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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Pickens County

D. Garrison Hill, Circuit Court Judge

JAMES MICHAEL DOVER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212588

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

COURT OF GENERAL SESSIONS
2006-GS-39-1134; 1135

ORIGINAL

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)

vs.)

TRANSCRIPT OF RECORD

JAMES MICHAEL DOVER,)
DEFENDANT.)

July 26 & 27, 2006
Pickens, South Carolina

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR., JUDGE.

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

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Attorney for the State

JOHN DEJONG, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

I N D E X

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(State's Exhibits)		
S-1	CD.....		38
S-2	Drugs.....		149
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(Defense Exhibits)

There were no Defense Exhibits.

(Court's Exhibits)

There were no Court's Exhibits

State's Exhibits 1 through 3 were retained by the Clerk of Court for Pickens County.

State's Exhibit No. 4 was retained by Pickens County Sheriff's Office.

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10 THE COURT: All right, Mr. DeJong.

11 MR. DEJONG: Thank you, Your Honor. May it please the

12 Court. I had the chance to review most of the video although

13 the video was blocked out and the audio that I could hear.

14 But in that, Your Honor, the defendant in this case, my

15 client, talks about a lot of other drug stuff, that

16 conceivably could be construed as drug dealing. I would

17 submit, Your Honor, that that would not be admissible in that

18 number one, it's not probative as to the distribution.

19 Anything on the video that would show him, or on the audio

20 part, that would show him actually doing the distribution, I

21 would submit is admissible and would be admissible without

22 objection. Any discussion by him of prior drug dealing or

23 that type the thing, Your Honor, I would submit is not

24 admissible. It basically would be coming in as prior bad

25 acts. Which I don't think would be admissible in this case.

1 There's no mistake of identity. Motive is not an issue. I
2 can't remember off the top of my head the other two elements
3 of Lyle at this point in time. But I don't think that part
4 would be admissible.

5 There's also a case, if memory serves me, Your Honor, and
6 I apologize, I do not have the case cite on it where the
7 State attempted to use as a prior bad act a prior drug deal.
8 And if memory serves me the Court of Appeals notes that was
9 not admissible under a prior bad act because it had nothing
10 to do with what was at barred in that particular case. So I
11 would submit that whatever they have on the video that would
12 as to the actual distribution under these allegations would
13 be admissible. Any other conversations or statements made by
14 the defendant in this case as to prior dealings or whatever
15 would not be admissible, Your Honor. I move that that be
16 suppressed.

17 THE COURT: Solicitor.

18 MR. MARCHANT: May it please the Court. There's several
19 references in this video with respect to money and this
20 defendant having not been paid. It doesn't specifically
21 reference. At one point in time, specifically with respect
22 to the beginning, of him being owed money for anything. It
23 just says somebody and somebody owes me \$3200. It's the
24 State's position that that should be allowed in. I don't
25 know what he's talking about. There is reference later in

1 the video where he refers to him being able to get his hands
2 on some other dope or ice or meth or something with respect
3 to that. He was not probed by the informant. He just
4 randomly and recklessly talked about a number of things.
5 None of which was---

6 THE COURT: Why would that not be admissible, Mr. DeJong?

7 MR. DEJONG: Well I would---

8 THE COURT: I mean, it was a conversation not instigated
9 by the police officer. And why is it Lyle to begin with?

10 MR. DEJONG: Well I'm not saying the---

11 THE COURT: I mean, a prior bad act.

12 MR. DEJONG: Well I think when he talks about getting
13 other drugs and all of that, number one, I would propose the
14 question with all due respect to the Court, what is the
15 probative value on that?

16 THE COURT: Why wouldn't it go to the issue of
17 distribution? Whether or not he distributed the
18 methamphetamine?

19 MR. DEJONG: Well the that fact that he distributed
20 before is not probative of whether he distributed it in this
21 particular case is what I'm saying.

22 THE COURT: Solicitor?

23 MR. MARCHANT: The State's position is that it absolutely
24 is. It proves his intent and motive with respect to this
25 deal. And I believe what Mr. DeJong may be referring to

1 happens after the deal even takes place. I believe there's
2 no admission or talk of any distribution prior to the actual
3 distribution in this case. There's some other talk about him
4 giving some stuff to his brother-in-law and he might be able
5 to get his hands on some other stuff but I certainly think if
6 it proves intent of distribution in this case.

7 THE COURT: Well he's pleading not guilty to
8 distribution, is he not?

9 MR. DEJONG: He is, Your Honor. I'm not objecting to
10 them showing or anything with regard to this distribution for
11 what he's indicted for.

12 THE COURT: I understand that.

13 MR. DEJONG: But all that other---

14 THE COURT: I mean, is he admitting it? That he
15 distributed it in this instant?

16 MR. DEJONG: No, he's not admitting it.

17 THE COURT: Okay, then why can't the State prove that
18 he's a drug dealer to prove distribution in this case?

19 MR. DEJONG: Because I don't think that is proper under
20 the case law in the State, Your Honor.

21 THE COURT: Well I disagree with you. I think it's
22 admissible.

23 MR. DEJONG: Thank you, Your Honor. Obviously I'll have
24 to raise my objections at the appropriate time on that

25 THE COURT: Certainly.

1 MR. MARCHANT: That State has no further motions.

2 MR. DEJONG: I have no further motions, Your Honor.

3 THE COURT: All right, the panel is coming in at 10:00 so
4 we'll strike a panel at 10:00.

5 MR. MARCHANT: Thank you, Your Honor.

6 MR. DEJONG: Very well, Your Honor.

7 (WHEREUPON, a short break was taken.)

8 (WHEREUPON, State's Exhibit No.'s 1, 2 and 3
9 were marked for identification.)

10 (WHEREUPON, the jury venire entered the
11 courtroom at approximately 10:30 a.m.)

12 THE COURT: Ladies and gentlemen of the jury, if I could
13 have your attention. At this time we will select a jury in
14 the case of the State versus James Michael Dover.

15 Mr. Dover, would you please stand up, turn around, face
16 the jury panel a moment for me, please, sir. Thank you, you
17 can be seated.

18 He is indicted for distribution of methamphetamine on or
19 about February 6th, 2006. And further that it was
20 distributed within close -- within one half mile of Pickens
21 Elementary School. Potential witnesses in the case will be
22 Lieutenant Chad Brooks, Agent C. Brett Barwick, Agent Neysa
23 Caron, Lieutenant Tony Robinson, Brian Gibson all with the
24 Pickens County Sheriff's Office. Renee Pruitt with the
25 Greenville County Public Safety Office, James Armstrong with

1 the Greenville County Public Safety Office and Kathryn Jo
2 Pennington. I would inquire at this time if any member of
3 the jury panel is related by blood or marriage or connected
4 by employment to the defendant or to any potential witness in
5 the case? Are you sensible or aware of any bias or prejudice
6 with respect to the defendant, to the State or to the subject
7 matter of the case? That being an alleged distribution of
8 methamphetamine and within close proximity of a school. Or,
9 do you know of any reason why you could not give this
10 defendant and the State a fair and impartial based on the law
11 and evidence to be presented? If so, would you please stand
12 and give me your name.

13 There was no response.

14 Do I have any member of the panel who has any connection
15 family, business, social or otherwise with Bob Ariail, the
16 Solicitor, or any member of his staff or with law
17 enforcement? Whether that be federal, state, county or
18 municipal? If so, would you please stand and give me your
19 name.

20 There was no response.

21 Do I have any member of the panel who belongs to or
22 contributes money to MADD, SADD or any similar type
23 organization? If so, would you, please, stand and give me
24 your name.

25 Your name, please, sir?

1 PROSPECTIVE JUROR: Chris Dewitt.

2 THE COURT: Would that fact in anyway interfere with your
3 ability to be a fair and impartial juror on this case?

4 PROSPECTIVE JUROR: No, sir, I don't believe so.

5 THE COURT: Thank you.

6 Do I have any member of the panel who has been the victim
7 of a crime in which drugs were involved? If so, would you,
8 please, stand and give me your name?

9 There was no response.

10 John DeJong represents the defendant. Do I have any
11 clients now or formally of Mr. DeJong? If so, please stand
12 and give me your name.

13 There was no response.

14 All right, you got the list? Strikes are five for the
15 State, five for the defense.

16 MR. MARCHANT: Thank you, Your Honor.

17 THE COURT: All right, ladies and gentlemen, when your
18 name is called I'll ask that you please come around to the
19 bar, turn around, face counsel and await further
20 instructions. Thank you.

21 THE CLERK: Ashley M. Hamlett, number 61.

22 THE COURT: Call out the numbers first.

23 THE CLERK: Okay.

24 (Ashley M. Hamlett, a white female, came forward.)

25 THE CLERK: What says the State?

1 MR. MARCHANT: Please present the juror.

2 THE CLERK: Defense?

3 MR. DEJONG: Please swear the juror.

4 THE CLERK: Thank you, ma'am.

5 Number 48, Ethel---

6 THE COURT: Okay, counsel, approach just a moment, I need
7 to ask you a question.

8 (WHEREUPON, a bench conference was held.)

9 PROSPECTIVE JUROR: I know the defendant.

10 THE COURT: Your name, sir?

11 PROSPECTIVE JUROR: Travis Lewis.

12 THE COURT: All right, Mr. Lewis, the fact that you know
13 the defendant, would that in any way interfere with your
14 ability to be a fair and impartial juror on this case?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: Thank you, sir, I appreciate your telling me
17 that, you're qualified.

18 THE COURT: Number 48, Ethel M. Franklin.

19 (Ethel M. Franklin, a black female, came forward.)

20 THE CLERK: What says the State?

21 MR. MARCHANT: Please present the juror.

22 THE CLERK: Defense?

23 MR. DEJONG: Please excuse the juror from the trial of
24 this case.

25 THE CLERK: Number 134, Ginger R. Tadlock.

1 (Ginger R. Tadlock, a black female, came forward.)

2 THE CLERK: What says the state?

3 MR. MARCHANT: Please present the juror.

4 THE CLERK: Defense?

5 MR. DEJONG: Please swear the juror.

6 THE CLERK: Ma'am, come on around and have a seat.

7 Number 86, John D. Martin.

8 (John Martin, a white male, came forward.)

9 THE CLERK: What says the State?

10 MR. MARCHANT: Please present the juror.

11 THE CLERK: Defense?

12 MR. DEJONG: Swear the juror.

13 THE CLERK: Sir, come on around.

14 Number 129, Brian T. Stancell.

15 (Brian T. Stancell, a white male, came forward.)

16 THE CLERK: What says State?

17 MR. MARCHANT: Please present the juror.

18 THE CLERK: Defense?

19 MR. DEJONG: Please excuse this juror from the trail of
20 this case.

21 THE CLERK: Number 108, Tracy K. Prouty.

22 (Tracy K. Prouty, a white female, came forward.)

23 THE CLERK: What says the State?

24 MR. MARCHANT: Please present the juror.

25 THE CLERK: Defense?

1 MR. DEJONG: Please swear the juror.

2 THE CLERK: Ma'am come on around and have a seat.

3 Number 34, Donna J. Derossett.

4 (Donna J. Derossett, a white female, came forward.)

5 THE CLERK: What says the State?

6 MR. MARCHANT: Please present the juror..

7 THE CLERK: Defense?

8 MR. DEJONG: Please swear the juror.

9 THE CLERK: Ma'am come on around, have a seat.

10 Number 148, Antonio E. Wright.

11 (Antonio E. Wright, a black male, came forward.)

12 THE CLERK: What says the State?

13 MR. MARCHANT: Please excuse the juror from the trial of
14 this case.

15 THE CLERK: Sir, have a seat, thank you.

16 Number 47, Susan A. Foster.

17 (Susan A. Foster, a white female, came forward.)

18 THE CLERK: What says is State?

19 MR. MARCHANT: Please present the juror.

20 THE CLERK: Defense?

21 MR. DEJONG: Excuse this juror from the trial of this
22 case.

23 THE CLERK: Number 150, Bernard P. Yeatman.

24 (Bernard P. Yeatman, a white male, came forward.)

25 THE CLERK: What says the State?

1 MR. MARCHANT: Please present the juror.

2 THE CLERK: Defense?

3 MR. DEJONG: Swear the juror.

4 THE CLERK: Sir, come on around.

5 Number 103, Titus C. Owens.

6 (Titus C. Owens, a white male, came forward.)

7 THE CLERK: What says the State?

8 MR. MARCHANT: Please excuse the juror from the trial of
9 this case.

10 THE CLERK: Thank you, sir, just have a seat.

11 Number 120, Michael D. Scott.

12 (Michael D. Scott, a white male, came forward.)

13 THE CLERK: What says the State?

14 MR. MARCHANT: Please present the juror.

15 THE CLERK: Defense?

16 MR. DEJONG: Swear the juror.

17 THE CLERK: Sir, come on around, have a seat.

18 Number 105, Susie F. Peden.

19 (Susie F. Peden, a white female, came forward.)

20 THE CLERK: What says the State?

21 MR. MARCHANT: Please present the juror.

22 THE CLERK: Defense?

23 MR. DEJONG: Please excuse this juror from the trial of
24 this case.

25 THE CLERK: Number 130, Kimberly L. Stancil.

1 (Kimberly L. Stancil, a white female, came forward.)

2 THE COURT: What says the State?

3 MR. MARCHANT: Please present the juror.

4 THE CLERK: Defense?

5 MR. DEJONG: Please swear the juror.

6 THE CLERK: Ma'am, come on around.

7 Number 145, Elizabeth W. Wilson.

8 (Elizabeth W. Wilson, a white female, came forward.)

9 What says the State?

10 MR. MARCHANT: Please present the juror.

11 THE CLERK: Defense?

12 MR. DEJONG: Please swear the juror.

13 THE CLERK: Come on around, ma'am.

14 Number 118, Gwendolyn M. Sachar.

15 (Gwendolyn M. Sachar, a white female, came forward.)

16 THE CLERK: What says the State?

17 MR. MARCHANT: Please excuse the juror from the trial of
18 this case.

19 THE CLERK: Just have a seat, thank you.

20 Number 11, John E. Black.

21 (John E. Black, a white male, came forward.)

22 THE CLERK: What says the State?

23 MR. MARCHANT: Please present the juror.

24 MR. DEJONG: Defense?

25 MR. DEJONG: Swear the juror.

1 THE CLERK: Sir, come on around.

2 THE COURT: Mr. Black, take that first seat and serve as
3 foreman for me, please sir.

4 THE CLERK: Number 121, Mary D. Shealy.

5 (Mary D. Shealy, a white female, came forward.)

6 THE COURT: What says the State?

7 MR. MARCHANT: Please present the juror.

8 THE CLERK: Defense?

9 MR. DEJONG: Excuse this juror from the trial of this
10 case.

11 THE CLERK: Sir, that's your five.

12 MR. DEJONG: Thank you, Madam Clerk.

13 THE CLERK: Number 17, James Brown.

14 (James Brown, a white male, came forward.)

15 THE CLERK: What says the State?

16 MR. MARCHANT: Please present the juror.

17 THE CLERK: Defense?

18 MR. DEJONG: Please swear the juror.

19 THE CLERK: Sir, come on around.

20 Number 149, Sandra A. Wyatt.

21 (Sandra A. Wyatt, a white female, came forward.)

22 THE CLERK: What says the State?

23 MR. MARCHANT: Please excuse the juror from the trial of
24 this case.

25 THE CLERK: Ma'am, just have a seat.

1 Number 84, Travis A. Lewis.

2 (Travis A. Lewis, a white male, came forward.)

3 What says the State?

4 MR. MARCHANT: Please excuse the juror from the trial of
5 this case.

6 THE CLERK: Sir, that's your five.

7 MR. MARCHANT: Thank you, ma'am.

8 THE CLERK: Number 74, James Holder.

9 (James Holder, a white male, came forward.)

10 THE CLERK: What says the State?

11 MR. MARCHANT: Please present the juror.

12 THE CLERK: Defense?

13 MR. DEJONG: Present the juror.

14 THE COURT: Give me one alternate. One for the State two
15 for the Defense..

16 THE CLERK: Number 62, Tammy A. Hansen.

17 (Tammy A. Hansen, a white female, came forward.)

18 THE CLERK: What says the state?

19 MR. MARCHANT: Please present the juror.

20 THE CLERK: Defense?

21 MR. DEJONG: Please swear the juror.

22 THE CLERK: Ma'am, come on around.

23 THE COURT: Swear the jury, please.

24 THE CLERK: If you would please stand, raise your right
25 hand and after the oath has been administered if you will

1 please say, I will.

2 (WHEREUPON, the jury was sworn.)

3 THE COURT: Ladies and gentlemen, I'll give you a short
4 recess before we start. While on recess do not talk about
5 this case. You don't do that until you've heard all the
6 testimony to be presented and the arguments by the attorneys
7 and my charge on the law. So if you'll be at ease, follow
8 Ben, we'll start the trial shortly. Thank you.

9 (WHEREUPON, the jury left the courtroom at
10 approximately 10:30 a.m.)

11 THE COURT: And for the balance of the panel, I'll ask
12 that you call in after 6 p.m. today. Call in after 6:00.
13 Thank you, you're excused.

14 (WHEREUPON, the jury venire was excused at
15 approximately 10:30 a.m.)

16 (WHEREUPON, the jury entered the courtroom at
17 approximately 10:41 a.m.)

18 THE COURT: All right, gentlemen, you want to make a
19 brief opening statement to the jury before we start the
20 testimony?

21 MR. DEJONG: Defense would, Your Honor.

22 MR. MARCHANT: Yes, sir.

23 THE COURT: All right, brief opening statement.
24 Solicitor.

25 MR. MARCHANT: May it please the Court.

1 Mr. DeJong.

2 MR. MARCHANT: Good Morning, Ladies and gentleman. My
3 name is Lucas Marchant, I'm an assistant solicitor here in
4 Pickens County. It's my job to prosecute cases that occur in
5 Pickens County for the law enforcement agency when they make
6 arrest, it's my job to prosecute. What I'm going to ask you
7 to do today is very simple. I'd ask you to pay attention to
8 the witnesses that come up and sit in this chair right here.
9 That's the evidence that you're going to be able to take back
10 in the jury room and decide. Whether or not this man
11 committed two offenses. One, that he distributed
12 methamphetamine? Did he sell it to someone working for the
13 Pickens County Sheriff's Office? And two, was that within
14 one half mile of a school. And that school is going to be
15 Pickens Elementary.

16 I submit to you that the evidence will show at the end of
17 this trial that he did do those two things. Now the one
18 thing I would like for you to know and understand about jury
19 cases is it's not a clean business. It's not pretty, it's
20 nasty. And in order to apprehend and prosecute and convict
21 somebody like this man, law enforcement has to use people in
22 that business, in that industry. And what they did in this
23 case is they used a confidential informant that was working
24 under their direction and their control. And you'll see that
25 the evidence is going to show that he purchased some

1 methamphetamine from this man back in February of this year.
2 And again, that that occurred within one half mile of Pickens
3 Elementary. And again, it's not a clean business. A lot of
4 the stuff that you see or hear is not really meant for virgin
5 ears so to say, but I would let you know that comes from
6 here. It doesn't come from me, it doesn't come from the
7 defense table. Take what you hear up here and you can take
8 that back in the jury room and evaluate whether or not that
9 evidence is credible or not to convict this man of
10 distribution of methamphetamine. And distribution within
11 proximity.

12 I submit to you at the close of this case when you have
13 all the evidence back in the jury room and you enter your
14 deliberations it will lead you with only one answer. And
15 that answer is guilty. Thank you.

16 THE COURT: All right, sir.

17 MR. DEJONG: Thank you, Your Honor. May it please the
18 Court.

19 Mr. Marchant.

20 Ladies and gentlemen, there are not many guarantees left
21 in our world. But thankfully the Constitution of the United
22 States still guarantees every citizen of this county, of this
23 state, of this great country, a trial by a jury when they are
24 charged with a crime. Today, ladies and gentlemen, I have
25 the distinct pleasure of representing the innocent, James

1 Michael Dover. And you might well say that the innocent,
2 James Michael Dover is on trial. And indeed he is. And you
3 might say well was he not arrested? Indeed he was. And, His
4 Honor, read the indictment so ou might well say well was he
5 not indicted by the Pickens County Grand Jury? And indeed he
6 was. But you see, ladies and gentlemen, part of that
7 guarantee of the Constitution, says that when a client or a
8 person is charged, a citizen is charged with a crime, not
9 only are they guaranteed that right to a trial by jury, but
10 furthermore, they come in with a very substantial right.
11 That substantial right is what we call the presumption of
12 innocence. Two words. Two relatively simple words. But
13 those two simple words as I have shared with you, ladies and
14 gentlemen, that is not legal theory, it is not legal fiction,
15 it is not lawyer mumbo-jumbo. It is a substantial right
16 afforded every citizen of this county, of this state, of this
17 country.

18 Now, Mr. Dover with that presumption of innocence comes
19 into this courtroom with nothing whatsoever to prove to you
20 today. We don't know how the trial will unfold at this point
21 in time. Whether he testifies or does not testify. We'll
22 talk more about that when we meet at the close of this case.
23 But he has nothing whatsoever to prove. What we call the
24 burden of proof. That is who must prove the case. The
25 burden of proof in this case is on the State. They must

1 prove their case beyond a reasonable doubt. And again, we
2 will talk about reasonable doubt when we come to the end of
3 this case.

4 I will now discuss with you everything that you're
5 certainly charged with as a juror. As collectively a jury.
6 But one of the jobs you will have aside from rendering a
7 verdict as you said you would when the clerk swore you in, it
8 will be up to you to observe the witnesses, listen to the
9 testimony and determine the credibility or the believability
10 of those witnesses. And in this regard as Mr. Marchant has
11 told you, there is what we call a confidential informant,
12 often times referred to as a CI who presumptively will
13 testify in this case. And I would ask you to listen, observe
14 and pay particular attention to the testimony, not only of
15 that witness but various facts surrounding that particular
16 witness.

17 On behalf of Mr. Dover I would like to thank you for
18 being here today. They're probably a 1001 places that you
19 would rather be than sitting in the jury box at this moment
20 in your life. But I assure you, ladies and gentlemen, that
21 you are the very corner stone of our whole judicial system.
22 If it were not for you, wouldn't be any need for His Honor,
23 me, prosecutor or anybody else. Because you, ladies and
24 gentlemen, are what make this system run. Jury duty is a
25 very important duty. His Honor, may have shared with you

1 what the great Winston Churchill one time said. It's the
2 highest service a citizen can render to his country in peace
3 time. We're not particularly at peace time now but I think
4 we can say it's the highest service that we can give our
5 country, our county. So I do thank you for being here. I
6 thank you for your attention and again, when the all
7 testimony is in, evidence is in, we will have an opportunity
8 to get back together again and I look toward to be talking
9 with you then. Thank you, very much.

10 THE COURT: Okay. Solicitor.

11 MR. MARCHANT: State calls Agent Brett Barwick.

12 Brett Barwick, after being duly sworn,
13 testified as follows:

14 THE CLERK: Please state your name for the record.

15 THE WITNESS: Charles Brett Barwick.

16 DIRECT EXAMINATION

17 BY MR. MARCHANT:

18 Q Agent Barwick, where are you employed?

19 A I'm employed with the Pickens County Sheriff's Office.

20 Q What capacity are you employed with them?

21 A I'm employed with the narcotics agent.

22 Q What exactly are your responsibilities as a narcotics
23 agent?

24 A My primary responsibilities are to investigate crimes
25 related to drug trade, sales, trafficking, things of that

1 nature and prosecute offender.

2 Q Okay. How long have you been working with the narcotics
3 unit?

4 MR. DEJONG: I apologize for interrupting but could I ask
5 Mr. Barwick to speak up into the microphone just a little bit
6 more, Your Honor?

7 THE COURT: Sure.

8 MR. DEJONG: Thank you.

9 A In that better?

10 MR. DEJONG: I think so.

11 A Okay.

12 BY MR. MARCHANT:

13 Q How long have you been working with the narcotics unit?

14 A I've been with the narcotics unit about a year now.

15 Q Okay. What did you do prior to being involved with the
16 narcotics unit?

17 A I spent four years in CID which is criminal investigative
18 division. Investigated any types of property crimes,
19 assaults, burglaries, things of that nature.

20 Q Prior to that where were you employed.

21 A Prior to that I spent time as a credidaton manager
22 constructing policy and procedurals manual for the office and
23 then I was in uniform patrol before that.

24 Q Do you have a high school diploma?

25 A Yes, sir, I do.

1 Q College degree?

2 A Yes, sir, I do.

3 Q Prior to beginning work in law enforcement, was there
4 some type of training that you had to receive?

5 A Yes, sir, I attended the South Carolina Criminal Justice
6 Academy in Columbia.

7 Q And what type of training did you get?

8 A It was basically law enforcement training. Everything
9 from shooting and driving to legals and things of that
10 nature. Just everything that pertains to law enforcement.

11 Q Okay. Do you have any particular or specialized training
12 with respect to narcotics?

13 A Yes, sir, I have received narcotics training as well as
14 numerous other law enforcement training classes.

15 Q Okay. Well let's take you to the date of this incident.
16 Do you recall what date that we're here discussing today?

17 A I believe if memory serves me right it was February 6th,
18 of this year, 2006.

19 Q Okay. And in what capacity were you working that day?

20 A I was working as a narcotics agent.

21 Q Okay. And what was your role with respect to this deal
22 on February 6th, 2006?

23 A I would have been classified as the case agent. I
24 basically took care of the paper work. I made the charges
25 against the subject. Basically supervised -- I don't know is

1 supervised is the right word but I was overseeing the
2 activity related to the charges against Mr. Dover.

3 Q Okay. So were people working under you or were you
4 reporting to someone else?

5 A Well we were -- we worked together. My lieutenant was
6 with me so I don't want to say anyone was working under
7 anyone but we were working together. But I was in charge of
8 the case file and the management of this one.

9 Q And who is the lieutenant?

10 A Lieutenant Chad Brooks.

11 Q Okay. And is he above you or below you as far as ranking
12 goes within the Sheriff's Office?

13 A Yes, sir, he would be my immediate supervisor.

14 Q On this date you said you were the case agent, tell me
15 again what that means?

16 A Case agent basically would be the person who would be in
17 charge of the case, doing what I'm doing now. We would
18 participate in the -- in the undercover, in the monitoring of
19 the deal. The setting the deal up, the surveillance, things
20 of that nature. I would be in charge of getting evidence
21 together. I would take the drugs and things of that nature
22 in. And I would keep them in chain of custody and take them
23 to the ID division and have the drugs tested. I would write
24 the reports, present the case for warrants, things of that
25 nature.

1 Q Okay. On this particular date, was it your intention to
2 set up the deal or did someone contact you to set up the
3 deal?

4 A On this date Agent Caron, I think she'll be a part of
5 this trial as well, she received a call from one of her CI's.
6 This particular individual, Agent Caron met with her
7 originally and stated that our CI had received---

8 MR. DEJONG: I'm going to object to what the CI said.

9 THE COURT: Overruled.

10 A Okay.

11 BY MR. MARCHANT:

12 Q Were you contacted or did you contact an informant to set
13 up this transaction?

14 A I was contacted.

15 Q Okay. Who were your contacted by?

16 A I was informed by my lieutenant who was informed of by
17 About Caron.

18 Q Okay. So once you -- you had a name of someone?

19 A Yes, sir.

20 Q And was that person, you're calling them a CI?

21 A Yes, sir.

22 Q Okay. What was your intent on this date to use the CI
23 for?

24 A At this date we were intending to monitor a
25 methamphetamine purchase.

1 Q Okay. And going to meeting with the CI, what did you
2 first do when you met with this CI?

3 A When I first met with the CI we had the CI brief us about
4 the information or the phone call that they had been in
5 contact with the suspect. And from there the CI made a phone
6 call to that subject a little later on after our meeting and
7 spoke with them. And then the suspect advised that he would
8 be in Pickens with some methamphetamine later in the day and
9 arranged a meeting with her.

10 Q Okay. Let's stop right there. When you found out that
11 there was a possibility of making a deal that day, what did
12 you do with that confidential informant?

13 A With the confidential -- prior to the deal or prior to
14 the actual going forward with the deal the confidential
15 informant, like I said, was interviewed about the situation.

16 Q Who were they interviewed by?

17 A They were interviewed by myself.

18 Q In person?

19 A Yes, sir.

20 Q Okay. What did you tell this informant at that time?

21 A I told the informant to go ahead and call the suspect
22 back and make arrangements for the purchase of
23 methamphetamine.

24 Q Okay. Who was the suspect on this date?

25 A The suspect was Mr. Dover.

1 Q Okay. Prior to sending this informant to make the deal,
2 what did you do with the informant?

3 A We followed our standard procedure before a deal. The
4 informant was met with by myself and Lieutenant Brooks. The
5 informant was searched and wired with a hidden transmitter.

6 Q Okay, let me stop you right there. Why was the informant
7 searched?

8 A The informant was searched beforehand to make sure they
9 didn't have any -- anything on them illegal or anything of
10 that nature, any weapons or anything like that.

11 Q Who searched the informant that day?

12 A Lieutenant Brooks searched the informant.

13 Q Is it standard procedure for one agent to search them or
14 two or what?

15 A It's pretty standard for one to search someone.

16 Q Okay. What, if anything, did you search that day?

17 A Prior to her leaving for the deal I searched the
18 subject's vehicle.

19 Q Okay. So whose car were you using that day? Was it law
20 enforcement vehicle or?

21 A No, sir. It was the CI's personal vehicle.

22 Q Okay. So when you say you searched that vehicle, please
23 tell the jury what exactly you did that day during that
24 search?

25 A I typically start with one of the doors. I go to the

1 driver's side door and I worked my way around the vehicle. I
2 search under the seats, above the visors, look for any tears
3 or anything in cloth or where anything could be hidden. I
4 check the center console or things of that nature. Under the
5 floor mats. Worked my way to the back seat. I repeat the
6 process again and then I search the trunk. I move to the
7 passenger door and then the driver's door, wherever I may
8 start.

9 Q Okay. Did you find anything in that vehicle on this
10 date?

11 A No, sir.

12 Q Okay. After you finished searching the vehicle and you
13 say there was another agent that searched the informant?

14 A Yes, sir.

15 Q Okay. What did you do after you finished searching the
16 vehicle?

17 A After I searched the vehicle I believe I counted out 50
18 dollars in funds. Then I documented the serial numbers of
19 that 50 dollars.

20 Q What's the purpose of documenting the serial numbers off
21 of the money?

22 A It keeps a record of the money that we spend in these
23 operations and say for instance, Mr. Dover were arrested and
24 maybe had some of that money on his possession, in immediate
25 proximity, that would show him have that in possession. It's

1 just basically to keep a record of the funds we use.

2 Q Okay. How much money did you give this informant?

3 A I gave her 50 dollars.

4 Q Have you seen that money since?

5 A No, sir, I have not.

6 Q You didn't recover it in this operation?

7 A No, sir, the subject wasn't arrested at that time.

8 Q Okay. Who wired the informant on this deal?

9 A Lieutenant Brooks.

10 Q Okay. And what was she wired with?

11 A She was wired with a transmitter. It's a small battery
12 powered unit with a microphone.

13 Q Okay. What's the purpose of having this wire on the
14 informant?

15 A It allows us from a different location to hear what's
16 being said. And to record the transaction.

17 Q Okay. Did you do anything besides an audio recording on
18 this case?

19 A Yes, sir, I did.

20 Q Okay, what was that?

21 A We also made a video of the transaction. We parked at a
22 vantage point across the street from the Hot Spot and shot a
23 video with audio. The audio signal from the receiver, from
24 our monitoring kit into the recorder and -- and recorded it
25 real-time.

1 Q Okay. Let me show you what's been marked as State's
2 Exhibit No. 1. Again, let me show you what's been marked as
3 State's Exhibit No. 1, do you recognize that?

4 A Yes, sir, I do.

5 Q What is that?

6 A It is a DVD of the transaction in question.

7 Q Have you had an opportunity to review this prior to
8 today?

9 A Yes, sir, I have.

10 Q Is what's on this DVD a fair and accurate depiction of
11 what occurred that afternoon?

12 A Yes, sir, it is.

13 Q Okay. Now, you said something about the Hot Spot, please
14 tell me, where y'all set this deal up?

15 A Well actually Mr. Dover relayed to the CI to meet him at
16 the Hot Spot in Pickens.

17 Q And where is this Hot Spot exactly.

18 A It's right on Highway 8 just down between the law
19 enforcement center and the Bi-lo area. Just a short distance
20 from here.

21 Q Okay. Is it within the city limits?

22 A Yes, sir, I believe it is within the city limits. Within
23 Pickens County.

24 Q Okay. And once the informant told you the deal was going
25 to be done there, what did you do?

1 A Once we once we figured where the deal was going to go we
2 got our video equipment out, got it set up and things of that
3 nature. Sent our CI to that location to meet with them and
4 we set up on surveillance point.

5 Q Okay. And where was this surveillance point in relation
6 to the Hot Spot?

7 A It was directly across to street in the, I think it's a
8 Little Cesar's or something like that. Right there parked in
9 the parking lot.

10 Q Okay. Did you have a clear view or line of sight of the
11 informant the entire time?

12 A Yes, sir, I did.

13 Q Okay. From the point in time you met with the informant
14 to the Hot Spot, was she ever out of your sight?

15 A On the way to the Hot Spot, no, sir I don't believe she
16 was.

17 Q What type of vehicle was she driving that day?

18 A She was driving, I believe it was a small black
19 four-door. I think it was a Saturn.

20 Q Okay. Now, once this defendant arrived, did you have an
21 opportunity to view the entire transaction?

22 A As best we could from that location. They got into the
23 -- the suspect got into the CI's vehicle which had tinted
24 windows. But we could see through the tint to a certain
25 extent but yeah we maintained visual the entire time.

1 Q So did the CI's vehicle ever leave your line of sight?

2 A No, sir.

3 Q Okay. Once the transaction was made with the informant,
4 what happened next?

5 A Once the transaction was concluded and the suspect
6 existed her vehicle, we had a phone call with the CI. She
7 stated that he had---

8 MR. DEJONG: Objection, Your Honor.

9 THE COURT: Yeah, don't tell us what she said.

10 A For reasons described in the phone call we decided to
11 maintain surveillance a few minutes longer on him. At that
12 point in time -- well just before that actually Agent Caron
13 had contacted us by Nextel, saw where we were and we sent her
14 to meet with the CI, the location. And then we surveilled
15 him for a little while longer then we left and met back with
16 the informant.

17 Q Okay. When you met back with this informant, did you
18 retrieve anything from her?

19 A Yes, sir, I did.

20 Q What exactly did you retrieve?

21 A A small plastic bag or baggy of crystal substance which
22 appeared to be methamphetamine.

23 Q Show you what's been marked as State's Exhibit No. 2, do
24 you recognize that?

25 A Yes, sir, I do.

1 Q Okay. How is it that you recognize it?

2 A I did the package and everything, that's my writing.

3 Q Okay. So that's the substance that you retrieved from
4 the informant after this transaction took place?

5 A Yes, sir, it is.

6 Q What did you do with this after the informant gave it to
7 you?

8 A I put it in the interior bag that you see there and I
9 marked it with the case number and things of that nature.
10 And then I took it and sealed it in the larger bag and I
11 turned it over to our evidence or ID desk.

12 Q What's the purpose of sealing it in this larger bag?

13 A That's the evidence bag we use when we send something to
14 Greenville for testing. Once I seal it to ensure that it's
15 sealed and Greenville County receives it to maintain a proper
16 chain.

17 Q And do you fill out the paper work with respect to this
18 evidence?

19 A Yes, sir, I do.

20 Q Let me show you what's been marked as State's Exhibit No.
21 3, would you please tell me what that Exhibit is?

22 A This is the evidence report from Pickens County Sheriff's
23 Office. It was filled out by me on February 6th, 2006.
24 References this case and it item number, plastic bag
25 containing crystal substance which was turned into evidence.

1 Q And who did you turn this into.

2 A I turned it into ID Officer, Brian Gibson.

3 Q Okay. And how did you deliver this substance to Brian
4 Gibson?

5 A I handed it to him.

6 Q In person?

7 A Yes, sir.

8 Q Okay. Now, this Hot Spot, tell me again, where it is?

9 A Hot Spot is, I believe it's 2801 Gentry Memorial Highway
10 which is Highway 8 here in Pickens.

11 Q Have you had an opportunity to measure the distance
12 between this Hot Spot and Pickens Elementary School?

13 A Yes, I have.

14 Q How far is it from the location of the Hot Spot to
15 Pickens Elementary School?

16 A It's less than a half mile. The exact measurements were
17 .35 miles.

18 Q Okay. And how did you come to determine that it was .35
19 miles?

20 A I used a sheriff's office issued GPS unit which is a
21 global positioning system and I took a measurement at the Hot
22 Spot, the deal location. And then I went to the front side
23 of Pickens Elementary and calculated the distance between the
24 two.

25 Q And that what was .35 miles?

1 A Yes, sir, that's correct.

2 Q Okay. After you recovered this substance from the
3 informant, what did you do? Did you search the vehicle
4 again, did you search the informant?

5 A Once I recovered the substance I bagged it and then after
6 the -- after the deal -- let me double check, reference my
7 notes, but no, sir. Lieutenant Brooks searched the CI's
8 vehicle and the CI was searched by Agent Caron.

9 Q Okay. After the vehicle was searched did y'all recover
10 any illegal substances?

11 A Not after the vehicle, no, sir.

12 Q Okay. After the informant was searched was there
13 anything recovered off of her?

14 A Yes, sir, there was.

15 Q Okay. What was that if you know?

16 A It was a -- it was a very small plastic bag, I think it's
17 known as a jewelers bag. It had a small chards of white
18 crystal substance and it was located in the CI's front pants
19 pocket. Not in the actual pocket itself but a lot of jeans
20 have a small watch pocket right there, a little tiny little
21 pocket inside of one and Agent Caron found it inside of that
22 pocket.

23 Q Okay. Do you know what that substance was?

24 A It -- she identified it to us---

25 Q Do you know---

1 A No, sir.

2 Q Has it been tested?

3 A No, sir, it had not.

4 Q Has there been any charged placed against the informant
5 at this time?

6 A Not at this time.

7 Q Okay.

8 MR. MARCHANT: At this time the State would move Exhibit
9 No. 1 into evidence.

10 THE COURT: Any objection?

11 MR. DEJONG: Subject to my previous objection, Your
12 Honor.

13 THE COURT: All right, put it in. Subject to your
14 objection. Put it in.

15 MR. DEJONG: Thank you, Your Honor.

16 (WHEREUPON, State's Exhibit No. 1 was admitted
17 into evidence.)

