

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Anderson County

Honorable William P. Keesley, Circuit Court Judge

MARY NIMMONS PATRICK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001253

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA,
PLAINTIFF,
VS
MARY N. PATRICK,
DEFENDANT.

)
) 2017-GS-04-02576
)
)
) April 16-18, 2018
)
)
) TRANSCRIPT OF RECORD
)
)

B E F O R E :

THE HONORABLE R. LAWTON MCINTOSH, JUDGE

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SUSAN W. HUDGINS
OFFICIAL COURT REPORTER

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1 **APRIL 16, 2018**

2 THE COURT: Ladies and gentlemen, just to let you
3 know what's going on, I was just conferring with the
4 attorneys to make sure everybody is on the same page as to
5 the number of what we refer to as strikes. In just a
6 moment, I'm going to ask the State to announce the case,
7 the first case, for trial this week. She'll pass forward
8 the indictment. Then a few minutes later, the clerk will
9 run off a list and provide it to myself and my law clerk.

10 If you're on that list, your name will be called,
11 you'll come through the bar or these swinging doors and
12 stand between the clerk and the court reporter who is this
13 lady sitting to my right. You'll face the State and the
14 Defense, and they'll make a determination as to whether or
15 not you will be asked to sit on this jury for this trial.
16 If your name is called, bring your personal belongings with
17 you, please, so you'll have them with you in the jury box.

18 Mr. Clerk, let's have -- it's five and five, two and
19 one, and we'll have two alternates.

20 THE CLERK: Your Honor...

21 (Off record discussion.)

22 THE COURT: I'm getting ahead of myself, ladies
23 and gentlemen. I'm just out of sorts this morning.

24 Would you announce your case, please?

25 MS. MOORE: Your Honor, before you is

1 2017-GS-04-2576, trafficking methamphetamine between 200
2 and 400 grams. The defendant is Mary N. Patrick
3 represented by Bill Yarborough.

4 THE COURT: All right. Would you please pass that
5 forward.

6 Ladies and gentlemen, this is what is known as an
7 indictment. The fact that this person has been indicted,
8 arrested and charged with the crime of trafficking in
9 methamphetamine is not evidence of her guilt, and it does
10 not raise an inference nor a presumption of her guilt.
11 It's simply the mechanism by which the State will bring a
12 person, such as this lady, before the Court for a trial and
13 a determination of her guilt.

14 Now I have to go through some questions relating more
15 particularly to this case. If the question applies to you,
16 I'm going to ask you to go ahead and stand up unless you
17 have an absolute need to come forward. And if you do,
18 we'll let you do so. Can everybody hear me okay still?

19 (No response.)

20 THE COURT: I remind you that you're each still
21 under oath. The first question, has anyone ever been
22 related by blood or marriage to Mary N. Patrick?

23 Mr. Yarborough, will you have Ms. Patrick stand,
24 please, sir.

25 (WHEREUPON, the defendant stood and faced the jury

1 panel.)

2 THE COURT: Very good. Thank you, sir.

3 Has any member of the jury panel ever been related by
4 blood or marriage to Ms. Patrick? If so, would you please
5 stand.

6 (No response.)

7 THE COURT: Has any member of the jury panel ever
8 had a close personal or social relationship with Mary N.
9 Patrick? If so, would you please stand.

10 (No response.)

11 THE COURT: All right. Ladies and gentlemen, the
12 following is a list of potential witnesses who may appear
13 in this case. I'm going to read the entire list to you
14 consisting of eleven names, and then I'm going to ask you
15 questions related thereto.

16 The potential witnesses are Derek Green, Andres
17 Acevedo, Investigator Andres Acevedo, Sergeant Alan
18 Hendrix, Investigator Matt McDonald, Anderson County
19 Sheriff's Office, Deputy L.M. Watts, Anderson County
20 Sheriff's Office, Investigator Sean Proner, Anderson County
21 Sheriff's Office, Investigator Josh Durham, Anderson County
22 Sheriff's Office, Investigator Ronald Wood, Anderson County
23 Sheriff's Office, Deputy Casey Purdy, Anderson County
24 Sheriff's Office, Jan Robison, Anderson County Sheriff's
25 Office, and Meredith Lanford, the Anderson/Oconee Regional

1 Forensic Laboratory.

2 Ladies and gentlemen, did everyone get all those
3 names? If there's anyone who did not, would you please
4 raise your hand.

5 (No response.)

6 THE COURT: Very good. All right.

7 Ladies and gentlemen, has anyone ever been related by
8 blood or marriage to any of the potential witnesses I've
9 just read to you? If so, would you please stand.

10 All right, sir. What is your juror number?

11 THE JUROR: 125.

12 THE COURT: 125?

13 THE JUROR: (Witness moves head up and down.)

14 THE COURT: You're Mr. Richey?

15 THE JUROR: Yes, sir.

16 THE COURT: And who are you friends with or
17 related to?

18 THE JUROR: Josh Durham.

19 THE COURT: And how are you related to him?

20 THE JUROR: My cousin by marriage.

21 THE COURT: Okay, sir. Do you socialize with him
22 often?

23 THE JUROR: Yes, sir.

24 THE COURT: Are you real close with him?

25 THE JUROR: Yes, sir.

1 THE COURT: Would the fact that this person may
2 appear and testify in this case cause you to believe his
3 testimony over anyone else who may appear in this case
4 because of your relationship?

5 THE JUROR: It probably would.

6 THE COURT: It would?

7 THE JUROR: Yes, sir.

8 THE COURT: All right. I'm going to strike you
9 from the trial of this case -- number 125 -- but you're not
10 excused this week because we have other trials. I'm going
11 to ask that you and anyone else who may be excused call in
12 tonight after 6 o'clock, and there will be a message for
13 you to either return tomorrow or not. The clerk will give
14 you that number, and you'll need to call in each night
15 after six until you have a message that says you've been
16 excused. All right, Mr. Richie? Thank you very much.

17 Anyone else?

18 All right, sir. What is your jury number?

19 THE JUROR: Number 35.

20 THE COURT: What was it? 75?

21 THE CLERK: 35.

22 THE JUROR: 35?

23 THE COURT: I'll tell you, the acoustics are
24 terrible in here, and I've got gray hair and bad ears, and
25 sometimes it's terrible.

1 So you're Derek Evans?

2 THE JUROR: Yes, sir.

3 THE COURT: And which witness or witnesses do you
4 have a relationship with?

5 THE JUROR: Josh Durham. I went to high school
6 with him.

7 THE COURT: All right, sir. And how old are you
8 now?

9 THE JUROR: I'm 36. Today is my birthday.

10 THE COURT: Oh, happy birthday. I know this is
11 probably the place you thought you'd be.

12 (Laughter)

13 THE COURT: Now, the fact that you went to high
14 school with Mr. Durham, will that prevent you from giving
15 both sides of this case a fair and impartial trial?

16 THE JUROR: We were pretty close going through
17 school, so I would probably say that I would --

18 THE COURT: You just want to get out for your
19 birthday? I'll transfer you to another term.

20 THE JUROR: No, sir. That would be nice, but I'd
21 I do have a pretty good relationship with Josh.

22 THE COURT: Well, I mean, hey, listen, I have a
23 lot of people I have good relationships with. But if our
24 clerk of court got up and testified doesn't mean I'd
25 believe him over anybody else in the case. Do you

1 understand? And that's -- the real question is, we want to
2 make sure that the State and this defendant has a jury
3 that's fair and impartial who will make their determination
4 based on the testimony and evidence and according to the
5 law uninfluenced by any biases for or against one side or
6 the other. Do you think you could do that?

7 THE JUROR: I would probably say no. I mean,
8 like I said, I grew up with him. We were pretty close
9 growing up.

10 THE COURT: All right, sir. I'm going to excuse
11 you from the trial of this case. Have a happy birthday,
12 and you'll need to call in the remainder of the week. What
13 number juror? That's number...

14 THE CLERK: 35.

15 THE COURT: ... 35. Anyone else?

16 (No response.)

17 THE COURT: Has any member of the jury panel ever
18 had a close personal or social relationship other than
19 being related by blood or marriage to the same witnesses I
20 gave to you? If so, would you please stand up.

21 THE JUROR: Ronald William Wood.

22 THE COURT: What is your juror number?

23 THE JUROR: 54.

24 THE COURT: 64?

25 THE JUROR: 54.

1 THE COURT: 54? Are you Mr. Hembree?

2 THE JUROR: Yes, sir, I am.

3 THE COURT: And which witness was it?

4 THE JUROR: Ronald William Wood.

5 THE COURT: And how are you related to him or do
6 you know him?

7 THE JUROR: I grew up with him.

8 THE COURT: Okay, sir. And if this witness
9 appears in this case, would that prevent you from giving
10 both sides of this case a fair and impartial trial?

11 THE JUROR: Maybe.

12 THE COURT: Sir?

13 THE JUROR: Maybe.

14 THE COURT: I didn't hear what he said.

15 THE JUROR: Maybe.

16 THE COURT: He said no?

17 THE CLERK: He said maybe.

18 THE COURT: Sir, you wouldn't believe this
19 witnesses' testimony over any other witness just because of
20 that relationship?

21 THE JUROR: I would probably be more prone to
22 believe the other person.

23 THE COURT: Come around here, if you would.

24 (WHEREUPON, the juror approached the bench.)

25 THE COURT: I'm sorry. I didn't hear your

1 response.

2 THE JUROR: I said I may be more prone to believe
3 Woody's statement.

4 THE COURT: Well, here's the question, what I
5 just got through telling the gentleman before you. We want
6 to make sure -- because somebody is being on trial for
7 their liberty. So we've got to have a trial -- a jury
8 that's consistent of people who can be fair to both sides
9 and not have any bias or prejudice for one side or against
10 one side.

11 THE JUROR: I might be prejudiced.

12 THE COURT: But if this person comes and
13 testifies, would you believe them over somebody else just
14 because you had this relationship?

15 THE JUROR: It's a very strong possibility.

16 THE COURT: You said you think you would? All
17 right. I'm going to excuse you. And if you would, call in
18 tonight.

19 What number was that again?

20 THE CLERK: 54.

21 THE COURT: Thank you. Anyone else?

22 THE CLERK: Is he excused?

23 THE COURT: 54?

24 Come on forward. The acoustics in this courtroom are
25 so terrible. The court reporter and I both are probably

1 having a hard time hearing. What is your juror number?

2 THE JUROR: 148.

3 THE COURT: 148?

4 THE JUROR: Yes, sir.

5 THE COURT: You're Ms. Stricklin. And which one

6 of the witnesses are you related to or have a relationship

7 with?

8 THE JUROR: An investigator.

9 THE COURT: There's a whole bunch of

10 investigators.

11 THE JUROR: Andres.

12 THE COURT: Ma'am?

13 THE JUROR: Andres.

14 THE COURT: Andres Acevedo?

15 THE JUROR: (Witness moves head up and down.)

16 THE COURT: Okay. And how do you know or are

17 related to Mr. Acevedo?

18 THE JUROR: Friends.

19 THE COURT: Friends?

20 THE JUROR: Uh-huh (affirmative).

21 THE COURT: Do you socialize with him now.

22 THE JUROR: Yes.

23 THE COURT: How often?

24 THE JUROR: Maybe a couple of times a month.

25 THE COURT: A couple of times a month?

1 THE JUROR: Uh-huh (affirmative).

2 THE COURT: Would that prevent you from being
3 fair and impartial to both sides in this case?

4 THE JUROR: No.

5 THE COURT: Would that cause you to believe his
6 testimony over someone else who may appear?

7 THE JUROR: No.

8 THE COURT: All right. Any additional voir dire
9 from the State?

10 MS. MOORE: None, Your Honor.

11 THE COURT: From the Defense?

12 MR. YARBOROUGH: No, sir.

13 THE COURT: Thank you, ma'am. You may be seated.
14 Anyone else?

15 (No response.)

16 THE COURT: Mr. Yarborough, would you stand up
17 and introduce yourself and your firm, please.

18 MS. MOORE: I'm William Yarborough. I go by
19 Bill. Right now I'm in Greenville by myself.

20 THE COURT: Ms. Moore, would you introduce
21 yourself and everybody at the table.

22 MS. MOORE: My name is Chelsea Moore. I'm an
23 assistant solicitor with the 10th judicial circuit, and I'm
24 prosecuting this case. This is my cocounsel, Scott
25 McElhannon, and the investigator on the case, Detective

1 Acevedo, also at the table with me this morning.

2 THE COURT: All right, ladies and gentlemen, has
3 any member of the jury panel ever been represented by any
4 of the attorneys here in the courtroom or any attorney who
5 is employed by the 10th Judicial Circuit Solicitor's
6 Office? If so, would you please stand.

7 (No response.)

8 THE COURT: Has any member of the jury panel ever
9 been related by blood or marriage or have you ever had a
10 close personal or social relationship with any of the
11 attorneys here in the courtroom or any attorney employed by
12 the 10th Judicial Circuit Solicitor's Office? If so, would
13 you please stand.

14 (No response.)

15 THE COURT: Ladies and gentlemen, has any member
16 of the jury panel read, heard or seen anything about the
17 case of the State of South Carolina versus Mary N. Patrick,
18 indicted for trafficking in methamphetamine prior to coming
19 to court today? If so, would you please stand.

20 (No response.)

21 THE COURT: And a followup to that, has any
22 member of the jury panel formed or expressed any opinion
23 about any issue or matter involved in the case of the
24 status of Carolina versus Mary N. Patrick? If so, would
25 you please stand.

1 (No response.)

2 THE COURT: Is there any member of the jury panel
3 that's aware of any bias or prejudice they may harbor for
4 or against the State or for or against the Defense in this
5 matter or their respective attorneys? If so, would you
6 please stand.

7 (No response.)

8 THE COURT: All right, sir. What is your jury
9 number?

10 THE JUROR: 68.

11 THE COURT: 58?

12 THE JUROR: 68.

13 THE COURT: 68? You're Mr. Keger (phonic)?

14 THE JUROR: Kiger.

15 THE COURT: Kiger. I'm sorry. And what is your
16 bias that you have?

17 THE JUROR: I'm prejudiced. I'm prejudiced
18 against drugs.

19 THE COURT: Sir?

20 THE JUROR: I'm prejudiced against drugs.

21 THE COURT: Well, you know, do you understand
22 that everyone who comes before this Court is presumed to be
23 innocent, and the State has to present evidence that
24 establishes their guilt by proof beyond a reasonable doubt
25 before they can be found guilty?

1 THE JUROR: I'm sorry. What was the question?

2 THE COURT: Sir?

3 THE JUROR: What was the question?

4 THE COURT: The question is do you understand
5 that as we sit here today, this defendant, Ms. Patrick, is
6 presumed to be innocent? Do you understand that?

7 THE JUROR: (No response.)

8 THE COURT: And that this indictment does not
9 raise an inference of her guilt nor does it raise a
10 presumption of her guilt. It's just a mechanism by which
11 she's brought to this Court for a trial. Do you understand
12 that?

13 THE JUROR: Yes, sir.

14 THE COURT: And do you also understand that the
15 State has to prove each and every element of the charge
16 against this defendant by proof beyond a reasonable doubt
17 before she can be found guilty? Do you understand that?

18 THE JUROR: Yes, sir.

19 THE COURT: And do you feel like you can apply
20 those constitutional principles in this case?

21 THE JUROR: No.

22 THE COURT: You don't think so? All right. Have
23 a seat over here on the front row, please, sir.

24 I'm going to strike Mr. Kiger from the jury panel this
25 week.

1 Anyone else?

2 Yes, sir. What is your jury number?

3 THE JUROR: 11.

4 THE COURT: 11? You're Mr. Bauknight?

5 THE JUROR: I am.

6 THE COURT: All right, sir.

7 THE JUROR: I'm an expert in the chemistry of
8 making methamphetamine.

9 THE COURT: Okay. Listen, when I practiced law,
10 I was a lawyer. And some said I was an expert, and some
11 said I wasn't an expert and didn't know anything. But that
12 didn't prevent me from sitting on a jury that involves the
13 law. You know, it may be that that would be beneficial to
14 the jury. I don't know.

15 THE JUROR: I look forward to serving on the
16 jury.

17 THE COURT: Sir?

18 THE JUROR: Your Honor, I look forward to serving
19 on the jury.

20 THE COURT: Well, let me ask you this,
21 Mr. Bauknight, just to make sure that we are having both
22 sides protected here. Do you feel that you can listen to
23 the testimony and the evidence and apply the law without
24 being impartial or biased for or against one side or the
25 other?

1 THE JUROR: I believe I could be impartial, Your
2 Honor.

3 THE COURT: Sir?

4 THE JUROR: I believe I could be impartial.

5 THE COURT: Well, we need to be a little bit
6 stronger. And I know that may be just your vernacular that
7 you're using. But can you be impartial, fair and
8 impartial, to both sides?

9 THE JUROR: Yes.

10 THE COURT: Thank you. Good.

11 Any additional voir dire from the State?

12 MS. MOORE: None from the State, Your Honor.

13 THE COURT: From the Defense.

14 MR. YARBOROUGH: No, sir, Your Honor.

15 THE COURT: Thank you, Professor.

16 All right. Is there any member of the jury panel that
17 was a member of the grand jury that issued the indictment
18 in this case? If so, would you please stand.

19 (No response.)

20 THE COURT: All right. Ladies and gentlemen,
21 I'll tell you this. I know sometimes these questions seem
22 to be redundant. They are created by statute to make sure
23 we try to cover the bases. But just for your information,
24 those are things that have been questions in courtroom all
25 over the state for a long, long time.

1 All right. The next question is is any member of the
2 jury panel who is a member of or a contributor to any group
3 which has as its primary purpose the promotion of law
4 enforcement or victims' rights. Examples of such
5 organizations would be MADD, SADD or CAVE although that
6 certainly is not an exhaustive list. But if any member of
7 the jury panel is a member of or a contributor to any group
8 which has as its primary concern the promotion of law
9 enforcement or victims' rights, would you please stand.

10 All right, sir. What is your jury number?

11 THE JUROR: I'm number 4. I am a member of the
12 Georgia Association of Criminal Defense Lawyers.

13 THE COURT: Okay, sir. Now, Mr. Anderson -- you
14 are Howard Anderson, correct?

15 THE JUROR: Yes, Your Honor.

16 THE COURT: Can you be fair and impartial to both
17 the State and to the Defense in this matter?

18 THE JUROR: Yes, Your Honor.

19 THE COURT: Can you make your decision based on
20 the testimony and evidence in accordance with the law as I
21 give it to you at the end of this case?

22 THE JUROR: Yes, Your Honor.

23 THE COURT: Thank you. Any additional voir dire
24 from the State?

25 MS. MOORE: None, Your Honor.

1 THE COURT: From the Defense?

2 MR. YARBOROUGH: No, sir.

3 THE COURT: Thank you, sir.

4 All right. Ladies and gentlemen, lastly, does any
5 member of the jury know of any reason why he or she should
6 not be selected to serve in the trial of this matter with
7 particular emphasis being placed on your ability to be fair
8 and impartial to both the State and to the Defendant in
9 this matter? If you know of any reason why you should not
10 serve, would you please stand.

11 THE JUROR: Judge, one other thing. Ms. Moore
12 and I did a plea -- I think it was three or four terms ago.
13 She's very easy to work with, and it wouldn't cause me to
14 be unfair or impartial.

15 THE COURT: Okay. So you can be fair and
16 impartial, in other words?

17 THE JUROR: Yes, Judge.

18 THE COURT: Okay. All right. Good. That was
19 juror number 4, Mr. Anderson.

20 THE JUROR: Your Honor, in regards to your last
21 question.

22 THE COURT: Hang on, Mr. Mullane. You are --

23 THE JUROR: Number 101.

24 THE COURT: Number 101. Okay, sir.

25 THE JUROR: I am in a business that represents

1 the union.

2 THE COURT: Come up here for a second. I can't
3 really hear you back there.

4 By the way, Mr. Mullane and I used to coach Little
5 League football together years ago. We actually had a
6 pretty good little team, didn't we?

7 THE JUROR: We did.

8 THE COURT: All right, sir.

9 THE JUROR: I'm in a business since I represent
10 people as a union president, local union president.

11 THE COURT: As a union president?

12 THE JUROR: Yes. It's just a business --

13 THE COURT: And for the State and the Defense, he
14 said in his business since he is a union representative, a
15 president, and so he represents people in that regard, but
16 it would not affect his ability to be fair and impartial to
17 either side.

18 Does the State have any additional voir dire?

19 MS. MOORE: None, Your Honor.

20 THE COURT: Does the Defense have any?

21 MR. YARBOROUGH: No, sir.

22 THE COURT: Thank you, Mr. Mullane.

23 All right, ladies and gentlemen. That concludes the
24 questions that have to do with your qualifications to serve
25 on this particular jury.

1 Now, in just a minute, the clerk is going to draw out
2 some names. If your name is called, if you come to the bar
3 and stand between the clerk and our court reporter, they'll
4 make a decision as to whether or not you'll be seated on
5 this jury. If your name is called, please bring your
6 personal belongings.

7 MS. MOORE: Judge, may we approach?

8 THE COURT: Yes, ma'am.

9 (WHEREUPON, a bench conference was held off the
10 record.)

11 THE COURT: Would juror number 167 come forward,
12 Ms. Wigington?

13 (WHEREUPON, the juror approached the bench, and the
14 following was held on the record but out of the hearing of
15 the jury panel.)

16 THE COURT: It was brought to our attention that
17 you and Officer Acevedo know each other pretty well; is
18 that correct?

19 THE JUROR: I've only seen him a few times. I
20 wouldn't say well.

21 THE COURT: He said that y'all ran in kind of the
22 same circles at times or whatever.

23 THE JUROR: I believe he knew my brother, yes,
24 sir.

25 THE COURT: Okay. Would that relationship affect

1 your ability to be fair and impartial?

2 THE JUROR: Not at all, no, sir.

3 THE COURT: Are you sure?

4 THE JUROR: Positive.

5 THE COURT: Okay. And are you okay?

6 MS. MOORE: I'm all right.

7 THE COURT: Did you get that? She said she ran

8 in circles with him sometimes, didn't really know him, and

9 it wouldn't affect her ability to be fair and impartial.

10 Thank you, ma'am.

11 THE JUROR: Thank you.

12 THE COURT: Thank you, ma'am. That's the way to

13 do it if you ever have any questions.

14 Mr. Clerk, would you please run the list enough for

15 twelve and two alternates.

16 (Off record discussion.)

17 THE CLERK: All right. Ladies and gentlemen, if

18 I call your name, if you would just come through the

19 swinging doors and come here.

20 Our first potential juror is number 49, Brandon D.

21 Hamm.

22 What say you for the State?

23 MS. MOORE: Please seat the juror.

24 THE CLERK: What say you for the Defense?

25 MR. YARBOROUGH: Please swear the juror.

1 THE COURT: That way, Mr. Hamm.

2 The next potential juror is number 101, Thomas M.
3 Mullane.

4 What say you for the State?

5 MS. MOORE: Please seat the juror.

6 THE CLERK: What say you for the Defense?

7 MR. YARBOROUGH: Please swear the juror.

8 THE CLERK: Juror number 24, Philip A. Dance.
9 What say you for the State?

10 MS. MOORE: Please seat the juror.

11 THE CLERK: What say you for the Defense?

12 MR. YARBOROUGH: Please excuse the juror.

13 THE CLERK: You can have a seat back in the
14 audience, Mr. Dance.

15 Juror number 2, Kenneth M. Aldrich.

16 What say you for the State?

17 MS. MOORE: Please seat the juror.

18 THE CLERK: What say you for the Defense?

19 MR. YARBOROUGH: Please swear the juror.

20 THE CLERK: That way, Mr. Aldrich.

21 Juror number 84, Teresa D. Mann.

22 What say you for the State?

23 MS. MOORE: Please excuse Ms. Mann from the trial
24 of this case.

25 THE CLERK: You can have a seat in the audience,

1 Ms. Mann.

2 Juror number 134, Robin J. Shiflet.

3 What say you for the State?

4 MS. MOORE: Please seat the juror.

5 THE CLERK: What say you for the Defense?

6 MR. YARBOROUGH: Please swear the juror.

7 THE CLERK: That way, please.

8 Juror number 118, Valentin Ramirez.

9 What say you for the State?

10 MS. MOORE: Please excuse Mr. Ramirez from the

11 trial of this case.

12 THE CLERK: You can have a seat, please. Thank

13 you.

14 Juror number 61, Michael G. Holsenback. What say you

15 for the State?

16 MS. MOORE: Please seat the juror.

17 THE CLERK: What say you for the Defense?

18 MS. MOORE: Please excuse the juror.

19 THE CLERK: You can have a seat in the audience,

20 Mr. Holsenback.

21 Juror number 135, Amy S. Siler.

22 What say you for the State?

23 MS. MOORE: Please seat the juror.

24 THE CLERK: What say you for the Defense?

25 MR. YARBOROUGH: Please swear the juror.

1 THE CLERK: That way, please, ma'am.

2 Juror number 11, Charles W. Bauknight, Jr.

3 What say you for the State?

4 MS. MOORE: Please excuse Mr. Bauknight from the

5 trial of this case.

6 THE CLERK: You can have a seat, Mr. Bauknight.

7 Thank you.

8 Juror number 96, Derek S. Miller.

9 What say you for the State?

10 MS. MOORE: Please swear the juror.

11 THE CLERK: What say you for the Defense?

12 MR. YARBOROUGH: Please swear the juror.

13 THE CLERK: Juror number 86, Matthew B. Mantooth.

14 What say you for the State?

15 MS. MOORE: Please seat the juror.

16 THE CLERK: What say you for the Defense?

17 MR. YARBOROUGH: Please swear the juror.

18 THE CLERK: That way, Mr. Mantooth, please.

19 Juror number 154, William E. Tripp.

20 What say you for the State?

21 MS. MOORE: Please seat the juror.

22 THE CLERK: What say you for the Defense?

23 MR. YARBOROUGH: Please swear Mr. Tripp.

24 THE CLERK: That way, please.

25 Juror number 4, Howard W. Anderson III.

1 What say you for the State?

2 MS. MOORE: Please excuse Mr. Anderson from the
3 trial of this case.

4 THE CLERK: Thank you.

5 And I have that as your fourth strike.

6 Juror number 14, Pauline R. Brown.

7 What say you for the State?

8 MS. MOORE: Please seat the juror.

9 THE CLERK: What say you for the Defense?

10 MR. YARBOROUGH: Please swear Ms. Brown.

11 THE CLERK: That way, please.

12 Juror number 66, Jackie L. Johnson.

13 What say you for the State?

14 MS. MOORE: Please seat the juror.

15 THE CLERK: What say you for the Defense?

16 MR. YARBOROUGH: Please excuse Ms. Johnson.

17 THE CLERK: You can have a seat back out in the
18 audience, please.

19 Juror number 32, Reginald K. Earle.

20 What say you for the State?

21 MS. MOORE: Please excuse Mr. Earle from the
22 trial of this case.

23 THE CLERK: You can have a seat in the audience.

24 Juror number 167, Whitney L. Wigington.

25 Any reason for cause?

1 MS. MOORE: No.

2 THE CLERK: What say you for the Defense?

3 MR. YARBOROUGH: Please swear the juror.

4 THE CLERK: That way, please.

5 Juror number 73, Janice L. Kohlhoff.

6 Any reason for cause?

7 MS. MOORE: No, sir.

8 THE CLERK: What say you for the Defense?

9 MR. YARBOROUGH: Please swear the juror.

10 THE CLERK: That way, please.

11 Juror number 25, Leslie M. Dellinger.

12 Any reason for cause?

13 MS. MOORE: No, sir.

14 MR. YARBOROUGH: Please excuse Ms. Dellinger.

15 THE CLERK: You may have a seat, Ms. Dellinger.

16 Mr. Yarborough, I have that as your fourth strike.

17 MR. YARBOROUGH: Yes, sir.

18 THE CLERK: Crystal N. Adams.

19 What say you for the State? Oh, I'm sorry. Any
20 cause?

21 MS. MOORE: None.

22 THE CLERK: What say you for the Defense?

23 MR. YARBOROUGH: Please excuse Ms. Adams.

24 THE CLERK: You may have a seat.

25 Juror number 80, Kristen B. Lopez.

1 Any reason for cause?

2 MS. MOORE: None.

3 THE CLERK: Any reason for cause?

4 MR. YARBOROUGH: No, sir.

5 THE CLERK: You can have a seat.

6 Your Honor, I believe that is twelve. We'll move now
7 to the two alternates.

8 THE COURT: Yes, sir.

9 THE CLERK: The first potential alternate is
10 number 5, Andrea L. Arcomone.

11 What say you for the State?

12 MS. MOORE: Please seat the juror.

13 THE CLERK: What say you for the Defense?

14 MR. YARBOROUGH: Please excuse the juror.

15 THE CLERK: You may have a seat back in the
16 audience, please.

17 Juror number 129, Charles W. Roy.

18 What say you for the State?

19 MS. MOORE: Please seat the juror.

20 THE CLERK: What say you for the Defense?

21 MR. YARBOROUGH: Excuse the juror.

22 THE CLERK: Juror number 157, Gerald A.
23 Vandermey.

24 What say you for the State?

25 MS. MOORE: Please seat the juror.

1 THE CLERK: Any reason for cause?

2 MR. YARBOROUGH: Swear the juror, please.

3 THE CLERK: You can take a seat in the jury box.

4 That will be our first alternate.

5 Juror number 93, Ian E. McIntyre.

6 What say you for the State?

7 MS. MOORE: Please seat the juror.

8 THE CLERK: What say you for the Defense?

9 MR. YARBOROUGH: Please swear the juror.

10 THE CLERK: That way, Mr. McIntyre.

11 Your Honor, I believe that makes twelve and two
12 alternates.

13 THE COURT: All right. Any motions from the
14 State with regard to jury selection?

15 MS. MOORE: No, Your Honor.

16 THE COURT: Any from the Defense?

17 MR. YARBOROUGH: None from the Defense, Your
18 Honor.

19 THE COURT: Sir?

20 MR. YARBOROUGH: None from the Defense, Your
21 Honor.

22 THE COURT: Thank you very much.

23 All right. Ladies and gentlemen, those of you who
24 were not selected, I'm going to go ahead and excuse you.

25 (WHEREUPON, the remaining jurors on the jury panel

1 were excused.)

2 THE COURT: Ladies and gentlemen, those of you
3 who were selected on this jury, I'm going to ask that you
4 go back in just a minute and select someone to be the
5 foreperson of the jury. The foreperson of the jury will be
6 someone who presides over the deliberations and also who
7 communicates with the Court whenever there may be a need to
8 have communication with the Court.

9 Our alternates may not serve as the foreperson, but
10 they have a right to vote. It doesn't have to be
11 unanimous, but by simple majority. Once that person is
12 elected to be foreperson, I'm going to ask that person to
13 write their name down and their jury number, if they still
14 remember it, on a piece of paper that our bailiff will give
15 to you and then turn around and check with your fellow
16 jurors, including your alternates, to determine whom, if
17 anyone, would like to have a pad or pen to take notes with
18 during the course of this trial. Once you get that
19 information, write that number down underneath your name,
20 knock on the door and we'll receive you back in the
21 courtroom with a few more instructions before we leave you
22 for a little bit until this afternoon. But if you go back
23 with the bailiff right now, please.

24 (WHEREUPON, the jury exited the courtroom at
25 approximately 11:06 AM.)

1 THE COURT: Sir, I'm going to ask that you, while
2 this case is being tried, that you use that seat and you
3 spectate whether we have the jury here or not throughout
4 the course of this trial. And I'll let you know when
5 you're excused. I think it will probably be a good thing
6 for you to be able to watch. Okay, sir? So if you sit
7 there throughout the course of this trial, then I'll let
8 you know further instructions.

9 That being said, any reason why we can't go forward
10 with our hearings right now?

11 MS. MOORE: Your Honor, the only thing that would
12 stop us from going forward is I need to get my witnesses
13 here.

14 THE COURT: Well, how long do you think that will
15 take?

16 MS. MOORE: Your Honor, they've been on standby,
17 so I can probably get them here probably within 30 minutes.

18 THE COURT: Okay.

19 Mr. Yarborough, are you ready to go?

20 MR. YARBOROUGH: Yes, sir.

21 THE COURT: I mean, I figure we might as well go
22 until we break for lunch. That way we can give a better
23 gauge for this jury.

24 MS. MOORE: Okay.

25 THE COURT: All right?

1 (Off record discussion.)

2 THE COURT: Let's take about a ten-minute break.

3 (WHEREUPON, court stood at recess for a short break.)

4 (STE. EXH. 1, PHOTOGRAPH, was marked for

5 identification.)

6 (STE. EXH. 2, SEARCH WARRANT & RETURN, was marked

7 for identification.)

8 (STE. EXH. 3, PHOTOGRAPH, was marked for

9 identification.)

10 (STE. EXH. 4, PHOTOGRAPH, was marked for

11 identification.)

12 (STE. EXH. 5, PHOTOGRAPH, was marked for

13 identification.)

14 (STE. EXH. 6, PHOTOGRAPH, was marked for

15 identification.)

16 (STE. EXH. 7, PHOTOGRAPH, was marked for

17 identification.)

18 (STE. EXH. 8, PHOTOGRAPH, was marked for

19 identification.)

20 (STE. EXH. 9, PHOTOGRAPH, was marked for

21 identification.)

22 (STE. EXH. 10, SEARCH INVENTORY, was marked for

23 identification.)

24 (STE. EXH. 11, PHOTOGRAPH, was marked for

25 identification.)

1 (STE. EXH. 12, PHOTOGRAPH, was marked for
2 identification.)

3 (STE. EXH. 13, PHOTOGRAPH, was marked for
4 identification.)

5 THE COURT: We're back on the record in the case
6 of the State versus Mary Patrick. We are about to have one
7 of two pretrial hearings -- you can be seated, Ms.
8 Patrick -- one being a suppression hearing based on a
9 Franks affidavit for a search warrant and also a Jackson
10 Denno.

11 My understanding is, Ms. Moore, you want to go forward
12 with the Franks hearing first?

13 MS. MOORE: Yes, Your Honor.

14 THE COURT: Do you agree that's what we need to
15 do deal with pretrial?

16 MR. YARBOROUGH: Yes, sir, Your Honor.

17 THE COURT: I'd like to go ahead and deal with
18 this jury and cut them loose. Do you think that if we
19 bring them back -- and I hate them sitting around waiting.
20 But it's now 11:30. If we bring them back at, say, 2:15 or
21 2:30, that would be sufficient time to let y'all have lunch
22 and get these hearings in?

23 MR. YARBOROUGH: I think so, yes, sir.

24 MS. MOORE: It should be, Your Honor.

25 THE COURT: Okay.

1 Would you bring the jury in please.

2 (WHEREUPON, the jury entered the courtroom at
3 approximately 11:38.)

4 THE COURT: Okay. Who is our foreperson? If
5 you'd raise your hand.

6 You're number 96?

7 THE JUROR: Yes.

8 THE COURT: Okay, sir. Next time we come in the
9 courtroom -- do you see this lady here in the gold shirt --
10 if you would use that chair and use it each time we come in
11 and out of the courtroom. Right now you're fine with that.
12 But if you don't mind, do that. It will help us keep up
13 with things.

14 Our two alternates, would you raise your hand? That's
15 where you need to be. If you'd use the seats each time you
16 come in and out of the courtroom, I'd appreciate it. The
17 rest of you other than our foreperson and our alternates,
18 may sit in the other spaces wherever you'd like to.

19 (CRT. EXH. 1, JURY NOTE, was marked for
20 identification.)

21 THE COURT: Now, my understanding, Mr. Foreman,
22 is that there's only one juror who wants to have a pad and
23 pen to take notes with during the trial, is that correct?

24 THE JUROR: Yes, sir.

25 THE COURT: If anybody changes their mind, let us

1 know. Otherwise we'll have a pad and pen ready for you
2 when we begin the trial.

3 What I'm thinking, we have some pretrial matters to
4 take care of. I'm going to in just a minute excuse you and
5 ask that you be back in your jury room by 2:15. Is there
6 any reason anybody can't make it back to the jury room by
7 2:15?

8 (No response.)

9 THE COURT: All right. Very good. Let me give
10 you a couple of what we generally refer to as the don't
11 speech.

12 At this juncture, now that you've been selected to
13 serve in the trial of this matter, you may not speak with
14 anybody about this case. I'm married. I have a daughter.
15 And I know if I was selected to serve on a trial, one or
16 both of them would be asking me about it. Friends may be
17 asking you -- or fellow jurors, you know, that you're
18 sitting with now may ask you about this case. From this
19 point forward until you bring back a verdict in this case,
20 you may not speak with anyone including your fellow jurors
21 about this case. That will include face-to-face
22 conversations, text messages, Twitter or any other form of
23 communication you can think of. And the reason being is we
24 want you to make your determination based on the testimony
25 and evidence that's presented here in this courtroom in

1 accordance with the law as I will give it to you at the end
2 of this case.

3 Likewise, I'm required by a prior order of the Chief
4 Justice of the South Carolina Supreme Court to advise all
5 juries that during the course of the trial, you may not
6 engage in independent jury research. What that means is
7 that you can't look up anything about any court officer,
8 say me or our clerk or any of the attorneys or parties
9 involved in this case. You can't look up any issues that
10 you hear about during this case or any issues that you
11 think may be helpful to you during the course of this case.
12 And, again, the reason is you need to make your
13 determination based on the testimony and evidence that is
14 presented during the course of this trial and according to
15 the law as I give it to you.

16 Finally, you may not read, hear or listen to anything
17 about the case in the event that it's in the media out
18 there at all. If that were to happen, if you would just
19 cut it off and cut it down or not listen to it, we would
20 greatly appreciate it. I may ask you variously throughout
21 the trial if anybody's read, heard or seen anything about
22 this case while you're being a juror or whether you've
23 spoken with anyone about this case.

24 With that being said, is the State okay with 2:15?

25 MS. MOORE: Yes, Your Honor.

1 THE COURT: Is the Defense okay?

2 MR. YARBOROUGH: Yes, sir, Your Honor.

3 THE COURT: Very good. I'm going to excuse you.
4 If you'll follow the bailiff out, we'll ask you to be back
5 in your jury room at 2:15.

6 (WHEREUPON, the jury exited the courtroom at
7 approximately 11:41 AM.)

8 THE COURT: All right. Mr. Yarborough, at this
9 juncture, I think you, under the Franks cases, have to make
10 a preliminary showing to warrant a hearing. Do you
11 disagree or agree with that?

12 MR. YARBOROUGH: I agree with that, Your Honor.

13 THE COURT: All right, sir. I'll be glad to hear
14 from you.

15 MR. YARBOROUGH: Your Honor, in regards to the
16 search -- there was a previous -- Your Honor, I'll stand up
17 here. I can't hear.

18 THE COURT: That's terrible.

19 MR. YARBOROUGH: I've got mine on.

20 THE COURT: I think he's got all these
21 microphones, so if you speak close to them, we all will be
22 able to pick them up.

23 Isn't that right, Mr. Clerk?

24 THE CLERK: Yes, sir, we should be.

25 THE COURT: Do you have a copy of the affidavit

1 that accompanied the search warrant that you're
2 challenging?

3 MR. YARBOROUGH: I have one in my hand.

4 THE COURT: Is there an extra one I could look at
5 so you can point it to me?

6 MR. YARBOROUGH: Your Honor, the way I read the
7 search warrant, it says that the informant that was working
8 for the Sheriff's office at the time actually made a
9 purchase of methamphetamine from a Mary Nimmons' house for
10 the purpose of obtaining --

11 THE COURT: A Mary Nimmons?

12 MR. YARBOROUGH: That's the way I read it. It
13 says it's a Mary Nimmons. I'm not sure who that person is,
14 but it's not Mary Patrick.

15 THE COURT: Well, I noticed that her middle
16 initial is N. What does that stand for?

17 MR. YARBOROUGH: It may be her middle name, but
18 it's not -- her name is Mary Patrick.

19 THE COURT: I understand that, but is her middle
20 name Nimmons?

21 MR. YARBOROUGH: Based on --

22 THE COURT: Hang on. Let me ask about -- again,
23 does N stand for Nimmons for Ms. Patrick?

24 MR. YARBOROUGH: N does stand for Nimmons.

25 THE COURT: Okay. All right.

1 MR. YARBOROUGH: But it's not -- her name is
2 Patrick, and she lives at this residence, but there are
3 other people that live there. It's also my understanding
4 that the informant at the time had actually purchased the
5 drugs from somebody else at that house, not from
6 Ms. Patrick. And when they came to the house, they were
7 relying at some point -- if you look up in the part of the
8 affidavit before that, it says that they gained information
9 previously. I'm not sure what that information was.

10 THE COURT: We're looking on the first page of
11 the affidavit?

12 MR. YARBOROUGH: Yes, sir, Your Honor.

13 THE COURT: Okay.

14 MR. YARBOROUGH: We'll just go down. Detectives
15 have previously confirmed through the South Carolina
16 Department of Motor Vehicles as well as previous
17 interactions. That's about one quarter of the way down
18 there. I'm not sure what those previous interactions are,
19 but that tends to me to be talking about some other
20 information that we are not aware of that wasn't provided
21 at that time to the magistrate. Now, if what it was was a
22 previous search warrant at that house, I'd like to have an
23 opportunity to discuss the validity of that because if it
24 was that previous search warrant, I think that previous
25 search warrant may be fruits of the poisonous tree because

1 they're not going forward on that case today. And I'd like
2 to have an opportunity to cross-examine the officers about
3 that. If this information was previously obtained, she's
4 entitled to know what it is and challenge that information
5 and at least have information about it and be able to
6 challenge it under the Fourth Amendment.

7 I think there's a series of cases that all come out of
8 that United State's versus -- and I don't want to
9 mispronounce it, but it's -- Wong Song (phonic) that says
10 that if there was information that was previously gotten by
11 law enforcement that was fruits of the poisonous tree that
12 it can't be used in a later affidavit of a search warrant.
13 And if that's the case, then we would move to suppress
14 based on that as well.

15 THE COURT: Well, let me make sure I'm looking at
16 the right standard for everybody in this case. Okay?

17 MR. YARBOROUGH: Yes, sir.

18 THE COURT: My understanding is that we are
19 having a Franks hearing. And the first aspect of my
20 understanding -- and I just looked at it real quick. I
21 quite frankly don't do a lot of Franks hearings. But it
22 says: First, you have to establish that you're entitled to
23 a hearing in the first place.

24 MR. YARBOROUGH: Right.

25 THE COURT: And the threshold is that it's got to

1 be -- must be more than a conclusory and must be supported
2 by more than a desire to cross-examine somebody because
3 that's what I thought I heard you say. That it has to be
4 allegations of a deliberate falsehood or a reckless
5 disregard of the proof and there has to be a proffer of --
6 by an offer. You have to be an offer or proffer of proof
7 as to what that is. So are you --

8 MR. YARBOROUGH: What I'm trying to say, Your
9 Honor, is that because the affidavit is incomplete on its
10 face, I don't have that opportunity. So I'm asking them to
11 provide that information to the Court because I think what
12 they're going to say is that it came from a previous search
13 of the house. And if that's the case, I'd like to
14 challenge that search at this time.

15 THE COURT: What is it based on?

16 MS. MOORE: Your Honor, the search warrant was
17 obtained based on Detective Acevedo and Detective Durham
18 pulled over two men who were leaving the house. They got
19 written statements from those --

20 THE COURT: And they said that she's the one they
21 got the drugs from?

22 MS. MOORE: Yes, Your Honor. When Detective
23 Acevedo went to Judge Lawless to obtain that search
24 warrant, he explained the facts as they unfolded that day.
25 And he did also mention that Ms. Patrick had been arrested

1 back in January for trafficking 400 plus grams of
2 methamphetamine. Based on all of that information,
3 Detective Lawless issued the search warrant.

4 THE COURT: Do you have -- I mean, those should
5 be -- there was an indictment issued in the other case as
6 well or not?

7 MS. MOORE: As to the 400 plus grams? Yes, Your
8 Honor.

9 THE COURT: There is an indictment?

10 MS. MOORE: Yes, Your Honor.

11 THE COURT: Do you have access to that,
12 Mr. Yarborough?

13 MR. YARBOROUGH: Your Honor, what I don't have
14 access to is that -- I'm going back to this. On the face
15 of the search warrant, it says --

16 THE COURT: Point me to the exact language. I
17 see where it says Mary Nimmons Patrick in the first -- end
18 of the first paragraph where there is a line on it. Show
19 me further.

20 MR. YARBOROUGH: Okay. Where it resides at [REDACTED]
21 Willingham Road. And right before that -- I'm two
22 sentences -- two lines up above you -- okay -- where you
23 say -- it says: Mary Nimmons' house -- okay -- for the
24 purpose of obtaining methamphetamine. Detectives have
25 previously confirmed through South Carolina Department of

1 Motor Vehicles as well as previous interactions. My --
2 what information was given to -- I'm entitled to know what
3 information was given to the magistrate of what that
4 interaction was so that I can challenge it or not challenge
5 it. I mean, right here you've just got -- you've got on
6 its face a blanket statement that -- you know, I don't know
7 what that means. Does that mean they had interaction
8 because she got a traffic ticket? Does that mean they had
9 interaction because they go to church together? Or did
10 they have interaction because of -- what I think that they
11 told the magistrate was that they knew something about her
12 drug involvement from some previous search warrant. If
13 that's the case, I'm entitled to challenge that previous
14 search warrant because it would be fruits of the poisonous
15 tree.

16 THE COURT: Ms. Moore?

17 MS. MOORE: Your Honor, I think that Detective
18 Acevedo would testify that they had been doing surveillance
19 on Ms. Patrick's house since January. In fact, one of the
20 officers had been caught in the woods behind her house
21 doing that surveillance. As far as I am aware, they -- I
22 don't have any notes from that that we can show Mr.
23 Yarborough, but they are all willing to testify to that.

24 THE COURT: Well, let me say this. I don't think
25 that there's been a necessary showing from Ms. Patrick to

1 warrant a Franks hearing, but my understanding is that even
2 if there is false information made in a reckless disregard
3 of its truth, if you can exclude that from a warrant and
4 there's still probable cause, then you have no grounds to
5 complain regardless. And if you look at the terms of this
6 warrant, that the occupant of the vehicle said that she was
7 in possession -- that she or he was in possession at the
8 time had been obtained from Ms. Patrick. And that almost
9 would be enough for probable cause in and of itself, would
10 it not?

11 MR. YARBOROUGH: Your Honor, I'm not sure what
12 the credibility of that warrant would be or not be. I'm
13 also -- I'm a little bit hesitant to agree with you because
14 I don't know how that -- if you look at how this -- and I
15 want to make this point for the record.

16 THE COURT: Sure, absolutely. I think you
17 should. I just don't think under the Franks analysis
18 you've made a proper showing. And if you want to ask just
19 in a generalized motion to suppress based on fruit of the
20 poisonous tree, then you can, but this isn't a Franks
21 situation is what I'm trying to say.

22 MR. YARBOROUGH: And I think my original motion
23 was a fruits of the poisonous tree motion. The one that I
24 filed was a suppression motion under the Fourth Amendment.
25 And maybe I'm trying to get too technical with whether it's

1 Franks or not, so I would move to suppress the
2 methamphetamines that came out of it at that time. But I
3 do want to point out something about the search warrant
4 because I think it's important, and I want the record to be
5 clear on it.

6 THE COURT: Sure.

7 MR. YARBOROUGH: It appears to me that this
8 search warrant was prepared at some time prior to its
9 submission or affiant because if you look, they just cut
10 off the line halfway down. There's something happened when
11 they were doing this. They cut off the line, and so they
12 obviously prepared the warrant and then they said, well, we
13 went and bought it from Mary Nimmons Patrick. Then they
14 typed that in and then went on.

15 THE COURT: Hang on for a second. Let me look at
16 this right quick.

17 MR. YARBOROUGH: I'm looking at line --

18 THE COURT: I've got you. Hang on. Let me look
19 at the whole thing so I can not just do it line by line.

20 MR. YARBOROUGH: Okay.

21 THE COURT: All right, sir. So your concern is
22 that there apparently is some line going across it and that
23 was --

24 MR. YARBOROUGH: It's not the line going across
25 it -- it's what is right in front of the line because at

1 that point all of a sudden you get to the name on this
2 document that says Mary Nimmons Patrick at that point. If
3 you look at the bulk of the statement that follows after
4 that, they start talking about Mary Nimmons.

5 THE COURT: It does Mary Nimmons and Mary Nimmons
6 Patrick.

7 MR. YARBOROUGH: I mean, what I don't understand
8 is at one point they're talking to this informant and they
9 use the name Mary Nimmons Patrick, and then the next point
10 they're talking to who's house it was, and they use the
11 name Mary Nimmons, but then they turn around and use the
12 name Mary Nimmons Patrick again. I mean, it, on its face,
13 is extremely confusing. I mean, are those the same people?
14 Was that information provided to the magistrate correctly?
15 I mean, it's easy for this Court to sit in here today and
16 say, well, that Mary Nimmons is Mary Nimmons Patrick
17 because she's the one sitting in the courtroom, but this is
18 supposed to be a free and voluntary presentation to a
19 magistrate in which to get probably the most invasive thing
20 that you can get which is a search warrant on someone's
21 home. And the information is inconsistent to me when I
22 read it on its face. I don't understand the difference
23 between -- if was another woman sitting in the courtroom
24 named Mary, I mean, that person could be Mary Nimmons or
25 Mary Nimmons Patrick. You know, it's like, William G.

1 Yarborough, and, you know, Lynn Yarborough could be sitting
2 in here, and there wouldn't be -- you know, that might be
3 my father or that might be somebody else. So it's not
4 consistent. And so what was the consistency that was
5 presented to the magistrate at that time?

6 And then it becomes somewhat convoluted as to where
7 this information originally came from because they say
8 because of previous interactions. I don't know what those
9 previous interactions may mean. I think they refer to
10 something that was an original sort of search warrant that
11 I believe was fruits of the poisonous tree, but I can't
12 even say that at this point because I can't tell from the
13 face of this affidavit what the interaction might be.

