hand. Applicant's history of drug use and dealing was brought up at trial, objected to by Counsel, and then not brought up again. Prosecutor stated that Applicant admitted to knowing drugs were in the room, that she took the hundred dollars from the confidential informant, and that evidence of the deal was clear. Prosecutor stated that the issue of who rented the hotel room was not probative in the case. Based on the pictures of Applicant shown and her appearance in Court, Prosecutor stated that Applicant looks healthier now and like she is no longer using drugs.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's

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conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is

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a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

The court makes this determination based upon the totality of the evidence. *Id.* at 695.

Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Move for Continuance

Applicant claims Counsel was ineffective for failure to request a continuance. However, she stated during pre-trial proceedings that Counsel requested a continuance on her behalf and informed her when it was denied. (Tr. 8). She also asked for a continuance on the day of trial to procure new counsel and this was denied. (Tr. 14-15). Applicant claimed she was sick and high at trial, but Counsel credibly testified that he did not see any indication she was high at trial, nor did he recall being informed by Applicant that she was high. Accordingly, Counsel was not ineffective because a continuance was, in fact, requested, and Applicant failed to show what more Counsel could have done to secure a continuance or how that continuance would have impacted the results of the proceedings. Thus, this Court finds the allegation without merit and relief is denied on this ground.

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Prepare Applicant's Testimony

Applicant claims Counsel was ineffective for failure to properly prepare Applicant for testifying at her trial. Counsel credibly testified he talked to Applicant about testifying and told her to tell the truth. There has been no showing as to why this was unreasonable and, accordingly, deficient. There has also been no showing on what additional preparation would have consisted of or how that would have made a difference on the trial outcome. Thus, Applicant has not established prejudice. Accordingly, relief is denied on this ground.

Drug Weight Discrepancy

Applicant testified that she thought Counsel was ineffective for failure to address the fact that the State said the drugs weighed .03 grams in a motion and a different weight was stated at trial. Whether failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. *Strickland*, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a “reasonably substantial investigation” into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. *Id.* “[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial.” *Id.* at 681 *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1255). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Regarding failure to alert the Applicant of a defense specifically, Counsel will not be

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found ineffective if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. *See McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not ineffective when the applicant denied any wrongdoing); *Arnette v. State*, 306 S.C. 556, 413 S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); *Robinson v. State*, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that Counsel was not ineffective when failing to state a defense that was not recognized by the Court until six years later and was just recently acknowledged by the scientific community).

At the PCR hearing, Counsel credibly testified that the evidence shown at trial showed that the State had video footage of the deal, they had the drugs, and the testimony of the confidential informant. The weight of the drugs is irrelevant to whether Applicant intended to distribute drugs. Thus, Counsel was not ineffective for failing to raise this as an issue because it is irrelevant and, accordingly, non-prejudicial. Thus, relief is denied on this ground.

Hotel Rental Issue

Applicant claims Counsel was ineffective for failure to point out at trial that Applicant did not rent the hotel room personally. However, Counsel credibly testified he did not do so because it was irrelevant. Additionally, because Applicant was the person recorded on tape engaging in the drug deal, the hotel rental issue was seemingly of no consequence and, thus, any failure to raise this issue was non-prejudicial. Accordingly, relief is denied on this ground.

Move for Mistrial

Applicant claims Counsel was ineffective for failure to move for a mistrial. To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions

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fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. “To prove prejudice resulting from counsel’s failure to move for a mistrial, an applicant must demonstrate that, had counsel moved for a mistrial, the trial court’s denial of the motion would have amounted to an abuse of discretion.” *Earley v. State*, 418 S.C. 255, 266, 792 S.E.2d 226, 232 (2016).

Counsel acted reasonably in his decision not to move for a mistrial when testimony concerning a prior deal was elicited. Counsel objected when the prosecutor asked about the prior deal, a bench conference was held, the objection was sustained, and the issue was not revisited. (Tr. 79-80). Counsel credibly testified that he did not request a mistrial because he did not think it would be granted. This Court finds Counsel’s approach was reasonable concerning this issue and declines to find him deficient on this ground.

Concerning prejudice, this Court does not find that if the trial court denied the motion it would have amounted to an abuse of discretion. Instead, this Court finds that this issue was adequately dealt with without a mistrial being needed. *See State v. Patterson*, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct. App. 1999) (“[t]he granting of [a] motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way.”). Thus, relief is denied on this ground.

Entry of Phone Evidence

Applicant claims Counsel was ineffective for failure to enter evidence off of Applicant’s phone at trial. This evidence consisted of photographs of Applicant at the time. However, Counsel credibly testified that he did not think the phone evidence would have made a difference at trial. Counsel is not deficient for failing to pursue a fruitless defense at trial and, because the evidence is irrelevant, Applicant is not prejudiced as a result. Accordingly, relief is denied on

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this ground.

Intent to Deal

Applicant claims ineffective assistance of counsel for failure to assert a defense that Applicant did not intend to deal to the confidential informant. However, Applicant testified to this at trial. Specifically, she testified at trial that the confidential informant stole money from her several times, and she wanted to get the informant to the hotel room so she could take his money. (Tr. 116-18). She testified that she told him she would deal him drugs as an excuse for getting him to go to the hotel room, but that she had no intent to deal. (Tr. 116-18). She testified that she acted like she was going to deal to him, but that she never had any intent of doing so. (Tr. 116-18, 122-23). She testified she never gave the informant any drugs. (Tr. 122). Thus, this Court finds that the defense was asserted at trial and Applicant's own testimony was the best source for that defense. Counsel is not deficient because he presented that defense, and no prejudice is found flowing therefrom. Accordingly, relief is denied on this ground.

Conclusion

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR, counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to

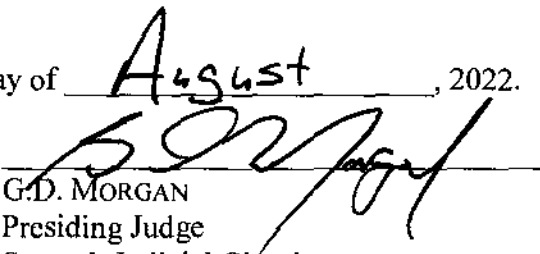
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South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 23rd day of August, 2022.


G.D. MORGAN
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

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