18 MR. MARCHANT: Court's indulgence. That's all the
19 questions I have at this time. Please answer any questions
20 Mr. DeJong may have.

21 THE COURT: All right, Mr. DeJong.

22 MR. DEJONG: Thank you, Your Honor. May it please the
23 Court.

24 ///

25 ///

CROSS-EXAMINATION

1

2 BY MR. DEJONG:

3 Q So, Mr. Barwick you've been in narcotics now for about a
4 year?

5 A Yes, sir, that's correct.

6 Q By in large when you say narcotics investigation, by in
7 large that is you try to set people up to buy drugs from?8 A No, sir, not necessarily. We have people come forward,
9 criminal informants, confidential informants who have
10 information about people who sell drugs and they come to us.
11 Once they notify us, yes, we will arrange a transaction, yes,
12 sir.

13 Q Well you say people come to you?

14 A We approach people who have been in trouble at times too,
15 yes, sir.16 Q Well on this particular case did the CI come to you or
17 did you go to the CI or did somebody else, who went to the
18 CI?19 A In this particular case Agent Caron met with the CI
20 originally.21 Q All right, sir. But you were the case manager on this
22 particular case, right?

23 A Yes, sir, on this case.

24 Q And -- well let me back up just a minute. When you use a
25 confidential informant, it is a normal practice that these

1 confidential informants are paid?

2 A Sometimes they're paid.

3 Q And sometimes they work off charges?

4 A Yes, sir, sometimes they work for consideration of
5 charges.

6 Q And usually it's one or the other, isn't it?

7 A Usually, yes, sir. We had some people who just want to
8 help but it's more often the other two.

9 Q Well in particular case, since you were the case manager,
10 was this confidential informant working for money?

11 A No, sir.

12 Q Was she working off charges?

13 A She had a magistrate level charge, I think, pending in
14 the City of Clemson that she wanted some consideration with,
15 yes, sir.

16 Q I'm sorry, I couldn't hear the last part?

17 A She was wanting some consideration, yes, sir, from the
18 charge.

19 Q Okay. So that we understand each other, in essence she
20 came to you and said I want to work but you got to make this
21 magistrate level charge go away?

22 A No, sir.

23 Q Well what was it?

24 A I wasn't with the original meeting, I was with her on
25 subsequent meetings. We don't make any charges go away,

1 that's up to the Solicitor's Office or the prosecuting
2 officer on magistrate level cases. We make recommendations.
3 And we tell them if the person cooperated but.

4 Q Well certainly from your end of the -- your side of the
5 coin, this confidential informant was looking for something
6 from you?

7 A Yes, sir.

8 Q Okay. By way of money or favor or whatever?

9 A Yes, sir.

10 Q Okay. Now, before where exactly, I'm a little confused,
11 did you first get involved with the confidential informant?
12 Was it you that first made contact, Agent Caron that first
13 made contact, Lieutenant Brooks who first made contact?

14 A The CI called Agent Caron. We work a split shift at our
15 office. Two Agents typically work on what we call first
16 shift. Which is 8:00 in the morning to 5:00 in the
17 afternoon. And two work from 3:30 to mid-night. And, of
18 course, we're on call. We work over a lot but. Agent Caron
19 happened to be on second shift this week. This particular CI
20 who was working with Agent Caron called and said that -- well
21 not going into what was said but there was someone who was --
22 had a product and wanted to make a sale. So Agent Caron in
23 turn contacted Lieutenant Brooks and then we went and met
24 with the CI.

25 Q So really, if I understand it correctly, the confidential

1 informant or the confidential informant on this case actually
2 set up the deal?

3 A Yes, sir.

4 Q You went along for the ride?

5 A To a certain extent, yes, sir. But like I said, this
6 particular incident, the confidential informant was contacted
7 by Mr. Dover.

8 Q Okay. Well that's what the confidential informant told
9 you?

10 A Yes, sir, that's what I was told.

11 Q You weren't present when any of that happened?

12 A No, sir, I was not.

13 Q Okay. So you don't meet at the Hot Spot, obviously,
14 right? Usually you don't meet your confidential informant at
15 the Hot Spot?

16 A No, sir.

17 Q You met some place else?

18 A Yes, sir.

19 Q Now this was on February the 6th of this year?

20 A Yes, sir, that is correct.

21 Q Do you remember what the weather was like that day?

22 A Yes, sir, I do.

23 Q What was it like?

24 A It was very cold. We had a little -- actually had a
25 little bit of, I guess, it was few snow flurries that day.

1 It was clear but it was brisk and cold.

2 Q When you meet your CI, I do you meet them inside,
3 outside?

4 A It depends on where we are. On this particular occasion
5 we met outside.

6 Q Okay. So you met your CI outside and it's cold?

7 A Yes, sir.

8 Q What did your CI have on?

9 A I don't have any notes on that but from what I remember
10 she was wearing blue jeans and an oversized sweater on under
11 a undershirt.

12 Q A what?

13 A Like a sweater or something to keep warm under a regular
14 shirt.

15 Q Have a coat on?

16 A I think that was what it was. But I'm not 100 percent
17 positive on that.

18 Q Jeans tight or baggy or do you remember?

19 A I believe the jeans were tight.

20 Q Okay. Now, you didn't initially at that point before you
21 left for the Hot Spot, you did not search the CI personally?

22 A No, sir, not personally.

23 Q Brooks did that?

24 A Yes, sir.

25 Q Okay. Now you searched the vehicle?

1 A Yes, sir.

2 Q Now this was the CI's vehicle that you searched?

3 A Yes, sir.

4 Q What kind of car was it?

5 A It was a black four-door Saturn.

6 Q Black four-door Saturn?

7 A Saturn. Just a smaller four-door vehicle. I know
8 Saturn's are small.

9 Q How long did it take you to search the vehicle?

10 A Let's see if I have actual notes on that. I'm not sure
11 exactly how long it took me. Five to eight minutes,
12 probably. Something like that. Began the vehicle search at
13 12:10 and then the next activity after I counted money out at
14 12:22. So probably about eight minutes or so. Five to eight
15 minutes.

16 Q Well you have identified what's been marked as State's
17 Exhibit No. 2 and you say that is the little bag that the CI
18 turned over to you?

19 A Yes, sir.

20 Q After this alleged sale?

21 A Yes, sir.

22 Q Is that pretty typical of how you would see drugs
23 packaged?

24 A Yes, sir, they're fairly typically in different size bags
25 or baggies and things of that nature.

1 Q So we're clear now, there's a very small little bag in
2 here, right?

3 A Yes, sir. A small bag inside of the larger bag.

4 Q What would you say, maybe an inch and a half by two
5 inches, something like that?

6 A Take a look. It appears to be about three inches in
7 length and about a inch and a half in width.

8 Q And in terms of quantity, would that be about a normal
9 amount of quantity that you would see in a methamphetamine
10 sale?

11 A That just very much depends between sale to sale. Some
12 sales are grams, half grams. I've seen them all the way up
13 to pounds.

14 Q And I think I asked but I apologize if I didn't, I'm
15 going to ask again. The package would be about the same,
16 right? In any situation for this amount?

17 A For that amount of dope, it would be something similar.
18 It could be a larger bag but that would be a waste and harder
19 to hide I would imagine.

20 Q That's a very, very small thing, isn't it, Mr. Barwick?

21 A That -- it's not very large.

22 Q And it's flat, right?

23 A Yes, sir.

24 Q It's not bulky?

25 A Not very bulky.

1 Q Okay. So you checked in this car, you checked the doors?

2 A Yes, sir.

3 Q When you say you checked the doors, now is that where you
4 have these little like storage things that's on the door, is
5 that where you're checking?

6 A Partially. I checked the door facing. I normally check
7 speaker holes in vehicles. Sometimes people remove speakers
8 to hide something. I also make sure that the door seems to
9 be attached to its normal axis around it because somebody
10 could pull the door panel off. So I normal check to see if
11 that is tampered with.

12 Q This car had floor mats in it?

13 A Yes, sir, it did.

14 Q Did you take the floor mats out?

15 A I lifted them up and looked.

16 Q Pardon me?

17 A I lifted the floor mats up and looked around, yes, sir.

18 Q That floor mat, did it go all the way up to the
19 accelerator?

20 A I don't recall if it went up to the accelerator or not.

21 Q So you just kind of lifted it up and looked?

22 A If the floor mats there I pick them up and look
23 underneath them.

24 Q Well was there one there or was there one not there?

25 A I believe there was one with that one, yes, sir.

1 Q Were there floor mats on both sides?

2 A I believe it was.

3 Q And under the floor mats was there carpeting in this
4 vehicle?

5 A Yes, sir. Basic standard four-door vehicle. It had
6 carpet, center console, glove box.

7 Q What kind of seats did this vehicle have it in?

8 A Had bucket seats. Center console in between them.

9 Q Bucket seats and center console?

10 A Uh-huh.

11 Q So in eight to ten minutes you searched that vehicle and
12 you're saying that you could have found a small bag like that
13 in that amount time in a four-door Saturn vehicle?

14 A Yes, sir, I believe I could have.

15 Q Could you have found that on a person in eight to ten
16 minutes?

17 A Yes, sir, probably so.

18 Q Okay. Now, you gave the confidential informant some
19 money, right?

20 A Yes, sir.

21 Q Do you recall what denominations you gave the confidential
22 informant?

23 A Yes, sir, I'll tell you what they were. I gave her two
24 20 dollar bills and two five dollar bills with recorded
25 serial numbers.

1 Q Do you recall if that was new money or old money?

2 A No, sir. I don't recall. We get our money from the
3 bank, we normal don't issue out --

4 Q If you took two 20 dollar bills and a 10 dollar bill,
5 they would almost fold like the size of that little baggie
6 that you say the drugs were in?

7 A I gave her 20's and two 5's.

8 Q Okay. Two 20's and two 5's, okay. They would still fold
9 to about that size, wouldn't it?

10 A Yes, sir.

11 Q About that flat?

12 A It would be marginal but about this flat.

13 Q All right, sir. So the money in this case was never
14 recovered?

15 A No, sir.

16 Q I'm going to jump to the end for the minute, who searched
17 the CI after you say this alleged buy, this alleged deal, was
18 done?

19 A At the conclusion of it, Agent Caron.

20 Q Agent Caron?

21 A Yes, sir.

22 Q Okay. Is it usual that a different agent will search at
23 the beginning or the end?

24 A Yes, sir. When we get done with the deal we typically do
25 a few things. Someone starts a statement or someone who

1 collects the product or something like that and somebody else
2 to do the search. It's not uncommon.

3 Q Well you certainly had video capability out there on
4 February the 6th of '06, didn't you?

5 A Yes, sir, we did.

6 Q Did you video the search?

7 A No, sir.

8 Q Did you tape record the search?

9 A No, sir, I did not.

10 Q Now, I'm not asking you for the location but from where
11 you met your snitch to the Hot Spot, how far was it?

12 A I would be doing guesstimation but it's like less than
13 two miles, it's not very far.

14 Q Two miles?

15 A Two miles or so, yes, sir.

16 Q Well what agent road with this informant person for that
17 two miles?

18 A No agent rode with the informant.

19 Q So your agent was in their personal vehicle for two miles
20 where the only supervision, if you will, would have been what
21 you could hear on the tape?

22 A Yes, sir. They were -- we followed the subject to
23 location but no one was actually in the car with her.

24 Q Just so I'm clear, I may have made an assumption there,
25 but was the transmitter on during that two miles?

1 A Yes, sir, it was.

2 Q Okay. Well, you say you could see the vehicle but you
3 certainly could not see any -- what activity, if any, was
4 going on in that vehicle, could you?

5 A No, sir. Just what I heard.

6 Q Pardon me?

7 A Only what we heard.

8 Q And the snitch's car, was the windows on that car tinted?

9 A Yes, sir, they were.

10 Q Is that dark tint?

11 A No, sir, it wasn't anything outside the legal limits. On
12 the video you can see in the car a little bit but it's
13 obscures you somewhat.

14 Q What time of the day was this?

15 A This was approximately, I think deal time was 1:00, a few
16 minutes after.

17 Q As I recall cloudy, overcast?

18 A It was the little cloudy that day, yes, sir.

19 Q Okay. Again, jumping to the back end for a moment, when
20 you say this informant person left the Hot Spot after
21 supposedly this deal was made, did they go back to where you
22 started out from?

23 A Yes, sir, they did.

24 Q So that's going back again about another two miles,
25 right?

1 A Yes, sir.

2 Q And did an agent ride with this person from the Hot Spot
3 back to this predetermined location that you were at?

4 A No, sir. The time she left the suspect was still in the
5 parking lot of the Hot Spot.

6 Q So again, the only surveillance, if you will, was --
7 well, I don't know was somebody following you?

8 A Actually in that particular one, once we spoke with the
9 CI, Lieutenant Brooks and I maintained surveillance on
10 Mr. Dover a few minutes longer and Agent Caron met her back
11 at the location.

12 Q I'm sorry, what was the last?

13 A Agent Caron met her back at the location.

14 Q Oh, so then from the Hot Spot, back to the location, the
15 vehicle wasn't even under surveillance?

16 A I'm sure when Agent Caron, she got behind her and just
17 met her back. I don't believe so. I think she was -- aside
18 from what we could hear on the wire.

19 Q Now who did you say you turned the substance over to that
20 the snitch gave you?

21 A ID Officer Brian Gibson.

22 Q All right. Is that the last you saw of it until today?

23 A No, sir. I took a look at it yesterday. I spoke with
24 Lieutenant Robinson.

25 Q Well, were you and Brooks back at this location when

1 Caron found this substance in the CI's pocket?

2 A Yes, sir, we were.

3 Q Was that taken into evidence?

4 A Yes, sir, it was.

5 Q But it's not here?

6 A I'm not certain if it's here or not. I think we made
7 arrangements for it to be here but I don't know if it's made
8 it. Lieutenant Robinson probably would have it. If need be.

9 Q Was that substance ever tested?

10 A Hasn't been tested yet.

11 Q Okay. Well based upon your experience as a narcotics
12 agent, what did that substance appear to be?

13 A It appeared to be crystal substance which had the
14 appearance of methamphetamine.

15 Q Did it look exactly like what's been marked here for
16 State's Exhibit No. 1?

17 A Actually the chards were a little bit bigger than that
18 one and more consistent than these. But you can say it was
19 like these.

20 Q So this person had on their person, if you will, after
21 this alleged buy went down was bigger than what this was?

22 A I think so, yes, sir. I mean, this isn't a big one but
23 let me look at it.

24 Q Any particular reason why it hasn't been tested yet?

25 A Other than the fact that the informant's still working

1 with our office and there was a evidence report done on the
2 situation and it has just been on standby until we see how
3 far the corporation goes.

4 Q Well maybe I'm missing something here, but isn't it a no,
5 no for these people that work for you to carry drugs on their
6 own?

7 A Yes, sir. It's a violation of law same as anyone else to
8 have them.

9 Q Well and certainly then you can't really be sure what
10 happens when what you call these transactions whether an
11 agent is either keeping drugs or taking drugs with them, you
12 don't know when that happens, do you?

13 A When an agent?

14 Q Well your informant?

15 A I'm sorry, I misunderstood the question, can you run that
16 by me again.

17 Q I'll try. That probably wasn't very clear to begin with.
18 When you have informants that are taking drugs with them or
19 retaining drugs or whatever, it's pretty hard to know what
20 happens when these supposed deals go down, is it not?

21 A Well that's the purpose for the search beforehand. It
22 just happened to be this one was missed.

23 Q It was missed?

24 A On the original search.

25 Q I reckon that 50 dollars could have been missed?

1 A Which 50 dollars.

2 Q What you gave her. You don't know that she ever gave
3 that to Mr. Dover or anybody else, do you?

4 A Just from what I heard and see on the video and
5 surveillance. He says 50 and hands it over.

6 Q Did you see her hand it over?

7 A No, sir, just what you hear on the video.

8 Q You heard 50?

9 A Uh-huh.

10 Q That's it? You didn't see any hand movement, nothing at
11 all?

12 A No, sir, couldn't see from the vantage point.

13 Q All right. So when you meet up with these informants do
14 you ask them if they have drugs on them?

15 A We typically search them to look for drugs. In this
16 particular case I met with the CI before and informed them of
17 our protocol before and after any type of deal. We meet with
18 them, we search them, search their vehicle, things of that
19 nature. So the CI would have been aware of that.

20 Q Well the question remains, did you ask the CI in this
21 case either before or after if they had drugs on them?

22 A No, sir, I don't believe I did.

23 Q To your knowledge, did anybody else?

24 A Not to my knowledge.

25 Q Well, now, when you go to the academy, part of what you

1 learn is to fill out a report, is it not, Mr. Barwick?

2 A I believe there's a section there on the report.

3 Q And through the course of either Mr. Marchant asking you
4 questions or me asking you questions, you referred to your
5 notes?

6 A Yes, sir.

7 Q And you filed a report in this case, didn't you?

8 A Yes, sir, I did.

9 Q There's not one thing in that report saying you found
10 drugs on your informant after this alleged buy, is it?

11 A No, sir. It's two separate incidents.

12 Q Two separate incidents?

13 A Yes, sir.

14 Q The fact that you found drugs on your informant after you
15 said this informant bought drugs, you're saying that wasn't
16 important to this case?

17 A Like I said it was a separate incident. Agent Caron
18 would have been the case agent on that to control the
19 possession. After interviewing the CI and things of that
20 nature, it was obvious that it was a separate incident.

21 MR. DEJONG: One moment, please, Your Honor.

22 Thank you, Officer Barwick.

23 THE COURT: Any redirect?

24 MR. MARCHANT: Just briefly, Your Honor.

25 BY MR. MARCHANT:

1 Q Did you make this informant any promises?

2 A No, sir.

3 Q Did you guarantee her that any charges would be disposed
4 of in any fashion?

5 A No, sir.

6 Q Okay. With respect to the money Mr. DeJong is referring
7 to, to your knowledge was there any money found either on her
8 or in her vehicle after this buy?

9 A No, sir. The only thing she had after the buy was 10
10 dollars which we gave her for gas money.

11 Q Okay. And again, on the video, can you see this
12 transaction taking place? Can you see the hand to hand?

13 A No, sir, not the hand to hand. You see motion moving in
14 the car but you can't see.

15 Q Can you hear what's going on?

16 A Yes, sir, very clearly.

17 Q And you said, I believe, that you heard the transaction
18 took place?

19 A Yes, sir.

20 Q Is that evident on the video?

21 A Yes, sir, it is.

22 Q Okay. And who is this video, in this video, who is
23 visible in the vehicle?

24 A Actually in the vehicle, you see silhouettes in the
25 vehicle but you see Mr. Dover getting in the vehicle with the

1 CI. He gets out of his vehicle and exits and gets into the
2 other.

3 Q And in between the meeting location and the Hot Spot, the
4 wire was on? The audio wire was on?

5 A Yes, sir.

6 Q And you can hear everything that was transpiring in that
7 vehicle?

8 A Yes, sir.

9 Q To the best of your knowledge on the way, did the CI stop
10 anywhere?

11 A No, sir.

12 Q Did she make any phone calls?

13 A Not that I'm aware of.

14 Q After the deal was over on the way back to the location,
15 did she make any phone calls?

16 A I don't believe she made any phone calls.

17 Q Okay. Did she stop anywhere to your knowledge?

18 A No, sir, not to my knowledge.

19 Q Who searched the vehicle after the fact?

20 A Lieutenant Brooks.

21 MR. MARCHANT: Okay, that's all I have of this witness.

22 THE COURT: Thank you, step down.

23 All right, counsel, approach just a minute.

24 (WHEREUPON, a bench conference was held.)

25 MR. MARCHANT: State calls Lieutenant Chad Brooks.

1 Chad Brooks, after being duly sworn, testified
2 as follows:

3 THE CLERK: Please state your name for the record.

4 THE WITNESS: Mark Chad Brooks.

5 THE COURT: Speak into the microphone a little closer for
6 me.

7 MR. BROOKS: Yes, sir..

8 DIRECT EXAMINATION

9 BY MR. MARCHANT:

10 Q And Lieutenant Brooks, where are you employed?

11 A With the Pickens County Sheriff's Office.

12 Q What capacity?

13 A I'm A lieutenant in the special operations in the
14 narcotics division.

15 Q How long have you been employed in that capacity?

16 A As a lieutenant or special operations.

17 Q Special operations?

18 A Special operations, I've been there about a little over
19 15 years.

20 Q What did you do before you got involved in the special
21 operations?

22 A I worked in detention division when I first went to work
23 at the sheriff's office then transferred to road patrol for a
24 short period of time then went to special operations.

25 Q When you're referring to special operations, does that

1 involve narcotics?

2 A Yes, sir, it does.

3 Q Okay. Prior to you -- your employment with the Sheriff's
4 Office do you go through some training at the law enforcement
5 academy?

6 A Yes, sir.

7 Q And then you had training with them in narcotics since
8 then?

9 A Yes, sir, numerous cases.

10 Q And as a lieutenant what are your duties in the narcotics
11 division?

12 A Basically as well as caring a case load and first line
13 supervisor for the other agents in that division.

14 Q Okay. Taking you to this incident on February 6th of
15 this year, who was the lead agent with respect to Mr. Dover?

16 A That would have been Agent Brett Barwick.

17 Q Were you with Agent Barwick through this entire
18 transaction?

19 A Yes, sir, I was.

20 Q Okay. What was your role with respect to this
21 transaction?

22 A Basically just assisting agent involved in the case.

23 Q Okay. Prior to the informant being sent to Hot Spot down
24 here on Highway 8, did you search the informant?

25 A Yes, sir, I did.

1 Q First of all, do you recall what the informant was
2 wearing that day?

3 A Best I remember I think she had on some blue jeans, kind
4 of flared legged blue jeans, white -- or long sleeve T-shirt,
5 I think it was white. I definitely remember a big, puffy,
6 green, I guess it's called fleece type, fuzzy jacket or coat.

7 Q Okay. And she was wearing this when she arrived at this
8 predetermined location?

9 A Yes, sir.

10 Q Okay. And did you search her at that time?

11 A Yes, sir, I did.

12 Q Okay. And what's the purpose of searching the informant?

13 A Just to make sure that they don't have any drugs on them
14 before they go do the transaction, basically.

15 Q And did you find any drugs on her at this time?

16 A No, sir, I did not.

17 Q Okay. Well tell me how you went about searching her on
18 this date?

19 A I had her remove the coat first of all because it had
20 several pockets inside and outside and I checked the jacket.
21 The lining. Had her pull her shirt tale out of her pants. ,
22 Since it's a female I had her kind of just hold the front of
23 the shirt open and without lifting her shirt, of course, but
24 to take her bra and pull it out. Maneuver so if there's
25 anything in there it would have fell out in my view.

1 Q Okay.

2 A With respect to her jeans, I checked her pants legs, her
3 pockets. Best I remember they were very tight jeans. I kind
4 of patted the back pockets, had her pull the front pockets
5 inside out and checked those.

6 Q Okay. What about her shoes and socks, was she wearing?

7 A I don't recall. If she had on socks I'm sure I checked
8 the socks, I just don't remember her wearing socks.

9 Q Did you find anything on her prior to this transaction?

10 A No, sir, I didn't.

11 Q Okay. And after the informant left to go to the Hot
12 Spot, where were you?

13 A Agent Barwick and I were in my vehicle.

14 Q Who was driving?

15 A I was.

16 Q Okay. And where did you go once the informant arrived at
17 the Hot Spot?

18 A Once she got to the Hot Spot, we parked across the street
19 at a vantage point so we could watch her and her vehicle.

20 Q What did you do while she was sitting over there at the
21 Hot Spot?

22 A We monitored the transmitter that was placed on her. We
23 could hear it in the vehicle with us. We had a receiver with
24 us and Agent Barwick was video taping.

25 Q So you heard everything that occurred?

1 A Yes, sir.

2 Q Now on the way to the Hot Spot, was audio running?

3 A Yes, sir, it was.

4 Q Did you hear her make any phone calls?

5 A I don't recall her making any.

6 Q Did she stop anywhere?

7 A No, sir.

8 Q After this deal was over---

9 A Yes, sir.

10 Q And she left the Hot Spot, was audio running?

11 A It was.

12 Q Did she make any phone calls?

13 A I don't remember.

14 Q Do you recall if she stopped anywhere?

15 A No, sir, she did not. Not that I know of.

16 Q There's already been testimony that y'all went and
17 followed the defendant afterwards, correct?

18 A Correct.

19 Q So while you're sitting in your vehicle, are you in the
20 passenger or driver seat?

21 A I'm in the driver seat.

22 Q Where is Agent Barwick?

23 A In the passenger seat.

24 Q What was Agent Barwick doing?

25 A He was video taping.

1 Q Have you seen this video tape?

2 A Yes, sir, I have.

3 Q Okay. And everything on the audio is what occurred that
4 day, is that correct?

5 A Yes, sir, that is correct.

6 Q That's your recollection?

7 A Yes, sir.

8 Q Okay. So after this deal happens and you get back to the
9 predetermined location, did you search the informant?

10 A No, sir, I did not.

11 Q Why not?

12 A At that time Agent Caron had -- she was on her way to
13 work and actually saw us, called me by telephone, asked if we
14 needed some assistance? I said, yes. Sent her to meet with
15 the informant and she searched the informant afterwards.

16 Q Okay. Did you search the vehicle afterwards?

17 A Yes, sir, I did.

18 Q Okay. Please tell me what you did searching the vehicle?

19 A Checked both door panels, anywhere I think something to
20 be hidden in the vehicle, console, under mats, above visors,
21 in the trunk of the vehicle, any storage compartment that may
22 be in the vehicle, pocketbook or anything. Any type of
23 storage container that may be in the vehicle. Sun glasses
24 case or anything. I checked all of those. Dash. Under the
25 seats.

1 Q Basically turn it inside out?

2 A Yes, sir.

3 Q Okay. Did you find any drugs in the vehicle after the
4 transaction?

5 A No, sir, I did not.

6 Q Did you find any money?

7 A No, sir.

8 Q Okay.

9 MR. MARCHANT: Court's indulgence.

10 BY MR. MARCHANT:

11 Q Were you present when the informant was searched after
12 the transaction?

13 A I was.

14 Q Okay. So you witnessed the search?

15 A Yes, sir, I did.

16 Q And in your presence where there any drugs found?

17 A Yes, sir, there was.

18 Q Do you know what those drugs were?

19 A It appeared to be a small bag of crystal methamphetamine.

20 Q Let me show you what's been marked as State's Exhibit No.
21 2, Agent Barwick has already testified that the small baggy
22 in this package is the one that he retrieved from the
23 informant.

24 A Yes, sir.

25 Q With respect to the size of this bag, what was the size

1 of bag that Agent Caron retrieved from the informant?

2 A It's a teeny, tiny jewelers bag. It may be, it's not

3 much over a half inch by half inch.

4 Q Okay. So in relation to the smaller in here.

5 A Yes, sir.

6 Q Half the size or fourth of the size?

7 A Not even a fourth of the size. May be a fourth of the

8 size.

9 Q Do you recall if there any markings on that bag?

10 A On the smaller bag?

11 Q Yes, sir.

12 A Yes, sir, there was some kind of red color design but I

13 don't recall what it was.

14 Q Has that substance been tested to your knowledge?

15 A Not that I know of, sir.

16 Q Did the informant tell you what it was?

17 A Yes, sir.

18 Q Okay. Have any charges been placed against the informant

19 at this time?

20 A Not at this time.

21 Q Okay.

22 MR. MARCHANT: That's all the questions I have for

23 Lieutenant Brooks, please answer any questions Mr. DeJong may

24 have.

25 THE COURT: Okay, Mr. DeJong.

1 MR. DEJONG: Thank you, Your Honor. May it please the
2 Court.

3 CROSS-EXAMINATION

4 BY MR. DEJONG:

5 Q Mr. Brooks, why is it important that your informants not
6 have any drugs on them before they go do one of these deals
7 for you?

8 A Just for purposes so that we can secure, make sure that
9 the drugs are purchased are not something that they brought
10 with them but something that was actually transferred from
11 another individual.

12 Q So in this case it could have been something your
13 informant brought with them?

14 A I didn't find anything before she left.

15 Q Yes, sir.

16 A Yes, sir.

17 Q But certainly your informant had drugs on her after the
18 alleged deal?

19 A That is correct, yes, sir.

20 Q You don't know if they were there before or after?

21 A I didn't find them before, no, sir.

22 Q Right. Simply saying you didn't find them doesn't mean
23 they weren't there?

24 A That is correct, I did not find them.

25 Q Okay. So as I said then in this case you can't say

1 whether the informant gave you drugs that she already had,
2 can you?

3 A Well it's apparent from the transaction that I heard that
4 there was some substance passed from the defendant to the
5 informant. Other than---

6 Q That's an assumption that you made based on what you
7 heard?

8 A Well, yes, sir.

9 Q Now, when you go out to do these things, to make these
10 buys or whatever, that's your job; isn't it?

11 A That's correct.

12 Q And certainly part of your job is that you have got to
13 produce buys for your job?

14 A Not necessarily.

15 Q You just go out and do it for kicks?

16 A No, sir. I wish that I couldn't produce any drugs in
17 this county but unfortunately that's not the situation.

18 Q But the point is you don't go out with the thought that
19 you're not going to be successful?

20 A Well that happens.

21 Q But you go out with the predetermined notion that you're
22 going to come back with drugs?

23 A We got out with the intention of fighting the drug
24 problem in Pickens County, yes, sir.

25 Q All right, sir. These blue jeans that you say your

1 informant had on, they were tight?

2 A Yes, sir. Best I remember.

3 Q Okay. Were you present when Mr. Barwick gave the
4 informant the money?

5 A Yes, sir, I was.

6 Q You know what dominations were given to the informant?

7 A No, sir, I did not.

8 Q The bag that the informant had on him or her after you
9 say this alleged buy went down, you don't have that with you
10 today? It's not here?

11 A I brought it to the courthouse.

12 Q Okay.

13 A I don't have it with me, no, sir.

14 Q I'm not talking about this bag, I'm talking about the bag
15 you say you took off the informant?

16 A Right.

17 Q It's around here some where?

18 A I turned it over to Mr. Marchant, yes, sir.

19 Q All right, sir. Well did you notice when you were
20 searching this informant before you left to go to the Hot
21 Spot, whether those jeans had a watch pocket or not?

22 A I don't recall.

23 Q Well you've been in narcotics for 15 years have you not?

24 A Yes, sir.

25 Q Certainly a part of your job is that you have to be

1 observant, is it not?

2 A As best I can, yes, sir.

3 Q Did you file any kind of written report as to your
4 involvement in this case?

5 A No, sir, I had not.

6 Q So you don't recall whether there was a watch pocket or
7 not?

8 A I don't recall seeing one, no, sir.

9 Q All right. Could have been?

10 A Could have been, yes, sir.

11 Q Okay. Now, you searched the vehicle of the informant
12 after the alleged buy occurred; is that correct?

13 A That is correct, yes, sir.

14 Q How long did it take you to search the vehicle?

15 A Probably five, ten minutes. Five, seven minutes,
16 something like that.

17 Q What kind of car was it?

18 A It was a dark colored Saturn. Small two-door vehicle.

19 Q Two door?

20 A Yes, sir.

21 Q I see, okay. And you sure it was a two-door?

22 A Pretty sure, yes, sir.

23 Q Do you recall what kind of seats it had in it?

24 A Just regular cloth seats.

25 Q And when we say a two-door Saturn, that's a fairly small

1 car, is it not?

2 A Yes, sir.

3 Q From the back of the front seat to the back seat, it's
4 not a long way?

5 A No, sir not a very long way.

6 Q Within reaching distance?

7 A Yes, sir.

8 Q And now you've been in narcotics for 15 years I believe
9 is your testimony. The packaging that you see here, and I'm
10 talking about the inside packaging now, Mr. Brooks?

11 A Yes, sir.

12 Q Is that pretty normal for what you would see by way of
13 methamphetamine?

14 A Yes, sir.

15 Q That is a fairly small packet, is it not?

16 A It is, sir. But they make them a lot smaller.

17 Q Yes, sir.

18 A Yes, sir.

19 Q Hard to find?

20 A What's that?

21 Q Hard to find?

22 A Well.

23 Q Right?

24 A Yes, sir.

25 Q And yet you can search a vehicle in five to 10 minutes

1 and find packets like or smaller is what you're telling me?

2 A Yes, sir.

3 Q Hypothetically, if the agent was given two 20's and two
4 5's, that's not a lot of money, is it?

5 A It's 50 dollars.

6 Q Yes, sir, 50 dollars. I didn't make my question clear.
7 Let me see if I can clarify my question a little bit.

8 A All right.

9 Q In terms of bulk or volume, I'm holding a dollar bill
10 here in my hand, okay?

11 A Yes, sir.

12 Q And if you had two 20's and two 5's it would be about
13 four times that thickness?

14 A Yes, sir.

15 Q 20's, 5's, 1's they're all about the same thickness?

16 A Yes, sir.

17 Q If you folded those two 20's and two 5's, hypothetically
18 it wouldn't be very big, would it?

19 A About the same as four 100's, yes, sir.

20 Q Right. Well I'm not talking in terms of monetary value,
21 I'm talking in terms of the physical size of the money?

22 A Yes, sir. Sure.

23 Q Pardon?

24 A Yes, sir.

25 Q Was it ever determined to your knowledge, Mr. Brooks,

1 whether the informant had this on him or her going into this
2 kind of action or was it kept out of the transaction or was
3 that what your informant alleged or do you know?

4 A I'm not sure I really understand what you're trying to
5 ask me there, sir.

6 Q Well during the course of your investigation, I assume
7 there was some investigation in that your CI had what
8 appeared to be drugs on them after an alleged buy, right?

9 A That is correct, yes, sir.

10 Q Now, did your investigation reveal that your informant
11 had those alleged drugs on them when they went to meet
12 Mr. Dover to do this alleged buy?

13 A Our investigation revealed that yes the informant had one
14 bag, not that bag, of drugs prior to meeting Mr. Dover. Then
15 that bag Mr. Dover sold to the informant.

16 Q So then based on that investigation then when you
17 searched the informant, you missed it, didn't you?

18 A Yes, sir.

19 Q And you could have missed two bags?

20 A Could have.

21 Q May be even three?

22 A There was no response.

23 Q Now you searched a person and missed, drugs, right?

24 A That is correct, yes, sir.

25 Q You searched a car. Did you search the car as thoroughly

- 1 as you searched the person?
- 2 A Yes, sir.
- 3 Q Two 20's and two 5's are about that same size as that
- 4 bag, isn't it?
- 5 A Close, yes, sir.
- 6 Q You could have missed the two 20's and the two 5's in the
- 7 car, couldn't you?
- 8 A I don't think I did, no, sir.
- 9 Q Could have?
- 10 A Could have.
- 11 Q You didn't think you missed that bag of drugs when you
- 12 searched your informant, did you?
- 13 A Yes, sir, that's correct.
- 14 Q Is this confidential informant still working? Well let
- 15 me rephrase the question. Did they continue to work after
- 16 this alleged buy was made from Mr. Dover?
- 17 A Yes, sir.
- 18 Q Even though they had violated your policy?
- 19 A What do you mean violated the policy?
- 20 Q Well isn't it your policy that your informants don't take
- 21 drugs with them to drug buys?
- 22 A Yes, sir. I wouldn't say it's a policy but yeah, I mean.
- 23 Q Pardon me?
- 24 A I would hope that would be a common sense issue.
- 25 Q Well, indeed but aside from being a common sense issue

1 you say it's important that they not take drugs with them,
2 right?

3 A Yes, sir, that is correct.

4 Q And yet in spite of you saying this particular informant
5 took drugs with them to make an alleged buy, you continued to
6 work that informant?

7 A That is correct, yes, sir.

8 MR. DEJONG: One moment, please, Your Honor.

9 Thank you, Mr. Brooks.

10 THE COURT: All right, any redirect, Solicitor?

11 MR. MARCHANT: Just one question, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. MARCHANT:

14 Q Prior to this incident?

15 A Yes, sir.

16 Q And after this incident?

17 A Yes, sir.

18 Q Using this informant, did you ever find any drugs on them
19 before or after a deal?

20 A None other than what was purchased during the deal.

21 MR. MARCHANT: That's all the questions I have.

22 THE COURT: Thank you, you can step down.

23 Ladies and gentlemen, we're going to recess for lunch at
24 this time, we'll pick back up with the testimony after lunch.
25 During the recess, do not talk about this case among

1 yourselves or with anyone else. If anybody contacts you or
2 tries to talk to you about the case, get their names and
3 addresses and report that to me. Please keep your badges on
4 during the lunch recess. I ask that you do that so that
5 everyone involved with this case will know that you are a
6 juror on this case. And they should not discuss this case in
7 your presence because that would be highly improper. So
8 please keep your badges on during the lunch recess. And I'll
9 ask that you be back at 1:15. 1:15. Thank you.

10 (WHEREUPON, the jury left the courtroom at
11 approximately 12:00 p.m.)

12 THE COURT: All right, I'll see you back after lunch.

13 MR. MARCHANT: May Agent Brooks be excused?

14 MR. DEJONG: No objection excusing Brooks.

15 THE COURT: All right, you're excused.

16 MR. MARCHANT: Thank you, Your Honor.

17 THE COURT: All right, do we have anything before I bring
18 the jury panel?

19 MR. MARCHANT: Agent Brooks was dismissed right before
20 the break, he was the one that actually brought the drugs up
21 here.

22 THE COURT: Okay.

23 MR. MARCHANT: And evidence custodial was not able to be
24 here this morning. I believe in speaking with Mr. DeJong he
25 had no objection to that link in the chain of custody between

1 Lieutenant Robinson and Agent Brooks.

2 MR. DEJONG: I don't, Your Honor.

3 THE COURT: Thank you.

4 MR. DEJONG: I think I opened a can of worms that I
5 didn't even intend to open a can of worms but I don't have a
6 problem with that.

7 THE COURT: Thank you.

8 Okay, bring the jury.

9 (WHEREUPON, the jury entered the courtroom at
10 approximately 1:23 p.m.)