14 And so I'm asking the Court to have a hearing to --
15 maybe it's not -- maybe I'm using the wrong term of Franks.
16 We'll get past Franks and just go out. I'd like a
17 suppression hearing.

18 THE COURT: Well, it's not a Franks hearing at
19 this juncture because it's been -- all you've really done
20 is made conclusory allegations, supposition and basically
21 say I want to cross-examine this affiant to find out what
22 they said. And that's not the proper showing, and that's
23 not the proper standard here. So to the extent it is,
24 you're not going to have a hearing. I'm going to deny it.

25 MR. YARBOROUGH: I'm not going to have a Franks

1 hearing. I'd like to have a suppression hearing.

2 THE COURT: Hang on.

3 Ms. Moore?

4 MS. MOORE: Yes, Judge.

5 THE COURT: What would be your response to what
6 Mr. Yarborough is saying?

7 MS. MOORE: As to the confusion of the name, Your
8 Honor?

9 THE COURT: As to -- well, first procedurally
10 where we're heading with this case. As far as with this
11 hearing, he wants to have what he -- quote/unquote, a
12 suppression hearing, which I'm glad to have. But at this
13 juncture, the standard seems to be probable cause or lack
14 thereof.

15 MS. MOORE: Your Honor, I would equally be happy
16 to have a suppression hearing. All of my witnesses are
17 prepared to do that; however, I tend to agree with the
18 Court. I think that we have shown ample probable cause to
19 obtain the search warrant and to search her home.

20 As far as another search warrant that Mr. Yarborough
21 alludes to, if I remember correctly -- now, it has been
22 some time since I've looked at her previous January arrest,
23 so I don't want to say with a hundred percent certainty.
24 But if I remember correctly, there was no search warrant in
25 that case. And, Your Honor, even if there was, again, that

1 is not the subject of this hearing. This hearing is based
2 off of a traffic stop where not one but three different
3 defendants said that they obtained their methamphetamine
4 from this defendant. And, Your Honor, I think that that
5 alone is probable cause with any additional testimony
6 Detective Acevedo gave to Judge Lawless on May 11th when he
7 issued the search warrant and then when they executed the
8 search warrant.

9 THE COURT: Did Officer Acevedo give additional
10 information to the magistrate in addition to what's
11 contained in the affidavit?

12 MS. MOORE: Yes, Your Honor.

13 THE COURT: Okay, sir. I'm going to let you take
14 the stand, please, sir, out of an abundance of caution.

15 (WHEREUPON, the witness was duly sworn.)

16 THE COURT: If you would limit your questions to
17 the additional information provided to the magistrate,
18 please, ma'am.

19 MS. MOORE: Yes, Your Honor.

20 ANDRES ACEVEDO,

21 being first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. MOORE:

24 Q. Detective Acevedo, you obtained a search warrant in
25 this case, correct?

1 A. Yes.

2 Q. Okay. And when you, when did you meet with Judge
3 Lawless to get the search warrant?

4 A. I met with him on May the 11th. I was on Highway 29
5 at a gas station because he was on his way to his
6 residence.

7 Q. Okay. And you have read the affidavit that we've been
8 discussing here today. What additional testimony did you
9 provide to Judge Lawless in addition to that affidavit?

10 A. I advised him of the January arrest on the defendant
11 for the same charge.

12 Q. Okay. Did you advise him of anything else? Any
13 surveillance that you have been doing?

14 A. I did. I advised him on several occasions myself and
15 other members of the narcotics division had conducted
16 surveillance on her.

17 Q. Is there any other additional information that you
18 gave Judge Lawless?

19 A. No.

20 Q. I have nothing further.

21 THE COURT: Cross-examination?

22 CROSS EXAMINATION

23 BY MR. YARBOROUGH:

24 Q. You said you provided him information about a January
25 arrest?

1 A. I did.

2 Q. And what information did you provide to him about that
3 arrest in January?

4 A. The only information that I had in reference to that
5 arrest was she was arrested for trafficking in
6 methamphetamine.

7 Q. Okay. And did you describe to him what happened that
8 night?

9 A. I advised him that she was arrested at the residence
10 at [REDACTED] Willingham Road and she was charged with trafficking
11 methamphetamine.

12 Q. Did you tell him that there were other people at the
13 house that night?

14 A. Sir, I wasn't present.

15 Q. Where did you get the information that she was
16 arrested?

17 A. Sir, our reporting system on our computers, there's a
18 report from that date she was arrested for trafficking
19 methamphetamine.

20 Q. And you gave that information to the magistrate at
21 that point?

22 A. Sir, there was other units that -- part of the units
23 that I work with were there during that search on January.
24 I was not present.

25 Q. But so in that search warrant where you're talking

1 about other previous interactions, you're talking about
2 information that you didn't have any firsthand knowledge
3 of; is that correct?

4 A. Sir, our previous interactions were for the previous
5 people that had been arrested leaving Ms. Patrick's
6 residence.

7 Q. And who were those people?

8 A. One of them was a traffic stop in April where Deputy
9 Purdy had stopped a Sandra Irby, and she gave information
10 stating -- she was also charged with trafficking
11 methamphetamine, and she said that she got the
12 methamphetamine from her today. There was also an
13 arrest --

14 Q. She said she got it from the defendant?

15 A. From Ms. Patrick.

16 Q. Do you have a copy of that statement?

17 A. Not right now.

18 Q. So did you take a statement from her or not?

19 A. Sir, I spoke to her afterwards. Yes, sir, I did.

20 Q. I'm sorry. What did you say?

21 A. I spoke to that female, Sandra Irby. I did.

22 Q. And did you -- did she provide information that she'd
23 actually bought from another individual and it wasn't from
24 Mary Patrick?

25 A. No, sir.

- 1 Q. Was Ms. Patrick charged with that?
- 2 A. No, sir. That was intel that was gathered. That
- 3 female, Sandra Irby, was arrested also for trafficking
- 4 methamphetamine.
- 5 Q. And Ms. Patrick wasn't charged?
- 6 A. No, sir.
- 7 Q. And on the search back in -- is it December or
- 8 January? You're familiar with that? That's the one you
- 9 were telling the magistrate about?
- 10 A. The search on January.
- 11 Q. And what was the date of that search?
- 12 A. I believe it was January the 1st.
- 13 Q. Would January 11th be that --
- 14 A. Sir, I don't know the actual date.
- 15 Q. You don't know the date?
- 16 A. I just know --
- 17 Q. So you just presented the magistrate that you knew
- 18 that at some point she had been arrested previously to
- 19 that; is that correct?
- 20 A. Yes, sir.
- 21 Q. You didn't show him any reports? You didn't give him
- 22 any firsthand information?
- 23 A. Of the January arrest?
- 24 Q. Right.
- 25 A. The only information I had was that she was arrested

- 1 for trafficking methamphetamine.
- 2 Q. Are you familiar with what happened that night?
- 3 A. You're still referring to January, correct?
- 4 Q. Yes.
- 5 A. My opinion is that she was arrested for trafficking
- 6 methamphetamine.
- 7 Q. But is it your understanding that the police were
- 8 called to another person's house for some type of
- 9 altercation that night?
- 10 A. Sir, I was not present.
- 11 Q. So you don't have any information from it?
- 12 A. The only information I have is that she was charged
- 13 with trafficking methamphetamine.
- 14 Q. You don't know anything else about it? You didn't
- 15 review the reports or anything?
- 16 A. I read the report, sir.
- 17 Q. What report did you read? That's what I'm trying to
- 18 understand.
- 19 A. I read the report that stated she was charged with
- 20 trafficking methamphetamine.
- 21 Q. On what date?
- 22 A. Sir, I don't know the date.
- 23 Q. And did you provide any information to the magistrate?
- 24 A. The magistrate -- what I provided the magistrate is
- 25 that she was arrested in January. I did not get into that.

1 She was arrested in January for trafficking
2 methamphetamine.

3 Q. Okay. I don't have any further questions. Thank you.

4 THE COURT: Redirect?

5 MS. MOORE: None, Your Honor.

6 THE COURT: Thank you, Officer. You may step
7 down.

8 Mr. Yarborough, I'll be glad to hear from you.

9 MR. YARBOROUGH: Your Honor, it's even worse than
10 I really imagined when I was trying to figure it out. He
11 just provided some type of hearsay to the magistrate about
12 something that he maybe thought happened he read in a
13 police report and then presented that to a magistrate. I
14 mean, it's information that shouldn't have been given to
15 the magistrate in the first place. In the second place, if
16 it was going to be given to the magistrate, I mean,
17 somebody neutrally should have at least looked at what the
18 police report, what the date was, what was information that
19 was provided, why were they there, all that information,
20 but none of that was given to the magistrate. All that was
21 told to the magistrate was because of some thought that,
22 you know, there have been previous activity out there --
23 Your Honor, I think it's just, A, the information wasn't
24 good enough, and B, if the information was good enough, I
25 think then we are entitled to argue that it would be fruits

1 of the poisonous tree. But I can't even ask him that
2 because he doesn't even know anything about it. I move to
3 suppress.

4 THE COURT: Well, I'm going to deny your motion.
5 First, as I stated, I don't think this is a Franks-type
6 situation. To the extent it is, number one, there was not
7 the necessary showing made by the Defense in this case to
8 warrant going forward with the hearing. And to the extent
9 there was a hearing held, even if you exclude the language
10 from the warrant that has to do with the prior interaction
11 with this lady, there's still sufficient information in the
12 affidavit to have probable cause going forward. There's
13 sufficient information for the magistrate to find probable
14 cause in this case.

15 I will point out also that Officer Acevedo's affidavit
16 said that the interaction let them understand what her
17 address was as well as the Department of Motor Vehicles as
18 far as [REDACTED] Willingham Road. It really didn't say anything
19 about a prior drug arrest in the affidavit. Now, he did
20 say he supplemented that, but there's sufficient
21 information to go forward with this case. So there's
22 probable cause. I'll deny your motion.

23 With that being said, here's your affidavit.

24 Are you ready for your Jackson Denno?

25 MR. YARBOROUGH: Would you mark that affidavit as

1 a part of the record, Your Honor?

2 THE COURT: Absolutely. Now, I've marked on
3 this. Do you want to get a clean copy?

4 MS. MOORE: Your Honor, there is a certified copy
5 from the clerk's office already marked as an exhibit.

6 THE COURT: Okay. Let's make that number 2,
7 Courts Exhibit Number 2.

8 (CRT. EXH. 2, AFFIDAVIT, was marked for
9 identification.)

10 Call your first witness on the Jackson Denno, please.

11 MS. MOORE: The State calls Investigator Hendrix.

12 ALAN HENDRIX,

13 being first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. MOORE:

16 Q. Sergeant Hendrix, by who are you employed?

17 A. I'm employed by the Anderson County Sheriff's Office.

18 Q. And what is your current position there?

19 A. I'm a sergeant over the narcotics investigative unit.

20 Q. And was that your position in May 2017?

21 A. It was not.

22 Q. What was your position then?

23 A. I was a detective in the narcotics investigative unit.

24 Q. Okay. And were you involved in the execution of a
25 search warrant in relation to this case?

- 1 A. I was.
- 2 Q. What address was that for?
- 3 A. It was [REDACTED] Willingham Road in Belton, South Carolina.
- 4 Q. Okay. When did you execute that search warrant?
- 5 A. That was on May 11, 2017.
- 6 Q. And does the Anderson County Sheriff's Office have a
- 7 protocol when you execute a search warrant?
- 8 A. We do.
- 9 Q. Okay. Can you tell me a little bit about it?
- 10 A. The protocol is whenever you have a search warrant,
- 11 you execute that search warrant, your assigned duty is to
- 12 execute or make entry into the residence. Once that has
- 13 took place, secure everybody, then you're assigned duties
- 14 during that search warrant and you will do this task until
- 15 it's complete.
- 16 Q. Okay. And if there is anyone in the building, what do
- 17 you do with those people?
- 18 A. They would be detained.
- 19 Q. Okay. And do you read the search warrant to the
- 20 building owner?
- 21 A. We try to find out who the owner is. We'll read the
- 22 warrant off to the owner. Or if the owner is not known, if
- 23 somebody occupies the residence, we will read it to them.
- 24 Q. Okay. And was that protocol followed in this case?
- 25 A. It was.

1 Q. Who, if anyone, was detained during the execution of
2 this search warrant?

3 A. Mary Patrick was detained during it.

4 Q. And where was she when you first encountered her?

5 A. The first encounter, she was walking to the front
6 door. There's a bedroom to the right. She was inside that
7 bedroom, and that's where we detained her there.

8 Q. And who detained her?

9 A. I believe that was Investigator McDonald.

10 Q. And where exactly -- what room of the house was she
11 in? Bedroom? Bathroom?

12 A. It was a bedroom -- there's a bathroom attached to
13 this bedroom. I don't remember specifically if it was in
14 that bathroom or that bedroom, but they're all connected to
15 that bedroom to the right.

16 Q. And where was she taken after she was detained?

17 A. She was taken from the bedroom and sat on the couch
18 inside the living room?

19 Q. Odd question. But what was she wearing when she was
20 first detained?

21 A. I don't believe she was wearing any pants or shorts.
22 I remember she had a T-shirt on, but we supplied her with
23 some clothes.

24 Q. So you or someone else covered her up?

25 A. That's correct.

1 Q. And was she read her Miranda rights?

2 A. She was. She was read Miranda by Acevedo, Detective
3 Acevedo.

4 Q. Did he recite it from memory, or did he read it from a
5 card?

6 A. No. We're issued a card, and he read them from that
7 card.

8 Q. And was she under arrest at that point?

9 A. At this point, she was merely detained.

10 Q. So if she was not under arrest, why was she read her
11 Miranda rights?

12 A. Our protocol is whenever we detain somebody and we're
13 going to be asking about a specific crime that may have
14 been committed, we will read them Miranda.

15 Q. And did she sign a waiver of her Miranda rights?

16 A. This was done verbally. There was no written Miranda.

17 Q. Okay. And is that protocol for your office as well?

18 A. That is -- in the field it is because we don't have
19 that paperwork a lot of times with us.

20 Q. Will you describe the living room for me and where you
21 were in?

22 A. I actually pulled up a chair from the kitchen and sat
23 down facing -- my back was to the door. There was a couch.
24 I can't remember exactly the layout, but a couch, maybe a
25 love seat here. And Ms. Patrick was sitting on the couch

- 1 across from me.
- 2 Q. And she was seated, you said?
- 3 A. That's correct.
- 4 Q. She was handcuffed?
- 5 A. She was.
- 6 Q. Was anyone else in the room with you?
- 7 A. Detective McDonald was with me.
- 8 Q. Did you or any of the other officers present ask the
- 9 defendant any questions?
- 10 A. I asked Ms. Patrick if she knew why we were there, and
- 11 her reply was that she thought that we thought that she
- 12 sold drugs.
- 13 Q. Okay. Did you or any of the other officers promise
- 14 her anything or coerce her in any way into talking to you?
- 15 A. No.
- 16 Q. Did you threaten her in any way?
- 17 A. No.
- 18 Q. Did you deprive her of anything in order to get her to
- 19 talk to you?
- 20 A. No.
- 21 Q. Did she appear to be under the influence of anything?
- 22 A. No.
- 23 Q. Did she willingly and voluntarily speak to you?
- 24 A. Yes.
- 25 Q. And what did she tell you?

1 A. She told us that -- her first statement was that there
2 wasn't any drugs inside the house. She had gotten rid of
3 all her drugs prior to us getting there.

4 Once detective Durham located a bag of
5 methamphetamine, she changed her statement saying that was
6 all the drugs that she had and that those drugs came from
7 an individual by the name of Nathan Blake Kelly.

8 Q. And did she say if she had had any interaction with
9 those drugs?

10 A. I don't recall.

11 Q. If I show you your incident report, would that refresh
12 your recollection?

13 A. It would.

14 MR. YARBOROUGH: Which report is she showing you?
15 Which report do you have in your hand?

16 THE WITNESS: This is supplemental report of
17 2017-077648.

18 THE COURT: Do you have that, Mr. Yarborough?

19 MR. YARBOROUGH: I'm just trying to put my -- I'm
20 sure I've got it. I'm just trying to get the right one in
21 my hand.

22 THE COURT: Okay.

23 MR. YARBOROUGH: I've got it. Thank you.

24 BY MS. MOORE:

25 Q. What else did Ms. Patrick tell you?

1 A. She made a statement that Mr. Kelly had brought over
2 some drugs and that she usually was getting -- I apologize.

3 THE COURT: Do you need some water?

4 THE WITNESS: Yes, sir.

5 She also made the statement that along with Mr. Kelly,
6 a gentleman by the name of Gene Finley would also bring
7 methamphetamine over to her. She also described
8 Mr. Kelly's vehicle that he would drive. And at one point
9 Mr. Kelly came over and asked her if she knew anybody that
10 would mix opiates, which she replied that she did not. And
11 then she also made a statement about a guy name Brian that
12 lives in Iva that she would have dealings with meth
13 related. She also made the statement that this Brian guy
14 and Blake Kelly knew each other somehow, possibly through
15 Josh Peace. And then she also stated that Mr. Kelly, when
16 he would bring the drugs over, that he would break up the
17 methamphetamine into individual baggies, and that's how she
18 would prepare them and sell them.

19 Q. That she would break them up into individual baggies?

20 A. According to her statement, that Mr. Kelly would bring
21 it over, and then she would take the meth and she would
22 break it up into individual baggies to sell.

23 Q. Okay. I apologize if you've already testified to
24 this. I may have missed it. Did she state how much meth
25 she usually gets at a single time from Mr. Kelly?

1 A. Yes. Between a half a pound to a quarter of a pound
2 from Mr. Kelly.

3 Q. Thank you so much. I have nothing further. Please
4 answer any questions Mr. Yarborough may have.

5 THE COURT: Mr. Yarborough?

6 MR. YARBOROUGH: Thank you.

7 CROSS EXAMINATION

8 BY MR. YARBOROUGH:

9 Q. So you're out there on May 11th and have come into her
10 house, is that right?

11 A. Yes, sir.

12 Q. And you got a search warrant to get in the house?

13 A. Correct.

14 Q. Did you knock down the door? How did you get in?

15 A. I'm trying to go from memory here. I believe I was
16 one of the last ones inside the residence. I'm not real
17 sure how they entered the residence. I'm not sure.

18 Q. There's a fence around the residence that's about -- I
19 don't know. Is that 25 yards from the door? Is that about
20 right?

21 A. Guesstimation would be about 25 yards.

22 Q. So did y'all -- y'all were inside the fence. And then
23 did you knock down the door, or did you knock on the door?

24 A. Like I said, I don't remember that part of it. I
25 remember being one of the last ones inside the residence,

1 so I'm not sure if they did.

2 Q. So how did you end up talking to Ms. Patrick?

3 A. That was -- my assigned duties was to sit with the
4 individual, and that would be part of my duties.

5 Q. And when you got there, she had no clothes on?

6 A. I don't remember her having any pants on.

7 Q. And where were y'all at that point? Was she in her
8 bedroom?

9 A. If you walk into the front door, there is a bedroom to
10 the right. She was inside that bedroom. That bedroom has
11 a bathroom attached to it as well, so when I saw her, she
12 was in that bedroom/bathroom area.

13 Q. So once you got there, you engaged in conversation
14 with her. And she says something along the lines: Y'all
15 are here because y'all think I sell dope?

16 A. I asked her the question of did she know why we were
17 there, and her statement was that she thought that we
18 thought she sold drugs.

19 Q. And at that point, had you read her Miranda warnings?

20 A. Prior to speaking to her, Detective Acevedo had read
21 her Miranda.

22 Q. Okay. And he had read them -- did you not come in
23 simultaneously with -- she still wasn't dressed when you
24 started talking to her?

25 A. I mean, she was detained in the bedroom. She was

- 1 brought from the bedroom to the living room.
- 2 Q. Right. And at that point she just had a T-shirt on.
- 3 Is that what you're saying?
- 4 A. Right. And then we allowed her to put some pants on
- 5 or cover up with a blanket or something like that. I can't
- 6 remember exactly. But at some point in time, she put some
- 7 pants on. She was wrapped up in a blanket. Detective
- 8 Acevedo read off the Miranda and read off the search
- 9 warrant. Then I begin speaking to her.
- 10 Q. Did you give her a copy of that search warrant at that
- 11 point?
- 12 A. After we were completed with it, we did provide her
- 13 with a copy of it.
- 14 Q. Do you recall if you gave her a copy that night or
- 15 not?
- 16 A. I don't know if it was that night or the following
- 17 morning, but generally if we have items that are -- that's
- 18 not able to fit on that portion of the warrant, we will
- 19 return it down to the jail, and her property person will
- 20 give it to her.
- 21 Q. Now, you didn't read her Miranda warnings, but you
- 22 talked to her?
- 23 A. I was beside Acevedo when he read Miranda, but my
- 24 duties was to sit with her when we begin speaking.
- 25 Q. At that point, had the drugs that were in the shorts

1 been found?

2 A. When we initially talked, the drugs had not been
3 found.

4 Q. So all this conversation took place before the drugs
5 were found; is that correct?

6 A. A portion of it, yes. A portion of it where she said
7 she didn't have any drugs inside the residence took place.
8 And then we found the drugs, and that's when she changed
9 her statement.

10 Q. Before that, was she under arrest?

11 A. No. She was detained.

12 Q. She was detained. After the drugs were found in the
13 pants, was she under arrest?

14 A. At that point, she was still detained. We were still
15 doing our investigation work.

16 Q. After the drugs were found, did you re-mirandize her?

17 A. No.

18 Q. Did you say, whose drugs are these?

19 A. She volunteered all this information. This
20 information was all voluntary.

21 Q. I guess I'm having trouble understanding what
22 information you're saying was voluntarily. She asked you a
23 question about y'all think I sell dope?

24 A. Correct.

25 Q. Did she use the word dope or methamphetamine?

- 1 A. I think she might have used the word -- I have to look
2 back at my supplemental report, but I think she used the
3 word dope.
- 4 Q. Okay. And you responded to her with that question
5 what?
- 6 A. I don't think I responded to that question when she
7 made the statement that we thought that she sold drugs. I
8 didn't make a response to that.
- 9 Q. But you said she made some other statements that you
10 feel like are prejudicial. What are those statements, and
11 under what circumstances were they given to you?
- 12 A. I'm sorry. I don't understand your question.
- 13 Q. What are the statements, the specific statements, that
14 you're talking about?
- 15 A. Right. These statements of drugs being brought by
16 Nathan Blake Kelly. She talks about Josh Peace, a Mexican.
17 She talked about how Mr. Kelly brought her drugs.
- 18 Q. Do you know who Kelly is?
- 19 A. Yes. As I testified earlier, she mentioned his name
20 as Blake Kelly.
- 21 Q. Do you know who Blake Kelly is?
- 22 A. Do I know who Blake Kelly is?
- 23 Q. Yeah.
- 24 A. Yes.
- 25 Q. So she said those were Blake Kelly's drugs, as I

1 understand it?

2 A. She did make that statement, yes.

3 Q. And what other statements specifically are you wanting
4 to testify to that you think she made?

5 A. Well, I know she made the statement that he brings
6 between a half a pound and quarter-pound, that Mr. Kelly
7 would bring to her residence.

8 Q. Okay. Did she say -- make those statements after she
9 had -- after the meth had been found in the apartment or
10 before?

11 A. It was after.

12 Q. After?

13 A. That's correct.

14 Q. And at that point, what was she being detained for?
15 She was being detained for these new drugs that you had
16 just found?

17 A. It's protocol whenever we enter a residence that we
18 detain everybody, so they will stay detained until we're
19 done with our investigation. So she was still being
20 detained until our investigation was complete.

21 Q. But you were there to execute a search warrant, right?

22 A. Yes.

23 Q. And she's been charged with what happened during the
24 execution of that search warrant; is that correct?

25 A. Yes.

1 Q. And what she's been charged with is methamphetamine
2 that was found in that house, right?

3 A. Yes.

4 Q. She hasn't been charged with these other drugs that
5 you're talking about, right?

6 A. I'm sorry. What drugs are you referring to?

7 Q. Well, you were talking about something with Blake
8 Kelly and somebody else. She hasn't been charged with
9 those drugs, correct?

10 A. No.

11 Q. Do you have any independent knowledge of that
12 information besides what she gave you?

13 A. What information?

14 Q. About Blake Kelly or the other individual that you
15 mentioned.

16 A. Right. The Blake Kelly and Brian?

17 Q. Right. She hasn't been charged with that?

18 A. No.

19 Q. And so that's information you gathered after you found
20 the drugs in the house?

21 A. Right.

22 Q. I don't have any further questions.

23 REDIRECT EXAMINATION

24 BY MS. MOORE:

25 Q. For the purposes of this trial, how long have you been

1 in narcotics?

2 A. Five years.

3 Q. And it's safe to say, I think, that Mr. Kelly was

4 Ms. Patrick's supplier?

5 A. Correct.

6 Q. Okay. And her supplier would bring her a half pound

7 of meth at a time, correct?

8 A. Correct.

9 Q. And then she would break it up to then presumably sell

10 it, correct?

11 A. That's correct.

12 Q. And the drugs -- she told you that the drugs that you

13 found today were brought by Mr. Kelly and that she took

14 that meth and broke it up into individual baggies to sell,

15 correct?

16 A. That's correct.

17 Q. I have nothing further. Thank you.

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

19 Call your next witness.

20 MS. MOORE: The State calls Investigator

21 McDonald.

22 MATTHEW MCDONALD,

23 being first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. MOORE:

- 1 Q. Detective McDonald, by who are you employed?
- 2 A. I'm employed by Anderson County Sheriff's Office.
- 3 Q. What's your current position there?
- 4 A. Currently I'm designated as the Drug Enforcement
- 5 Administration task force officer which is within the
- 6 narcotics division.
- 7 Q. And was that your position in May 2017?
- 8 A. That's correct.
- 9 Q. And on May 11, 2017, did you have occasion to go to
- 10 [REDACTED] Willingham Road.
- 11 A. I did.
- 12 Q. For what reason?
- 13 A. I came to assist with Anderson County narcotics
- 14 division to execute a search warrant at that residence.
- 15 Q. And during executing that search warrant, did you have
- 16 occasion to come in contact with this defendant?
- 17 A. I did.
- 18 Q. How did you come in contact with her?
- 19 A. Upon entry to the residence, we generally clear the
- 20 facility and make sure we secure any threats from
- 21 individuals in the area. After entering through the front
- 22 door of the residence, I located -- I heard the toilet
- 23 flushing in what I describe as the master bedroom bathroom.
- 24 As I entered that bathroom -- the door was open to the
- 25 bathroom. As I entered it, the defendant was standing

1 adjacent to the toilet.

2 Q. And what was she wearing when you detained her?

3 A. Underwear and some sort of shirt.

4 Q. And did you or someone else cover her up?

5 A. I did. I instructed her to the ground. We provided
6 her with a blanket, and then she was removed from that room
7 in attempts to preserve any evidence that might have been
8 being destroyed. And then she was covered with a blanket
9 while I searched the couch area to ensure that it was safe
10 and no weapons or evidence would be there. And then she
11 was placed there until another detective provided her with
12 shorts at which time she changed.

13 Q. And when you detained her, was she under arrest?

14 A. Initially, no, ma'am.

15 Q. Was she read her Miranda rights?

16 A. I believe she was read them twice. She was read by
17 another detective when they executed the search warrant
18 which is general protocol. And then again during the
19 interview process, I advised her of her Miranda rights.
20 Due to my position, I'm instructed by the DEA policy.
21 Anyone I advise their Miranda rights has to be done so with
22 a DEA 13A Miranda card, which is what I utilized to
23 mirandized her a second time during the interview.
24 Q. Okay. And did she sign a waiver of her Miranda rights
25 for you?

- 1 A. No, ma'am. It was all done verbally.
- 2 Q. Okay. And can you describe the room for me and where
3 you were in it?
- 4 A. During the interview process, she was sitting on the
5 couch in the living room. There was a coffee table between
6 her -- I believe it's two chairs on the opposite side of
7 the coffee table. I was in one of those chairs, and there
8 was another detective in the other chair.
- 9 Q. And who else was in the room with you?
- 10 A. In the actual living room, it's an open floor plan.
11 At the time Detective Hendrix, now Sergeant Hendrix, was in
12 the room with me. In the adjacent dining room area, there
13 was other narcotics detectives. I believe Detective Durham
14 and another detective.
- 15 Q. And they were executing the search warrant?
- 16 A. Yes, ma'am. Everyone else was executing the search
17 warrant during our interview.
- 18 Q. Okay. And you and Detective Hendrix were the only
19 ones speaking with Ms. Patrick?
- 20 A. Primarily, yes, ma'am.
- 21 Q. Primarily. Okay. And what were you and Sergeant,
22 then Detective, Hendrix wearing at the time? Were you
23 wearing your badges? Your guns? Your uniforms?
- 24 A. We did have badges and our backup pistols or sidearm
25 pistols with us. During the initial entry, we were, of

1 course, wearing a vest and our entire duty belt. And after
2 the home was initially secured, we rotated out to store
3 that tactical equipment in vehicles, and then we -- again,
4 just a badge and a gun while conducting the interview with
5 shorts on. Normal street attire.

6 Q. And while speaking with Ms. Patrick, were your weapons
7 holstered?

8 A. Yes, ma'am.

9 Q. And did you or any of the other officers present
10 executing the search warrant or speaking with Ms.
11 Patrick -- did you ask the defendant any questions?

12 A. I did, yes, ma'am.

13 Q. You did? And did any of the officers promise her
14 anything or course her in any way into talking to you?

15 A. No, ma'am.

16 Q. Did you threaten her in any way?

17 A. No, ma'am.

18 Q. Did you deprive her of anything?

19 A. No, ma'am.

20 Q. Did she appear to be under the influence of anything?

21 A. No, ma'am.

22 Q. Did she voluntarily agree to speak with you?

23 A. Yes, ma'am.

24 Q. Okay. What did she tell you?

25 A. She continued to explain and elaborate. One of the

1 other detectives apparently located some methamphetamine in
2 the shorts they provided her. She initially was very
3 reluctant to discuss those, but then explained that those
4 were -- that was her -- I don't remember the exact word,
5 but she alluded to the idea that that was her drugs, her
6 methamphetamine. And then we continued to discuss where
7 she would get her methamphetamine from and whether or not
8 there was any other methamphetamine in the home. Initially
9 she explained there was no other methamphetamine in the
10 home and that she had not received any methamphetamine
11 since the previous search warrant aside from the small
12 amount that was located. However, once additional
13 methamphetamine was located, her story changed to the fact
14 that Mr. Kelly, Blake Kelly, was her supplier and that
15 either Blake Kelly or other individuals would deliver her
16 drugs at his directions to her.

17 Q. Thank you. I have no further questions. Please
18 answer any Mr. Yarborough may have for you.

19 A. Yes, ma'am.

20 CROSS EXAMINATION

21 BY MR. YARBOROUGH:

22 Q. I'm trying to understand. What you're saying is
23 that -- did she say that the drugs that originally were
24 gotten in the other search warrant was from this Kelly guy?

25 A. You know what? I didn't conduct the interview during

1 that initial search warrant. I can't tell you that. That
2 issue, I think, came up during the interview. I wasn't
3 part of that case, so I...

4 Q. Okay. I guess what I'm trying to figure out is what
5 are your intentions of trying to testify to statements that
6 she made? That's what the purpose of this hearing is. I'm
7 trying to get a handle on what -- what do you want to say
8 that she said?

9 A. I don't know that I have intentions, sir. I just
10 repeat what I was told.

11 Q. Told by who?

12 A. By the defendant.

13 Q. Tell me exactly what those statements are one at a
14 time.

15 A. She explained that Mr. Kelly -- she would contact
16 Mr. Kelly or that Mr. Kelly would contact her and that
17 between -- I think it was a half pound roughly of
18 methamphetamine would be delivered at his direction to her
19 residence.

20 Q. Okay.

21 A. And that she would receive those drugs oftentimes in
22 plastic bags she described like a Bilo bag.

23 Q. Right.

24 A. And then they would be distributed from that
25 residence.

1 Q. Has she been charged with those drugs you're talking
2 about?

3 A. That would be part of the methamphetamine that was
4 located during the search warrant.

5 Q. You're saying that's part of the methamphetamine that
6 was located during the search warrant?

7 A. It's my understanding. I'm not the charging officer,
8 so you would have to get those exact details of what
9 methamphetamine she was charged with from the charging
10 officer. I responded on the scene to help secure the
11 residence, secure the defendant and then assisted with
12 conducting the interview. That was the extent of my
13 involvement. I don't even know what warrants were signed
14 on her, sir.

15 Q. Thank you. No further questions.

16 MS. MOORE: No redirect, Your Honor.

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

18 Call your next witness. Give me five minutes. We
19 need to take a quick break. Give me five minutes, and I'll
20 be right back.

21 MS. MOORE: Your Honor, I have nothing further
22 for the Jackson Denno hearing.

23 THE COURT: That's it?

24 MS. MOORE: Yes.

25 THE COURT: Mr. Yarborough, do you intend to have

1 any witnesses for the purposes of this hearing?

2 MR. YARBOROUGH: No, sir.

3 THE COURT: You do not?

4 MR. YARBOROUGH: Do not.

5 THE COURT: All right. Then let's do this and
6 get it taken care of before we have a break.

7 Mr. Yarborough, I'll be glad to hear from you.

8 MR. YARBOROUGH: Your Honor, it's the State's
9 duty and obligation to outline what statements they're
10 using and how they have something to do with this
11 particular case. I think that she was read her Miranda
12 warnings, but it seems to me like they're talking about
13 something besides the drugs that were found in the house
14 that night.

15 Now, if they can tell me what statements they're
16 trying to say are going towards that, that might be one
17 issue of why they may be admissible. But what they're
18 talking about is some grand conspiracy that talks about
19 several different drug deals, and I think that those
20 shouldn't be admissible because they don't have anything to
21 do with those particular drugs that were found in her
22 house.

23 THE COURT: All right, sir. You know, the issue
24 under Jackson Denno is not otherwise whether or not these
25 other statements are admissible or inadmissible; it's based

1 on the totality of the circumstances. If this lady was
2 being subjected to custodial interrogation, and if so from
3 a totality of the circumstances, did she make a voluntary
4 statement or was it an involuntary statement?

5 And then we have the factors we look at, and we have
6 to find by a preponderance. But in this case, there's no
7 evidence of coercion at this juncture. Obviously, being in
8 detention is somewhat coercive, but it's certainly not
9 unduly coercive. I think that a little concerning was the
10 state of dress. That can be considered coercive,
11 especially for a female -- I'm not trying to be sexist --
12 but they remedied that situation as best they could under
13 the circumstances fairly timely.

14 The length of the interrogation does not appear to be
15 unduly long. It was in her home. I don't know other than
16 seeing this lady in front of me today what her maturity
17 level was or lack thereof or her education, but her
18 physical condition was such that she was not under the
19 influence that they could tell. They testified about -- I
20 really don't have anything about her mental health. But
21 there's no misrepresentation, threats of violence or
22 promises of leniency, and this case doesn't involve
23 isolation of a minor from his parents. So under the
24 totality of the circumstances, clearly she was being
25 detained. Clearly she should have been mirandized, and she

1 was.

2 And so the statements I find were voluntary based on
3 the totality of the circumstances. It will be up to the
4 jury to make that call. That's not to state,
5 Mr. Yarborough, that that necessarily makes these other
6 conversations or statements, alleged statements, admissible
7 without any further foundation as to those.

8 With that being said, anything further from the
9 Defense before we break?

10 MR. YARBOROUGH: No, sir.

11 MS. MOORE: Nothing further, Your Honor.

12 THE COURT: All right. See you at 2:15, guys.

13 MR. YARBOROUGH: Thank you.

14 THE COURT: Hang on. One matter.

15 Ms. Patrick, when you came to court today, your bond
16 was satisfied because you can to court. I'll tell you
17 right now that I'm going to let you remain out during the
18 course of this trial. If you decide that you don't want to
19 join us for the rest of this trial, the trial will proceed.
20 I don't mean that in a threatening manner. I just want to
21 put it on the record that the trial in your absence will be
22 held if you do not return this afternoon or at any other
23 time throughout the course of this trial. Okay?

24 THE DEFENDANT: Okay.

25 THE COURT: We're in recess until 2:15.

1 (WHEREUPON, court stood at recess for a lunch break.)

2 (STE. EXH. 14, DRUGS, was marked for

3 identification.)

4 (STE. EXH. 15, DRUGS, was marked for

5 identification.)

6 (STE. EXH. 16, DRUGS, was marked for

7 identification.)

8 (STE. EXH. 17, BEST KIT, was marked for

9 identification.)

10 (STE. EXH. 18, SCALES, was marked for

11 identification.)

12 (STE. EXH. 19, CROWN ROYAL BAG, was marked for

13 identification.)

14 (STE. EXH. 20, PLASTIC BAG WITH DUCT TAPE, was

15 marked for identification.)

16 (STE. EXH. 21, SCALES, was marked for

17 identification.)

18 (STE. EXH. 22, PIPE, was marked for

19 identification.)

20 (STE. EXH. 23, CHAIN OF CUSTODY SHEET, was marked

21 for identification.)

22 (STE. EXH. 24, CHEMICAL ANALYSIS, was marked for

23 identification.)

24 (STE. EXH. 25, SCALES, was marked for

25 identification.)

1 THE COURT: All right, guys. We haven't even
2 sworn the jury, and we've got some questions out. The
3 first one -- which would be three, I think -- is: If I
4 take notes, do I keep them or does the Court keep them?
5 The second one -- this is from juror number 1 -- the fourth
6 one -- this is juror number 135. I just realized I do know
7 Josh Dunn.

8 MS. MOORE: Durham.

9 THE COURT: Durham. Excuse me. One of the
10 witnesses, I didn't realize he was no longer working for
11 the state patrol. I know him from church but do not
12 socialize with him. Just wanted to be clear.

13 This is number 86. I realized that I may know someone
14 involved in the case, Meredith Lanford. I went to church
15 with her seven or eight years ago but haven't spoken since.

16 I'd answer the juror's note question on my own. The
17 other two, I would follow up and ask them questions about
18 impartiality. It sounds like they're saying they can be,
19 but I just wanted to see if anybody has a different
20 approach.

21 MS. MOORE: Your Honor, I think that's perfect.

22 MR. YARBOROUGH: That's fine, Your Honor.

23 THE COURT: Okay. Anything else before we get
24 started?

25 MR. YARBOROUGH: Are you going to sequester the

1 witnesses?

2 THE COURT: If you request it, that will be done.

3 MR. YARBOROUGH: I'll ask it.

4 THE COURT: Okay.

5 (CRT. EXH. 3, JURY NOTE, was marked for
6 identification.)

7 (CRT. EXH. 4, JURY NOTE, was marked for
8 identification.)

9 (CRT. EXH. 5, JURY NOTE, was marked for
10 identification.)

11 THE COURT: Let me have the two from the -- yeah,
12 thank you.

13 (WHEREUPON, the jury entered the courtroom at
14 approximately 2:18 PM.)

15 THE COURT: Mr. Foreman and our alternates, good.
16 Ladies and gentlemen of the jury, my understanding is that
17 the jury has a few questions. And this is one from, I
18 believe, from a person, the only person, who wanted to take
19 notes. To that person, you don't have to identify
20 yourself. Number one, nobody looks at your notes but you.
21 Those notes during lunch breaks will be left in the jury
22 room. They'll be left in the jury room at night when you
23 go home or during -- and they'll take -- they'll be left in
24 the courtroom during breaks in the trial when we just
25 having a few minutes break. But nobody looks at them but

1 yourself. Okay? Does that answer that question?

2 THE JUROR: Yes, sir.

3 THE COURT: Does the person have that wanted the
4 notepad -- raise your hand if you do not have it. Do you
5 want one?

6 THE JUROR: Yes, sir.

7 THE COURT: Okay, sir.

8 Can we get one more?

9 Now, there is a juror number 135 said that: I just
10 realized that I know one of the potential witnesses, that
11 being Mr. Durham, and I didn't realize he was no longer
12 with the state patrol, and I know him from church but do
13 not socialize with him. She just wanted to be clear.

14 Now, juror number 135, raise your hand. Ma'am, would
15 the fact that you have this prior knowledge of this witness
16 affect your ability to be fair and impartial to both the
17 State and to the defendant in this matter?

18 THE JUROR: No, sir.

19 THE COURT: Do you feel comfortable about that?

20 THE JUROR: Yes, sir.

21 THE COURT: Any qualms?

22 THE JUROR: I just ran into him in the hallway
23 and didn't realize -- I ran into him in the hallway. I
24 didn't realize that that's who you were referring to
25 earlier.

1 THE COURT: Well, to follow up, you didn't have
2 any conversations with him, did you?

3 THE JUROR: No, sir.

4 THE COURT: Okay. All right.

5 Any additions or exceptions from the State or the
6 Defense as to this juror?

7 MS. MOORE: None, Your Honor.

8 MR. YARBOROUGH: No, sir.

9 THE COURT: All right. Then we have juror number
10 86. Raise your hand. All right, sir. I realize that I
11 may know someone involved in the case, and that's Meredith
12 Lanford, and I went to church together about seven or
13 eight years ago. The same question to you, sir. Would the
14 fact that you attended church with Ms. Lanford affect your
15 ability to be fair and impartial to both the State and to
16 the defendant in this matter?

17 THE JUROR: No, sir.

18 THE COURT: All right. Any additional voir dire
19 from the Defense or the State?

20 MS. MOORE: None, Your Honor.

21 THE COURT: From the Defense?

22 MR. YARBOROUGH: No, sir, Your Honor.

23 THE COURT: All right. Very good. Thank you.

24 Does everyone who wanted to have a pad have one? And
25 pen?

1 All right. Are you ready to swear the jury?

2 THE CLERK: Yes, sir, Your Honor.

3 THE COURT: Okay, sir.

4 THE CLERK: If you would stand and raise your
5 right hand, please.

6 (WHEREUPON, the jury was duly sworn.)

7 THE COURT: Thank you, sir.

8 All right. Mr. Foreman, ladies and gentlemen of the
9 jury, first let me point out something to you. Trials are
10 not an endurance contest. So if I ever call you back
11 before you're ready to come back or if I don't break -- you
12 can ask my court reporter. She will verify that sometimes
13 I have a tendency to run long in here. If someone needs a
14 break before I call for one, let us know. If I call you
15 back before you're ready to come back, let us know that as
16 well. We'll accommodate you. If you need anything, our
17 bailiffs are good, and they can reasonably accommodate you
18 if you need something while you're in the back room.

19 If you cannot see or hear during the course of this
20 trial, indicate so for us by raising your hand. We'll stop
21 and make sure that's repeated so that you can hear and you
22 can see. It's of vital importance to both the State and
23 the Defendant that you see and hear all aspects of this
24 case.

25 With that being said, ladies and gentlemen, I don't

1 know if any of you have ever been involved in a court
2 proceeding before, whether it be in civil court or criminal
3 court as we are in today. I would suspect, however, that
4 each and every one of you have watched on the TV or at the
5 movies something that purports to be a trial, whether it be
6 civil or criminal. Let me quickly dispel you of any
7 notions you may have from watching TV or movies. Trials
8 are vastly different. They're very slow. They're very
9 methodical, and they're very deliberate. They're certainly
10 not entertainment, but they're a fundamental part of our
11 democracy.

12 Now, ladies and gentlemen, these attorneys are like
13 all attorneys. When they are sworn in, they swear or
14 affirm to zealously represent their client's position in
15 the courtroom. And you can expect no different from either
16 one of them in this courtroom or any of them in this
17 courtroom in this trial.

18 With that being said, they're also officers of this
19 Court. So what that means is you can expect that they'll
20 be professional and they'll be competent and they'll be
21 ethical toward one another, to this Court and anyone
22 appearing before this Court.

23 Now, ladies and gentlemen, you just took an oath where
24 you swore or affirmed that you would be fair and impartial
25 in your deliberations and in your -- in these proceedings.

1 That means this Court and the parties and the attorneys
2 have a right to expect of you that you will be fair, you
3 will be impartial, and you will be ethical in your dealings
4 with in this case.

5 Now, ladies and gentlemen, what I'm telling you now is
6 just an introduction into this case. It is not the law
7 that you will apply. That will be given to you at the end
8 of all the evidence that's being presented and before you
9 begin your deliberations. This is simply an explanation to
10 let you know really where you are throughout the course of
11 this trial.

12 Now, those of you who may be taking notes in this
13 matter, I want you to be careful about becoming so
14 engrossed in taking your notes that you may miss somebody's
15 subtle reaction here on the witness stand that may indicate
16 to you whether or not their testimony should be believed or
17 should not be believed.

18 Also, Mr. Foreman, at the end of this day when you're
19 expressly instructed to begin your deliberations, just
20 because something may appear in somebody's notes doesn't
21 mean it trumps somebody's memory of that issue. They are
22 equally as important, and that's why they're called
23 deliberations. You will just have to hash those things
24 out.

25 Now, in this trial, ladies and gentlemen, the

1 defendant has been indicted and charged with trafficking in
2 methamphetamine. I'll give you the elements of that charge
3 at the end of the case. Again, I remind you that the
4 indictment is simply the mechanism by which the State
5 brings this defendant before the Court at a trial for a
6 determination of guilt or innocence. It is not in any
7 sense evidence of the allegation it contains nor does it
8 raise a presumption or an inference of those allegations.
9 In fact, the defendant in this case has pled not guilty.
10 That means that from that point forward and unless and
11 until at the end of this case you believe that she is
12 guilty, she is to -- she is presumed to be innocent. And
13 that will remain with her throughout the course of this
14 trial.

15 Therefore, the burden is on the State of South
16 Carolina to prove each and every element of the charge of
17 trafficking in methamphetamine by proof satisfying you of
18 proof beyond a reasonable doubt. At the end of the day
19 when you're told to begin your deliberations, it will be up
20 to you, the jury, to collectively decide whether or not the
21 State has met its burden of proof in this matter. So let
22 me give you a brief idea of what proof beyond a reasonable
23 doubt is so you can have that in your mind. A reasonable
24 doubt is the kind of doubt that would cause a reasonable,
25 sincere person to hesitate to act in an important matter in

1 their own affairs.

2 Now, as I told you, the State has the burden of
3 proving each and every element of proof beyond a reasonable
4 doubt. And these cases are unlike civil cases where the
5 burden of proof is a preponderance. In a preponderance
6 matter, you can think of the scales being roughly equal.
7 And if they tilted ever so slightly in favor or against one
8 party or the other, that is the burden that has to be met
9 or not met. In criminal cases, the burden is much higher.
10 It is proof beyond a reasonable doubt. Proof beyond a
11 reasonable doubt is proof that leaves you firmly convinced
12 of the defendant's guilt.

13 Now, with that being said, ladies and gentlemen, there
14 are very few things in this world that we know with
15 absolute certainty. In criminal cases, the law does not
16 require the State to overcome every possible doubt that may
17 exist in a case. At the end of this case, when you're
18 asked and told to begin your deliberations, if you are
19 firmly convinced of the defendant's guilt, it will be your
20 job to find her guilty. On the other hand, if you think
21 there is a real possibility that the defendant is not
22 guilty, then you must give her the benefit of the doubt and
23 find her not guilty. And I will charge you more on that at
24 the end of the case.

25 Now, ladies and gentlemen, your purpose as jurors are

1 to find facts. In the vernacular of lawyers, you're the
2 sole judges of what the facts are. Nobody can invade your
3 fact-finding process. Not this Court, not the attorneys,
4 not any law enforcement, not the Defense or anybody
5 associated with either side. You, and you alone, are to
6 determine what the facts are, i.e. what your verdict is
7 going to be in this case.

8 Therefore, if at any time I do anything by making a
9 comment or gesture that seems to indicate to you how you
10 are to find facts or the verdict you are to reach, I'm
11 going to ask you and instruct you to disregard that. Our
12 state constitution does not allow any trial judge to
13 express an opinion on the facts of any case before them.
14 You, and you alone, are the judges of what the facts are.
15 And you will determine what those facts are by the
16 testimony and evidence that you hear from this witness
17 stand and exhibits that I allow into evidence in this case.

18 Let me point out to you that the opening statements by
19 the State and -- if the Defense decides to have one -- is
20 their opening statement is not facts. The attorneys are
21 not sworn in. They're not subjected to cross-examination.
22 It's helpful, but it is not evidence. What they -- the
23 questions they ask is not evidence. The responses they
24 elicit from the witnesses who have been sworn in and the
25 exhibits is the only true evidence you may consider as such

1 in this case. I'll tell you more about that later on.
2 That means that you're not to be influenced by anything you
3 see when court is not in session or anything that you may
4 see when you're not here in this courtroom. The only
5 evidence is from this witness stand and the exhibits.

6 Now, the law that makes you the sole judges of the
7 facts makes me the sole judge of the law. You must and you
8 shall accept the law as I give it to you. You may not and
9 shall not concern yourself with what you think it should
10 be, but only what it is. I'll tell you that if I make an
11 error at law, there are crowds in Columbia that will
12 quickly correct my legal mistake. On the other hand, you,
13 as factfinders, there's really not a good way to easily
14 correct an improper finding of fact. So therefore, pay
15 close attention throughout this trial and please do not let
16 your mind wander. Remember, no deliberations about this
17 case before you're asked to do so.

18 In every case, there are five phases. In just a
19 second, the State is going to stand up and give you an
20 opening statement. In other words, what she or he contends
21 this case is about. What they intend to prove about this
22 case. Also, the defendant may, but is not required to,
23 give an opening statement. What these lawyers tell you is
24 important. It is helpful. But it is not evidence in this
25 case.

1 After opening statements, there will be presentation
2 of the evidence. At the close of all the evidence, then
3 there will be closing statements by the attorneys. I'll
4 then charge you on the law. And in the fifth phase, you
5 will be told to begin your deliberations. And until you're
6 told, do not begin your deliberations at any time.

7 Again, Mr. Foreman, if your jury needs anything
8 throughout these proceedings, if you'd write it down, sign
9 your name to it and give it to our bailiff, and we'll
10 respond. If there's something that goes on in the
11 courtroom that we need to stop or change, make sure we
12 understand it. Okay, sir?

13 Now, any additions or exceptions from the State?

14 MS. MOORE: None, Your Honor.

15 THE COURT: From the Defense?

16 MR. YARBOROUGH: No, sir, Your Honor.

17 THE COURT: Is the State ready to proceed?

18 MS. MOORE: Yes, Your Honor.

19 THE COURT: Very good.

20 MS. MOORE: May it please the Court.

21 THE COURT: Yes, ma'am.

22 MS. MOORE: Mr. Yarborough.

23 OPENING STATEMENT

24 BY MS. MOORE:

25 Ladies and gentlemen of the jury, before we get

1 started this afternoon, I wanted to take this opportunity
2 to introduce myself one more time. My name is Chelsea
3 Moore. I'm the assistant solicitor assigned to this case.
4 With me is Scott McElhannon, my cocounsel, as well as
5 Detective Andres Acevedo with the Anderson County Sheriff's
6 Office. He's the lead investigator in this case. And they
7 will sit with me throughout the duration.

8 So before we start testimony, I just kind of wanted to
9 give you an overview of what this case is about. On May
10 11, 2017, members of the Anderson County Sheriff's Office
11 narcotics division executed a search warrant at the home
12 located at [REDACTED] Willingham Drive in Anderson County.

13 Now, when investigators searched that residence, they
14 found one person, this defendant, Mary Patrick, along with
15 more than 200 grams of methamphetamine. Because of the
16 amount of methamphetamine found, Ms. Patrick was charged
17 with trafficking methamphetamine between 2 and 400 grams.

18 Now, in order for you to find her guilty of that
19 charge, three things must be proven: First, that the
20 defendant was in possession of the substance; second, that
21 the substance was in fact methamphetamine; and third, that
22 it weighed more than 200 grams.

23 Now, throughout the course of this trial, I will prove
24 each of those elements to you beyond a reasonable doubt.
25 To help me do that, you'll hear testimony from law

1 enforcement and a forensic chemist.

2 Now, as the judge said, trials are not what you see on
3 Law & Order. They're not what you see on CSI. They are
4 oftentimes boring. And I promise that if I ask a question,
5 it has a deliberate effect. It may confuse you, but I hope
6 to tie it all together at the end when I do my closing
7 statement.

8 So this is a very important time for both the State
9 and for the defendant. So even though it may be boring at
10 times, I ask that you listen very closely to all of the
11 evidence and all of the testimony and use your best
12 judgment. And at the close of this case, if you find that
13 I have met my burden, that I have proven each of those
14 elements to you beyond a reasonable doubt, then you must
15 find Mary Patrick guilty of trafficking methamphetamine
16 greater than 200 grams.

17 Thank you.

18 THE COURT: Mr. Yarborough, does the Defense wish
19 to have opening statements?

20 MR. YARBOROUGH: Yes, I'd like to make one.

21 THE COURT: Yes, sir.

22 MR. YARBOROUGH: Thank you, Your Honor. If the
23 Court, please.

24 OPENING STATEMENT

25 BY MR. YARBOROUGH:

1 Good morning. Ladies and gentlemen of the jury, right
2 off the bat, this active charge of crack -- she's charged
3 with trafficking methamphetamines. She's pled not guilty
4 because she's not. She's here today. It's her day in
5 court. She's glad to be here. She's glad to get this part
6 of her life on with.

7 It's the State's obligation to prove Ms. Patrick
8 possessed a large amount of drugs that we get to the point
9 that it's trafficking, that it's more than 200 grams.

10 You're going to learn they went into this house with a
11 search warrant. You will learn they investigated. There
12 were other people in and out of that house. She just
13 happened to be the one that was there that day because she
14 lived there. But just because sometimes people live in a
15 house doesn't mean that they know everything that's in that
16 house. In this case, she didn't know that the large amount
17 of drugs were in there.

18 Ms. Patrick is -- they've got a big burden to meet.
19 They've got to meet the burden of beyond a reasonable
20 doubt. And Judge McIntosh just told you a minute ago that
21 that means, you know, you've got to look at it. You got to
22 say, well -- if you hesitate, if you question, if you
23 hesitate, then you must return a verdict of not guilty.
24 Here I don't think you're going to have a really hard time
25 doing that. I think you're going to listen and say, hum, I

1 wonder why she was the one that was charged. A lot of
2 times the State -- I like to look at as something like
3 this. The State brings the case. They go before the grand
4 jury. They're the only ones that give their version of the
5 facts because they have never had a chance to have things
6 opened up for cross examination and to have people
7 questioned. It's kind of like one of those things, if you
8 went to a bed and breakfast or a hotel room and you went
9 and got in bed, and that night you started hearing rain
10 just constantly beating on the window. You think to
11 yourself, hum. It might be raining. Well, you go outside
12 and look around. It doesn't look like it was raining
13 anywhere. And what you realize is that there was a
14 sprinkler system going by. And that sprinkler system, you
15 didn't know about it just like you didn't know what was
16 tapping on the window. And that's the hesitation that
17 Judge McIntosh is talking about when he's talking about
18 beyond a reasonable doubt.

19 Now, it's their obligation. It's their burden. I
20 challenge them to meet that burden. I challenge them to
21 prove that Ms. Patrick knew that those drugs were there.
22 You'll learn that she cooperated with them. She tried to
23 help them. She tried to talk to them. She tried to
24 explain it to them, and they just didn't want to listen
25 because they'd made up their mind before they got there.

1 And this is her first day in court. She is looking
2 forward to you hearing her case and listening to it and
3 allowing us to move forward with this part of her life.

4 Thank you.

5 Thank you, Your Honor.

6 THE COURT: Thank you.

7 Call your first witness, please.

8 MS. MOORE: The State calls Matthew McDonald.

9 MATTHEW MCDONALD,

10 being first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. MOORE:

13 Q. Detective McDonald, by who are you employed?

14 A. With the Anderson County Sheriff's Office.

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

17 A. Approximately ten years.

18 Q. Okay. And what is your current position there?

19 A. Within the narcotics unit, I'm assigned to the Drug
20 Enforcement Administration as a task force officer.

21 Q. Okay. And how long have you been with the narcotics
22 unit?

23 A. Approximately five years.

24 Q. And what are your duties and responsibilities as a
25 narcotics unit member?

1 A. We handle and control informants, control persons,
2 execute search warrants, conduct a full range of narcotics
3 investigations.

4 Q. And were you with the Anderson County narcotics unit
5 in May of 2017?

6 A. Yes, ma'am.

7 Q. And on May 11, 2017, did you have occasion to go to
8 [REDACTED] Willingham Road.

9 A. Yes, ma'am, I did.

10 Q. Is that in Anderson County?

11 A. It is.

12 Q. And why did you go there?

13 A. I was instructed to go there and assist the narcotics
14 unit with the execution of a search warrant at that
15 residence.

16 Q. Okay. And what, if anything, did you assist in
17 executing that search warrant?

18 A. I breached the main entrance to the door, provided
19 verbal commands upon approach to that door, and as entering
20 the door, announced that we were law enforcement, sheriff's
21 office, and executing search warrants.

22 After breaching the main door, I joined into the line
23 of officers entering the doorway. As I entered the back
24 bedroom on the right-hand side -- I would say is the master
25 bedroom of the residence -- I could hear the toilet

1 flushing in the adjacent bathroom. I entered the bathroom,
2 and I saw the defendant standing next to the toilet. I
3 ordered her to the ground. I secured her. And then after
4 she was provided with a blanket, I searched the area around
5 the couch and escorted her to that area. Conducted a
6 subsequent interview.

7 Q. Okay. You escorted the defendant from the bathroom to
8 the couch?

9 A. Yes, ma'am.

10 Q. Okay. And so you would be the person who detained
11 this defendant?

12 A. Initially, yes, ma'am.

13 Q. Okay. And is that protocol when you execute a search
14 warrant to detain people in the home?

15 A. Yes, ma'am. Everyone in the house was detained on
16 initial contact with law enforcement just to secure the
17 residence and ensure there's no threats, make sure any
18 evidence preservation is being taken care of. Whoever
19 finds an individual, for lack of a better term, kind of
20 takes claim to that individual, secures that person, takes
21 responsibility for them.

22 Q. Okay. And to the best of your knowledge, was anyone
23 else detained in this case?

24 A. No, ma'am.

25 Q. Was there anyone else in the home?

1 A. No, ma'am, there was not.

2 Q. Okay. And what was the defendant wearing when you
3 detained her?

4 A. Upon initial approach, she was wearing underwear and a
5 shirt. She was ordered to the ground so that the rest of
6 the room could be secured and then provided with a blanket.
7 She was seated on the couch with a blanket over herself
8 until what we refer to as a secondary sweep could be
9 completed making sure that there's no individuals in
10 cabinets, under beds. Things like that. As soon as that
11 was completed, she was provided shorts and an opportunity
12 to put those shorts on. Then she was seated on the couch
13 that I had previously search.

14 Q. Was the defendant read her Miranda rights at any
15 point?

16 A. Yes, ma'am. She was actually read her Miranda rights
17 on two occasions. After the home is secured, it's
18 Sheriff's office policy that we read the search warrant to
19 them so that they understand why we're in the home, who we
20 are and exactly what were looking for. During that process
21 another detective advised her of her Miranda rights. And
22 then once she was seated on the couch, as a Drug
23 Enforcement Administration task force officer, I'm bound by
24 some additional rules which means that anytime I advise
25 somebody of their Miranda rights, I have to be read it from

1 a form. A DEA-13A is the title of the form. So upon
2 initiating, once she was seated, I then advised her of
3 those Miranda rights again so that she would be clear on it
4 before we ever discussed anything.

5 Q. Okay. So she was detained and read her Miranda
6 rights. Was she under arrest?

7 A. No, ma'am. She was detained at the time.

8 Q. Okay. And if she wasn't under arrest, why was she
9 read her Miranda rights?

10 A. It's just imperative that people understand their
11 rights in that situation. I just wanted to make sure that
12 everything was admissible and clear and that there was no
13 cloak and dagger or hidden thing to our agenda.

14 Q. Okay. And did she sign a waiver of those rights?

15 A. No, ma'am. On the scene, it's Anderson County and DEA
16 policy that we just read them from our Miranda cards.
17 There's not a desk or opportunity to lay out the paperwork
18 and things like that.

19 Q. Okay. And can you describe the room where you and the
20 defendant were seated?

21 A. Yes, ma'am. It's primarily an open floor plan in the
22 residence. The defendant was seated on the couch which is
23 the living room. It's the second room you've got to enter
24 as you come into the front door. There's a coffee table
25 between her, and myself and Sergeant Hendrix were seated in

- 1 chairs on the other side of the coffee table.
- 2 Q. And was the defendant handcuffed?
- 3 A. I don't recall clearly, ma'am. Generally, we would
- 4 handcuff a defendant, but there are instances where we
- 5 might make exceptions if we don't see them as a threat. I
- 6 recall the defendant smoking and having a soda to drink,
- 7 but I'm not sure if she was handcuffed or not at the time.
- 8 Q. Okay. Was she seated?
- 9 A. Yes, ma'am.
- 10 Q. Was anyone else in the room with you?
- 11 A. Detective or Sergeant Hendrix was in the room. The
- 12 room adjacent to the dining room area which was being used
- 13 as the evidence collection area, there were several
- 14 detectives in that room.
- 15 Q. Okay. And did you or any of the other officers
- 16 promise her anything or coerce her in any way to talk with
- 17 you?
- 18 A. No, ma'am.
- 19 Q. Did you or any of the other officers threaten her in
- 20 any way?
- 21 A. No, ma'am.
- 22 Q. Did you deprive her of anything in order to get her to
- 23 speak with you?
- 24 A. No, ma'am.
- 25 Q. Did she appear to be under the influence of anything

1 that would impair her ability to speak with you?

2 A. No, ma'am, she did not.

3 Q. So did she speak with you freely and voluntarily?

4 A. Absolutely.

5 Q. And what did she tell you, if anything?

6 MR. YARBOROUGH: Your Honor, at this time I'd
7 like to note my previous objection.

8 THE COURT: Noted for the record.

9 THE WITNESS: It's my understanding that
10 narcotics were found in the shorts that she was provided
11 with. Initially, there was some back-and-forth over
12 whether or not she took claim to that. However, she did
13 admit that that was hers, or the narcotics inside. I can't
14 remember exactly whether she used the word methamphetamine,
15 drugs, or dope, but she took ownership of the items found
16 in her shorts.

17 She then denied that there was any other narcotics in
18 the home. While we were conducting the interview, we
19 discussed basically her history of narcotics. The search
20 continued by other investigators during which they located
21 additional methamphetamines at which time the defendant
22 changed her story to the fact that Mr. Blake Kelly had
23 provided her with those narcotics or with narcotics, and
24 she kind of went through the history of the fact that he
25 provides, I think she said, a half pound roughly on a

1 consistent basis to her.

2 Q. Okay. And did she say anything about how the drugs
3 were typically packaged when they come to her?

4 A. She did. She explained that the drugs would generally
5 be in a plastic bag similar to a Bilo bag or something like
6 that. When we asked her, she explained that.

7 Q. Other than coming here today to testify, did you have
8 any further involvement in this case?

9 A. No, ma'am, I did not.

10 Q. Thank you. Answer any questions Mr. Yarborough would
11 have for you.

12 THE COURT: Cross-examination?

13 CROSS EXAMINATION

14 BY MR. YARBOROUGH:

15 Q. When you got there, she was unclothed?

16 A. She had her underwear and a T-shirt on.

17 Q. She was in the bathroom?

18 A. That's correct. She was standing near the toilet.

19 Q. And at that time, she seemed startled?

20 A. Yes, sir, a little.

21 Q. And she tried to be somewhat cooperative with you?

22 A. I would say so.

23 Q. And she said that those drugs, the larger amount of
24 drugs, not the smaller amount, were not hers. Is that what
25 she said?

- 1 A. Initially.
- 2 Q. And do you know who Blake Kelly is?
- 3 A. Yes, sir.
- 4 Q. And she said those drugs belonged to Blake Kelly?
- 5 A. She stated that he provided them to her. She didn't
- 6 say that they were his.
- 7 Q. She was nervous?
- 8 A. I would assume so.
- 9 Q. There were guns drawn.
- 10 A. There were guns that were drawn on entry; however,
- 11 during the entire interview, no guns were displayed.
- 12 Q. I didn't understand the last thing you said.
- 13 A. Not during the interview, they were not drawn or
- 14 pointed at her.
- 15 Q. But when y'all came in, there were a lot of men that
- 16 came in, and she was a woman. She was there by herself?
- 17 A. There were six of us, I believe, roughly.
- 18 Q. You're a pretty big guy?
- 19 A. Thank you.
- 20 Q. Some of the other people are large guys?
- 21 A. Right.
- 22 Q. And there were other people living in the house,
- 23 right?
- 24 A. I'm not aware.
- 25 Q. You didn't see any men's clothing in the house, or you

1 did not look?

2 A. I wasn't responsible for searching the bedrooms or
3 anything like that. I didn't see any laying about in the
4 room that I was in, but I didn't partake in any sort of
5 bedroom searches.

6 Q. Did y'all not see a man leave right before y'all got
7 there?

8 A. I do not know. Upon arriving at the location, I made
9 entry into the residence.

10 Q. So did you see somebody coming in or not?

11 A. No. Upon arriving at the residence, if we had seen
12 somebody departing as we were arriving, we would have
13 stopped them as well.

14 Q. And how many bedrooms were there?

15 A. I'm not a hundred percent sure, sir. I would estimate
16 three, but, again, I did not search any bedrooms or even --
17 the only bedroom I even entered would have been the master
18 bedroom.

19 Q. Okay. And you didn't look in any closets?

20 A. No, sir.

21 Q. Thank you. No further questions.

22 THE COURT: Redirect?

23 MS. MOORE: None, Your Honor.

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

25 Any reason why this witness can't be excused.

1 MS. MOORE: None, Your Honor.

2 THE COURT: Mr. Yarborough?

3 MR. YARBOROUGH: No. He can be excused.

4 THE COURT: Thank you, sir. You're excused.

5 THE WITNESS: Thank you.

6 THE COURT: Call your next witness, please.

7 MS. MOORE: The State calls Sergeant Alan
8 Hendrix.

9 ALAN HENDRIX,

10 being first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. MOORE:

13 Q. Sergeant Hendrix, by who are you employed?

14 A. I'm employed with the Anderson County Sheriff's
15 Office.

16 Q. And how long have you been with the Sheriff's office?

17 A. Fifteen years.

18 Q. And what is your current position there?

19 A. I'm the sergeant over the narcotics investigative
20 unit.

21 Q. How long have you been with the narcotics unit?

22 A. Five years.

23 Q. Okay. And you said that you are a sergeant. Was that
24 your position in May of 2017?

25 A. No. At that time, I was a detective in the same

1 division.

2 Q. So you've been promoted?

3 A. Yes, ma'am.

4 Q. And what are some of your duties involved with the
5 narcotics unit?

6 A. We field complaints about drug-related cases. We
7 investigate those, and we do surveillance. We use
8 confidential sources to help with some of those
9 investigations.

10 Q. Okay. And do you execute search warrants as part of
11 your duties and responsibilities?

12 A. We do.

13 Q. Were you involved in executing a search warrant in
14 relation to this case?

15 A. I was.

16 Q. And was that at [REDACTED] Willingham Road.

17 A. That's correct.

18 Q. Okay. And when did you execute that search warrant?

19 A. It was May 11th of 2017.

20 Q. And did the sheriff's office narcotics unit have a
21 protocol for when you execute search warrants?

22 A. We do.

23 Q. And can you tell me a little bit about that?

24 A. Right. Prior to the execution of a search warrant,
25 we'll have a briefing where people are assigned duties. So

1 you get your assigned duties. Once you get to the
2 residence, we'll make entry into the residence, secure the
3 residence, detain everybody that's inside, and then we'll
4 start our evidence collection or executing that search
5 warrant.

6 Q. Okay. And what kind of duties were you assigned?

7 A. We're assigned photographs. We're assigned collection
8 duty. We are assigned what we call, like, scene security.
9 That person will sit with the individuals during the
10 execution of the warrant.

11 Q. Okay. And what, if any, duties were you assigned in
12 this case?

13 A. I was assigned what you would call scene security, so
14 I would be sitting with the individual at the residence.

15 Q. Okay. And so you did follow the typical narcotics
16 unit protocol in executing that search warrant?

17 A. That's correct.

18 Q. Okay. And who, if anyone, was detained during the
19 execution of the search warrant?

20 A. I detained a female by the name of Mary Patrick.

21 Q. And was anyone else detained in this case?

22 A. No.

23 Q. To your knowledge, was anyone else in the house?

24 A. To my knowledge, no.

25 Q. And who detained the defendant?

- 1 A. That would be Investigator McDonald.
- 2 Q. Where was she when she was detained?
- 3 A. She was in a bedroom off to the right if you was to
- 4 enter the front of the residence.
- 5 Q. And where was she taken after she was detained?
- 6 A. She was taken from the bedroom into the living room.
- 7 Q. Any specific place in the living room?
- 8 A. Well, there was a couch setup, so she was set on that
- 9 couch?
- 10 Q. Okay. What was she wearing when she was first
- 11 detained?
- 12 A. When she was first detained, all she had on was a
- 13 T-shirt. So we supplied her with a pair of shorts after
- 14 the fact. After we detained her, she was supplied with a
- 15 pair of shorts.
- 16 Q. Okay. And was she read her Miranda rights when you
- 17 got into the living room?
- 18 A. She was.
- 19 Q. Okay. By who?
- 20 A. Detective Acevedo.
- 21 Q. Did he read them from memory or from a card?
- 22 A. No. He read from a card.
- 23 Q. And is that protocol as well?
- 24 A. That's correct.
- 25 Q. Was she under arrest at that point?

- 1 A. At that point, no, she was only detained.
- 2 Q. And is there any particular reason why she would be
- 3 read her Miranda rights if she was detained and not
- 4 arrested?
- 5 A. Well, if I'm going to speak with her about a specific
- 6 or crime or whatever, we would read Miranda off.
- 7 Q. Just in case?
- 8 A. Just in case.
- 9 Q. Okay. Did she sign a waiver of her Miranda rights?
- 10 A. No. This was done verbally.
- 11 Q. Okay. And can you describe the room where you were
- 12 when you were speaking with Ms. Patrick?
- 13 A. It was a living room area. I remember it was a couch
- 14 setup. And I believe I retrieved a chair from the kitchen,
- 15 so I was actually facing her. I remember a couch being in
- 16 the living room area.
- 17 Q. Okay. And was the defendant seated?
- 18 A. She was.
- 19 Q. Was she handcuffed?
- 20 A. She was.
- 21 Q. Okay. Was anyone else in the room with you?
- 22 A. Investigator McDonald was with me inside the living
- 23 room area. I know there was other detectives there, but I
- 24 remember McDonald being there with me.
- 25 Q. Okay. And what were you and Detective McDonald

1 wearing?

2 A. I was wearing a T-shirt and blue jeans, but prior to
3 that, I was wearing a duty belt with a vest that was marked
4 Sheriff on the front and the back. I had my badge on and
5 my gun inside the holster.

6 Q. Okay. And at any point when you were speaking to the
7 defendant, did your gun come out of the holster?

8 A. No.

9 Q. Did Detective McDonald's gun come out of his holster?

10 A. No.

11 Q. Did you or any of the other officers promise Mary
12 Patrick anything in order to get her to speak with you?

13 A. No.

14 Q. Did you attempt to coerce her in any way?

15 A. No.

16 Q. Did you or any of the other officers threaten her in
17 any way?

18 A. No.

19 Q. Did you deprive her of anything in order to get her to
20 speak with you?

21 A. No.

22 Q. Okay. Did she appear to be under the influence of
23 anything?

24 A. No.

25 Q. So she gave her consent to speak with you freely and

1 voluntarily?

2 A. Yes.

3 Q. Okay. And what, if anything, did she tell you?

4 A. She told us -- originally when I sat down with her, I
5 asked her does she know why we were here. And her
6 statement was that she felt like that we thought she was
7 selling drugs and that she didn't have any drugs inside the
8 residence.

9 Now, that changed after some drugs were found. Then
10 she made the statement that: Well, that's the only drugs
11 that I have. I don't remember if it was right after that
12 or if it was after we found more drugs or whatever. But
13 then she made the statement of where the drugs are coming
14 from and how he was supplying it and everything like that.

15 Q. Okay. Specifically, where did she say these drugs
16 were being supplied from?

17 MR. YARBOROUGH: Your Honor, I'm going to note my
18 objection again for the record.

19 THE COURT: Overruled. Go ahead. Noted for the
20 record.

21 BY MS. MOORE:

22 Q. Specifically, where did the defendant say these drugs
23 were coming from?

24 A. She said it was coming from an individual by the name
25 of Blake Kelly.

1 Q. Okay. And did she say how much methamphetamine she
2 usually gets at one time from Mr. Kelly?

3 A. She said that she normally gets a half a pound at a
4 time from Blake.

5 Q. And did she say what she did with that half a pound
6 once she received it?

7 A. She said she would take that -- sometimes it would be
8 in a -- I think she even mentioned a Bilo bag specifically.
9 It would be in a Bilo bag. She would take that and
10 individually bag it, and then she would distribute it out.

11 Q. So she would sell it?

12 A. That's correct.

13 Q. Okay. Other than coming here to testify today, did
14 you have any further involvement in this case?

15 A. No.

16 Q. I have nothing further. Please answer any questions
17 Mr. Yarborough may have for you.

18 THE COURT: Mr. Yarborough?

19 CROSS EXAMINATION

20 BY MR. YARBOROUGH:

21 Q. She was trying to be cooperative with you when you
22 came in?

23 A. I'm sorry. He was speaking. What was that?

24 Q. She was trying to be cooperative when you came in?

25 A. Yes, sir.

- 1 Q. Okay. And she -- you're sure there weren't any guns
2 drawn?
- 3 A. No, sir.
- 4 Q. So when you got there, she was in the bathroom. She
5 was partially clothed?
- 6 A. When I met her -- she was in the bedroom when I met
7 her.
- 8 Q. So did you get in after the first officer that came
9 in?
- 10 A. Yes, sir. I was one of the last ones inside the
11 residence.
- 12 Q. And at that point, she had gotten some clothes on?
- 13 A. Initially she did when she was detained, brought in
14 from the bedroom to the living room, then she was allowed
15 to -- they had wrapped her up in a blanket prior to that,
16 and then they allowed her to put some shorts on.
- 17 Q. And she was nervous?
- 18 A. If I remember right, she was nervous.
- 19 Q. And I guess she tried to be cooperative with you at
20 that point?
- 21 A. Yes.
- 22 Q. Okay. Did you look around? Were there other men's
23 clothes in the house?
- 24 A. No, sir.
- 25 Q. You didn't look?

1 A. I'm sorry. I did not look because I was assigned to
2 be with her, so I did not do any looking.

3 Q. So you didn't look in the other bedrooms to see who
4 else?

5 A. No, sir.

6 Q. Thank you. No further questions.

7 THE COURT: Redirect?

8 MS. MOORE: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. MOORE:

11 Q. When you came into the house, were your guns drawn
12 initially?

13 A. Initially they were.

14 Q. Okay. But they were not drawn during the interview,
15 correct?

16 A. That's correct.

17 Q. Okay. And also briefly just to clear up, there is a
18 bathroom inside the bedroom?

19 A. Yes. The bedroom to the right that we're speaking of
20 that she was inside, there is a bathroom attached to that.
21 I don't think there's even a door that separates the two.
22 I think they're all in the same room.

23 Q. So when you say that Ms. Patrick was -- you believe
24 she was in the bedroom, there is a bathroom attached to
25 that bedroom?

1 A. That's correct.

2 Q. I have no further questions. Thank you.

3 MR. YARBOROUGH: Let me just make sure I
4 understand.

5 RE CROSS EXAMINATION

6 BY MR. YARBOROUGH:

7 Q. When you -- when they came in, there were guns drawn
8 on Ms. Patrick?

9 A. Right. That's protocol.

10 Q. Protocol. The guns were out. I mean, you busted in.
11 She's got a gun, several guns, pointed at her, correct?

12 A. I don't know if there are several guns, but I would --
13 when we enter a residence, we're going to have our guns
14 drawn.

15 Q. Okay. And how many people entered the residence?

16 A. I'm trying to think. Six or seven.

17 Q. Okay. And that protocol would be all of them would
18 have their guns drawn?

19 A. That's correct.

20 Q. Okay. Thank you.

21 THE COURT: May this witness be excused?

22 MS. MOORE: Yes, Your Honor.

23 MR. YARBOROUGH: Yes, sir.

24 THE COURT: Thank you, sir.

25 Call your next witness, please.

1 MS. MOORE: The State calls Officer Acevedo.

2 ANDRES ACEVEDO,

3 being first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MOORE:

6 Q. Detective Acevedo, by who are you employed?

7 A. Anderson County Sheriff's Office.

8 Q. And how long have you been with the sheriff's office?

9 A. Over nine years.

10 Q. Over nine years?

11 A. Yes.

12 Q. And how long have you been -- what is your current
13 position there?

14 A. My current position is detective with the narcotics
15 team.

16 Q. And how long have you been with the narcotics team?

17 A. A year and four months.

18 Q. Okay. And what other positions in the sheriff's
19 office did you hold prior to being in the narcotics
20 division?

21 A. I was originally hired as a corrections officer at the
22 detention center and then transferred over to the road
23 patrol and then transferred over to narcotics.

24 Q. Okay. And you said that you are currently a detective
25 at the narcotics unit?

1 A. Yes, ma'am.

2 Q. What are some of your duties and responsibilities as a
3 detective?

4 A. We have a caseload dealing with narcotics complaints
5 and investigations that are going on in the county. We
6 also handle criminal warrants. We also answer drug
7 complaints and anything to do with drugs in the county.

8 Q. Okay. Are you familiar with the home at [REDACTED]
9 Willingham Road?

10 A. Yes, ma'am.

11 Q. And is that in Anderson County?

12 A. Yes, ma'am.

13 Q. And how are you familiar with that home?

14 A. I've been -- at the time, I was on a drug
15 investigation involving --

16 MR. YARBOROUGH: Objection, Your Honor.

17 THE COURT: Just one second.

18 Mr. Foreman, would you take your jury back to the jury
19 room, please, sir.

20 (WHEREUPON, the jury exited the courtroom at
21 approximately 3:05 PM.)

22 THE COURT: Are you trying to get into the
23 January arrest?

24 MS. MOORE: No, Your Honor. I am simply trying
25 to elicit that Ms. Patrick lived at the home at [REDACTED]

1 Willingham Road.

2 THE COURT: I assume that's your objection. Go
3 ahead and state it.

4 MR. YARBOROUGH: He said: I'm handling an
5 investigation. I wanted to stop it right there before we
6 got into a mistrial.

7 THE COURT: Yeah. I would -- to the extent that
8 he's going to bring the January, I'm going to sustain that.
9 Okay? Because that's indicted but not convicted --

10 MS. MOORE: Certainly, Your Honor.

11 THE COURT: -- charge that has a different
12 standard for admission.

13 Do you want to keep going, or do you want to take a
14 quick break?

15 What do you want to do down there, Madam Court
16 Reporter?

17 THE REPORTER: I'm fine, Judge.

18 THE COURT: You're good?

19 Well, let's go ahead since we started.

20 MS. MOORE: Would you like me to go ahead and ask
21 so that he can hear the question?

22 THE COURT: I think that -- I'm going to leave it
23 up to you.

24 Do you want to hear a proffer, Mr. Yarborough?

25 MR. YARBOROUGH: Your Honor, if he's just

1 directed that he's going to talk about that one case
2 instead of he just got -- what he said was I was handling
3 an investigation. I didn't know where he was going with
4 that, and I wanted to make sure that we cut it.

5 THE COURT: Right. I thought that's what you
6 were doing.

7 MR. YARBOROUGH: Well, that's -- yeah.

8 THE COURT: Okay.

9 MS. MOORE: I just want to double check.

10 THE COURT: You're fine.

11 Don't get into January.

12 THE WITNESS: No, sir, I wasn't.

13 THE COURT: All right. I think he was just being
14 cautious. All right. Bring the jury back.

15 (WHEREUPON, the jury entered the courtroom at
16 approximately 3:07 PM.)

17 THE COURT: All right.

18 BY MS. MOORE:

19 Q. Now, just to recap for the jury, I asked you if you
20 are familiar with the home at [REDACTED] Willingham Road.

21 A. Yes.

22 Q. Okay. And how are you familiar with that home?

23 A. We executed a search warrant there.

24 Q. Okay. And did you do any kind of observations of the
25 home prior to executing that search warrant?

- 1 A. Yes, ma'am. Surveillance was done at the residence.
- 2 Q. Okay. And during your surveillance, did you -- were
- 3 you able to observe whether or not this defendant Mary
- 4 Patrick resided in that home?
- 5 A. Yes, ma'am.
- 6 Q. She did?
- 7 A. Yes.
- 8 Q. Okay. And to the best of your knowledge, did any
- 9 other females reside in that home?
- 10 A. No, ma'am.
- 11 Q. Okay. And on May 11, 2017, did you have occasion to
- 12 go to that address?
- 13 A. Yes, ma'am.
- 14 Q. And why did you go there?
- 15 A. To execute a search warrant.
- 16 Q. Okay. I'm going to show you what's been marked as
- 17 State's Exhibit 1. Do you recognize that?
- 18 A. Yes, ma'am.
- 19 Q. And what is it?
- 20 A. That's the residence at [REDACTED] Willingham Road.
- 21 Q. And when was that taken, to the best of your
- 22 knowledge?
- 23 A. On May 11th.
- 24 Q. Is that the day you executed the search warrant?
- 25 A. Yes, ma'am.

1 Q. And is it a true and accurate representation of the
2 scene as you remember it?

3 A. Yes, ma'am.

4 Q. Do any changes appear to have been made?

5 A. No, ma'am.

6 MS. MOORE: Your Honor, at this time, the State
7 asks that State's Exhibit 1 be admitted into evidence and
8 published to the jury.

9 THE COURT: Any objections?

10 MR. YARBOROUGH: No, sir, Your Honor.

11 THE COURT: Admitted, and you have a right to
12 publish it.

13 (STE. EXH. 1, PHOTOGRAPH, was admitted into
14 evidence.)

15 BY MS. MOORE:

16 Q. Can you tell the jury exactly what this is?

17 A. Yes. This is the residence at [REDACTED] Willingham Road.
18 It is a doublewide mobile home with tan vinyl siding. It's
19 got a covered porch on the front. It's got -- the porch is
20 painted white. It's got a fence surrounding the whole -- a
21 chain-link fence surrounded the property surrounding the
22 whole property.

23 Q. And this is the home that you had been surveilling?

24 A. Yes, ma'am.

25 Q. This is Mary Patrick's home?

1 A. Yes, ma'am.

2 Q. Okay. And what, if anything, did you do to assist in
3 executing the search warrant for this home?

4 A. I obtained the search warrant. Once the search
5 warrant was signed by the judge, we searched -- the units
6 responded to the residence and executed the search warrant.
7 And I assisted in searching the residence.

8 Q. Okay. And what did you do to assist in that search?

9 A. I searched the master bedroom which was the first
10 bedroom on the right, and I also searched the first bedroom
11 to the left.

12 Q. Okay. Did you have an occasion to come into contact
13 with the defendant at all?

14 A. Yes, ma'am.

15 Q. Okay. And what, if anything, did you say to her?

16 A. I mirandized her while she was detained by
17 Investigator -- Detective McDonald. Once she came out of
18 the master bedroom, I then pulled out a Miranda warning
19 card and read it off to her.

20 Q. Okay. And you said that you were focused on a
21 specific part of the house. Which house were you -- which
22 part of the house were you focused on?

23 A. Yes, ma'am. I was focused on the master bedroom which
24 was the first bedroom on the right, and I also searched the
25 first bedroom to the left.

1 Q. Okay. And what, if anything, did you find in the
2 master bedroom?

3 A. In the master bedroom, I found a set of digital scales
4 on top of a -- kind of like a nightstand where some jewelry
5 and stuff was at.

6 Q. Okay. And what, if anything, did you find in the
7 front bedroom on the left side of the residence?

8 A. Yes, ma'am. The front bedroom, the front left
9 bedroom, I located a -- it looked like a package that was
10 taped on the inside of a closet. It was black. After
11 looking at it and being able to open it up, we located
12 methamphetamine inside. Also a set of digital scales were
13 also found -- black and gray digital scales were found in
14 the second area.

15 Q. Okay. I'm showing you what's been marked as State's
16 Exhibit 3, 4, and 5. Can you take a look at these, please.

17 A. Yes, ma'am.

18 Q. Do you recognize those?

19 A. Yes, ma'am, I do.

20 Q. What are they?

21 A. This is a picture of the package that I mentioned that
22 was taped with black tape that was located on the inside of
23 the closet taped to the wall.

24 Q. Okay. And do those appear to be a fair and accurate
25 representation of the scene as you remember it?

1 A. Yes, ma'am.

2 Q. Does anything appear to have been changed in any way?

3 A. No, ma'am.

4 MS. MOORE: Your Honor, at this time I would ask
5 that State's Exhibits 3, 4 and 5 be admitted into evidence
6 and published to the jury.

7 MR. YARBOROUGH: Your Honor, I don't have any
8 objections to those particular pictures, but I do want to
9 note all my previous objections that were raised.

10 THE COURT: All right, sir.

11 They'll be admitted subject to previous objection.

12 (STE. EXH. 3, PHOTOGRAPH, was admitted into
13 evidence.)

14 (STE. EXH. 4, PHOTOGRAPH, was admitted into
15 evidence.)

16 (STE. EXH. 5, PHOTOGRAPH, was admitted into
17 evidence.)

18 BY MS. MOORE:

19 Q. Can you see? Is your screen working?

20 A. Yes, ma'am.

21 Q. Okay. Perfect. I'm showing you State's Exhibit 3.
22 Can you explain to the jury what they're seeing here?

23 A. Yes. This is the closet that is located in the front
24 left bedroom. If you see where where this pink trim is at,
25 that's actually the entrance. So as soon as you walk --

1 Q. Right here?

2 A. Yes, ma'am. As soon as you walk in, the closet is
3 going to be to the left side. In that closet was, there
4 was several things in there. The first thing that was
5 located was a set of digital scales in there. And then
6 once you looked inside the closet, that was hanging from
7 the closet taped up against the wall.

8 Q. You're speaking of --

9 A. Yes, ma'am, that package right there.

10 Q. Okay. I'm showing you State's Exhibit 4. Can you
11 tell the jury what they're looking at here?

12 A. Yes. This is actually a picture of myself after I
13 took the package off the wall. Again, that's the package
14 that was taped up against the wall with black tape. I
15 don't know what kind of tape it was, if it was duct tape or
16 electrical tape. It was black.

17 Q. Okay. And State's Exhibit 5? It's a little hard to
18 see, but can you tell us what this is?

19 A. Yes, ma'am. This is -- once the package, after I took
20 a picture of the package in my hand -- this is actually the
21 area where the evidence collection was at. That's why you
22 can tell all these other officers are walking around here
23 with their shoes. We opened the package up. We didn't
24 really examine it until the team leader took it all apart
25 just for simply we didn't know exactly what it was at the

1 time. We could tell it was a crystal-like substance that
2 did resemble methamphetamine. That was later field-tested,
3 and it did come back as methamphetamine.

4 Q. Okay. And so what the jury is looking at here, this
5 bright white part, that is the crystal-like substance that
6 you're referring to?

7 A. That is actually the -- inside that package, it was
8 already broken up into several baggies to be distributed.
9 So, yes, that's actually -- let's see. What you're seeing
10 in there is actually baggies with the crystal-like
11 substance in there.

12 Q. Okay. Thank you. And did you collect any of the
13 items that you found?

14 A. The items that I found, once the picture was taken of
15 them, I then collected the items and took them to the
16 evidence collection detective, Detective Durham.

17 Q. And you said that was Detective Durham?

18 A. Yes, ma'am.

19 Q. And is that normal protocol for your narcotics team?

20 A. Prior to executing the search warrant, we all have
21 separate duties. Everybody gets an assignment, whether
22 you're with the person that's detained or you're on the
23 search team or evidence collection. At that time,
24 Detective Durham was assigned to evidence collection.

25 Q. Okay. Other than coming here to testify today,

1 Detective, did you have any further involvement in this
2 case?

3 A. No, ma'am.

4 Q. Thank you so much. Please answer any questions
5 Mr. Yarborough may have for you.

6 CROSS EXAMINATION

7 BY MR. YARBOROUGH:

8 Q. Detective Durham, you found the -- it's a black
9 package, I guess. Exhibit Number 4, you found that taped
10 to the wall in the closet?

11 A. Yes, sir.

12 Q. Okay. And there were some other people that lived in
13 that house; isn't that correct?

14 A. Sir, I'm not aware of who lived there.

15 Q. But you are aware other people lived there besides
16 Mary?

17 A. No, sir. I don't know who lives there other than
18 Mary.

19 Q. Well, I mean, you found men's clothes in the house,
20 right?

21 A. Sir, I didn't locate any men's clothes.

22 Q. Did you look?

23 A. Sir, I searched her bedroom which was the master
24 bedroom and that bedroom where that substance was located.
25 I did not locate any men's clothing.

- 1 Q. You didn't locate any clothing?
- 2 A. I did not locate any men's clothing.
- 3 Q. Do you have any other pictures from that night? Did
- 4 you take an inventory of the other rooms?
- 5 A. Sir, the whole residence was photographed, so there
- 6 should be pictures of it.
- 7 Q. But that package was taped on the inside of the closet
- 8 on the wall? Is that where it was? Right there?
- 9 A. Yes, sir.
- 10 Q. So it was up against the wall; it wasn't readily
- 11 viewable?
- 12 A. Sir, if you turn the picture.
- 13 Q. That way? You want it that way?
- 14 A. Yes, sir. Like I explained, when you enter the room,
- 15 this pink trim right here is going to be to your left when
- 16 you enter the room, so the closet is going to be on the
- 17 left side.
- 18 Q. And what all this stuff here is looks like some kind
- 19 of equipment on the inside here. What's that?
- 20 A. I believe that is a Coca-Cola -- maybe one of the
- 21 antique -- cooler. I'm not sure.
- 22 Q. Is that a boot on the outside of that door right
- 23 there?
- 24 A. Sir, if I'm not mistaken, that's my hand.
- 25 Q. That's a what?

- 1 A. If I'm not mistaken, that's my hand.
- 2 Q. Oh, that's your hand right there?
- 3 A. Yes, sir.
- 4 Q. I see. What about farther in the back? What's all
- 5 that stuff?
- 6 A. Sir, that's another bedroom. You have to go through a
- 7 hallway.
- 8 Q. Okay. Did you take pictures of that bedroom?
- 9 A. Yes, sir. Like I explained, the whole residence was
- 10 photographed.
- 11 Q. Photographed? And Ms. Patrick was found in the
- 12 bathroom?
- 13 A. Sir?
- 14 Q. When you came in, she was in the bathroom?
- 15 A. When I came in, sir, she was already walking out of
- 16 the master bedroom which is the first bedroom on the right.
- 17 Q. Which is the first bedroom on the right?
- 18 A. Yes, sir.
- 19 Q. Thank you.
- 20 MR. YARBOROUGH: Thank you, Your Honor. No more
- 21 questions.
- 22 THE COURT: Redirect?
- 23 MS. MOORE: None, Your Honor.
- 24 THE COURT: May this witness be excused?
- 25 MS. MOORE: He may.

1 THE COURT: Mr. Yarborough?

2 MR. YARBOROUGH: No, your Honor. I may need to
3 call him later.

4 THE COURT: Okay. You can step down, but don't
5 leave.

6 THE WITNESS: Yes, sir.

7 THE COURT: Mr. Foreman, ladies and gentlemen of
8 the jury, let's take a little afternoon break and then
9 we'll bring you back and resume. If the jury needs
10 anything, let our bailiff know, and he will try to provide
11 it for you. You can go back to your jury room. Those of
12 you who have notepads need to leave your notepads in the
13 courtroom, please.

14 (WHEREUPON, the jury exited the courtroom at
15 approximately 3:21 PM.)

16 THE COURT: All right. Let's take about a 10- or
17 15-minute break.

18 MR. YARBOROUGH: Thank you, Your Honor.

19 (WHEREUPON, a short recess transpired.)

20 THE COURT: All right. Anything before we get
21 started?

22 MS. MOORE: Nothing, Your Honor. Just for
23 scheduling purposes...

24 THE COURT: Sure.

25 MS. MOORE. ... all of my witnesses are here.

1 They're present and accounted for. I could probably get
2 through all of my testimony today if the Court would like
3 to do that.

4 THE COURT: Whatever you guys want to do.

5 I assume that's fine with you, isn't it?

6 MR. YARBOROUGH: That's fine with me.

7 MS. MOORE: We could do closings in the morning,
8 and that way Mr. Yarborough can --

9 THE COURT: Closing in the morning? You would
10 think -- do you think Mr. Yarborough is not going to put up
11 evidence in the case?

12 MS. MOORE: Or Mr. Yarborough can put up evidence
13 in the case in the morning, whichever he prefers.

14 THE COURT: Well, before we go then, let's do a
15 -- if we get through, let's do a charge conference and see
16 what we need to do.

17 MR. YARBOROUGH: Okay. And I'd like to discuss
18 at some point about her prior record in case she decides
19 she might want to testify.

20 THE COURT: All right. Well, let's do that right
21 quick.

22 MS. MOORE: Okay.

23 THE COURT: Well, no. Let's do it after the
24 afternoon. Go ahead and get your next witness ready.

25 MS. MOORE: Okay.

1 THE COURT: Bring the jury back out.

2 We'll do the Fifth Amendment stuff at the end of the
3 day.

4 (WHEREUPON, the jury entered the courtroom at
5 approximately 3:36 PM.)

6 THE COURT: All right. Call your next witness,
7 please.

8 MS. MOORE: Your Honor, at this time the State
9 calls Detective Ronald Wood.

10 RONALD WOOD,

11 being first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. MOORE:

14 Q. Detective Wood, by who are you employed?

15 A. I'm employed by Anderson County Sheriff's Office.

16 Q. And how long have you been with the Sheriff's office?

17 A. I've been with Anderson County approximately 20 years.

18 Q. Twenty years? Okay. What is your current position?

19 A. I am a detective in the narcotics investigation unit.

20 Q. Okay. And how long have you been with the narcotics
21 unit?

22 A. January 2017.

23 Q. Okay. And prior to that, what are other positions
24 that you held with the Sheriff's office?

25 A. In 1998, I started out in dispatch. I moved to

1 apartment security, animal control, road patrol, criminal
2 investigations division, and now detective in the narcotics
3 investigations unit.

4 Q. Okay. And on May 11, 2017, did you have occasion to
5 go to [REDACTED] Willingham Road?

6 A. I did.

7 Q. Okay. And for what reason?

8 A. To assist in executing a search warrant.

9 Q. And what, if anything, did you do to assist?

10 A. I helped search the residence.

11 Q. Okay. And what, if anything, did you find while you
12 were executing that search warrant?

13 A. I searched the master bedroom and the bathroom in the
14 master bedroom. Also, the front left --

15 THE COURT: You need to back up just a tad.

16 Thank you.

17 THE WITNESS: -- the front left of the residence,
18 the front left bedroom of the residence, and also the
19 closet in both the master bedroom and the front left
20 bedroom and the bathroom next to the front left room.

21 BY MS. MOORE:

22 Q. Okay. And what, if anything, did you find in those
23 bedrooms?

24 A. In the front left bedroom closet to the left of the
25 residence, I found a purple Crown Royal bag containing four

1 plastic, clear plastic, bags of a crystal-like substance
2 that field-tested positive for methamphetamine. Also,
3 there were three other clear plastic bags contained in the
4 residence.

5 Q. I'm showing you what's been marked as State's Exhibits
6 6 through 9. Will you take a look at these for me, please.

7 A. I'll will.

8 Q. Do you recognize those?

9 A. Yes, ma'am, I do.

10 Q. Okay. What are they?

11 A. These are photographs of the purple Crown Royal bag
12 and also the three clear plastic baggies and residue in the
13 four clear plastic bags and the crystal-like substance that
14 field-tested positive for methamphetamine.

15 Q. Okay. Are they a true and accurate representation of
16 the scene as you remember it?

17 A. Yes, ma'am, they are.

18 Q. Does anything appear to have been changed, any
19 deletions been made?

20 A. No, ma'am.

21 Q. Okay.

22 MS. MOORE: Your Honor, at this time I would ask
23 that State's exhibits 6 through 9 be admitted into evidence
24 and published to the jury.

25 MR. YARBOROUGH: Just subject to my previous

1 objection.

2 THE COURT: Subject to the prior ruling, they
3 will be admitted.

4 (PLF. EXH. 6, PHOTOGRAPH, was admitted into
5 evidence.)

6 (PLF. EXH. 7, PHOTOGRAPH, was admitted into
7 evidence.)

8 (PLF. EXH. 8, PHOTOGRAPH, was admitted into
9 evidence.)

10 (PLF. EXH. 9, PHOTOGRAPH, was admitted into
11 evidence.)

12 BY MS. MOORE:

13 Q. Briefly, Detective Wood, what are we looking at here?

14 A. This is the ice cold red and white
15 refrigerator-freezer with the purple Crown Royal baggies
16 inside of it.

17 MS. MOORE: And just for the Court's information,
18 that State's Exhibit 6.

19 BY MS. MOORE:

20 Q. And in State's Exhibit Number 7, what are we seeing?

21 A. That's the inside of that first picture, the purple
22 Crown Royal bag.

23 Q. That would be the purple Crown Royal bag?

24 A. That is correct.

25 Q. Okay. And in State's Exhibit Number 8?

1 A. That is the three clear plastic baggies with residue
2 that came out of the purple Crown Royal bag.

3 Q. Okay. And in State's Exhibit Number 9?

4 A. And that would be the four clear plastic bags with the
5 crystal-like substance that field-tested positive for
6 methamphetamine that also came out of the purple Crown
7 Royal bag.

8 Q. Okay. And is that what this small cylinder is here
9 that kind of looks like an ink pen?

10 A. Yes, ma'am. The test kit that we use has blue showing
11 it's positive for methamphetamine. It's a field-test kit.

12 Q. Okay. And did you collect any of the items in these
13 photographs?

14 A. No, ma'am, I did not.

15 Q. Who did?

16 A. Detective Josh Durham.

17 Q. Okay. And is that protocol for when you execute a
18 search warrant?

19 A. Yes, ma'am, it is.

20 Q. Okay. And did you find or collect anything besides
21 the purple Crown Royal bag and the things inside of it?

22 A. I did locate a glass pipe known to smoke illegal
23 narcotics in the master bedroom bathroom also. And
24 detective Josh Durham did collect it also.

25 Q. Okay. And aside from coming here to testify today,

1 did you have any further involvement in this case?

2 A. I witnessed Detective Joss Durham placing the items of
3 evidentiary value into evidence.

4 Q. Okay. So how -- explain a little bit to the jury
5 about how that's done.

6 A. How that's done is we collect -- whoever's collecting
7 the items brings them back to a secure facility there at
8 our office. Paperwork is done, and then we have somebody
9 following them or transport with them from the scene to
10 the -- to our office. And once we get everything packaged
11 up and everything, then somebody rides with the collecting
12 guy and/or follows that guy to the evidence to make sure
13 everything gets put into evidence and nothing is tampered
14 with or anything.