11 THE COURT: All right, Solicitor, you may proceed.

12 MR. MARCHANT: At this time the State calls Kathryn
13 Pennington.

14 THE CLERK: Place your left hand on the Bible, raise your
15 right hand.

16 Kathryn Pennington, after being duly sworn,
17 testified as follows:

18 THE CLERK: Thank you, be seated, state your name for the
19 record.

20 THE WITNESS: Kathryn Jo Pennington.

21 DIRECT EXAMINATION

22 BY MR. MARCHANT:

23 Q Ms. Pennington, where did you grow up?

24 A In Clemson.

25 Q Where did you go do high school?

1 A Daniel.

2 Q What happened after you graduated from Daniel?

3 A I moved out of my house, from my parents house.

4 Q Where did you move?

5 A To Easley.

6 THE COURT: Can you speak into the microphone a little
7 closer, please, ma'am.

8 A In Easley.

9 Q Where exactly did you move in Easley?

10 A To the -- you want to know the address?

11 Q Did you rent a house?

12 A I rented a house.

13 Q Okay. Who did you rent the house from?

14 A Mike Dover and Randy Dover.

15 Q Who were you living in that house with?

16 A Annie.

17 Q Okay. How long did you live in that house?

18 A I lived there for two months.

19 Q Why did you move out?

20 A I didn't have a job so my parents wanted me to come back
21 to live with them.

22 Q Okay. While you were living in that house, who was
23 paying the rent?

24 A My parents.

25 Q Okay. What happened after you moved back home? How long

1 did you live at home?

2 A I stayed there for a good while.

3 Q Where are you living now?

4 A My parents house.

5 Q Okay. Did you live anywhere from the time you moved out
6 of this rental home?

7 A No, I mean, I stayed with my parents.

8 Q All right. Well let's talk about what happened right
9 after graduation, did you get involved in drugs?

10 A Yes, sir.

11 Q Did you start doing drugs?

12 A Yes.

13 Q What kind of drugs did you do at that time?

14 A Anything, pretty much.

15 Q Please tell the jury what you mean by anything. Were you
16 smoking marijuana?

17 A I smoked marijuana.

18 Q Doing cocaine?

19 A Yes, sir.

20 Q Doing methamphetamine?

21 A Yes.

22 Q Doing crack cocaine?

23 A No.

24 Q Okay. Taking pills?

25 A Yes.

1 Q Okay. Back in, when you were living in this rental
2 house, were you doing all these things?

3 A Yes.

4 Q After you moved out of this rental house were you doing
5 all these things?

6 A Up until I went to rehab.

7 Q When did you go to rehab?

8 A In May of 2005.

9 Q How long were you in rehab?

10 A I was in there for 28 days.

11 Q And you came out in June '05?

12 A Sometime.

13 Q Roughly. And where did you go to stay once you came out
14 of rehab?

15 A My parents.

16 Q Okay. After you came out of rehab did you do drugs
17 again?

18 A I stayed clean for a while then I did fall off the wagon.

19 Q Primarily what kind of drugs were you doing after you got
20 out of rehab?

21 A Methamphetamine.

22 Q Okay. Now, this house that you were renting as soon as
23 you graduated, high school, were you doing drugs when you
24 were living in that house?

25 A Yes.

1 Q Okay. And who were you getting your drugs from at that
2 time?

3 A Just people.

4 Q Okay. Anybody, anywhere?

5 A When I was staying in the house?

6 Q Right.

7 A Yes.

8 Q Okay. After you moved out of that house who were you
9 getting your drugs from?

10 A When?

11 Q When you were living at home?

12 A Just different people.

13 Q Who moved into that house after you moved out?

14 A Darlene and Wally.

15 Q Okay. Did you have an occasion to do drugs with them?

16 A Yes.

17 Q Okay. Did you have an occasion to do drugs with the
18 defendant?

19 A Yes.

20 Q Okay. On how many occasions have you done drugs with the
21 defendant?

22 MR. DEJONG: Your Honor, I'm going to object to that
23 whole line --

24 THE COURT: Yes, I sustain the objection. Instruct the
25 jury to disregard the last question and answer by the

1 witness.

2 MR. MARCHANT: Okay.

3 BY MR. MARCHANT:

4 Q Back in 2005 did you get arrested?

5 A Yes.

6 Q Okay. For what did you get arrested?

7 A No, sorry 2005?

8 Q Yes.

9 A No.

10 Q Okay. Well the spring of 2006 this year did you get
11 arrested?

12 A Yes.

13 Q What did you get arrest for?

14 A I was arrested for shoplifting.

15 Q Okay. And please tell me what were you -- what is it
16 alleged that you shoplifted?

17 A A lighter.

18 Q Where did this take place?

19 A At the Central Stop Exxon.

20 Q Did you previously work at this?

21 A Yes.

22 Q Okay. Have you been convicted of that charge?

23 A Yes.

24 Q Okay. When were you convicted, if you know?

25 A It was in February first. February, I think. I was

1 found guilty in my absence.

2 Q What was it that you shoplifted?

3 A A lighter.

4 Q Okay. Now, after your arrest and prior to that
5 conviction, did you have an occasion to meet with Agent Neysa
6 Caron?

7 A After the arrest?

8 Q After the arrest.

9 A Yes.

10 Q Okay. Was it at your request or did Agent Caron come to
11 you?

12 A It was my request.

13 Q Okay. Why did you request to meet with Agent Caron?

14 A Because I asked the police at Central if there was
15 anything that I could do to like help my situation.

16 Q Okay. Did the police at Central make you any promises?

17 A No.

18 Q After meeting with Agent Caron did she make you any
19 promises?

20 A No.

21 Q Well why would you go assist Agent Caron if she hadn't
22 promised you anything?

23 A Because it would be taken in consideration that I helped
24 so they would look at that better than my situation was.

25 Q Okay. Some were any promises made to you as far as

1 disposition of any arrest?

2 A No.

3 Q Okay. Did they promise to pay you any money?

4 A No.

5 Q Okay. After meeting with Agent Caron was there an
6 occasion that will you called her on February 5th of 2006?

7 A I mean I called her.

8 Q Well, why did you call her?

9 A To set up a time when I could go meet with her and set up
10 a drug deal.

11 Q Okay. So was it at your initiation or hers that contact
12 was made between the two of you?

13 A It was mine.

14 Q You initiated the contact?

15 A Anytime I called her -- anytime we talked it would be me
16 calling her.

17 Q And you would call her and tell her what?

18 A Who I could buy from and when.

19 Q Buy what from?

20 A Drug.

21 Q Okay. Now, back in February of this year, did you call
22 her with respect to Mr. Dover?

23 A Yes.

24 Q What did you tell Agent Caron?

25 A That he had been calling me all night and that morning

1 and that I could buy drugs from him.

2 Q At that time was Agent Caron able to meet with you?

3 A No.

4 Q Okay. Did she put you in touch with someone else?

5 A With Brett.

6 Q With Agent Barwick?

7 A Yes.

8 Q At that time did y'all arrange to set up an undercover
9 buy?

10 A Yes.

11 Q Okay. Without telling me where you went prior to this
12 deal, did you meet with Agent Barwick?

13 A Yes.

14 Q Was there anyone else present?

15 A Yes, sir.

16 Q Whose was present if you know?

17 A Chad, Agent Chad.

18 Q You're referring to Chad Brooks?

19 A Yes.

20 Q When you met with the two of them did they search you?

21 A Yes.

22 Q Did they search your person?

23 A Yes.

24 Q Who searched you if you recall?

25 A Chad searched me but he didn't really like, you know.

1 Q Well?

2 A Like search---

3 Q Tell the jury---

4 A He didn't search me -- like he patted me down but he
5 didn't like go completely in my pockets just because being a
6 guy and I'm a girl.

7 Q Did he have you turn your pockets inside out?

8 A He had me pull them out.

9 Q Did he have you shake your jacket loose?

10 A Uh-huh.

11 Q Did her search through your pockets?

12 A Yes.

13 Q Do you recall if you were wearing shoes that day?

14 A I was.

15 Q Did he search your shoes?

16 A No.

17 Q Okay. Now, the jacket you had on, did it have pockets?

18 A Yes.

19 Q Did he search those pockets?

20 A Yes.

21 Q Okay. To the best of your knowledge, after he was done
22 searching you did he find anything?

23 A No.

24 Q Did you have any money on you?

25 A No.

1 Q Lighter?

2 A I didn't have anything.

3 Q Cigarettes?

4 A I didn't have anything.

5 Q Okay.

6 A I mean in my car there was a lot but.

7 Q I'm just talking about on your person, did he find

8 anything on you?

9 A No.

10 Q Did you know of anything that was on you?

11 A No.

12 Q Okay. Now, did someone search your vehicle?

13 A Yes.

14 Q Who searched your vehicle?

15 A Brett.

16 Q Did Agent Barwick find anything in your vehicle to the

17 best of your knowledge?

18 A No.

19 Q Okay. And what type of vehicle do you drive?

20 A I drive a '99 Saturn.

21 Q And how many doors?

22 A Four doors.

23 Q Four doors?

24 A Yeah.

25 Q What color is it?

1 A Black but as you get closer it looks dark purple.

2 Q Okay. And this is your car?

3 A Yes.

4 Q Registered to your parents?

5 A Yes.

6 Q Okay. Now, after he searched your vehicle were you wired

7 with some kind of surveillance equipment?

8 A My jacket was.

9 Q Okay. Do you know where that wire was being recorded?

10 A In the car.

11 Q Okay. You know it was being recorded?

12 A Yes.

13 Q Were you told you were being recorded the entire time or

14 did they tell you when they turned it on or turned it off?

15 A No.

16 Q Okay. So do you know whether the recording started

17 before you got to the Hot Spot?

18 A I don't know.

19 Q You don't know. Okay. Now, from the time you left this

20 meeting place and drove to the Hot Spot who was in your car?

21 A No one.

22 Q Okay. Where was Agent Barwick and Agent Brooks?

23 A They were in thier car.

24 Q Okay.

25 A Agent Brooks car.

1 Q Did they tell you what they were doing?

2 A No.

3 Q Okay. Did you know whether or not this accident was
4 being video taped?

5 A No.

6 Q You did not know at the time?

7 A No, not at the time.

8 Q Okay. Are you aware now that it was being video taped?

9 A Yes.

10 Q Have you had an opportunity to review this video tape?

11 A Yes.

12 Q Okay. What transpires on this video, is it a fair and
13 accurate depiction of what took place in your vehicle at the
14 Hot Spot that day?

15 A Yes.

16 Q Okay. Now, when you got to the Hot Spot, where were you
17 sitting? Where did you park?

18 A If you're looking at the Hot Spot I was sitting to the
19 right.

20 Q Okay.

21 A Like in front of the building but it was to the right.

22 MR. DEJONG: I'm sorry, Your Honor, I cannot hear her.

23 THE COURT: Yeah, can you speak into the microphone.

24 A I was sitting like up -- like if you're looking at the
25 building I was sitting toward the right of it but it was

1 still parked in the front. It wasn't on the side.

2 Q How long did you wait there before the defendant showed
3 up?

4 A Probably 20, 30 minutes, it was a while.

5 Q Okay. When he showed up what type of vehicle was he
6 driving?

7 A It was a gray, two-door, older model car, I don't know.

8 Q Okay. When he arrived, what happened?

9 A He got -- he first told me to come into his car.

10 I said, No get in my car, it's too cold. He got in my
11 car.

12 Q Okay. When he got in your car did y'all leave the Hot
13 Spot?

14 A No.

15 Q Well did you move your vehicle from the place that it was
16 originally parked?

17 A Yes.

18 Q Where did you move it to?

19 A To the side of the building, the right side of the
20 building.

21 Q Why did you do that?

22 A Because he had asked at first to ride around and I told
23 him no that we're fine where we are. Because he was worried
24 about police. And so I told him that we could just move to
25 the side of the building.

1 Q Okay. And once he entered your vehicle and you moved
2 around to the side, how long was he in your car, if you know?

3 A I'd say like 15 minutes. It was the while. 10, 15
4 minutes.

5 Q And at some point in time was there a transaction that
6 took place?

7 A Yes.

8 Q Okay. What did you ask to purchase from Mr. Dover?

9 A A half gram.

10 Q Half gram of what?

11 A Methamphetamine.

12 Q Okay. And for how much did you pay Mr. Dover for this
13 half gram?

14 A 50 dollars.

15 Q 50 dollars. Who gave you that 50 dollars?

16 A Brett and Chad.

17 Q Okay. Was that your money?

18 A No.

19 Q Okay. Now, did you have any other money on you prior to
20 this? Was there any money in the vehicle?

21 A There might have been some change.

22 Q No dollar bills?

23 A No.

24 Q So while you were sitting in your vehicle Mr. Dover sold
25 you 50 dollars worth of -- a half of what now?

1 A Half a gram of methamphetamine.

2 Q Okay. Now, let me show you what's been marked as State's
3 Exhibit No. 2, do you recognize this pouch?

4 A Uh-huh.

5 Q Do you know what that substance is?

6 A Methamphetamine.

7 Q Okay. Where did this bag come from?

8 A From Mike Dover.

9 Q This bag is the bag that came from Dover that day?

10 A I mean, that's the bag. It looks just like it.

11 Q You didn't pull this out of your vehicle some where?

12 A No.

13 Q It didn't come out of your shoes?

14 A No.

15 Q Didn't come out of your jacket?

16 A No.

17 Q Glove box?

18 A No.

19 Q Trunk?

20 A No.

21 Q Okay. After the transaction took place, how long did he
22 stay in your car, if you recall?

23 A Probably another five or 10 minutes.

24 Q Okay. After he exited your vehicle where did you go?

25 A Back to the meeting place.

1 Q Okay. And who met you back at the this location?

2 A Neysa.

3 Q Was she the only one there?

4 A She came right after I pulled up.

5 Q Did you stop anywhere in between the Hot Spot and this
6 location?

7 A No.

8 Q Did you call anybody?

9 A Yes.

10 Q Who did you call?

11 A I called Chad and Brett.

12 Q Did you place any other calls to anyone besides a law
13 enforcement officer?

14 A No.

15 Q Okay. Now, when you got back to this meeting place who
16 searched your vehicle, if you recall?

17 A Brett, I think. I'm not positive.

18 Q You're not sure. Well who searched you?

19 A Neysa did.

20 Q And when Neysa started searching you, did she find
21 anything on you?

22 A Yes.

23 Q What is it that she found and where?

24 A Another back bag in my little pocket.

25 Q What little pocket? Please be very specific.

1 A Little pocket like in jeans. You know, you have a little
2 extra pocket.

3 Q What exactly did she find in that pocket?

4 A A separate bag of methamphetamine.

5 Q A separate bag of methamphetamine?

6 A Uh-huh.

7 Q Where did that bag come from?

8 A A friend from a couple of days ago.

9 Q Did you know that was in your pocket?

10 A No.

11 Q Did you get that bag from Mr. Dover?

12 A No.

13 Q No. Show you what's been marked as State's Exhibit No.

14 4, do you recognize that little bag?

15 A Yes.

16 Q Where did this bag come from?

17 A A friend. Another friend.

18 Q Where did Agent Caron find it on you?

19 A In the little extra pocket.

20 Q So this bag came out of your pocket?

21 A Yes.

22 Q The other bag came from Mr. Dover?

23 A Right.

24 Q Okay. Now, after you got back did Agent Caron charge you
25 with any crime that day? Had she charged you with possession

1 of methamphetamine?

2 A Yes.

3 Q She has charged you?

4 A I assume that she did. I wasn't arrested.

5 Q Okay. Do you know whether or not you have a pending
6 charge for possession of methamphetamine against you?

7 A I don't know.

8 Q Do you know whether or not this substance has been
9 tested?

10 A No, it hasn't. I don't think.

11 Q Okay. Did -- at that time did they -- did Agent Caron or
12 Agent Barwick or Agent Brooks make any threats to you?

13 A No.

14 Q Did they make any promises to you with respect to what
15 was found in your pocket that day?

16 A No.

17 Q So it's your testimony that this was your
18 methamphetamine?

19 A Yes.

20 Q And you brought that to this whole deal that day?

21 A Yes.

22 Q Okay. Had you known that was in your pocket would you
23 have brought it to the deal?

24 A No.

25 Q Why not?

1 A Because I probably if not already charged I probably will
2 be charged with it.

3 Q Okay. Now, you said you had an opportunity to review
4 this video, correct?

5 A Yes.

6 MR. MARCHANT: Judge, at this time I'd like permission to
7 publish the video to the jury.

8 THE COURT: All right, show the video.

9 MR. DEJONG: May I move to the corner there, Your Honor,
10 so I can see?

11 THE COURT: Certainly.

12 BY MR. MARCHANT:

13 Q Now, would you please tell me to stop the tape at the
14 point in time the transaction occurs?

15 A Yes.

16 Q Thank you.

17 (WHEREUPON, State's Exhibit No. 1 was played.)

18 BY MR. MARCHANT:

19 Q Okay, if you can tell the jury, where is your car at this
20 time?

21 A It's the black one on the right. You can see.

22 MR. MARCHANT: Okay, permission to have the witness step
23 down, Your Honor?

24 THE COURT: Sure.

25 BY MR. MARCHANT:

1 Q Please point out your vehicle for the jury.

2 A It's this one you right here.

3 THE COURT: Why don't we let her stand on the other side
4 and face the court reporter and the jury.

5 BY MR. MARCHANT:

6 Q Now, are you able to see Mr. Dover's vehicle at this
7 point in time?

8 A You can see it a little bit right here.

9 Q This is his vehicle?

10 A Yes.

11 Q Okay.

12 A He's talking about how much---

13 THE COURT: Speak up, please, ma'am.

14 A He's talking about how much I wanted to buy that day.

15 THE COURT: All right.

16 A I said a half and that's a half gram. That's when I was
17 paying him. I paid 50 dollars. I was counting it out to
18 him.

19 Q Have a seat back up on the witness stand. Just a few
20 more questions. When you're in the vehicle, where did the
21 defendant pull these drugs from?

22 A From a cigarette pack.

23 Q Do you know what kind of cigarette pack?

24 A It was Marlborough Red, soft pack.

25 Q What all was in this cigarette back?

1 A A bag of weed then two bags---

2 MR. DEJONG: Your Honor, I'm going to object to that
3 unless that---

4 THE COURT: I'm allow it, you can cross-examine her.
5 Go ahead.

6 A It was a bag of weed then two bags that he said dope
7 which is methamphetamine.

8 Q What did he do when he pulled this out of the cigarette
9 pack?

10 A He didn't pull that big bag out.

11 Q Where did this little bag come from?

12 A He pulled that out of his pocket when he weighed it on
13 the digital scales.

14 Q Where did the scales come from?

15 A From his pocket, his coat pocket.

16 Q Did you have scales in your car?

17 A No.

18 Q He brought the scales with him?

19 A Yes.

20 Q So once he weighed out this he put it in this little bag?

21 A He then -- he put it from like a bigger bag. He poured
22 it in there.

23 Q What did he do with the big bag after he separated this
24 little bit out?

25 A Put it back in the cigarette pack.

1 Q Okay. Did he put it away, was it sitting on the
2 dashboard or what?

3 A He put it like -- I don't know where but he put it back
4 on him.

5 Q Okay. Did he leave anything in the vehicle to your
6 knowledge?

7 A No.

8 Q Once he exited the vehicle, did you have anything else
9 from him beside this bag?

10 A No.

11 Q Did you buy anything else from him that day?

12 A No.

13 Q Did you take anything out of this bag; out any other bag?

14 A No.

15 Q So what was found in this bag did not come from here?

16 A No.

17 Q Did not come from Mr. Dover?

18 A No.

19 Q Okay. This person whom I saw get into your vehicle and
20 sell you this 50 dollars, this half gram, who was that?

21 A That was Mike Dover.

22 Q Do you see Mr. Dover in the courtroom today?

23 A Yes.

24 Q Would you please point him out for the jury?

25 A He's the man sitting in the blue sweat shirt.

1 MR. MARCHANT: Thank you, no further questions. Please
2 answer any questions that Mr. DeJong may have.

3 THE COURT: Mr. DeJong.

4 MR. DEJONG: Thank you, Your Honor. May it please the
5 Court.

6 CROSS-EXAMINATION

7 BY MR. DEJONG:

8 Q So Miss Pennington, you have done a lot of drugs in your
9 day, haven't you?

10 A I've done some.

11 Q How old are you?

12 A I'm 20.

13 Q Okay. How old were you in February of 2006?

14 A I was 19.

15 Q Pardon me?

16 A 19. I turned 20 in February. At the end of February.

17 Q I'm sorry, ma'am, I'm having a very difficult time
18 hearing?

19 A I turned 20 at the end of February.

20 Q All right, ma'am. Well, now if I understood you
21 correctly you said you went into rehab in 2005?

22 A Yes.

23 Q And how long were you in rehab?

24 A For 28 days.

25 Q 28 days. Okay. And that was when?

1 A In May of 2005.

2 Q Okay. And you told everybody you're off drugs, right?

3 A In May.

4 Q You came out of rehab?

5 A When I first got out I was off drugs.

6 Q You told people you were off drugs?

7 A I told my family.

8 Q But in February your weren't off drugs, were you?

9 A No.

10 Q That was a lie.

11 A This was in February following that May.

12 Q Yes, ma'am. I understand. You were doing drugs in
13 February, weren't you?

14 A Yes.

15 Q Doing drugs before February, weren't you?

16 A Yes.

17 Q Now you obviously know that methamphetamine is illegal,
18 don't you?

19 A Yes.

20 Q And you're going to sit there and tell this jury that you
21 were caring around methamphetamine and you didn't know it was
22 on your person?

23 A No, I did not know it was on me.

24 Q You're carrying illegal drugs and you say you didn't know
25 it was there?

- 1 A I wasn't -- I wasn't using at that time. Like that week
2 before that.
- 3 Q So you're not saying you were?
- 4 A I didn't know it was on me at that time.
- 5 Q Okay. Well when you buy drugs usually you're doing drugs
6 you know you have them on you?
- 7 A We'll if you abuse them.
- 8 Q Pardon me?
- 9 A When you abuse them, yes.
- 10 Q Does abuse mean that when you're using a lot of drugs?
- 11 A I just -- means -- abuse like doing things.
- 12 Q I see. All right. Now, you had this problem with
13 shoplifting, right? You're caught stealing?
- 14 A Yes. They called -- I wasn't caught that day.
- 15 Q So you were caught later on?
- 16 A Yes.
- 17 Q I see. And then after that, that's when you called Neysa
18 Caron?
- 19 A Yes. Caron.
- 20 Q Pardon me?
- 21 A Caron.
- 22 Q Pardon me?
- 23 A Caron or I just know her by Neysa.
- 24 Q I'm not sure of the pronunciation of her last name either
25 but I believe it's Caron?

1 A Yes.

2 Q Well why did you call her then?

3 A Because I called before and I called then.

4 Q You had called before this time?

5 A I had called before.

6 Q When did you call the first time?

7 A The day before.

8 Q Okay. Well had you ever called months before or anything
9 like that?

10 A Yes. Not months before but days.

11 Q Why did you call then?

12 A To set up a buy.

13 Q Pardon me?

14 A To set up a buy.

15 Q Because of the shoplifting charge?

16 A Yes.

17 Q Okay. Well in February of 2006 were you working?

18 A No.

19 Q Okay. I want to hear a little bit more detail about how
20 you came to work with them. You said you were weren't
21 promised anything?

22 A No.

23 Q And you weren't paid anything?

24 A No.

25 Q And you're a heavy drug user in February of 2006?

- 1 A No, I don't look at myself as a heavy drug user.
- 2 Q You're drug user?
- 3 A Yes.
- 4 Q You were doing methamphetamine?
- 5 A Yes.
- 6 Q And you called the narcotics agents to set up buys?
- 7 A Yes. When I originally met her in Central.
- 8 Q I'm sorry?
- 9 A When I was arrested in Central.
- 10 Q For the shoplifting?
- 11 A Shoplifting that's when I met her.
- 12 Q Well when you started doing this there was no thought on
- 13 your part that you were going to get something out of the
- 14 deal?
- 15 A It would be taken into consideration that I was helping
- 16 -- I was trying to make a -- I was trying to like do good.
- 17 So that they would try to help me out but they didn't promise
- 18 anything.
- 19 Q Okay. So it would be taken into consideration but they
- 20 didn't promise you anything, is that what I heard you saying?
- 21 A No.
- 22 Q I see. Now in February the 6th, what time of the day did
- 23 you first call Miss Caron?
- 24 A It was early like probably 9.
- 25 Q Pardon me?

1 A Probably 9.

2 Q In the morning?

3 A Yes.

4 Q Okay. And how many times did you talk to Ms. Caron that
5 day?

6 A I talked to her twice.

7 Q Twice?

8 A Well I mean I saw her afterwards.

9 Q Well let's before you said you went to the Hot Spot and
10 bought drugs from Mr. Dover, how many times did you talk to
11 Ms. Caron?

12 A Twice, I think.

13 Q Both times on the phone?

14 A Yes.

15 Q She is the one that instructed you to meet with Detective
16 Barwick, right?

17 A Yes, she had him call me.

18 Q So what time was it that you met up with Detective
19 Barwick?

20 A I'm not sure.

21 Q Well had you been using methamphetamine on February 6th
22 of 2006?

23 A No.

24 Q Okay. How about on the 5th, did you use that day?

25 A The day before?

1 Q Yes, ma'am.

2 A Yes.

3 Q How much did you do?

4 A Not much. It was that morning.

5 Q Pardon me?

6 A Not much in was in the morning because I spent that
7 evening with my family.

8 Q Now methamphetamine has a tendency to keep you awake
9 doesn't it, Miss Pennington?

10 A Yes, if you use it a lot.

11 Q Pardon me?

12 A If you use it a lot.

13 Q Make you paranoid, can it?

14 A It can.

15 Q But you had been using meth on February 5th, the day
16 before?

17 A Yes.

18 Q Okay. Now, if I understood you correctly you said that
19 Mr. Dover had been calling you when, on the 5th or the 6th?

20 A It was the night before that when I bought it.

21 Q Well, watching this tape, if I understood that correctly,
22 there was a lot of sexual talk in that tape, was there not?

23 A Yes.

24 Q Okay. And I think it would be safe to say that Mr. Dover
25 was trying to put the moves on you that day, wouldn't it?

1 A Yes.

2 Q Pretty hot and heavy, wasn't it?

3 A Yes.

4 Q All right. And the phone calls, were they of the same
5 type of nature that we heard here?

6 A I didn't take any of the phone calls until that morning.

7 Q Pardon me?

8 A I didn't answer any of the phone calls until that
9 morning.

10 Q Until the morning of when?

11 A Of the 6th. We just left messages.

12 Q So you meet out at this predetermined place, how far away
13 was that from the Hot Spot?

14 A I'm not sure.

15 Q Well how long did it take you to drive there?

16 A Five minutes.

17 Q Okay. And do you remember what the weather was like on
18 this particular day?

19 A It was snowing and sleeting a little bit.

20 Q Okay. Was it cold?

21 A Very.

22 Q So Mr. Brooks, if I understood you correctly, he just
23 kind of patted you down?

24 A Right.

25 Q He didn't really search you?

1 A He searched me.

2 Q What part did he search?

3 A I mean, patting down is not just -- he patted. I mean,
4 for a guy he did he search as well as he could have.

5 Q I'm sorry?

6 A For a male he searched as well as he could have done.

7 Q Okay. So there were no women out there at that point in
8 time?

9 A No.

10 Q But now he didn't find anything, did he?

11 A No. I couldn't pull out that fifth pocket.

12 Q Pardon me?

13 A I couldn't pull that fifth pocket out, that little one.

14 Q Do you recall how -- I believe you said you were wearing
15 blue jeans, correct?

16 A Correct.

17 Q Do you recall whether they were loose so tight fitting or
18 do you remember?

19 A They were tighter. I still have them. Like belle
20 bottoms.

21 Q They were tight fitting but they were belle bottoms?

22 A Yeah, tight up here and flair out at the leg.

23 Q And that little pocket, watch pocket or whatever it was,
24 that would have been in a pretty tight fitting place,
25 wouldn't it?

1 A Yes. I mean, it wasn't like baggy.

2 Q Right. Now you drove your car?

3 A Yes.

4 Q And who searched your car before you went to the Hot
5 Spot?

6 A Brett.

7 Q Pardon me?

8 A Brett.

9 Q How long did it take him to search your car?

10 A A good while.

11 Q Well how long is that?

12 A I don't know for sure but it was more than -- a lot
13 longer than usual.

14 Q Okay. When you bought your methamphetamine, Miss
15 Pennington, did it usually come in little bags like this?

16 A When I bought it from who?

17 Q Anybody.

18 A It would sometimes. It was whatever they had.

19 Q Okay. But this is how it was packaged?

20 A Not every time.

21 Q Not every time?

22 A No.

23 Q Sometimes?

24 A Just whenever, I mean.

25 Q Other times how would it be packaged?

1 A Cigarette cellophane.

2 Q I'm sorry?

3 A Cigarette cellophane, any plastic forms of bags.

4 Q Not particularly big items, are they?

5 A No.

6 Q Okay. Now, what you had in your pocket, do you know how
7 much that was?

8 A No.

9 Q So after your car was searched and after you're
10 supposedly searched, then you drove to the Hot Spot?

11 A Yes.

12 Q By yourself?

13 A Yes.

14 Q Do you know if anybody was behind you or not?

15 A No. I mean, they followed me to a certain point but then
16 they weren't behind me anymore.

17 Q Well how long was it that they weren't behind you?

18 A Until I pulled up to the Hot Spot.

19 Q Well you said you had to wait 25, 30 minutes, I think,
20 for Mr. Dover to get there?

21 A Yes.

22 Q You stayed in your car that whole time?

23 A Yes.

24 Q Parked in front of the Hot Spot?

25 A Yes.

1 Q What time of day was it?

2 A It was like lunchtime.

3 Q Did you have a cell phone with you that day?

4 A Yes.

5 Q Did you call anybody during that point in time?

6 A I think my boyfriend called me.

7 Q So what we saw on the video was not the video of the
8 whole time you were at the Hot Spot, is it?

9 A No.

10 Q It was only from the time that Mr. Dover pulled up to the
11 Hot Spot?

12 A Right.

13 Q And share with me again why you moved your car?

14 A He wanted me to ride around like off the roads and I told
15 him no. So he said go to the side.

16 Q The money you said you gave Mr. Dover, where did it come
17 from?

18 A Came from Brett and Chad.

19 Q What were the denominations or how was the money given to
20 you?

21 A Two 20's and a 10.

22 Q Two 20's and a 10?

23 A Yes.

24 Q Okay. And that's the money you say you gave to
25 Mr. Dover?

1 A Yes.

2 Q Well, when Brooks searched you first, how long did that
3 search take?

4 A Probably five minutes, four minutes.

5 Q When Caron searched you after you say you made this buy,
6 how long did that search take?

7 A Probably about the same amount of time.

8 Q I'm sorry?

9 A Same amount of time.

10 Q Same amount of time?

11 A About that much. I didn't have a stop watch on me.

12 Q I understand. But you're saying it was pretty close to
13 the same amount of time?

14 A Yes.

15 Q So Caron found in the same amount of time what Brooks
16 didn't find in the same amount of time?

17 A Well she's a female so she can go a little more into my
18 pockets than.

19 Q Well where this bag was not -- the bag you had on you
20 wasn't close to any of your genitalia, was it?

21 A I mean my pocket -- my pants leg sit low. I wouldn't
22 have felt comfortable with him going in my pockets. I don't
23 think any girl would.

24 Q Describe for us what you say were these digital scales
25 Mr. Dover had?

1 A They were silver and had like a blue button.

2 Q And how big were they?

3 A They were about this big.

4 Q Did he have a coat on that day?

5 A Yeah.

6 Q Where do you say that he got these drugs from?

7 A In a cigarette pack.

8 Q Okay. And that's where you say these drugs came that he
9 weighed out for you?

10 A Yes.

11 Q But then you say once you got your drugs you don't know
12 what happened to whatever else he had?

13 A Where?

14 Q Where he put it, what he did with it?

15 A I know he took it with him. I can't remember if he put
16 it in his coat pocket or back pocket but I know he put it
17 back on him.

18 Q After May of '05 did you ever go back to rehab again?

19 A Yes.

20 Q When?

21 A In March of '06.

22 Q Shortly after you say you made this buy?

23 A Yes.

24 MR. DEJONG: One moment, please, Your Honor.

25 BY MR. DEJONG:

- 1 Q You knew Mr. Dover before February 6th of '06?
- 2 A Yes.
- 3 Q How long have you known him?
- 4 A Since he was like my landlord.
- 5 Q Pardon me?
- 6 A Since I was living in the house and renting from his Dad.
- 7 Q Okay. Where there occasions where you would call him?
- 8 A When?
- 9 Q When you were living in the house, after you lived in the
- 10 house?
- 11 A After I lived in house.
- 12 Q Did you call him after you lived in the house?
- 13 A Yes.
- 14 Q Okay. How often would you call him?
- 15 A I called him on a daily basis in like '06 and Christmas
- 16 of '05 and '06.
- 17 Q You called him on a daily basis?
- 18 A Almost.
- 19 Q Okay. These other times and over this period of time
- 20 that you had known him, was there sexual talk between you and
- 21 Mr. Dover?
- 22 A He would joke around about it with me and friends. He
- 23 was always just laughing like. It was never actual.
- 24 Q But certainly there was that talk before?
- 25 A Yes.

1 Q On many occasions?

2 A I couldn't say.

3 MR. DEJONG: Okay. Thank you, Miss Pennington.

4 THE COURT: All right, any redirect?

5 MR. MARCHANT: Just briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. MARCHANT:

8 Q These other times when you called Mr. Dover, why did you
9 do that?

10 A To buy drugs or to talk to him.

11 Q Just to clarify, because there's been some shuffling
12 between these two. Which out of these two bags, State's
13 Exhibit No. 2 or State's Exhibit No. 4, did you get from
14 Mr. These two?

15 A It was this one.

16 Q What Exhibit?

17 A 2.

18 MR. DEJONG: I'm sorry, I could not hear that exchange.

19 A 2.

20 THE COURT: Exhibit No. 2.

21 All right, anything else?

22 MR. MARCHANT: Nothing else of this witness, I ask that
23 she be excused.

24 THE COURT: Thank you, you can step down.

25 MR. DEJONG: No objection to her being excused.

1 THE COURT: She's excused.

2 MR. MARCHANT: State would call Neysa Caron.

3 THE CLERK: Place your left hand on the Bible, raise your
4 right-hand.

5 Neysa Caron, after being duly sworn, testified
6 as follows:

7 THE CLERK: Thank you, han have a seat. State your name
8 for the record.

9 THE WITNESS: Neysa Caron.

10 DIRECT EXAMINATION

11 BY MR. MARCHANT:

12 Q Agent Caron, where are you employed?

13 A I'm employed at the Pickens County Sheriff's Office.

14 Q In what capacity are you employed?

15 A I'm a agent in the special operations division.

16 Q How long you been working in special operations?

17 A I've been in special operations or narcotics since around
18 November 2004.

19 Q Where were you prior to that?

20 A I was with Pickens County Sheriff's Office, I was a
21 uniform patrol deputy.

22 Q Okay. Prior to becoming a deputy did you receive any
23 training from the Criminal Justice Academy?

24 A I did. I graduated the police academy in September of
25 2000 and became a uniform patrol deputy.

1 Q Have you had any specialized training since being in the
2 narcotics unit?

3 A I have had a good bit. I've taken narcotics and
4 undercover classes. I've had some drug recognition classes.
5 I try to take any type of advance training that's available.
6 In addition to that we have yearly mandated or legal update
7 and things to maintain your police certification.

8 Q Okay. And again, how long you been working in narcotics?

9 A Since November, 2004. Year and a half.

10 Q At some point in time did you have an opportunity to come
11 in contact with a Kat Pennington?

12 A I did.

13 Q How did that arise?

14 A I believe it was about the end of January this year. I
15 was notified that there was a female at Central Police
16 Department that had some information and I was -- I believe
17 my lieutenant called me and he asked if I could go meet with
18 her and speak with her and see what she had to say.

19 Q All right. When you met with her did she -- did you know
20 the she had any pending charges?

21 A Central advised me that they had her on a shoplifting
22 charge, I believe it was. And that she had a lot of
23 information and that she want to help. Do anything she could
24 to help herself out. I talked to her to see what kind of
25 information she had and what she was able to do.

1 Q Okay. After speaking with her what exactly did you tell
2 her that you could help here out with?

3 A I can't help her out with -- she could work, I told her
4 and anything that she does as far as working, as far as
5 helping us out with drug information would be relayed to
6 Central Police Department to the Solicitor's Office and the
7 Solicitor's Office would make the final decision. She was
8 made aware that I couldn't actually do anything on my own but
9 if she wanted to help us that we would relay whatever she
10 did.

11 Q Did you make any promises to her?

12 A No, I did not.

13 Q And, obviously, we're here because you obtained some
14 information about this defendant?

15 A That's correct.

16 Q Had you had an opportunity on February the 6th to have a
17 conversation with her?

18 A I did.

19 Q Okay. And were you working at that time that she called
20 you?

21 A No, I was on second shift that day. Katy called me, it
22 was probably mid-morning 10, 11:00 or so but I was not at
23 work yet. My lieutenant and Agent Barwick were working so
24 she called me and let me know that the defendant had
25 contacted her and wanted to do something with her. So at

1 that time I called my lieutenant and said, This girl can do
2 something, can y'all meet with her?

3 Q Okay. And after that conversation, did you know that the
4 deal had been set up that day?

5 A No.

6 Q Okay. How did you come to find out that the deal was
7 going down that afternoon, lunchtime?

8 A I was coming into work and I was coming into work a
9 little earlier as I was driving through Pickens by the Burger
10 King. In front of the Hot Spot I noticed my lieutenant's car
11 parked across the street. So at that time I called them and
12 said, Are y'all doing a deal and do you need any help with
13 anything?

14 Q Okay. And what point in time did you become involved in
15 this transaction.

16 A He told me he said, Yes, go meet with the informant. The
17 deal just happened, we're trying to observe the suspect a
18 little bit more so if you can go meet the informant. So I
19 ran and.

20 Q Did you know where the informant was going after the
21 deal?

22 A Yeah. He said at the place right near there we usually
23 meet people.

24 Q So you met the informant back at this predetermined
25 location?

1 A That is correct.

2 Q Okay. When you met her back there what did you do?

3 A I pulled up and she was just getting out of her car. I
4 met with her. We have paper work we have usually do after a
5 deal. It was cold so I went ahead and put her in my car with
6 me. We sat down. I took a statement from her about what had
7 happened with the deal. We talked a little bit more. She
8 had the drugs in her hand. She tried to give them to me and
9 for chain purposes I said, No, you need to hold those until
10 Agent Barwick gets here. She just had a bag in her hands.
11 At that time we continued to talk. A little while later
12 Agent Barwick and Lieutenant Brooks had shown up.