15 Q. And neither you nor Detective Durham tampered with any
16 of this evidence?

17 A. No, ma'am, we did not.

18 Q. Thank you so much. I have no further questions.

19 Please answer any Mr. Yarborough may have for you.

20 CROSS EXAMINATION

21 BY MR. YARBOROUGH:

22 Q. So let me make sure I understand. So you were there
23 to help get this stuff packaged up; is that right?

24 A. Sir?

25 Q. You were there to help get this stuff packaged up; is

- 1 that right?
- 2 A. It goes back to our office. Josh Durham collects and
- 3 packages things up.
- 4 Q. You collected it?
- 5 A. No. Josh Durham collected it.
- 6 Q. I don't understand what you're saying.
- 7 A. Josh Durham collected all the evidence.
- 8 Q. Somebody else collected all the evidence?
- 9 A. Detective Josh Durham.
- 10 Q. Okay. Josh Durham collected it all?
- 11 A. Josh Durham collected the evidence.
- 12 Q. But you were there with him?
- 13 A. I found what I found. And once they collect it, we go
- 14 back to our office to put it into evidence.
- 15 Q. Okay. So you go back to your office and you put it
- 16 into evidence?
- 17 A. We go back to our office and label everything, and
- 18 then it goes to evidence.
- 19 Q. Okay. And so y'all have this stuff. You got it
- 20 from -- well, you got it -- you took it back over to the
- 21 Anderson County Sheriff's Office; is that right?
- 22 A. No. It goes back to our office.
- 23 Q. It goes back to your office which is where?
- 24 A. Yes. It's at the Anderson County.
- 25 Q. Okay. So y'all secure this stuff, and you've had it

1 since the date that it was --

2 A. No, sir. We take it to our office, then it goes to
3 evidence. I witnessed him place it into evidence. It's
4 been in evidence ever since May 11th.

5 Q. So it's been in evidence. Y'all have had it since
6 May the 11th, right?

7 A. Yes, sir. Evidence division has had it.

8 Q. Okay. And did you weigh it?

9 A. I did not.

10 Q. You didn't weigh it?

11 A. No, sir.

12 Q. Okay. Did you have these packages tested after you
13 took them back over to the office?

14 A. I just found the stuff, sir. I'm not the case agent
15 who filled out the proper paperwork to have stuff tested or
16 -- I didn't do the charge, so there was no reason for me to
17 weigh it.

18 Q. So you didn't do anything with it?

19 A. I found it.

20 Q. You found it. Then my next question is did you test
21 it after you found it?

22 A. That's the case agent.

23 Q. Okay.

24 A. It was field-tested -- which has on that picture. It
25 was field-tested and field-tested positive. As far as the

1 paperwork, that goes to her.

2 Q. I've got it. Field-tested, and then y'all took it
3 back over, and you sent it down to SLED and had it tested;
4 is that correct?

5 A. Sir, all I did was find it.

6 Q. All you did was find it. Well, who sends it to SLED
7 to have it tested for fingerprints and for DNA?

8 A. You need to ask the case officer. The case agent. I
9 can't tell you.

10 Q. You didn't do it?

11 A. I did not do it.

12 Q. Okay. But you got it back over to the office so it
13 could be done?

14 A. Yes, sir. All I did was find it, and I assisted in
15 helping execute the search warrant. I was tasked with
16 searching the residence. That's all I did.

17 Q. All right. Now, when you were searching the
18 residence, did you see some men's clothing in there?

19 A. No, sir, I did not.

20 Q. Okay. I'm going to show you -- this is Defense
21 Number 1. I'll have it marked.

22 (DFT. EXH. 1, PHOTOGRAPH, was marked for
23 identification.)

24 BY MR. YARBOROUGH:

25 Q. Do you see this jacket here?

- 1 A. I guess that's a jacket. It's something black.
- 2 Q. Okay. Do you see these boots down here?
- 3 A. There's some boots down there.
- 4 Q. Okay. So there's a jacket and some boots there that
- 5 are men's clothing, correct?
- 6 A. I can't tell by looking at that. It could be a
- 7 woman's jacket; it could be a woman's boots. That's a
- 8 picture of a jacket and boots.
- 9 Q. Okay. Well, if you look at those boots, those are
- 10 pretty big boots, aren't they?
- 11 A. Again, I can't say if they're women's or men's.
- 12 Q. Okay. But did you check when you were out there to
- 13 see if these belonged to somebody else?
- 14 A. I must not have searched that part.
- 15 Q. Okay. Well, this is the room that was attached to the
- 16 closet where the drugs came out of, right?
- 17 A. According to that picture, I'm not sure.
- 18 Q. You're not sure?
- 19 A. I'm not by that picture.
- 20 Q. Do you recognize this picture being taken that night,
- 21 right?
- 22 A. No, sir, I do not.
- 23 Q. You do not?
- 24 A. I didn't take the pictures that day.
- 25 A. Okay. But you said you searched. I was just

1 wondering if you saw it.

2 A. I searched, but like I said...

3 Q. Did you find -- you talked about finding a pipe?

4 A. Yes, sir, I did.

5 Q. And did you -- do you know if that pipe was

6 field-tested positive for fingerprints or DNA?

7 A. That I do not know, sir.

8 Q. You do not know?

9 A. I do not know.

10 MR. YARBOROUGH: Just a second, Your Honor.

11 BY MR. YARBOROUGH:

12 Q. Are you familiar with a guitar that was found there

13 that night?

14 A. No, sir.

15 Q. Do you remember seeing a guitar in one of the

16 pictures?

17 A. No, sir.

18 Q. All right, sir.

19 MR. YARBOROUGH: Could I have this marked as

20 Exhibit 2.

21 (DFT. EXH. 2, PHOTOGRAPH, was marked for

22 identification.)

23 BY MR. YARBOROUGH:

24 Q. I'm going to show you this picture and ask if you

25 recognize it is one of the pictures that was taken that

1 night?

2 MR. YARBOROUGH: That's been previously marked as
3 Defense 2, Your Honor.

4 BY MR. YARBOROUGH:

5 Q. Do you recognize that picture?

6 A. No, sir.

7 Q. You don't recognize it from the search --

8 A. I didn't take the pictures.

9 Q. Okay. Well, I mean, you said you searched. I was
10 just wondering if that's what it looked like. That doesn't
11 look familiar to you?

12 A. No, sir.

13 Q. Who was the one that took all these pictures?

14 A. Detective Sean Proner.

15 Q. So he would know about these pictures?

16 A. Yes, sir.

17 Q. Okay. And all you did was watch this stuff get taken
18 back over to the office?

19 A. No, sir. I witnessed that stuff getting put into
20 evidence.

21 Q. Get put into evidence. So you put it into bags, and
22 then you took it over to the office. And you don't know
23 what was done with it after that?

24 A. It was placed into evidence. What the evidence
25 division does, you have to ask evidence.

1 Q. So what evidence did with it after that, that's what
2 happened?

3 A. Like I said, you'd have to speak to the evidence
4 division. We placed it in -- I witnesses him place it into
5 evidence.

6 Q. Okay. And how long have you been doing this?

7 A. How long have I been doing what? I've been in the
8 narcotics investigation unit since January 2017.

9 Q. 2017?

10 A. Yes, sir.

11 Q. Okay. Thank you. Nothing further.

12 THE COURT: Redirect?

13 MS. MOORE: Nothing further, Your Honor.

14 THE COURT: May this officer be excused?

15 MS. MOORE: He may, Your Honor.

16 MR. YARBOROUGH: Yes, sir.

17 THE COURT: Sir, you're excused.

18 Call your next witness, please.

19 MS. MOORE: The State calls Detective Josh
20 Durham.

21 JOSH DURHAM,

22 being first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. MOORE:

25 Q. Detective Durham, by who are you employed?

- 1 A. Anderson County Sheriff's Office.
- 2 Q. And how long have you been with the sheriff's office?
- 3 A. I've been with the sheriff's office almost a year and
- 4 a half now.
- 5 Q. Okay. And what is your position there?
- 6 A. I'm a detective in the narcotics unit.
- 7 Q. Okay. And you've been with the narcotics unit your
- 8 entire time with the sheriff's office?
- 9 A. That's correct.
- 10 Q. And before you were with the sheriff's office, were
- 11 you employed in law enforcement?
- 12 A. Yes, I was. I actually started my law enforcement
- 13 career in the sheriff's office till '05, then I joined the
- 14 South Carolina Highway Patrol from '05 to 2016.
- 15 Q. Okay. And what kind of things did you do with the
- 16 Highway Patrol?
- 17 A. Investigate collisions, DUIs.
- 18 Q. Okay. And what are some of your duties and
- 19 responsibilities as a detective with the narcotics
- 20 division?
- 21 A. We investigate the sale and use of illegal narcotics.
- 22 Q. Okay. And on May 11, 2017, did you have occasion to
- 23 go to [REDACTED] Willingham Road?
- 24 A. I did.
- 25 Q. For what reason?

1 A. A search warrant.

2 Q. Okay. And what, if anything, did you do to assist in
3 executing that search warrant?

4 A. I searched the residence, and I kept the search
5 inventory and collected the evidence.

6 Q. Okay. What is a search inventory?

7 A. A search inventory is a form that we use to fill out.
8 It documents the item number, what the item is, where we
9 located it, which detective located it, and the time they
10 located it.

11 Q. Okay.

12 MR. YARBOROUGH: Your Honor, I don't have any
13 objection except for my initial objections.

14 THE COURT: All right. It will be admitted
15 subject to prior objection.

16 BY MS. MOORE:

17 Q. I'm showing you what's been marked as State's
18 Exhibit 10. Can you take a look at that for me, please.

19 A. Yes, ma'am.

20 Q. Do you recognize that?

21 A. I do.

22 Q. What is it?

23 A. This is the search inventory that I filled out on this
24 case.

25 Q. Okay. That is your original search inventory?

1 A. That's correct.

2 MS. MOORE: Your Honor, I would ask that State's
3 Exhibit Number 10 be admitted into evidence and published
4 to the jury.

5 THE COURT: Admitted subject to prior objection.

6 (STE. EXH. 10, PHOTOGRAPH, was admitted into
7 evidence.)

8 BY MS. MOORE:

9 Q. Can you explain to the jury a little bit about what
10 they're seeing here?

11 A. Yes. On the left-hand side is the actual item number.
12 You see D1 and ND? D1 stands for drug items; ND stands for
13 nondrug items. Over to the right of it is the description
14 of what was found. To the right of it is where it was
15 found in the house. And following that is the time, who it
16 was found by, who collected it, and then who transported it
17 to evidence.

18 Q. Okay. And what, if anything, did you find while
19 executing the search warrant?

20 A. I found a small baggie of a crystal-like substance
21 that appeared to be methamphetamine in the pocket of some
22 blue jean shorts, and I also found a set of digital scales
23 in the kitchen.

24 Q. I'm showing you what's been pre-marked as State's
25 Exhibits 11 through 13. Can you take a look at them for

1 me, please.

2 A. Yes, ma'am.

3 Q. Do you recognize those?

4 A. I do.

5 Q. What are they?

6 A. Those are the jean shorts that I found in the -- I
7 guess it was the bedroom or the bathroom of the master
8 bedroom.

9 Q. Okay. And are they a true and accurate representation
10 of the scene as you remember it?

11 A. They are.

12 Q. Does anything appear to have been changed in those
13 photos?

14 A. No, ma'am.

15 MS. MOORE: Your Honor, at this time I would ask
16 that State's Exhibits 11 through 13 be admitted into
17 evidence for publication.

18 MR. YARBOROUGH: I'm just trying to figure out 11
19 through 13.

20 (Off record discussion.)

21 THE COURT: Any objection?

22 MR. YARBOROUGH: No objection, Your Honor.

23 THE COURT: All right. Admitted.

24 MR. YARBOROUGH: Well, besides my previous
25 objection.

1 THE COURT: Subject to prior ruling.

2 (STE. EXH. 11, PHOTOGRAPH, was admitted into
3 evidence.)

4 (STE. EXH. 12, PHOTOGRAPH, was admitted into
5 evidence.)

6 (STE. EXH. 13, PHOTOGRAPH, was admitted into
7 evidence.)

8 BY MS. MOORE:

9 Q. And in State's Exhibit 11, can you explain to the jury
10 what they're seeing in this photo?

11 A. That's the jean shorts that appear to be ladies
12 shorts. In that pocket, there is what we call a clear
13 plastic baggie of methamphetamine.

14 Q. That would be there?

15 A. Yes, ma'am.

16 Q. Okay. And in State's Exhibit 12?

17 A. That's the baggie of methamphetamine that was pulled
18 from the pocket of the jean shorts.

19 Q. There?

20 A. That's correct.

21 Q. Okay. And State's Exhibit Number 13?

22 A. That's the baggie that you saw in the previous
23 picture. To the left of it is a test kit showing that it
24 was positive for methamphetamine.

25 Q. Okay. That's a field-test kit?

- 1 A. That's correct.
- 2 Q. Okay. Now, I'm going to show you State's Exhibit 3
3 through 5, 6 through 9 and 11 through 13. Take a look at
4 those for me, please. Are you familiar with those?
- 5 A. I am.
- 6 Q. Okay. And did you collect any of the items in those
7 photos?
- 8 A. I did.
- 9 Q. What did you collect?
- 10 A. I collected all the drug items.
- 11 Q. And just for the jury's information, those would be
12 items in State's Exhibit 13?
- 13 A. Correct.
- 14 Q. And those are the drugs found in the pocket of the
15 denim shorts that we just discussed?
- 16 A. Right.
- 17 Q. And State's Exhibit 8?
- 18 A. Correct.
- 19 Q. Which are the drugs found in the Crown Royal bag,
20 correct?
- 21 A. That's correct.
- 22 Q. And State's Exhibit 5?
- 23 A. Correct.
- 24 Q. Which are the drugs taped inside the closet?
- 25 A. Inside the closet, that's correct.

1 Q. Okay. I'm going to show you State's Exhibit 14
2 through 16. If you can take a look at those for me,
3 please.

4 A. (Witness reviews documents.)

5 Q. Do you recognize those?

6 A. I do.

7 Q. Okay. What are they?

8 A. These are bags of methamphetamine.

9 Q. Okay. Specifically, what are they?

10 A. These are items that were located at this residence at
11 Willingham Road. One was the baggies that I actually found
12 in the jean shorts, one was from the Crown Royal bag, and
13 the other was taken inside of the closet door.

14 Q. Okay. And you're certain that those are the same
15 pieces of evidence that you took from the scene?

16 A. I am.

17 Q. Okay. How do you know?

18 A. Because I documented those in the search inventory by
19 item name, the description, and where they were located.

20 Q. And are there any numbers on those bags that you would
21 be able to identify on your search inventory?

22 A. They are. The numbers on the bag and the numbers on
23 the search inventory coincide, so if you look down and see
24 D3, the sixth line down, it describes four clear plastic
25 bags found inside ND3 which was a nondrug. That would be

- 1 this one here because it's labeled as ND3.
- 2 Q. Okay. And that's State's Exhibit what?
- 3 A. Fifteen.
- 4 Q. Okay. And where was that found, according to the
- 5 search inventory?
- 6 A. Inside ND3 which was located -- that was the Crown
- 7 Royal bag that was located inside the front bedroom on the
- 8 left side of the closet.
- 9 Q. Which investigator found it?
- 10 A. Detective Wood.
- 11 Q. Okay. And what about the other two items that you
- 12 have there?
- 13 A. This one would be D1.
- 14 Q. That State's exhibit what?
- 15 A. This is State's Exhibit 14.
- 16 Q. Okay.
- 17 A. And this was located by myself. It's a clear plastic
- 18 bag containing methamphetamine or a crystal-like substance,
- 19 and this is the one I located inside the jeans shorts.
- 20 Q. Okay. You said you were the one who found and
- 21 collected that?
- 22 A. Yes, ma'am.
- 23 Q. Okay. What about that final bag?
- 24 A. This one is -- we've got it labeled as D5. It's
- 25 State's Exhibit 16. And this was six clear plastic baggies

1 containing a crystal-like substance which was
2 methamphetamine. It was located inside of ND4. ND4 is the
3 white plastic CVS bag wrapped in black duct tape. This was
4 the one that was located by Detective Ralph Detective
5 Acevedo inside the closet.

6 Q. Thank you, sir. I'm now showing you what's been
7 premarked as State's Exhibit 18 through 22 and 25.

8 MR. YARBOROUGH: Subject to my previous
9 objection.

10 THE COURT: Okay, sir.

11 BY MS. MOORE:

12 Q. Can you take a look at these items for me. Do you
13 recognize those?

14 A. I do.

15 Q. Okay. What are they?

16 A. These are items, nondrug items, that were located
17 inside the residence search warrant. We have ND3 which was
18 the Crown Royal bag that contained the methamphetamine.
19 ND5 is the set of scales. ND4, that's the CVS bag wrapped
20 in black duct tape which was taped inside the closet door.

21 Q. I'm actually going to stop you here for just a second.

22 A. Okay.

23 Q. You're certain that these are the items that you
24 collected from the home?

25 A. I am.

1 Q. Okay. And how are you certain?

2 A. Again, they were documented on the search inventory,
3 the item number, description, location and the detective
4 who found it and the time.

5 Q. Okay.

6 MS. MOORE: Your Honor, I would ask at this time
7 that State's Exhibit 18 through 22 and 25 be admitted into
8 evidence and published to the jury.

9 THE COURT: Subject to my prior ruling, any
10 objection?

11 MR. YARBOROUGH: Subject --

12 THE COURT: All right. Exhibits 18 through 22
13 and 25 will be admitted.

14 (STE. EXH. 18, SCALES, was admitted into
15 evidence.)

16 (STE. EXH. 19, CROWN ROYAL BAG, was admitted into
17 evidence.)

18 (STE. EXH. 20, PLASTIC BAG WITH DUCT TAPE, was
19 admitted into evidence.)

20 (STE. EXH. 21, SCALES, was admitted into
21 evidence.)

22 (STE. EXH. 22, PIPE, was admitted into evidence.)

23 (STE. EXH. 25, SCALES, was admitted into
24 evidence.)

25 BY MS. MOORE:

1 Q. Detective Durham, I'm going to give you a pair of
2 scissors and ask you to open these up for me. Let's start
3 with State's Exhibit Number 19. Can you show that to the
4 jury.

5 A. I can.

6 Q. I'm going to show you State's Exhibit Number 8. Is
7 that Crown Royal bag the same bag as in this photo?

8 A. Yes, it is.

9 Q. I'm showing you State's Exhibit D3. Is that what you
10 collected from the inside of that Crown Royal bag? Excuse
11 me. State's Exhibit 15.

12 A. Yes, it is.

13 THE COURT: What number?

14 MS. MOORE: Exhibit 15, Your Honor.

15 BY MS. MOORE:

16 Q. Why don't you open State's Exhibit Number 23, please.
17 What is that exactly?

18 A. This is a CVS, plastic CVS, bag, wrapped in duct tape,
19 black duct tape.

20 Q. It's basically like a grocery bag wrapped in duct
21 tape?

22 A. That's correct.

23 Q. Okay. And I'm showing you State's Exhibit 5. Is that
24 the same bag as in this photograph?

25 A. It is.

- 1 Q. Okay. I'm showing you State's Exhibit Number 16. Is
2 that what you collected from the inside of that bag?
- 3 A. It is.
- 4 Q. Okay. And will you open Item 22 for me.
- 5 A. (Witness complied.)
- 6 Q. And what is that exactly?
- 7 A. This is a -- it's a glass pipe used to smoke
8 methamphetamine.
- 9 Q. Okay. And now if you'll open Items 18, 21 and 25. Do
10 you want me to take some of those exhibits for you? You're
11 getting crowded up there. Thank you. Can you show each of
12 those items to the jury, please.
- 13 A. Okay. (Witness complies.)
- 14 Q. And what are those?
- 15 A. These are all sets of digital scales.
- 16 Q. Okay. And how long did you say you've been in law
17 enforcement?
- 18 A. For going on 17 years now.
- 19 Q. And in your training and experience, how many times
20 would you say you've encountered scales like this?
- 21 A. Unfortunately, too many to keep count of.
- 22 Q. And in your training and experiences, what are these
23 types of scales used for?
- 24 A. In my experience, these are what drug dealers use to
25 weigh out the drugs.

1 Q. Okay. I'll take those from you.

2 Now, you collected all the items in this case,
3 correct?

4 A. That's correct.

5 Q. And what did you do with those items?

6 A. I put them in baggies, sealed them up. I listed them
7 on the evidence bags. I located -- or wrote the item
8 number, where it was located, and also put them on the
9 search inventory.

10 Q. Okay. Let's just, for example, show the jury State's
11 Exhibit Number 21. So you wrote ND5?

12 A. That's correct.

13 Q. Which corresponds to the black and silver scales?

14 A. That's correct.

15 Q. On your search inventory?

16 A. That's correct.

17 Q. Okay. So you wrote your case number?

18 A. That's correct.

19 Q. Your corresponding search inventory number and your
20 name?

21 A. Collected by me, correct.

22 Q. And what did you do with these bags?

23 A. I took those bags back to our office where we weighed
24 and field-tested all the drugs, then we submitted them into
25 evidence. I put the drugs inside a BEST kit before we put

1 them into evidence.

2 Q. Okay. What is a BEST kit?

3 A. A BEST kit is a -- it's an evidence kit that we use to
4 submit controlled narcotics to the laboratory for further
5 analysis of it.

6 Q. Okay. I'm showing you what's been premarked as
7 State's Exhibit 17. Do you recognize this?

8 A. Yes.

9 Q. Can you tell me what that is?

10 A. This is actually the outer cover of the envelope that
11 the BEST kit -- the drugs, go into.

12 Q. Okay. And does it appear to have been changed or
13 altered in any way other than the fact that it is now
14 obviously empty?

15 A. Other than the fact it is empty now.

16 Q. And that is the exact thing that you use to submit
17 your drugs for analysis to the Anderson County Regional
18 Lab?

19 A. That's correct.

20 Q. Okay.

21 MS. MOORE: Your Honor, at this time, I would ask
22 that State's Exhibit Number 17 be admitted into evidence.

23 MR. YARBOROUGH: Same objection.

24 THE COURT: Admitted subject to prior objection.

25 (STE. EXH. 17, BEST KIT, was admitted into

1 evidence.)

2 BY MS. MOORE:

3 Q. So after you put them in the BEST kit, what did you do
4 with them then?

5 A. We submitted them to the evidence locker at the
6 Anderson County Sheriff's Office Forensics.

7 Q. Okay. Tell us a little bit about the evidence locker.

8 A. The evidence locker is for -- actually like a locker
9 that's installed in the wall which you put the evidence in
10 there, close it. It's locked from the outside. There's no
11 way to get into it from the outside, so it's secure.

12 Q. So they're basically like school lockers?

13 A. A little more secure than school lockers.

14 Q. A little more sophisticated than that?

15 A. Yes.

16 Q. Okay. And is it a safe and secure location?

17 A. It is.

18 Q. Who has access to that?

19 A. The only person who has access to it once it's
20 submitted into evidence those lockers are evidence techs.

21 Q. So once once you've put those drugs into evidence, you
22 could not get them back out again?

23 A. No, ma'am.

24 Q. Other than coming here to testify today, did you have
25 any further involvement in this case?

1 A. No, ma'am.

2 Q. I have nothing further. Please answer any questions
3 Mr. Yarborough has for you.

4 A. Thank you.

5 CROSS EXAMINATION

6 BY MR. YARBOROUGH:

7 Q. And you've been doing narcotics for how long?

8 A. Since January of 2017.

9 Q. Since January 2017?

10 A. That's correct.

11 Q. So this was a relatively new case for you? You'd been
12 doing it for --

13 A. Just about five months at the time.

14 Q. -- five months?

15 A. That's correct.

16 Q. And you were the evidence custodian and you got all
17 the stuff together?

18 A. I did. I was collecting it.

19 Q. Okay. Now, I don't see on this sheet where these
20 items were sent down to SLED to be tested.

21 A. We don't send them to SLED. We sent them to the
22 Anderson/Oconee laboratory.

23 Q. Okay. So did -- pardon me. This Item 20 -- my
24 mistake. It's Exhibit 20. This was sent to Oconee?

25 A. No. These things are kept in-house. The drugs are

- 1 sent to the lab.
- 2 Q. The drugs are sent to the lab?
- 3 A. That's correct.
- 4 Q. But how about this?
- 5 A. That's kept in the evidence at the sheriff's office.
- 6 Q. Okay. At the sheriff's office, do you have the
- 7 ability to test for DNA?
- 8 A. That's beyond the scope of my job. I don't know.
- 9 That's in forensics.
- 10 Q. Was this tested for DNA?
- 11 A. Not to my knowledge, it wasn't.
- 12 Q. Okay. What about for fingerprints?
- 13 A. I think it was submitted to forensics, but I don't --
- 14 Q. Do you have that with you?
- 15 A. No.
- 16 Q. It didn't have Ms. Patrick's fingerprints on it?
- 17 A. I don't know.
- 18 Q. How about the scale? Were they sent and tested?
- 19 A. No, they were not.
- 20 Q. They were not? So you don't know if -- this wasn't
- 21 tested for fingerprints or for DNA?
- 22 A. No.
- 23 Q. Let's see. What about these bags? The bags that the
- 24 drugs were found in, where they tested?
- 25 A. Not to my knowledge.

- 1 Q. For DNA or for fingerprints?
- 2 A. To my knowledge, no.
- 3 Q. That would include all these other -- how about this
- 4 pipe? Was it tested?
- 5 A. Not to my knowledge.
- 6 Q. I don't figure you would test the Crown Royal. They
- 7 can't be tested for DNA or for finger fingerprints, can
- 8 they?
- 9 A. I'm not -- I have not done time in forensics, so I
- 10 couldn't tell you that.
- 11 Q. How about this? It wasn't tested, right?
- 12 A. Not to my knowledge.
- 13 Q. And the same with what's been marked as 16, 15 and 16.
- 14 These weren't tested either?
- 15 A. Not to my knowledge, they wasn't.
- 16 Q. Were you out there that night?
- 17 A. I was.
- 18 Q. You were?
- 19 A. Uh-huh (affirmative).
- 20 Q. And did you see any men's clothing there?
- 21 A. I don't recall any men's clothing. I didn't do a lot
- 22 of searching. Initially, I was on the entry team to secure
- 23 the location of any threats, and then I was tasked with
- 24 collecting evidence.
- 25 Q. Did y'all see a guitar there or a guitar box?

- 1 A. Again, I was not on the search team.
- 2 Q. Okay. Boots? Jacket? Anything like that?
- 3 A. Again, I wasn't searching the residence.
- 4 Q. So all you did was to gather this stuff together and
- 5 put it in a locker?
- 6 A. That's correct.
- 7 Q. And from there, it was never tested after that?
- 8 A. I'm sorry.
- 9 Q. From there, it was never tested after that because you
- 10 got it in and out and it's not on this sheet?
- 11 A. Not on my behalf, it wasn't.
- 12 Q. Right. And it would be listed on this sheet if it
- 13 went somewhere else, right?
- 14 A. That's not the chain of custody. That is just a
- 15 search inventory of what we took from the house.
- 16 Q. Okay. So Durham that's here, that's you all the way
- 17 across?
- 18 A. That's correct.
- 19 Q. And so you transported it over there and put it in?
- 20 A. I submitted it to evidence.
- 21 Q. You don't know what else happened to it after that?
- 22 A. It sat in the evidence till the day -- we signed out
- 23 those particular items today.
- 24 Q. So you got it back out and brought it back over here?
- 25 A. That's correct.

1 Q. Okay. And you would have some documentation if it
2 went somewhere else, right?

3 A. Yes. The evidence techs keep those documented.

4 Q. And you don't have it?

5 A. I don't.

6 Q. Thank you. I don't have any other questions.

7 THE COURT: Redirect?

8 MR. YARBOROUGH: None, Your Honor.

9 THE COURT: Thank you, sir. You can step down.
10 Can this officer be excused?

11 MR. YARBOROUGH: He may, Your Honor.

12 MS. MOORE: Yes, sir, Your Honor.

13 THE COURT: Thank you, sir.

14 How long is your next witness?

15 MR. YARBOROUGH: Your Honor, it's our evidence
16 technician. It shouldn't be lengthy from my perspective.

17 THE COURT: All right. Would you call your
18 witness, please?

19 MS. MOORE: The State calls Jan Robison.

20 JAN ROBISON,

21 being first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. MOORE:

24 Q. Ms. Robison, if you could scoot a little closer to the
25 microphone for us.

- 1 A. Okay.
- 2 Q. Thank you so much. Ms. Robison, where do you work?
- 3 A. Anderson County Sheriff's Office.
- 4 Q. Okay. And what is your position there?
- 5 A. I'm an evidence technician.
- 6 Q. And how long have you been an evidence technician?
- 7 A. Approximately 15 months.
- 8 Q. Okay. What are your duties and responsibilities?
- 9 A. My responsibilities is to intake the evidence,
10 actually log it in, put it in the computer and to store it
11 in a secure place.
- 12 Q. Okay. And tell us a little bit about how evidence is
13 stored after you've gotten your hands on it?
- 14 A. Okay. When I get the evidence, we log it in, and then
15 we actually store it based upon what kind it is. There's
16 different areas in our department where we store it, and
17 it's all behind lock and key.
- 18 Q. Okay. And who has access to that evidence once it's
19 put into storage?
- 20 A. There's just the evidence technicians and our
21 sergeant.
- 22 Q. Okay. And is the evidence tracked in any way?
- 23 A. We actually keep up with it based upon the barcodes
24 that are labeled to each item.
- 25 Q. Okay. And before it goes into storage, generally

1 speaking, how do you obtain evidence from officers who turn
2 that in?

3 A. Okay. When the officer turns it in, they put it in a
4 locked box. And we actually take it out, and we -- at that
5 point we look at their evidence sheet that they attached to
6 that property, and we put it in the computer. And then we
7 actually take it and store it into the actual locked room.

8 Q. Okay. Where you get it from, are you referring to the
9 evidence locker?

10 A. We don't put it back in the locker. We secure it in
11 whatever room in our building that we have. For instance,
12 there's a specific place for drugs; there's a specific
13 place for guns. And we store whatever the item is in the
14 appropriate locked area.

15 Q. But when you initially obtain it, do you obtain it
16 from the evidence locker?

17 A. We do, yes.

18 Q. All right. And you said once you get that evidence,
19 you log it into the computer and then you put it in
20 storage?

21 A. That's correct.

22 Q. Okay. And did you receive any evidence related to the
23 case against Mary Patrick?

24 A. Yes.

25 Q. Ms. Robison, I'm showing you what has been premarked

1 as State's Exhibit Number 23. Can you take a look at this
2 for me, please?

3 A. Sure.

4 Q. Do you recognize this?

5 A. Yes, ma'am.

6 Q. Okay. What is it?

7 A. This is a printout that we have of our chain of
8 custody from our department computer where we log it in.

9 Q. Okay. And then -- I'm sorry. Go ahead.

10 A. Where we log it in to our computer.

11 Q. And is that a record made and kept in the course of
12 regularly conducted business at property and evidence?

13 A. Yes, ma'am.

14 Q. Okay.

15 MS. MOORE: Your Honor, at this time I would ask
16 that State's Exhibit Number 23 be admitted into evidence
17 and published to the jury.

18 MR. YARBOROUGH: Same objection.

19 THE COURT: Admitted.

20 (STE. EXH. 23, CHAIN OF CUSTODY SHEET, was
21 admitted into evidence.)

22 BY MS. MOORE:

23 Q. Ms. Robison, can you tell the jury what exactly it is
24 they're looking at?

25 A. You're looking at --

1 Q. State's Exhibit 23.

2 A. You're looking at our chain of custody report. It
3 shows the officer who submitted it. It shows that we
4 actually -- I personally took it in on 5/12, and I logged
5 it in. And then I stored it in the AOFL box getting ready
6 to go to the lab. And then on 5/25, one of the other
7 evidence techs, Ms. Lindsay (phonic), actually took it to
8 the lab, and it was analyzed by Meredith Lanford. And then
9 I picked it up from the lab on September the 7th and stored
10 it in our secure area where we keep our BEST kits.

11 Q. Okay. Thank you.

12 A. Uh-huh (affirmative).

13 Q. Now, I am showing you State's Exhibit Number 17. Can
14 you tell me what that is?

15 A. Uh-huh (affirmative). This is a BEST kit, and it is
16 the one that we're talking about that Josh Durham brought
17 in on the 11th.

18 Q. Okay. So the barcode on that BEST kit corresponds
19 with this barcode number?

20 A. Yes, ma'am, it does.

21 Q. Thank you.

22 A. Uh-huh (affirmative).

23 Q. And when did you receive this BEST kit?

24 A. I received it on May the 12th.

25 Q. And you said it was submitted by Detective Durham?

- 1 A. That's correct.
- 2 Q. Okay. And to the best of your knowledge, was that
- 3 BEST kit sealed when you received it?
- 4 A. Yes, ma'am. If it was not sealed, we would not have
- 5 entered it into our evidence.
- 6 Q. Is that protocol for your department?
- 7 A. Yes, ma'am, it is.
- 8 Q. Okay. What did you do with this particular BEST kit
- 9 when you received it?
- 10 A. When I received this BEST kit, I logged it in to the
- 11 computer, and I put the appropriate identifying labels on
- 12 those, and then I filed it in our stored BEST kit room
- 13 behind lock and key.
- 14 Q. And that is a safe and secure location?
- 15 A. Yes, ma'am, it is.
- 16 Q. Okay. Did you open that BEST kit?
- 17 A. No, ma'am.
- 18 Q. To the best of your knowledge, did any of the other
- 19 evidence technicians open that BEST kit?
- 20 A. No, ma'am.
- 21 Q. Okay. And you said that this evidence was moved to
- 22 the AOFL box?
- 23 A. Uh-huh (affirmative).
- 24 Q. Can you explain what that is for us, please?
- 25 A. We just have -- actually it's like a little postal

1 box. And whenever we get the evidence in, if we label --
2 if that box is labeled, it's sitting on a shelf inside the
3 secure locked vault actually, and that's the same thing
4 that when it's time for us to switch it over and change the
5 location to take it to the lab, we just pick up that box
6 that has all those in it. So it's just a labeled area
7 where we keep the kits.

8 Q. Okay. And AOFL stands for what?

9 A. Anderson/Oconee County Forensic Lab because it's going
10 to be going to the the lab.

11 Q. Okay. And you said you did come to be back in
12 possession of that BEST kit?

13 A. I did.

14 Q. How did you get it back?

15 A. I have to go over -- usually once a week we take our
16 kits to the lab. And when I take kits over, they normally
17 have some that's complete from being analyzed, and I pick
18 those back up, bring those back to our office and log them
19 in the computer and store them appropriately.

20 Q. So you would have picked this BEST kit up after it had
21 been tested?

22 A. That is correct.

23 Q. Okay. Perfect. Thank you.

24 A. Uh-huh (affirmative).

25 Q. I'll take that back from you.

1 Ms. Robison, other than coming here today to testify,
2 did you have any further involvement in this case?

3 A. No, ma'am, I have not.

4 Q. Thank you so much. I have no further questions.

5 Please answer any that Mr. Yarborough Yarborough may have.

6 A. Okay.

7 CROSS EXAMINATION

8 BY MR. YARBOROUGH:

9 Q. Ms. Robison, how are you today?

10 A. I'm fine, sir.

11 Q. All this stuff here, did you have the ability to test
12 it for fingerprints at the lab there?

13 A. Sir, I don't test anything. All I do is when it's
14 taken, I actually enter the items into evidence and secure
15 those in their proper places.

16 Q. I've got you. When y'all do test it, do you send it
17 down to SLED and have it tested there?

18 A. On this -- I only did what they asked us to do, and
19 this was -- we were asked to send it to the Anderson/Ocone
20 forensic lab, and so that's all I did was send it there.

21 Q. And the lab only tested the drugs, right?

22 A. I don't know what all they had in that case. All I
23 did is just took it over there.

24 Q. But do they have a lab over there that also does DNA?

25 A. I don't know that, sir.

1 Q. Thank you. I don't have any further questions.

2 A. Okay. Thank you.

3 THE COURT: Redirect?

4 MS. MOORE: None, Your Honor.

5 THE COURT: Thank you, ma'am. You may be
6 excused.

7 THE WITNESS: Okay. Thank you.

8 THE COURT: Your Honor, the State's final witness
9 is Meredith Lanford.

10 THE COURT: Okay. Go ahead and call her, please.

11 MEREDITH LANFORD,

12 being first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. MOORE:

15 Q. Will you please state your name for the record.

16 A. Meredith Lanford.

17 Q. Please spell your name last name for me, please.

18 A. L-A-N-F-O-R-D.

19 Q. And what do you do for a living, Ms. Lanford?

20 A. I am a forensic chemist.

21 Q. And who is your employer?

22 A. I am employed by the Anderson/Oconee Forensics
23 Laboratory.

24 Q. And how long have you been with the Anderson/Oconee
25 Forensics Laboratory?

1 A. Twelve years.

2 Q. And how long have you -- you've worked in that
3 position for all twelve years?

4 A. I have.

5 Q. Okay. And what are your duties and responsibilities?

6 A. My primary job function is to analyze evidence that's
7 brought to our laboratory for suspected controlled
8 substances.

9 Q. And do you have to have any type of specialized
10 training or education in order to do that?

11 A. Yes, ma'am.

12 Q. Okay. What kind do you have to have?

13 A. I graduated from Clemson University with a bachelor of
14 science degree in chemistry. I then went on to complete
15 the forensic science certificate program at Greenville
16 Technical College. I was trained and certified as a
17 forensic chemist with my previous employer, the Charleston
18 Police Lab, as well as my current laboratory. I received
19 training in the area of drug chemistry from the Drug
20 Enforcement Administration. I'm a member of the American
21 Chemical Society. And each year I have to pass a
22 proficiency test as well as take continuing education hours
23 in the area of forensics.

24 Q. And have you had the occasion to chemically analyze
25 substances to determine whether the substance is or

- 1 contains a narcotic?
- 2 A. Yes, I have.
- 3 Q. How many times would you say?
- 4 A. Over 5000.
- 5 Q. Over 5000?
- 6 A. Yes.
- 7 Q. And more specifically, have you ever had the occasion
- 8 to analyze substances to determine whether the substance i
- 9 contains methamphetamine?
- 10 A. Yes, I have.
- 11 Q. Okay. And how many times would you say?
- 12 A. Probably 3000.
- 13 Q. How many analyses do you make in a given week?
- 14 A. Usually around 200 or so.
- 15 Q. Okay. Have you ever been qualified as an expert in
- 16 this field in any of the courts in Anderson County?
- 17 A. Yes, I have.
- 18 Q. How many times?
- 19 A. Thirty.
- 20 Q. And did you actually testify in those cases?
- 21 A. I did.
- 22 Q. Okay.
- 23 MS. MOORE: Your Honor, at this time the State
- 24 moves to have Meredith Lanford qualified as an expert
- 25 witness in the field of forensic chemistry and narcotics

1 analysis.

2 THE COURT: All right. Voir dire?

3 MR. YARBOROUGH: Without objection.

4 THE COURT: You stipulate?

5 MR. YARBOROUGH: I stipulate.

6 THE COURT: All right. Very good.

7 Mr. Foreman, ladies and gentlemen of the jury,
8 normally witnesses are limited in their testimony to areas
9 where they saw, they felt, they touched, they smelled
10 something with their senses, but they're not allowed to
11 give their opinions in most cases. However, a person,
12 because of their education or their experience, who has
13 developed an expertise in an area that would be helpful to
14 you, the jury, is allowed to testify in the area of their
15 expertise.

16 In this case, it has been stipulated that Ms. Lanford
17 is an expert in the area of forensic chemistry and
18 narcotics analysis. She'll be allowed to give her
19 testimony and her opinion in that regard.

20 I'll tell you that expert testimony is like any other
21 testimony you will hear. You may accept it, you may reject
22 it, and give it as much weight as you think it deserves.

23 Ms. Moore?

24 BY MS. MOORE:

25 Q. Is Lanford, I'm going to show you what's been marked

1 as State's Exhibits 14 through 16. Can you take a look at
2 those for me, please. Do you recognize those exhibits?

3 A. Yes, I do.

4 Q. How can you recognize those?

5 A. They have our lab number that we generate on them as
6 well as my initials.

7 Q. Okay. And does it say when you worked it?

8 A. Not on these, no.

9 Q. When would you have worked it?

10 A. When it came into the laboratory.

11 Q. Okay. And where do you receive exhibits like these
12 from?

13 A. Usually an evidence technician from one of our
14 agencies brings the evidence to our laboratory.

15 Q. And while I pull out the exhibit, was it continuously
16 under your care, custody and control?

17 A. Yes.

18 Q. Is it in the same or substantially the same condition
19 as when you first received it other than being analyzed?

20 A. Correct, yes, ma'am.

21 MS. MOORE: Your Honor, at this time I would ask
22 that State's Exhibits 14 through 16 be admitted into
23 evidence and published to the jury.

24 THE COURT: They would be admitted subject to
25 prior objection and rulings.

1 (STE. EXH. 14, DRUGS, was admitted into
2 evidence.)

3 (STE. EXH. 15, DRUGS, was admitted into
4 evidence.)

5 (STE. EXH. 16, DRUGS, was admitted into
6 evidence.)

7 BY MS. MOORE:

8 Q. Okay. State's Exhibits 14 through 16, did you analyze
9 those substances?

10 A. Yes, I did.

11 Q. And when would you have made that analysis?

12 A. This was a fairly large case, so I analyzed this
13 beginning on August 29th of 2017, and then I came in the
14 next day on August 30th, 2017 and completed the rest of
15 them.

16 Q. Okay. Will you tell us what kind of test you
17 performed on these substances?

18 A. The first thing I do is remove any packaging from the
19 substance, and I take a weight of the substance. I then
20 perform two screening tests to narrow down what might
21 possibly be in the substance if there's a controlled
22 substance present. And then I perform two confirmatory
23 tests on our instruments in the lab in order to determine
24 what controlled substance may be present.

25 Q. Okay. And from those tests, were you able to form an

- 1 expert opinion as to what those exhibits contained?
- 2 A. Yes, I did.
- 3 Q. And can you please state your opinion for us?
- 4 A. Do you want me to go bag-by-bag or just a total of all
- 5 the substances?
- 6 Q. Let's start with just a total.
- 7 A. I found that the bags contained 234.11 grams of
- 8 methamphetamine.
- 9 Q. Okay. And as part of your work, do you issue any kind
- 10 of report explaining your findings?
- 11 A. Yes, I do.
- 12 Q. I'm showing you what's been premarked as State's
- 13 Exhibit Number 24. Do you recognize that?
- 14 A. Yes.
- 15 Q. What is it?
- 16 A. This is our lab report that we generate with our
- 17 analyses and conclusions.
- 18 Q. And is that the report that correlates with the
- 19 exhibits in front of you?
- 20 A. Yes, it is.
- 21 Q. How do you know?
- 22 A. It has my number and case number and the suspect's
- 23 name.
- 24 Q. Okay. And is this a record produced in the ordinary
- 25 course of business by you in your office?

1 A. Yes, it is.

2 MS. MOORE: Your Honor, at this time, I would ask
3 that State's Exhibit Number 24 be admitted into evidence
4 and published to the jury.

5 MR. YARBOROUGH: Your Honor, I think she can
6 publish what she found, but I don't know that that document
7 itself is admissible. I think it's --

8 THE COURT: I'll allow it in subject to prior
9 objection.

10 (STE. EXH. 24, CHEMICAL ANALYSES, was admitted
11 into evidence.)

12 BY MS. MOORE:

13 Q. Ms. Lanford, I'm showing you State's Exhibit
14 Number 24. It's kind of hard to see, so we'll start from
15 the top. Can you explain to the jury exactly how you know
16 based on this report that this report correlates with the
17 items in front of you?

18 A. Okay. The lab number, the L1700632, is the same
19 number that has -- that I've written on all these bags
20 along with my initials. And then we also have a control
21 number which I'm not -- I don't actually see that bag up
22 here, but there is what's called a BEST kit evidence bag
23 that is submitted. And it has a control number which is
24 the C0024743, and that is what correlates with all these
25 items.

- 1 Q. Okay. And moving down this report -- I know it's kind
2 of difficult to see. But this says that there is a single
3 clear plastic evidence bag labeled D1. Do you have that
4 before you?
- 5 A. I do.
- 6 Q. And what exhibit number is that?
- 7 A. Fourteen.
- 8 Q. Okay. And how much methamphetamine is inside State's
9 Exhibit Number 14?
- 10 A. 18.34 grams.
- 11 Q. Okay. And inside -- do you have a bag labeled D3 with
12 you as well?
- 13 A. Yes.
- 14 Q. Okay. And what exhibit number is that?
- 15 A. Fifteen.
- 16 Q. Okay. And how many total grams are inside of D3?
- 17 A. 51.28 grams.
- 18 Q. Okay. And finally, do you have a bag labeled D5?
- 19 A. Yes.
- 20 Q. And what exhibit number is that?
- 21 A. Sixteen.
- 22 Q. Okay. And how much methamphetamine was found inside
23 exhibit D5?
- 24 A. That was 164.49 grams.
- 25 Q. Thank you so much, Ms. Lanford. I have no further

1 questions. Please answer any Mr. Yarborough may have.

2 CROSS EXAMINATION

3 BY MR. YARBOROUGH:

4 Q. You're a chemist?

5 A. Yes, sir.

6 Q. Where did you go to chemistry school?

7 A. (No verbal response.)

8 Q. Where did you go to chemistry school?

9 A. Clemson.

10 Q. Clemson? And so you studied DNA?

11 A. No, I have not.

12 Q. And do you know if this stuff that you tested, was it
13 tested for DNA?

14 A. I do not know.

15 Q. Do you know anything about fingerprints?

16 A. I do not.

17 Q. Was any of the items you had tested for fingerprints?

18 A. I do not know.

19 Q. Could you have done that at the lab you worked at?

20 A. No. The only thing that we do is drug analysis.

21 Q. Y'all just do drug analysis there? Do you know where
22 these items would have been tested for DNA or fingerprints?

23 A. DNA could possibly be tested at the state laboratory,
24 and fingerprint analysis as well at SLED.

25 Q. It's SLED down in Columbia?

1 A. Correct.

2 Q. And to your knowledge, these weren't done there?

3 A. Not to my knowledge, no.

4 Q. Thank you. I don't have anything further.

5 THE COURT: Redirect?

6 MS. MOORE: None, Your Honor.

7 THE COURT: All right.

8 Thank you, ma'am. You may be excused.

9 MS. MOORE: The State rests, Your Honor.

10 THE COURT: All right. Very good.

11 Mr. Foreman, ladies and gentlemen of the jury, the
12 State says that it rests. In other words, it has presented
13 its evidence in its case-in-chief. I have some
14 administrative matters. I'm going to go ahead and excuse
15 you for the remainder of the day. Does anyone on the jury
16 or will anyone on the jury have a problem being here and
17 getting started at 9:30 in the morning?

18 (No verbal response.)

19 THE COURT: Okay. Very good. I'm going to ask
20 you to be in your jury room at 9:30. Those of you with
21 pads, leave them in the jury room. We'll remind you not to
22 speak speak amongst yourselves or anyone else about this
23 case. But we'll excuse you for the evening. Thank you
24 very much.

25 (WHEREUPON, the jury exited the courtroom at

1 approximately 4:40 PM.)

2 THE COURT: All right, sir.

3 MR. YARBOROUGH: Your Honor, at this time I'd
4 make a motion for a directed verdict. I think the State in
5 no way has shown anything that ties Ms. Patrick to these
6 specific drugs. There's an overwhelming amount of evidence
7 that they found in or around her residence that she had
8 something to do with, but they stopped. They didn't do any
9 other investigation. And I don't think they've met their
10 burden, and I'd asked the Court to dismiss the case at this
11 time.

12 THE COURT: All right. I'm going to deny that.
13 I think it's a matter of actual and/or constructive
14 possession from direct or substantial evidence -- or
15 circumstantial evidence.

16 That being said, Ms. Patrick, would you please stand.
17 Would you raise your right hand.

18 (WHEREUPON, the defendant was duly sworn.)

19 THE COURT: I need you to speak up. Okay?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: How about come around here so we can
22 get it and the court reporter can get it as well.

23 (WHEREUPON, the defendant and counsel approached the
24 bar.)

25 THE COURT: All right. Ms. Patrick, you heard

1 the State say that it rests. And at this juncture, I'm
2 going to go over certain of your rights. Tomorrow when we
3 resume, you'll have a right to present a defense in this
4 case which would include your right to testify. But before
5 we do that, I'm going to go over with you -- has anybody
6 explained to you your rights under the Fifth Amendment to
7 the United State's Constitution?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand them?

10 THE DEFENDANT: I think so.

11 THE COURT: Ma'am?

12 THE DEFENDANT: I understand them.

13 THE COURT: Okay. Well, let me go over with you
14 just in case to make sure that you do. And if I say
15 something to you that you do not understand, let me know or
16 make your attorney stop me, and then we'll go over it.
17 Okay?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, under the Fifth Amendment to the
20 United State's Constitution, it says in relevant part that
21 no person shall be compelled in any criminal case to be a
22 witness against himself. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: That means that I can't put you up on
25 the stand and make you testify. Your attorney can't put

1 you up on the stand and make you testify. No agent from
2 the State can do the same either. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, if you decide to testify, that
5 is your right to do so, and it's also your right to claim
6 the privileges under the Fifth Amendment and not testify.
7 If you do testify and you have any prior criminal history
8 or background, and if it meets the requirements for
9 admission into evidence, the State would be able to
10 cross-examine you on the existence of your prior criminal
11 record. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: The obvious purpose would be to try
14 and impeach your credibility. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Also, if there's nothing in your
17 criminal background, they would be able to cross-examine
18 you like they would -- your attorney has been doing to
19 their witnesses. And you'll be subject to direct
20 examination from your attorney. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, is there any aspect of
23 Ms. Patrick's record that you would seek to impeach her
24 with?

25 MS. MOORE: Your Honor, she has a possession with

1 intent to distribute methamphetamine.

2 THE COURT: She has what, now?

3 MS. MOORE: Possession with intent to distribute
4 what was then known as crank but is now known as
5 methamphetamine from 1997.

6 MR. YARBOROUGH: And I just -- it's from 1997,
7 Your Honor, and I discussed with her, and I thought that it
8 was outside the ten years.

9 THE COURT: I don't disagree that you can't
10 cross-examine her about that.

11 MS. MOORE: Your Honor, it was always my
12 understanding if it was a possession older than ten years
13 that you could not, but if it was a PWID on a trafficking
14 case, that you could. I may be incorrect.

15 THE COURT: Well, let me do this. And we go over
16 this on a fairly regular basis. The first step in the cog
17 was to determine whether it's probative. In the State
18 versus Black, it had to show that it's probative when you
19 have to show that it has a tendency to show dishonesty or
20 whether or not her testimony is believable or not
21 believable unless we've fallen under some other common
22 scheme or plan. And you have a heightened degree of
23 analysis after if it's over ten years old, right?

24 MS. MOORE: Correct.

25 THE COURT: Now, first, do you disagree that the

1 first step as to whether or not it's probative, it has to
2 be indicative of whether or not her testimony should be
3 believed or not.

4 MS. MOORE: I don't disagree, Your Honor.

5 THE COURT: And you would agree with me that the
6 PWID meth or crank or whatever it was now or then, although
7 it's probably some degree of dishonesty, it doesn't
8 indicate whether or not her testimony should be believed,
9 the charge in and of itself or the conviction?

10 MS. MOORE: That's correct, Your Honor.

11 THE COURT: So what then -- is there another way
12 for you to get to that?

13 MS. MOORE: Your Honor, the only thing that I
14 would intend to use that conviction and also her -- I just
15 realized, Your Honor, she also has a 2005 conviction for a
16 possession of meth less than a gram although that probably
17 would not come in, Your Honor, since it's --

18 THE COURT: I don't think it would either.

19 MS. MOORE: -- well, it's 2007, so it would just
20 barely hit get under the ten years.

21 THE COURT: Right.

22 MS. MOORE: The only reason that I would use
23 those convictions, Your Honor, is if Ms. Patrick did say
24 that she was not involved in any kind of methamphetamine
25 dealing, that she had never dealt with methamphetamine

1 before. I would just use it to impeach her testimony.

2 THE COURT: Well, now, that's a different
3 analysis there. If she opens the door to say I've never --
4 that's never happened to me, I'm not a drug dealer, never
5 have been, blah blah blah, then I think that they very well
6 may open the door for you to get at it. But in and of
7 itself, the fact that she takes the stand, I don't think is
8 subject to cross-examination --

9 MS. MOORE: Correct.

10 THE COURT: -- as we speak right now.

11 MS. MOORE: Correct, Your Honor.

12 THE COURT: So what they're saying to you,
13 Ms. Patrick...

14 By the way, anything else, Ms. Moore, than those
15 charges?

16 MS. MOORE: Nothing, Your Honor.

17 THE COURT: Right now the fact that you had this
18 1997 possession with intent to distribute crank or whatever
19 it was is not, under our rules of evidence, admissible to
20 challenge your credibility on the stand if you were to take
21 it. However, if you somehow were to open the door, as we
22 speak -- and I'm sure your attorney will advise you -- to
23 maintain that you've never or you wouldn't do such things,
24 there is a possibility they could. But you need to
25 understand that because if you do take the stand, then you

1 may possibly be subject to having that issue come up. Do
2 you understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. Now, Ms. Patrick, if you were
5 to go to trial and not testify, I would charge the jury
6 that they could not consider your failure to testify. I
7 would tell the foreman that he could not bring that up and
8 no jury could bring that up in their deliberations because
9 the burden remains on the State to prove each and every
10 element of your charge, of the charge against you, by proof
11 beyond a reasonable doubt and that you're presumed innocent
12 throughout the whole trial until they reach a final
13 verdict. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: In order for you to make your
16 decision on whether or not you wish to testify or wish not
17 to testify, you have the right to consult with your fine
18 attorney, Mr. Yarborough. And I would certainly encourage
19 you to do so. You have a right to speak with someone else,
20 other people, family members or friends, who are reasonably
21 nearby for you to talk to. But the ultimate decision falls
22 on you to make the determination of whether or not you wish
23 to testify or whether or not you wish to claim the
24 privileges of the Fifth Amendment. And you can only do
25 that in a knowing, intelligent and voluntary way knowing

1 the rights and the privileges both for and against
2 testifying and presenting evidence. Do you understand
3 that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Do you have any questions
6 about anything I've gone over with you?

7 THE DEFENDANT: No, sir.

8 THE COURT: Mr. Yarborough, is there anything
9 else that you would like to place on the record at this
10 juncture?

11 MR. YARBOROUGH: I would like, in an abundance of
12 caution, to put on the record that I've explained to her
13 that I don't think those 2007 convictions are admissible
14 unless she would get on the stand and say that she never
15 did it. She could say that those drugs were not hers, but
16 she couldn't get on the stand and say she never did
17 anything. You know, I think sometimes abundantly you need
18 to explain that to a client just to make -- she should
19 think about that overnight.

20 THE COURT: Right. Yeah. And I am going to give
21 you that opportunity. But in the morning, you're going to
22 be called upon to make a decision as to whether or not you
23 wish to testify. Also whether or not you wish to present
24 any other evidence in this case.

25 Do you anticipate, Mr. Yarborough, calling Mr. Greene

1 or whatever his name is?

2 MR. YARBOROUGH: Your Honor, I very well may call
3 him. I anticipate calling him.

4 THE COURT: All right.

5 MR. YARBOROUGH: And now I think there has become
6 this issue whether or not -- that I didn't think was an
7 issue -- whether or not her husband lived there, and I may
8 call her husband just to ask him if he lives there. He's
9 in the hospital, but I think we could get him over here
10 tomorrow.

11 THE COURT: Did we voir dire the jury about his
12 existence? Did anybody have any knowledge about him?

13 MR. YARBOROUGH: Could we do that in the morning
14 if I decide I want to call him?

15 THE COURT: Yeah, we can. But if they say they
16 have a problem with it, then I think that you're going to
17 have a hard time getting him in when we had other jurors
18 available who may not have been affected by that.

19 THE COURT: Right. And I --

20 THE COURT: But if they don't, I don't see any
21 hardship.

22 Do you, Ms. Moore?

23 MS. MOORE: No, your Honor.

24 THE COURT: Okay.

25 MR. YARBOROUGH: Thank you, Your Honor.

1 THE COURT: Thank you.

2 All right. Anything further from the State?

3 MS. MOORE: Nothing further from us, Judge.

4 THE COURT: From the Defense?

5 MR. YARBOROUGH: Nothing, Your Honor.

6 THE COURT: All right. Remember, Ms. Patrick,
7 the trial will proceed in your absence if you don't show in
8 the morning. Okay? 9:30.

9 Thank you, guys.

10 MR. YARBOROUGH: Thank you.

11 (WHEREUPON, court stood at recess for the day.)

12 APRIL 17, 2018

13 THE COURT: Mr. Yarborough, have you had a chance
14 to discuss with your client whether or not she wishes to
15 testify.

16 MR. YARBOROUGH: I have, Your Honor, and I...
17 Stand up.

18 THE COURT: Ms. Patrick.

19 MR. YARBOROUGH: After talking with her, I
20 believe that she wants to testify.

21 THE COURT: She does want to testify?
22 Is that correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. And you understand your rights
25 and privileges under the Fifth Amendment and the

1 consequences of your decision; is that correct?

2 THE DEFENDANT: (No verbal response.)

3 THE COURT: I need you to speak up, please.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And has anybody forced, threatened or

6 promised you anything to get you to testify?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you made this decision on your

9 own freely and voluntarily?

10 THE DEFENDANT: Yes, sir.

11 MR. YARBOROUGH: You need to answer.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And I assume that you're not under

14 the influence of any medications, drugs or alcohol today.

15 THE DEFENDANT: No. Just the medications I take

16 every day.

17 THE COURT: I need you to speak up.

18 THE DEFENDANT: Just my back medication.

19 THE COURT: What medications are you taking?

20 THE DEFENDANT: Botch (phonic) and --

21 THE COURT: Step around here, please.

22 (WHEREUPON, the defendant and counsel approached the

23 bar.)

24 THE COURT: Okay. What medications are you

25 taking?

1 THE DEFENDANT: I take Klonopin.

2 THE COURT: There's a microphone right there.

3 THE DEFENDANT: I'm sorry. I take Klonopin,
4 Enbrel (phonic) shots, Methotrexate. I can't even think of
5 all of them. About eight kinds I take.

6 THE COURT: Okay. And when was the last time you
7 took them? This morning?

8 THE DEFENDANT: This morning.

9 THE COURT: Ma'am?

10 THE DEFENDANT: This morning.

11 THE COURT: Okay. And the fact that you take
12 these medications that we don't have a complete list of,
13 does that impact on your ability to comprehend and
14 understand what you're doing today?

15 THE DEFENDANT: I don't understand the question.

16 THE COURT: Yes, ma'am. What I need to find out
17 is, is the fact that you took this medication this morning,
18 whether they're prescribed or not -- hopefully they are
19 prescribed --

20 THE WITNESS: Yes, sir.

21 THE COURT: -- does that impact on your ability
22 to understand what you're doing here in the courtroom and
23 the decision that you're making today?

24 THE DEFENDANT: No, sir.

25 THE COURT: And you're making this decision on a

1 clearheaded basis; is that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you feel comfortable, Mr.
4 Yarborough, that your client is comfortable?

5 MR. YARBOROUGH: We've had a chance to talk about
6 it, and I think she's clearheaded and she knows what she
7 wants to do.

8 THE COURT: And you've gone through with her
9 before trial, and I assume after our meeting yesterday
10 afternoon, her rights under the Fifth Amendment and also
11 the consequences of her decision to testify, is that
12 correct?

13 MR. YARBOROUGH: And this morning. On numerous
14 occasions I've talked to her about it, and it's my
15 understanding that she understands the possibility of her
16 prior record coming in, but it probably won't come in as
17 long as she doesn't do certain things. And she understands
18 that.

19 THE COURT: And she also understands that if she
20 didn't testify, I would tell the jury that they couldn't
21 consider her failure to testify at all?

22 MR. YARBOROUGH: I've told her that several
23 times, Your Honor. She tells me she wants to get on the
24 stand and testify.

25 THE COURT: Is that correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Ma'am?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. And you made this decision,
5 even though with the advice of your attorney, on your own?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Nobody forced you to testify in this
8 case?

9 THE DEFENDANT: No, sir.

10 THE COURT: And you thought about it and made the
11 decision knowing your rights under the Fifth Amendment and
12 the consequences of testifying? I say consequences. In
13 other words, you'll be subject to cross-examination and
14 examination. Right?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Any questions right now before
17 we bring the jury in?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right.

20 MR. YARBOROUGH: Could I have one minute, Your
21 Honor?

22 THE COURT: Yes, sir.

23 (Off record discussion.)

24 MR. YARBOROUGH: She's going to testify, Your
25 Honor.

1 THE COURT: Sir?

2 MR. YARBOROUGH: She's going to testify.

3 THE COURT: Very good. Do you have any other
4 anticipated witnesses in this case?

5 MR. YARBOROUGH: Your Honor, I do not have one at
6 this time.

7 THE COURT: All right. Are you ready to proceed,
8 Mr. Yarborough?

9 MR. YARBOROUGH: Yes, sir.

10 THE COURT: Ms. Moore, are you ready to proceed?

11 MS. MOORE: Yes, Your Honor.

12 THE COURT: Would you bring the jury in.

13 (WHEREUPON, the jury entered the courtroom at
14 approximately 9:40 AM.)

15 THE COURT: Good morning, ladies and gentlemen.

16 THE JUROR: Good morning.

17 THE COURT: I hope you had a nice evening. Does
18 everyone who requested a pad and pen have them with them?

19 THE JUROR: Yes, sir.

20 THE COURT: Very good. Let me ask before we get
21 started if anyone has read, heard, or seen anything about
22 this case during the break or spoken with anyone about this
23 case during the break. If so raise your hand.

24 (No response.)

25 THE COURT: Very good. Let the record reflect

1 that no one responded in the positive.

2 All right. Mr. Yarborough, is the Defense ready to
3 proceed?

4 MR. YARBOROUGH: We are, Your Honor.

5 THE COURT: Call your first witness, please, sir.

6 MR. YARBOROUGH: I call Mary Patrick.

7 MARY PATRICK,

8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. YARBOROUGH:

11 Q. Mary, how old are you?

12 A. I'm 56.

13 Q. And will you tell the jury a little bit about
14 yourself? Are you married?

15 A. Yes, I'm married. I've been married ten years.

16 Q. Okay. And where does your husband live?

17 A. With me.

18 Q. Okay. Where do you live?

19 A. At [REDACTED] Willingham Road in Belton.

20 Q. And how long have you lived there?

21 A. Twenty-three years.

22 Q. Are you from Anderson?

23 A. I wasn't born in Anderson, but...

24 Q. Where were you born?

25 A. Chicago.

1 Q. Let me ask you this. The night that -- or the
2 afternoon that all this happened, were you at home?

3 A. Yes, sir.

4 Q. Okay. And what were you doing when the police came to
5 your house?

6 A. I was fixing to take a bath. I had just took my
7 clothes off and went to the restroom. And I heard a bam.
8 My dog started barking, so I ran into the living room to
9 see why he was barking. And then my door flew open, and it
10 was him at my door. Well, he was already in my living room
11 pointing his gun.

12 Q. Were you afraid?

13 A. Yes, I was afraid.

14 Q. Did you talk to the police when they came in?

15 A. Yes, I did. They made me sit down on the couch. And
16 I said: Can I put my clothes on? And they said: No. Sit
17 down. So I sat on the couch, and he got a kitchen chair
18 and turned around backwards and started questioning me.

19 Q. Did you get wrapped up in a blanket or something.

20 A. One of the cops that went into the bathroom, he come
21 out of there eventually and brought me -- he was going to
22 get my shorts, but he didn't. He brought me a little towel
23 that wouldn't hardly wrap around me.

24 Q. Did you have any idea there were drugs in that house?

25 A. No, sir.

1 Q. Do you know who those drugs might belong to?

2 A. I know they could belong to -- I seen them that night
3 and I told them to take them out of my house. And he left
4 to take them out, but he came back to stay the night.

5 Q. But you didn't know that they were there?

6 A. No.

7 Q. Okay. Did you tell the police that that night?

8 A. That day?

9 Q. That day. I'm sorry.

10 A. No. I told the police they were mine. I was scared.
11 My husband was real sick, and I didn't want him to get
12 locked up. He just had left to go fishing, and I didn't
13 want him to get locked up because he was real sick. So I
14 told them they were mine.

15 Q. And any of these items they put in here, these drugs,
16 these scales, any of this stuff, is any of this yours?

17 A. No, sir.

18 Q. And I guess you just told the jury -- you admitted
19 that you knew about them because you were scared?

20 A. Yes, I was scared. I just wanted to get my clothes
21 on.

22 Q. And is there anything else you know about these drugs?

23 A. No.

24 Q. Is there anything else you want the jury to know about
25 this?

- 1 A. That --
- 2 Q. Who else stayed in that house besides you and your
- 3 husband?
- 4 A. Me and my husband, and other people stayed off and on,
- 5 but Derek had been staying there for a while.
- 6 Q. Who did? Derek?
- 7 A. Yes. Derek Green.
- 8 Q. Okay. And Derek would stay at your house off and on?
- 9 A. Yeah.
- 10 Q. Okay. And that day, had Derek just left your house?
- 11 A. Yes. My husband left, and Derek left after that.
- 12 Q. Okay.
- 13 A. The officer asked me who he was that drove that car,
- 14 that convertible car.
- 15 Q. And you heard the car leave, but you didn't see when
- 16 they left?
- 17 A. I didn't pay any attention. I went to the bathroom.
- 18 Q. You were getting dressed?
- 19 A. I was going to take a bath, yes, sir.
- 20 Q. Is your health not real good, Ms. Patrick?
- 21 A. No, sir.
- 22 Q. And what about your husband's health?
- 23 A. It's terrible.
- 24 Q. Is he in the hospital?
- 25 A. Yes, sir.

- 1 Q. And did any other people besides Derek stay there?
- 2 A. Not that night, but they have on and off a lot, yes.
- 3 We let people stay with us.
- 4 Q. You let people stay there?
- 5 A. We let people stay there several times if they didn't
- 6 have anywhere to go, yeah.
- 7 Q. And do you collect dogs?
- 8 A. Do I collect dogs?
- 9 Q. Or what? Do you breed dogs?
- 10 A. My husband's bulldog, he bred it.
- 11 Q. And those are the dogs in the pictures? Those are
- 12 your dogs?
- 13 A. Yeah, the little babies.
- 14 Q. Okay. I'm going to show you what's been marked
- 15 Defense Exhibit Number 1. Ms. Patrick, come around. Do
- 16 you see that coat and that pair of boots?
- 17 A. Yes, sir, I do.
- 18 Q. Whose is that?
- 19 A. That is my husband's, I think. Yes, that's my
- 20 husband's boots.
- 21 Q. Is there any question that other people live there
- 22 besides you? Let me show you this picture. Whose guitar
- 23 is that?
- 24 A. That's my husband's.
- 25 Q. That's your husband's guitar? Are those all his

1 clothes and stuff around in there?

2 A. Yes, sir.

3 Q. So did the police ask you that night if your husband
4 or anybody else lived there?

5 A. He knew they did. He asked me where was Gary at, and
6 I said he was gone fishing.

7 Q. I mean, there's no question that men's clothing and
8 stuff is all over that house, right?

9 A. Yes, sir. It's a mess.

10 Q. I don't have any further questions.

11 MR. YARBOROUGH: Thank you, Your Honor.

12 THE COURT: Cross-examination?

13 MS. MOORE: Judge, may we approach?

14 THE COURT: Yes, ma'am.

15 (WHEREUPON, a bench conference was held off the
16 record.)

17 THE COURT: Mr. Foreman, would you take your jury
18 back to the jury room, please, sir.

19 (WHEREUPON, the jury exited the courtroom 9:49 AM.)

20 THE COURT: All right. Ms. Moore?

21 MS. MOORE: Your Honor, I gave Mr. Yarborough
22 photographs yesterday to take home, and I need those back
23 so that I can show them to Ms. Patrick.

24 THE COURT: You did what, now?

25 MS. MOORE: I gave Mr. Yarborough photos that I

1 had printed for this trial yesterday.

2 THE COURT: Oh, that's not where I thought you
3 were going with that. I thought you were going --

4 MS. MOORE: But I also, Your Honor -- I do also
5 need to make mention of the issue of third-party guilt. I
6 believe Mr. Yarborough was trying to get into that with
7 Ms. Patrick without having any kind of evidence.

8 THE COURT: I don't disagree with that, but that
9 should have been a contemporaneous objection at this
10 juncture. I mean, I probably would have sustained that.
11 But at this juncture, I'm going to overrule. I don't know.
12 What would you propose without a contemporaneous objection?
13 I'm a little bit in the air about that.

14 MS. MOORE: Your Honor, I don't think that
15 there's room to --

16 THE COURT: Okay. Do you have those photos?

17 MR. YARBOROUGH: Your Honor, I don't. I asked --
18 I looked right here for the photos when she asked me for
19 them a little while ago, and Ms. Patrick said she saw me
20 hand them back to you. But I can run out to my car. I may
21 have them in the car.

22 THE COURT: Go get them, please. I'm not saying
23 you have them. I'm just saying go check.

24 MR. YARBOROUGH: Let me just run out there and
25 look.

1 THE COURT: Okay. Can you check other places and
2 see?

3 MS. MOORE: Yes, Your Honor. And I can always
4 print off additional copies if need be. I would just need
5 a moment to do that.

6 THE COURT: Right. All right. How about you
7 step down for a moment, and you can't speak with anybody
8 about your testimony at all until we get you back on the
9 stand.

10 THE WITNESS: Okay.

11 (WHEREUPON, court stood at recess for a short break.)

12 (STE. EXH. 26, PHOTOGRAPH, was marked for
13 identification.)

14 (STE. EXH. 27, PHOTOGRAPH, was marked for
15 identification.)

16 (STE. EXH. 28, PHOTOGRAPH, was marked for
17 identification.)

18 (STE. EXH. 29, PHOTOGRAPH, was marked for
19 identification.)

20 (STE. EXH. 30, PHOTOGRAPH, was marked for
21 identification.)

22 MR. YARBOROUGH: Your Honor, I'm sorry those
23 things must have slid out. They were in my car.

24 THE COURT: I did that one time with Judge
25 Nicholson. He granted me a directed verdict, and I grabbed

1 my stuff and ran. I had 15 exhibits with me I had to bring
2 back. All right. Are you ready?

3 MS. MOORE: We are, Your Honor.

4 THE COURT: Okay.

5 Come back around, please, Ms. Patrick.

6 (WHEREUPON, the witness resumed the witness stand.)

7 THE COURT: All right. Bring the jury in please,
8 sir.

9 (WHEREUPON, the jury entered the courtroom at
10 approximately 10:08 AM.)

11 THE COURT: Ms. Moore?

12 MS. MOORE: Thank you, Judge.

13 THE COURT: Yes, ma'am.

14 CROSS EXAMINATION

15 BY MS. MOORE:

16 Q. Ms. Patrick...

17 A. Yes, ma'am.

18 Q. I want to start a little bit by talking about when you
19 were interviewed by law enforcement. You said in your
20 testimony that you were basically thrown on the couch and
21 that nobody would let you cover up.

22 A. I didn't say thrown on the couch. I sat on the couch.

23 Q. Okay. You sat on the couch?

24 A. Right.

25 Q. Okay. Ms. Patrick, I'm going to show you what's been

1 marked as State's Exhibit 30.

2 THE COURT: What number?

3 MS. MOORE: Thirty.

4 BY MS. MOORE:

5 Q. Can you take a look at that for me, please. Do you
6 recognize it?

7 A. Uh-huh (affirmative).

8 Q. Okay. Can you tell me what's in that picture?

9 A. Two cops and I'm sitting in front of them.

10 Q. Okay. And does that picture appear to reflect
11 everything that you remember about that day? Is it pretty
12 accurate? Does anything appear to have been changed about
13 the picture?

14 A. Not that I can see.

15 Q. Okay.

16 MS. MOORE: Your Honor, at this time I would move
17 State's Exhibit 30 exhibit be admitted to evidence and
18 published to the jury.

19 MR. YARBOROUGH: Without objection.

20 THE COURT: Admitted. You may publish it.

21 (STE. EXH. 30, PHOTOGRAPH, was admitted into
22 evidence.)

23 BY MS. MOORE:

24 Q. Now, Ms. Patrick, while I wait for this to warm up,
25 you've been listening to testimony this week, correct?

- 1 You've been sitting over there with us this week?
- 2 A. Yes, ma'am.
- 3 Q. And you heard Detective McDonald talk about how
- 4 officers allowed you to smoke a cigarette during your chat
- 5 with them?
- 6 A. That was right before I got put in the cop car, yeah.
- 7 Q. Okay. And they gave you a Coke, right? They gave you
- 8 something to drink?
- 9 A. No. I got my Coke out of the refrigerator.
- 10 Q. Okay. So they were letting you get things out of the
- 11 fridge? You're moving around the house pretty freely?
- 12 A. That was after they let me put my clothes on. They
- 13 called somebody to come and detain me to take me to jail,
- 14 and they said I could then put my clothes on. And when I
- 15 did that, I got a Coke and offered them one. And we went
- 16 and sat on the porch and they let me smoke.
- 17 Q. Okay. You offered them a Coke?
- 18 A. Uh-huh (affirmative).
- 19 Q. So y'all were having a pretty cordial conversation;
- 20 everybody was pretty calm? Yeah, as calm as you could be
- 21 under the circumstances?
- 22 A. Yeah.
- 23 Q. Right. This is State's Exhibit 30. Now, this is your
- 24 living room, right?
- 25 A. Uh-huh (affirmative).

- 1 Q. Okay. You've got your puppies over here. You've got
2 your officer standing right there, correct?
- 3 A. Uh-huh (affirmative).
- 4 Q. Let's see if we can get this to zoom in a little bit.
5 There we go. There you are speaking with, it looks like,
6 Detective Hendrix and Detective Acevedo, correct?
- 7 A. I guess that's their name, yeah.
- 8 Q. Okay. And you're covered up, you're not handcuffed,
9 right?
- 10 A. They didn't handcuffed me till I was ready to leave.
- 11 Q. And no one has their guns pointed at you, and you
12 appear to be speaking with them voluntarily, correct?
- 13 A. At that moment, yes, I was.
- 14 Q. Okay. Now, I want to talk to you a little bit about
15 you saying that you had no idea that there were any drugs
16 in your house. Okay? I'm going to show you what has been
17 marked State's Exhibits 26 through 29. Can you take a look
18 at these for me.
- 19 A. Uh-huh (affirmative).
- 20 Q. Thank you, ma'am. Can you tell me what those are?
- 21 A. Yeah, they're pictures of the bathroom.
- 22 Q. Pictures of your master bathroom?
- 23 A. Uh-huh (affirmative).
- 24 Q. And that's where you were when the officers came in?
- 25 A. I was in the living room when they came in because I

1 ran in there.

2 Q. But you'd be in -- yeah, you'd been in there. You
3 said you were about to take a bath, right?

4 A. Exactly.

5 Q. Okay. So does anything about those pictures appear to
6 been changed? It's a pretty accurate reflection of your
7 house?

8 A. It wasn't that junkie then.

9 Q. That's all right. We're not judging you on the state
10 of your house. What I'm saying is nothing appears to have
11 been changed about the pictures, right? That's what your
12 house look like on the day that all of this happened.

13 A. I guess so.

14 Q. Okay.

15 MS. MOORE: Your Honor, I would ask at this time
16 that State's Exhibits 26 through 29 be admitted into
17 evidence and published to the jury.

18 THE COURT: Just for the record, ma'am, did you
19 respond that that is the way your house looked?

20 THE WITNESS: (Witness moves head up and down.)

21 THE COURT: Okay. You looked like you shook your
22 head, but I want to make sure.

23 THE WITNESS: The stuff wasn't everywhere like
24 that, but that's my house. The stuff wasn't everywhere
25 laying around like that, but that is my house and my

1 bathroom, yeah.

2 THE COURT: Any objection to 26 through 29 coming
3 into evidence?

4 MR. YARBOROUGH: Just my objections from before,
5 Your Honor.

6 THE COURT: They'll be admitted.

7 (STE. EXH. 26, PHOTOGRAPH, was admitted into
8 evidence.)

9 (STE. EXH. 27, PHOTOGRAPH, was admitted into
10 evidence.)

11 (STE. EXH. 28, PHOTOGRAPH, was admitted into
12 evidence.)

13 (STE. EXH. 29, PHOTOGRAPH, was admitted into
14 evidence.)

15 BY MS. MOORE:

16 Q. Okay. Let me take these back from you real quick.
17 Ms. Patrick, I'm showing you Exhibit 29. You said that
18 this is your bathroom?

19 A. Uh-huh (affirmative).

20 Q. This is the bathroom where you --

21 THE COURT: Hang on. I know that that's the
22 nature of the way people speak, but give us yes or nos or
23 verbal responses, please.

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Thank you.

1 BY MS. MOORE:

2 Q. Okay. And this is where -- this is the room where you
3 were about to take a bath then, correct?

4 A. Yes, ma'am.

5 Q. Okay. Let's see. Let me make sure we get this right.
6 In the corner, is that your vacuum cleaner?

7 A. Yes, ma'am.

8 Q. And in the floor laying next to your vacuum cleaner,
9 is that a pair of women's shorts?

10 A. I can't tell. Probably so.

11 Q. All right. You were not wearing any pants when you
12 were arrested, correct?

13 A. Correct.

14 Q. Okay. So these are the women's shorts that were
15 laying in the master bathroom that you were about to take a
16 bath in. And inside of those shorts pocket were Exhibit
17 Number 11 and Exhibit Number 9. Now, if you look closely
18 back at Exhibit Number 27 -- let's see if we can zoom in on
19 this. It appears in these shorts pocket laying in the
20 floor of the master bathroom that you were in when you were
21 detained by law enforcement that you can see a cellophane
22 bag sticking out of the corner of the shorts. Wouldn't you
23 agree?

24 A. You can see something, but I was naked when they
25 detained me.

- 1 Q. Okay. But what I'm trying to get at, Ms. Patrick, is
2 that you were in this bathroom?
- 3 A. Yes.
- 4 Q. Presumably having just taken those shorts off of your
5 body, correct?
- 6 A. (No a verbal response.)
- 7 Q. And you had no idea that there was any methamphetamine
8 in the pocket of those shorts?
- 9 A. I didn't know.
- 10 Q. No idea? Okay. Let's talk about the rest of your
11 bathroom.
- 12 A. That don't even look like my shorts honestly.
- 13 Q. Okay. Let's talk about the rest of your bathroom.
14 Let's go back to -- let's see. Let's take a look at your
15 vanity. I'm showing you State's Exhibit Number 28. We
16 have a Clorox bottle. We have some women's hair care
17 products on the vanity there. What looks like the makeup
18 over here, correct?
- 19 A. (No a verbal response.)
- 20 Q. You were in this bathroom, correct, when you were
21 detained, right?
- 22 A. Not when I was detained. I was in the bathroom when I
23 heard the doorbell, and I ran into the living room.
- 24 Q. Okay. But you admit that you had been in this
25 bathroom just before police got here?

- 1 A. Yeah.
- 2 Q. Okay. And in State's Exhibit Number 26, we see some
- 3 women's makeup. That looks like an Elf box. Probably some
- 4 women's perfume.
- 5 A. Uh-huh (affirmative).
- 6 Q. And what is that right there?
- 7 A. It looks like a pipe.
- 8 Q. It does look like a pipe.
- 9 A. Uh-huh (affirmative).
- 10 Q. It looks remarkably like this pipe, State's Exhibit
- 11 Number 22. Now, you heard law enforcement testify earlier
- 12 this week that these pipes are used for smoking
- 13 methamphetamine, correct?
- 14 A. Yes.
- 15 Q. And this was laying -- this pipe was laying on your
- 16 bathroom vanity, correct?
- 17 A. Yes, but other people use my bathroom too. They had
- 18 just left there. I'm not the only one that uses that
- 19 bathroom, but I didn't know the pipe was there.
- 20 Q. You didn't know the pipe was there, and you had no
- 21 idea -- even if you had seen it, you would have no idea
- 22 that there was any methamphetamine anywhere in your house?
- 23 A. If I had seen it, I would have knowed (phonic) what
- 24 that was, yeah. Yes, I would have knowed what that was.
- 25 But I didn't see it.

- 1 Q. And it is your house, correct?
- 2 A. It is.
- 3 Q. You've been living there for 23 years.
- 4 A. Correct.
- 5 Q. Okay. But you had no idea that there was any
- 6 methamphetamine inside?
- 7 A. I just had went to the bathroom to use the bathroom.
- 8 Q. I thought you were taking a bath.
- 9 A. I hadn't got into the bathtub yet. I was naked. I
- 10 was using the bathroom when the bam -- when my dog started
- 11 barking, I ran into the other room.
- 12 Q. Okay.
- 13 A. I had my clothes off ready to take a bath.
- 14 Q. Okay.
- 15 A. But the second bam, the door flew open, and there
- 16 was -- my dogs was raising Cain, and one of the officers
- 17 said they were going to shoot my dog if I didn't get it.
- 18 So you know. He said that several times too. My dog had
- 19 little puppies. It was just growling, wanting to be with
- 20 its puppies.
- 21 Q. Well, I mean, let's -- let's talk about that a little
- 22 bit. I'm showing you again State's Exhibit 30. Your dog
- 23 looks pretty calm over there with its puppies. It doesn't
- 24 look like anyone is about to draw down on the dog?
- 25 A. No, they wasn't at that time, but he kept saying he

1 was going to if she kept on because he kept making me move
2 her puppies to different rooms. When he said he had to
3 search this room, I moved them. And then they had to
4 search this room, and I moved them to that room. With a
5 towel around me that barely went around me.

6 Q. Okay.

7 A. And my dog would growl at him. My dog is not mean.

8 Q. Uh-huh (affirmative). It had just had puppies.

9 A. Yeah.

10 Q. Okay. Let's talk a little bit about your original
11 statement to law enforcement.

12 A. Okay.

13 Q. You talk about how you got delivered a half pound of
14 meth at a time, correct? Isn't that what you said?

15 A. I don't even remember what I said, ma'am. They was
16 badgering me so bad, and I was naked. I told them anything
17 they wanted to hear so I could get my clothes put on.

18 Q. Okay. Well, let's go over what you said to them that
19 you think they wanted to hear. You gave them some names,
20 namely John Peace, Blake Kelly and a man named Brian from
21 Iva. Does that sound about right?

22 A. They asked me did I know drug dealers, any drug
23 dealers, and I told them that was some drug dealers I heard
24 of, yes. I don't even know them personally.

25 Q. Uh-huh (affirmative).

- 1 A. I do know one person.
- 2 Q. Okay. And is that person a Mr. Derek Green who would
3 come to your house that you testified about?
- 4 A. He's the one that stayed at my house off and on, yes,
5 he did.
- 6 Q. He's a drug dealer who stayed at your house off and
7 on?
- 8 A. I didn't say he was a drug dealer.
- 9 Q. Okay. So why is it important that he stayed at your
10 house off and on?
- 11 A. He didn't have nowhere to go, and I let him stay at my
12 house.
- 13 Q. Okay. And your husband, you said you didn't want him
14 to get in trouble, correct?
- 15 A. Right.
- 16 Q. Why would he get in trouble?
- 17 A. Because they found drugs in my house, and they were
18 going to take everybody, you know, if somebody didn't claim
19 them. And there was nobody there but me to claim them.
20 But if he had of come back home, he could have claimed them
21 too. I claimed them.
- 22 Q. Okay.
- 23 A. My husband was in bad shape. I didn't want him going
24 to jail.
- 25 Q. Okay. So you have now pointed the finger at Derek

1 Green potentially, Josh Peace, Blake Kelly, some man named
2 Brian from Iva and your husband. Is there anyone else that
3 you would like to say possibly had these drugs?

4 A. Josh Peace has never been in my house, ma'am. They
5 asked me questions about things, and I told them people I
6 heard that sold drugs.

7 Q. Uh-huh (affirmative).

8 A. I mean, that's hearsay from me that I heard sold
9 drugs.

10 Q. Right. Okay. So the drugs potentially belonged to
11 one of those five people, but definitely not you?

12 A. No, they didn't belong to me.

13 Q. Okay. Let's talk a little bit more about your
14 statement because for someone who did not have possession
15 of the drugs, it seems like you know an awful lot about
16 them. You say that you got half a pound of meth delivered
17 at a time, correct?

18 A. I don't know what I said to them. They was telling me
19 stuff, and I was agreeing with them. They was badgering
20 me, and I was agreeing with everything they said. I was.

21 Q. Okay.

22 A. I couldn't tell you really what all they did say to
23 me.

24 Q. Okay. Let's put it this way. You were in here when
25 officers testified that you told them that you got a half

- 1 pound of meth delivered at a time, correct?
- 2 A. Yes, I was in here.
- 3 Q. Okay. So you heard that?
- 4 A. I did.
- 5 Q. And I am abysmal at math. I am not very good at math.
- 6 But I've done some math this week. And you had in your
- 7 house 234 grams of methamphetamine, correct?
- 8 A. They say I did.
- 9 Q. Do you know how many pounds that is?
- 10 A. No.
- 11 Q. It is almost exactly one half pound. So don't you
- 12 think that that is a coincidence that you told officers
- 13 that you got one half pound delivered at a time, and then
- 14 officers found almost exactly a half a pound of
- 15 methamphetamine in your house?
- 16 A. I told the officers that or they told me that. They
- 17 was telling me things, and I was agreeing with things.
- 18 Q. Okay. You also --
- 19 A. I agreed with anything they said because I was naked,
- 20 like I said, and I wanted to put my clothes on. I was
- 21 scared.
- 22 Q. Okay. I understand. You also heard, I believe it
- 23 was, Detective McDonald testify that you told him that when
- 24 Blake Kelly would bring you a half pound of methamphetamine
- 25 that he would bring it in plastic, usually, grocery bags;

1 is that correct?

2 A. I don't remember, ma'am.

3 Q. But you were in here when Detective McDonald testified
4 to that, correct?

5 A. I couldn't even hear half of what you were saying
6 yesterday, but I was in here, I'm sure.

7 Q. You were in here and he did testify to that. And so
8 this is State's Exhibit Number 20. Were you in here when
9 Detective Durham was testifying to what this is? You were,
10 right?

11 A. I was in here yesterday, yes, ma'am.

12 Q. Okay. You heard him testify that this appears to be a
13 grocery bag of some sort. I believe he said it was a
14 target bag or a CVS bag wrapped in black tape taped to the
15 inside of your closet?

16 A. Not my closet.

17 Q. Taped to the inside of a closet in your home?

18 A. Yes, ma'am.

19 Q. And he also testified that this State's Exhibit 20 had
20 several baggies of methamphetamine inside of it as well,
21 correct?

22 A. Yeah, I heard him testify to that.

23 Q. Do you think that that is another really big
24 coincidence that you had drugs in a grocery bag in your
25 home just like you said that you would?

1 A. I didn't say I would.

2 Q. Okay. And the last thing that I want to talk about
3 your statement is the fact that you -- well, let's put it
4 this way. You were in here when Detectives Hendrix and
5 McDonnell testified that you told them that you would break
6 up the half pound of methamphetamine into smaller bags to
7 sell, correct?

8 A. I think I heard him say that, yes, ma'am.

9 Q. Okay. And State's Exhibits 16, 15, and 14 appear to
10 be all individual bags of methamphetamine that were found
11 in your home. Wouldn't you agree?

12 A. They said they was found in my home, yes.

13 Q. Okay. And, again, do you think that it is a
14 coincidence that all the methamphetamine that was found in
15 your home was broken up into individual bags for sale? Do
16 you think that you're just a really good guesser?

17 A. I don't recall saying that.

18 Q. You don't recall saying that?

19 A. (Witness moves head from side to side.)

20 Q. Okay.

21 A. Most everything that was said that day, they were
22 saying it to me, and I was agreeing with it. They were
23 badgering the hell out of me. Excuse me. Pardon my
24 language. And I was very scared. There's no telling what
25 I would have said that day just to -- I was just ready to

1 get my clothes on and get it over with.

2 Q. I understand.

3 A. Do you?

4 Q. Ms. Patrick, I have nothing further. Thank you so
5 much.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION

8 BY MR. YARBOROUGH:

9 Q. Ms. Patrick, were you scared that night that they came
10 in?

11 A. Yes, I was scared.

12 Q. Are you scared today?

13 A. No, I'm not scared today. I'm just nervous. I'm not
14 scared.

15 Q. And you told them what you know about these drugs
16 today?

17 A. Yes, sir.

18 Q. Thank you.

19 MR. YARBOROUGH: I don't have any further
20 questions, Your Honor.

21 THE COURT: Thank you, ma'am. You may step down
22 down.

23 Call your next witness.

24 MR. YARBOROUGH: Could I have one second, Your
25 Honor?

1 THE COURT: Yes, sir.

2 (Off record discussion.)

3 MR. YARBOROUGH: Your Honor, the Defense rests.

4 THE COURT: The Defense rests?

5 MR. YARBOROUGH: Yes, sir.

6 THE COURT: Very good.

7 Any reply from the State?

8 MS. MOORE: None, Your Honor.

9 THE COURT: Very good.

10 All right. Mr. Foreman, ladies and gentlemen of the
11 jury, you will recall yesterday I told you there were five
12 phases in every case. One, you had the opening statements.
13 Then you have the presentation of the evidence. We have
14 concluded the second phase. In just a moment, we'll have
15 the lawyers giving you their closing arguments and I'll
16 charge you on the law, and then you'll begin your
17 deliberations. However, before we get there, I need to
18 review with the attorneys the law that I'm going to charge.
19 Sometimes it's relatively quick; sometimes it may take a
20 little time.

21 So if you would, go back to your jury room. Relax.
22 If you need anything, let the bailiff know. And we'll get
23 you out here as soon as we can.

24 Does anybody from the State or the Defense care if a
25 juror needs to go outside and smoke if they do so?

1 MS. MOORE: No objection, Your Honor.

2 MR. YARBOROUGH: No, sir, Your Honor.

3 THE COURT: If anybody needs to.

4 (WHEREUPON, the jury exited the courtroom at
5 approximately 10:31 AM.)

6 THE COURT: All right. Let me ask -- go ahead
7 first and make your motions.

8 MR. YARBOROUGH: I would just renew my motions
9 from before.

10 THE COURT: They're denied.

11 Anything from the State before we go over the charge
12 conference?

13 MS. MOORE: Nothing, Your Honor. Just scheduling
14 for the rest of the day. I believe Mr. Yarborough does
15 need to leave about 11:30.

16 MR. YARBOROUGH: I had told you yesterday it's at
17 1:30, so I -- I'm going to do whatever I can. Let's try to
18 get --

19 THE COURT: Well, we can probably get it to the
20 jury. If we need to stop and bring them back, we will. I
21 mean, we obviously can't have them deliberate with you
22 somewhere else. But let's cross that in just a few
23 minutes. Let me ask, though, initially -- and as we were
24 leaving court yesterday, I asked -- just to get my charge
25 ready, I asked Ms. Moore whether or not she thought that

1 we'd have lesser-included offenses.

2 MR. YARBOROUGH: Yes, sir.

3 THE COURT: And she said, yes, I think so. But
4 how do you reconcile that with State versus Gore?

5 MR. YARBOROUGH: Your Honor, the only thing I can
6 say is that I think that there is some evidence that the
7 drugs were found in that pair of pants, and they seem to
8 draw -- she asked several questions about it, and I think
9 that the jury could split a verdict or could look at it and
10 say, well, those were -- those drugs and that pair of pants
11 were hers, but the other drugs -- and that's --

12 THE COURT: How much -- what was the weight of
13 the drugs in the pants?

14 MS. MOORE: Your Honor, I believe --

15 THE COURT: I was asking my law clerk this
16 morning. I didn't make a note. I know we had 234
17 something.

18 MS. MOORE: I believe, Your Honor, that it was
19 18.34 grams in the pants pocket.

20 THE COURT: 18.34?

21 MS. MOORE: Yes, Your Honor.

22 THE COURT: So that gets you in trafficking
23 anyway, does it not?

24 MS. MOORE: Yes, Judge.

25 THE COURT: So the question would be, and it

1 seems like it's clear under the Gore case, the only charge
2 to the jury would be trafficking. But then if it's
3 different levels, we have special interrogatories on your
4 verdict form as to the weights.

5 MR. YARBOROUGH: I do think that the State also
6 elicited evidence about a small amount of drugs that were
7 found on a dresser or in the bathroom.

8 THE COURT: I'm certainly going to do what
9 everybody agrees on if everybody agrees, but my feeling is
10 under this case based on -- I was a little bit surprised
11 when we were looking at it that trafficking is the only one
12 that we charge and just give them an option. The option
13 would be 10 to 20.

14 MS. MOORE: Ten to 28.

15 THE COURT: And 200 to 400. And you don't have,
16 is there another option out there?

17 MS. MOORE: Twenty-eight to a hundred, Judge.

18 THE COURT: Where would that be? I understand
19 that's part of the statute, but where is the evidence in
20 the record to support that?

21 MS. MOORE: Well, they were broken into three
22 separate groups, so I assume that if they found two
23 combined...

24 THE COURT: So the pocket is 18, the individual
25 packets are the ones that would be the 28 to 100, and then

1 we have the 200 to 400?

2 MS. MOORE: Yes, Judge. And if they found any
3 combination of two of them, then they could get in the 28
4 to 100 range.

5 THE COURT: Sure. I mean, please argue to me
6 because you guys do it more than I do, quite frankly. But
7 looking at the Gore case and looking at the others, it
8 seems to me -- although the Gore case is overwhelming
9 evidence, and it seems like that's not the question. The
10 question for me is whether or not the evidence is in the
11 record to support the charge. If there is, I'm required to
12 charge it. That's my standard. But the only evidence that
13 we have as to the drugs would be under the trafficking
14 statute with the various amounts.

15 MR. YARBOROUGH: I thought there was some
16 evidence elicited that there was a small amount of drugs
17 that were shown in the picture.

18 THE COURT: There was paraphernalia.

19 MR. YARBOROUGH: The paraphernalia, and so I'd
20 ask the Court to charge simple possession on paraphernalia.

21 THE COURT: I'm not going to charge simple
22 possession on paraphernalia because there is no evidence in
23 the record stemming from the testing of that pipe, I don't
24 believe. If there is, show it to me, Mr. Yarborough, and
25 I'll be glad to look at it. I don't think there is.

1 MR. YARBOROUGH: She asked her about the pipe
2 that was found on the dresser. That's what I was referring
3 to a minute ago. It was found on the dresser of the
4 bathroom. She asked about it, and she drew attention to
5 it. So she seemed to indicate that, Ms. Patrick, that's
6 yours. That's in your bathroom.

7 THE COURT: Yeah, I mean, I agree with you there,
8 but there's nothing about weights involved in that pipe. I
9 know that you're around it enough, and we all see it in the
10 courtroom, that there's probably residue in there, but
11 there's no evidence of any testing of residue in the record
12 in this case, is there?

13 MR. YARBOROUGH: No, but I think that there is
14 evidence that there was possession of that pipe. She drew
15 attention to that pipe, and I don't want the jury to get to
16 the point where they're saying, well, she had a pipe in the
17 bathroom -- it was elicited by the State; it wasn't
18 elicited by me. She had a pipe in the bathroom, so she
19 must be guilty of something. So if she's guilty of
20 something, they would have left us with a lesser-included.
21 And so I think that the Court should charge that.

22 THE COURT: On the -- what's that last witness
23 you had? The report that was admitted in to evidence?

24 MS. MOORE: Yes, sir.

25 THE COURT: May I look at that report.

1 (WHEREUPON, Ms. Moore handed document to the Court.)

2 THE COURT: Double check me, Mr. Yarborough. I
3 don't see anything in this report that would have any
4 reference to the paraphernalia that they allegedly -- the
5 pipe in the bathroom. Would you double check me to make
6 sure I'm not overlooking it?

7 MR. YARBOROUGH: I'm pointing at State's --

8 THE COURT: Here's the concern I have. You know,
9 a pipe can be used. It can be unused. What we saw was a
10 picture of a pipe. We had testimony about the pipe. I
11 know that's the inference that she was trying to get them
12 to draw, that she was a user and she knew that was in
13 reference to her saying, I don't know that there were any
14 drugs in the house. And the point that she had a pipe
15 mean, yeah, you do know too. But there's nothing about
16 weight or any evidence about what was inside that pipe,
17 whether it be marijuana or some other type drugs, to
18 sustain a charge on simple possession. And if there is --
19 I'm going to give you a few minutes to think about it and
20 look at it because I want to charge the appropriate charge.
21 It doesn't matter to me one way or the other, but I think
22 under the cases I'm kind of required to charge trafficking.
23 Okay?

24 MR. YARBOROUGH: Your Honor, I think she went --
25 she took the pipe out of the bag. She took that pipe over

1 to Ms. Patrick. She showed her the pipe and said: This is
2 a pipe that's used for smoking methamphetamines. Those are
3 questions she asked her.

4 THE COURT: Sure.

5 MR. YARBOROUGH: So I think she is entitled to a
6 charge that the jury could find that she was just guilty of
7 simple possession of that pipe.

8 THE COURT: Okay. Well, simple possession of the
9 pipe would be a paraphernalia charge without identifying
10 any substance within the pipe.

11 MR. YARBOROUGH: Right. Okay.

12 THE COURT: So that wouldn't be a lesser-included
13 in this case.

14 MR. YARBOROUGH: Your Honor, I think the
15 inference that she drew was that that pipe was used to
16 smoke methamphetamine when she pulled it out.

17 THE COURT: The question was directly related to
18 that, but that still doesn't get you to -- take a few
19 minutes to look through it. If you see there's something
20 I'm overlooking as to what's in the record. That's what my
21 job is, to charge what's in the record. And I don't see it
22 in there, quite frankly.

23 MR. MCELHANNON: Your Honor, to be honest --

24 THE COURT: Hang on. Tell her because you can't
25 double up on Mr. Yarborough.

1 MR. YARBOROUGH: He knows I'm not that smart.

2 THE COURT: We all know that. I'm kidding. We
3 went to school -- I'm playing.

4 MS. MOORE: Judge, there is nothing in
5 Ms. Lanford's report that weighed less than a gram. There
6 is nothing here that would warrant a charge for simple
7 possession of methamphetamine. At best you have a 2.44
8 grams from the bag labeled D3. So that's possession with
9 intent to distribute.

10 MR. YARBOROUGH: Which I think is State's Exhibit
11 13 State's which I think is that bag right there.

12 THE COURT: Well, that was part of a multiple --
13 that's just one bag out of a group of bags found together,
14 right?

15 MS. MOORE: Yes Judge. That was found, I
16 believe, in the Crown Royal bag.

17 MR. YARBOROUGH: Can I --

18 THE COURT: Yeah, man. Sure. Please.

19 MR. YARBOROUGH: Would you look at State's
20 Exhibit 13.

21 THE COURT: Let me see it, please.

22 MR. YARBOROUGH: And see where they tested it and
23 said that's possession of methamphetamine. The thing next
24 to it is the little --

25 THE COURT: It's a testing kit.

1 MR. YARBOROUGH: It's a test kit. So they did
2 have that. And then I think if you look --

3 THE COURT: What was 13 found with? I can't
4 remember.

5 MS. MOORE: Exhibit 13?

6 THE COURT: State's Exhibit 13 which is a
7 photograph of the baggie with the testing --

8 MS. MOORE: I'll have to look at the photos.
9 Judge, I believe that it was -- that would have been in the
10 shorts pocket, Judge.