13 Q Okay. Prior to Agent Brooks and Barwick's arrival, did
14 you search Katy, Miss Pennington; prior to thier arrival?

15 A I did not prior to their arrival, I was taking a
16 statement.

17 Q Prior to the arrival did you search her vehicle?

18 A No.

19 Q Okay. So after she exited her vehicle did she remain in
20 you vehicle until Lieutenant Brooks and Agent Barwick
21 arrived?

22 A Yes.

23 Q After they arrived did you have an opportunity to search
24 Miss Pennington?

25 A Yes. It's customary before and after each deal we'll

1 search an informant. And since I was there now and I'm a
2 female I went ahead and searched her afterwards.

3 Q Okay. Why do you say, Because I'm a female?

4 A If an informant's a female and I'm there, I'll usually
5 search her. And vice versa. If I'm there with a male agent
6 and we have a male informant, I usually let the male search
7 him. If I'm there and there's not another male officer I
8 search them. And vice versa, if I'm not there and there's a
9 female then the male will search them.

10 Q After you searched her did you find anything?

11 A I did. I located a small baggy of a white substance in
12 her small pocket.

13 Q Let me show you what's been marked as State's Exhibit 4,
14 can you identify that?

15 A Yes, that's the baggy she had.

16 Q Okay. So after you found this baggy what did you do with
17 it?

18 A I immediately took it in my possession and put it into an
19 evidence envelope.

20 Q Okay. What happened to it after that?

21 A After that I went back to the office, it was secured.
22 And I believe it was the next day I did an evidence report
23 and turned it into our ID division to be held.

24 Q Do you recall who you turned it into?

25 A I believe Lieutenant Robinson.

1 Q Okay. Do you recall how it was turned into him?

2 A I don't. Well either -- if someone's in the office I'll
3 give it by hand or we also have a drop box.

4 Q Okay.

5 A But I believe I took it to the office but I'm not 100
6 percent sure.

7 Q Do you fill out a property report showing the same?

8 A I do.

9 Q Does this refresh your memory as to how you delivered it
10 to Lieutenant Robinson?

11 A It showed that he received the drugs or the substance at
12 15:30 which is 3:30. So I must have taken it to him by hand.

13 Q Okay. Let's don't guess, let's see how does it say
14 manner received?

15 A It's checked in person under manner received.

16 Q So you handed it directly to him?

17 A Right, in person.

18 Q Now, has this substance, has it been tested?

19 A No, it has not.

20 Q So do we have a chemical analysis of what the drug is?

21 A No, we do not.

22 Q Was Miss Pennington charged in this case?

23 A Not as of this point she not been.

24 Q - Why has she not been charged yet?

25 A A unique situation but Miss Pennington is currently and

1 still cooperating. And when she's done cooperating at that
2 point she will be charged. But at this point, due to her
3 cooperation and to preserve her indentity, we've not done any
4 reports with her name on it and brought those charges against
5 her. They are pending at this time.

6 Q Okay. With respect to the transaction that occurred on
7 this place with the defendant, did you have any other
8 involvement with it besides essentially meeting with the
9 informant after the fact?

10 A No.

11 MR. MARCHANT: I have no further questions, at this time.

12 THE COURT: I need to take a short recess before we
13 cross.

14 Take the jury out, please.

15 (WHEREUPON, the jury left the courtroom at
16 approximately 2:32 p.m.)

17 THE COURT: You can step down.

18 (WHEREUPON, a short break was taken.)

19 (WHEREUPON, the jury entered the courtroom at
20 approximately 2:42 p.m.)

21 THE COURT: Mr. DeJong.

22 MR. DEJONG: Thank you, Your Honor. May it please the
23 Court.

24 CROSS-EXAMINATION

25 BY MR. DEJONG:

1 Q So you first met or talked with Miss Pennington sometime
2 in late January?

3 A That is correct.

4 Q And that came as a result of her going to the Central
5 Police Department?

6 A I was contacted by the Central Police Department that
7 they had a female there wishing to speak with someone.

8 Q All right. Now, when you talked with Miss Pennington
9 either late in January or February the 5th or the 6th, do you
10 know whether or not she was employed or not?

11 A I'm not sure if she was or not.

12 Q Okay. Other than when you do these, what you refer to as
13 buys, other than money to make the buys, is any other monies
14 such as gas money or anything like that given to the
15 informants?

16 A Occasionally we will give them gas money.

17 Q And the location from this mystical predetermined
18 location in this case, how far was that from the Hot Spot?

19 A It was rather close to the Hot Spot in Pickens.

20 Q How long would it take to drive?

21 A Maybe a minute.

22 Q Okay. When you were coming to work that afternoon, I
23 guess, you met Miss Pennington at the predetermined location,
24 right?

25 A After I talked to my lieutenant.

1 Q Right.

2 A He asked me to go there, I did; that's correct.

3 Q Now, when you got there Miss Pennington was getting out
4 of her car?

5 A That is correct.

6 Q How long was it before Barwick and Brooks arrived once
7 you got there?

8 A Not real long. We began, I asked her about the deal
9 because I didn't know anything that had happened during the
10 deal, I just met with her. We were taking her statement.
11 And sometime around that point Agent Barwick and Lieutenant
12 Brooks came pulling up. Exactly how long, I'm really not
13 sure.

14 Q Well from what you could observe, had anyone followed her
15 from the Hot Spot back to this predetermined location?

16 A I wasn't behind her.

17 Q And from what you could observe was anybody else?

18 A I only met with Miss Pennington at the location.

19 Q Well the point of that is, some time elapsed from the
20 time she got there to when anybody else got there?

21 A I don't know how much time had.

22 Q Yes, ma'am?

23 A I pulled upright behind her.

24 Q What is the importance of searching what you refer to as
25 confidential informant before they go out to do one of these

1 what you call buys?

2 A It's a procedure we do to check to see if there's any
3 drugs on them, any weapons or anything that would concern us
4 as far as them going to do the buy.

5 Q Why would it concern you if there were drugs on them?

6 A That would be a concern. We want -- we search them
7 beforehand to make sure they wouldn't bring anything that we
8 would need to know about to do the deal.

9 Q Would it not also be possible that an informant could set
10 up an alleged buy if they had drugs on them?

11 A That could be possible but that's why we also do visible
12 and audio surveillance of the buy. Not just strictly based
13 on the informant.

14 Q Well I'm still not really clear then on the importance of
15 the search. It is important because you want to see if they
16 got illegal drugs on them important or is it important to the
17 buy that you're supposedly getting ready to do?

18 A It's important for many reasons. We do search each
19 person and we do want to make sure that there are no drugs on
20 them prior to doing a drug buy. Or weapons or anything else
21 of that nature.

22 Q Would you say that search is critical?

23 A It's an important part. There's so many aspects of the
24 buy, I don't know that it's critical.

25 Q Well, other than the buy, what are the many aspects?

1 A There's audio regarding of the buy. There's some type of
2 visual surveillance of a suspect meeting. There's
3 conversation of the buy happening. There's all different
4 aspects of the buy that go in. And the search before the buy
5 is part of it.

6 Q You say that when you got to this predetermined spot
7 location, after you talked to your lieutenant, that Miss
8 Penningotn had a baggy in her hand?

9 A She either had it in her hand or she got it and tried to
10 give it to me.

11 Q Well you say she got it, where did she got it from?

12 A I don't remember but I'm pretty sure she either had it in
13 her hand or she pulled it out of her pocket. I just remember
14 her getting it as she got out of the car and trying to hand
15 it to me.

16 Q So she may have pulled it out of her pocket?

17 A She could have.

18 Q Well, if she pulled it out of her pocket, do you remember
19 which pocket it would have come out of?

20 A No because I'm not sure she pulled it out her pocket. I
21 remember her having it and I don't remember though if she was
22 pulling it out when she got up or if she was already cuffing
23 it in her hand.

24 Q When you did your search, was that done inside the car or
25 outside the car?

1 A I searched Katy outside. We were standing up outside.

2 Q She have a coat on?

3 A I remember her having some type of green, either a pull
4 over or zip up like jacket type thing on. Blue jeans.

5 Q Did you have her take her coat off?

6 A I would have, yes. I searched the pockets. I searched
7 under the bra with my hand. We usually go along the
8 underwear line and in her pockets. And if she's wearing
9 socks, go in the socks and we'll take the shoes off too.

10 Q Well you said you would have, do you have an independent
11 recollection of having done that with Miss Penningotn?

12 A Yes, I would have. She had a jacket on, so her having a
13 jacket on, it would have been taken off. And searched and
14 felt thoroughly. And I did it that day.

15 Q I want to go back there for a minute. As you said, I
16 believe you said, that this search prior to this allege buy
17 is very important, is it not? Did you not say that?

18 A I said it's an aspect of the buy that we do before each
19 buy..

20 Q All right. You didn't say it was important?

21 A It is one of the important -- it is an important aspect
22 of the buy that we do before every buy.

23 Q All right. Now, when you have a female informant, is
24 there also a female police officer there with them?

25 A No.

1 Q Or vice versa, if you have a male informant, is
2 necessarily always a male police officer?

3 A No, not necessarily.

4 Q So now you said that you searched her after the alleged
5 buy because you are a female, right?

6 A I was sent to her after the buy because Lieutenant Brooks
7 and Agent Barwick were tied up still on the buy. When we all
8 got there I went ahead and searched her again because now
9 there's a female present. So since she is a female I went
10 ahead and searched her. It's not necessary, I mean, a male
11 can search a female and vice versa.

12 Q Well if this search before the buy is important, then why
13 isn't there a female there every time when there's a female
14 informant?

15 A I can't be there all the time. And there's a level of
16 professionalism with our job. And I have to search males at
17 some point and at some point male deputies that arrest
18 females and male narcotics agents would have to search the
19 female for them. It's just part of the job to search for
20 safety. And whether male or female, there's a level of
21 professionalism that's adhered to.

22 Q Well how long did it take you before you found this baggy
23 in the pocket?

24 A The baggy and what, I'm sorry?

25 Q How long were you into your search before you found the

1 baggy that was in the pocket of Miss Pennington which has
2 been marked as State's Exhibit No. 4?

3 A I began with her pockets and there's a small coin pocket
4 in her jeans, I stuck my finger in that pocket. I felt -- I
5 thought it was a gum wrapper or a piece of paper and I pulled
6 it out of the pocket and it was that small baggy.

7 Q Did she ever volunteer that those drugs were there?

8 A No. In fact, when I pulled it she was, I believe, as
9 surprised as I was.

10 Q Drug addicts are pretty good con-artist, aren't they?

11 A I don't know to generalize a person with that.

12 Q All right, ma'am. The pocket that you stuck your finger
13 in was not close to any of her genitalia, was it?

14 A No. Well it depends I guess on how you're sitting or
15 standing but standing it was about right here. A coin type
16 pocket.

17 Q And a male officer putting his finger in there would not
18 be more close to her genitalia, would it?

19 A No, I don't believe so. If you were able to feel it.

20 Q You have seen what has been marked Exhibit No. 2, I
21 believe, is that correct? If you feed to see it I'll show it
22 to you.

23 A Can you, please?

24 Q Did you see that on February 6th of 2006?

25 A This is the baggie that Katy was holding in her hand.

1 Q Okay. And then what has been marked as State's Exhibit
2 No. 4, that's the one you found in her pocket, is that
3 correct?

4 A That is correct.

5 Q Now the way those items are packaged, is that common
6 package in the methamphetamine trade?

7 A Yes, it is.

8 Q And specifically the size of the package and that type of
9 thing, is that common?

10 A Depends on the amount of methamphetamine. For a small
11 amount, yes, sir, a small baggy like this would be common.

12 Q You turned -- I believe you said you turned the drugs in
13 at approximately 3:30, what time did you find the drugs?

14 A I found the drugs on the 6th and it was around, probably
15 met back with her probably about 1:40 or so. And we did the
16 statement, did some debriefing, some paper work. Probably
17 around, by around, I'd say, approximately 2:00, 2:15 is
18 probably when I began my search of her and found the drugs.

19 Q Now after you found that in her pocket, you did an
20 evidence sheet and put in a evidence locker some place?

21 A Yeah, at point afterwards I did.

22 Q It was never analyzed?

23 A No, I turned it into evidence and asked them to hold it.
24 Because I wanted Katy to be able to complete the cooperation
25 she was doing. And at that point it's going to be sent off

1 to be analyzed and the reports to be done in that matter.

2 Q Did you ever go get an arrest warrant for Miss
3 Pennington?

4 A She's not been charged at this time. That will happen
5 when she's going to be charged. I will do an incident
6 report. The evidence will be sent off for analysis to
7 confirm that it is indeed meth and an arrest will be obtained
8 from the magistrate.

9 Q So the answer to that question is you never got an arrest
10 warrant?

11 A There's not an arrest warrant at this time.

12 Q You work with CI's on a regular basis, do you not?

13 A Pretty regular basis, that is correct.

14 Q And certainly you have a policy and procedure for these
15 informants?

16 A Based what -- elaborate, I guess.

17 Q Well certainly you have a procedure that they can't be
18 doing illegal drugs themselves, don't you?

19 A We, of course, would not condone any type use of illegal
20 drugs by our informants.

21 Q Okay. Now you're confusing me. I know State's Exhibit 4
22 has not been analyzed but based on your experience as a
23 narcotics agent, would you say that's methamphetamine?

24 A It appears to be methamphetamine and by Katy's own
25 admission she stated it was methamphetamine.

1 Q Well and now you say you haven't analyzed because this
2 agent is still cooperating, right?

3 A Correct, she's not yet been charged.

4 Q Well then when do you quit condoning her using illegal
5 drugs?

6 A She'll be charged at a later date when she finished
7 cooperating.

8 Q I missed something. You said you would not condone an
9 informant using illegal drugs, correct?

10 A I did say that, that is correct.

11 Q And yet, if that is your policy you're breaking your own
12 policy because you found illegal drugs on that CI?

13 A She was in possession of this package in her pocket.

14 Q You test her?

15 A No.

16 Q You're job's to get illegal drugs off the street, right?

17 A Yes, sir.

18 Q Your CI says that somebody gave her what you found,
19 right?

20 A I would assume she got it from some where.

21 Q Did you ask her?

22 A When I found it I said, What is this?

23 And she said, I guess it's been in these jeans.

24 I said, Where did it come from?

25 I believe she said she didn't know, didn't remember.

1 Q Well based on your experience as a narcotics agent, what
2 would the cost of State's Exhibit 4 be?

3 A It depends but I would approximate around 40 dollars.

4 Q About the same amount as what's in State's Exhibit No. 2,
5 is it not?

6 A There seems to be more in State's Exhibit 2 but I have
7 not weighed these.

8 Q What State's Exhibit No. 4, has it ever been weighed?

9 A No. The bag I found in her small coin pocket has not
10 been weighed.

11 Q Nothing's been done with it other than put it in the
12 evidence locker?

13 A That is correct. When it's sent off for analysis they
14 will give a report of the weight. It comes back with the
15 analysis.

16 Q Well what investigation did you do to follow up as to
17 where she got her baggy that you found in the watch pocket?

18 A There's no investigation pending. The drug was found on
19 her. She's in possession of whatever this substance turns
20 out to be once analyzed and will be charged with that.

21 Q Did you ever try to determine where it came from and set
22 up a buy from that person?

23 A She's currently cooperating.

24 Q I'm not making myself---

25 THE COURT: That question's been asked an answer, let's

1 move on, please, Mr. DeJong.

2 MR. DEJONG: With all due respect, Your Honor, I don't
3 think I did get an answer. But if that is your ruling I'll
4 move on.

5 THE COURT: Let's move on.

6 MR. DEJONG: Thank you. One moment, please, Your Honor.
7 Thank you, Miss Caron, no further questions.

8 THE COURT: Any redirect?

9 MR. MARCHANT: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. MARCHANT:

12 Q What was Miss Pennington's reaction when you know found
13 these drugs in her pocket?

14 A She was surprised. I pulled it out and the only thing --
15 she didn't really pay attention to what I was pulling out and
16 I said, Hey, what is this?

17 And she said, Oh.

18 She was very surprised. And she's aware that we search
19 before each buy. And I think she was just as surprised as I
20 was when I pulled it out.

21 MR. MARCHANT: Thank you, I have no further questions.

22 THE COURT: Thank step you, down.

23 MR. MARCHANT: Ask the witness be excuse.

24 THE COURT: Any objection.

25 MR. DEJONG: No objection, Your Honor.

1 THE COURT: Thank you, you're excused.

2 MR. MARCHANT: Call Brian Gibson.

3 Brian Gibson, after being duly sworn, testified
4 as follows:

5 THE CLERK: Thank you, be seated. State your name for
6 the record.

7 THE WITNESS: Brian Edward Gibson.

8 DIRECT EXAMINATION

9 BY MR. MARCHANT:

10 Q Mr. Gibson -- Officer Gibson, where are you employed?

11 A Pickens County Sheriff's Office.

12 Q In what capacity?

13 A I'm a crime scene investigator for identification
14 forensics.

15 Q Okay. You also have an involvement with evidence?

16 A Yes, sir.

17 Q And how long you been working in this capacity?

18 A In this capacity July 1995.

19 Q So you were working in the evidence room in February of
20 this year?

21 A Yes, sir.

22 Q Let me show you what's been marked as State's Exhibit 2,
23 do you recognize this?

24 A Yes, sir, I do.

25 Q Okay. How is that you recognize this?

1 A It has our Pickens County case number, suspect, date and
2 our officers who were involved.

3 Q At some point in time was this delivered to you?

4 A I believe it was, yes.

5 Q Who dropped it off with you?

6 A I'm not sure.

7 Q You're not sure. Would review of the chain of custody
8 refresh your memory?

9 A Yes, sir. The Agent Brett Barwick.

10 Q Okay.

11 A Dropped it off to me in person.

12 Q Okay. And once he dropped it off to you what did you do
13 with it?

14 A One we get it we log it into our computer. If it's
15 controlled substance it's going to Greenville for testing and
16 we put it in a locked room where it's secured until we do go
17 to Greenville for it to be tested.

18 Q Who has access to this locked room?

19 A Myself, Lieutenant Tony Robinson, our supervisor, other
20 officers in our forensics division and Caption Phil Sargent
21 who is our main supervisor.

22 Q So basically the people that work in the evidence room?

23 A Right.

24 Q Okay. So was this in -- once it was placed in your
25 custody and control, did anyone else have access to it except

1 those people that you just mentioned?

2 A No, they did not.

3 Q Has it remained in your evidence room prior to it being
4 tested? To the best of your knowledge?

5 A Prior to it being test?

6 Q Yes, sir.

7 A Yes, it was in our possession.

8 Q Did you have any other dealings with this particular
9 piece of evidence?

10 A Not according to the evidence sheet which we document
11 those pretty thorough to make sure that when we come to a
12 position like today we know where everything was and when we
13 got it and who we got it from.

14 Q So after Agent Barwick gave it to you you logged it into
15 evidence and that was the last you had with respect to this
16 piece of evidence until today?

17 A Correct.

18 MR. MARCHANT: I have no further questions of this
19 witness.

20 THE COURT: Any questions?

21 MR. DEJONG: Thank you, Your Honor. May it please the
22 Court?

23 CROSS-EXAMINATION

24 BY MR. DEJONG:

25 Q Let me show you what's been marked as a State's Exhibit

1 4, have you had any contact with that?

2 A Not to my recollection, no, sir.

3 MR. DEJONG: Thank you, sir, no further questions.

4 THE COURT: Thank you, step down.

5 MR. MARCHANT: State would call Tony Robinson.

6 May this witness be excused, Your Honor.

7 MR. DEJONG: No objection, Your Honor.

8 THE COURT: Thank you, you're excused.

9 Tony Robinson, after being duly sworn testified
10 as follows:

11 THE CLERK: Thank you, state your name for the record.

12 THE WITNESS: Tony Dale Robinson.

13 DIRECT EXAMINATION

14 BY MR. MARCHANT:

15 Q Where are you employed?

16 A Pickens County Sheriff's Office.

17 Q How long you been employed there?

18 A 17 years.

19 Q In capacity are you employed?

20 A I'm a lieutenant in the crime scene and property and
21 evidence division.

22 Q And what are your duties include?

23 A Other than crime scene work we take in all evidence
24 that's logged in through the sheriff's office. And we store
25 it and send it out to be analyzed or anything else that may

1 need to be done do it.

2 Q Back in February of this year were you employed in this
3 capacity?

4 A Yes, sir.

5 Q Let me show you what's been marked as State's Exhibit No.
6 2, do you recognize that?

7 A Yes.

8 Q Okay. How is it that you recognize that?

9 A It's a sealed evidence package. This is a package we use
10 for narcotics.

11 Q At some point in time did you remove that from the
12 evidence locker?

13 A I did.

14 Q Why did you do that?

15 A To take it to Greenville to be analyzed.

16 Q And what date did you do that if you recall?

17 A You'll have to hand me that chain of custody.

18 Q Okay.

19 A I took it out of evidence room on February 8th of 2006.

20 Q Okay. Where did you take it?

21 A I took it to the Greenville County property and evidence
22 room.

23 Q Who did you give it to?

24 A Renee Pruitt.

25 Q Okay. At some point in time did you then go back to

1 Greenville County and pick this up?

2 A I picked it up on March 1st, 2006.

3 Q Okay. And from March 1st until today where has this
4 piece of evidence been?

5 A I returned it to the LEC and secured it in the evidence
6 room and that's where it's been.

7 Q Okay. So has it been under your custody and control
8 until it was brought to court today?

9 A Yes, sir.

10 Q Okay. Let me also show you what's been marked as State's
11 Exhibit No. 4, do you recognize this?

12 A Yes, I do.

13 Q Okay. Would you please tell me how did you come to
14 obtain this piece of evidence?

15 A Agent Neysa Caron submitted this to me on February 7th,
16 '06 and that's where it's been in evidence every since.

17 Q Until today?

18 A Until today, yes, sir.

19 Q Do you know if this piece of evidence has been tested?

20 A It has not been tested.

21 Q Do you know if State's Exhibit No. 2 has been tested?

22 A Number 2 has been tested, yes.

23 MR. MARCHANT: That's all the questions I have for this
24 officer.

25 MR. DEJONG: Your Honor, could I, please, see the last

1 document that he testified from, please?

2 THE COURT: Sure.

3 CROSS-EXAMINATION

4 BY MR. DEJONG:

5 Q Mr. Robinson, you say what has been marked as State's
6 Exhibit No. 4, was brought do you when?

7 A February 7th, 2006.

8 Q At what time?

9 A 3:30.

10 MR. DEJONG: Thank you, I have no further questions.

11 THE COURT: Thank you, you can step down.

12 MR. DEJONG: No objection to him being excused.

13 MR. MARCHANT: State would call Renee Pruitt.

14 THE CLERK: Please place your left hand on the Bible,
15 raise your right hand.

16 Renee Pruitt, after being duly sworn, testified
17 as follows:

18 THE CLERK: Thank you, you may be sated. State your name
19 for the record.

20 THE WITNESS: Renee Pruitt.

21 DIRECT EXAMINATION

22 BY MR. MARCHANT:

23 Q Ms. Pruitt, where are you employed?

24 A Greenville County Department of Public Safety in the
25 evidence section.

1 Q Okay. What exactly are your duties in the evidence
2 section?

3 A We take in property from Greenville City, Greenville
4 County and some agencies in the surrounding area.

5 Q Okay. Would you please explain how that evidence is
6 tracked an recorded in your office?

7 A We have a log in which we fill out when evidence is
8 brought to us from an outside agency.

9 Q Okay. Let me show you what's been marked has State's
10 Exhibit No. 2, do you recognize this Exhibit?

11 A I can't say that I really recognize it. But evidence
12 that's brought into us we just check to make sure that it is
13 sealed properly before accept it.

14 Q Okay. Well let me show you what's been marked as State's
15 Exhibit No. 3, which is Pickens County property report?

16 A Okay.

17 Q Is that your signature?

18 A Yes, this my signature.

19 Q What is that signature representing?

20 A It says that I received this property and it was sealed
21 when I received it.

22 Q Okay. And what is the case number on this property
23 report?

24 A Outside agency, agencies that are not within Greenville
25 County, we cut new case numbers for them to put into our

1 system. That we did receive it. So the case number on this
2 would be 110643.

3 Q Okay. Does this case number -- does this property report
4 also list a Pickens County case number, do you know?

5 A Yes, it does.

6 Q Okay. And what is that case number?

7 A That case number 20063086.

8 Q Okay. I'm going to show you again what's been marked as
9 State's Exhibit No. 2, do you see the case number, the
10 Pickens County case number on this piece of evidence?

11 A Yes, I do.

12 Q Okay. So from those two pieces of evidence, is this a
13 piece of evidence that you took in into your custody from
14 Lieutenant Tony Robinson?

15 A Yes.

16 Q Okay. And who did you -- what did you do with it once
17 you got it from Lieutenant Robinson?

18 A Once we get evidence from the outside agency, if they're
19 not already in the envelope, then I'll will do it or any of
20 the other technicians will make an envelope to stick the
21 evidence in before we put into our drug vault. Once it's put
22 into our drug vault it stays there until one of the
23 criminologist comes down and picks it up to take back and
24 have it analyzed.

25 Q So once you received it, you put it in the drug vault?

1 A Yes.

2 Q At some point in time did you again remove it from the
3 drug vault?

4 A Well it's not removed from the drug vault until
5 Mr. Armstrong came to get it.

6 Q After Mr. Armstrong would have tested it, what would he
7 have done with it?

8 A He keeps it in his office until he finishes with it.

9 Q Okay. Once he's finished with it, where is it stored?

10 A It's brought back to us and we put it back into our drug
11 vault.

12 Q Okay. And at what point in time did you remove this
13 evidence from the drug vault?

14 A Okay, I removed it on the 8th -- February 8th, 2006 at
15 9:45.

16 Q And who did you give it to?

17 A No, I'm sorry, that's what time I have received it. It
18 was removed on February the 9th, 2006 at 3:30.

19 Q Okay. And why was it removed?

20 A Mr. Armstrong came down to get it to do testing on it.

21 Q Okay. After Mr. Armstrong tested it, where did it go
22 from there?

23 A When Mr. Armstrong finished up his analysis it was
24 brought back to us.

25 Q Okay. And you held it for some period of time; is that

1 correct?

2 A I was the receiving officer and it came back from
3 analysis on February 21st and Lieutenant Robinson came and
4 picked it up on March the 3rd.

5 Q Okay. So the last person in your office to have this
6 piece of evidence was you?

7 A Yes.

8 Q Before Lieutenant Robinson picked it up?

9 A Yes.

10 Q Okay.

11 MR. MARCHANT: I have no further questions. And I move
12 State's Exhibit No. 3 be admitted.

13 MR. DEJONG: No objection, Your Honor.

14 THE COURT: Any questions, Mr. DeJong?

15 MR. DEJONG: I may, Your Honor, I may not. If I can see
16 this document for just a second, please. Just a couple, very
17 briefly, Your Honor.

18 (WHEREUPON, State's Exhibit No. 3 was admitted
19 into evidence.)

20 CROSS-EXAMINATION

21 BY MR. DEJONG:

22 Q Ms. Pruitt, let me show you this document again, what's
23 been marked as State's Exhibit No. -- I forgot the number.
24 Good memory, awfully short. State's Exhibit No. 3. It went
25 to Mr. Armstrong's office on February 9th?

1 A Yes.

2 Q And then it remained out of your locker until February
3 the 21st?

4 A Yes.

5 MR. DEJONG: Thank you, ma'am, no further questions.

6 THE COURT: Thank you, you can step down.

7 MR. MARCHANT: State calls James Armstrong.

8 James Armstrong, after being duly sworn,
9 testified as follows:

10 THE CLERK: Thank you, be seated. State your name for
11 the record.

12 THE WITNESS: James William Armstrong.

13 DIRECT EXAMINATION

14 BY MR. MARCHANT:

15 Q Where are you employed?

16 A With Greenville County Department of Public Safety
17 forensics division crime laboratory.

18 Q Do you have a title?

19 A Criminalist.

20 Q Okay. What exactly does a criminalist do?

21 A Well actual have a dual function. I'm a drug chemist and
22 fire arms examiner.

23 Q Please tell me what a drug chemist does?

24 A We analyze suspected controlled substance such as white
25 powder, rock substances, plant materials to determine whether

1 or not there is a controlled substance present.

2 Q Okay. How long have you been employed in this capacity
3 with Greenville crime lab?

4 A A little over 10 year.

5 Q Let's talk about your educational background, do you got
6 to college?

7 A Yes, sir I did.

8 Q Did you go to graduate school?

9 A No, sir.

10 Q What is your further education with respect to your
11 field?

12 A I have Bachelor Science Degree in Chemistry from Erskine
13 College. I've attended and completed the South Carolina
14 Criminal Justice Academy. I've attended numerous
15 instrumental analysis schools concerning the instruments I
16 use in my analysis. I have received approximately a year
17 plus training under the supervision of the lab supervisor. I
18 have been certified by South Carolina Law Enforcement
19 Division to analyze dangerous and controlled substances.
20 I've attended the drug enforcement administration forensic
21 chemist seminar sponsored by the drug enforcement
22 administration in Washington, D.C. I've testified no fewer
23 than 88 times as an expert in the area of drug identification
24 in Federal, State and local courts in drug analysis.

25 MR. MARCHANT: With that I'd like to move Mr. Armstrong

1 as an expert witness in drug analysis.

2 THE COURT: Any voir dire?

3 MR. DEJONG: No voir dire, Your Honor.

4 THE COURT: He's qualified.

5 BY MR. MARCHANT:

6 Q Let me show you what's been mark as State's Exhibit 2, do
7 you recognize this?

8 A Yes, sir, I do.

9 Q Please tell the jury how is it that you recognize this?

10 A The outside bag has any initials and the date which I
11 sealed it. The bag which came to me sealed from the agency,
12 it has my initials and date in which I opened the bag.

13 Q What's the date on that?

14 A February 13th.

15 Q Okay.

16 A 2006. And the innermost bag which has some rock
17 substance has the item number and my initials and the weight.

18 Q Okay. Was this evidence sealed when you received it?

19 A Yes, sir, it was.

20 Q What would you with some evidence that was not sealed?

21 A If it was not sealed I would make a notation on the bag
22 and on the property sheet that the evidence was not sealed at
23 the time of the analysis.

24 Q Okay. So how do you know this bag was not tampered with
25 or the seal had not been broken?

1 A There's no notation.

2 Q What were your findings with respect to what's in this
3 evidence bag?

4 A In this case I had a bag containing rock substance and I
5 found it to be methamphetamine with a weight of 0.39 grams.

6 Q Okay.

7 MR. MARCHANT: At this point in time, Your Honor, I'd
8 like to move this State's Exhibit No. 2 into evidence.

9 THE COURT: Any objection?

10 MR. DEJONG: No objection, Your Honor.

11 (WHEREUPON, State's Exhibit No. 2 was admitted
12 into evidence.

13 MR. MARCHANT: I have no further questions of this
14 witness at this time. Please answer any questions Mr. DeJong
15 may have.

16 MR. DEJONG: Thank you, Your Honor. May it please the
17 Court.

18 CROSS-EXAMINATION

19 BY MR. DEJONG:

20 Q How many agencies do you do testing for, Mr. Armstrong?

21 A Approximately 20.

22 Q That includes Greenville County?

23 A Yes, sir. Greenville County, Pickens County, federal and
24 state agencies throughout, yes, sir.

25 Q Okay. And how many chemists are in your particular lab

1 there in Greenville?

2 A At the moment we have two.

3 Q Two?

4 A Yes, sir.

5 Q Okay. And how many tests would you say you do on a daily
6 basis?

7 A That depends upon the case load. My average for the last
8 eight years, for a total of year, has been approximately 1200
9 cases a year.

10 Q You work five day weeks?

11 A Yes, sir.

12 Q Okay. Now when you say 1200 cases, that would be James
13 Armstrong cases not the other chemists?

14 A Yes, sir.

15 Q Not total for the lab. Now, according to the evidence
16 sheet, this particular substance that you say you tested was
17 taken out, as I understand it, out of the drug vault on
18 February 9th?

19 A That is correct.

20 Q And it was returned to the drug vault on February the
21 16th?

22 A Yes, sir.

23 Q I mean, correction, February 21st?

24 A Yes, sir.

25 Q I believe you did your testing on the 16th?

1 A Correct.

2 Q Now, when you take it out of the drug vault or when you
3 got it from Ms. Pruitt -- when you get it from her where does
4 it go next?

5 A It goes to my office. Inside my office, if I'm not in
6 the office working the case at the time, it goes into a
7 locked locker. Where I have combination lock on it and only
8 I have that combination.

9 Q Now, obviously you keep more than one substance in that
10 locker at a time that's to be tested?

11 A Yes, sir.

12 Q How many do you keep in that locker?

13 A That depends upon the case load.

14 Q Average?

15 A Probably 15, 20.

16 Q Okay. How many tests do you run at a time?

17 A One.

18 Q Well how many tests do you run?

19 A That's depending on the case.

20 Q Pardon me?

21 A That's depending on the case. Like this case had one
22 Exhibit. I had one test. And I only open one case at a
23 time. And once that case is completed then the next case is
24 opened.

25 Q Okay. You're jumping ahead of me a little bit but that's

1 okay. I understand you say you only have one exhibit so we
2 understand what we're talking about, when you say there is
3 only one Exhibit, that is in reference to this case you only
4 had one baggy, right?

5 A Correct.

6 Q But you run more than one test?

7 A I do a chemical spot test and instrumental analysis, yes,
8 sir.

9 Q Okay. So you do a chemical analysis test, what is that?

10 A Chemical spot test gives me indication. It's a
11 preliminary test. It gives me an idea of what I may or may
12 not have. Depending on color change. And then from there I
13 determine which instrument I need to use to run the analysis
14 on.

15 Q Well you said you've done I believe 1200 cases over the
16 last year, in that 1200 cases how many were methamphetamine?

17 A Approximately half.

18 Q So roughly 600?

19 A Yes.

20 Q When you look at a substance, do you have some notion of
21 what you're looking at?

22 A I have a pretty good idea but I have been wrong. Just by
23 my visual observation, yes, sir.

24 Q But it would be fair to say that you go into this testing
25 with some preconceived notion?

1 A No, sir.

2 Q None whatsoever?

3 A No, sir. I've reported out several cases with no control
4 substance detected.

5 Q All right. Well now the chemical test you said, that's
6 just a preliminary test?

7 A That is correct.

8 Q And what is the next test you did?

9 A Since my preliminary test gave me an indication that I
10 may have a methamphetamine base product I did a gas
11 chromatograph mass spectrometer.

12 Q And that's a mouth full?

13 A Yes, it is. We use short for GCMS.

14 Q Without making me try to have to say that, explain just
15 briefly to this jury how that works?

16 A Certainly. It's two instruments in one. Gas
17 chromatograph and a mass spectrometer. The gas chromatograph
18 is a big oven which has a hollow tube inside. The sample is
19 injected into this hollow tube and it's being pushed through
20 the tube with a carrier gas which is heated. Once it's in
21 this oven, the oven is ramped up from 60 degree up to 280
22 degrees. During this ramp, lighter molecules off faster,
23 heavier molecules stay behind longer. So it's being pushed
24 through and then it goes into the mass spectrometer. The
25 mass spectrometer identifies and actually breaks apart those

1 compounds once it comes out the other end and into the mass
2 spectrometer. Once it's in there the electrons are broken up
3 and then I get a fingerprint of that compound and judge by
4 the mass of charged ratios of what the compound is.

5 Q Okay. Well that first part you're talking about when
6 it's in the oven, that's not visible to the naked eye, is it?

7 A No.

8 Q That's based on how you are told that machine worked in
9 your training, right?

10 A Well we can actually see that compounds are coming
11 through. There is a ion gauge that hooks to the mass that
12 tells us when a flow stops or is following through the GC.
13 And we can detect any leaks, any tears whatsoever in the
14 product.

15 Q The machine doesn't actually shout out that this crack
16 cocaine or methamphetamine or?

17 A No, sir.

18 Q Actually it prints out a graph, doesn't it?

19 A Yes, sir.

20 Q And on that graph there are certain peaks and valleys
21 with little jacked edges in between, right?

22 A Yes, sir.

23 Q So it is not purely that the machine tells you what a
24 substance, is it?

25 A It does not tell us completely, no, sir. We have to run

1 standards on our machine to have an idea. And then we
2 compare those standards to our unknowns.

3 Q Right. And that becomes -- there's a large subjective
4 element. In other words, what you think, not what the
5 machine says, but what you think, how does that compare to
6 what you're saying is the known?

7 A Well we have a set up with our machine that actually does
8 a computer check, compares to our library of known. When we
9 have a sample that comes out on the mass spectrometer. It
10 then gives us a print out that gives an idea that it is that
11 substance.

12 Q So you have that on board library on the computer?

13 A Yes, sir.

14 Q Now indeed and in fact when that comes out you get
15 basically a top five or top 10 list, don't you?

16 A No, sir.

17 Q You just get one?

18 A On this one here we get a one print out because we have
19 actually compared methamphetamine thousands of times and we
20 know that from our known that is in the library, when it
21 comes to a match, we compare it and if it looks weird we
22 check other compounds, yes, sir. But if everything it
23 matched identical then we know that it is that compound.

24 Q Well wouldn't there be different strengths of
25 methamphetamine?

1 A Well there maybe but methamphetamine is methamphetamine.

2 Q So doesn't make any difference in the strength is what
3 you're telling me?

4 A Does not matter in my opinions.

5 Q In other words, methamphetamine has every peak, every
6 crag, every valley, you're telling me is going to match
7 identically?

8 A Yes, sir.

9 MR. DEJONG: Thank you, sir. No further questions.

10 THE COURT: Thank you, step down.

11 MR. DEJONG: No objection the him being excused.

12 THE COURT: Thank you.

13 MR. MARCHANT: Your Honor, at this time the State would
14 move Exhibit No. 4 into evidence as well.

15 MR. DEJONG: Without objection, Your Honor.

16 THE COURT: All right.

17 (WHEREUPON, State's Exhibit No. 4 was admitted
18 into evidence.)

19 MR. MARCHANT: And that's the State's case, Your Honor.

20 THE COURT: All right, take the jury out a minute,
21 please.

22 (WHEREUPON, the jury left the courtroom at
23 approximately 3:29 p.m.)