11 THE COURT: In the what?

12 MS. MOORE: In her shorts pocket.

13 THE COURT: I thought they said in the shorts
14 pocket it was 18 grams.

15 MS. MOORE: It was, Judge. But it was broken
16 into individual bags, I believe.

17 THE COURT: Oh. Well, see, that doesn't get you
18 anywhere either. I mean, if I hear what you're arguing,
19 Mr. Yarborough, is that she had -- there's no dispute -- 18
20 point some odd grams. There was 18 point some odd grams in
21 those shorts, whether they're hers or not because she
22 denied that she thought they were hers. But if you break
23 out an individual bag from that that's 2 point something
24 grams -- that way she's entitled to a PWID charge -- you
25 don't get there.

1 MR. YARBOROUGH: I think I do because of the way
2 the evidence came in by the State. If you look at that
3 picture, that's what it shows.

4 THE COURT: I know, but you can't take the
5 picture in isolation from the totality of all the evidence
6 that's presented, and that is in that pocket, whether or
7 not they're hers -- there's obviously that argument. But
8 there are 18 some odd grams would which would put you over
9 the trafficking statute, right?

10 MR. YARBOROUGH: What you're going to do is
11 charge --

12 THE COURT: Trafficking and then give them -- do
13 you find them guilty -- or the defendant guilty of
14 trafficking? If no, stop. And if yes, then you continue
15 on. And was the amount 10 to 28, 28 to 100, 200 to 400?
16 And let them pick and choose which one of those. If they
17 find that she's guilty, then I'm going to charge they have
18 to find at least one of those weights. If they find that
19 she's not guilty, they're to stop because then they have
20 nothing else to deliberate. So it would be trafficking
21 only, no PWID, no simple possession. Okay? That's the
22 way --

23 MR. YARBOROUGH: And I'm asking you not to do
24 that. I understand --

25 THE COURT: I know you are. Obviously, that's

1 your job.

2 MR. YARBOROUGH: I'm just protecting the record.

3 THE COURT: Right. And I think under State
4 versus Gore and the other cases -- what other cases?

5 Grandy. Does that hold the same thing? Give me a second.

6 MR. YARBOROUGH: I think that case right there --

7 THE COURT: Grandy?

8 MR. YARBOROUGH: Yeah. I think it talks about if
9 there's any inference, and I don't think in that case there
10 were any inferences. I think here you've got some
11 inferences.

12 THE COURT: Wait a minute. Let me look. Hang
13 on. Let me look. They're citing Matthews versus State.
14 And in that case, they're saying: Where there is
15 conflicting evidence whether the amounts will get you into
16 trafficking or PWID, then you have to charge the
17 lesser-included. And my point being in this case, if I
18 understand what the evidence is -- and listen, I'm all for
19 charging whatever is appropriate because that's what I want
20 to do. But you have some that was taped on the wall that
21 would put you in trafficking, some that was individually
22 packaged in several packets that would put you in
23 trafficking, and some that were found in her shorts that
24 would put you in trafficking as well although they are
25 various weights. And the only thing that would put you

1 under the trafficking charge would be this pipe which we
2 don't have any idea whether or not there is any actual use
3 of it or any residue that would constitute some kind of
4 possession charge of that. Am I wrong on the evidence?

5 MR. YARBOROUGH: I think the implication from the
6 State's cross-examination of Ms. Patrick that that pipe was
7 used for smoking methamphetamine.

8 THE COURT: Sure. I'm sure it was. And the
9 implication was you knew drugs were in that house was why
10 she was bringing that pipe.

11 MR. YARBOROUGH: Right. But they can't just say,
12 well, she new drugs were in the house. Then they've opened
13 the Pandora's box and said, okay. Well, maybe she knew
14 about that pipe. And the jury can infer from that
15 question, well, the State said she knew about the pipe.
16 The pipe was in her bathroom, so, you know, she must have
17 known about the rest of it.

18 THE COURT: Well, here's the problem with that.
19 You know, I charge the jury that their decision can't be
20 left to speculation, conjecture or surmise. And for me to
21 charge anything under trafficking based on the evidence
22 would do just exactly that because you're based on whether
23 or not this pipe was actually used, whether there's
24 anything in it. And there's nothing in the record about
25 it.

1 I'm going to take about ten minutes. If you find
2 something to convince me, then I will -- I am more than
3 glad to charge it. I just don't think it's appropriate
4 under the facts of this case. All right, sir.

5 MS. MOORE: Thank you, Judge.

6 (WHEREUPON, court stood at recess for a short break.)

7 THE COURT: I just noticed that it's 11 o'clock.

8 MR. YARBOROUGH: Sir?

9 THE COURT: And that's what you were trying to
10 say earlier, Ms. Moore.

11 MS. MOORE: Yes, Your Honor.

12 THE COURT: I'm just slow to the draw. A couple
13 of options. I hate to argue and charge now and break and
14 then bring them back.

15 How long are you going to be in Greenville, Billy?

16 MR. YARBOROUGH: You know, it's scheduled at --

17 THE COURT: This afternoon is probably not
18 realistic for you, or is it?

19 MR. YARBOROUGH: I just don't think so, Judge. I
20 mean, she's got a bunch of stuff on that docket. And I'm
21 not sure how we fit in.

22 THE COURT: All right, 9:30 in the morning argue
23 and charge. I don't see much around it. Let's get this
24 issue figured out on the charge conference. I'll get you
25 out of here by 12. Let's go ahead and cut this jury loose.

1 MS. MOORE: Yes, Judge.

2 THE COURT: Let's bring the jury in.

3 (WHEREUPON, the jury into the courtroom at
4 approximately 11:02 AM.)

5 THE COURT: Mr. Foreman, ladies and gentlemen of
6 the jury, just to update you where we are logistically at
7 this juncture, it slipped my mind that we have some
8 obligations this afternoon and we're not going to be able
9 to have court. In conversing with the attorneys, I want to
10 make sure that before the case begins -- gets turned over
11 to you for your deliberations that closing statements by
12 the attorneys and my charge on the law are fresh in your
13 mind. In other words, I don't want to give it to you today
14 and then bring you back tomorrow because you'll forget some
15 of it, I'm afraid.

16 So the option for us -- I think it's a better one --
17 would be to break for today, bring you back at 9:30 in the
18 morning unless somebody has a problem being here at 9:30.
19 Does anyone have a problem being here?

20 (No response.)

21 THE COURT: And I know you don't want to do that,
22 but you probably are going to be back here anyway on
23 another trial. So let's just consider the afternoon off
24 from trial work and bring you back at 9:30 in the morning.

25 If you would, those of you who have pad and pen, leave

1 them in the jury room. Also, I remind you please don't
2 speak with anyone about this case, read, hear, or listen to
3 anything about this case including amongst yourselves.

4 With that being said, have a nice afternoon.

5 (WHEREUPON, the jury exited the courtroom at
6 approximately 11:04 AM.)

7 THE COURT: All right. Any additions or
8 exceptions to my instructions?

9 MS. MOORE: None, Your Honor.

10 MR. YARBOROUGH: No, sir.

11 THE COURT: All right. Mr. Yarborough, during
12 the break, were you able to identify any other evidence
13 other than what you already --

14 MR. YARBOROUGH: I couldn't find any thing else.
15 Judge, I just -- I'm a little bit concerned too about how
16 you're going to charge trafficking, so I kind of wanted to
17 talk about that too if we have time.

18 THE COURT: Well, I've got a proposed verdict
19 form. And what I would -- what I'm looking at...

20 (WHEREUPON, the bailiff handed a note to the Court.)

21 THE COURT: Tell them...

22 They just want to know if they finish this trial do
23 they have to report the rest of the week.

24 Tell them we'll make that determination as the trial
25 goes. Maybe.

1 Do you want me to bring them back in and respond to
2 them? I'll tell you what.

3 Bring the jury in. Bring the jury in.

4 THE BAILIFF: Both of them are gone, Judge.

5 THE COURT: All right. Who. Anyone have an
6 objection with me speaking to this juror?

7 MR. YARBOROUGH: No, sir.

8 MS. MOORE: No, Your Honor.

9 (WHEREUPON, the jurors entered the courtroom at
10 approximately 11:06 AM.)

11 THE COURT: Right now you are determined from
12 Monday through Friday, so you may be required to come back
13 on another trial depending on circumstances. If any of
14 you -- and not to suggest that you come up with excuses --
15 but have a legitimate conflict with that, let us know if
16 and when we bring you back for another trial. Okay? With
17 that being said, we'll see y'all tomorrow morning.

18 (WHEREUPON, the jurors exited the courtroom at
19 approximately 11:06 AM.)

20 THE COURT: Any additions or exceptions from
21 either the State or Defense?

22 MS. MOORE: No, sir.

23 MR. YARBOROUGH: No, Your Honor.

24 THE COURT: Okay. Now, here's what I was
25 thinking, Mr. Yarborough. And I've got my law clerk

1 crafting a verdict form. And the verdict form -- it seems
2 like they're going to have to -- in the trafficking, you're
3 going to have to -- the State has the burden of proving one
4 of the following, possession of 10 but less than 28 grams,
5 28 to 100 grams, 100 to 200 grams, or 200 to 400 grams.
6 And I'll tell you more about that in the verdict form. And
7 the verdict form will be: We, the jury, unanimously find
8 under indictment so and so trafficking methamphetamine that
9 the defendant -- the first option is always not guilty.
10 Number two, guilty. If they're guilty, then I'll have a
11 note that they must go forward and choose the amount of
12 methamphetamine in the defendant's actual and/or construct
13 possession. And they have to choose only one. Okay? They
14 can't choose two or three or four because then it wouldn't
15 make sense. And it would be the same options, 10 to 28 --
16 10 but less than 28. She's using the statutory language in
17 the options. And you'll see it in a second. And then that
18 would be the way that I would craft it.

19 MR. YARBOROUGH: So you going to charge 10 to 28?
20 I got that. I see where that --

21 THE COURT: Ten to 28, 28 to 100, 100 to 200, 200
22 to 400.

23 MR. YARBOROUGH: Okay, sir. I don't -- I'm not
24 quite sure that the two second ones you said, I mean, I can
25 see the 10 to 28. I see where the --

1 THE COURT: Well, the total amount -- and I had
2 originally crafted it such that it was 10 to 28, 28 to 100,
3 and then 200 to 400.

4 MR. YARBOROUGH: Okay.

5 THE COURT: But when my law clerk came up here
6 and went through the report, Ms. Moore pointed out to her
7 that it's one grouping that was 100 some odd grams. But
8 then you had a total of 234 grams, you had the 18 in her
9 pants or allegedly her pants. And I don't know where we
10 get 100 -- well, 28 to 100. Do we have any --

11 MS. MOORE: 51.28 grams was found in the Crown
12 Royal bag, Your Honor.

13 THE COURT: Okay. So 18, then 51, then 100 and
14 something and then the total. I think you get all of them
15 in there. I mean, if you have another suggestion, I'll
16 certainly be glad to entertain it, but I think that's
17 appropriate.

18 MR. YARBOROUGH: I guess in my mind I thought
19 that I had trafficking first. But 10 to 28, I can see
20 where that was coming in now. I see where the Court's
21 going to, but I would think that the evidence tends to show
22 either the stuff that was in the pair of pants was hers or
23 everything was hers. So it seems to me that --

24 THE COURT: That's for the jury to make that
25 call. And, you know, under the charge it says even two

1 people can have constructive possession of the same drugs,
2 so ultimately that's a question of fact for the jury to
3 make a call, I think.

4 MR. YARBOROUGH: And you're going to charge, I'm
5 guessing, that -- you were talking about constructive
6 possession. And I heard you say everything except I didn't
7 hear you use the word knowledge. And you're going to
8 charge --

9 THE COURT: I'm going to give you the charge
10 right now, and we're going to go over that.

11 MR. YARBOROUGH: Great. Thank you.

12 THE COURT: And you have the verdict form?

13 THE LAW CLERK: I do. I need to make one
14 correction.

15 THE COURT: You didn't put the weights in there,
16 girl.

17 THE LAW CLERK: It is.

18 THE COURT: Oh, I've got you.

19 THE LAW CLERK: Okay.

20 THE COURT: Okay.

21 (WHEREUPON, the law clerk handed out copies of the
22 charge to the attorneys after which court stood at ease.)

23 THE COURT: Just tell me when you're ready.

24 MR. YARBOROUGH: I just have a couple of things I
25 wanted to address. One thing that I'd ask the Court to

1 take out is where it says: Actual knowledge of the
2 presence of the methamphetamine --

3 THE COURT: Strong evidence?

4 MR. YARBOROUGH: -- is strong evidence...

5 THE COURT: I would take out strong. I would say
6 evidence that they can consider. I'd do it as a normal
7 thing. Just take out strong because I think that's a
8 comment on the facts.

9 Any objection to that, Ms. Moore?

10 MS. MOORE: None, Your Honor.

11 THE COURT: So that would mean that the charge
12 would read: Actual knowledge of the presence of the
13 methamphetamine is evidence of the defendant's intent, et
14 cetera, et cetera. Okay?

15 MR. YARBOROUGH: Yes, sir. And then I think
16 you've already -- I think it's bringing more attention to
17 the jury from the charge than needs to be where it says:
18 Two or more persons may have joint possession of a drug. I
19 think that's inferred from everything you said up here, and
20 so I don't think it should be restated again, especially
21 where it is which is right at the end.

22 THE COURT: Well, I'm going to charge it. I'm
23 glad to rearrange the order. Typically I would put the
24 last page three of six right after trafficking and before
25 possession. But I am going to leave that in there because

1 that's good law. And I would note your objection to that.

2 MR. YARBOROUGH: Could you at least change the
3 order, and instead of putting it at the end, put it at the
4 beginning? Where you say possession, say possession, then
5 you could say, two or more persons may have joint
6 possession, as opposed to putting it at the end because
7 then to me it seems like by putting it at the end, it draws
8 attention to it more so than it would.

9 THE COURT: What if I put it at the end of
10 page one at the end of that paragraph that says:
11 Possession may be either actual or possession, and also two
12 or more persons may have joint possession, and then go to
13 the rest of the it from there?

14 MR. YARBOROUGH: Then you're explaining it. I
15 think --

16 THE COURT: Fine with me. Any objection to that?

17 MS. MOORE: None, Judge.

18 THE COURT: All right. Give me just one second.
19 On page three of six, FYI the weights, each one will be
20 charged like: The State must also prove beyond a
21 reasonable doubt that the amount of the methamphetamine was
22 10 or more but less than 28 or -- and then each option you
23 put or.

24 MR. YARBOROUGH: Your Honor, I'd ask you to look
25 at the charge where you say that constructive possession

1 means the defendant had dominion and control or the right
2 to exercise dominion and control. I agree with that's a
3 statement of the law.

4 THE COURT: What page are you on? Where are you
5 looking?

6 MR. YARBOROUGH: I'm on page two at the top.

7 THE COURT: Okay.

8 MR. YARBOROUGH: I think in this case certainly
9 the jury could find that she -- it's her house. Okay? She
10 just said she didn't know the drugs were there. And I
11 think the way you're charging it, it tends to leave them
12 with the impression that the law is that if she controlled
13 the place that she has control of the drugs. And I don't
14 think that's a correct statement of the law. I think the
15 law is clear that they've got to prove actual knowledge of
16 those drugs in order to prove that -- she could certainly
17 own a house. You could own a house. There could be drugs
18 in the house that someone else put there. And clearly you
19 might have dominion and control over that house, but you
20 don't have control over those drugs without the knowledge.
21 So I think that the way it's stated here, it tends to show
22 -- state that she somehow, because she had actual control
23 over the property, was thus in control of the drugs. And I
24 think that's a misstatement of the law.

25 THE COURT: Well, I don't necessarily disagree

1 with that.

2 What's your feeling about it, Ms. Moore?

3 MS. MOORE: Your Honor, it has always been my
4 understanding of the law that a house is similar to a car.
5 If you're driving a car, then you have actual and/or
6 constructive possession over everything in the car and that
7 your knowledge of the things in that car mean that you
8 possessed it. So if they find drugs in your car, those
9 drugs are in your possession. I also think that --

10 THE COURT: What if you have a situation -- I
11 think we talked about it yesterday or -- no. You had a
12 situation where mom and dad have a college-age kid who
13 comes home from school, has a pound of dope up in his room.
14 Mom and dad don't know anything about it. They own the
15 house. He's there. They have no clue. I understand
16 Mr. Yarborough to say that the fact that they control that
17 house means that they could have constructive possession of
18 that marijuana in the house even though they don't have any
19 knowledge that it's there.

20 MS. MOORE: Your Honor, I think that the next
21 sentence clears that up -- of your jury instructions -- the
22 portion that says: Mere presence at the scene is not
23 enough. Actual knowledge of the presence of
24 methamphetamine is evidence of the defendant's intent to
25 control.

1 MR. YARBOROUGH: Your Honor, what that says is
2 mere presence at the scene as opposed to actually owning
3 the house. I think that's different -- a different
4 analysis.

5 THE COURT: What if -- and I'll be glad to change
6 it because it's a simple change for everybody. And you
7 want to charge it right. But what if we inserted:
8 Constructive possession means the defendant had dominion
9 and control or the right to exercise dominion or control
10 over either the methamphetamine itself or the property on
11 which the methamphetamine was found? Well, you'll have to
12 have something...

13 MS. MOORE: Judge, I would propose moving the
14 knowledge portion to after that sentence so that it implies
15 that she had some kind of knowledge because I believe that
16 is what Mr. Yarborough and Your Honor are saying.

17 THE COURT: I agree. I agree. I don't disagree
18 with that at all. Then mere presence at the scene is not
19 actual -- so that would satisfy what you're saying. I
20 think you're right about that. Do you disagree?

21 MR. YARBOROUGH: If you say I was right, I'm
22 never going to disagree.

23 (Laughter.)

24 THE COURT: But we'll add -- I think that makes a
25 lot of sense, what Ms. Moore suggests, and just move that

1 line up. Actual knowledge of the presence of the
2 methamphetamine is evidence of the defendant's intent to
3 control its use.

4 Think about it. If you have another proposed charge,
5 give me one, and we'll do the same thing. And the same
6 thing with Ms. Moore because it does -- or you can insert
7 you can have actual knowledge, and you can also insert a
8 line that lack of knowledge of the presence of the drugs --
9 something along those lines. I'm not being very smart
10 enough to do it right this second, but I will -- we'll look
11 at it, and I'll try to fashion something. I do agree with
12 what you're saying, though, because under the circumstances
13 I can't imagine that parents get charged with a son's drugs
14 that he hid in the closet on the way home.

15 Where did you go to undergraduate? USC or
16 Presbyterian? You know what I'm saying?

17 All right. Again, if you have any other proposed
18 charges, give them to me.

19 How about the verdict form itself? Any problems with
20 that?

21 MS. MOORE: No objections to that, Your Honor.

22 MR. YARBOROUGH: I don't see how I can -- I
23 mean --

24 THE COURT: Say that again.

25 MR. YARBOROUGH: I was mumbling. I'm sorry. I

1 don't have an objection to it, Your Honor.

2 THE COURT: Okay. Now, listen, this is without
3 prejudice to changing your mind overnight if you convince
4 me it's the right thing to do. As we go, I have my basic
5 charge -- that you've all been around -- that I've
6 plagiarized from Judge Hill, and that's what I'll do. The
7 substantive charge on page one we would put at the end of
8 page one: Furthermore, two or more persons may have joint
9 possession of a drug, deleting that from page three. We
10 would move actual knowledge from the second paragraph up to
11 the second sentence and mere presence to the third. Then
12 we would have or inserted on page three of six between the
13 various weights. Then we have the standard charge on
14 statement of the defendant. Okay? And again, I'm
15 certainly willing to change it if you convince me that's
16 the right thing to do.

17 Guys, thank you, and I'll see you at 9:30 for the
18 record.

19 Again, Ms. Patrick, not to suggest anything otherwise,
20 but just so you I continue to tell you, if you don't show
21 up at 9:30 in the morning, this case will be continued in
22 your absence. Okay?

23 THE DEFENDANT: I'll be here.

24 THE COURT: All right. Thank you. We'll be at
25 recess for the day in this trial.

1 MS. MOORE: Thank you, Your Honor.

2 MR. YARBOROUGH: Thank you. Have a good evening.

3 (WHEREUPON, court stood in recess for the day.)

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5 THE COURT: All right. Has my law clerk given
6 you the new proposed charge?

7 MS. MOORE: Not yet, Judge.

8 THE COURT: She has not?

9 MS. MOORE: Not yet, Judge.

10 THE COURT: Good law clerks are hard to come by.
11 I'm just telling you.

12 (Laughter.)

13 THE COURT: While we're doing that, here's the
14 proposed verdict form.

15 (Off record discussion.)

16 THE COURT: Let me just read to you the changes
17 we made in the trafficking charge. This is under the
18 possession. It says: To prove possession, the State must
19 prove beyond a reasonable doubt that the defendant had BOTH
20 the power and intent to control the disposition or use of
21 the methamphetamine. Possession may be either actual or
22 constructive. Further, two or more persons may have joint
23 possession of a drug. Actual possession means that the
24 methamphetamine was in the actual physical custody of the
25 defendant. Constructive possession means that the

1 defendant had dominion or control or the right to exercise
2 dominion or control over the methamphetamine itself.
3 Constructive possession also means that the defendant had
4 knowledge of the presence of the methamphetamine on the
5 premises and that the defendant had dominion or control of
6 or the right to exercise dominion or control of the
7 premises on which the methamphetamine was found. I think
8 that's just clarification of that.

9 Any additions or exceptions to that change from the
10 State?

11 MS. MOORE: None, Your Honor.

12 THE COURT: I know you have other matters, but as
13 to that change, any additions or exceptions as to that
14 change on possession?

15 MR. YARBOROUGH: I defer to what originally I
16 said. I just think that just from originally what I'd
17 asked, I think that's drawing too much attention to her
18 control.

19 THE COURT: You're the one that asked for this
20 change, brother. That's what I did. And so I'm not sure
21 what you want me to do.

22 MR. YARBOROUGH: I want you to do what you just
23 did.

24 THE COURT: Okay. That's what I wanted to know.

25 Now, there was a question as to whether or not there

1 would be a lesser-included charge with this. Under the
2 facts of this case, I felt and ruled that they were not
3 appropriate, but I gave you time to convince me otherwise.
4 Have you found anything to show me?

5 MR. YARBOROUGH: Your Honor, I go back to just
6 the way the evidence came in. That pipe -- I think the way
7 the pipe was admitted, it could draw the attention that she
8 was -- had the pipe in her simple possession. And also, I
9 think at one point they talked about some white substance
10 that was on a table. And there again, I think that was
11 drawing the attention to possession.

12 THE COURT: All right. I'll note your objection
13 to my charge. I'm going to leave it as is. Also, your
14 objections throughout this trial have been restated and
15 should be good for the record. Do you have anything else
16 before we get started?

17 MR. YARBOROUGH: No, sir, Your Honor.

18 THE COURT: All right. So you'll open on the law
19 unless you want to waive that.

20 And then you'll reply to his closing, right?

21 MS. MOORE: Correct, Judge.

22 THE COURT: Everybody ready to go? Do you need a
23 minute?

24 MS. MOORE: No, Your Honor. I'm ready.

25 THE COURT: Bring the jury in.

1 (WHEREUPON, the jury entered the courtroom at
2 approximately 9:38 AM.)

3 THE COURT: Good morning, ladies and gentlemen.
4 Thank you for being here and being here on time. As I told
5 you yesterday, we've concluded the evidence phase of this
6 case. The third phase will be the closing arguments in
7 this case. The State will go first and open and describe
8 the law. Then the Defense will go next. And the State has
9 the right, since it has the burden of proof, of finishing
10 up. After which, Mr. Foreman, I'm going to give you the
11 option of taking a break or I'll finish up with my charge,
12 and then you'll be given word to begin your deliberations.
13 Just so you know where you are.

14 Before we get started though, let me ask the jury has
15 anybody read, heard or seen anything about this case or
16 spoken with anybody about it during the break including one
17 another? If so raise your hand.

18 (No response.)

19 THE COURT: Very good. Let the record reflect
20 that nobody responded in the positive.

21 Ms. Moore, is the State ready to proceed?

22 MS. MOORE: Yes, Your Honor.

23 THE COURT: Mr. Yarborough, is the Defense ready?

24 MR. YARBOROUGH: Yes, sir, Your Honor.

25 THE COURT: Very good.

1 MS. MOORE: May it please the Court.

2 THE COURT: Yes, ma'am.

3 CLOSING ARGUMENT

4 BY MS. MOORE:

5 Ladies and gentlemen, as I said in my opening
6 statement, the defendant Mary Patrick is on trial because
7 she was found to be in possession of more than 200 grams of
8 methamphetamine. It was found in her home on May 11, 2017
9 here in Anderson County.

10 Now, before I start explaining the law to you, I want
11 to tell you one caveat. The Judge is going to instruct you
12 on the law once I am finished speaking and once
13 Mr. Yarborough is finished speaking. If you hear anything
14 from myself or Mr. Yarborough about the law that is
15 contradictory, you listen to the Judge's instructions. He
16 is the instruction on the law.

17 So let's talk a little bit about this law. Initially
18 I told you that for someone to be found guilty of
19 trafficking methamphetamine greater than 200 grams, only
20 three things have to be proven. That the defendant must
21 have been in possession of the substance -- and that
22 possession can be actual or constructive -- the substance
23 was in fact tested to be methamphetamine, and that
24 methamphetamine weighed more than 200 grams. That is all
25 that must be proven, and it must be proven to you by me

1 beyond a reasonable doubt.

2 So I'm going to let Mr. Yarborough speak to you for a
3 moment, and then I'll come back and tell you how I'm going
4 to prove those things to you.

5 THE COURT: Mr. Yarborough?

6 MR. YARBOROUGH: If the Court please, Your Honor.
7 Thank you.

8 THE COURT: Yes, sir.

9 CLOSING ARGUMENT

10 BY MR. YARBOROUGH:

11 Ladies and gentlemen of the jury, I told you when this
12 case started that the burden was on the State to prove
13 Ms. Patrick guilty. That means that they have to prove
14 that she knew or had some knowledge or some way of
15 exercising control over those drugs, that she knew
16 something about it. Okay? Just because they were in her
17 house, just because they were in the house that other
18 people stayed at does not mean that she is guilty of those
19 drugs.

20 I want you to look -- I'm going to go back over and
21 look at the evidence in a little bit. But look where those
22 drugs were found. Look at the fact that those drugs were
23 found hidden and secreted in different places and that
24 obviously there were other people in and out of there. The
25 State wanted to say no, nobody else was there. Look at the

1 pictures. The pictures should clearly show that there were
2 men's clothes in there. I showed you that picture. I
3 asked the officer. I said: Those are men's boots. Those
4 are -- that's a man's jacket. This stuff was in a place
5 that other people stayed in.

6 The house -- you will look at the pictures the State
7 put in. The house was in -- the places that she stayed was
8 nice, was well taken care of, and it was done well. The
9 other parts of the house were all messed up, and there was
10 stuff all crammed in. And then the drugs that were found
11 in there, one was -- if you look in that black wrapper --
12 and I'll show you a picture of it in a minute -- and you
13 look at that box, those things were found in other parts of
14 the house that she had no way of knowing about.

15 Okay. So you sit there and say well -- and the Judge
16 is going to tell you this. That, you know, there's an
17 inference that if she was there that she had to have had
18 some knowledge that those drugs were there. That's an
19 inference, and the Judge is going to tell you that. But
20 that in itself is not enough. There needed to have been
21 more of an investigation done. Okay? They stopped.

22 The police went out there. They knocked down the
23 door. They found her in there. She didn't have any
24 clothes on. And they went through their -- where they
25 talked to her. She was confused. You can tell by the way

1 she testified she's not a -- you know, she's not educated
2 on the law. She doesn't understand that stuff. She tried
3 to talk to them about what she thought they wanted to hear.
4 They said: Do you know why we're here? She said: I guess
5 because y'all think I'm dealing drugs. I guess that's why
6 you're here. She didn't go any further than that.

7 But the State has the burden, and that burden should
8 have been pushed a little bit farther. They could have
9 done a couple of things. And I'll show you the evidence in
10 a second. And it's clear that they could have -- once they
11 put those drugs into evidence, they could have tested those
12 drugs for fingerprints. They could have tested those drugs
13 for DNA. They could have done a lot of investigation after
14 the fact. But what happened was they quit. They quit.
15 They didn't do anything more. And she is entitled to
16 something more than that. The law clearly states that
17 she's entitled to something more than that, and she didn't
18 get it.

19 This is her day in court. This is the day I told you
20 that she was looking forward to. That day to be able to
21 come in here and tell you she didn't do this. Okay? You
22 need to look at that evidence and sit there and go, you
23 know, could they have taken any one of these items. I'll
24 give them this. They probably couldn't have taken the
25 purple bag because that wouldn't have gotten fingerprints.

1 But any of this other stuff, they could have easily tested
2 it. And I asked them: Did you test it? No. Did you have
3 it? Yeah. Maybe it was because they were new at doing
4 this. I think the guy that was working in the storage
5 place where the drugs are kept said he'd been doing it for
6 about six months. Maybe that was it. Maybe it fell
7 through the cracks. Maybe there was something else. Maybe
8 they decided they didn't need to.

9 Y'all are the ones that have to make this stop today.
10 You're the one to say the State's got to do more. They've
11 got to look at more. They've got to look at something else
12 and say, hey, this is something else.

13 Now, where is that other thing? Where is the other
14 evidence? They wanted to say that she wasn't scared and
15 she was in a position of being nervous because they showed
16 you a picture. I'll try to get this thing...

17 I want you to look at this picture. This is State's
18 Exhibit Number 30. I want you to look at this picture, and
19 I want you to look here. They were talking to you about
20 how calm and everything was and how she wasn't under any
21 kind of threat or coercion when this was going on. But
22 look right there on the left-hand side of that picture.
23 Look at that police officer staring her down. Look at
24 what's in his hand over there on the left. Look at that
25 vest that's over there. And she's not being scared?

1 She's in her house. She's been in her house. She
2 doesn't have any clothes on. They say, oh, well, we're
3 just sitting there reading it. Well, look at the picture.
4 Look at the picture and look at the threat she's under.
5 And you sit there and you wonder. You wonder why would
6 that not have been -- why would they say it like that
7 unless there was a reason? Why wouldn't they do more? Why
8 wouldn't they ask more? Why wouldn't they question more?
9 Look here. They talked about this pipe. This pipe --
10 this doesn't have anything to do with trafficking. Maybe,
11 you know, it's a crack pipe. They could have checked for
12 fingerprints. They could have done anything. She's not
13 charged with that. They put it into evidence to try to
14 send you on another one of these wild goose chases to try
15 to prove that -- because they didn't do their job, because
16 they didn't ask more that she's guilty. Somehow or
17 another, somebody's got to look at this and say, hey,
18 what's all that about. Why didn't we do it? Look at this.
19 This is that black pack that's in there. It's in -- it's
20 marked over here in evidence where you can see it. Why
21 hasn't this been tested? Why hasn't that package on that
22 been tested for fingerprints or DNA? Why hasn't somebody
23 else looked at it? The police officer's got a big smile on
24 his face that he found something back there, but what is
25 there that ties it to this lady right here? There's

1 nothing.

2 Look at that room. Look at all that junk in there.

3 There's nothing tying it to her. Look at this over here.

4 Look here. That picture there. Look at all that stuff.

5 How does she know that stuff's in there. They wanted to

6 hide that nobody else was coming in and out, but clearly

7 there were men's close in there. Clearly there's other

8 stuff it here.

9 Look at the pictures the State put in. There are

10 people in and out of this house. She's not the only one

11 that lives there. That's where those drugs were found.

12 They were found in that box. What ties her to that box?

13 Zilch.

14 Does anybody look at anything to try to tie her to

15 that? Has anybody checked? You're the first people that

16 can answer that question. It's not her job to prove her

17 innocence. The burden is on the State.

18 Look at all those bags. All those bags are here.

19 They could have all been tested. You see they could test.

20 They tested to see if it was positive for drugs. They

21 tested that. Why did they quit? Why didn't they test

22 more? They had it all in their evidence locker. They had

23 it all in different places they could look into. The

24 burden is on the State.

25 Judge McIntosh is a good judge, and he's going to tell

1 you what the law is. He's going to tell you what you've
2 got to find Ms. Patrick guilty. He's going to tell you the
3 protections that she has. He's also, I think, going to
4 tell you -- and you listen to what he says, not what I say.
5 He's going to say mere presence is not enough to prove
6 possession. The law is that the burden is on the State to
7 prove something more. Okay? Not just presence at the
8 scene. Okay? It's her house. She's there. She told you
9 she lived there for a long time. She also said other
10 people live there. She also said other people were in and
11 out of there. But for some reason, they don't want you to
12 know that.

13 You've heard her say that she didn't do this. She's
14 not charged with using. She's not charged with that crack
15 pipe. She's charged with something serious. Crack. And I
16 want you to look at where those drugs were found, and I
17 want you to question that.

18 I want you to look at the evidence, and I want you to
19 ask why they didn't follow up, why they didn't do prints,
20 why they didn't do DNA. They had the ability. They had
21 the stuff in their possession for over six months, and they
22 did nothing. Shouldn't you ask that question and say isn't
23 she entitled to something more? Isn't there something more
24 that she's entitled to before you get this verdict form and
25 you have to return a conviction of trafficking? Nowhere on

1 here does it say possession.

2 I'll remind you one more time before I sit down that
3 she's cloaked in innocence. The burden is on the State. I
4 told you in my opening statement that, you know, you can
5 rent an apartment house. You can rent a hotel room. And
6 you can hear water pounding out there at night and you can
7 be convinced of the way things look that it must be
8 raining. But you go outside and look around in the parking
9 lot out there outside the hotel, and there's nothing more
10 than a parking lot. There's nothing going. And you sit
11 there and go, huh. You know, I need to look at this more
12 and realize there was a sprinkler head that was running all
13 night. It didn't mean it was raining.

14 It doesn't mean just because she was there she's
15 guilty. They have to prove something else. They have to
16 go look and put it together.

17 It's an important day for Ms. Patrick, and it's an
18 important day for y'all. You've sat here for three days,
19 and we appreciate that. Now I ask you to look at the
20 evidence. And I ask you to return a verdict of not guilty.

21 Thank you.

22 MR. YARBOROUGH: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 Ms. Moore?

25 CLOSING ARGUMENT

1 BY MS. MOORE:

2 Ladies and gentlemen, you've just heard Mr. Yarborough
3 talk a great deal about the burden is on the State, and
4 that's absolutely true. It is my burden to prove this case
5 to you beyond a reasonable doubt.

6 Now, I want to talk to you a little bit about
7 reasonable doubt. Mary Patrick is innocent until she is
8 proven guilty, until I, the State, prove her guilty.
9 Reasonable doubt does not mean beyond all doubt.
10 Reasonable doubt means if you are firmly convinced of her
11 guilt. It does not mean that there is some far-fetched
12 solution to the problem, that aliens came and put the drugs
13 in Ms. Patrick's house. Sure that's doubt, but that's not
14 reasonable doubt. I'm asking that you be firmly convinced
15 of her guilt, and I submit to you that by the end of my
16 closing statement you will be.

17 So let's start with the elements. As I said, the
18 three elements, just to remind you, are that the defendant
19 must have been in possession of a substance, the substance
20 was methamphetamine, and the methamphetamine weighed more
21 than 200 grams. So the two easiest to prove, the things
22 that I think everyone in the courtroom can agree with are
23 the last two elements, that the substance is
24 methamphetamine and that it weighs more than 200 grams.

25 And the person who proved that to you is the chemist,

1 Meredith Lanford. You'll have her report when you go back
2 into the jury room with you. It breaks down every single
3 piece of methamphetamine that was tested, every single one.
4 And not just any methamphetamine. It breaks down this
5 methamphetamine.

6 You have three groups all in smaller bags like these.
7 You'll notice there's markings on the bags. The D1
8 correlates to the search inventory that you heard about
9 from Josh Durham. The lab numbers are all on there, and
10 you can see all of those things on this report. So you
11 know for a fact that these are the drugs. These are the
12 drugs. These are the drugs that came out of Mary Patrick's
13 home. Without a doubt you know that because you heard from
14 every single person that touched them.

15 You also know that Mary Lanford is reliable. She has
16 performed over 5000 analyses in her career. Over 3000 of
17 them have been on methamphetamine alone. So she has some
18 experience in this. And in this case, she tested all of
19 those substances and found that it was a grand total of
20 234.11 grams or almost exactly one half pound.

21 So those prove the last two elements, I submit to you,
22 beyond a reasonable doubt. The first element is a little
23 bit trickier to prove. That is the question of possession.

24 So what is possession? Actual possession is this. I
25 am holding this pin. I have physical care, custody and

1 control over this pen. Now, when I put that pen down, I
2 don't lose possession of the pen. If I walk away from it,
3 I don't lose possession of it. I have constructive
4 possession over this pen. I have been writing with this
5 pen the entire trial. I have had care, custody and control
6 over this pen. I've had the right to exercise control over
7 this pin. And that is constructive possession. And that
8 is how Mary Patrick possessed the methamphetamine in this
9 case.

10 The Judge will instruct you that constructive
11 possession means that the defendant had dominion or control
12 or the right to exercise dominion or control over the
13 methamphetamine itself. Constructive possession also means
14 that the defendant had knowledge of the presence of the
15 methamphetamine on the premises in her home -- she knew it
16 was there -- and that the defendant had dominion and
17 control of or the right to exercise dominion or control of
18 the premises on which the methamphetamine was found.

19 So let's break that down a little bit. It means that
20 she knew meth was in the house and the house was hers and
21 she had the right to control everything in it. And I
22 submit to you that she did.

23 It's also important to note that two or more persons
24 may have joint possession over the methamphetamine. And
25 I'll talk to you a little bit more about that in a moment.

1 So how do I prove constructive possession to you? I
2 prove it through Mary Patrick's statement. Her statement
3 to law enforcement, her original statement. You heard from
4 detectives Matt McDonald and now Sergeant Alan Hendrix that
5 Mary Patrick told them that all of the drugs in the house
6 belonged to her. That is what she said. She said that she
7 broke them into smaller bags to sell, and that proves that
8 she had actual possession of that methamphetamine at some
9 point. That she got a half pound delivered at a time and
10 that the drugs were usually delivered to her by someone
11 named Blake Kelly in a plastic grocery bag.

12 Now, you heard from Detectives McDonald and Hendrix
13 that those two have been in law enforcement for quite some
14 time. They've been doing this for a combined total of more
15 than 20 years. They have a lot of law enforcement
16 experience. They have taken a lot of statements. They
17 know what it means to read to someone their Miranda rights.
18 They know what it means to take a good statement from a
19 person.

20 And you heard Detective McDonald say they read her her
21 rights twice. They wanted to make sure, as he said, that
22 there was no cloak and dagger, that she knew exactly what
23 she was getting into. She knew that she had the right to
24 remain silent, that anything she said could be used against
25 her, and that she had the right to an attorney. She heard

1 those words not once but twice from two separate
2 detectives, and still she spoke to law enforcement. Not
3 because she was coerced, not because she was forced. She
4 voluntarily gave them that information.

5 Now, initially of course she said that there were no
6 drugs in the home. And then when officers went to get her
7 shorts for her, they found some drugs in the pocket of a
8 pair of women's shorts in the very bathroom that
9 Ms. Patrick was found in when officers first entered the
10 home.

11 These are the shorts on the bathroom floor, and this
12 is the methamphetamine inside those shorts pocket. And
13 after they brought her her shorts, after they collected
14 those drugs, after she saw that she was in trouble, she
15 changed her story. She said all right, all right. Those
16 are all the drugs that are in the house. And the officers
17 kept searching.

18 They kept searching, and then they found these drugs
19 in a Crown Royal bag in a small box in a closet. And you
20 have that Crown Royal bag, and you have these drugs. Look
21 at them. Examine them when you take them back with you.

22 She changed her story again. All right, all right.
23 That's everything. And then one more time, law enforcement
24 finally finds the grocery bag taped to the inside of a
25 closet filled with methamphetamine. Approximately 160

1 grams of methamphetamine. And that's when she realizes
2 she's in trouble. And so she did the only thing that she
3 could do. She gave up the information.

4 She gave up the name of her supplier, Blake Kelly.
5 She gave up his interactions with drugs. She gave the
6 names of other drug dealers. She told them herself she
7 knows those people to be drug dealers. Josh Peace, Brian
8 from Iva, Brandon Kelly. She knows all those people. They
9 are all drug dealers, and she gave all that information
10 voluntarily to law enforcement because she didn't have
11 anything else to lose. She didn't have any other cards to
12 play. It was her only option. And that statement is how
13 we know that she had constructive possession over these
14 drugs.

15 So this statement is not the only thing that you have
16 heard from Mary Patrick this week. You also heard her
17 testimony. Her testimony was that she had no idea that the
18 drugs were in the house. Not a clue. She lived at [REDACTED]
19 Willingham Road for 23 years with her husband who had been
20 there for ten. And she told the officers that the drugs
21 were not hers, presumably to protect her sick husband, and
22 also said that someone named Daniel Green often stayed at
23 her home. That is her statement. I don't know nothing
24 about nothing. I was protecting my husband.

25 Also, there's some potentially sketchy guy that --

1 Daniel Green, you know, comes in and out of the house.
2 Lots of people come in and out of the house. But there's
3 some problems with that testimony. She initially -- when
4 we started speaking, she said, you know, the officers were
5 cordial. Everything was as cordial as it could be under
6 the circumstances. That's what we agreed to. She said
7 that officers allowed her to move around the house. She
8 moved her dogs from room to room to get them out of the
9 officers' way. You saw in the pictures she's not
10 handcuffed. She's not shackled. No guns are drawn on her
11 when she is speaking to officers. They let her have a
12 cigarette. They let her get a Coke. She even offered them
13 a drink. And so that to me says that everything is good.
14 Everything is voluntary. Everything is calm.

15 And then when I started asking her the more difficult
16 questions, the questions about her statement to law
17 enforcement, that's when her story changes on the stand.
18 That's when she starts saying: I don't know. I was so
19 afraid. I was coerced. They were putting words in my
20 mouth. I was telling them anything that they wanted to
21 hear. They wouldn't let me get dressed. I was trapped
22 there. That's when her story changed. Again, when she
23 knew she was in trouble, her story flipped.

24 Now, she also says that there were -- she had no idea
25 that there were any drugs in the home. But I submit to you

1 that this home that this woman had lived in for 23 years
2 was filled with evidence of methamphetamine use and
3 presence. The meth was clearly visible in the pocket of
4 the denim shorts of the bathroom that she had just vacated.

5 That pipe, this pipe, was clearly visible on the
6 vanity of the bathroom that she had just vacated. A vanity
7 that is covered in women's makeup. And you heard Detective
8 Acevedo say he'd been surveilling that house. To his
9 knowledge, the only woman who lived in that house was Mary
10 Patrick. These are all women's things. She would have
11 known that that meth pipe was there. And if she knew that
12 meth pipe was there, I submit to you that she knew that
13 there was methamphetamine in her home.

14 Now, there were also scales found throughout the home.
15 Some of them are small. These two are a little smaller.
16 For those who have never seen them, they kind of look like
17 tiny cell phones. They were found -- they were scattered
18 throughout the home. Two smaller ones, these two, and then
19 one larger one, this one. They're not food scales. These
20 are the tools of the trade. These are the tools of the
21 drug dealing trade, and they were found throughout Mary
22 Patrick's home, the home that she had lived in for
23 23 years.

24 These digital scales were found in the master bedroom
25 on top of a chest of drawers. They were found in the front

1 bedroom on the left side of the house, and they were found
2 in the kitchen above the refrigerator. And you'll be able
3 to see that on the search inventory.

4 There is evidence of methamphetamine throughout this
5 home. It's not tucked away, hidden in a closet or a
6 drawer. It's out in the open where Mary Patrick knew or
7 should have known that there were drugs in her home.

8 Now, she also testified yesterday that she took the
9 rap for her husband. She said her husband was sick, that
10 she did not want him to go to jail. He was very sick, so
11 sick that he was fishing the day the officers executed the
12 search warrant on this Ms. Patrick's home.

13 And then she abandoned the idea of her husband and
14 said, well, Daniel Green comes in and out of the house a
15 lot. And then I asked her about Josh Peace, about Blake
16 Kelly, about Brian from Iva who she mentioned in her
17 initial statement to police. And she said: Well, Josh
18 Peace has never been in my house. Well, that to me implies
19 that Blake Kelly, Brian from Iva, and Daniel Green were
20 constantly in and out of her house.

21 What did she say about those men yesterday? She said:
22 I know they're drug dealers, so I told cops about the drug
23 dealers. She knew about the drug dealers. She gave
24 officers drug dealers names. And then she replied that she
25 lets them into her home. Drug dealers.

1 Now, my mom always says that birds of a feather flock
2 together. And so I submit to you that if Daniel Green,
3 Blake Kelly and Brian from Iva, who are known drug dealers,
4 were in Ms. Patrick's house, that Ms. Patrick is also a
5 drug dealer. However, I would also submit to you that she
6 knew or should have known that those men were bringing
7 drugs into her home. That is their trade. That is their
8 business. Of course, she knows that. If she knows they're
9 drug dealers, then she knows they bring them with them.

10 Now, even if you believe that the drugs did belong to
11 Daniel Green or her husband or Josh Peace or Blake Kelly or
12 Brian from Iva, even if you do believe that, the Judge will
13 instruct you that it is possible under the law for two
14 people to have joint possession of this methamphetamine,
15 that they were in this business together.

16 She had control over the home in which the drugs were
17 found. She told you that. She'd lived there for 23 years.
18 And based on her initial statement at the very least, it
19 seems that she knew drugs were there. The meth was visible
20 in the pocket of the shorts. There's a meth pipe. There's
21 scales all over the house. She knew that there was
22 methamphetamine in her home.

23 And so if she knew that there was meth there and she
24 had control over the house, then that means that you can
25 infer that she had constructive possession of those drugs.

1 And she can have constructive possession of those drugs
2 with any or all of those men.

3 So we know that she is, based on yesterday's
4 testimony, a little bit of a flip flopper. Perhaps not the
5 most reliable witness. So the question becomes why should
6 you believe her original statement to police. And I submit
7 to you that it is because that statement is corroborated.
8 She told law enforcement that she got a half pound of
9 methamphetamine delivered to her at one time. Meredith
10 Lanford testified that there was 234.11 grams of meth in
11 the house. And that converts -- believe me, it took me
12 forever to do the conversion when I became employed because
13 I'm not a mathematician. It converts to .51 pounds, almost
14 exactly a half pound, just like she said.

15 She also told law enforcement that she broke that
16 methamphetamine into smaller bags for sale. Each of these
17 is broken into smaller bags. You can see it in the
18 pictures. You can see it in the evidence.

19 There are also, like I said earlier, three sets of
20 digital scales. The tools of the trade. Because if you're
21 going to break down methamphetamine to sell, you need to
22 make sure that your weight is correct. And if you look at
23 this report, you'll notice particularly in the items in D5,
24 the items that were found taped inside the closet, almost
25 everything there weighs exactly 28 grams. They are broken

1 down precisely for the sale of methamphetamine, and they
2 were broken down, I submit to you, using the scales in Ms.
3 Patrick's home.

4 She also said that Blake Kelly usually delivered the
5 drugs to her in a grocery bag like a Bilo bag. Now, I
6 believe officers determined that the bag wrapped in the
7 duct tape was a CVS bag or a Target bag. A CVS bag. And
8 you can see that. You can see that this is a white plastic
9 grocery bag that was taped to the inside of a closet. And
10 inside of this white grocery bag were several smaller bags
11 of methamphetamine that Mary Patrick had broken into pieces
12 to sell.

13 The evidence corroborates her statement. She's not
14 just a good guesser. She didn't just tell law enforcement,
15 well, I mean, you know, maybe I get a half pound at a time,
16 and there just happened to be a half pound of
17 methamphetamine in the home. She said it because she knew
18 it. She said there were smaller bags because she had
19 broken them into smaller bags herself. She said it was
20 delivered in a plastic grocery bag because it had been.

21 And that, ladies and gentlemen, is how you know that
22 this defendant had constructive possession over those
23 drugs. She had dominion and control over the meth because
24 she broke it into smaller bags. She had it delivered to
25 her home a half pound at a time.

1 She also had dominion and control over the property on
2 which the methamphetamine was found. She had dominion and
3 control over her home. She was not merely present on the
4 scene. She was not, as she said, just about to take a bath
5 and then all of a sudden the cops kicked the door in and
6 there she was with 234 grams of methamphetamine. No. She
7 was there running her business. And she could also have
8 possession with more than one person.

9 So ladies and gentlemen, I submit to you that I have
10 not only proven but exceeded my burden that Mary Patrick
11 possessed more than 200 grams of methamphetamine. But if
12 you disagree with me, if you think that she only possessed
13 the methamphetamine that was found in her shorts or the
14 methamphetamine that was found in the Crown Royal bag or
15 the methamphetamine that was found in the plastic grocery
16 bag, you do not have to find her guilty of trafficking 200
17 to 400 grams.

18 The Judge will instruct you that you can find her
19 guilty of something called a lesser-included offense. It
20 can be trafficking between 10 and 28 grams if you think
21 that she only had possession of the methamphetamine in her
22 shorts. It can be trafficking between 28 and 100 grams if
23 you think that she only had possession of the
24 methamphetamine in the Crown Royal bag. And it could be
25 trafficking 100 to 200 grams if you think that she only had

1 possession of the methamphetamine in the plastic grocery
2 bag. But I submit to you that she had possession of all of
3 it.

4 So what has been proven? I submit to you that I have
5 proven beyond a reasonable doubt that Mary Patrick was in
6 constructive possession of methamphetamine that weighed
7 234.11 grams or almost exactly one half pound. And ladies
8 and gentlemen, if you agree that I have met my burden, that
9 I have exceeded my burden, then you must find her guilty.