24 THE COURT: All right, do I have any motions?

25 MR. DEJONG: Your Honor, I would move for a directed

1 verdict in that there is no substantial, credible evidence
2 from which the jury could find guilt in this matter. This
3 confidential informant had other drugs on her. We have worn
4 that course out, I think. But I certainly think that with
5 that and even looking at the tape, Your Honor, I would submit
6 that there's no substantial, credible evidence in which they
7 could find guilt. Even looking at it in light most favorable
8 to the State.

9 THE COURT: And I'd have to disagree with that and deny
10 your motion.

11 MR. DEJONG: Thank you, Your Honor.

12 THE COURT: All right, now---

13 MR. DEJONG: Could I have a brief recess to confer with
14 my client?

15 THE COURT: Yes, you may.

16 THE COURT: All right.

17 MR. DOVER: Thank you so much, Your Honor, for giving me
18 that opportunity. I have discussed with Mr. Dover his right
19 to testify, Your Honor. I discussed with him his right not
20 to testify. He shares with me that he desires not to testify
21 but I certainly offer him to, Your Honor, to question.

22 THE COURT: All right, would you put him under oath,
23 please, Carolyn.

24 THE CLERK: Please raise your right hand.

25 James Dover, after being duly sworn, testified

1 as follows:

2 THE COURT: You can be seated.

3 EXAMINATION

4 BY THE COURT:

5 Q Mr. Dover, we're at point in your trial where I need to
6 determine whether or not you will take the stand and testify
7 or otherwise present testimony in your defense, okay?

8 A Yes, sir.

9 Q I understand Mr. DeJong has fully explained your rights
10 to you concerning this issue, is that correct?

11 A Yes, sir.

12 Q You don't have to take the stand and testify or otherwise
13 present evidence or testimony because that is your
14 Constitutional right. The burden is on the State to prove
15 you guilty beyond a reasonable doubt. Do you understand
16 that?

17 A Yes, sir.

18 Q You have absolutely no burden in this case. Do you
19 understand that?

20 A Yes, sir.

21 Q Now, with that understanding I tell you that you got a
22 perfect right to take the stand and testify and tell this
23 jury your side of the story, okay; do you understand that?

24 A (The defendant nods.)

25 Q If you take the stand and testify then you become subject

1 just like any other witness to cross-examination by the
2 State, do you understand that?

3 A Yes, sir.

4 Q I don't know whether or not you have any prior record
5 that the State could use to impeach you but if you do then
6 the State could do that, do you understand that?

7 A Yes, sir.

8 Q I understand that you do not wish to take the stand and
9 testify or otherwise present testimony or evidence, is that
10 correct?

11 A Correct.

12 Q Is this a decision you have made?

13 A Yes, sir.

14 Q Mr. DeJong has not put any pressure on you to stay off
15 the stand and not testify or present evidence?

16 A No, sir.

17 Q That is your decision?

18 A Yes, sir.

19 Q Are under the influence of any alcohol, drugs or any
20 other substance right at this moment?

21 A No, sir.

22 Q You're sober, you know what you're doing and you have
23 made the decision freely and voluntarily not to testify or
24 present evidence, is that correct?

25 A Yes, sir.

1 Q You're satisfied with the services of your lawyer?

2 A Yes, sir.

3 Q You don't have any complaint to make against him?

4 A No, sir.

5 Q Is that correct, sir?

6 A No, sir.

7 THE COURT: All right. Then you will have the final
8 argument in the morning, Mr. DeJong.

9 MR. DEJONG: In the morning, Your Honor?

10 THE COURT: Yes, sir.

11 MR. DEJONG: Thank you so much, Your Honor. I was hoping
12 you would say that.

13 THE COURT: All right, we will started back at 9:00 in
14 the morning.

15 All right, bring the jury, please.

16 (WHEREUPON, the jury entered the courtroom at
17 approximately 3:44 p.m.)

18 THE COURT: Ladies and gentlemen of the jury, in a trial
19 of a case a defendant never has any burden whatsoever. A
20 defendant does not have to take the stand and testify or
21 otherwise present evidence because that's his or her
22 Constitutional right. The burden also remains on the State
23 to prove a defendant guilty beyond a reasonable doubt. The
24 defendant in this case has exercised his Constitutional right
25 not to testify or otherwise present evidence. So this will

1 conclude the evidence in this case. What we have remaining
2 is the final arguments by the attorneys and then my charge on
3 the law. We'll do that in the morning. I'll ask that you be
4 back in your jury room at 9:00 tomorrow morning. And please
5 remember when you leave do not talk about this case among
6 yourselves or with anyone else. This includes even members
7 of your own family. You can tell family members that you're
8 serving on this case, what kind of case it is but don't
9 discuss this case with them or as I said anyone else.

10 If anybody contacts you and tries to talk to you about
11 this case, get their names and addresses and report that to
12 me. Please have your badges on when you come back in the
13 morning so that everyone involved with this case will know
14 that you are a juror and should not discuss this case in your
15 presence. So with that I'll see you back at 9:00 in the
16 morning. Thank you.

17 (WHEREUPON, the jury left the courtroom and was
18 excused for the day at approximately 3:46 p.m.)

19 THE COURT: All right, see you in the morning.

20 MR. MARCHANT: Thank you, Your Honor.

21 MR. DEJONG: Thank you, Your Honor. Have a good evening.

22 (WHEREUPON, the court proceedings concluded for
23 the day at approximately 3:50 p.m. to reconvene
24 Thursday, July 26, 2006 at approximately 9:00
25 a.m.)

1
2 Thursday, July 27, 2006

3
4 THE COURT: All right, Solicitor, you ready to talk to
5 the jury?

6 MR. MARCHANT: State's ready, Your Honor.

7 THE COURT: Bring them on, please.

8 (WHEREUPON, the jury entered the courtroom at
9 approximately 9:00 a.m.)

10 THE COURT: All right, Solicitor, you may proceed.

11 MR. MARCHANT: May it please the Court.

12 Mr. DeJong.

13 Good morning, ladies and gentlemen of the jury. At this
14 time the case is getting ready to be handed over to you. I'm
15 going to give you my final thoughts as well as Mr. DeJong
16 will follow me up. The first thing I want you to think about
17 is what this man's charged with. Distribution of
18 methamphetamine. Did he distribute, dispense, deliver a
19 quantity of methamphetamine? Which is illegal in the State
20 of South Carolina. And did he do that within one half mile
21 of Pickens Elementary School? I submit to you right now that
22 he did. The statute does not require for it to be sold or
23 sold for money. It just says distribute or delivered. Okay.
24 However, I believe the facts of this case have shown you that
25 he did on the 6th of February of this year deliver one half

1 gram of methamphetamine to this informant, Katy Pennington.
2 Who testified on the stand before you yesterday.

3 Now, it's going to be completely up to you to weigh her
4 credibility and believability in this case. I submit that a
5 lot rests on her testimony. What has he told you? She told
6 you that she got arrested back in January of this year for
7 shoplifting. She told you it was silly, a 99 cent lighter
8 and that she was hoping to work off or get some consideration
9 out of the central Police Department. But she was working
10 with the Pickens County Sheriff's Office. Now, she told you
11 she got convicted of that charge. Even though she had been
12 assisting agencies in this area. She told you that back in
13 high school she had graduated and moved into a house that she
14 rented from this man and either his brother or father. And
15 she's known him for well over two years. She knows his
16 activities and knows that he was a drug dealer. Which is why
17 she chose to come forward and cooperate with the sheriff's
18 office in order to get some of the these illegal drugs off
19 the street.

20 Now, again, we're going to talk about her credibility and
21 her believability. There's been no question that there were
22 drugs in her pocket after this deal. She has never denied
23 that on the stand. These police officers have never denied
24 that. Agent Brooks told you that he thoroughly searched her.
25 Well apparently he missed it. You can look at it. Been

1 marked as State's Exhibit No. 4. Came out of her coin pocket
2 in her blue jeans. It's very small. She told you that it
3 was there. She told you that she had used it. She told you
4 that she had used methamphetamine the day before. I told you
5 this was a dirty business. Can't get to people like the
6 defendant without using the people in the trade. I surely
7 hope that you don't think that these officers would risk
8 their jobs, their representations in order to convict one
9 individual. They made a mistake. They did not find this
10 dope before this deal transpired. They told you that on the
11 stands.

12 Lieutenant Brooks, over 15 years of experience. Is he
13 going to risk trying to put one person in jail over this? Is
14 that worth his career? He told you didn't find it. Agent
15 Caron told you she found it after the fact. She told you
16 Miss Penningotn was surprised. Miss Pennington told you she
17 didn't know it was there. Surely she wouldn't have brought
18 it on her own accord. She said she was using, she just
19 forgot it was in there. And it wasn't found. You have to
20 get over that hurdle and I Understand that. I submit that
21 you can get over that hurdle. If you take this dope and
22 compare it to this dope, you'll see they're different sizes.
23 So I submit to you that one, that they didn't come out of the
24 same bag. If Mr. Dover did not deliver it to Miss
25 Pennington. These are two separate pieces of dope.

1 I submit to you that the video is extremely clear.
2 There's no question -- there should be no question in your
3 mind that Mr. Dover is the one that arrived at the Hot Spot
4 that day. That he got out of his vehicle and got into her
5 vehicle. And at many occasions there was talk of the drug
6 trade and drug activity. There's one that he says, I don't
7 do credit. Talking about \$3200 that he's owed to him. Then
8 they get into the discussion about the actual deal that took
9 place that afternoon. She testified that he pulled this
10 methamphetamine out of a cigarette pouch. That he pulled it
11 out, emptied it on to a scale. Weighed the scale -- weighed
12 on the scale the bag and the dope. And says, That's a half
13 gram. Bag weight and all. What does that tell you?
14 Distribution. And, in fact, at two points in time that
15 video, more specifically at 1:14 and 12 seconds that day he
16 asked her, How much you want?
17 She says, A half.
18 He asked her again, 1:14 57, How much did you want again?
19 A half gram.
20 She follows that up a few minutes later at 1:17 35, How
21 much was that?
22 50. Starts counting it out.
23 Now, I hope you were paying attention. Agent Brooks says
24 there were two 20's and two 5's. She said there were two
25 20's and a 10. Agent Brooks has it documented in his report,

1 I don't know whether she didn't but there was no question
2 that it was \$50. He said it was \$50, she said it was \$50 and
3 you heard \$50 on the video. He's got \$50 documented in his
4 incident report with serial numbers that were given that day.
5 Now why wasn't that money found? Mr. Dover wasn't arrested
6 until several days later, that money's gone. Money changes
7 hands very quickly. It's not unlikely that agents do not
8 recover money that's used in the drug transaction.

9 Again, I'm going to ask you, he's charged with
10 distribution and distribution within one half mile of Pickens
11 Elementary School. Did he, on that day, deliver, dispense,
12 sell methamphetamine to an informant working under the
13 supervision of the Pickens Sheriff's Office? Now we've gone
14 through yesterday afternoon, there were a number of witnesses
15 up here that had to tell you, you know, who did do you hand
16 this to first? When did you sign? Etcetera, etcetera,
17 etcetera. What that demonstrates is that this
18 methamphetamine that was recovered that day is the same
19 methamphetamine that was tested by James Armstrong of the
20 Greenville County Public Safety Office. He told you with 100
21 percent certainty, this is methamphetamine with a weight of
22 .39 grams. This dope is the same dope that Katy Penningotn
23 turned over to Agent Brooks that afternoon following the
24 sale. She told you she didn't stop anywhere afterwards. She
25 didn't talk to anybody after the sale until Agent Caron

1 arrived at the predetermined location.

2 There's one issue here. Did this guy deliver a quantity
3 of methamphetamine to an undercover operative working with
4 Pickens County Sheriff's Office? In it's on you to determine
5 what happened up here. And what happened in the video.
6 You'll have all this to take back to the jury room and decide
7 whether the State has produced enough evidence to convince
8 you beyond a reasonable doubt. And, His Honor, will tell you
9 in a minute, I believe, that it's not any doubt, you don't
10 have to 100 percent certainty but a reasonable doubt. I
11 believe he'll tell you that reasonable doubt would be what
12 would cause a reasonable person to hesitate to act.

13 I submit to you that I have met that burden. That this
14 evidence is sufficient to convict that man of distribution
15 and distribution within one half mile. That half mile being
16 measured by Agent Brooks with GPS satellite .35 miles. From
17 the Hot Spot up here on Highway 8 to Pickens Elementary
18 School.

19 Now, again, I realize there are some issues that happened
20 in the case that certainly I didn't wish they weren't there.
21 You wouldn't think that we'd have an informant that would
22 come to a drug deal with dope on them. People are human,
23 they make mistakes. I hope you can understand that and get
24 past that. She told you she was a drug user. She was using
25 at the time. She used the day before. She had not used that

1 day. She has been completely honest, forthright and upfront
2 with you about everything that has happened in her life up to
3 this point. She's young, she made some mistakes earlier on.
4 She was trying to rectify those mistakes. She was trying to
5 do right. And, in fact, what she was trying to get herself
6 out for, she's even been convicted of. So I submit to you
7 that she is completely credible and that you can believe
8 everything she says. She has nothing to gain out of this.
9 There is no way any law enforcement officer can help her.
10 She's already been convicted. She didn't have to come today.
11 She didn't have to get up here and tell you that. She could
12 have told you whatever she wanted to because whatever help
13 she was going to get is gone. They can go nothing for her,
14 she's been convicted already. So I submit to you that she is
15 completely credible and she's believable.

16 And again, I would hope that you can look past this
17 misstep in this investigation. And certainly that these
18 officers would not -- setting this guy up would not risk
19 there lives, put this informant in harm to do one deal.
20 Wreck their entire career with the sheriff's office.

21 Again, did this man deliver a quantity of
22 methamphetamine? To an undercover agent? That's the sole
23 question. And did the State prove that beyond a reasonable
24 doubt? I need you to take this information, take what you've
25 heard on the stand. You're going to take it back there and

1 you're going to become the judges of the facts. His Honor,
2 is the Judge of the law. You cannot question what the law
3 says. It says, Did he distribute? Point blank, yes or no.
4 If you don't believe that he distributed a quantity of
5 methamphetamine that day, I submit to you let him go. Come
6 back with not guilty. However, I submit there is enough
7 information here to prove to you beyond a reasonable doubt
8 that he did. Not only did he deliver, distribute, but he
9 sold it for profit. You can hear it on the video. He's
10 weighing it out on his scales. There it is, half a gram. It
11 was collected. It was tested. Came back positive as
12 methamphetamine. And it did occur within one half mile of
13 Pickens Elementary. I submit to you to take this information
14 back, deliberate over it. And there's only one verdict that
15 you can come back with. And that verdict is guilty. Thank
16 you for your time and attention in this case.

17 THE COURT: Mr. DeJong.

18 MR. DEJONG: Thank you, Your Honor. May it please the
19 Court.

20 Mr. Marchant.

21 In a trial everybody in the courtroom, including the
22 jury, I say including the jury, the jury is probably
23 paramount in a trial. Everybody has a function and a job.
24 Now, His Honor, presides over this case and he rules on
25 matters of law, he will charge you on the law. And if, His

1 Honor, makes a mistake that will be corrected or can be
2 corrected. The Solicitor's job is to prosecute a case and
3 attempt to get convictions. And if he makes a mistake
4 there's a higher court that will correct that mistake. My
5 job is to defend my client. And if I make a mistake there is
6 a court looking over my shoulder that will correct that. Now
7 your job, ladies and gentlemen, is to reach a verdict in this
8 case. Nobody looks over your shoulder. You come back with a
9 verdict, no one can even talk to you about that verdict
10 unless you want to talk to them. Nobody can say the jury was
11 right or wrong. Because your verdict is final, without
12 question.

13 Now, we have a case here, the Solicitor says it is a
14 dirty business. And indeed it is. But even in a dirty
15 business, ladies and gentlemen, there has to be certain
16 etiquette. Throughout the testimony in this case of asking
17 officers about these searches of these confidential
18 informants, very important. Critical -- they wouldn't quite
19 go to the point of critical but very important. I think it
20 was obvious why that is important. Now Mr. Marchant says
21 this informant has nothing to gain by coming to you and
22 testifying in this case. I certainly submit to you, ladies
23 and gentlemen, that she has a great deal to gain at that
24 point in time. I think she was looking for gain on February
25 the 6th or 5th I believe it was of 2006 when they say this

1 transaction happened. She apparently and obviously a drug
2 addict, a liar and thief, was trying to curry favor with law
3 enforcement. No two ways about it. That was when the
4 alleged buy happened.

5 Now, on that day she got herself into a bigger and deeper
6 hole. And one which she is still not out of. By State's
7 Exhibit No. 4. She has hanging over her like a cloud at this
8 point in time, her own charge, of possession of
9 methamphetamine. And the State would have you to believe
10 that she has no reason to come in here and tell you something
11 that is not true. Aside from the fact of her very
12 personality of being a drug addict, a thief and a liar. And
13 that's just the bottom line. In may of 2005, by her
14 testimony, she went into rehab. She came out of rehab and
15 started using again. And then said after sometime, after
16 this alleged buy, that she went back into rehab which I
17 believe was in March according to her testimony. She was a
18 heavy user. And as I recall her testimony, she used just
19 about anything and everything she could get her hands on.
20 She's an addict. And yet the State wants you to come in and
21 say well she's an addict but has no reason to lie, she was
22 telling the truth, hog wash.

23 A police officer, 15 years, searches thoroughly, this
24 woman. They missed drugs. Now they want to make a big to-do
25 out of the fact that what they missed was a small pack. Well

1 look at State's Exhibit No. 2. Other than the plastic bag,
2 same thing. They say they searched the car. They also say
3 they searched her. Did any police officer ride with her to
4 the Hot Spot? No, they didn't. Indeed, ladies and
5 gentlemen, no one even followed her back from the Hot Spot to
6 that predestinated location. She went by herself. A thief,
7 a liar and an addict. Who has methamphetamine on her before
8 she ever goes to make this alleged buy.

9 And, ladies and gentlemen, they say she was surprised
10 that she had methamphetamine on her. Hogwash again. You
11 don't carry around illegal drugs and you don't know they're
12 in your pocket. What was the relationship between her
13 Mr. Dover? It's not entirely clear. They had known each
14 other for some period of time. There had been a lot of
15 sexual talk, as I recall the testimony, between this
16 confidential informant and Mr. Dover. Not just on this
17 particular day but by her testimony over a period of time.
18 She said nothing ever came of it.

19 So again, if you're currying favor with law enforcement,
20 you're looking for something. You want something. And
21 interestingly enough they gave her \$10 worth of gas money.
22 Now \$10 isn't a lot of money but a lot of money to an addict
23 who isn't working. \$10 gas money to drive approximately two
24 miles one way. And we can sit say \$10, that's nothing. I
25 submit to you, ladies and gentlemen, \$10 is lot of money to

1 an addict. And then the \$50. She says she gave \$50 to Mr.
2 Dover for a half gram of methamphetamine.

3 Now, ladies and gentlemen, you take the testimony as you
4 heard it, not as Mr. Marchant says it or as I say it because
5 you're charged to take it as you heard it as it came from the
6 witness stand as you heard it. But on the video, watching
7 the video and as I recall Mr. Marchant says, tell me when the
8 transaction took place. Now, I never heard where she said,
9 This is where he gave me methamphetamine. I heard her say
10 this is where I gave him the \$50. But I never heard her say,
11 This is where he gave me the methamphetamine. So again, for
12 whatever reason, ladies and gentlemen, other than the fact
13 that you're a crook, a liar, a thief an addict and you're
14 currying favor with law enforcement, and if you're going to
15 go out and make a buy you've got to bring drugs back. Well
16 she had drugs on her. Now is it anymore less plausible to
17 think that she had new bags on her after this thorough search
18 that didn't turn up anything than one bag? She's a crook.
19 She knows how to manipulate the system. She's an addict.
20 They do that.

21 Her big thing on March the 6th of 2006 was currying favor
22 with law enforcement. She got 10 bucks in gas money and she
23 had to bring drugs back. And she did. So is it any less
24 plausible to think that she took two bags with her, held that
25 bag out to the officer when she got back to this

1 predestinated location? Reasonable doubt. Reasonable doubt.
2 Indeed it would be any less plausible if she says this liar,
3 this addict, this thief who interestingly enough as I
4 observed her testifying, thought stealing a cigarette lighter
5 was quite amusing. But she said she gave him \$50. Law
6 enforcement says, these police officers of years on the
7 police force, 15 years, I forgot how much Mr. Barwick had,
8 how much Ms. Caron had but police officer of 15 years misses
9 a bag of drugs on a thorough search. Is it not just as like
10 that they missed \$50 in the car on the second search? Isn't
11 it just as likely if you missed one bag of drugs you're going
12 to miss two bags of drugs? Because somebody wants to curry
13 favor?

14 And I don't recall the exact dates but if memory serves
15 me correctly, at the time this supposed buy was made, she had
16 not yet been convicted of the shoplifting. Again, you take
17 that as you heard it. But that's the way I understood it.

18 So what the whole case boils down to is whether you, the
19 jury, want to take the words of a thief, a liar and drug
20 addict. That's what it boils down to. You can watch this
21 video until the cows come home. I submit to you you're not
22 going to see any type of transaction on that video. Well
23 they say, Well we got a video. Was Mr. Dover there that day?
24 Ladies and gentlemen of the jury, there's absolutely no
25 question that Mr. Dover was there that day. No question at

1 on this case, take those two rights along with you. They
2 belong to Mr. Dover in that jury room, that presumption of
3 innocence he's covered with. Sometimes that presumption of
4 innocence is likened to a cloak of righteousness our law
5 says. It covers you from the very top of your head to the
6 very soles of your feet. Until and unless the State has
7 stripped that cloak of righteousness, if you will, then he's
8 innocent.

9 So, ladies and gentlemen, again, bottom line is what you
10 had is sloppy police work. Incredibly sloppy police work.
11 From veteran officers. Incredibly sloppy. And the words a
12 liar, a thief, a two time rehab drug addict. And I submit,
13 ladies and gentlemen, when you look at that entire picture,
14 what you have heard, what you have seen, that would cause a
15 conscientious person going about their daily business to
16 hesitate to act. And that's what reasonable doubt is. And I
17 submit to you there is tremendous reasonable doubt in this
18 case. And ask you to bring back a verdict of not guilty on
19 both charges.

20 THE COURT: Now, ladies and gentlemen, I do not allow
21 anyone in or out of the courtroom during my charge. So if
22 anyone needs to leave now is the time to do it. Also, if you
23 have a cell phone it must be turned off. Otherwise, if it
24 should ring during the course of this charge it will be
25 confiscated.

1 all. The question I would submit to you is what he was there
2 for. And if you listen to the conversation on there, I think
3 what he was there for was not drugs. He was looking for
4 something else. You had to listen to some pretty vivid
5 conversation and I'm sorry for that. But I think that's what
6 he was there for. That's what he was there for that day.
7 He's being tried for being a crude man. He's not being tried
8 for trying to obtain sexual favors from a young woman.
9 That's not what he's on trial for. He's on trial for
10 distribution of methamphetamine.

11 Was it methamphetamine? I submit yeah, both of these
12 packs, interestingly enough State's Exhibit No. 4 has not
13 been tested yet? Why? Because this fine, upstanding
14 citizen, this liar, thief and addict is still cooperating
15 with the police. The very police who sat on the witness
16 stand who said we wouldn't condone someone bringing drugs
17 along with them for a buy, and yet, March, April, May, June
18 -- March, April, May, June, July, five months later, the
19 activity the police say they won't condone, they're still
20 condoning it. It's a serious business when you're dealing
21 with a man's life. And the State says believe a liar,
22 believe a thief, believe an addict.

23 Reasonable doubt. Presumption of innocence. I'm not
24 going back into that, we talked about that. But I ask you
25 to, please, when you go back into the jury room to deliberate

1 Ladies and gentlemen, the defendant in this case is first
2 indicted for distribution of methamphetamine. This is a
3 statutory offense. And our code of laws provides in part as
4 follows. It shall be unlawful for any person to manufacture,
5 distribute, dispense, or possess with intent to manufacture,
6 distribute or dispense a controlled substance. I charge you
7 further that under our code of laws methamphetamine is a
8 controlled substance. Now the word distribute, ladies and
9 gentlemen, means to deliver a controlled substance. It means
10 to deliver from one person to another a controlled substance.

11 So with respect to this indictment, they're two elements.
12 Each of which the State must prove beyond a reasonable doubt.
13 First of all, the State must prove that the substance in
14 question is methamphetamine. And secondly the State must
15 prove that this defendant delivered this methamphetamine. In
16 other words, he delivered it to another person. The
17 defendant is next indicted for distribution of
18 methamphetamine within one half mile of a school. This too,
19 is a statutory offense and Section 44-53-445 of our code
20 provides or reads in part as follows. It is a separate
21 criminal offense for a person to distribute a controlled
22 substance while in, on or within one half mile radius of the
23 grounds of a public or private elementary or secondary
24 school. Therefore, the elements of this offense which the
25 State must prove beyond a reasonable doubt is that this

1 defendant distributed methamphetamine as I have explained
2 that to you, to this defendant and that the distribution
3 occurred within one half mile of a school.

4 Now, ladies and gentlemen, I am the Judge of the law in
5 this case, you are the judges of the facts. The Constitution
6 of our State does not allow me to charge you on the facts of
7 this case or to discuss the facts with you. Or in any way or
8 manner let you know what my person feelings, if any, are
9 about this case. That is because you and you alone are the
10 judges of the facts. Therefore, if during the course of this
11 trial or if during the course of my charge, you have a
12 feeling or you have been left with the impression that I have
13 a personal feeling about this case one way or another, then
14 you disregard that feeling or that impression.

15 Now, it's your duty and your duty alone to weigh the
16 testimony and evidence presented in this case and to pass
17 upon the credibility or believability of the witnesses you
18 heard testify. In this connection you have a right to
19 believe all that a witness told you or you can disbelieve all
20 that a witness told you. You can believe a part of what a
21 witness told you and disbelieve a part of what a witness told
22 you. You can believe one witness as against several or you
23 can believe several as against one. You also have the right
24 to take into consideration any bias or prejudice or interest
25 you feel a witness in a case might have. As I told you, I am

1 the judge of the law in this case and I am required to charge
2 the law that applies to the facts. It is not a question of
3 what you feel the law might be or what it should be. It is
4 not necessarily what the lawyers may have told you it is
5 because under your oath you are required to take the law
6 officer as I gave it to you, apply that law to the facts as
7 you determine those facts to be and to write your verdict
8 accordingly.

9 Ladies and gentlemen, in this case as in all criminal
10 cases, this defendant comes into this courtroom presumed to
11 be innocent. And this presumption continues and carries
12 through the entire trial until and unless it is removed by
13 evidence that satisfies you of his guilt beyond a reasonable
14 doubt. The burden is on the State in this case to prove this
15 defendant guilty and to prove each and every element of the
16 offenses with which he is charged beyond a reasonable doubt.
17 Now some of you may have in the past served as jurors on
18 civil cases. And if so you were most likely told that it was
19 only necessary to prove that a fact was more likely true than
20 not true. But in criminal cases the State's proof must be
21 more powerful than that as I've told you, it must be beyond a
22 reasonable doubt. Now, ladies and gentlemen, proof beyond a
23 reasonable doubt is proof that leaves you firmly convinced of
24 this defendant's guilty.

25 There are a very few things in this world that we know with

1 absolute certainty. And in criminal cases our law does not
2 require proof that over comes every possible doubt. If based
3 upon your consideration of the evidence in this case you are
4 firmly convinced that this defendant is guilty then you must
5 find him guilty. If on the other hand you think there is a
6 real possibility that he is not guilty then you must give him
7 the benefit of that doubt and find him not guilty.

8 Ladies and gentlemen, our law does not compel a defendant
9 in a criminal case to take the witness stand and testify or
10 present evidence. And no presumption of guilt maybe raised
11 and no inference of any kind maybe drawn from the defendant's
12 decision not to testify. Our law never imposes upon a
13 defendant in a criminal case the burden or duty of calling
14 any witnesses or producing any evidence or testifying.
15 Therefore, the decision of this defendant not to take the
16 stand and testify in his behalf cannot be taken, held,
17 discussed or considered against him any manner whatsoever.

18 Under the oath you took in this case you swore to try
19 this case based only and solely on the testimony and evidence
20 presented in the case. I tell you that it is your duty to
21 lay aside all outside opinions, bias, prejudice or sympathy
22 you may have in reaching your verdict. Now the word verdict
23 is taken from the latin word veredicto. It means to speak
24 the truth. You have no friends to reward in this case or
25 enemies to punish. I charge you to abide by your oath and

1. return verdicts that speak the truth.

2. Now, you'll have in the jury room with you the two
3. indictments. These indictments do not constitute evidence.
4. They simply set forth the allegations by the State. These
5. two indictments are the legal documents that bring this case
6. into the courtroom and presents it to you for your
7. determination. Ladies and gentlemen, with respect to each
8. indictment there are one of two possible verdicts. Guilty or
9. not guilty. And whatever those verdicts are, they must be
10. unanimous. That is all 12 of you must agree.

11. Now, Mr. Foreman, whatever the unanimous verdicts of the
12. jury are on each indictment, you'll find a place on the back
13. of the indictment where it says, Verdict. Write out that
14. verdict, guilty or not guilty, then sign your name on the
15. line where it says, Foreperson of the petit jury. Now, at
16. this time I'm required to suspend and go over my charge with
17. the lawyers. I need for you to go back into your jury room
18. but don't begin deliberating until I send word in for you to
19. do so. Thank you.

20. (WHEREUPON, the jury left the courtroom at
21. approximately 9:42 a.m.)

22. THE COURT: All right, anything further from the State?

23. MR. MARCHANT: Nothing from the State, Your Honor.

24. THE COURT: Anything further from the defense?

25. MR. DEJONG: Nothing further from the defense, Your

1 Honor.

2 THE COURT: All right, got all our exhibits together,
3 Ben?

4 THE BAILIFF: I believe so.

5 THE COURT: Okay, my alternate is Ms. Hansen. If you'll
6 take all the Exhibits, tell them to begin deliberating and
7 bring my alternate, please.

8 (WHEREUPON, deliberations began at
9 approximately 9:43 a.m.)

10 THE COURT: Ms. Hansen, since our 12 jurors have made it
11 through this case, I have the pleasure of telling you that
12 you're through for the week, you don't have to come back.
13 Now the clerk will mail a voucher to you for your service and
14 a slip to give to you for your work if you need that. Or if
15 you want that today you can drop by the clerk's office and
16 they will provide one for you. You're welcome to stay and
17 see what the verdict of the jury is. If you don't want to
18 hang around you're free to go. Thank you, so much. Enjoyed
19 working with you.

20 (WHEREUPON, the alternate was excused.)

21 (WHEREUPON, court was in recess awaiting a
22 verdict.)

23 THE COURT: I understand we have a verdict. All right,
24 bring our jury, please.

25 (WHEREUPON, the jury entered the courtroom at

1 approximately 9:58 a.m.)

2 THE COURT: Mr. Foreman, if you've reach a verdict, hand
3 it to the bailiff, please, sir.

4 All right, madam clerk, would you publish the verdicts,
5 please.

6 THE CLERK: The verdict in the case 2006-GS-39-1134,
7 State vs. James Michael Dover, verdict, guilty. Signed by
8 John E. Black, foreman. Case 2006-GS-39-1135, State vs.
9 James Michael Dover, distributing of methamphetamine,
10 verdict, guilty. Signed by John E. Black, foreman.

11 If this being your verdict and still your verdict, please
12 raise your right hand.

13 (WHEREUPON, all members of the jury panel
14 raised their right hand.)

15 MR. MARCHANT: Nothing from the State, Your Honor.

16 MR. DEJONG: Nothing from the defense, Your Honor.

17 THE COURT: Thank you, ladies and gentlemen, for your
18 service on this case. And in so far as you're concerned,
19 thank you for your service this week. You don't have to come
20 back tomorrow. So I want to take this opportunity to thank
21 you for coming and serving. I want you to know that we'll
22 well aware of the fact that jury service is a burden to you.
23 We know that it's difficult for you to take time off from
24 your jobs and families and spend it with us on jury duty.
25 But I do hope you understand the importance of being here

1 this week. For without your presence we simply could not get
2 off from our docket the cases that we do. It is a very
3 important service you have performed and I thank you, very
4 much for that service.

5 Now, Legitte will mail vouchers or checks to you.
6 Attached to that will be a slip for you to give to your
7 employer. Should you need one of those slips today her
8 office downstairs can provide one to you. Do I have any
9 members of the panel who has any question I can try to answer
10 for you before letting you go? Thank you, so much. I
11 enjoyed working with you, you're free to go.

12 (WHEREUPON, the jury panel was excused at
13 approximately 10:00 a.m.)

14 THE COURT: Any motions?

15 MR. DEJONG: At this point in time on behalf of the
16 defendant I would move for a new trial in that the evident in
17 this case does not substantiate the verdict, Your Honor.

18 THE COURT: And your motion's denied.

19 MR. DEJONG: Thank you, Your Honor.

20 MR. MARCHANT: Ready for sentencing, Your Honor?

21 THE COURT: Yes, sir.

22 MR. MARCHANT: Could I have just a minute to speak with
23 Mr. DeJong?

24 THE COURT: Sure. All right, does this constitute more
25 than a first offense?

1 MR. MARCHANT: Yes, sir, Your Honor, this is a third
2 offense.

3 THE COURT: Third offense?

4 MR. MARCHANT: Yes, Your Honor.

5 THE COURT: All right. Now, Mr. Dover, you exercised
6 your Constitutional right not to take the stand and testify
7 in your defense. At this time you have a right to address
8 the Court concerning sentence. Is there anything, sir, that
9 you'd like to say now before I sentence you?

10 MR. DOVER: Yes, sir.

11 THE COURT: All right, sir. Speak up so I can hear you.

12 MR. DOVER: I just hope that you can have mercy on me.
13 I'm not no drug dealer, sir. I just got caught up in a mess
14 and everything. I'm the father of two children, I got two
15 grandchildren. And I'm not no bad person.

16 THE COURT: You're not a bad person, what in world are
17 you doing dealing with a 19 year-old girl? Selling
18 methamphetamine to her? Trying to have sex with her?

19 MR. DOVER: I was trying to have sex, sir, I wasn't
20 selling to her.

21 THE COURT: And you're married with a wife and
22 grandchildren?

23 MR. DOVER: I'm separated, been separated for a couple of
24 years. And I just got caught up in a mess, sir.

25 THE COURT: No doubt about that.

1 Anything else, Mr. DeJong?

2 MR. DEJONG: Your Honor, the only thing I would share
3 with the Court, it is third offense statutorily because he's
4 had two prior drug offenses. Those were not methamphetamine
5 offenses. As I understand it there was one that was a
6 marijuana charge dating back to 1992 and his other conviction
7 dates back to 1995, Your Honor. And that was also, I
8 believe, that was also marijuana, Your Honor.

9 THE COURT: All right, Mr. Dover, on Indictment for
10 distribution of methamphetamine, sentence of the Court is
11 that you be committed to the Department of Corrections for a
12 period of 20 years and pay a \$50,000 fine. And on Indictment
13 for distribution within close proximity to a school, 10
14 years, concurrent.

15 MR. DEJONG: Thank you, Your Honor.

16 MR. MARCHANT: Thank you, Your Honor.

17

18 (WHEREUPON, the proceedings were concluded.)

19

20

21

22

23

24

25

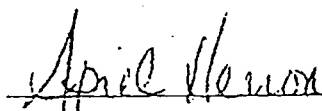
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, April Herron, Official Court Reporter for the 13th
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 evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of General Sessions for Pickens County,
South Carolina, on the 26th & 27th day of July, 2006.

I do further certify that I am neither of kin, counsel
nor interest to any party hereto.

February 11, 2006

_____

April Herron, Court Reporter

My Commission Expires: 11-17-07

2010-CP-39-457

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Pickens)James M. Dover #220690)

Full name and prison number, if any, of applicant.)

v.)

APPLICATION FOR

POST-CONVICTION RELIEF

STATE OF South Carolina)

Name of Respondent)

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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

1. Place of detention BROAD RIVER CI, SCDC, 4460 BROAD RIVER ROAD
Columbia, S.C. 29210
2. Name and location of Court which imposed sentence Pickens County Court House
Pickens, South Carolina
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2006-GS-390-1134, Distribution of Methamphetamines within Prox. School
 - (b) 2006-GS-390-1135, Distribution of Methamphetamines
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 27, 2006 (10) years, concurrent with
 - (b) July 27, 2006 (20) years, plus \$50,000 Fine NON-Violent
 - (c) _____

3015 2nd
3039 3rd

should have tested dope
challenged dope
not in police reports
petition to be sentenced
under new drug
law

5. Check whether a finding of guilty was made

- (a) after a plea of guilty N/A
- (b) after a plea of not guilty (yes) Jury Trial
- (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? yes, Direct

Appeal

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. STATE OF SOUTH Carolina Court OF Appeals
- ii. _____
- iii. _____

convicted third
no choice
and offering

(b) the result in each such Court to which you appealed:

- i. (AFFIRMED) Lower Courts Judgment
- ii. _____
- iii. _____

John saw
some
m.c. - sexually
explicit things

(c) the date of each such result:

- i. Submitted may 1, 2009, Filed may 28, 2009, UNPublished
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. UNPublished OPINION, 2009-UP-246
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
- (b) _____
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE Assistance OF Counsel in Failing to properly Advise Failing to properly Investigate
- (b) Failing to Assert possible Defenses, Credibility of Confidential Informant
- (c) Failing to GO Through with Already Approved (Drug Court) Plea Agreement, Court ERRED by Allowing Incriminating Taped CONVERSATION of Applicant Also IMTrappment where C.I. had meth on her the whole Time

They gave
RSD the A.

they painted every day
together.

wouldn't let wait another
term
MIL to exclude her.

10. State concisely and in the same order the facts which support each of the grounds set out in. (9)

- (a) Trial Counsel WAS InEffective, by NOT Exploring A Defense of ENTrapment. Due to Coercion by Female Confidential Informant, Failed To investigate (CI) Background (ETC.
- (b) Confidential Informant was without Credibility by Her own Admission under oath AS TO Already Having Possession OF Methamphetamines on her during her meetings.
- (c) Applicant WAS Already approved AS OF May 2nd 2006 For (Drug Court) Appli. WAS only waiting on transfer to (Drug Court) when taken to trial. Applicant Notifi. Trial Counsel And showed Drug Court Approval Letter To Trial Counsel.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A

(d) any other petitions, motions or applications in this or any other Court?

N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i. N/A

ii.

iii.

iv.

(c) the disposition thereof:

i. N/A

ii.

iii.

iv.