10 THE COURT: All right. Mr. Foreman, ladies and
11 gentlemen of the jury, I told you before closing arguments
12 that I was going to give you the option to go forward or
13 not at this juncture with my charge. I think probably
14 let's take about a ten-minute break, and then we'll bring
15 you back out here and I'll give you the charge on the law
16 that you must apply. If you'll go back to your jury room,
17 please.

18 (WHEREUPON, the jury exited the courtroom at
19 approximately 10:19 AM.)

20 THE COURT: All right. First, thanks to the
21 lawyers. You did a grand job on both sides of your case.
22 Let's take about a ten-minute break, and we'll be back
23 right back.

24 MR. YARBOROUGH: Thank you.

25 MS. MOORE: Thank you, Judge.

1 (WHEREUPON, court stood at recess for a short break.)

2 THE COURT: Bring the jury in, please, sir.

3 All right. During the charge, nobody comes in or
4 comes out -- or goes out of the courtroom, please.

5 (WHEREUPON, the jury entered the courtroom at
6 approximately 10:32 AM.)

7 CHARGE

8 BY THE COURT:

9 All right. Mr. Foreman, ladies and gentlemen of the
10 jury, now that you've heard all the evidence in this case,
11 now that you've heard the opening and closing statements by
12 the attorneys, it's my duty to instruct you on the law that
13 you must apply.

14 My charge on the law will be in three parts. The
15 first part is the general rules or instructions on the
16 general rules that define and control your duties as
17 jurors. The second aspect will be the instructions on the
18 state law that is applicable in this case. In other words,
19 what the State must make out in order to prove its case
20 against this defendant. And then I'll give you some
21 considerations for your deliberations.

22 Let me tell you in advance, I'm not as articulate as
23 these attorneys, and because these are very important
24 points of law, I will have to read some of it to you. I'll
25 try to minimize that as much as possible, but I apologize

1 in advance because I know that can be a dry situation.

2 Ladies and gentlemen, you will recall that I told you
3 at the beginning of this case you are the judges of the
4 facts, and it's your duty to find the facts from the
5 evidence that you heard in this case from this witness
6 stand and the exhibits that have been allowed into
7 evidence.

8 At this juncture there's no more evidence that's going
9 to be presented. All the evidence that was going to be
10 presented has been presented. Therefore, at this point,
11 you will apply the law as I give it to you now as to facts
12 as you find them to be in your deliberations. You must
13 follow the law as I give it to you. You may not be
14 concerned with what you think it should be but only what it
15 is. If I'm incorrect, I will be corrected by the Court of
16 Appeals or the Supreme Court. But on the other hand, you
17 must take it as I give it to you.

18 Also, ladies and gentlemen, you must not and shall not
19 be influenced by any personal likes or dislikes, opinions,
20 prejudice or undue sympathy you may have for anyone in this
21 case. That means that you must decide this case according
22 to the evidence that's been presented in this courtroom and
23 according to the law as I give it to you now. If you
24 recall when you took your oath at the beginning of this
25 trial, you swore or affirmed that you would do just that.

1 Now, in following these instructions, it is important
2 that you follow all aspects of this charge. You may
3 disagree with some of it, but it is your obligation as
4 jurors to follow each and every part of this charge.

5 Also, if I had said or done anything throughout the
6 course of this trial that seems to indicate to you either
7 the findings of fact or the verdict that you are to reach,
8 I'm going to ask you, but also instruct you, to disregard
9 that. Our state constitution does not allow a judge to
10 have any comment or opinion about the facts of a case.
11 You, and you are alone, are the judges of what the facts
12 are and what your verdict will be, and you'll decide what
13 those facts are by evaluating or weighing the evidence that
14 you heard during this trial.

15 Now, when I say evaluate or weigh the evidence, you
16 can't weigh evidence in the literal sense. I can't send
17 you back a set of scales. But what you do do is use your
18 common sense and your sound judgment that you bring with
19 you as jurors to consider all the evidence and the
20 testimony and ultimately reach a verdict.

21 Now, what is evidence in this case that you may
22 consider as evidence? First, the sworn testimony of a
23 witness from this witness stand is evidence, whether it be
24 on direct or cross examination or redirect. Also, the
25 exhibits that have been allowed into evidence is evidence.

1 In this case, that's it. That's the only evidence you may
2 consider legally as evidence.

3 So that leads me to what's not evidence in this case.
4 I remind you that although it's important, the arguments by
5 these attorneys, whether in the opening or their closing or
6 at other times during this case, is not evidence. It's
7 helpful, but it's not subject to cross-examination, and
8 it's not under oath. If what either or both of these
9 attorneys told you at any time during this case differs
10 from your memory of that particular issue or issues, then
11 your memory will control.

12 Mr. Foreman, remember just because something may
13 appear in a juror's note doesn't mean it trumps a juror's
14 memory of that particular issue. That's why they call them
15 deliberations, and you'll just have to hash that out.
16 Okay, sir?

17 Now, ladies and gentlemen, the questions by the
18 attorneys is not evidence itself. It elicits evidence, but
19 they're not -- it's not evidence as meant to be.

20 Also, I will remind you lawyers have an obligation to
21 object any time that he or she feels like the proceedings
22 are not going the way it should be according to the rules
23 of evidence. The fact that there was an objection and to
24 the extent that I let you sit and see my ruling on it is
25 not fodder for your deliberations. And, Mr. Foreman, it

1 will be your job to make sure that no juror attempts to
2 bring up the fact that there was an objection or my ruling
3 on that objection. It is simply the process that which all
4 trials go through, and it's a lawyer's obligation.

5 Ladies and gentlemen, also, you may not consider
6 anything that you heard outside of this courtroom in your
7 deliberations. So the testimony from the witness stand and
8 the exhibits allowed into evidence.

9 So that leads me to the types of evidence that we
10 record in South Carolina as evidence. Generally in South
11 Carolina you have direct evidence and circumstantial
12 evidence.

13 Now, direct evidence is evidence that directly proves
14 the existence of a fact and does not require deduction.
15 For example, if the issue in a case was whether or not I
16 ran a stop sign and my law clerk gets up on the stand and
17 says, I saw him run that stop sign, that immediately
18 establish that fact. It's an eyewitness to the fact. You
19 don't have to infer or deduce anything from it. That is
20 direct evidence.

21 We also recognize circumstantial evidence.
22 Circumstantial evidence is a little more tricky. It is
23 evidence that's proof of a chain of facts and circumstances
24 indicating the existence of a fact. In other words, it's
25 by inference or deduction. For example, if each of you

1 were to go to bed at night and have a fresh sheet of snow
2 in your front yard, if you were to wake up in the morning
3 and have tracks in that snow, you can reasonably infer that
4 someone or something walk through your yard during the
5 night although you did not see it. The only limitations is
6 that the inference can't be speculation or conjecture. It
7 has to be with reasonable certainty.

8 Now, ladies and gentlemen, in South Carolina, crimes
9 may be proven by both direct or circumstantial evidence or
10 a combination thereof. The law makes no distinction
11 between the weight or the value to be given to either
12 direct or circumstantial evidence. However, to the extent
13 the State relies on circumstantial evidence in this case,
14 all of the circumstances must be consistent with each other
15 and when taken together point conclusively to the guilt of
16 the accused beyond a reasonable doubt. If these
17 circumstances merely portray the defendant's behavior as
18 suspicious, then the proof has failed.

19 The State has the burden of proving the defendant's
20 guilt whether or not it uses direct evidence,
21 circumstantial evidence or a combination of both. And that
22 burden is by proof beyond a reasonable doubt.

23 Now, ladies and gentlemen, in deciding what the facts
24 of this case are, you have to consider all of the evidence
25 that's been presented. In doing this, you must decide

1 which testimony that you wish to believe and whether or not
2 there's any testimony you wish not to believe. You have
3 the right to disbelieve all or part of any witness'
4 testimony. You can believe all of any witness' testimony.
5 In making this decision of what we refer to in the law as
6 the credibility of the witnesses or the evidence, you may
7 take into account the following nonexclusive list of facts.
8 For example, you can ask yourself was the witness able to
9 see or hear or know about the things which they testified
10 about. How well was the witness able to recall and
11 describe the subject of their testimony? What was the
12 witness' manner or their demeanor while they were sitting
13 on the witness stand? You can ask yourself if there was
14 some reason the witness would want to give testimony that
15 would help or hurt one side or the other. Did the witness
16 have an interest in the outcome of this case or any bias or
17 prejudice concerning any party or issue involved in this
18 case? You can consider how reasonable the witness'
19 testimony was considered in light of all the evidence that
20 has been presented and also whether the witness' testimony
21 was contradicted by what the witness said or done at
22 another time or by the other testimony of other witnesses
23 or the evidence in the case.

24 Now, Mr. Foreman, ladies and gentlemen of the jury,
25 those are just some of the factors you may consider in

1 deciding the credibility or the believability of the
2 testimony that's in this case. And of course, you do not
3 check your common sense at the door once you're sworn in as
4 jurors. You should use those things in your day-to-day
5 lives that you find indicative of truthfulness as well as
6 indicative of lack of truthfulness when deciding this issue
7 of the believability of the testimony.

8 You have the right to believe as much or as little of
9 each witness' testimony as you think is proper. You can
10 believe all or none of any witness' testimony. But one
11 thing you may not do is add up the number of witnesses who
12 appeared on behalf of the State or the Defense in making
13 this decision of the believability of the testimony.

14 Now, ladies and gentlemen, you've also heard testimony
15 from people who have been qualified as an expert in this
16 case. As I told you, usually witnesses are limited to
17 testimony about what they saw, they smelled, they felt,
18 their senses. However, a person who because of their
19 education or experience or a combination of the two becomes
20 an expert in a particular area and their testimony would be
21 helpful to you, the jury, in making a determination of what
22 the facts are in this case, they are allowed to give their
23 opinion and the reasons for their opinion.

24 Expert testimony, ladies and gentlemen, should be
25 judged in the light of all the testimony just like any

1 other testimony. You may accept it, you may reject it or
2 give it as much weight as you think it deserves considering
3 the witness' education, their experience, the reasons given
4 for their opinion and other evidence in this case.

5 I'll remind you, ladies and gentlemen, that the
6 indictment in this matter is not evidence of the
7 defendant's guilt. The fact that she was arrested, charged
8 and indicted is not evidence in this case. This piece of
9 paper is simply the mechanism by which she is brought
10 before the Court and for this trial. This indictment will
11 not go with you back into the jury room when you begin your
12 deliberations.

13 Now, ladies and gentlemen, as to the charge of
14 trafficking, the defendant has said: I'm not guilty.
15 Therefore, that places -- and that plea places the burden
16 on the State to prove the defendant guilty by proof beyond
17 a reasonable doubt.

18 Now, I'll charge you and tell you that a person
19 charged with committing a criminal offense in South
20 Carolina is never required to prove herself innocent. I
21 charge you that it is an important rule of law that a
22 defendant in a criminal case, no matter what the
23 seriousness of the charge may be, will always be presumed
24 to be innocent of the crime for which they have been
25 indicted and unless you the jury are satisfied that there

1 has been proof of guilt by proof beyond a reasonable doubt.

2 Now, this presumption of innocence does not end when
3 you begin your deliberations, but it accompanies this
4 defendant throughout the trial and in your deliberations
5 until you unanimously find a verdict of guilt based on
6 evidence satisfying you of guilt beyond a reasonable doubt.

7 In the law it is said that a presumption of innocence
8 is like a robe of righteousness where it remains around the
9 defendant's shoulders until it has been stripped from her
10 shoulders by evidence satisfying you, the jury, of guilt
11 beyond a reasonable doubt.

12 I'll tell you that the presumption of innocence is not
13 just a nice legal phrase. It's not just a legal theory.
14 It is a substantial right which every defendant is entitled
15 unless and until you, the jury, are satisfied of guilt by
16 evidence satisfying you of guilt beyond a reasonable doubt.

17 So, therefore, I have to give you a new definition of
18 what reasonable doubt is. This is what a reasonable doubt
19 is. It is the kind of doubt that would cause a reasonable,
20 sincere, honest and conscientious person to hesitate to act
21 in an important matter in their own affairs. Proof beyond
22 a reasonable doubt is proof that leaves you firmly
23 convinced of the defendant's guilt.

24 Now, ladies and gentlemen, there are very few things
25 in this world that we know with absolute certainty. And

1 the law does not require the State to overcome every
2 possible doubt that may exist in this case. If, based on
3 your consideration of the evidence, you are firmly
4 convinced that the defendant is guilty of the crime for
5 which she has been charged, you must find her guilty. On
6 the other hand, if you think there's a real possibility
7 that the defendant is not guilty, then you must give her
8 the benefit of the doubt and find her not guilty.

9 A reasonable doubt, ladies and gentlemen, may arise
10 from the evidence or from the lack of the evidence. And I
11 will further instruct you that a defendant is entitled to
12 every reasonable doubt that may arise in the case. And
13 what that simply means is this. Upon any fact essential to
14 a conviction and a verdict of guilt for the crime for which
15 the defendant has been indicted, if you have any reasonable
16 doubt, then you must give her the benefit of the doubt and
17 find her not guilty.

18 Now, ladies and gentlemen, in order to establish
19 criminal liability, criminal intent is required to be
20 proven. For example, the mental state required to be
21 proven by the State for a particular crime might be
22 purpose, intent, knowledge, recklessness, or criminal
23 negligence. Criminal intent must be proven by the State by
24 proof beyond a reasonable doubt. Criminal intent is always
25 a matter that must be determined by you, the jury, from the

1 circumstances surrounding the situation.

2 Now, ladies and gentlemen, there's no way to prove
3 intent to a mathematical certainty. There's no way that
4 science can dissect a person's brain to determine what they
5 had in mind, so the law says that criminal intent may be
6 inferred from the circumstances shown to have existed.

7 Ladies and gentlemen, that's how you make a
8 determination as to whether or not the element requiring
9 intent is present. It is not necessary for the State to
10 establish intent by direct and positive evidence, but
11 intent may be established by inference in the same way as
12 any other fact, by taking into consideration the acts of
13 the parties and all of the facts and circumstances in the
14 case.

15 Criminal intent is a mental state. It is a conscious
16 wrongdoing. Ladies and gentlemen, it's up to you to
17 determine what the defendant intended to do based on the
18 circumstances that have been shown to exist. Criminal
19 intent can arise from action or a failure to act. It may
20 arise from negligence, recklessness or an indifference to
21 duty or to the consequences that is considered by the law
22 to be the equivalent of criminal intent.

23 Ladies and gentlemen, a statement alleged to have been
24 made by the defendant has been admitted into evidence in
25 this case. While the Court has determined that the

1 statement is admissible, I instruct you that you make the
2 ultimate decision of whether or not the defendant made the
3 statement. If the defendant did make the statement, you
4 must determine whether the statement was made by the
5 defendant voluntarily and of her own free will. This means
6 that the statement was not caused by pressure, force, fear,
7 threats, coercion or intimidation or by hope or a promise
8 of leniency or a reward of any kind. In determining
9 whether the statement was voluntary, you should consider
10 both the characteristics of the defendant and the details
11 of the questioning.

12 Some of the factors that you must consider are the age
13 of the defendant, the defendant's education or lack of
14 education, the defendant's mental ability or capacity, the
15 defendant's IQ or intelligence, the defendant's background
16 and environment, the place and length of detention, the
17 nature of the questioning and the advice or the lack of
18 advice to the defendant of her constitutional rights
19 including, but not limited to, the right to remain silent,
20 that any statement could be used against her in a court of
21 law, that a right to have -- the right to have a lawyer
22 present, that if she could not afford a lawyer, a lawyer
23 would be appointed to represent her without any cost, and
24 that she could stop making a statement at any time. You
25 must consider all of the surrounding circumstances before

1 you give any weight to the alleged statement by the
2 defendant.

3 The State has the burden of proving beyond a
4 reasonable doubt that the alleged statement was voluntary.
5 Now, if you determine that the statement was voluntary, you
6 may give the statement any further consideration you deem
7 to be proper. You must decide what weight, if any, should
8 be given to the alleged statement. On the other hand, if
9 you determine that the alleged statement was not the free
10 and voluntary statement of the defendant, you should not
11 consider the statement at all.

12 All right. Mr. Foreman, ladies and gentlemen of the
13 jury, that is the first aspect of my charge. And
14 fortunately for you, that's the longest part of my charge.
15 The next part of it will be the law that applies in this
16 case. If you would like to take a break, I'll be glad to
17 give you one. If you want to go forward, I'll be glad to
18 do that. Check with your jurors, please, Mr. Foreman, and
19 let me know.

20 THE JUROR: We'll go forward.

21 THE COURT: You're ready to go forward? You're
22 going to speak for them already?

23 THE JUROR: Yes.

24 THE COURT: All right. I knew that's what you
25 were going to say.

1 CHARGE

2 BY THE COURT:

3 This is the law of trafficking. The defendant is
4 charged with trafficking in methamphetamine. The State
5 must prove beyond a reasonable doubt that the defendant
6 knowingly sold, manufactured, cultivated, delivered,
7 purchased, brought into this state, provided financial
8 assistance or otherwise aided, abetted, attempted or
9 conspired to sell, manufacture, cultivate, deliver,
10 purchase or bring into this state, was knowingly in actual
11 or constructive possession or knowingly attempted to become
12 in actual or constructive possession of methamphetamine.

13 To prove possession, the State must prove beyond a
14 reasonable doubt that the defendant had both the power and
15 the intent to control the disposition or use of the
16 methamphetamine. Possession may be either actual or
17 constructive. Further, two or more people may have joint
18 possession of a drug.

19 Actual possession means that the methamphetamine was
20 in the actual physical custody of the defendant.

21 Constructive possession means that the defendant had
22 dominion or control or the right to exercise dominion or
23 control over the methamphetamine itself. Constructive
24 possession also means that the defendant had knowledge of
25 the presence of the methamphetamine on the premises and

1 that the defendant had dominion or control of or the right
2 to exercise dominion or control of the premises on which
3 the methamphetamine was found. Mere presence at the same
4 where the drugs were found is not enough for possession.
5 Actual knowledge of the presence of the methamphetamine is
6 evidence of the defendant's intent to control its
7 disposition or use. The defendant's knowledge and
8 possession may be inferred when a substance is found on the
9 property under the defendant's control. However, this
10 inference is simply an evidentiary fact to be taken into
11 consideration by you, the jury, along with all the other
12 evidence in this case and to be given the weight that you
13 decide it should have.

14 Finally, ladies and gentlemen, the State must prove
15 beyond a reasonable doubt the amount of the -- excuse me.
16 Finally, the State must prove beyond a reasonable doubt
17 that the amount of the methamphetamine was 10 grams or more
18 but less than 28 or 28 grams or more but less than 100
19 grams or 100 grams or more but less than 200 grams or 200
20 grams or more but less than 400 grams.

21 Now, Mr. Foreman, I'll go over those options again
22 with you on the verdict form so you will have that in front
23 of you.

24 Ladies and gentlemen, that is the law that you must
25 apply in this case. So that leads me to the last expect of

1 my charge, and that is a few points about your
2 deliberations.

3 If you recall during jury qualification in what we say
4 as voir dire, you represented yourself expressly or implied
5 that you could be fair and impartial to both the State and
6 to the defendant in this matter. You don't serve as jurors
7 to be partisans or advocates for one side or the other.
8 Each side selected you to serve on this jury because you
9 represented and they believed that you could be fair and
10 impartial. In this case, use your experiences in life.
11 Use your common sense and your sense of logic and reason
12 and go through and talk through all the evidence and
13 hopefully reach a unanimous verdict.

14 Let me say something about deliberations. This is its
15 definition. It's a careful consideration weighing up with
16 a view to a decision. Now, regardless of what any of you
17 may think about our judicial system, I would submit to you
18 that the genius of the system is that it allows twelve men
19 and women such as yourselves who come from different
20 backgrounds who have different perspectives, different life
21 experiences and to listen to the testimony, to listen to
22 the evidence, to hear the attorneys' arguments and listen
23 to the law, to ultimately go back and engage in meaningful
24 and courteous deliberations and ultimately reach a verdict.

25 You're not partisans or advocates. You are the judges

1 of what the facts are in this case. I'm going to ask you,
2 but I also instruct you, that you are to listen to the
3 views of your fellow jurors, consider other people's points
4 and their points of view. Go through and walk through and
5 discuss the evidence thoroughly. And remember if you're
6 doing something deliberately, you should not be in a big
7 hurry. And you should not be in a big hurry in this case.

8 This case is very important to both the State and to
9 this defendant, and this is their only day in court. They
10 do not get a second bite at the apple.

11 Now, when you go back to your jury room and begin your
12 deliberations once instructed to do so, in order to stand,
13 your verdict must be unanimous. With that being said, each
14 of you must decide this case on your own, but you should do
15 so only after you have impartially considered all the
16 evidence, you've discussed it fully with your fellow
17 jurors, you've listened to their views and their points of
18 views. Do not be afraid to change your opinion as to the
19 weight of the evidence if your deliberations persuade you
20 that's the right thing to do. On the other hand, do not
21 change a firmly held belief as to the weight of the
22 evidence simply to appease your fellow jurors to reach a
23 verdict.

24 With that being said, Mr. Foreman, if at any time the
25 jury has question, if you would write it out on a piece of

1 paper, sign your name, knock on the door. The bailiff will
2 bring it in to us, and we will address it here either in
3 front of you or outside of your presence. Also, if there's
4 ever communications from you, the jury, about anything
5 other than your verdict form, never tell us where the jury
6 stands numerically, i.e. we're eleven to one or six to six
7 or some other possible mathematical division. It's none of
8 our business. Okay, sir?

9 Also, when you go through and look at the evidence, I
10 want you to -- if you want, you can handle it. Please do
11 not open up the actual containers of drugs. I had that
12 happen down in another place, and it's not healthy for you,
13 and it causes other problems in the case. So handle it as
14 much as you want, but do not open them up.

15 With that being said, Mr. Foreman, once and if the
16 jury reaches a unanimous verdict, you'll have to fill it
17 out. It will be your job to do so. These options, as I
18 give them to you, have to be in some order. The order is
19 of no consequence to you, but these are your options.
20 Under trafficking methamphetamine, as to the charge of
21 trafficking methamphetamine under indictment
22 2017-GS-04-2576, we, the jury, unanimously find the
23 defendant not guilty. If that is the jury's verdict, then
24 you will check that option, that space beside that, and
25 you'll sign your name at the bottom. You'll fold this over

1 and crease it, knock on the door. We'll receive you back
2 in the courtroom.

3 The other option is as to the charge of trafficking of
4 methamphetamine, indictment number 2017-GS-04-2576, we, the
5 jury, unanimously find the defendant guilty. If you find
6 the defendant guilty, and only if you find her guilty of
7 trafficking, then you'll have to go one step further.
8 You'll have to decide what the weight is. And you can only
9 check one. And your options are 10 grams or more but less
10 than 28 grams, 28 grams or more but less than 100 grams,
11 100 grams or more but less than 200 grams, 200 grams or
12 more but less than 400 grams. Again, it can only be one
13 and only if you find her guilty. Once you have all that
14 done, you will check the applicable weight, again, sign and
15 fold it and knock on the door and we'll receive you back in
16 the courtroom and receive your verdict here.

17 With that being said, any additions or exceptions from
18 the State to the jury charge?

19 MS. MOORE: None, Your Honor.

20 THE COURT: Other than as noted?

21 MR. YARBOROUGH: No, sir.

22 THE COURT: Okay. Thank you.

23 All right. Mr. Foreman, I'm going to ask our two
24 alternates to get your personal belongings out of the jury
25 room and come back to the courtroom. The rest of you, if

1 you'd go back to the jury room. We'll send back the
2 evidence with the verdict form, and the bailiff will tell
3 you to begin your deliberations.

4 (WHEREUPON, the jury exited the courtroom at
5 approximately 11:04 AM.)

6 THE COURT: If you would get your evidence
7 together, make sure everyone is agreeable to it, and then
8 tell them to begin.

9 Again, thanks to the State's attorney and Defense
10 attorney. Y'all did a great job presenting your cases. We
11 appreciate it.

12 (WHEREUPON, court stood at recess awaiting the verdict
13 of the jury.)

14 THE COURT: All right. The question from the
15 jury is, number one, we need definition of constructive
16 possession. We need definition of trafficking and
17 definition of joint possession. And is the defendant -- is
18 the defendant the actual homeowner of address. First,
19 let's take them first in reverse order. Mr. Yarborough?

20 MR. YARBOROUGH: I mean, I think the record is
21 closed on that.

22 THE COURT: I mean, I try to tell jurors every
23 time you got to make your decision based on the evidence
24 presented, and I've still got to tell them that.

25 MS. MOORE: Yes, Judge.

1 THE COURT: So I have to make that call. As to
2 the definition of trafficking, I'll just redo the charge.
3 It covers everything else, don't you think?

4 MS. MOORE: I think so, Judge.

5 THE COURT: All right. Would you bring the jury
6 in?

7 (WHEREUPON, the jury entered the courtroom at
8 approximately 11:56 AM.)

9 THE COURT: Mr. Foreman, ladies and gentlemen of
10 the jury, the jury has three different questions to me.
11 The first one is going to be the last one on your list, so
12 I'm going to address it first. And that is: Is the
13 defendant the actual homeowner of address? Ladies and
14 gentlemen, as I told you at the beginning of my charge, all
15 the evidence that's in is in. So that information has to
16 be placed into evidence based on what you heard during the
17 testimony of this trial. And you just have to make that
18 determination based on what you heard in the testimony.
19 Okay?

20 THE JUROR: Okay.

21 THE COURT: The next is: We need a definition of
22 constructive possession and definition of trafficking and
23 joint possession. Okay? I'm going to go through and give
24 you the trafficking charge which would include the
25 constructive possession. It doesn't define joint

1 possession, but joint would mean one or more -- I mean two
2 or more people who have actual or constructive possession.

3 Any disagreement from the State?

4 MS. MOORE: None, Your Honor.

5 THE COURT: Any disagreement from the Defense?

6 MR. YARBOROUGH: No, sir.

7 THE COURT: Did you get that? Two or more people
8 in actual or constructive possession. Okay?

9 Now, this is the charge on trafficking. The defendant
10 is charged with trafficking in methamphetamine. The State
11 must prove beyond a reasonable doubt that the defendant
12 knowingly sold, manufactured, cultivated, delivered,
13 purchased, brought into this state, provided financial
14 assistance or otherwise aided, abetted, attempted or
15 conspired to sell, manufacture, cultivate, deliver,
16 purchase or bring into this state, was knowingly in actual
17 or constructive possession or knowingly attempted to become
18 in actual or constructive possession of methamphetamine.

19 THE COURT: Do you want me to slow down and do
20 that again?

21 THE JUROR: Please.

22 THE COURT: Okay. Stop me anytime. That's what
23 I want you to do. This is taken from the statute, ladies
24 and gentlemen. And a lot of these words you can find --
25 they have been broadly worded, so sometimes they're -- you

1 have descriptions and you have somebody who attempts to do
2 the same thing. But listen to it.

3 The defendant is charged with trafficking in
4 methamphetamine. The State must prove beyond a reasonable
5 doubt that the defendant knowingly sold, manufactured,
6 cultivated, delivered, purchased, brought into this state,
7 provided financial assistance or otherwise aided, abetted,
8 attempted or conspired to sell, manufacture, cultivate,
9 deliver, purchase or bring into this state, was knowingly
10 in actual or constructive possession or knowingly attempted
11 to become in actual or constructive possession of
12 methamphetamine.

13 Did you get that? Do you want me to do it again?

14 THE JUROR: Just the last part.

15 THE COURT: Just last part? Okay. I don't know
16 what you define as the last part, so let me just do it
17 again. Okay. I'm sorry.

18 THE JUROR: That's okay.

19 THE COURT: The State must beyond a reasonable
20 doubt that the defendant knowingly sold, manufactured,
21 cultivated, delivered, purchased, brought into this state,
22 provided financial assistance or otherwise aided, abetted,
23 attempted or conspired to sell, manufacture, cultivate,
24 deliver, purchase or bring into this state, was knowingly
25 in actual or constructive possession or knowingly attempted

1 to become in actual or constructive possession of
2 methamphetamine.

3 That is -- they're not all together. Any of those
4 stand alone. Okay?

5 Now, to prove possession, the State must prove beyond
6 a reasonable doubt that the defendant had both the power
7 and intent to control the disposition or use of the
8 methamphetamine. Possession may be either actual or
9 constructive. Further, two or more people may have joint
10 possession of a drug.

11 Actual possession means that the methamphetamine was
12 in the actual physical custody of the defendant.

13 Constructive possession means that the defendant had
14 dominion or control or the right to exercise dominion or
15 control over the methamphetamine itself. Constructive
16 possession also means that the defendant had knowledge of
17 the presence of the methamphetamine on the premises and
18 that the defendant had dominion or control of or the right
19 to exercise dominion or control of the premises on which
20 the method enemy is found.

21 Mere presence at the scene when the drugs were found
22 is not enough to prove possession. Actual knowledge of the
23 presence of the methamphetamine is evidence of the
24 defendant's intent to control its disposition or use. The
25 defendant's knowledge and possession may be inferred when a

1 substance is found on the property under the defendant's
2 control. However, this inference is simply an evidentiary
3 fact to be taken into consideration by you along with all
4 the other evidence in this case and to be given the weight
5 that you decide it should have.

6 Finally, the State must prove beyond a reasonable
7 doubt that the amount of the methamphetamine was one of the
8 following: 10 grams or more but less than 28 or 28 grams
9 or more but less than 100 grams or 100 grams or more but
10 less than 200 grams or 200 grams or more but less than 400
11 grams.

12 Mr. Foreman, would you check with your jury to make
13 sure that is adequate instruction.

14 THE JUROR: That's adequate.

15 THE COURT: Okay. If you need anything, let me
16 know.

17 While we're here, any additions or exceptions from the
18 State?

19 MS. MOORE: None, Your Honor.

20 THE COURT: From the Defense?

21 MR. YARBOROUGH: No, sir.

22 THE COURT: Okay. If you will return to your
23 jury room and resume your deliberations.

24 (WHEREUPON, the jury exited the courtroom at
25 approximately 12:06 PM after which court stood at recess

1 awaiting the verdict of the jury.)

2 THE COURT: All right, guys. There's a verdict,

3 I believe.

4 Ready?

5 MS. MOORE: Yes, Judge.

6 THE COURT: Ready?

7 MR. YARBOROUGH: Yes, sir.

8 THE COURT: Would you bring them in, please.

9 (WHEREUPON, the jury entered the courtroom at

10 approximately 4:13 PM.)

11 THE COURT: Mr. Foreman, my understanding is the

12 jury has reached a verdict; is that correct?

13 THE JUROR: Yes, it is.

14 THE COURT: Is it unanimous?

15 THE JUROR: Yes.

16 THE COURT: Would you pass the form to the

17 bailiff, please, sir.

18 (WHEREUPON, the verdict form was handed up to the

19 Court.)

20 THE CLERK: If it pleases the Court.

21 THE COURT: Yes, sir.

22 THE CLERK: This is the State of South Carolina,

23 County of Anderson, in the Court of General Sessions 10th

24 Judicial Circuit, indictment number 2017-GS-04-02576, the

25 State of South Carolina versus Mary N. Patrick, defendant.

1 This is the verdict form. As to the charge of trafficking
2 of methamphetamine, indictment number 2017-GS-04-2576, we,
3 the jury, unanimously find the defendant guilty. If you
4 find the defendant is guilty of trafficking in
5 methamphetamine, you must next determine the amount of
6 which the defendant had in her actual and/or constructive
7 possession. You may choose only one. And our verdict
8 chose 200 grams or more but less than 400 grams. It is
9 signed by the foreperson and it is dated today, April 18,
10 2018, in Anderson, South Carolina.

11 THE COURT: Mr. Foreman, ladies and gentlemen of
12 the jury, if that was your verdict in the jury room and if
13 that is your verdict here in the courtroom, please raise
14 your right hand.

15 (WHEREUPON, all jurors hands were raised.)

16 THE COURT: Let the record reflect that all
17 twelve responded in the affirmative.

18 Ladies and gentlemen, the Court is never concerned
19 with your verdict but that you, number one, come and do
20 your civic duty, number two, pay close attention. I've
21 watched you variously throughout this case. You did just
22 that. For that we thank you for your service.

23 All the trials now because of the threat of you being
24 here, have been reconciled by guilty pleas. So you were
25 working even though you didn't know you were working. We

1 thank you for your service. I'm going to excuse you. I'm
2 going to ask you to go back to your jury room. I'm going
3 to step back there.

4 Mr. Foreman, I need you to sign some paperwork, and
5 then I'll chat with you for one second.

6 Mr. Clerk, will you give them their form now?

7 THE CLERK: Yes, sir. I have it here.

8 THE COURT: Our clerk of court will give you the
9 statements for your employers at that time too. If you'll
10 go back to your jury room.

11 (WHEREUPON, the jury exited the courtroom at
12 approximately 4:17 PM.)

13 THE COURT: Would you prepare the paperwork for
14 me?

15 MS. MOORE: Yes, sir.

16 THE COURT: Thank you.

17 (WHEREUPON, court stood at ease.)

18 THE COURT: Hang on for second. I think some may
19 be coming in.

20 THE COURT: Ms. Patrick, Mr. Yarborough, would
21 you come around, please.

22 (WHEREUPON, the defendant and counsel approached the
23 bar.)

24 THE COURT: Does anybody from law enforcement
25 want to say anything further?

1 MS. MOORE: Would you like to say anything?

2 THE COURT: And everybody agrees this is a fixed
3 time of 25 plus 100,000, right?

4 MS. MOORE: Yes, Your Honor.

5 THE COURT: No deviation?

6 MR. YARBOROUGH: Not any.

7 THE COURT: All right. I don't need to hear
8 backgrounds. Ms. Patrick, you'll have ten days to appeal.
9 Okay? But the sentence will be 25 years and \$100,000 fine.
10 Good luck to you.

11 MR. YARBOROUGH: Your Honor, she did want me to
12 ask you if she could report in the morning.

13 THE COURT: No.

14 MR. YARBOROUGH: I told her --

15 THE COURT: And nothing against you, Ms. Patrick.
16 I've had that done to me before two times, and twice they
17 didn't show, so I won't do that anymore. I'm sorry. Good
18 luck to you.

19 MS. MOORE: Thank you, Judge.

20 THE COURT: Thank you, ma'am.

21 (WHEREUPON, court stood at recess in the trial of this
22 case.

23 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

24

25

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Certified
3 Verbatim Reporter and Notary Public for the State of South
4 Carolina, do hereby certify that the foregoing is a true,
5 accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal, in
8 the Circuit Court for Anderson County, South Carolina, on
9 the days of April 16 through 18, 2018.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 August 22, 2018

15

16 S/ReneeHTollison,CVR

17 Certified Verbatim Reporter

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARY N. PATRICK,

APPELLANT

APPELLATE CASE NO 2018-000783

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion for a directed verdict on the drug charge because there was insufficient proof that appellant was in actual or constructive possession of methamphetamine.

STATEMENT OF THE CASE

Appellant Mary N. Patrick was convicted of trafficking in methamphetamine (200- 400 grams) during the April 2018 term of the Anderson County General Sessions Court before Judge R. Lawton McIntosh and sentenced to imprisonment for a period of twenty-five years. William Yarborough represented appellant at trial and Assistant Chelsea Moore appeared on behalf of the state. Appellant appealed. This brief follows.

STANDARD OF REVIEW

“A case should be submitted to the jury when the evidence is circumstantial ‘if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.’ State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). “Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt.” *Id.* “Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” *Id.* at 139, 708 S.E.2d at 776- 777. “On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state.” *Id.* at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonable tending to prove guilt of the accused, the appellate court must reverse the lower court’s denial of the directed verdict motion. Hepburn, 406 S.C. at 416, 429 S.E.2d at 409.

ARGUMENT

The trial judge erred in denying appellant's motion for a directed verdict on the drug charge because there was insufficient proof that appellant was in actual or constructive possession of methamphetamine.

At trial, police officers Matthew McDonald, Alan Hendrix, Andrea Acevedo, and Ronald Wood all testified that they assisted in executing a search warrant on May 11, 2017, at the house where appellant was located and found methamphetamine in the pocket of a pair of women's shorts, and in a Crown Royal bag in a closet, and in a grocery bag in a bedroom. R. 106, l. 9-p. 113, l. 9; R. 116, l. 9-p. 123, l. 15; R. 127, l. 2-p. 138, l. 3; R. 143, l. 10- p. 148, l. 17.

Appellant testified at trial and declared that she had no idea that drugs were in the house and that she told the police that the drugs were hers because she was scared, and her husband was sick, and she didn't want her husband to get locked up; but that it was Derek Green and a man named Bailey (drug dealer) who had been at her home, which meant by inference that the drugs belonged to them or her husband. R. 209, l. 7-p. 214, l. 9; R. 227, l. 22- p. 228, l. 24.

Defense counsel moved for a directed verdict at the close of the case for the state and the case for the defense. R. 235, l. 8-10; R. 194, l. 3-17. The motion was denied.

Actual possession occurs when the drugs are found in the actual physical custody of a defendant and constructive possession arises a defendant has dominion and control or the right to exercise dominion and control over the drugs. State v. Heath, 370 S.C. 326, 635 S.E.2d 181 (2006). In Heath, the Court held that there was insufficient evidence that the defendant was in constructive possession of crack. The crack was found in a car washing mitt in a recycling bin outside near the back of a house owned by the defendant's mother. Here, the state failed to

prove that appellant was in actual or constructive possession of the drugs found in the house; and thus the conclusion is the same as reached in Heath, i.e., that the state “failed to establish an essential element of the crime charged.”

In ruling on a motion for a directed verdict, the trial court must view the evidence in the light most favorable to the state and the case submitted to the jury only if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993). Due process requires the prosecution must prove every element of the offense charged beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979).

Here, appellant’s testimony clearly revealed that the drugs belonged to her husband and/or the drug dealers who appeared to be in and out of her house. Note appellant’s explanation regarding the men’s ownership of the drugs:

Q: Do you know who those drugs might belong to?

A: I know they could belong to – I seen them that night and I told them to take them out of my house. And he left to take them out, but he come back to stay the night.

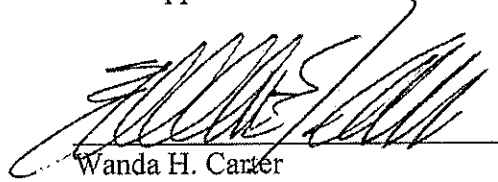
Q: But you didn’t know that they were there?

A: No. R. 211, l. 1-6.

The lower court erred in denying appellant’s directed verdict motion because there was suspicion only and insufficient evidence presented to establish that appellant was in actual or constructive possession of the drugs in question.

CONCLUSION

Based on the above raised argument, counsel for appellant would ask this Court to vacate appellant's conviction and sentence.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of January, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARY N. PATRICK,

APPELLANT

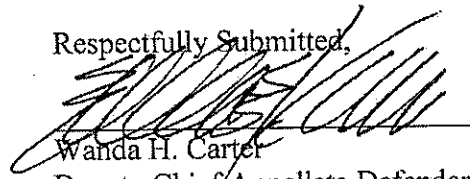
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Mary Nimmons Patrick states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Lawton McIntosh, which was held on April 16 - 18, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for Mary Nimmons Patrick.

Respectfully Submitted,


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 11th day of January, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARY N. PATRICK,

APPELLANT

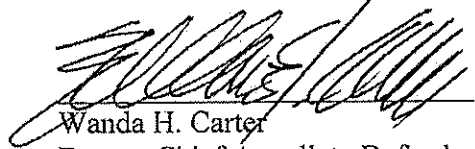
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment and sentencing sheet
- (2) Trial transcript dated April 16-18, 2018

I certify that this designation contains no matter which is irrelevant to this appeal.

January 11, 2019


Wanda H. Carter
Deputy Chief Appellate Defender

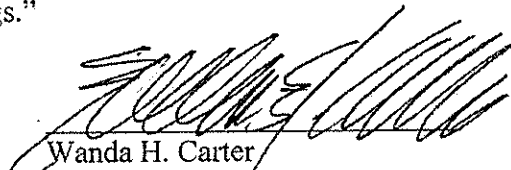
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 11, 2019.


Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Anderson County

 Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

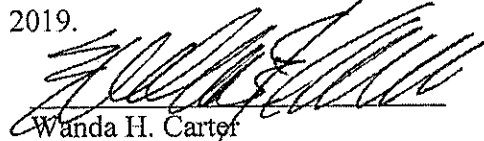
V.

MARY N. PATRICK,

APPELLANT

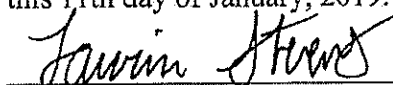
 CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Mary Nimmons Patrick, 340156, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 11th day of January, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of January, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Mary N. Patrick, Appellant.

Appellate Case No. 2018-000783

Appeal From Anderson County
R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2020-UP-069
Submitted February 1, 2020 – Filed March 11, 2020

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General William M. Blich,
Jr., both of Columbia, for Respondent.

RECEIVED

MAR 11 2020

APPELLATE DEFENSE

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

WILLIAMS, KONDUROS, and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

County of Anderson)Mary N. Patrick 370156)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2020CP0400904
APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Leath Correctional, Greenwood SC
2. Name and location of Court which imposed sentence Anderson County General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-04-2576 (Trafficking Meth/Chack 200g but < 400g)
 - (b) _____

A TRUE COPY

APR - 2 2020

Richard M. Butler
CLERK OF COURT

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4/18/10 - 25 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Unknown 3/11/20
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unknown
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of counsel
- (b) Court's failure to direct a verdict in favor of applicant at trial
- (c) Failure to ensure fair/impartial jury & failure to dismiss case in Chry due to illegal search/seizure

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel failed/refused to adequately represent applicant by doing
- (b) adequate research on her behalf, for failing to argue hearsay rules
- (c) proper motions at/ before/ following trial that would have resulted in dismissal, by allowing a prejudiced jury to hear the case & by failing to discredit

12. Prior to this application have you filed with respect to this conviction: Testimonies of legal officers who illegally obtained

- (a) any petition in a State Court under South Carolina Law? No evidence
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

- i. Applicant filed appeal for failure to direct verdict
- ii. _____
- iii. _____
- iv. _____

- (b) the name and location of the Court in which each was filed:

- i. SC Court of Appeals, which was denied - See #8 above
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

See # above

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) was never counseled that I could present such grounds
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes -
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Trial - William Garborough

ii. Appeal - Wanda Carter, SC Indigent Defense

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

New Trial/Sentencing

Vacation of Sentence

Dismissal of Case

20. Are you now under sentence from any other court that you have not challenged?

Release from Incarceration

STATE OF SOUTH CAROLINA)

County of Greenwood)

VERIFICATION

I, Mary N Patrick, 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.

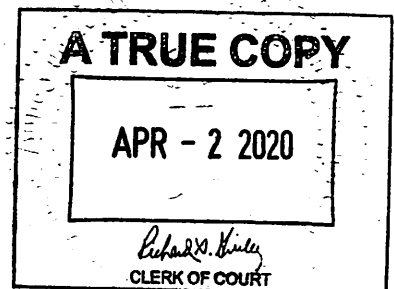
Mary N Patrick

SWORN to and subscribed before me this 27 day of March, 2020.

Carolee M. Hays (L.S.)
Notary Public

My Commission Expires: 6/16/24

'20 APR 2 AM 10:45:15
Anderson, SC CCJ, CP/GS



Revised 3/2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
	)	
Mary N. Patrick, SCDC #340156,	)	Case No. 2020-CP-04-0904
	)	
Applicant,	)	
	)	
v.	)	RETURN, PARTIAL MOTION TO
	)	DISMISS, AND MOTION FOR A
	)	MORE DEFINITE STATEMENT
State of South Carolina,	)	(COUNSEL APPOINTED)
	)	
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Mary Patrick (Applicant) on April 2, 2020, the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was arrested on May 12, 2017 after law enforcement recovered 241 grams of methamphetamine while executing a search warrant on her home. During its October 2017 term, the Anderson County Grand Jury indicted Applicant for trafficking in methamphetamine, 200 to 400 grams (2017-GS-04-2576).

On April 16, 2018, Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh. William G. Yarborough, III, Esquire (Counsel) represented Applicant. Assistant Solicitor Chelsey Hucker of the Tenth Circuit Solicitor's Office prosecuted the case. On April 18, 2018, the jury found Applicant guilty as indicted. Judge McIntosh sentenced her to a term of twenty-five years' imprisonment and ordered her to pay a \$100,000 fine.

Applicant filed a timely notice of appeal. Deputy Chief Appellate Defender Wanda H. Carter perfected the appeal by filing an *Anders* brief and petition to be relieved as counsel with the

South Carolina Court of Appeals. The Court subsequently dismissed Applicant's appeal and granted appellate counsel's petition to be relieved in an unpublished opinion issued March 11, 2019. *State v. Patrick*, Op. No. 2020-UP-069 (Ct. App. filed March 11, 2020). The case was returned to the circuit court on May 5, 2020. Applicant commenced this timely PCR action on April 2, 2020.

II. CURRENT APPLICATION

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on the following:

1. Ineffective assistance of counsel
 - a. "Counsel failed/refused to adequately represent Applicant by doing adequate research on her behalf, for failing to argue hearsay rules, and proper motions before/after trial that would have resulted in dismissal;"
 - b. "By allowing a prejudicial jury to hear this case and by failing to discredit testimonies of legal officers who illegally obtained no evidence"
2. "Court's failure to direct verdict in favor of Applicant at trial, failure to ensure impartial jury, and failure to dismiss case in chief due to illegal search/seizure"

Applicant requests relief as follows:

"New trial/sentencing; vacation of sentence; dismissal of case; release from incarceration"

Attached herewith and incorporated by reference are the Anderson County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, including the trial transcript, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. PARTIAL MOTION TO DISMISS

Applicant's allegations of trial court error should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act¹ (the Act). An applicant may commence a post-conviction relief action on the following grounds:

1. United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

However, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR); *Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal

¹ S.C. Code Ann. § 17-27-10 to -160.

cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel). Applicant's allegation of trial court error for failing to grant her directed verdict motion was raised on appeal. The remaining allegations regarding trial court error—failure to ensure impartial jury and failure to dismiss case based on illegal search and seizure—could have been raised on appeal. Accordingly, the State moves to dismiss these allegations pursuant to Rule 12(b)(6), SCRPC, as it is not a cognizable claim under the Uniform Post-Conviction Procedure Act.

IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction

or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the applicant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The applicant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance

of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance 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." *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 691; *See also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the

sentence or conviction ‘resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable’ ”) (quoting *Strickland*, 466 U.S. at 687). Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the [applicant] makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the [applicant] as a result of the alleged deficiencies.” *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

“Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary.” *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014) (citing *Strickland*, 466 U.S. at 691). Specifically, a criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). However, counsel’s decision not to undertake a particular investigation should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. *Bagwell*,

410 S.C. at 265, 763 S.E.2d at 633. “Counsel’s conversations with the defendant may be critical to a proper assessment of counsel’s investigation decisions.” *Id.* at 265, 763 S.E.2d at 634 (citation omitted).

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75–56, 659 S.E.2d 140, 145–46 (2008) (citation omitted), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995).

Applicant alleges trial counsel was ineffective for failing to failing to argue hearsay rules, and failure to file motions which would have resulted in dismissal. However, Applicant wholly fails to set forth facts and circumstances on which this allegation is based, including what Counsel failed to research, on what basis Counsel should have raised hearsay issues, and which motions she contends would have resulted in dismissal of her case. Applicant’s claim that counsel failed to conduct adequate research is similarly vague—Applicant fails to specify the issues Counsel should have researched nor has she provided any evidence that further research on the part of Counsel would have resulted in a different outcome.

Accordingly, it is impossible for the State to reply with specificity and requests that Applicant, through counsel, provide a more definite statement of the allegations on which Applicant intends to proceed forward. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247,

248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court”).

V. MOTION FOR A MORE DEFINITE STATEMENT

The State submits Applicant’s claims of ineffective assistance of counsel are without merit. However, as discussed above, it is impossible to adequately respond to Applicant’s allegations because Applicant has completely failed to provide any specific facts to support such claims. The State requests Applicant, through counsel, provide specific claims and facts to support these vague allegations. *See* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to “specifically set forth the grounds upon which the application is based”); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRPC (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRPC (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”). Thus, the State moves to require Applicant to provide a more definite statement of her allegations of ineffective assistance of counsel pursuant to Rule 12(e), SCRPC.

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last

minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC. *See also* Rules 15(a)-(b), SCRPC. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VII. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[Conclusion and signature on following page]

VIII. CONCLUSION

WHEREFORE, having made its return, the State respectfully requests this Court grant its partial motion to dismiss as set forth in section III and grant its motion for a more definite statement as set forth in section V. The State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

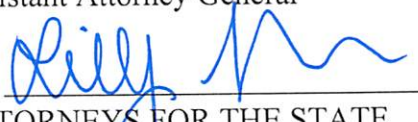
Respectfully submitted,

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By: 

ATTORNEYS FOR THE STATE
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August 24, 2020

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

MARY PATRICK (340156),
PLAINTIFF,

VS.

STATE OF SOUTH CAROLINA,
DEFENDANT.

IN THE COURT OF
COMMON PLEAS
TENTH JUDICIAL CIRCUIT

DOCKET NO: 2020-CP-04-00904

AMENDED APPLICATION FOR POST
CONVICTION RELIEF

The application is being brought pursuant to South Carolina Code of Laws Sec 17-27-10 et seq. and should be considered along with the original application filed on April 2, 2020.