5/19 Day

Just talked
to Mrs. Gordon
would accept
6/30
I would
small Karen

(d) the date of each such disposition:

- i. N/A
- 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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES ~~NO~~ MOTION TO SUPPRESS RECORDED CONVERSATION OF ALLEGED DRUG TRANSACTION

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. MOTION TO SUPPRESS RECORDED CONVERSATION OF ALLEGED DRUG TRANSACTION
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. DIRECT APPEAL
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) INEFFECTIVE ASSISTANCE OF COUNSEL. (DIRECT APPEALS COUNSEL CHOOSE NOT TO)
- (b) CREDIBILITY OF (CI) CONFIDENTIAL INFORMANTS. (DIRECT APPEALS COUNSEL CHOOSE NOT TO)
- (c) FAILURE TO HONOR PRE-APPROVED PLEA DEAL OF (DRUG COURT). DIRECT APPEALS COUNSEL CHOOSE NOT TO. ALSO INTERRUPTED

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (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 S.C. Indigent Defense
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. John DEJONG ESQ.
- ii. KATHCINE H. HUDGINS (Appellate Defender) DIVISION OF APPELLATE DEFENSE
1330 Lady St. Suite 401
Columbia, S.C. 29204-33
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Jury Trial, and sentencing.
- ii. Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

Sentence Vacated and Remanded For New Trial, OR (DRUG COURT)
That Applicant HAD Already Agreed to, OR Reduction to Time serve

19. Are you now under sentence from any other court that you have not challenged?

N/A

2010-CP-39-457

STATE OF SOUTH CAROLINA)

) VERIFICATION

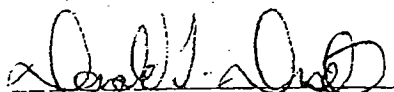
COUNTY OF Pickens)

I, James M. Dover, 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.

James Dover

2010 MAR -9 PM 3:39

Sworn to and subscribed before me

This 2nd day of March, 2010
 L.S.

Notary Public for South Carolina

My Commission Expires

My Commission Expires
August 25, 2010

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

2010-CP-39-457

I, James M. Dover, 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 or perjury that the following facts are true:

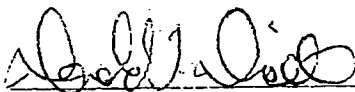
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

James Dover

Applicant

2010 MAR -9 PM 3:39

Sworn to and subscribed before me

This 2nd day of March, 2010
 L.S.

Notary Public for South Carolina

My Commission Expires:

My Commission Expires
August 25, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-39-0457
COUNTY OF PICKENS	)	
	)	
James Michael Dover,	)	
S.C.D.C. No. 220690,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed March 9, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the July 2006 term of General Sessions for distribution of methamphetamines within proximity of a school (2006-GS-39-1134) and distribution of methamphetamines (2006-GS-39-1135). John W. DeJong, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On July 27, 2006, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to concurrent terms of ten (10) years for distribution of methamphetamines within proximity of a school and twenty (20) years for distribution of methamphetamines.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Dover, Op. No.

2009-UP-246 (S.C. Ct. App. filed May 28, 2009).

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failure to properly advise.
 - b. Failure to properly investigate informant's background.
 - c. Failure to assert possible defense of entrapment.
 - d. Failure to have the Applicant's case transferred to drug court.
2. Trial court error.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

"rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such 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, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent 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) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

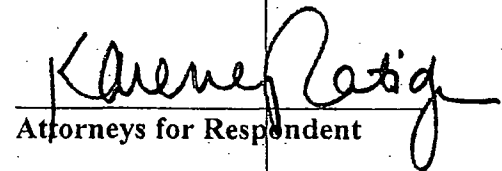
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

August 20, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

2010-CP-39-0457

JAMES MICHAEL DOVER, 220690)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Michael Dover, 220690
 Broad River Correctional Institution
 4460 Broad River Road
 Columbia SC 29210

DATED this 20th day of August, 2010.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

COURT OF COMMON PLEAS
2010-CP-39-00457

JAMES MICHAEL DOVER,
APPLICANT,)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.)

ORIGINAL

February 27, 2012
Pickens, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

JAMES S. ERWIN, III, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Assistant Attorney General

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
 (RW) - Denotes Respondent's Witness

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(RW) <u>JOHN WILLIAM DEJONG:</u>	
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Applicant's Exhibits)			
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A-2	Indictment 2006-GS-39-01135.....	6.....	6
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All Exhibits were retained by the Clerk of Court for Pickens County.

P R O C E E D I N G S

THE COURT: Yes, ma'am.

MS. RATIGAN: May it please the Court, Your Honor.

This is the case of James Dover v. the State of South Carolina. The docket number is 2010-CP-39-0457.

Mr. Dover was indicted for distribution of methamphetamines within proximity of a school, and distribution of methamphetamines. He was represented on these charges by Mr. DeJong.

The case was brought to trial in July of 2006, before Judge Pyle. The Applicant was found guilty of the charges as indicted. Judge Pyle levied concurrent sentences of 10 years for distribution of methamphetamines within proximity, and 20 years for distribution of methamphetamines.

A notice of appeal was filed. The Court of Appeals affirmed his conviction and sentences in May of 2009. And the State is ready to proceed.

THE COURT: All right. Yes, sir, Mr. Erwin.

MR. ERWIN: May it please the Court, Your Honor.

We are ready to proceed.

THE COURT: You may call your first witness.

MR. ERWIN: May it please the Court.

I call James Michael Dover.

THE CLERK: Place your left hand on the Bible and

1 raise your right hand, please.

2 WHEREUPON,

3 JAMES MICHAEL DOVER,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: State your full name for the record.

6 THE WITNESS: James Michael Dover.

7 THE CLERK: Please be seated.

8 DIRECT EXAMINATION

9 BY MR. ERWIN:

10 Q Mr. Dover, I want to start by going over the grounds
11 of this PCR with you. Okay.

12 A Yes, sir.

13 Q What I understand that -- I want to make sure that we
14 have a clear understanding of what your reasons for filing
15 this PCR are. Okay.

16 A Yes, sir.

17 Q You have indicated to me that you were indicted by
18 the Grand Jury on a certain charge, but tried on another;
19 is that --

20 A Yes, sir.

21 Q Is that what you allege?

22 A That's what these [sic] paperwork shows.

23 Q Okay. Can you, please, tell me what you mean by
24 that?

25 A Okay. I've got an indictment paper here that says

1 that I was indicted under a -- 3015, which is a lesser
2 charge than the 3039. I've got the arrest warrant here
3 and the indictment. And the Solicitor, Lucas Marchant,
4 had changed and initialed the third offense to a second,
5 and the code from a 3039 to a 3015 to match the Grand Jury
6 indictment.

7 Q Where did he make that change? Where did he initial
8 and make that change?

9 A Right here on this --

10 Q On the warrant?

11 A The warrant.

12 Q Okay. So when you went to trial, what charge were
13 you tried on?

14 A On the 3039, third offense.

15 Q So the 3015 is the second offense of distribution of
16 methamphetamine?

17 A Yes, sir.

18 Q And the 3039, as you understand it, is a third
19 offense --

20 A Yes, sir.

21 Q -- of distribution of methamphetamines?

22 A Yes, sir.

23 Q So you were -- the original warrant was for a third
24 offense?

25 A Yes, sir.

1 Q And the indictment was for a second offense?

2 A Yes, sir.

3 Q And you were tried for what?

4 A Third.

5 Q You were tried for third?

6 A Yes, sir.

7 MR. ERWIN: Your Honor, I'd offer this warrant that
8 he just referenced as Applicant's Exhibit No. 1.

9 THE WITNESS: This is the Grand Jury indictment and
10 the warrant both.

11 MR. ERWIN: And the indictment as Applicant's Exhibit
12 No. 2.

13 MS. RATIGAN: That's part of the record, Your Honor.

14 (WHEREUPON, Applicant's Exhibit Nos. 1 and 2 were
15 marked for identification and admitted into evidence.)

16 BY MR. ERWIN:

17 Q Now, the next issue, as I understand it, Mr. Dover,
18 is that the confidential informant used in your trial had
19 some methamphetamines on her?

20 A Yes, sir.

21 Q That was not part of the alleged transaction between
22 you and her?

23 A Correct.

24 Q Okay. And we're going to get into more detail about
25 that in just a minute. But I want to understand and lay

1 out what the issues are with regard to your PCR first.

2 A Yes, sir.

3 Q The -- you allege several things with regard to that.
4 And if I'm -- correct me if I'm wrong. But, apparently,
5 during a subsequent search of this confidential informant,
6 some extra methamphetamine was found; right?

7 A Yes, sir.

8 Q Okay. So you allege that several things should have
9 been done; is that correct?

10 A Yes, sir.

11 Q That that methamphetamine should have been tested?

12 A Against the methamphetamines that she handed the
13 police and said that she had received from me.

14 Q Okay. You, also, take issue with the fact that in
15 the reports generated by law enforcement from the
16 transaction, they say you were involved in that
17 methamphetamine -- that extra methamphetamine is not
18 mentioned?

19 A No, sir. I've got the surveillance reports and the
20 police reports. And it's not mentioned in none of them.

21 Actually, on the -- I think it's the 27th of that
22 month -- the 7th of July, the Solicitor's Office sent
23 Mr. DeJong this letter saying that, additionally, it had
24 just come to his attention that the narcotics agents found
25 a separate bag of methamphetamines on the confidential

1 informant after the transaction took place.

2 Q Okay. We're going to get to that in just a little
3 bit.

4 A Okay, sir.

5 Q But the -- you, also, take issue with the -- with
6 regard to that confidential informant, and that there was
7 a tape-recorded conversation between you and her that had
8 some pretty sexually explicit language; is that correct?

9 A Pretty much the whole tape, yes, sir.

10 Q And you wanted that excluded from the trial --

11 A Yes, sir. Because some of it really made me look
12 bad.

13 Q Okay. And, again, these are all issues that you
14 allege that Mr. DeJong should have addressed?

15 A Yes, sir.

16 Q And it's your position that he did not address those?

17 A Correct, sir.

18 Q Now, with regard to -- let's talk about plea offers.
19 What is your understanding of -- now, we're going to talk
20 about drug court in just a moment. But with regard to
21 plea offers, what is your understanding of the offer that
22 was made to you by the Solicitor's Office?

23 A I had already had the drug court. And then after
24 they wouldn't let me go that Friday morning, they started
25 offering me seven years.

1 Q Now, this is the Friday morning of what?

2 A The day I was supposed to go and be tried to start
3 drug court.

4 Q Okay. So when they didn't take you to drug court --
5 do you remember the date of this?

6 A Of the day I was supposed to be tried for drug court?
7 That was May the 19th.

8 Q But I'm asking, the date of the offer?

9 A It was about two weeks later, maybe three weeks
10 later.

11 Q What was the offer?

12 A It was seven years violent.

13 Q Okay. Is it your testimony that you wanted to accept
14 that offer understanding that what they were telling you
15 is drug court was not an option anymore? You wanted to
16 take that offer when it came time to go to trial?

17 A Yes, sir. I asked about it. And Mr. DeJong said,
18 No, that is gone, just like drug court.

19 Q Okay. Mr. Dover, again, we're just -- I'm trying to
20 lay out the issues here --

21 A Yes, sir. Okay.

22 Q We're going to come back and visit each one of those.
23 But I want you to tell us what the issues are. Okay.

24 A Okay, sir.

25 Q So you were made an offer of seven years that you

1 wanted to accept?

2 A Yes, sir.

3 Q And it's your position that Mr. DeJong would not let
4 you accept that?

5 A Correct. He said that it was gone.

6 Q Okay. And is it, also, your position that you were
7 given an offer -- or you were accepted into drug court?

8 A Correct. Yes, sir.

9 Q Okay. And that would have alleviated you going to
10 trial in this matter?

11 A Correct, sir.

12 Q Is it your position that Mr. DeJong didn't do what he
13 was supposed to do with regard to that acceptance into
14 drug court?

15 A Yes, sir. I don't think he did.

16 Q Okay. And with regard to your going to trial and the
17 term that you did, did you, also, ask that your case be
18 continued so that you could figure out what was going on
19 with either the offer or with drug court?

20 A Yes, sir. I tried -- I told him that I wasn't going
21 to trial. I wasn't pleading guilty, or nothing. I was
22 going back to my county jail. And he said, You can't do
23 that. You're going to court today, whether you plead
24 guilty to 25 years, or you get a jury.

25 Q Okay. And without going into any of the facts yet,

1 Mr. Dover, are there any other issues that you're wanting
2 to raise in this PCR?

3 A Well, I had mentioned the coercion part to you and --

4 Q Do you mean coercion by the confidential informant --

5 A To where he forced me into taking the jury trial.

6 Q Okay. Well, that's what we've addressed in terms of
7 the --

8 A Okay, sir.

9 Q -- drug court, the continuance, and the offer.

10 A Okay sir. And, also, that I was told that I could
11 ask about petitioning the Court to sentence me under the
12 new drug guideline laws, if the ruling was not in my
13 favor. And I was wanting to petition the Court on that.

14 Q So you're wanting this PCR court to sentence you
15 under the current drug laws, and not the ones that were
16 enforced in 2006?

17 A Yes, sir.

18 Q Okay. Let's discuss -- let's go back to the
19 indictment issue, Mr. Dover -- well, first, is there any
20 other issue that you're wanting to raise in this PCR?

21 A None that comes to mind right now, no, sir. Just, I
22 mean --

23 Q Understand, we're going to go back and talk about
24 each of the ones you mentioned. But what I'm asking for
25 right now, are there any other issues that you're going to

1 want to discuss?

2 A The fact that Scott Dover was paid to clear my child
3 support, and to have Judge Johnson release me.

4 Q Okay. We're going to talk about the drug court
5 issue.

6 A Okay, sir.

7 Q Okay. So are there any other issues, Mr. Dover?

8 A No, sir, I don't think. I just -- you know, you're
9 asking me all this, and I'm trying --

10 Q Yeah. I understand. Well, and if you think of
11 something else once you finish your testimony, we're going
12 to go through that again and make sure you've covered it
13 all.

14 A Okay, sir. Yes, sir.

15 Q With regard to the indictment, let's start, again, at
16 the top. Your position is that you were indicted on a
17 second offense distribution; is that correct?

18 A Yes, sir.

19 Q And that your original warrant was for second offense
20 distribution?

21 A No, sir. The original was for a third offense.

22 Q A third one.

23 A And the Solicitor initialled it and changed it to a
24 second offense.

25 Q And -- but you were tried on what?

1 A A third offense, sir.

2 Q Do you believe that that was improper?

3 A Yes, sir.

4 Q Do you believe that your defense counsel should have
5 raised that issue?

6 A Yes, sir. I don't even think he even realized the
7 indictment was on a 3015.

8 Q Okay. And had he raised the issue, what do you think
9 would have happened at trial?

10 A Well, it would have been a significant difference in
11 the amount of time I got.

12 Q Are there any other differences? Do you think the
13 Court would have had jurisdiction to try you?

14 A I don't understand what you're asking.

15 Q Well, having been indicted -- if you were indicted on
16 a second, do you believe that the Court would have had
17 jurisdiction to try you on a third offense?

18 A No, sir. If I was indicted under a second, I should
19 have been tried under a second.

20 Q Now, was this an issue that you raised with your
21 defense counsel at the time of trial, or before?

22 A No, sir. It was not mentioned. I had just gotten
23 the motion of discovery a couple of weeks before I went
24 and --

25 Q Went to trial, you mean?

1 A Yes, sir. And I'm really dumb to the law. And this
2 is just stuff I've found out over the years of just --

3 Q You've noticed this after your trial?

4 A Yes, sir.

5 Q All right. Now, is there any other information you
6 wish to share with the Court concerning the difference in
7 the indictment and the warrant, and the charge at trial?

8 A No, sir. I don't think so.

9 Q Okay. Now, let's go on to the confidential informant
10 and the extra methamphetamine that was found on her. Is
11 it your understanding that subsequent to the search
12 conducted for your alleged transaction with the
13 confidential informant that another police officer found
14 an additional quantity of methamphetamine on this
15 confidential informant?

16 A Yes, sir.

17 Q Okay. And I believe from your previous testimony, it
18 was something that was at the eleventh hour indicated to
19 your defense counsel by the Solicitor's Office?

20 A Yes, sir.

21 Q Okay. And you have a document showing that?

22 A Yes, sir.

23 MR. ERWIN: I'd offer this as Applicant's Exhibit
24 No. 3.

25 MS. RATIGAN: No objection, Your Honor.

1 THE COURT: It's in evidence.

2 MR. ERWIN: Thank you.

3 (WHEREUPON, Applicant's Exhibit No. 3 was marked for
4 identification and admitted into evidence.)

5 BY MR. ERWIN:

6 Q Now, Mr. Dover, what is it that you allege that
7 Mr. DeJong should have done with regard to that
8 information that you allege he did not do?

9 A Well, to me, it seemed like there was some kind of
10 cover-up trying to be made. And he should have brought
11 this up that the narcotics agents was trying to cover-up
12 the fact that they found a separate bag of
13 methamphetamines on the confidential informant, you know.
14 They was trying to keep her clean looking, instead of
15 showing how dirty she really was.

16 Q Well, is it -- in what way did the extra
17 methamphetamines prejudice you at trial?

18 A Because the first come out of that bag that was in
19 her pocket.

20 Q So the evidence that they used against you in terms
21 of methamphetamines that they allege you sold, you believe
22 that that was part of what she had?

23 A Yes, sir.

24 Q And you deny that you sold her any methamphetamine?

25 A Yes, sir.

1 Q You do? You deny that you sold her any
2 methamphetamine?

3 A Yes, sir.

4 Q Okay. So, essentially, this was all a stash that she
5 had on her. And she gave part of that to law enforcement
6 saying that she bought it from you. And it's your
7 position she had that on her already?

8 A Correct. If he had had them to test it against the
9 other bag, I'm 100 percent sure it would have come back a
10 100 percent match.

11 Q What do you believe -- besides having that tested,
12 what do you believe that Mr. DeJong should have done that
13 he didn't do with regard to that extra meth?

14 A I'm not sure I understand the question.

15 He should have asked for a complete dismissal in my
16 eyes is the way I would see it.

17 Q Do you believe that that extra meth and the fact that
18 it was discovered after your transaction, and the fact
19 that notice of that was provided so late to you and your
20 defense counsel, do you believe that that should have
21 resulted in a dismissal of the charges in their entirety?

22 A You're saying because it was so late in being known?

23 Q Yes, sir.

24 A Not so much because it was late in being known, just
25 because it was done.

1 Q Okay. And do you believe that that so affected the
2 credibility of this confidential informant that she should
3 not have been allowed to testify at trial?

4 A Correct. Yes, sir.

5 Q Do you believe that Mr. DeJong should have done
6 something differently to preclude her testimony at trial?

7 A There should have been motions filed before we even
8 went to court to get her removed from testifying.

9 Q And it's your assertion he did not do that?

10 A No, sir.

11 Q Okay. With regard to this confidential informant and
12 the extra methamphetamine that was found on her, do you
13 believe that she should -- that your defense attorney
14 should have had that tested?

15 Do you believe that he should have sought dismissal
16 of the charges based on that, and he should, also, have
17 filed motions in limine, motions before the trial, and
18 during the trial to exclude her testimony because of it?

19 A Yes, sir.

20 Q Anything else with regard to that extra meth?

21 A I don't think so regarding the meth, no.

22 Q Now, let's go to the -- while we're talking about the
23 confidential informant, let's talk about the sexually
24 explicit conversation that you had with her during this
25 transaction -- or alleged transaction. Okay.

1 A Yes, sir.

2 Q Now, can you tell us the nature of that alleged
3 conversation, and what the effect of that conversation was
4 you believe?

5 A Well, I was just telling her sexually explicit things.
6 I was wanting, you know, to do with her. And then I was
7 talking about a friend I had loaned some money to. And
8 I -- just out of conversation, I said, Well, you know,
9 I've been thinking about going and tying Randy up and
10 having sex with his wife in front of him, you know, just
11 trying to make myself look big. And stuff like that
12 shouldn't have been heard by the jury.

13 Q Okay. And is it your position that the entire
14 conversation between you and her was played to the jury?

15 A Every bit of it, yes, sir.

16 Q And is it your position that Mr. DeJong should have
17 done something to exclude that that he did not do?

18 A There should have been motions filed way before we
19 went to court that day to block that, yes, sir.

20 Q Okay. Is it your position that Mr. DeJong didn't do
21 anything with regard to that conversation?

22 A He just asked that day to not -- you know, not -- to
23 have parts of it not played. And the Judge said, No. And
24 that was the end of it.

25 Q What more do you believe that your defense counsel

1 could have done with regard to that issue?

2 A He could have filed pre-motions before we even got
3 started, and had all of that blocked.

4 Q And do you believe that as a result of the -- that
5 entire conversation being played that you were
6 significantly prejudiced?

7 A Yes, sir.

8 Q In what way?

9 A Well, if you hear somebody saying something about
10 tying somebody up and having sex with their old lady in
11 front of them, don't that sound like a really bad way out
12 there person? And the jury hears that, they're going to
13 say guilty.

14 Q So do you believe that that was extremely
15 prejudicial?

16 A Very, yes, sir.

17 Q And that any probative value of that was outweighed
18 by its prejudicial effect?

19 A I say that statement alone was pretty much what got
20 me convicted.

21 Q Anything else with regard to the conversation between
22 you and the confidential informant that you want to
23 discuss?

24 A I can't think of nothing.

25 Q Let's talk about the drug court issue. And if I

1 may -- well, let me go through it this way.

2 You were, originally, accepted into drug court?

3 A Yes, sir.

4 Q Is that correct?

5 A Yes, sir.

6 Q Do you have in front of you your acceptance letter?

7 A Yes. I have an acceptance letter.

8 MR. ERWIN: I would offer that as Applicant's Exhibit
9 No. 4.

10 MS. RATIGAN: I have no objection, Your Honor.

11 (WHEREUPON, Applicant's Exhibit No. 4 was marked for
12 identification and admitted into evidence.)

13 BY MR. ERWIN:

14 Q I'm going to show you what's been entered as
15 Applicant's Exhibit No. 4, Mr. Dover. Is that a letter
16 from drug court dated May the --

17 A 2nd.

18 Q -- 2nd of 2006?

19 A Yes, sir.

20 Q And is that letter -- that letter is from Bobbie
21 Godwin, the drug court program manager?

22 A Yes, sir.

23 Q And does that indicate that you've been approved for
24 participation in the drug court program for the Thirteenth
25 Judicial Circuit?

1 A Yes, sir.

2 Q It, also, indicates in there that a plea date for
3 drug court is scheduled for Friday, May the 19th of 2006?

4 A Yes, sir.

5 Q And that's in Greenville?

6 A Yes, sir.

7 Q Okay. Now, so at this point on May 2nd, 2006, you
8 had been accepted into drug court, and you're expecting to
9 go plead; is that correct?

10 A Yes, sir.

11 Q Now, on May the 19th of 2006, were you transported to
12 Greenville -- where were you at during that period?

13 A I was at the LEC, the Pickens County LEC.

14 Q You had not made bond on the charges that you were
15 facing?

16 A No, sir. They asked me not to make bond.

17 Q Who asked you?

18 A The drug court people, Ms. Godwin. She told me it
19 would be best for me to sit there and dry out, and be
20 ready for drug court when I come and started.

21 Q So you were still at the LEC --

22 A Yes, sir.

23 Q -- in May of 2006.

24 A Yes, sir.

25 Q And on May the 19th, were you transported for a drug

1 court plea?

2 A No, sir.

3 Q And did you learn at some point why you had not been
4 transported?

5 A They said that it was because I owed some child
6 support.

7 Q Okay. And did you have any idea what your child
8 support arrearage was at that time?

9 A I knew it was \$2,100, \$2,200. I had been in a bad
10 car wreck. And I had been out of work for over a year.
11 And I had back surgery, and all that.

12 And I had done been in front of Judge Johnson and
13 talked about it. But while I was sitting there waiting on
14 this drug court, they went ahead and took me in front of
15 him. And he gave me a year.

16 Q Okay. So he gave you a year on the child support
17 arrearage?

18 A Yes, sir.

19 Q Do you know when that would have been?

20 A I'm not sure when it was, no, sir.

21 Q Okay. Do you know what your arrearage was at the
22 time you got a year?

23 A My daughter knows more about it than I do. Because
24 they paid it. They paid it off. But it --

25 Q What I'm asking, Mr. Dover, is, at the time Judge

1 Johnson sentenced you to a year for child support
2 arrearage, do you recall what that arrearage roughly was?

3 A It was \$2,100, \$2,200.

4 Q And that may help us determine when that hearing was.

5 A Okay, sir.

6 Q All right. It appears, according to your child
7 support work -- printout from the Clerk's Office, there
8 was a notation in February -- February the 16th to alter
9 the case. And your child support balance at that time was
10 \$20,061.84. Does that sound about the right time frame,
11 February of '06, that you may have been in front of Judge
12 Johnson?

13 A It's possible. I can't recall it. It's been so long
14 back, sir.

15 Q Okay. But you, at some point, learned that your
16 child support arrearage was an impediment to you're
17 entering into drug court; is that correct?

18 A Yes, sir.

19 Q And what steps did you take to solve that problem?

20 A My dad paid Scott Dover a little bit of money to take
21 what was owed to DSS, and a letter from my ex-wife -- a
22 letter to Judge Johnson saying that she was releasing me
23 from all responsibility.

24 And he called my daughter and told her that Monday,
25 the 15th, I think it was, that everything was clear. And

1 that night whenever I called her from jail, she told me
2 that Scott told her that everything had been taken care of
3 and was clear.

4 Q The 15th of what?

5 A May.

6 Q Okay. So you were fully expecting to go to your plea
7 for drug court on May the 19th?

8 A Yes, sir. I was ecstatic. I was so happy that
9 everything was taken care of.

10 Q All right. So let me back up just a little bit. You
11 had a child support arrearage. Between paying some money
12 toward that arrearage through your family and getting your
13 ex-wife to drop the child support and the rest of the
14 arrearage, you thought that that matter was resolved?

15 A Correct. Yes, sir.

16 Q Okay. At the time you went to trial in this case,
17 ultimately, did you still believe that that matter was
18 resolved?

19 A Yes. My daughter said that she had got the money
20 from my parents and went -- and just went ahead and paid
21 it all off themselves, and didn't even worry with the
22 letter from my ex-wife and all that, just paid everything.

23 Q Okay. Well, now, so at the time you went to trial,
24 your understanding was two things with regard to drug
25 court. You had been accepted, and the child support,

1 which was holding you back, had been resolved?

2 A Yes, sir.

3 Q Okay. Did you have discussions with your defense
4 counsel about that -- about drug court?

5 A Yes, sir. And I even have this letter with me today
6 that I went to trial. And he told me, he said, That
7 letter don't mean nothing. He said, It's done been taken
8 from you. You don't have drug court, just like you don't
9 have the seven years no more.

10 Q So when you went to trial, you discussed both that
11 seven-year offer and the drug court issue with him?

12 A Yes, sir.

13 Q And he indicated they were gone?

14 A Yes, sir.

15 Q Okay. Did you have any further conversation with him
16 about drug court?

17 A I just asked him a couple of times if he would tell
18 the Judge and show him this letter. And he said, No. He
19 said, It's gone. We don't even need to discuss it no
20 further.

21 Also, my daughter had talked with Ms. Godwin. And
22 she told her once she paid it, that they would accept me
23 on June the 30th. And she called Mr. Marchant's office.
24 And his secretary told her that she didn't see no problem
25 with it.

1 Q Okay. Is there anything else you want to tell us
2 about the drug court issue?

3 A What? About like not getting to go, or something?

4 Q Yeah. Are there any other conversations you had with
5 your defense counsel, or anyone else concerning drug
6 court?

7 A No, sir. I never got to talk to nobody else.

8 Q Okay. And is it your position that you were
9 prejudiced by not getting to go to drug court? That
10 sounds like a silly question, but...

11 A Yes, sir. I had done made my mind up I was going to
12 do good, and do this 18-month course, and clean my life
13 up.

14 Q And, of course, if you had been allowed to enter into
15 drug court, that would have kept you from going to trial
16 and, subsequently, being incarcerated?

17 A Correct. I would never have been incarcerated.

18 Q Now, the next issue that you've raised for us is the
19 matter of a continuance from the term of court you were
20 tried in until a subsequent term. Why did you want that
21 continuance?

22 A I didn't care nothing about going in there and
23 pleading guilty to 25 years, or taking no jury trial. I
24 didn't want to do neither one of them.

25 Q So during the week of trial, was it your

1 understanding that your only options were to plead to 25
2 years or to go to trial?

3 A That day, he -- it was that one day that I went to
4 court was the day he gave me them options.

5 Q That who gave you those options?

6 A Mr. DeJong.

7 Q Okay.

8 A There was no other option. I told him I just wanted
9 to go back to jail and wait on another term and try to,
10 you know, get something else worked out. And he said,
11 You're not going nowhere. You're going to court. And
12 you're going to plead guilty to 25 years, or you're
13 getting a jury.

14 Q Now, when did you -- so did you then decide to go to
15 a jury trial?

16 A I had no choice, sir.

17 Q Okay. Now, you had previously mentioned the
18 seven-year offer. When did you first learn of the
19 seven-year offer?

20 A That was the first part of June of '06.

21 Q Now, was it your position then that you were still
22 going to drug court?

23 A Yes, sir. My daughter had talked to Ms. Godwin. And
24 she told my daughter that, you know, just get everything
25 taken care of. They've done signed off on it. Get the

1 child support clear. And we'll take him on June the 30th
2 of '06. And that's what we was shooting on.

3 She called the Solicitor's Office and left -- talked
4 to his secretary. And she said that he was off on
5 vacation right now, but she seen no problem because he had
6 done signed off on it.

7 Q Okay. So, at that point -- how did you learn of the
8 seven-year offer in early June of '06?

9 A Mr. DeJong called me to the courthouse and offered it
10 to me.

11 Q What were your discussions with him at that time?

12 A I told him that I'm still shooting for drug court,
13 and that I can't go to prison seven years when I've got a
14 class I've done been accepted to for 18 months.

15 Q And what, if anything, did he say at that point?

16 A He said that it was gone.

17 Q That drug court was gone?

18 A And I told him, I said, Well, Ms. Godwin told my
19 daughter that, you know, as long as the child support was
20 paid, they would accept me on June the 30th.

21 Q Was there any more to that conversation?

22 A No, sir. He just asked me if I would accept the
23 seven. I told him that, no, I couldn't.

24 Q And did you have any other conversations with him
25 between then and the day of trial about drug court, or the

1 seven-year offer?

2 A The next time I seen him was when I went -- the day I
3 went to court. I think I might have went back to the
4 courthouse and sat down in that little room one time. But
5 I never seen him.

6 Q Okay.

7 A I think I went there one time. I can't be 100
8 percent sure.

9 Q Okay. And then the last issue that you gave us
10 earlier this morning was that you, in the alternative,
11 wanted this PCR court to sentence you under the current
12 drug laws?

13 A Correct, sir. Yes, sir.

14 Q And what is your understanding of this Court's
15 authority to do that?

16 A Well, just from the law libraries and talking to
17 people up there where I'm at, they told me that I could
18 petition the Court and ask them if, you know, they didn't
19 rule in my favor that they could resentence me under the
20 new drug laws. Because the new drug laws that started in
21 2010 take away the mandatory minimum 85 percent on
22 non-violent crimes, and give you work credits, good time,
23 and parole -- I mean probation -- parole, parole. Excuse
24 me.

25 Q All right. And you believe that that would have a

1 positive effect on your ability to get out sooner?

2 A Yes, sir. It would cut my sentence down to where I
3 think I would have five more years to max out, instead of
4 11.

5 Q All right. And absent the Court's ability or
6 inclination to do that, you're seeking to have your PCR
7 granted for the reasons that you've previously stated; is
8 that correct?

9 A (There was no response.)

10 Q In other words, your conviction thrown out, and you
11 to face trial again, or drug court?

12 A Yes, sir.

13 Q Is that what you're saying here today?

14 A Yes, sir, a new trial, time served, anything to give
15 me my life back.

16 Q Okay. Well, you understand that the options of this
17 Court are limited --

18 A Yes, sir.

19 Q -- in terms of a PCR itself, that you would face a
20 new trial on the charges?

21 A Yes, sir.

22 Q And that's what you're wanting?

23 A Yes, sir.

24 Q You're wanting your conviction overturned, and you're
25 wanting to face trial -- or to have the option possibly to

1 go into drug court again?

2 A I would take that, yes, sir. I mean, anything to
3 give me my life back.

4 Q Is there anything else you want to tell this Court,
5 Mr. Dover?

6 A I can't think of nothing, sir. Honest to God, I
7 can't think of nothing.

8 MR. ERWIN: Please answer any questions opposing
9 counsel has.

10 MS. RATIGAN: I have no questions for this witness,
11 Your Honor.

12 THE COURT: All right. Thank you, Mr. Dover.

13 THE WITNESS: Thank you, sir.

14 Do I take these, or leave these?

15 MR. ERWIN: The ones that are exhibits go to the
16 court reporter.

17 THE COURT: Thank you.

18 THE WITNESS: Thank you, sir.

19 THE COURT: You may call your next witness.

20 MR. ERWIN: Jesse Burton.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 WHEREUPON,

24 JESSE LEE BURTON,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: State your full name for the record.

2 THE WITNESS: Jesse Lee Burton.

3 THE CLERK: Please be seated.

4 DIRECT EXAMINATION

5 BY MR. ERWIN:

6 Q Ms. Burton, you are Mr. Dover's daughter; is that
7 correct?

8 A Yes, sir.

9 Q Okay. Now, you've been present in the courtroom
10 during his testimony; is that right?

11 A Yes, sir.

12 Q So I'm going to direct your attention to the issue
13 concerning drug court and the child support arrearage.

14 A Yes, sir.

15 Q Okay. Now, it was your understanding that Mr. Dover
16 had been accepted into drug court; is that correct?

17 A Yes, sir.

18 Q At some point, did you learn that his child support
19 arrearage, at that time, was going to be a stumbling block
20 to entrance into drug court?

21 A Yes, sir.

22 Q Did you take some measures to try to remove that
23 stumbling block?

24 A Yes, sir.

25 Q Okay. Can you tell me what those measures were?

1 A We had took money to Scott Dover, originally, and had
2 some paperwork drawn up for it to be took out of court.

3 And then, at a later date, I did take the money, a little
4 over \$2,000, to the Clerk of Court myself and paid it off.

5 Q Okay.

6 A And it was my understanding that it was paid down to
7 the balance that it needed to be.

8 Q Okay. So let me back you up just a little bit.

9 A Okay.

10 Q You took some money to Mr. Dover, Scott Dover?

11 A Yes, sir.

12 Q And when you said you had some papers drawn up, was
13 that for the recipient of the child support, Mr. Dover's
14 ex-wife, to stop the child support and waive the
15 arrearage?

16 A Yes, sir.

17 Q So it was your understanding that, initially, that
18 was going to be how the problem was solved?

19 A Yes, sir.

20 Q Did you, subsequently, learn that that was not going
21 to happen?

22 A Yes, sir. And that's when I went and paid the Clerk
23 of Court. And I spoke with the lady at drug court, and
24 with the secretary at the Solicitor's Office to make sure
25 everything was a go for him to go to court.

1 Q You spoke with Ms. Godwin at drug court?

2 A Yes, sir.

3 Q And you spoke with Mr. Marchant's secretary?

4 A Yes, sir.

5 Q And do you remember approximately when this was?

6 A It was sometime in June of 2006.

7 MR. ERWIN: I'm going to offer this as Applicant's
8 Exhibit No. 5. It's a printout from this morning from the
9 Clerk's Office, Your Honor.

10 MS. RATIGAN: For the record, I have to object to the
11 lack of authentication.

12 MR. ERWIN: Your Honor, certainly, I could get
13 somebody up from the Clerk's Office. But this is -- I can
14 tell you, as an officer of the Court, that I had the
15 Clerk's Office print this out this morning.

16 THE COURT: Okay. It's in evidence.

17 MR. ERWIN: Thank you very much.

18 (WHEREUPON, Applicant's Exhibit No. 5 was marked for
19 identification and admitted into evidence.)

20 BY MR. ERWIN:

21 Q Ms. Burton, I'm going to show you -- I'm going to
22 direct you to the last page of Applicant's Exhibit No. 5.
23 This deals with the time period of January through August
24 of 2006?

25 A Yes, sir.

1 Q There appears to be -- let me go to February the 16th
2 of '06. There's an entry of altered case. Is it your
3 recollection that that's when your father went to Family
4 Court?

5 A Yes, sir, I believe so.

6 Q And there was an arrearage balance set at that time?

7 A Yes, sir..

8 Q \$1,700 and change?

9 A Uh-huh.

10 Q Now, go on up to June of 2006. It shows some
11 payments made; is that correct?

12 A Yes, sir.

13 Q Okay. And can you tell us the amounts of those
14 payments?

15 A On June 22nd, 2006, there was a \$100 fine payment.
16 Also, on June 22nd, 2006, there was \$2,062 paid.

17 Q Okay. Was it -- did you make those payments?

18 A Yes, sir.

19 Q And was it your understanding, at that time, that
20 that was the full amount you had to pay to remove the
21 child support as a stumbling block to drug court?

22 A Yes, sir.

23 Q Okay. And why was that your understanding?

24 A Because the remaining balance was in arrears. It had
25 not accrued since that time.

1 Q So that's why you -- and you borrowed that money to
2 make that payment?

3 A Yes, sir.

4 Q That's why you borrowed less than the full \$3,000 and
5 change for the balance?

6 A Yes, sir.

7 Q Okay. So after you made that payment, did anyone
8 tell you that child support was still an issue?

9 A Not at that time, no.

10 Q Okay. And, in fact, did you just learn recently that
11 child support was the reason that he was kept out of drug
12 court?

13 A Yes, sir.

14 Q This morning?

15 A Yes, sir.

16 Q Okay. So that whole time, you were under the
17 impression that he was going to go into drug court?

18 A Yes, sir.

19 Q Was it your understanding -- did you have
20 conversations with your father during that time?

21 A Yes, sir.

22 Q Was it your understanding that he was under that same
23 impression?

24 A Yes, sir.

25 MR. ERWIN: I have no further questions.

CROSS-EXAMINATION

BY MS. RATIGAN:

Q So you had hired Scott Dover to try to help y'all sort out this matter. Would that be fair to say?

A Yes, ma'am.

Q Did you ever discuss -- this child support arrearage matter and the fine payment, did you ever discuss that with Mr. DeJong?

A No. I've never met Mr. DeJong.

MS. RATIGAN: That's all I have, Your Honor.

MR. ERWIN: Nothing further, Your Honor.

THE COURT: Thank you, Ms. Burton.

Yes, sir.

MR. ERWIN: Your Honor, I have no further witnesses. I do -- well, actually I do, Your Honor. But I have, in the meantime, a letter from the Solicitor's Office Diversion Program from drug court just -- it's a records letter saying that they have a record that Mr. Dover was screened and then denied. But in lieu of requiring their presence here, that was the -- that's the only information that they've indicated they have.

MS. RATIGAN: That's fine.

MR. ERWIN: So I'd offer this as Applicant's Exhibit No. 6.

THE COURT: It's in evidence.

1 (WHEREUPON, Applicant's Exhibit No. 6 was marked for
2 identification and admitted into evidence.)

3 MR. ERWIN: I call Mr. Marchant, Lucas Marchant.

4 THE CLERK: Place your left hand on the Bible and
5 raise your right hand.

6 WHEREUPON,

7 LUCAS CRAIG MARCHANT,
8 after first having been duly sworn, testified as follows:

9 THE CLERK: State your full name for the record.

10 THE WITNESS: Lucas Craig Marchant.

11 THE CLERK: Please be seated.

12 DIRECT EXAMINATION

13 BY MR. ERWIN:

14 Q Mr. Marchant, you are with the Solicitor's Office?

15 A That's correct.

16 Q And, in 2006, you were in that same capacity?

17 A Yes, sir.

18 Q And you were the Solicitor assigned to the case of
19 James Michael Dover; is that correct?

20 A Yes, sir.

21 Q And you handled the plea offers and, ultimately,
22 tried that case; is that correct?

23 A Yes, sir.

24 Q And you've been present in the courtroom and heard
25 the testimony concerning the drug court issue?

1 A Yes, sir.

2 Q And can you, please, tell us the information that you
3 have with regard to drug court? First, you were aware
4 that he was accepted into the program?

5 A Yes, sir.

6 Q And you had to sign off on that; is that correct?

7 A That's correct.

8 Q Okay. Did you, at some point, learn that there was
9 an impediment of his entry into that program?

10 A Yes, sir.

11 Q And what was that impediment?

12 A The child support issue that's been previously
13 discussed.

14 Q And I believe that you have in your file a memo
15 concerning that that was sent to Mr. Dover's defense
16 counsel; is that correct?

17 A I do not know whether or not it was sent to
18 Mr. DeJong or not. It was sent to me from the program
19 coordinator, Ms. Godwin.

20 Q Okay. And that's then where the drug court was
21 telling you, hey, you've sent him to us, but he's got an
22 arrearage?

23 A That's correct.

24 Q Do you have any information that tells us whether
25 this information was passed on to Mr. DeJong or Mr. Dover?

1 A I have no written information in my file to that
2 effect.

3 MR. ERWIN: Okay. If I may enter that.

4 I'll offer that as Applicant's Exhibit No. 7.

5 MS. RATIGAN: No objection, Your Honor.

6 (WHEREUPON, Applicant's Exhibit No. 7 was marked for
7 identification and admitted into evidence.)

8 BY MR. ERWIN:

9 Q And, to your knowledge, Mr. Marchant, was that issue
10 ever resolved, the child support arrearage?

11 A I do not believe that he was ever caught up to the
12 point where he would be allowed to enter the program. My
13 understanding from how the program works is that any
14 financial obligations would have had to have been
15 completely resolved prior to admission -- and when I say
16 admission, I don't mean acceptance, I mean admission --
17 into a plea date. That did not occur prior to May the
18 19th of 2006, which was the plea date that was,
19 originally, scheduled for Mr. Dover, as well as other
20 candidates.

21 Q Okay. Is that your understanding of why that plea
22 date on May 19th never went through?

23 A Yes, sir.

24 Q Okay. And that memo is dated May the 1st of 2006?

25 A That's correct.

1 Q Okay. Between May 1st of 2006, and the time of trial
2 in this case, are you aware of any efforts that were made
3 to resolve the child support arrearage?

4 A No, sir.

5 Q Did you have any conversations that you recall with
6 defense counsel about that drug court situation, or the
7 child support arrearage?

8 A I can't say with certainty that Mr. DeJong and I had
9 that conversation. But based off of the date and the
10 time, Mr. DeJong and I had to have discussed that. I
11 would not have not allowed Mr. Dover into the program had
12 he caught up on his child support.

13 So, again, I can't say with 100 percent. But knowing
14 the relationship that Mr. DeJong and I had, I feel
15 confident that we did discuss the child support issue.

16 Q And you -- and if I understand your testimony
17 correctly, had that issue been resolved, you would still
18 have allowed Mr. Dover into drug court?

19 A Sure.

20 Q Because you had allowed him, initially, before you
21 knew about it?

22 A Correct.

23 Q You've brought your file with you today. It doesn't
24 contain any written communication between you and defense
25 counsel concerning the drug court issue, or the child.

1 support arrearage?

2 A It does not, specifically -- I've been unable to find
3 any specific communication between myself and Mr. DeJong
4 about the child support.

5 However, there is a note, an e-mail from myself to
6 Mr. DeJong on May the 18th, informing Mr. DeJong that only
7 one of his other clients was going to be transported for
8 the plea. And then I turned around and offered him the
9 seven-year recommendation. That was done on Thursday, May
10 18th of 2006, which would have been the day before the
11 drug court plea was scheduled to occur. The offer
12 contained not only the charge that Mr. Dover went to
13 trial on, but, also, two other PWID methamphetamine
14 charges.

15 MR. ERWIN: Okay. If I may have that as well.

16 Thanks.

17 I'd offer this as Applicant's Exhibit No. 7 [sic].

18 MS. RATIGAN: I have no objection, Your Honor.

19 THE COURT: It's in evidence.

20 THE WITNESS: I believe that would be Applicant's
21 No. 8.

22 MR. ERWIN: Oh, it is. It's Applicant's Exhibit
23 No. 8.

24 (WHEREUPON, Applicant's Exhibit No. 8 was marked for
25 identification and admitted into evidence.)

1 BY MR. ERWIN:

2 Q Mr. Marchant, are there any other documents in your
3 file that reference either drug court, or the child
4 support issue, or anything in that regard?

5 A Nothing with respect to the drug court. There's
6 additional communications between myself and Mr. DeJong
7 trying to resolve this issue before it was placed on the
8 trail docket.

9 Q Okay. Do those additional documents center around
10 the plea offer that was made of seven years?

11 A Yes, sir.

12 Q And can you tell us, please, what the discussions
13 were between you and Mr. DeJong about that plea offer?

14 A Yes, sir. Following that May 18th e-mail, there was
15 an e-mail on June the 15th where I indicated to Mr. DeJong
16 I would not be in court the week that we had scheduled.

17 However, I was reminding him that Mr. Dover's case
18 needed attention. And I, again, offered the seven-year
19 recommendation. Following that June 15th e-mail,
20 Mr. DeJong communicated with me on July the 17th,
21 indicating that he had spoke with Mr. Dover and was
22 wondering if the State, as well as the narcotics officer,
23 would be interested in working with Mr. Dover.
24 Specifically, he referred to them as the "drug boys," if
25 they were interested in his cooperation, realizing that he

1 was probably a day late and a dollar short, I agreed with
2 him that he was late, and that we would be up for trial
3 first thing Monday morning, July the 24th.

4 MR. ERWIN: If I may have those two documents.
5 I'd offer these as Applicant's Exhibit Nos. 9 and 10.

6 MS. RATIGAN: No objection, Your Honor.

7 (WHEREUPON, Applicant's Exhibit Nos. 9 and 10 were
8 marked for identification and admitted into evidence.)

9 BY MR. ERWIN:

10 Q Mr. Marchant, were any efforts made through you to
11 try to clarify the drug court issue, or the child support
12 arrearage, or anything in order to prevent that case from
13 going to trial?

14 A No, sir.

15 MR. ERWIN: I have no further questions, Your Honor.

16 MS. RATIGAN: I have no questions for this witness,
17 Your Honor.

18 THE COURT: Yes, sir, Mr. Erwin.

19 MR. ERWIN: That's our case, Your Honor.

20 THE COURT: Ms. Ratigan.

21 MR. JOHN DEJONG: This isn't my show, Your Honor.

22 But I'm sure I'm going to be called as a witness in this
23 case.

24 Could I have about a two-minute break to slide around
25 the corner here?

1 THE COURT: Yes. Let's take about a five-minute
2 recess.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Yes, ma'am, Ms. Ratigan.

5 MS. RATIGAN: Thank you, Your Honor.

6 The State would call Mr. DeJong.

7 THE COURT REPORTER: Raise your right hand and place
8/ your left hand on the Bible.

9 WHEREUPON,

10 JOHN WILLIAM DEJONG,
11 after first having been duly sworn, testified as follows:

12 THE COURT REPORTER: Thank you.

13 You can have a seat.

14 If you'll state your name.

15 THE WITNESS: First name John, J-O-H-N; middle name,
16 William, W-I-L-L-I-A-M; last name is DeJong, big D, little
17 e, big J, O-N-G.

18 DIRECT EXAMINATION

19 BY MS. RATIGAN:

20 Q Mr. DeJong, do you recall representing Mr. Dover on
21 these charges?

22 A I do.

23 Q And did you file the appropriate discovery motions?

24 A Yes, ma'am.

25 Q Did you receive those materials from the State?

1 A I did.

2 Q Did you review those with Mr. Dover?

3 A I did.

4 Q And this case was a controlled buy with a CI; is that
5 correct?

6 A That is correct.

7 Q Did -- as part of discovery, did the State provide
8 any kind of video or audio tape to the buy?

9 A As memory serves me, there was an audio tape in this
10 case. And that memory, basically, comes from, candidly,
11 the transcript and motion that was made prior to the jury
12 being selected.

13 Q And do you recall whether you reviewed that audio
14 tape with your client?

15 A I did. Again, in some of this, I can only rely on
16 the transcript. Apparently, there were some problems with
17 the audio tape. I alluded to that in the -- my motion to
18 suppress certain parts of the tape. But, to the best I
19 was able, I did review the tape, yes.

20 Q And you, also, received copies of the warrants and
21 indictments from the State?

22 A I did. I know I had copies of the warrants prior to
23 trial. Very candidly, the indictments may have come into
24 my possession either a day or two before the trial, or the
25 day of the trial.

1 Q Did you realize that Mr. Dover was facing a third
2 offense for that trafficking charge -- I mean, pardon me,
3 that distribution charge?

4 A That was not something I would have picked up off of
5 the indictment. That would have -- I would have picked
6 that up off of his NCIC record.

7 Q And you did have that NCIC RAP sheet?

8 A Yes, ma'am.

9 Q Would you have reviewed the NCIC with your client?

10 A I would say I did as part of the discovery packet.
11 But, quite candidly, I have no independent recollection of
12 that.

13 Q But your general practice would be to --

14 A Yes, ma'am. That would be my general practice.

15 Q In your opinion, was this a true third offense, based
16 on looking at the NCIC?

17 A I'm sorry, ma'am?

18 Q I'm sorry. Was -- in your opinion, based on looking
19 at the NCIC, was this a true third offense?

20 A Well, I must have believed that. Because going to
21 the back end of the trial when it was time for sentencing,
22 I think the Judge and I had a discussion over his prior
23 record. I shared with the Judge -- I was hoping in
24 mitigation that he didn't have any methamphetamine
25 charges, but that he had two prior marijuana charges.

1 Q At some point, the State provided you information
2 about the confidential informant; is that correct?

3 A In terms of identity?

4 Q In terms of whether any drugs were found on her after
5 the --

6 A They did, yes.

7 Q Can you recall just how that information came about?

8 A Mr. Marchant sent it to me via, I believe, letter
9 format.

10 Q Basically, the gist of which was the CI was found
11 with an additional undisclosed amount of methamphetamines
12 on her person. Would that be fair to say?

13 A That is correct.

14 Q And you found this out prior to the trial; is that
15 correct?

16 A Yes. I don't have the exact date. It would have --
17 I believe the Applicant provided a copy of that letter.
18 That would have been the same letter.

19 I apologize, Madam Court Reporter. I don't know
20 which exhibit that was.

21 Give me a minute and I'll tell you.

22 It was by letter from Mr. Lucas Marchant dated July
23 the 7th of 2006.

24 Q Did you ever receive any information from the State
25 that they had tested those drugs?

1 A No. Actually, I believe that came out at trial, if
2 I'm not mistaken, that they had not been tested.

3 Q Based on this information, did you make any type of
4 pre-trial motion to suppress her testimony, the CI's
5 testimony?

6 A I did not.

7 Q Based on -- would this type of information have been
8 something that would have merited such a pre-trial motion
9 to suppress her testimony?

10 A Not in my humble opinion. I don't think that would
11 have had -- I can't think that would have been a basis to
12 suppress her testimony. I think that would be what the
13 Judges like to tell us so often that it goes to weight and
14 credibility, not admissibility.

15 Q And did you cross-examine the CI about this
16 undisclosed amount of drugs?

17 A I believe I did. I believe her and, perhaps, Agent
18 Carron [phonetic] and/or Agent Brooks.

19 Q So you attempted to kind of impeach her credibility
20 on the stand?

21 A Yes, ma'am.

22 Q And you mentioned earlier that you filed a motion to
23 suppress the audio-taped conversation with the CI?

24 A That was not a written motion that was filed. That
25 was an oral motion made prior to the striking of the jury

1 in this case.

2 Q And what was the basis of that suppression motion?

3 A Actually, as I read the transcript, it was more that
4 there was conversations that I could hear about money
5 being owed. Perhaps, what could be construed by the jury
6 as other drug dealings. And, for that reason, I did not
7 move to suppress the entire tape, only those portions.

8 However, I was unsuccessful in that as well.

9 Q Mr. Dover testified that there was some sexual
10 language on the tape. Do you recall that?

11 A I do not. I cannot say that it was there or it
12 wasn't there, Ms. Ratigan. I do not recall it.

13 Q Would sexual language on the tape between the
14 confidential informant and the Defendant have been a good
15 basis to try and move to suppress that tape?

16 A I can't think of one.

17 Q We've talked a lot today -- well, there's been a lot
18 of testimony today about drug court. Do you recall your
19 client being accepted into drug court?

20 A I do.

21 Q When did you find out that he had been rejected? Did
22 you find out before he did, or did y'all find out about
23 the same time?

24 A That, I, honestly, don't know. Apparently, he was
25 rejected just shortly before his plea date, which I

1 believe was -- if memory serves me correctly was May the
2 19th.

3 Q And were you informed the basis of his rejection from
4 drug court?

5 A There's been a lot of talk today about child support.
6 I, honestly, do not have any recollection of having had
7 any discussions with either the Solicitor's Office, the
8 drug court, or everyone Mr. Dover, I believe, about the
9 child support issue.

10 Q At some point, the State came to you with a
11 seven-year offer; is that correct?

12 A They did.

13 Q And was that before or after the rejection from drug
14 court? Do you remember?

15 A I believe that was after the rejection from drug
16 court. Candidly, it would have had to have been just as a
17 practical matter. There would have been no basis for the
18 State having made an offer if drug court was still
19 available.

20 Q And did you convey that seven-year offer to
21 Mr. Dover?

22 A I did.

23 Q Did you explain to him the potential pro's and con's,
24 pluses and minuses of accepting that offer?

25 A Again, Ms. Ratigan, I don't have any independent

1 recollection of that. In the normal course, I'm sure I
2 would have. But I cannot sit here under oath and testify
3 to that.

4 Q So, at the time, you would have made -- at the time,
5 you would have conveyed that seven-year offer. Mr. Dover
6 would have known, at that point, he was no longer eligible
7 for drug court?

8 A That would be my impression, yes, ma'am.

9 Q Now, do you recall if he rejected that seven-year
10 offer that day, or did he have some time to think about
11 it?

12 A I think both. I guess that's a bit of a weird
13 answer. But I think his initial reaction was that he was
14 rejecting the offer.

15 Q At some point, the case was put on the trial docket
16 for July of 2006?

17 A Yes, ma'am.

18 Q And do you recall any conversations with Mr. Dover
19 that day about, basically, that his time was up?

20 A I suspect we probably did. The Solicitor's Office
21 practice seems to be -- at least, with me -- I don't know
22 about with everybody else. But once they go on the trial
23 docket, all deals are off of the table. And I'm sure I
24 conveyed that to Mr. Dover.

25 Q Did you have any basis to request a continuance the

1 day the case was, finally, brought to trial?

2 A I don't think so, or I think I would have made a
3 motion for a continuance. Again, that's back door, but I
4 can't think of any.

5 MS. RATIGAN: That's all I have, Your Honor.

6 THE COURT: Cross-examination.

7 MR. ERWIN: May it please the Court.

8 CROSS-EXAMINATION

9 BY MR. ERWIN:

10 Q Mr. DeJong, did -- considering that seven-year offer,
11 you had some discussions, do you recall, with Mr. Dover
12 about that offer?

13 A Well, I know the offer was conveyed to him,
14 Mr. Erwin. Any specifics of the discussion, or the
15 conveyance of the offer, conversations surrounding it, I
16 cannot say.

17 Q And you just know that the offer was conveyed. And
18 it's your recollection, I believe you said, that he had
19 rejected that offer?

20 A Correct.

21 Q And do you recall any discussions with him, at that
22 time, of that seven-year offer being rejected that he was
23 still holding out hope for drug court, or do you know?

24 A I don't -- again, he may have. I don't recall it.
25 And I suspect somewhat his testimony was if he had been

1 rejected for whatever reason that I said that I would have
2 told him, you know, drug court is off the table. But,
3 again, the specifics of that I don't recall.

4 Q Okay. And in -- I believe you testified that you
5 don't have any recollection of any discussions with either
6 him, or the Solicitor's Office, or drug court itself about
7 the child support being an issue?

8 A I do not.

9 Q Okay. And --

10 A Just so I'm clear, I have no recollection about that.

11 Q Had you had such a conversation about child support
12 being an issue holding him up for being in drug court,
13 what do you believe that your steps would have been with
14 regard to that?

15 A Well, certainly, I think I would have talked to
16 Mr. Marchant. I don't have any control over drug court.
17 That's a Solicitor's Office program --

18 Q Yes, sir.

19 A -- but I think I, certainly, would have talked to him
20 about that issue in terms of payment, or whatever.

21 Q And do you recall any discussions with anyone about
22 that?

23 A I do not.

24 Q Now, the oral motion that you made prior to the
25 striking of the jury that -- concerning the audio tape --

1 A Yes, sir.

2 Q -- of the discussion, did -- was that motion based
3 entirely on -- or what was the motion based on?

4 A That motion was based upon what I believed that a
5 jury could perceive if there had been other drug dealings
6 that Mr. Dover could have been involved in. I'm not
7 saying he was. But that I think, certainly, was the
8 perception. And that was the thrust of that whole motion.

9 Q And then the Court rejected that motion -- or denied
10 that motion?

11 A Judge Pyle quite summarily denied that motion, yes,
12 sir.

13 Q Did you consider the effect of the extra
14 methamphetamine that the informant had on her testimony,
15 or on the State's case?

16 A Well, certainly, I think I considered the effect as
17 to her credibility, if nothing else. So, yeah, I
18 considered the effect of that.

19 Q And did you, in fact, cross-examine the State's
20 witnesses concerning that?

21 A I think I did. But without, actually, reading
22 through the transcript line for line, I could not say,
23 Mr. Erwin.

24 Q And what is your understanding of how that extra
25 methamphetamine was discovered?

1 A That was discovered in the -- well, as the drug boys
2 always testify, they do a search before the CI -- before
3 they send them out. They -- then the buy is allegedly
4 made. And then they bring them back and do another
5 search. And, as memory serves me, it was Agent Brooks
6 that, actually, found the other meth after the alleged buy
7 was made in this case.

8 Q Did they find it in the first search subsequent to
9 the buy?

10 A They did not.

11 Q Was there a second search?

12 A I believe it was in the second search. I couldn't --
13 well, I'm pretty sure it was in the second search,
14 actually.

15 Q Do you believe that there was any basis as a result
16 of that for the -- either the dismissal of the charges, or
17 the exclusion of her testimony, or any evidence that went
18 through her?

19 A I couldn't -- I didn't then. And I can't think of
20 any legal basis for a dismissal at this point in time, or
21 then. As I said, my impression was it went more to her
22 credibility than anything else.

23 Q Could it have any way effected the chain of custody
24 of the other evidence they obtained, or any issues with
25 regard to the search -- the buy itself?

1 A I don't believe so. I think there was testimony
2 where one of the agents said he held out his hand. And
3 then she put in his hand what she had -- said she had just
4 bought from Mr. Dover.

5 Q Was there any assurance that the testimony in the
6 record that that methamphetamine was not somehow connected
7 to the meth subsequently found on her?

8 A I'm not sure -- could you repeat that question? I'm
9 not sure I followed it.

10 Q Was there any assurance from the record or the
11 testimony that the two batches of meth were not somehow
12 connected?

13 A No.

14 Q Okay. Was that an issue that you raised with the
15 Court during the trial in terms of exclusion of any
16 evidence?

17 A In terms of motions, no.

18 Q So the -- that was solely dealt with in attacking the
19 credibility of the State's witness?

20 A That's correct.

21 Q Do you recall discussing with Mr. Dover on the date
22 of trial what his options at that point were?

23 A Again, not specifically. I'm sure it was plead
24 guilty or go to trial.

25 Q Okay. And concerning the guilty plea, would that

1 have centered around the previous seven-year offer, or, at
2 that point, would it have been for a straight-up plea, or
3 what manner of plea?

4 A Straight-up plea.

5 Q Do you recall how many conversations you may have had
6 with Mr. Dover from the date of the seven-year offer up
7 until the date of trial concerning his plea, or possible
8 plea?

9 A I do not.

10 Q You've told us of -- when the offer came in, you
11 conveyed it to him. And then you had a discussion on the
12 day of trial. Do you recall any other discussions during
13 that period of time?

14 A I do not.

15 MR. ERWIN: I have no further questions.

16 MS. RATIGAN: I have no redirect, Your Honor.

17 And the State would rest.

18 THE COURT: Thank you, Mr. DeJong.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: All right. Anything further?

21 MR. ERWIN: Not by way of any testimony, or evidence,
22 Your Honor.

23 THE COURT: Do you have any argument?

24 MR. ERWIN: Well, just briefly, Your Honor.

25 It's my client's position that several things went

1 wrong in this case. The drug court issue, he was,
2 obviously, under the impression that he was still going to
3 be accepted for that. I think it's clear from the
4 testimony that his family took the steps they believed
5 necessary to gain his acceptance into that program. That
6 would, obviously, have alleviated the need for a trial
7 and, of course, his subsequent conviction.

8 And I have to admit that this is a very strange issue
9 to come up. And you can tell from the records that the
10 drug court has -- by way of that letter, all they show is
11 that he was rejected. And they have a little computer
12 screen entry. And they keep no other documents on that.

13 Mr. Marchant, fortunately, did have some indication
14 in his record about that, that it was centered around that
15 child support arrearage. But, clearly, I think Mr. Dover
16 was under the impression that his child support was taken
17 care of, and he could go into the drug court. That issue
18 was, obviously, never really explored any further. And
19 that is a bit of a strange twist in this type of case.
20 And, clearly, that would have kept him from going to trial
21 on this issue, Your Honor.

22 THE COURT: So he was -- was he still in jail after
23 the payoff?

24 MR. ERWIN: He was.

25 But he was still under -- he had not made bond on the

1 charges he was facing. It was his testimony that drug
2 court told him not to, it would be better for him not to
3 be out on the street, to clean up, and stay in the LEC
4 until he was brought into drug court.

5 So he -- if your question centers around would he
6 have not been released once he paid it, he would not -- he
7 wouldn't know from him still being in the LEC that there
8 was an issue, because he never posted his bond. Because
9 drug court was telling him to stay there.

10 So that was not a red flag to him. But he was still
11 in jail at the time of his trial.

12 THE COURT: But he had a year sentence from Judge
13 Johnson; right?

14 MR. ERWIN: He did, which it appears must have come
15 in February of that year.

16 THE COURT: And then the testimony was the payment
17 was after that; right?

18 MR. ERWIN: The payment was in apparently -- I
19 believe June the 22nd, according to that exhibit, that his
20 daughter went up to the Clerk's Office and made that
21 payment. The trial was in July. And drug court, again,
22 by his testimony had told him that all of -- his original
23 plea was scheduled for May 19th in drug court. They would
24 let him in on June the 30th having that child support
25 issue resolved.

1 So I think, clearly, he was still under that
2 impression at the time the seven-year offer was made. And
3 I think that's a bit of a confusing issue. But it's,
4 certainly, something that would have kept him from going
5 to trial.

6 Thank you, Your Honor.

7 THE COURT: Thank you.

8 MS. RATIGAN: I mean, just very briefly, Your Honor.

9 We'd argue that, as Your Honor knows, it's
10 Mr. Dover's burden of proof. He has to prove to prevail
11 ineffective assistance of counsel both that Mr. DeJong was
12 ineffective, and that deficient performance prejudiced the
13 case. It appears Mr. Dover raised about six different
14 issues. I'll just briefly hit each one.

15 The indictment issue. He appears to be arguing that
16 the CDR code on the indictment, 3015, is for a second
17 offense, and the CDR code on the sentencing sheet is 3039.
18 CDR codes don't convey jurisdiction. He was indicted for
19 distribution under the entire statute.

20 Mr. DeJong testified it was clear based on his priors
21 it was a true third offense. They, clearly, were on
22 notice. And that's the whole purpose of an indictment is
23 a notice document. So we'd argue that he can't prove any
24 relief for the indictment issue.

25 The issue about the CI having meth on her that was

1 not properly pursued. Mr. DeJong testified that he was
2 aware that they had recovered this small bag of
3 methamphetamines on the CI after the drug transaction.
4 And he testified he did cross-examine her about that.

5 The testimony -- pardon me, the direct and cross-exam
6 at trial, he tried to cast her as a thief, as a liar. He
7 tried to cast the informant that she was, basically,
8 trying to work off a new charge, and that she set up the
9 Defendant. Mr. DeJong used this small bag of
10 methamphetamines to thoroughly impeach her credibility.
11 Unfortunately, the credibility is determined by the jury,
12 who, clearly, believed Mr. Dover was guilty.

13 The next issue about the taped conversation with the
14 confidential informant. Mr. Dover seems to allege that
15 the sexual language in that tape should have merited the
16 exclusion of the entire conversation, the entire tape.
17 Mr. DeJong did testify about the suppression motion that
18 he argued. And that's clear in the record. He argued
19 that the recording referenced prior drug buys and prior
20 bad acts.

21 He argued that, as he said, Judge Pyle ruled upon it.
22 That, in fact, was the appeal issue was whether the
23 suppression motion should have been denied. Mr. DeJong
24 stated he did not believe the sexual language on the tape
25 would have been a valid reason to suppress. We would

1 argue especially in light of the fact that there was prior
2 bad acts and drug transactions mentioned on the tape, and
3 it was still stressed and upheld. He can't prove any kind
4 of prejudice from that.

5 Mr. Dover has not articulated a reason why a
6 continuance should have been sought or requested the day
7 of trial.

8 He, also, testified he would like Your Honor to
9 resentence him under the current drug laws. We argue,
10 obviously, that is not a valid form of relief one can get
11 in post-conviction relief.

12 And, finally, the issue about drug court. There's
13 been a lot of testimony about who thought what, when, and
14 how. I believe Mr. Marchant testified that he e-mailed
15 Mr. DeJong on May 18th that only one of his clients would
16 be transported for drug court, and offered the seven-year
17 plea that day.

18 So well in advance of the trial in this case,
19 Mr. Dover would have been advised he was not going to be
20 put into the drug court program. Mr. DeJong would have
21 conveyed the plea offer, and they discussed it. There was
22 no testimony today that either Mr. Dover or his family
23 contacted Mr. DeJong in an attempt to rectify the child
24 support issue that was testified to have been gone through
25 by Mr. Dover.

1 We would argue that Mr. Dover has failed -- I should
2 clarify. That the child support was to be handled by
3 Mr. Scott Dover.

4 Mr. Dover, the Applicant, has failed to articulate
5 what else Mr. DeJong should have done to investigate this
6 issue, or try and rectify the child support arrearage.
7 Therefore, we would argue he hasn't met his burden of
8 proof on that issue, and any of the other issues.

9 THE COURT: All right. Thank you very much.

10 I appreciate your presentations.

11 I'll let you know my decision, hopefully, in the next
12 10 days.

13 MR. ERWIN: Thank you.

14 MS. RATIGAN: Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Erwin, and, Ms. Ratigan.

16 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

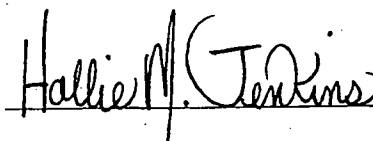
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 captioned case, relative to appeal, in the Court of Common Pleas for Pickens County, South Carolina, on the 27th day of February, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 16, 2013



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA

IN THE CIRCUIT COURT
13th JUDICIAL CIRCUIT

COUNTY OF GREENVILLE

James Dover

Plaintiff(s),

EXHIBIT LIST

State of SC vs.

Defendant(s).

Docket No. 2010-CP-39-0457

Plaintiff	Defendant
Attorney: <u>James S. Fewin, III</u>	Attorney: <u>Karen Ratigan</u>
Hearing Start: <u>2-27-12</u>	Judge: <u>G. Hill</u>
Hearing End: <u>2-27-12</u>	Court Reporter: <u>Hollie Jenkins</u>

Applicants

Plaintiff	Exhibit Description	Defendant	Exhibit Description
1.	<u>Arrest Warrant</u> EV	1.	
2.	<u>Indictment 06-GG-39-1135</u>	2.	
3.	<u>Letter dated 7-7-06</u>	3.	
4.	<u>Letter dated 5-2-06</u>	4.	
5.	<u>Child Support Pmt Out</u>	5.	
6.	<u>Letter dated 2-24-12</u>	6.	
7.	<u>Memo dated 5-1-06</u>	7.	
8.	<u>E-Mail dated 5-18-06</u>	8.	
9.	<u>E-Mail dated 6-15-06</u>	9.	
10.	<u>E-Mailed dated 6-17-06</u>	10.	
11.		11.	
12.		12.	
13.		13.	
14.		14.	
15.		15.	
16.		16.	

Submitted and received this 27th day of February, 20 12.Hollie Jenkins
Court ReporterCheryl Watson
(Deputy) Clerk of Court

ARREST WARRANT

DU

I-681776

1850

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

THE STATE

04-3088

against

James Michael Dover

Address:

Norris, SC 29667-

Phone: (864)

SSN:

Sex: M

Race: W

Height: 5'11"

Weight: 190

DL State: SC

DL #:

DOB:

Agency ORI #: SC0390000

Prosecuting Agency:

Pickens County Sheriff's Office

Prosecuting Officer:

Charles Brett Barwick

Offense:

Drugs / Manufacture, distribution, etc. of methamphetamine or cocaine base, 3rd

Offense Code:

3039

Code/Ordinance Sec:

44-53-0375(B)(3)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on James M. Dover2006-3-06

Signature of Law Enforcement Officer

RETURN WAS MADE

COMPUTER ENTERED

Pickens - Pickens County Summary Court

206A L. E. C. Road

Pickens, SC 29667

APR 3 2006

RETURNED

ORIGINAL

PICKENS COUNTY SHERIFF'S OFFICE

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Personally appeared before me the affiant Charles Brett Barwickbeing duly sworn deposes and says that defendant James Michael Doverdid within this county and state on 02/06/2006State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Pickens)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. of methamphetamine or cocaine base, 3rd

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON 2/6/06 THE DEFENDANT, JAMES MICHAEL DOVER, DID SELL A QUANTITY OF METHAMPHETAMINE TO AN UNDERCOVER OPERATIVE WORKING UNDER THE SUPERVISION OF THE SPECIAL OPERATIONS DIVISION OF THE PICKENS COUNTY SHERIFFS OFFICE. THE PURCHASE WAS MADE UNDER AUDIO, VISUAL AND VIDEO SURVEILLANCE CONDUCTED BY AGENTS. THE PURCHASE WAS MADE WITHIN PICKENS COUNTY.

1. INCIDENT REPORT #06-3086
2. CRIMINAL HISTORY WITH PRIOR CONVICTIONS ON 7/31/84, 7/24/92 AND 6/16/95.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Affiant's Address

216 Lec Road

Pickens, SC 29671-

Affiant's Telephone (864)898-5500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

If appearing from the above affidavit that there are reasonable grounds to believe that

on 2/6/2006did violate the criminal laws of the State of South Carolina (or ordinance of Pickens)☒ County/ ☐ Municipality of

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. of methamphetamine or cocaine base, 3rd

Having found probable cause and the above affidavit having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 03/31/2006370

Signature of Issuing Judge

Bruce E. Anders

Judge Code: 7064

Judge's Address

216-A Law Enforcement Center R

Pickens, SC 29671-2636

Judge's Telephone (864)898-5552

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

MAY

ORIGINAL

1 2006

BAIL set by

Judge

W. J. Howard

on

24 Nov 06

Type and Amount

\$ 12,000.00

Name of Surety

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney

Decision

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition

Sentence

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

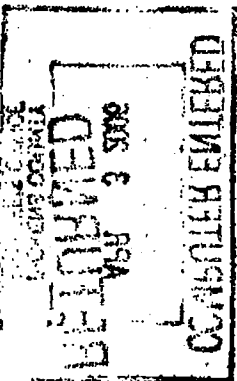
Telephone:

Name:

Address:

Telephone:

CODEFENDANTS



WITNESSES

Charles Barwick

Pickens County Sheriff's Office

4/3/2006

ARREST WARRANT NUMBER

1681776

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-39- 1135

LM

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2006

THE STATE

vs.

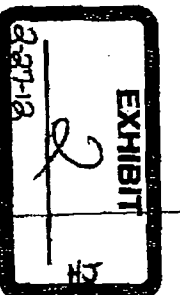
JAMES MICHAEL DOVER

3015

Indictment for

DISTRIBUTION OF METHAMPHETAMINE

VIOLATION § 44-53-0375



TRUE COPY

Lejette H. Bathini

CLERK OF COURT
PICKENS COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

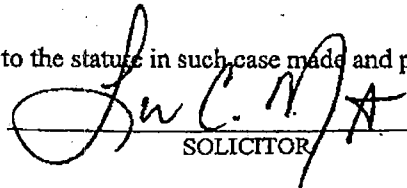
INDICTMENT FOR
DISTRIBUTION OF METHAMPHETAMINE

At a Court of General Sessions, convened on July 11, 2006 the Grand Jurors of Pickens

County present upon their oath:

That JAMES MICHAEL DOVER did in Pickens County, on or about the 6th day of February, 2006, distribute, dispense, deliver, or aid abet, or conspire to distribute, dispense or deliver to an undercover operative a quantity of Methamphetamine, a schedule II controlled substance, such distribution not having been authorized by law. This is in violation of § 44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

TELEPHONE 864-898-5806
FAX 864-898-5798



PICKENS COUNTY COURTHOUSE
214 E. MAIN STREET, 8120
PICKENS, SOUTH CAROLINA 29671

Solicitor
ROBERT M. ARIAIL

July 7, 2006

John DeJong

RE: State v. James Michael Dover
Distribution of Methamphetamine and Distribution within Proximity of a School

Dear John:

I am writing you in reference to the above-mentioned matter. Mr. Dover was charged on February 6, 2006 with Distribution of Methamphetamine and Distribution of Methamphetamine within Proximity of a School. I am currently in possession of the videotape from this incident. Please contact me at your convenience to view the tape. Additionally, it has just come to my attention that the narcotics agents found a separate bag of methamphetamine on the confidential informant after the transaction took place. The confidential informant has admitted that it was there before the transaction took place and has taken responsibility for it. This case is set on the trial docket for July.

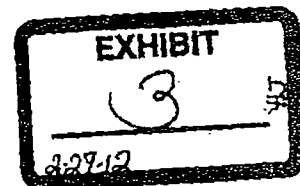
With best regards,

I am,

A handwritten signature in dark ink, appearing to read "Lucas C. Marchant".

Lucas C. Marchant

Assistant Solicitor of the 13th Judicial Circuit.



State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Greenville County Courthouse
305 East North Street, Suite 320
Greenville, South Carolina 29601-2185



Telephone 864-467-8277
Telefax 864-467-8695

Drug Court

May 2, 2006

Mr. James Dover
Pickens County Detention
216 LEC Road
Pickens, SC 29671

Dear Mr. Dover:

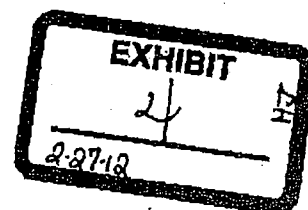
You have been approved for participation in the Thirteenth Judicial Circuit Drug Court Program. Your plea date is scheduled for Friday, May 19, 2006 at 8:30 a.m. in Courtroom 5 on the third floor of the Courthouse. Judge Simmons will be the presiding judge. Your attorney will need to be present. Should you have any questions, please contact me at 467-8277.

It is important that you meet with me after court proceedings for a few minutes to receive information concerning weekend requirements.

Sincerely,

Bobbie Godwin
Drug Court Program Manager

BG/tdm



CASE NBR-20-011325

DEFENDANT

PLAINTIFF

AGNER-

DOVER JAMES MICHAEL

BOLDING JODY LYNN

ACCT TYPE..S

GROUP.....N

FREQUENCY..W

STATUS.....

CENTRAL

SC 29630

PAY TO

JODY LYNN BOLDING

ORDER START DATE....08/23/02

LAST BW ISSUE DATE...00/00/00

LAST DATE RULED IN...00/00/00

LAST PAID DATE.....06/22/06

--- S T A T U S ---

PERIODIC PAYMENT

CUR PYMT... 85.62

ARR PYMT... 5.00

FEE..... 4.53

TOT PYMT... 95.15

CUR DUE.... 25429.14

ARR DUE.... 1485.00

FEE DUE.... 1345.41

TOT DUE.... 28259.55

CUR BAL..... 26700.30

ARREARS BAL.. 1618.04

TOTAL ACT BAL 28318.34

ABEYANCE AMT. .00

--A C T I V I T Y--

FROM 01/01/06 THRU 02/27/12

CODE	DATE	CHARGE	PAYMENT	CURRENT	ARREARS	FEE-AMT	ACCT-BAL
C	02/24/12	95.15		85.62	5.00	4.53	28318.34
C	02/17/12	95.15		85.62	5.00	4.53	28228.44
C	02/10/12	95.15		85.62	5.00	4.53	28138.54
C	02/03/12	95.15		85.62	5.00	4.53	28048.64
C	01/27/12	95.15		85.62	5.00	4.53	27958.74
C	01/20/12	95.15		85.62	5.00	4.53	27868.84
C	01/13/12	95.15		85.62	5.00	4.53	27778.94
C	01/06/12	95.15		85.62	5.00	4.53	27689.04
C	12/30/11	95.15		85.62	5.00	4.53	27599.14
C	12/23/11	95.15		85.62	5.00	4.53	27509.24
C	12/16/11	95.15		85.62	5.00	4.53	27419.34
C	12/09/11	95.15		85.62	5.00	4.53	27329.44
C	12/02/11	95.15		85.62	5.00	4.53	27239.54
C	11/25/11	95.15		85.62	5.00	4.53	27149.64
C	11/18/11	95.15		85.62	5.00	4.53	27059.74
C	11/11/11	95.15		85.62	5.00	4.53	26969.84
C	11/04/11	95.15		85.62	5.00	4.53	26879.94
C	10/28/11	95.15		85.62	5.00	4.53	26790.04
C	10/21/11	95.15		85.62	5.00	4.53	26700.14
C	10/14/11	95.15		85.62	5.00	4.53	26610.24
C	10/07/11	95.15		85.62	5.00	4.53	26520.34
C	09/30/11	95.15		85.62	5.00	4.53	26430.44
C	09/23/11	95.15		85.62	5.00	4.53	26340.54
C	09/16/11	95.15		85.62	5.00	4.53	26250.64
C	09/09/11	95.15		85.62	5.00	4.53	26160.74
C	09/02/11	95.15		85.62	5.00	4.53	26070.84
C	08/26/11	95.15		85.62	5.00	4.53	25980.94

EXHIBIT

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2-27-12

CASE NBR-20-011325

DEFENDANT

PLAINTIFF

AGNBR-

DOVER JAMES MICHAEL

BOLDING JODY LYNN

C	08/20/10	95.15	85.62	5.00	4.53	21216.24
C	08/13/10	95.15	85.62	5.00	4.53	21126.34
C	08/06/10	95.15	85.62	5.00	4.53	21036.44
C	07/30/10	95.15	85.62	5.00	4.53	20946.54
C	07/23/10	95.15	85.62	5.00	4.53	20856.64
C	07/16/10	95.15	85.62	5.00	4.53	20766.74
C	07/09/10	95.15	85.62	5.00	4.53	20676.84
C	07/02/10	95.15	85.62	5.00	4.53	20586.94
C	06/25/10	95.15	85.62	5.00	4.53	20497.04
C	06/18/10	95.15	85.62	5.00	4.53	20407.14
C	06/11/10	95.15	85.62	5.00	4.53	20317.24
C	06/04/10	95.15	85.62	5.00	4.53	20227.34
C	05/28/10	95.15	85.62	5.00	4.53	20137.44
C	05/21/10	95.15	85.62	5.00	4.53	20047.54
C	05/14/10	95.15	85.62	5.00	4.53	19957.64
C	05/07/10	95.15	85.62	5.00	4.53	19867.74
C	04/30/10	95.15	85.62	5.00	4.53	19777.84
C	04/23/10	95.15	85.62	5.00	4.53	19687.94
C	04/16/10	95.15	85.62	5.00	4.53	19598.04
C	04/09/10	95.15	85.62	5.00	4.53	19508.14
C	04/02/10	95.15	85.62	5.00	4.53	19418.24
C	03/26/10	95.15	85.62	5.00	4.53	19328.34
C	03/19/10	95.15	85.62	5.00	4.53	19238.44
C	03/12/10	95.15	85.62	5.00	4.53	19148.54
C	03/05/10	95.15	85.62	5.00	4.53	19058.64
C	02/26/10	95.15	85.62	5.00	4.53	18968.74
C	02/19/10	95.15	85.62	5.00	4.53	18878.84
C	02/12/10	95.15	85.62	5.00	4.53	18788.94
C	02/05/10	95.15	85.62	5.00	4.53	18699.04
C	01/29/10	95.15	85.62	5.00	4.53	18609.14
C	01/22/10	95.15	85.62	5.00	4.53	18519.24
C	01/15/10	95.15	85.62	5.00	4.53	18429.34
C	01/08/10	95.15	85.62	5.00	4.53	18339.44
C	01/01/10	95.15	85.62	5.00	4.53	18249.54
C	12/25/09	95.15	85.62	5.00	4.53	18159.64
C	12/18/09	95.15	85.62	5.00	4.53	18069.74
C	12/11/09	95.15	85.62	5.00	4.53	17979.84
C	12/04/09	95.15	85.62	5.00	4.53	17889.94
C	11/27/09	95.15	85.62	5.00	4.53	17800.04
C	11/20/09	95.15	85.62	5.00	4.53	17710.14
C	11/13/09	95.15	85.62	5.00	4.53	17620.24
C	11/06/09	95.15	85.62	5.00	4.53	17530.34
C	10/30/09	95.15	85.62	5.00	4.53	17440.44
C	10/23/09	95.15	85.62	5.00	4.53	17350.54
C	10/16/09	95.15	85.62	5.00	4.53	17260.64
C	10/09/09	95.15	85.62	5.00	4.53	17170.74
C	10/02/09	95.15	85.62	5.00	4.53	17080.84
C	09/25/09	95.15	85.62	5.00	4.53	16990.94
C	09/18/09	95.15	85.62	5.00	4.53	16901.04
C	09/11/09	95.15	85.62	5.00	4.53	16811.14
C	09/04/09	95.15	85.62	5.00	4.53	16721.24
C	08/28/09	95.15	85.62	5.00	4.53	16631.34

CASE NBR-20-011325		DEFENDANT	PLAINTIFF			
AGNBR-		DOVER JAMES MICHAEL		BOLDING JODY LYNN		
C	08/21/09	95.15	85.62	5.00	4.53	16541.44
C	08/14/09	95.15	85.62	5.00	4.53	16451.54
C	08/07/09	95.15	85.62	5.00	4.53	16361.64
C	07/31/09	95.15	85.62	5.00	4.53	16271.74
C	07/24/09	95.15	85.62	5.00	4.53	16181.84
C	07/17/09	95.15	85.62	5.00	4.53	16091.94
C	07/10/09	95.15	85.62	5.00	4.53	16002.04
C	07/03/09	95.15	85.62	5.00	4.53	15912.14
C	06/26/09	95.15	85.62	5.00	4.53	15822.24
C	06/19/09	95.15	85.62	5.00	4.53	15732.34
C	06/12/09	95.15	85.62	5.00	4.53	15642.44
C	06/05/09	95.15	85.62	5.00	4.53	15552.54
C	05/29/09	95.15	85.62	5.00	4.53	15462.64
C	05/22/09	95.15	85.62	5.00	4.53	15372.74
C	05/15/09	95.15	85.62	5.00	4.53	15282.84
C	05/08/09	95.15	85.62	5.00	4.53	15192.94
C	05/01/09	95.15	85.62	5.00	4.53	15103.04
C	04/24/09	95.15	85.62	5.00	4.53	15013.14
C	04/17/09	95.15	85.62	5.00	4.53	14923.24
C	04/10/09	95.15	85.62	5.00	4.53	14833.34
C	04/03/09	95.15	85.62	5.00	4.53	14743.44
C	03/27/09	95.15	85.62	5.00	4.53	14653.54
C	03/20/09	95.15	85.62	5.00	4.53	14563.64
C	03/13/09	95.15	85.62	5.00	4.53	14473.74
C	03/06/09	95.15	85.62	5.00	4.53	14383.84
C	02/27/09	95.15	85.62	5.00	4.53	14293.94
C	02/20/09	95.15	85.62	5.00	4.53	14204.04
C	02/13/09	95.15	85.62	5.00	4.53	14114.14
C	02/06/09	95.15	85.62	5.00	4.53	14024.24
C	01/30/09	95.15	85.62	5.00	4.53	13934.34
C	01/23/09	95.15	85.62	5.00	4.53	13844.44
C	01/16/09	95.15	85.62	5.00	4.53	13754.54
C	01/09/09	95.15	85.62	5.00	4.53	13664.64
C	01/02/09	95.15	85.62	5.00	4.53	13574.74
C	12/26/08	95.15	85.62	5.00	4.53	13484.84
C	12/19/08	95.15	85.62	5.00	4.53	13394.94
C	12/12/08	95.15	85.62	5.00	4.53	13305.04
C	12/05/08	95.15	85.62	5.00	4.53	13215.14
C	11/28/08	95.15	85.62	5.00	4.53	13125.24
C	11/21/08	95.15	85.62	5.00	4.53	13035.34
C	11/14/08	95.15	85.62	5.00	4.53	12945.44
C	11/07/08	95.15	85.62	5.00	4.53	12855.54
C	10/31/08	95.15	85.62	5.00	4.53	12765.64
C	10/24/08	95.15	85.62	5.00	4.53	12675.74
C	10/17/08	95.15	85.62	5.00	4.53	12585.84
C	10/10/08	95.15	85.62	5.00	4.53	12495.94
C	10/03/08	95.15	85.62	5.00	4.53	12406.04
C	09/26/08	95.15	85.62	5.00	4.53	12316.14
C	09/19/08	95.15	85.62	5.00	4.53	12226.24
C	09/12/08	95.15	85.62	5.00	4.53	12136.34
C	09/05/08	95.15	85.62	5.00	4.53	12046.44
C	08/29/08	95.15	85.62	5.00	4.53	11956.54

CASE NBR-20-011325

DEFENDANT

PLAINTIFF

AGNR-

DOVER JAMES MICHAEL

BOLDING JODY LYNN

C	08/22/08	95.15	85.62	5.00	4.53	11866.64
C	08/15/08	95.15	85.62	5.00	4.53	11776.74
C	08/08/08	95.15	85.62	5.00	4.53	11686.84
C	08/01/08	95.15	85.62	5.00	4.53	11596.94
C	07/25/08	95.15	85.62	5.00	4.53	11507.04
C	07/18/08	95.15	85.62	5.00	4.53	11417.14
C	07/11/08	95.15	85.62	5.00	4.53	11327.24
C	07/04/08	95.15	85.62	5.00	4.53	11237.34
C	06/27/08	95.15	85.62	5.00	4.53	11147.44
C	06/20/08	95.15	85.62	5.00	4.53	11057.54
C	06/13/08	95.15	85.62	5.00	4.53	10967.64
C	06/06/08	95.15	85.62	5.00	4.53	10877.74
C	05/30/08	95.15	85.62	5.00	4.53	10787.84
C	05/23/08	95.15	85.62	5.00	4.53	10697.94
C	05/16/08	95.15	85.62	5.00	4.53	10608.04
C	05/09/08	95.15	85.62	5.00	4.53	10518.14
C	05/02/08	95.15	85.62	5.00	4.53	10428.24
C	04/25/08	95.15	85.62	5.00	4.53	10338.34
C	04/18/08	95.15	85.62	5.00	4.53	10248.44
C	04/11/08	95.15	85.62	5.00	4.53	10158.54
C	04/04/08	95.15	85.62	5.00	4.53	10068.64
C	03/28/08	95.15	85.62	5.00	4.53	9978.74
C	03/21/08	95.15	85.62	5.00	4.53	9888.84
C	03/14/08	95.15	85.62	5.00	4.53	9798.94
C	03/07/08	95.15	85.62	5.00	4.53	9709.04
C	02/29/08	95.15	85.62	5.00	4.53	9619.14
C	02/22/08	95.15	85.62	5.00	4.53	9529.24
C	02/15/08	95.15	85.62	5.00	4.53	9439.34
C	02/08/08	95.15	85.62	5.00	4.53	9349.44
C	02/01/08	95.15	85.62	5.00	4.53	9259.54
C	01/25/08	95.15	85.62	5.00	4.53	9169.64
C	01/18/08	95.15	85.62	5.00	4.53	9079.74
C	01/11/08	95.15	85.62	5.00	4.53	8989.84
C	01/04/08	95.15	85.62	5.00	4.53	8899.94
C	12/28/07	95.15	85.62	5.00	4.53	8810.04
C	12/21/07	95.15	85.62	5.00	4.53	8720.14
C	12/14/07	95.15	85.62	5.00	4.53	8630.24
C	12/07/07	95.15	85.62	5.00	4.53	8540.34
C	11/30/07	95.15	85.62	5.00	4.53	8450.44
C	11/23/07	95.15	85.62	5.00	4.53	8360.54
C	11/16/07	95.15	85.62	5.00	4.53	8270.64
C	11/09/07	95.15	85.62	5.00	4.53	8180.74
C	11/02/07	95.15	85.62	5.00	4.53	8090.84
C	10/26/07	95.15	85.62	5.00	4.53	8000.94
C	10/19/07	95.15	85.62	5.00	4.53	7911.04
C	10/12/07	95.15	85.62	5.00	4.53	7821.14
C	10/05/07	95.15	85.62	5.00	4.53	7731.24
C	09/28/07	95.15	85.62	5.00	4.53	7641.34
C	09/21/07	95.15	85.62	5.00	4.53	7551.44
C	09/14/07	95.15	85.62	5.00	4.53	7461.54
C	09/07/07	95.15	85.62	5.00	4.53	7371.64
C	08/31/07	95.15	85.62	5.00	4.53	7281.74

CASE NBR-20-011325

DEFENDANT

PLAINTIFF

AGNR-

DOVER JAMES MICHAEL

BOLDING JODY LYNN

C	08/24/07	95.15	85.62	5.00	4.53	7191.84
C	08/17/07	95.15	85.62	5.00	4.53	7101.94
C	08/10/07	95.15	85.62	5.00	4.53	7012.04
C	08/03/07	95.15	85.62	5.00	4.53	6922.14
C	07/27/07	95.15	85.62	5.00	4.53	6832.24
C	07/20/07	95.15	85.62	5.00	4.53	6742.34
C	07/13/07	95.15	85.62	5.00	4.53	6652.44
C	07/06/07	95.15	85.62	5.00	4.53	6562.54
C	06/29/07	95.15	85.62	5.00	4.53	6472.64
C	06/22/07	95.15	85.62	5.00	4.53	6382.74
C	06/15/07	95.15	85.62	5.00	4.53	6292.84
C	06/08/07	95.15	85.62	5.00	4.53	6202.94
C	06/01/07	95.15	85.62	5.00	4.53	6113.04
C	05/25/07	95.15	85.62	5.00	4.53	6023.14
C	05/18/07	95.15	85.62	5.00	4.53	5933.24
C	05/11/07	95.15	85.62	5.00	4.53	5843.34
C	05/04/07	95.15	85.62	5.00	4.53	5753.44
C	04/27/07	95.15	85.62	5.00	4.53	5663.54
C	04/20/07	95.15	85.62	5.00	4.53	5573.64
C	04/13/07	95.15	85.62	5.00	4.53	5483.74
C	04/06/07	95.15	85.62	5.00	4.53	5393.84
C	03/30/07	95.15	85.62	5.00	4.53	5303.94
C	03/23/07	95.15	85.62	5.00	4.53	5214.04
C	03/16/07	95.15	85.62	5.00	4.53	5124.14
C	03/09/07	95.15	85.62	5.00	4.53	5034.24
C	03/02/07	95.15	85.62	5.00	4.53	4944.34
C	02/23/07	95.15	85.62	5.00	4.53	4854.44
C	02/16/07	95.15	85.62	5.00	4.53	4764.54
C	02/09/07	95.15	85.62	5.00	4.53	4674.64
C	02/02/07	95.15	85.62	5.00	4.53	4584.74
C	01/26/07	95.15	85.62	5.00	4.53	4494.84
C	01/19/07	95.15	85.62	5.00	4.53	4404.94
C	01/12/07	95.15	85.62	5.00	4.53	4315.04
C	01/05/07	95.15	85.62	5.00	4.53	4225.14
C	12/29/06	95.15	85.62	5.00	4.53	4135.24
C	12/22/06	95.15	85.62	5.00	4.53	4045.34
C	12/15/06	95.15	85.62	5.00	4.53	3955.44
C	12/08/06	95.15	85.62	5.00	4.53	3865.54
C	12/01/06	95.15	85.62	5.00	4.53	3775.64
C	11/24/06	95.15	85.62	5.00	4.53	3685.74
C	11/17/06	95.15	85.62	5.00	4.53	3595.84
C	11/10/06	95.15	85.62	5.00	4.53	3505.94
C	11/03/06	95.15	85.62	5.00	4.53	3416.04
C	10/27/06	95.15	85.62	5.00	4.53	3326.14
C	10/20/06	95.15	85.62	5.00	4.53	3236.24
C	10/13/06	95.15	85.62	5.00	4.53	3146.34
C	10/06/06	95.15	85.62	5.00	4.53	3056.44
C	09/29/06	95.15	85.62	5.00	4.53	2966.54
C	09/22/06	95.15	85.62	5.00	4.53	2876.64
C	09/15/06	95.15	85.62	5.00	4.53	2786.74
C	09/08/06	95.15	85.62	5.00	4.53	2696.84
C	09/01/06	95.15	85.62	5.00	4.53	2606.94

CASE NBR-20-011325		DEFENDANT		PLAINTIFF		
AGNR-		DOVER JAMES MICHAEL		BOLDING JODY LYNN		
C	08/25/06	95.15	85.62	5.00	4.53	2517.04
C	08/18/06	95.15	85.62	5.00	4.53	2427.14
C	08/11/06	95.15	85.62	5.00	4.53	2337.24
C	08/04/06	95.15	85.62	5.00	4.53	2247.34
C	07/28/06	95.15	85.62	5.00	4.53	2157.44
C	07/21/06	95.15	85.62	5.00	4.53	2067.54
C	07/14/06	95.15	85.62	5.00	4.53	1977.64
C	07/07/06	95.15	85.62	5.00	4.53	1887.74
C	06/30/06	95.15	85.62	5.00	4.53	1797.84
C	06/23/06	95.15	85.62	5.00	4.53	1707.94
P	06/22/06	NON CUSTOD	2062.00	1541.16	422.67	98.17
F	06/22/06	FINE PYMT	100.00			
C	06/16/06	95.15	85.62	5.00	4.53	3680.04
C	06/09/06	95.15	85.62	5.00	4.53	3590.14
C	06/02/06	95.15	85.62	5.00	4.53	3500.24
C	05/26/06	95.15	85.62	5.00	4.53	3410.34
C	05/19/06	95.15	85.62	5.00	4.53	3320.44
C	05/12/06	95.15	85.62	5.00	4.53	3230.54
C	05/05/06	95.15	85.62	5.00	4.53	3140.64
C	04/28/06	95.15	85.62	5.00	4.53	3050.74
C	04/21/06	95.15	85.62	5.00	4.53	2960.84
C	04/14/06	95.15	85.62	5.00	4.53	2870.94
C	04/07/06	95.15	85.62	5.00	4.53	2781.04
C	03/31/06	95.15	85.62	5.00	4.53	2691.14
C	03/24/06	95.15	85.62	5.00	4.53	2601.24
C	03/17/06	95.15	85.62	5.00	4.53	2511.34
C	03/10/06	95.15	85.62	5.00	4.53	2421.44
C	03/03/06	95.15	85.62	5.00	4.53	2331.54
C	02/24/06	95.15	85.62	5.00	4.53	2241.64
C	02/17/06	95.15	85.62	5.00	4.53	2151.74
A	02/16/06	ALTER CASE	1712.40	1712.40	.00	2061.84
C	02/10/06	95.15	85.62	5.00	4.53	2061.84
C	02/03/06	95.15	85.62	5.00	4.53	1971.94
C	01/27/06	95.15	85.62	5.00	4.53	1882.04
C	01/20/06	95.15	85.62	5.00	4.53	1792.14
C	01/13/06	95.15	85.62	5.00	4.53	1702.24
C	01/06/06	95.15	85.62	5.00	4.53	1612.34

END OF PAYMENT HISTORY

--HEARING DATA--

FROM 02/27/12 THRU 02/27/12

DATE	PRESIDING JUDGE	CURRENT PYMT	ARREARAGE BAL	TOT BAL
NO HEARING HISTORY EXISTS FROM 02/27/12 THRU 02/27/12				

Thirteenth Judicial Circuit
State of South Carolina
W. Walter Wilkins, Solicitor

Greenville County Courthouse
305 E. North Street, Suite 115
Greenville, SC 29601-2185



Telephone: 864-467-8717
Telefax: 864-467-8695

Solicitor's Diversion Programs

February 24, 2012

Mr. James Erwin, III
Attorney at Law
413 Gentry Memorial Highway
Easley, SC 29640

Dear Mr. Erwin:

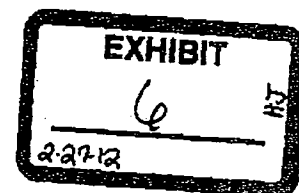
I am responding to your subpoena that you sent to the Drug Court Office regarding defendant, James Michael Dover. This defendant was initially screened for Drug Court in March 2006. Unfortunately, all of the rejected casefile records for 2006 have been destroyed. We do, however, have a record showing that Mr. Dover was screened and ultimately denied a recommendation for Drug Court.

If you need any other information, please feel free to give me a call at 467-8277.

Sincerely,

A handwritten signature in cursive script that reads "Teresa Moore".

Teresa Moore
Administrative Assistant
Drug Court



Marchant, Lucas

From: Marchant, Lucas
Sent: Thursday, May 18, 2006 10:26 AM
To: 'John DeJong'
Subject: RE: Drug Court

Karen Bryant is your only client in Drug Court.

The offer on James Dover is for the following charges, 4 total.
PWID METH 2ND OFFENSE (x's 2)
DIST METH
DIST METH PROX

Recommendation of concurrent on all for 7 years with ATU.

Tammy Bigbys offer of probation has now been withdrawn. The current offer is for 3 years with ATU.

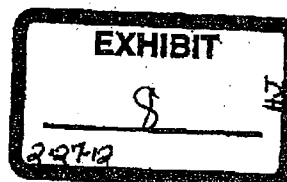
Thanks,
Lucas

-----Original Message-----

From: John DeJong [mailto:dejongatty@hotmail.com]
Sent: Thursday, May 18, 2006 9:51 AM
To: Lmarchant@greenvillecounty.org
Subject: Drug Court

I am advised that you are the man that knows everything there is to know about drug court. More specifically could you share with me a list of my clients or a toal list, either one, of who is schduled for court in the A.M.
Thanks

On the road to retirement? Check out MSN Life Events for advice on how to get there! <http://lifeevents.msn.com/category.aspx?cid=Retirement>



Marchant, Lucas

From: Marchant, Lucas
Sent: Thursday, June 15, 2006 10:51 AM
To: John Dejong (E-mail)
Subject: Guilty Pleas 6/19/2006

John,
I will not be here next week, but I have a few matters that need attention.

These are the only 3 people I am looking to plead guilty next week.
James M. Dover - 7 years (will plead him to the Dist & Prox, and dismiss the 2 PWID cases)
Brian B. Teague - 90 days
Brandy White - Probation (she was a no show b/w), you just asked about this one.

Additionally,

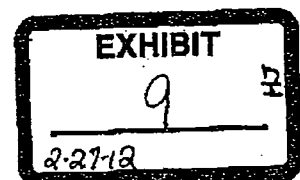
- (1) Anthony Smith - We can handle him next term.
- (2) Bennett Thompson - If he does not accept the deal this term, I will be preparing his case for trial next term. His paperwork will be in my file and he must be signed up next week in order to accept the deal. Otherwise the offer is withdrawn.
- (3) Christopher Whitmire - this is the Forgery guy. I will give him 2 options, if he can come up with the \$1200 bucks for restitution I will dismiss (he has until next trial term). OR, If he can not have the money he can plead guilty next term with a recommendation of probation, If neither of these occur I will be preparing his case for trial in August.

Lastly, there may be a few of your clients who I sent bond cards to make sure that you have had an opportunity to speak with or to insure they have made appointments with you. If they show and want to take the offer, more power to them. Their files should be ready for a plea.

Thanks,
Lucas

Lucas C. Marchant, Assistant Solicitor
Pickens County Courthouse
214 E. Main Street, B-120
Pickens, SC 29671

Phone - 864-898-5650
Fax - 864-898-5798



Marchant, Lucas

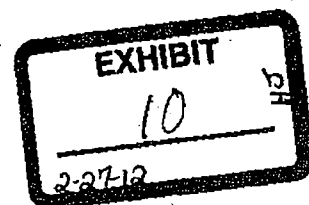
From: Marchant, Lucas
Sent: Monday, July 17, 2006 11:41 AM
To: 'John DeJong'
Subject: RE: James Dover 7-17-06

you are correct, day late and dollar short. I am in possession of the video from this transaction, please let me know when it is convenient for you to view it. As it stands it looks like we are 1st up. Jury selection will begin Monday morning 7/24/2006 at 9:30 and trial will start Tuesday morning. I have placed Mr. Dover on the transport list for Monday Morning.
Thanks
Lucas

-----Original Message-----

From: John DeJong [mailto:johnd@co.pickens.sc.us]
Sent: Monday, July 17, 2006 11:35 AM
To: Lucas Marchant (E-mail)
Subject: James Dover 7-17-06

I spoke to this man briefly on Saturday. I am sure a day late and a dollar short, however, he wanted me to advise you that he would be willing to work for the drug boys if they are interested. Thanks



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-39-0457
COUNTY OF PICKENS	)	
	)	
James Michael Dover,	)	
S.C.D.C. No. 220690,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

2012 JUN 14 P 3:35
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 9, 2010. The Respondent made its return on August 20, 2010. An evidentiary hearing into the matter was convened on February 27, 2012 at the Pickens County Courthouse. The Applicant was present at the hearing and represented by James S. Erwin, III, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Jessie Burton, Assistant Solicitor Lucas C. Marchant, Esquire, and the Applicant's trial counsel, John W. DeJong, Esquire. The Court had before it the trial transcript, the records of the Pickens County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at

the July 2006 term of the Pickens County Grand Jury for distribution of methamphetamine within proximity of a school (2006-GS-39-1134) and distribution of methamphetamine (2006-GS-39-1135). He was represented by John W. DeJong, Esquire.

After the State called the case to trial, the Applicant was found guilty. On July 27, 2006, the Honorable C. Victor Pyle, Jr, sentenced the Applicant to concurrent terms of ten (10) years for distribution of methamphetamines within proximity of a school and twenty (20) years for distribution of methamphetamines, third offense.

A notice of appeal was filed with the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Dover, Op. No. 2009-UP-246 (S.C. Ct. App. filed May 28, 2009).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failure to properly advise.
 - b. Failure to properly investigate informant's background.
 - c. Failure to assert possible defense of entrapment.
 - d. Failure to have the Applicant's case transferred to drug court.
2. Trial court error.

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. 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 conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated trial counsel did not challenge that the CDR code on his indictment was for distribution of methamphetamine second offense but the charge brought to trial was for a third offense. The Applicant stated the confidential informant should not have been allowed to testify at trial. The Applicant stated trial counsel should have requested testing of the methamphetamines found on the confidential informant (to compare with the methamphetamines she claimed to have purchased from Applicant). The Applicant stated trial counsel should have filed a pre-trial motion to exclude the audiotape conversation with the confidential informant

because it contained sexual language. The Applicant stated he was accepted into drug court in May 2006. The Applicant stated he was not transported to court to plead guilty and enter drug court, however, because the State determined he had an arrearage in child support. The Applicant stated that he believed drug court was still an option because he retained another attorney to clear up this issue. The Applicant stated that, by the time the case was brought to trial, trial counsel told him drug court was no longer an option. The Applicant stated trial counsel should have requested a continuance because he did not want to plead guilty or go to trial.¹

Jessie Burton stated she was the Applicant's daughter and that the Applicant had been accepted into drug court. Burton stated she went to another attorney regarding the Applicant's child support arrearage and believed she had paid the balance in June 2006 so that Applicant could enter drug court. Burton stated she never discussed this issue with trial counsel.

Assistant Solicitor Lucas C. Marchant, Esquire, testified he was the prosecuting attorney in this case. Marchant testified the Applicant was initially accepted into the drug court program and the plea date was set for May 19, 2006. Marchant testified the drug court coordinator advised him, however, that the Applicant was in arrears on child support payments. Marchant testified all such obligations must be resolved prior to admission to the drug court program. Marchant testified he would have discussed the child support issue with trial counsel. Marchant testified he sent an e-mail on May 18, 2006 that did not include Applicant among a list of defendants that were transported to the courthouse to plead guilty and enter drug court.

Trial counsel testified he filed discovery motions, received those materials, and reviewed

¹ The Applicant also requested this Court re-sentence him pursuant to the current statutory guidelines for these offenses. This Court cannot re-sentence the Applicant in this manner, as offenses must be sentenced under the statute as it was written at the time of the offense.

them with the Applicant. Trial counsel testified he would not have known this was a third offense based on the indictment, and he would have gotten this information from the Applicant's NCIC record. Trial counsel stated he would have reviewed the NCIC record with the Applicant and that, according to the NCIC, it was a true third offense. Trial counsel testified the State informed him before trial that undisclosed methamphetamine was found on the confidential informant after the sale. Trial counsel testified these drugs were not tested. Trial counsel testified there was no basis to file a pre-trial motion to suppress the informant's testimony. Trial counsel testified he cross-examined the informant about the undisclosed drugs and impeached her credibility. Trial counsel testified he moved to suppress portions of the audiotape conversation between the Applicant and the informant because of references to money owed and prior drug deals. Trial counsel testified sexual language would not have been a valid basis to move to suppress the tape. Trial counsel testified the Applicant was initially accepted into the drug court program but shortly before that plea date (from the State) trial counsel learned that the Applicant had been rejected. Trial counsel testified he did not recall that the child support issue was the basis for the rejection. Trial counsel testified the State made a seven (7) year plea offer after the rejection from drug court but that the Applicant rejected this offer. Trial counsel testified that, once the case was on the July 2006 trial docket, all plea offers were unavailable. Trial counsel testified he conveyed this to the Applicant and told him the choices at that point were to plead guilty without a recommendation or go to trial. Trial counsel testified there was no basis to move for a continuance.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his

representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged that the indictment listed a CDR code for a second offense but he was tried as a third offense. Initially, this Court notes the CDR code is not an integral part of the indictment. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). Indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictment in this case was true-billed and clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007). Trial counsel testified he reviewed the NCIC report and that the Applicant was facing a third offense. Trial counsel did not testify that he was unaware the State would be proceeding upon this charge as a third offense. As trial counsel had notice of the charge the Applicant faced, there was neither error nor prejudice from the lack of a motion challenging the indictment.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have investigated the confidential informant. This Court notes trial counsel thoroughly cross-examined the informant at trial about her drug use and the methamphetamine found on her person after she gave police the methamphetamine she allegedly purchased from the Applicant.² (Trial transcript, pp. 99-114). This Court notes the jury determines the credibility of the witnesses at trial. See State v. Pipkin, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct. App. 2004)

² This Court finds that, as trial counsel cross-examined the confidential informant about the origin of the separate bag of drugs found in her pocket, there was no prejudice from a lack of testing to compare these drugs with those sold to the informant.

9/14

(noting the jury is "the finder of fact and weigher of credibility"): It is clear that, regardless of trial counsel's cross-examination of the confidential informant, the jury accepted the State's theory of the case. See Craven v. Cunningham, 292 S.C. 441, 443, 357 S.E.2d 23, 25 (1987) ("The credibility of witnesses is for the triers of fact."). Further, as the Applicant failed to present evidence of what trial counsel would have discovered if he had investigated the informant, this Court cannot speculate on this point. See, e.g., Jackson v. State, 329 S.C. 345, 349-50, 495 S.E.2d 768, 770 (1998) (finding applicant failed to prove prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses when he failed to substantiate at the PCR hearing that the victims and witnesses had criminal records).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have filed a pre-trial motion to suppress the audiotape conversation between the Applicant and the confidential informant because it contained sexual language. Trial counsel moved to suppress the audiotape because – on the tape – the Applicant referred to prior events "that conceivably could be construed as drug dealing." (Trial transcript, pp. 4-5; pp. 6-7). The trial judge denied the motion and found the tape admissible. (Trial transcript, p. 7). This Court finds the outcome of that ruling would not have been any different if trial counsel had also argued the tape should be suppressed because it referenced the amorous interests of the Applicant.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have had this case resolved by a guilty plea into the drug court program. It is undisputed that the Applicant was initially accepted into the drug court program but later rejected because of an outstanding child support arrearage. This Court finds there was no evidence presented that the Applicant communicated the arrearage issue to trial counsel. This Court finds there was no evidence presented that trial counsel could have rectified the arrearage issue. To the contrary,

Assistant Solicitor Marchant testified the Applicant was never "caught up enough" on his arrearage to enter the drug court program. This Court finds Marchant's testimony is credible.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have moved for a continuance because he did not want to plead guilty and did not want to go to trial. Trial counsel testified there was no basis to move for a continuance. As the Applicant failed to present a valid reason as to why a continuance was necessary in this case, this Court cannot find trial counsel was ineffective in not making such a motion.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief is denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 12TH day of June, 2012.

D. Garrison Hill

D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2010-CP-39-457

James Michael Dover, S.C.D.C. No. 220690

Appellant,

v.

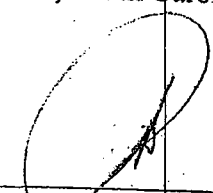
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy in the United States Mail, postage prepaid, on July 12, 2012, addressed to its attorney of record, Karen C. Ratigan, P.O. Box 11549, Columbia, South Carolina 29211.

July 12, 2012



James S. Erwin, III
413 Gentry Memorial Highway
Easley, South Carolina 29640
(864) 855-4595
Attorney for Appellant

DOCKET NO. 2006-GS-39-1135

LM

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2006

THE STATE

vs.

JAMES MICHAEL DOVER

WITNESSES

Charles Barwick

Pickens County Sheriff's Office

4/3/2006

ARREST WARRANT NUMBER

1681776

ACTION OF GRAND JURY

TRUE BILL

Date JUL 11 2006

Richard Logan
Foreperson of Grand Jury

VERDICT

Guilty

Indictment for

3015

DISTRIBUTION OF METHAMPHETAMINE

VIOLATION § 44-53-0375

John E. Block 7-27-06
Foreperson of Petit Jury Date:

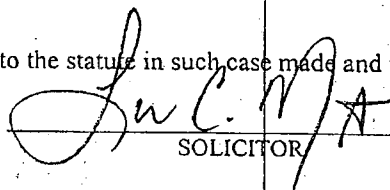
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
DISTRIBUTION OF METHAMPHETAMINE

At a Court of General Sessions, convened on July 11, 2006 the Grand Jurors of Pickens
County present upon their oath:

That JAMES MICHAEL DOVER did in Pickens County, on or about the 6th day of February, 2006, distribute,
dispense, deliver, or aid abet, or conspire to distribute, dispense or deliver to an undercover operative a quantity of
Methamphetamine, a schedule II controlled substance, such distribution not having been authorized by law. This
is in violation of § 44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

DOCKET NO. 2006-GS-39- 1134
LM

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2006

THE STATE

vs.

JAMES MICHAEL DOVER

WITNESSES

Charles Barwick

Pickens County Sheriff's Office

4/3/2006

ARREST WARRANT NUMBER

1681777

ACTION OF GRAND JURY

TRUE BILL

Date JUL 11 2006

Richard J. Rogers
Foreperson of Grand Jury

VERDICT

Guilty

Indictment for

0107

DISTRIBUTION OF METHAMPHETAMINE
WITHIN 1/2 MILE OF A SCHOOL

VIOLATION § 44-53-0445(B)(1)

John E. Clark 1-27-06
Foreperson of Petit Jury Date:

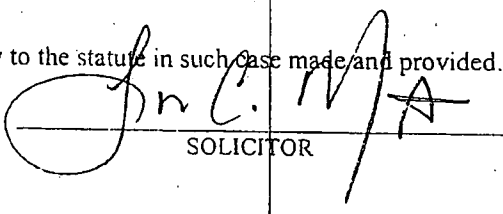
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
DISTRIBUTION OF METHAMPHETAMINE WITHIN 1/2 MILE OF A
SCHOOL

At a Court of General Sessions, convened on July 11, 2006 the Grand Jurors of Pickens
County present upon their oath:

That JAMES MICHAEL DOVER did in Pickens County, on or about the 6th day of February, 2006, distribute a
quantity of Methamphetamine, a controlled substance, while being within one-half (1/2) mile proximity of Pickens
Elementary School. This is in violation of § 44-53-445 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.James Dover

AKA: _____

Race: W Sex: M Age: 47DOB: 9 SS#: 2Address: iveGreenville, SC 29611

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2006GS3901134A/W#: 1681777Date of Offense: 02-06-2006S.C. Code § : 44-53-0445(B)(1)CDR Code #: 0107☐ CASE RESTORED
SENTENCE☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: DISTRIBUTION OF METHAMPHETAMINE WITHIN PROXIMITY OF A SCHOOLin violation of § 44-53-0445(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0107☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

W. C. MARMAN
SolicitorJames Dover
DefendantJohn W. DeJoy
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$ <u>100.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>6.75</u>
TOTAL	\$	\$ <u>231.75</u>

April Heron
Clerk of Court/ Deputy Clerk

Court Reporter: _____

PTUP _____

_____ days/hours Public Service Employment.

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE C. V. ByrdJudge Code: 2101710Sentence Date: July 27, 2006

SCCA/217 (2/2006)

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.James Dover

AKA: _____

Race: W Sex: M Age: 47DOB: 1 SS#: _____Address: Greenville, SC 29611DL#: - SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2006GS3901135A/W#: 1681776Date of Offense: 02-06-2006S.C. Code § : 44-53-0375(B)(3)CDR Code #: 3039☐ CASE RESTORED
SENTENCE☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: DISTRIBUTION OF METHAMPHETAMINEin violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3039☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lucas C. Marchant
Solicitor

Defendant

John W. DeJong
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 50,000; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	<u>50,000.00</u>
§ 14-1-211(A)(1) (Conv Surcharge)	\$100	\$ <u>5,375.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u>100.00</u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ _____
§ 35.13 (Public Def/Prob)	\$500	\$ _____
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$ <u>100.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	\$	<u>3,119.25</u>
TOTAL	\$	<u>107,094.25</u>

TOTAL

April H. Henson
Clerk of Court/Deputy ClerkCourt Reporter: April Henson

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE C. Vicki ByrdJudge Code: 2101710Sentence Date: July 27, 2006

SCCAV217 (2/2006)