1. The applicant is presently being held as an inmate with the South Carolina Department of Corrections.
2. On or about April 16, 2018 through April 18, 2018 Applicant was tried in the Greenville County Court of General Session for the following charges:
Trafficking in methamphetamine, 200 to 400 grams.
3. Applicant was found guilty, and sentenced to 25 years in prison.
4. The applicant did file a notice of appeal. This appeal was dismissed by the Court of Appeals on March 11, 2019.
5. The applicant filed the post-conviction relief application in a timely manner.
6. The applicant has filed no action in federal court challenging his convictions.
7. Attorney William G. Yarborough, III represented the applicant on these charges.
8. In this application the applicant seeks an order vacating her sentence and remanding her for a new trial.
9. The applicant is amending her post-conviction relief petition to include the below allegations.
10. The applicant alleges that she was denied effective assistance of counsel on both the above charges and submits the following facts to support her allegation:

- a. Trial counsel failed to introduce legitimate evidence of third-party guilt.
- b. Trial counsel failed to call either Derek Green or Gary Patrick as witnesses at her trial. Applicant alleges that both individuals lived with her at the time of the incident, that the majority of the drugs were found in their part of the house, and that they would have claimed the drugs as their own at the trial.
- c. Trial counsel failed to adequately object to hearsay.
- d. Trial counsel failed to adequately prepare Applicant for her testimony at trial. Specifically trial counsel failed to elicit testimony explaining Applicant's living situation, that she was merely a user, and that her living partners owned the drugs found outside of her living quarters.

Respectfully Submitted,

s/Sarah M. Henry
 SC Bar #77907
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 478-8324/232-9555 (fax)
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 Attorney for Applicant

February 25, 2022

PROOF OF SERVICE

ON THIS DATE, a copy of this document, Amended Application for Post Conviction Relief, was served by email upon counsel for the State of South Carolina at the following address:

S.C. Attorney General's Office
 Rembert C. Dennis Building
 Post Office Box 11549
 Columbia, South Carolina 29211
 Office: 803-734-0964
lillymeadows@scag.gov

s/Sarah M. Henry
 Date: February 25, 2022

1 In the Court of Common Pleas of the
2 State of South Carolina, County of Anderson

3

4 Case No.: 2020CP0400904

5 Mary Nimmons Patrick,

6 Plaintiff(s),

7 vs.

Transcript of Record

8 State of South Carolina,

9 Defendant(s).

10

11

12

13

14 *HEARING HELD IN THE VIRTUAL COURTROOM*

15 March 1, 2022

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20 BEFORE:

21 The Honorable William P. Keesley

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APPEARANCES

REPRESENTING THE STATE:

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REPRESENTING THE APPLICANT:

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OPENING COMMENTS

1 PROCEEDINGS

2 THE COURT: All right. If we have
3 everyone, this is in the matter of Mary N. Patrick. Her
4 inmate number is 340156, versus the State of South
5 Carolina. The case number is 2020CP0400904. It is an
6 Anderson County case. This is a hearing on the merits in
7 a PCR case that was scheduled using the WebEx virtual
8 courtroom platform.

9 The applicant is present with the
10 connection to Leath Correctional Institution. She's
11 represented by Ms. Sarah M. Henry. The State is
12 represented by Mr. Taylor Z. Smith of the Attorney
13 General's Office.

14 Ms. Patrick, can you see and hear me?

15 MS. PATRICK: Yes, sir.

16 THE COURT: Would you raise your right hand
17 please.

18 Thereupon,

19 MARY N. PATRICK

20 was called as a witness, having been first duly sworn by
21 the Court, was examined and testified as follows.

22 THE COURT: Now, first, Ms. Patrick, do you
23 agree to conduct this hearing using a virtual platform and
24 waive your right to be physically present in the
25 courtroom?

OPENING COMMENTS

1 MS. PATRICK: Yes, sir.

2 THE COURT: You understand that your
3 attorney will not be physically present with you?

4 MS. PATRICK: Yes, sir.

5 THE COURT: If you need to speak to her at
6 any time, please let me know. We will set up a private
7 phone connection so you can talk to her. Is that
8 agreeable?

9 MS. PATRICK: Yes, sir.

10 THE COURT: If we have some technical issue
11 that prevents you from seeing or hearing anyone, if you
12 will try to get my attention or tell the corrections
13 officer, we will try to get that remedied. Is that okay?

14 MS. PATRICK: Yes, sir.

15 THE COURT: Ms. Henry, do you agree to do
16 this by WebEx?

17 MS. HENRY: Yes, sir, I do.

18 THE COURT: Mr. Smith, do you?

19 MR. SMITH: Yes, I do, Your Honor.

20 THE COURT: All right. Are there any
21 preliminary matters that I need to address, modifications
22 to the petition, opening statements, anything of that
23 nature?

24 MS. HENRY: Your Honor, I filed a modified
25 or an amended application for post-conviction relief on

OPENING COMMENTS

1 February 25th, and I sent it to the Attorney General's
2 Office. I just wanted to make sure that you had a copy of
3 that.

4 Taylor, do you know if he does?

5 THE COURT: I saw it.

6 MS. HENRY: You did?

7 THE COURT: Yes.

8 MS. HENRY: All right. Your Honor, I don't
9 know if you want me to outline those before we start, or
10 if you want me to just go ahead and call Ms. Patrick?

11 THE COURT: I am going to leave it up to
12 you. If you want to make a brief opening or if we need to
13 put that on the record, go ahead.

14 MS. HENRY: Your Honor, in my amended
15 application for Ms. Patrick, we made I guess four separate
16 allegations. I do -- the third allegation, trial counsel
17 failed to adequately object to hearsay. After reviewing
18 the transcript, I think that we may have to withdraw that
19 allegation. The hearsay that I discussed with Ms.
20 Patrick, or the issues that I discussed with Ms. Patrick,
21 and, again, Ms. Patrick is aware of this. The things that
22 she had issues with were from the Jackson v. Denno
23 hearing, which is a non-issue, and/or were during the
24 solicitor's closing statements. So we are withdrawing the
25 allegation that Mr. Yarborough failed to object to hearsay

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 during this trial.

2 So we are just going forward on allegations
3 in A, B, and D under number ten on the amended
4 application.

5 THE COURT: Mr. Attorney General, do you
6 have anything that you need to respond to that?

7 MR. SMITH: No, Your Honor.

8 THE COURT: Are you prepared to meet those?

9 MR. SMITH: I am, Your Honor. Ms. Henry
10 made us aware of those last week and we are ready.

11 THE COURT: All right. Then, if there's
12 nothing else, Ms. Henry call your first witness.

13 MS. HENRY: Tahnk you, Your Honor. I call
14 my client, Mary N. Patrick.

15 THE COURT: Ms. Patrick, you have already
16 been sworn, answer the questions from your attorney
17 please.

18 Thereupon,

19 MARY N. PATRICK
20 was called as a witness, having been previously first duly
21 sworn by the Court, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. HENRY

24 Q. Ms. Patrick, can you state your full name for
25 the court reporter?

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 A. Mary N. Patrick.

2 Q. Okay. And, Ms. Patrick, I am just -- I am just
3 going to jump right in with the questions about the
4 issues, okay?

5 All right. So, Ms. Patrick, you were
6 charged with trafficking in methamphetamine 200 to
7 400 grams; is that right?

8 A. Yes, ma'am.

9 Q. Okay. And you were tried between April 16th,
10 2018, through April 18, 2018?

11 A. Yes, ma'am.

12 Q. Okay. You were convicted by a jury and you were
13 sentenced to 25 years in prison; is that accurate?

14 A. Yes, ma'am.

15 Q. Okay. Was Bill Yarborough your attorney?

16 A. Yes, ma'am.

17 Q. Okay. And you filed this --

18 THE COURT: Okay. Can you speak up a
19 little bit, Ms. Patrick?

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you.

22 BY MS. HENRY

23 Q. Then you filed this post-conviction relief
24 action on April 2nd, 2020; is that right?

25 A. Yes, ma'am.

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 Q. Okay. And as part of your post-conviction
2 relief action, you were asking that this Court vacate your
3 sentence and remand you for a new trial?

4 A. Yes, ma'am.

5 Q. Okay. What you are alleging in this PCR claim
6 is that Mr. Yarborough was ineffective?

7 A. Yes, ma'am.

8 Q. Okay, all right. So I want to talk to you a
9 little bit about the set-up of your house and where the
10 drugs were found.

11 So, Ms. Patrick, as part of the
12 investigation and the evidence presented against
13 you, did the police get a search warrant for where
14 you lived?

15 A. They didn't have one at the time. They got one
16 in November.

17 Q. So, this -- Ms. Patrick, and again, I am going
18 to repeat this because we discussed this. But they came
19 into your house and they searched your house; is that
20 right?

21 A. Yes, ma'am.

22 Q. Okay. And they did find drugs in your house; is
23 that right?

24 A. Yes, ma'am.

25 Q. Okay. Where were you when the police arrived?

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 A. I was in the bathroom using the restroom.

2 Q. Okay. Okay. Was anybody else in the house?

3 A. No, ma'am.

4 Q. All right. Did anybody else live there?

5 A. Yes, ma'am.

6 Q. Okay. Who else lived there at the time?

7 A. My husband, Gary Patrick. And Derrick Green
8 lived there some.

9 Q. Okay. Were they both living there at the time
10 that the police came to your house?

11 A. Yes, ma'am.

12 Q. All right. And were either one -- and so
13 neither one of those people were at the house when the
14 police came?

15 THE COURT: Repeat that. It kind of
16 muffled, Ms. Henry.

17 MS. HENRY: Cut out. Okay.

18 BY MS. HENRY

19 Q. And so neither one of those people were at the
20 house when the police arrived?

21 A. No, ma'am.

22 Q. Okay. So can you walk us through -- let me skip
23 that. Give me one second. The police, when they searched
24 your home, found drugs in multiple areas of your home; is
25 that correct?

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 A. Yes.

2 Q. Okay. And where were you when the police
3 arrived?

4 A. Where was I when they arrived?

5 Q. Yes. Where were you?

6 A. I was in the restroom.

7 Q. Okay. And can you describe to the Court how
8 your house was split up? Where did you live? Where did
9 your husband Gary Patrick live? And where did Derrick
10 Green live?

11 A. When you come in the front door, there is two
12 bedrooms on the left, that is where they lived. And on
13 the right was my bedroom. And I had a bathroom at the end
14 of my -- I was in my bathroom.

15 Q. Can you explain to the Court or describe to the
16 Court where they found the drugs?

17 A. They found them in a closet in the first bedroom
18 on the left.

19 Q. And whose bedroom is that?

20 A. That was Derrick's.

21 Q. Okay.

22 A. Mr. Green. And they found some in a pair of
23 shorts in my bathroom.

24 Q. Okay. Are those the only two places they found
25 drugs?

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 A. Yeah.

2 Q. Okay. Do you remember the amount of the drugs
3 that they said they found in your area of the house?

4 A. I think that it was like 18 grams.

5 Q. Okay. Do you remember the amount that was found
6 in the area where Derrick Green lived?

7 A. I think that it was like 200 grams. 200 -- I
8 don't -- the rest of the amount that they said that they
9 found.

10 Q. So, the bulk of the drugs was found in a closet
11 that Derrick Green was using?

12 A. Yes, ma'am.

13 Q. Okay. And do you remember how the drugs were
14 secured in the closet?

15 A. I don't. I didn't go in there.

16 Q. All right. And you don't remember that from the
17 testimony at your trial, what the police -- how the police
18 described them as being secured?

19 A. Un --

20 Q. It is okay if you don't.

21 A. I don't.

22 Q. All right. They also found -- did they find any
23 paraphernalia in your house?

24 A. Yes, they found a pipe.

25 Q. Would you just tell us where they found that?

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 A. In my bathroom.

2 Q. Okay. Any other paraphernalia?

3 A. I think they found some scales. I don't -- is
4 that paraphernalia?

5 Q. Okay. Were the scales found in a common area or
6 somewhere else?

7 A. In the kitchen. I think --

8 Q. Okay. Who all had access to the kitchen? I am
9 sorry, go ahead, Ms. Patrick.

10 A. I think that it was the kitchen.

11 Q. Okay. And did everybody have access to the
12 kitchen?

13 A. Yes, ma'am.

14 Q. Okay. Did they find any scales in your bedroom?

15 A. I think they found a small pair in there.

16 Q. Okay. And then the drugs that they found in
17 your bedroom, the drugs that they found in your area of
18 the house, can you be specific, where were they found?

19 A. It was found in a pair of shorts on the bathroom
20 floor.

21 Q. All right. Ms. Patrick, did you give any kind
22 of written statement to the police?

23 A. No. A written statement?

24 Q. A written statement. Did you sign any kind of
25 statement?

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 A. I don't think so.

2 Q. Okay. Did you give a verbal statement?

3 A. When they was questioning me, yeah, I give them
4 -- I answered their questions.

5 Q. Okay. Was your -- do you know if your statement
6 was recorded?

7 A. No, I don't think so.

8 Q. In that statement, what did you tell the police
9 about whose drugs they were?

10 A. At the time I was naked and I -- I told them
11 what -- they wouldn't quit asking me over and over, and I
12 told them they were mine so I could get my clothes on.
13 They wouldn't let me put my clothes on until I got done
14 answering their questions, and so I -- I just said they
15 were mine.

16 Q. Okay. And then you knew that during your -- so
17 you know that at the trial you had a Jackson v. Denno,
18 which is a hearing to determine the voluntariness of any
19 statements that you had given; right?

20 A. I had what?

21 Q. You were present for the hearing?

22 A. Yeah, I was in court.

23 Q. Okay. Where your attorney and the solicitor
24 questioned the police about how they -- how they got the
25 statement from you?

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 A. Yeah.

2 Q. Okay. During that hearing, do you remember the
3 police testifying that they had given you -- that you were
4 in a T-shirt and underwear?

5 A. I do remember them saying that, but I wasn't.

6 Q. Okay. So that wasn't true?

7 A. No.

8 Q. Okay. Do you remember the police saying that
9 they -- that they had immediately given you a blanket to
10 cover up?

11 A. I thought that they said that they give me a
12 little towel, which that is what they did, they give me a
13 little -- a towel. They didn't do it immediately. The
14 man come out of my bathroom and he had a little bag of
15 stuff and he then threw a towel at me, a dry towel.

16 Q. How long did that -- how long were you -- how
17 long were you naked while they were questioning you at
18 your house?

19 A. I don't know. I mean, it was over an hour. It
20 was a good while.

21 Q. Okay. Were there any female officers present?

22 A. No, sir. No, ma'am.

23 Q. Okay. And then did -- during the Jackson v.
24 Denno, or at any other time, did the State introduce or
25 were you aware of any video or body cams that contradicted

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 your version of events?

2 A. I don't think that they had any cameras on 'em.

3 Q. Okay. All right. And then, did you tell any of
4 this to Mr. Yarborough?

5 A. I did.

6 Q. All right. So, Ms. Patrick, did you meet with
7 Mr. Yarborough prior to trial?

8 A. Before my trial?

9 Q. Uh-huh.

10 A. Yes, I did.

11 Q. Okay. What did you guys discuss as defensive
12 strategy; what did you talk about?

13 A. (no verbal response.)

14 Q. Did you hear me, Ms. Patrick?

15 A. Yeah. We just talked about what happened. You
16 know, I told him what happened and I --

17 Q. And did you explain to Mr. Yarborough what you
18 just told us, that not all of the drugs were yours?

19 A. No, I told them that they weren't mine.

20 Q. Okay. What did you tell Mr. Yarborough about
21 the drugs?

22 A. I told him they weren't mine. They weren't
23 mine, that other people lived in my house. And so I
24 didn't -- well, Derrick went in there with me and told Mr.
25 Yarborough that they were his, but then he didn't show up

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 for Court and I couldn't -- you know, like he said he was
2 going to do.

3 Q. So did you -- Ms. Patrick, when you talked to
4 Mr. Yarborough, did you tell him that the large amount of
5 drugs found in the bedroom were not yours?

6 A. Yes. Yes.

7 Q. Okay. Did you tell him whose they belonged to,
8 whose they were?

9 A. Yeah.

10 Q. Okay. Who did you say they belonged to?

11 A. Derrick Green.

12 Q. Okay. Did you tell him that they also belonged
13 to your husband?

14 A. I told him that they were smoking in the living
15 room that night with the drugs, and when I told them to
16 get up and get them out of my house.

17 Q. All right. What did you tell Mr. Yarborough
18 about the drugs that were found in your shorts?

19 A. What did I tell him?

20 Q. Yeah.

21 A. I told him that they weren't mine, it wasn't
22 mine.

23 Q. You told him they weren't yours?

24 A. Yes.

25 Q. Okay. So when we talked about this before, it

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 was my understanding that those drugs -- that you said
2 that those drugs were yours but that you did not have the
3 larger amount of drugs; tell us what is correct? Like
4 what did you tell Mr. Yarborough?

5 A. The little drugs I got off of the table that
6 morning when I got up and I stuck them in my pocket. The
7 drugs that was in the bathroom --

8 Q. Yes.

9 A. -- in the short's pocket, I got. I put it in my
10 pocket when I got up. They was on the kitchen table and
11 nobody was in the house; they were gone. And I went to
12 get in the shower, and that is why the shorts was in the
13 floor.

14 Q. Okay. After you talked to Mr. Yarborough about
15 the placement of the drugs, especially the larger amount
16 of drugs --

17 A. Yes.

18 Q. -- did he interview Gary Patrick, your husband?

19 A. Gary went in there with me one time to talk to
20 Mr. Yarborough, but they didn't really -- I really can't
21 remember what they said to each other. Gary was trying to
22 tell him stuff that happened, and Gary wasn't even there
23 at that time, you know. Gary went with me to visit Mr.
24 Yarborough. And so Derrick went with me to visit him too.

25 Q. Did Mr. Yarborough interview Derrick Green about

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 the drugs and whether the drugs were his?

2 A. Yeah, he went in there with me and he told Mr.
3 Yarborough they was his. And he asked him what would they
4 do if he went to court that day, what would they do to him
5 if he went in there, you know, and told them the truth,
6 and Mr. Yarborough said he better have a good lawyer when
7 he comes in there.

8 Q. So you were present for Mr. Yarborough's
9 interview with Derrick Green?

10 A. Uh-huh. (Indicating affirmatively.)

11 Q. Okay. And Derrick Green told Mr. Yar -- did
12 Derrick Green tell Mr. Yarborough that those drugs in the
13 closet were his?

14 A. Yeah.

15 Q. He did. Did -- Mr. Yarborough also spoke with
16 your husband, Gary Patrick, at one point; is that right?

17 A. Yes. Gary went in there with me and, you know,
18 they talked. We was altogether. It was more me and Mr.
19 Yarborough talking. And some other friends of mine went
20 in there.

21 Q. Did Gary Patrick ever accept responsibility for
22 the drugs?

23 A. No, he didn't.

24 Q. Okay.

25 A. He didn't.

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 Q. Okay.

2 A. Gary was sick and I was not going to call out
3 his name like that. He died -- he died like two weeks
4 after I came in here, but . . .

5 Q. So did you or did you not tell Mr. Yarborough
6 that Gary Patrick potentially -- that the drugs were Gary
7 Patrick's and Derrick Green's?

8 A. Yes, I did. I told him they were both of
9 them's, but . . .

10 Q. Okay. And you are saying that Mr. Yarborough
11 did or did not interview Gary Patrick about the drugs?

12 A. I don't know that he questioned him, but Gary
13 was in there with me.

14 Q. Do you know if Mr. Yarborough ever got
15 statements about the drugs from either Gary Patrick or
16 Derrick Green?

17 A. I don't know if he got written statements or
18 not. I really don't know.

19 Q. Okay. Was -- do you know whether he subpoenaed
20 Derrick Green?

21 A. No, he didn't.

22 Q. Okay. Do you know if he subpoenaed Gary
23 Patrick?

24 A. No. Gary was in the hospital my first day of
25 Court and they asked where he was because they was saying

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 nobody else didn't live in the house. And he was in the
2 hospital that day. Then after that they didn't ever asked
3 for him again. But he come in to court the following days
4 after he got out of the hospital, but they never asked for
5 him again.

6 Q. So Gary Patrick, your husband, was present the
7 last two days of your trial?

8 A. Yes, ma'am.

9 Q. Okay. And then did Mr. Yarborough talk to him
10 at the trial, or call him as a witness?

11 A. No.

12 Q. And do you believe that if he had been called
13 that he would have testified truthfully that the drugs
14 were his?

15 A. Yeah, he probably would've.

16 Q. Okay. Was Derrick Green subpoenaed to your
17 trial?

18 A. Nope.

19 Q. Okay. Was he present at your trial?

20 A. Nope.

21 Q. Do you think that if he had been subpoenaed and
22 been forced to testify, that he would have testified
23 truthfully that the drugs were his?

24 A. After Mr. Yarborough told him he better have a
25 good lawyer I think it really scared him. I don't know

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 what he would have said if he would, you know.

2 Q. Okay. And where is Mr. Patrick now?

3 A. He died.

4 Q. Okay. And do you know where Mr. Green is? Have
5 you been able to locate him?

6 A. No, I haven't. I --

7 Q. Okay. Do you feel that if I -- that if Mr.
8 Green would have testified that the drugs were his, or
9 that if he had been subpoenaed and testified truthfully
10 about the drugs, about his possession of the drugs, do you
11 feel like that would have changed the outcome of your
12 trial?

13 A. I do.

14 Q. Okay. Do you feel that if Mr. Patrick had been
15 subpoenaed and then testified at your trial, do you
16 believe that that would have changed the outcome or the
17 verdict at your trial?

18 A. Yes, ma'am, I do.

19 Q. Okay. You testified, Ms. Patrick, at your
20 hearing, at your trial?

21 A. Yes. Yes, I did.

22 Q. All right. And you testified earlier at this
23 hearing that you did tell Mr. Yarborough that Derrick
24 Green and Gary Patrick were living at your house and that
25 it was their drugs?

DIRECT EXAMINATION OF MARY N. PATRICK BY MS. HENRY

1 A. Yes.

2 Q. Okay. During your preparation of your testimony
3 with Mr. Yarborough, did you guys discuss whether or not
4 you would testify about the drugs belonging to Derrick
5 Green and Gary Patrick?

6 A. No, we didn't talk about it.

7 Q. Okay. Did Mr. Yarborough elicit testimony from
8 you during your trial that these drugs actually belonged
9 to the other two people that live in your house?

10 A. Now, what was the question?

11 Q. Did when you were testifying, Ms. Patrick, do
12 you remember whether Mr. Yarborough asked you if the drugs
13 were Derrick Green's?

14 A. No, he didn't.

15 Q. Okay. Do you remember if he asked you if the
16 drugs belonged to Gary Patrick?

17 A. No.

18 Q. Okay. When you were trying to figure out what
19 your strategy was going to be for this trial with Mr.
20 Yarborough, did you discuss third-party guilt? Did you
21 discuss whether or not you were going to specifically
22 claim that the drugs were -- that these drugs belonged to
23 specific other people like Derrick Green or Gary Patrick?

24 A. No, we didn't.

25 Q. All right. Ms. Patrick, is there anything else

CROSS EXAMINATION OF MARY N. PATRICK BY MR. SMITH

1 that you want to tell the Court about this?

2 A. No, ma'am.

3 MS. HENRY: Okay. I don't have any other
4 questions.

5 THE WITNESS: Thanks.

6 THE COURT: Mr. Smith, do you have any
7 questions of the witness?

8 MR. SMITH: I do, Your Honor. Thank you.

9 CROSS EXAMINATION

10 BY MR. SMITH

11 Q. Ms. Patrick, you testified a minute ago that
12 when officers were in your house, that they did not have a
13 search warrant; but that is not true, is it? They did
14 have a search warrant?

15 A. Well, they produced one in November. They said
16 they had a verbal -- they said verbal search warrant is
17 what they said. They produced one in November that did
18 have the right dates on it. But at the time they come in
19 they didn't have one. They didn't produce it anyways. I
20 wasn't --

21 Q. And the methamphetamine that was found in your
22 pants' pocket, it was also in a drug baggy, right?

23 A. In a little plastic bag, yes.

24 Q. Right, okay. So you testified today that a
25 minute ago that the -- you know, you had that meth that

CROSS EXAMINATION OF MARY N. PATRICK BY MR. SMITH

1 you put in your pants' pocket?

2 A. I did.

3 Q. But when you testified at trial, you actually
4 said that you did not know that there was any meth in your
5 house; right?

6 A. I did.

7 Q. Okay.

8 A. When they found all of that stuff, I didn't want
9 to get blamed for all of that stuff so I didn't claim
10 anything because it really wasn't mine. I picked it up
11 off of my kitchen table. I was scared, and I was naked.
12 And I was . . .

13 Q. So you testified at trial, too, that you did not
14 know that there was methamphetamine in your pants' pocket;
15 right?

16 A. I did.

17 Q. Okay. And that contradicts your testimony from
18 a minute ago when you testified that you had put the meth
19 in there, right?

20 A. It does, yes, sir.

21 Q. And the last thing you said at trial, when you
22 were testifying under oath, was that you had told
23 everything that day that you knew about the drugs; right?

24 A. I guess I did.

25 MR. SMITH: Okay. No more questions.

CROSS EXAMINATION OF MARY N. PATRICK BY MR. SMITH

1 Thank you.

2 THE COURT: Do you have any redirect, Ms.

3 Henry?

4 MS. HENRY: No, Your Honor.

5 THE COURT: All right. Do you have any
6 other witnesses for the applicant?

7 MS. HENRY: No, Your Honor.

8 THE COURT: Mr. Smith, do you have evidence
9 to present, produce?

10 MR. SMITH: Your Honor, I would call Mr.
11 William Yarborough as a witness.

12 THE COURT: Raise your right hand, please.
13 Thereupon,

14 WILLIAM YARBOROUGH
15 was called as a witness, having been first duly sworn by
16 the Court, was examined and testified as follows:

17 THE COURT: State your full name.

18 THE WITNESS: William Glenn Yarborough,
19 III.

20 THE COURT: I lost you there.

21 THE WITNESS: William Glenn Yarborough,
22 III.

23 THE COURT: Okay. I am going to ask you to
24 do something for me. Keep your --

25 THE WITNESS: Yes, sir.

DIRECT EXAMINATION OF WILLIAM YARBOROUGH BY MR. SMITH

1 THE COURT: Keep your hands away from your
2 face because I think that that cuts down on your volume a
3 little bit. And try to speak as loud as you can.

4 THE WITNESS: I will yell.

5 THE COURT: Thank you. Mr. Smith.

6 DIRECT EXAMINATION

7 BY MR. SMITH

8 Q. Mr. Yarborough, when were you admitted to
9 practice law in South Carolina?

10 A. Originally in 1985. I didn't practice for a
11 while and I was re-admitted in, I don't know, 2000 and --

12 THE COURT: Mr. Yarborough.

13 THE WITNESS: Sorry, can you hear me?

14 THE COURT: When you look away from
15 wherever -- hold on a sec. When you look away from the
16 microphone we can't hear you.

17 THE WITNESS: Okay. Can you hear me now?

18 THE COURT: I can hear you fine as long as
19 you are facing that way, but when you start looking off to
20 your left I can't hear you. Okay? So will you start that
21 answer over about when you started practicing law?

22 A. Yes, sir. I practiced law for about 15 or 20
23 years. Started in 1986. And then I didn't practice for
24 about 13 or 14 years. And then I was back in practice
25 about nine or ten years ago.

DIRECT EXAMINATION OF WILLIAM YARBOROUGH BY MR. SMITH

1 Q. Mr. Yarborough, what portion of your legal work
2 has been devoted to the field of criminal law?

3 A. 99.5 percent.

4 Q. How did you come to be involved in Ms. Patrick's
5 trafficking case?

6 A. She called me and was telling me she was having
7 an awfully hard time dealing with the solicitor's office
8 in Anderson, and we met and struck up a relationship and I
9 represented her for a good period of time.

10 Q. Okay. So obviously your defense at trial was
11 that the drugs weren't hers, they were someone else's;
12 right?

13 A. That was the only defense that we had. It was
14 -- it was a tough case.

15 Q. Okay. Can you tell me why that was the only
16 defense?

17 A. Because she was present at the scene. It was
18 her house, you know. I think that she had given a partial
19 statement. There was drugs found in some clothes of hers.
20 You know, they had been tracking her for a good period of
21 time. There were some other charges out there as well.
22 It was just -- it was a hard case. I think about Ms.
23 Patrick all of the time.

24 Q. Okay. And she -- she told the officers there
25 that the drugs were hers, right?

DIRECT EXAMINATION OF WILLIAM YARBOROUGH BY MR. SMITH

1 A. She did. She did.

2 Q. Okay. And would you agree with me that the
3 officers had a search warrant for her house?

4 A. You know, I'm not sure about the specific --
5 what was happening when the original search took place,
6 but they had -- we looked at that and they did have a
7 search warrant. She was convinced they didn't, but . . .

8 Q. Okay. When you were preparing for trial, did
9 you talk with Ms. Patrick about whose drugs -- to whom the
10 drugs belonged?

11 A. No, I did. And I heard her testify a minute
12 ago. And at times she would bring people over to the
13 office that she would say were going to take
14 responsibility for those drugs. And, you know, they
15 didn't. It wasn't exactly the way she thought it was, let
16 me say that.

17 Q. What do you mean by that?

18 A. Well, they didn't want to have a -- you know, it
19 was like she brought, I think it was Green, in looking
20 back on it, his name was Derrick Green. He, he came over
21 you know and I said, Look, you don't have to talk to me.
22 But he talked to me a little bit and he asked me -- I
23 think he asked me what would happen. I said, You better
24 get a lawyer if that's what you are going to do. I said,
25 I want to make sure that we do whatever we can for her.

DIRECT EXAMINATION OF WILLIAM YARBOROUGH BY MR. SMITH

1 And, you know, they were not -- nobody was going to come
2 over there and take responsibility for those drugs, okay.
3 I know that is what she wanted. And I'm not saying that
4 all of those drugs were hers, because I don't -- I never
5 knew exactly what the real truth was because I heard a lot
6 of different stories. But Ms. Patrick spent a lot of time
7 trying to (inaudible). The biggest reason for that was
8 because Chelsea Ward, the solicitor, would not offer us a
9 darn thing. I mean, any sentence that Patrick was offered
10 was probably going to be something that she felt like she
11 wouldn't be able to get out of jail in a reasonable amount
12 of time. And I don't blame her.

13 Q. Well, you said that you weren't really sure
14 because you heard a lot of different stories; what do you
15 mean by that?

16 A. Well, during my --

17 Q. I am sorry, I am having trouble hearing you. Is
18 there any way you can tilt your computer towards you more?
19 I don't know if that is -- it fades out every now and
20 then.

21 A. How is that? Is that better?

22 Q. That is better.

23 A. Okay. During my, the course of my
24 representation, at times Ms. Patrick would call me later
25 in the afternoon and say, We are coming over to see you.

DIRECT EXAMINATION OF WILLIAM YARBOROUGH BY MR. SMITH

1 And she would bring different individuals with her that
2 might know something about the case, just like she
3 testified to. But it never would be exactly what she
4 hoped for.

5 Q. Okay. Did you have high hopes that you would
6 put someone else on the stand that would admit to
7 possessing enough drugs to get 25 years in prison as a
8 mandatory minimum?

9 A. I didn't think anybody was going to come in to
10 court and say they were going to take responsibility for
11 all of those drugs.

12 Q. Right. That is a lot of time, right?

13 A. That is a lot of time and it is a lot of drugs.

14 Q. Right. Okay. But still, when you -- when you
15 were at trial, you questioned officers about the home and
16 you focused a lot on whether there was men's clothing in
17 the house, didn't you?

18 A. That is correct. We were trying to look at some
19 kind of argument for third-party guilty.

20 Q. Okay. And, you know, when at trial, when you
21 would ask the officers about whether they had done DNA or
22 testing or checked for fingerprints on the containers for
23 the drugs, did that go back to the third-party guilty?

24 A. Yep, that did. I was looking for -- I was
25 grasping at straws, anything that I could find.

DIRECT EXAMINATION OF WILLIAM YARBOROUGH BY MR. SMITH

1 Q. Okay. And at trial Ms. Patrick didn't say that
2 some of the drugs were hers and some wasn't; didn't she
3 deny knowing anything about the drugs altogether?

4 A. That's correct.

5 Q. Okay. And would you agree with me that at trial
6 Ms. Patrick explicitly said that the drugs had belonged to
7 her husband?

8 A. Yeah. Yeah. I don't know that she said all of
9 the drugs belonged to her husband, but I think that she
10 said -- that's correct, yes.

11 Q. Okay. I know there's some back and forth in the
12 transcript about whether you were going to call her
13 husband as a witness. Can you remember what happened with
14 that?

15 A. I don't remember exactly what happened with
16 that, but I'm a hundred percent sure that her husband was
17 not going to take responsibility for those drugs. He was
18 shocked after the trial and when she got as much time as
19 she did. I kept explaining to both Ms. Patrick and her
20 husband that she was in a bad pickle. They didn't listen.

21 Q. When you talked with Derrick Green in your
22 office, did he say, "Those were my drugs"?

23 A. No. He didn't say those were his drugs. I
24 think that he had admitted to -- I think that he would
25 have said that he made a purchase of drugs from there.

DIRECT EXAMINATION OF WILLIAM YARBOROUGH BY MR. SMITH

1 Q. Okay. And you asked Ms. Patrick when you
2 questioned her at trial about the layout of the home, for
3 example, maybe the closet that the drugs were in was not a
4 closet that she used?

5 A. Yes. I don't think that that was her closet.
6 That is what was -- you know, that was my defense, that
7 she didn't know they were there and that that was a man's
8 closet. You know, that works on everything except for the
9 drugs that were found in female's clothes.

10 Q. So ultimately why did you decide not to call Mr.
11 Green as a witness at trial?

12 A. Because I thought that he would have hurt our
13 case.

14 Q. Okay. How so?

15 A. Because I don't think that he was going to say
16 anything that was going to help Ms. Patrick. I'd have
17 called him if I thought that. I mean, you know, I would
18 have done whatever we could. And he wasn't -- he was not
19 very cooperative when we got down to the end.

20 Q. Did you talk with Ms. Patrick before she
21 testified about what sorts of things she could expect to
22 be asked about if she were to take the stand?

23 A. I did.

24 Q. Okay. What sorts of things, you know, did you
25 go over with her when talking about whether she should

DIRECT EXAMINATION OF WILLIAM YARBOROUGH BY MR. SMITH

1 testify?

2 A. I told them that -- I told her that Chelsea was
3 -- Chelsea, I think it was Moore, the prosecutor, was
4 pretty high-strung about this case, and that she was going
5 to go after her pretty good and she needed to be careful
6 about telling the truth. The normal things I tell my
7 clients. I also talked to her about, you know, she didn't
8 have to -- she didn't have to testify. That would have
9 given us another argument. Anyway, I prepared her the
10 best I could. There's no question that Ms. Patrick and I
11 spent a lot of time together.

12 Q. Okay.

13 A. And most of -- and half of that was going over
14 trial strategy and half of it was me begging her to work
15 out some kind of deal with them.

16 Q. Okay. Did you explain to her that you were
17 going to go with this third-party -- third-party guilt?

18 A. I did.

19 Q. Okay.

20 A. You know, I can't swear to you that I used those
21 exact, exact terms, but she understood what we were doing.
22 I mean, she was helpful. Yeah, she was right there. She
23 was in her defense with me. She was -- it wasn't like she
24 wasn't part of it.

25 Q. So even if you didn't use that term, the gist of

CROSS EXAMINATION OF WILLIAM YARBOROUGH BY MS. HENRY

1 it would have been that it was -- you were going to argue
2 that it was someone else's drugs?

3 A. Correct.

4 Q. Okay. And this was hashed out at trial. You
5 questioned the officers in the Jackson v. Denno hearing
6 about what, what they -- when they allowed Ms. Patrick to
7 put on some clothing; right?

8 A. Yeah, I remember something about that, but not a
9 hundred percent. I'm sure I did.

10 Q. Okay.

11 A. I remember her telling me that she was partially
12 unclothed when they got there.

13 Q. Okay.

14 MR. SMITH: Those are all of the questions
15 that I have. Thank you.

16 THE COURT: Ms. Henry.

17 MS. HENRY: Thank you, Your Honor. I'll be
18 brief.

19 CROSS EXAMINATION

20 BY MS. HENRY

21 Q. All right. Mr. Yarborough, so you testified
22 that your strategy at trial was that the drugs belonged to
23 somebody else?

24 A. Correct.

25 Q. Okay. So, we have got the third-party guilt

CROSS EXAMINATION OF WILLIAM YARBOROUGH BY MS. HENRY

1 situation. Did you put up any evidence to support that
2 there were other people -- well, last first, did you put
3 up any evidence that supported the third-party guilt
4 strategy?

5 A. I think I, I just did through cross-examination.
6 I'm not -- I don't recall putting up anything besides
7 that.

8 Q. Okay. Did you call any witnesses or put up any
9 evidence that supported that anybody else lived in the
10 house?

11 A. I think I just cross-examined the officers. If
12 I remember correctly, I just cross-examined the officers
13 about men's clothing and stuff like that. I believe that
14 is correct. I don't think I put any other witnesses on
15 the stand.

16 Q. Okay.

17 A. If she had -- yeah, I just -- I don't recall
18 that.

19 Q. Okay. Did you subpoena anyone to testify that
20 they lived in the house?

21 A. I did not.

22 Q. Okay. So, you had talked to Derrick Green?

23 A. Right.

24 Q. Okay. And I -- I understand that your testimony
25 is that you did not believe that he was going to testify

CROSS EXAMINATION OF WILLIAM YARBOROUGH BY MS. HENRY

1 that the drugs were his?

2 A. Correct.

3 Q. Okay. Was he somebody that your client told you
4 lived in the house with her?

5 A. Yeah. She -- I'm pretty sure she said that he
6 lived in and out of the house with her, yes.

7 Q. Okay. Did you do any kind of background check
8 or like criminal record, criminal history on Mr. Green?

9 A. I don't recall doing that, so I -- I am going to
10 say no.

11 Q. Okay. Did you --

12 A. I did go out to the property a couple of times.
13 I mean, I tried to figure it out.

14 Q. Okay. And that is great, I definitely want to
15 ask you about that. Did you, when you were talking -- did
16 you consider calling -- I understand that you didn't want
17 to call them to claim the drugs, did you consider calling
18 Mr. Green to verify that he was living in the house prior
19 to the search warrant being executed?

20 A. You know, hindsight is 20/20. That was probably
21 a good idea, but I don't think that I thought about it at
22 the time. I just -- I didn't think that it was going to
23 be a real issue, but evidently it was more of an issue
24 than I thought, yes.

25 Q. I will ask you the same question about Gary

CROSS EXAMINATION OF WILLIAM YARBOROUGH BY MS. HENRY

1 Patrick. Did you consider calling Mr. Patrick? Not
2 necessarily to fully claim the drugs, but to confirm that
3 he was living in the house and living in those rooms?

4 A. Again, I'll agree with you, that hindsight is
5 20/20. I didn't, I didn't think that it was an issue, but
6 now that you say it I don't disagree.

7 Q. Okay. And then -- let's see.

8 A. The only thing that I would say about that is
9 that I was not a hundred percent convinced from talking to
10 those guys exactly what they would say. Their stories
11 changed a lot, so -- if I could have limited it to just
12 what you are saying I would have done that.

13 Q. Did you -- and I know that you said that you
14 went out to the property?

15 A. Yes.

16 Q. And that you were attempting to get this
17 information in through cross. I know that you met some
18 resistance from the officers. Did you -- did you attempt
19 to find any other witnesses or hire an investigator to
20 corroborate that people were living in the house prior to
21 the search warrant, or even after the search warrant?

22 A. I did not. I think that is a fair statement.

23 Q. And I know that you cross-examined the police
24 officers. Did you specifically ask them if they
25 investigated Derrick Green as potentially being the person

CROSS EXAMINATION OF WILLIAM YARBOROUGH BY MS. HENRY

1 that lived in the house, lived in those rooms, and/or was
2 the owner of those drugs?

3 A. I don't. Without going back and looking at the
4 update, I think that the answer must be no. So I don't
5 think that I did. I must not have.

6 Q. All right. And I'll ask you the same question
7 about Gary Patrick. Did you speak with the officers about
8 their investigation into Mr. Patrick as being a possible
9 suspect?

10 A. No, I did not. I agree with you, probably that
11 was quite a mistake.

12 Q. Okay. And then when you discussed the
13 third-party guilt strategy, did you talk -- what was your
14 discussion with Ms. Patrick about the drugs in the shorts
15 and how that fit into the third-party guilt strategy?

16 A. You know, it was hard. I didn't have any -- I
17 didn't have anywhere else to go. She -- she was a wreck
18 and a mess and it was just, you know, and she just didn't
19 believe for a minute she would get this much time and I --
20 we talked a lot, it's just things got lost in translation.
21 I did the best I could communicating with her. But, you
22 know. And I explained to her about third-party guilt the
23 best I could at that time.

24 Q. Okay. All right. Mr. Yarborough, I don't know
25 if you have anything else that you want to testify to,

REDIRECT EXAMINATION OF WILLIAM YARBOROUGH BY MR. SMITH

1 anything that you feel like would help the Court with this
2 case, anything that you noticed that you feel like you
3 could have done better in this case or that would have
4 affected the outcome?

5 A. You know, I don't, I don't recall anything
6 specific. It's one of those cases when I'm not sure that
7 I have got any women in the South Carolina Department of
8 Corrections that got this much time, so I always think
9 about Ms. Patrick. It was a bad situation. I don't know
10 what else I can say.

11 MS. HENRY: All right. I don't have any
12 further questions. Thank you, Mr. Yarborough.

13 THE COURT: Anything else, Mr. Taylor?

14 MR. SMITH: Your Honor, I just have a few
15 questions, if I may.

16 REDIRECT EXAMINATION

17 BY MR. SMITH

18 Q. Mr. Yarborough, if you had called Derrick Green
19 or Gary Patrick as a witness, the solicitor would have had
20 a chance to cross-examine them; right?

21 A. Exactly, right.

22 Q. Okay. And you did ask Ms. Patrick questions and
23 she testified that Derrick Green and Gary Patrick had been
24 living at the house, isn't that --

25 A. That is right.

RE CROSS EXAMINATION OF WILLIAM YARBOROUGH BY MS. HENRY

1 Q. Okay.

2 A. And that was confirmed, you know, with the stuff
3 that was found in the house.

4 Q. Okay. And do you remember Ms. Patrick in her
5 testimony blaming her husband for the drugs?

6 A. I think so, yeah. I'm not sure what page it is
7 on or -- but I do remember that.

8 Q. Okay. And part of your closing argument was
9 because the police officers had not looked at these other
10 people or checked for evidence or fingerprints, that they
11 had done an incomplete investigation; right?

12 A. Right.

13 MR. SMITH: Okay. That is all. Thank you,
14 Your Honor

15 THE COURT: Thank you, Mr. Smith. I
16 apologize for calling you Mr. Taylor.

17 All right. Ms. Henry, do you have anything
18 else?

19 MS. HENRY: I apologize, Your Honor, I was
20 just checking the transcript. I really just have one more
21 question.

22 THE COURT: Sure.

23 RE CROSS EXAMINATION

24 BY MS. HENRY

25 Q. And this is the only question, Mr. Yarborough.

RE CROSS EXAMINATION OF WILLIAM YARBOROUGH BY MS. HENRY

1 Are you sure that she specifically identified Gary Patrick
2 as possessing those drugs during her testimony?

3 A. I'm not a hundred percent sure. That is why
4 when I said that, I said that I would have to go back and
5 do an in-depth study of her testimony. So I'm not a
6 hundred percent sure. That is why I said that.

7 MS. HENRY: All right. I don't have any
8 other questions.

9 THE COURT: Okay. Thank you, Mr.
10 Yarborough.

11 MR. YARBOROUGH: Good to see you, Judge.

12 THE COURT: Good to see you again. All
13 right. Do you have any other witnesses for the State?

14 MR. SMITH: That is the State's case, Your
15 Honor.

16 THE COURT: Ms. Henry, do you have anything
17 in reply?

18 MS. HENRY: No, Your Honor.

19 THE COURT: So that is all of the evidence
20 that we have in the case, Ms. Henry?

21 MS. HENRY: Yes, sir.

22 THE COURT: And Mr. Smith?

23 MR. SMITH: That is right, Your Honor.

24 THE COURT: Either of you wish to make a
25 closing argument?

STATEMENT BY MS. HENRY

1 MS. HENRY: No, Your Honor, I think that
2 you have heard all of the testimony. The only thing that
3 I would say would be that the -- did we lose him? No,
4 there he is. The only thing that I would say, Your Honor,
5 is that it was Ms. Patrick's understanding, clearly, that
6 they were going forward with third-party guilt. And, you
7 know, it is our position that Mister -- that based on Mr.
8 Yarborough's testimony, that he didn't provide any
9 corroborating evidence for her allegations that there were
10 third parties there.

11 It is also my understanding from his
12 testimony that they never specifically named anybody as a
13 specific third party. Given the amount of drugs, the fact
14 that there was no additional investigation into anybody
15 else being in the house and that they didn't provide any
16 actual support that there were even other people living
17 there, that third-party guilt as a strategy was going to
18 be completely ineffective, and was.

19 And that because of the failure to
20 investigate, because of the failure to present actual
21 evidence, that there were two other adult men living at
22 the house in those rooms, that there was no chance that
23 Ms. Patrick was going to be successful with the
24 third-party guilt defense. That would be our position,
25 Your Honor.

STATEMENT BY MR. SMITH

1 THE COURT: Thank you. Mr. Smith, do you
2 have anything else?

3 MR. SMITH: Your Honor, it is a third-party
4 guilt issue. I think the record bears out that that is
5 the defense employed at trial. There was evidence that
6 came in that these two men lived in the house, through Ms.
7 Patrick's testimony. And Mr. Yarborough went into that on
8 cross-examination with the witnesses using photographs of
9 the home taken by the officers during the search. And
10 I -- my reading of the transcript is that Ms. Patrick
11 identified the drugs as belonging to her husband and
12 implied that they also belonged to Mr. Green, and that was
13 my reading of it.

14 MS. HENRY: Your Honor, I don't feel like
15 that was testified to. I feel like Mr. Yarborough
16 testified that he didn't remember that. And I don't think
17 that that is -- I mean, that would just mean that
18 decision. I am sorry to interrupt you, Mr. Smith.

19 THE COURT: Okay. I think he was talking
20 about the transcript. I might have misunderstood. I
21 remember the Judge having some discussion about
22 third-party guilt. All right.

23 MR. SMITH: I'm sorry if I wasn't clear, I
24 was not putting words in Mr. Yarborough's mouth. I was
25 saying that is my understanding of the transcript.

COMMENTS BY THE COURT

1 MS. HENRY: I apologize.

2 MR. SMITH: But I think that Mr. Yarborough
3 has also given a good reason why he did not call either of
4 these people as witnesses at trial. He said that both he
5 and Ms. Patrick agreed that her husband told Mr.
6 Yarborough that the drugs were not his. And Mr.
7 Yarborough disagrees with Ms. Patrick's understanding of
8 what Mr. Green was willing to admit to. And Mr.
9 Yarborough had a good reason to be weary of calling
10 someone as a witness at trial based on changing stories
11 given. And also I think it is a little suspect to think
12 that someone is going to come in under oath and admit to
13 25 years worth of methamphetamines.

14 But I'll also point out that Ms. Patrick
15 has not brought Mr. Green here to testify today. And the
16 other thing is about her testimony just, I think the issue
17 of whether he prepared her to testify, that that is sort
18 of a credibility issue. Ms. Yarborough said that they
19 went over that. And in terms of her testifying about not
20 being dressed during the interview, that was fully fleshed
21 out at trial and Judge McIntosh made factual findings on
22 that. And I think that that -- the record on that should
23 be closed. But that is the State's position, Your Honor.

24 THE COURT: Thank you. If there's nothing
25 else, I'll take this under advisement and I'll notify the

COMMENTS BY THE COURT

1 attorneys of the decision in writing. Ms. Patrick, thank
2 you. The attorneys will be in touch with you, or your
3 attorney will be in touch with you once a decision is
4 made.

5 All right. That concludes the hearing.

6 (Whereupon, the hearing concluded.)

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REPORTER'S CERTIFICATE PAGE

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2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF OCONEE:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the
8 foregoing proceedings and that the transcript is a true
and complete record of my stenographic notes.

8

DATED this 29th day of December, 2022.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 10th Circuit

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(850) 893-6662

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mmanley@scccourts.org

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Mary N. Patrick, #340156,

Case No. 2020-CP-04-00904

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before this Court by way of a *pro se* application for post-conviction relief filed by Mary N. Patrick (“Applicant”) on April 2, 2020. The State’s (“Respondent”) return to the application, which was served on August 24, 2020, included a motion for a more definite statement and a motion to dismiss some of Applicant’s claims. An evidentiary hearing in this matter was held before the undersigned via the WebEx virtual platform on March 1, 2022. Everyone who participated did so remotely. Applicant was present and was represented by Sarah M. Henry. Taylor Zane Smith of the South Carolina Attorney General’s Office represented Respondent. Following a thorough review of the record in its entirety and the evidence presented at the hearing, this Court finds that Applicant has failed to prove that she is entitled to post-conviction relief, and denies the application with prejudice.

PROCEDURAL HISTORY

Applicant is presently imprisoned in the South Carolina Department of Corrections. During its October of 2017 term, the Anderson County Grand Jury indicted her for trafficking in methamphetamine, 200 to 400 grams (2017-GS-04-2576). On April 16, 2018, Applicant proceeded to a jury trial with the Honorable R. Lawton McIntosh (“the trial court”) presiding. William G. Yarborough, III (“trial counsel”), represented Applicant at trial. At the conclusion of trial, the jury

found Applicant guilty as indicted. The trial court sentenced Applicant to imprisonment for twenty-five years and ordered her to pay a \$100,000 fine.

Trial counsel filed a timely notice of appeal. Deputy Chief Appellate Defender Wanda H. Carter ("appellate counsel") of the South Carolina Commission on Indigent Defense represented Applicant on appeal. Appellate counsel filed a petition to be relieved as counsel and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), arguing that the trial court erred in denying trial counsel's motion for a directed verdict. The South Carolina Court of Appeals subsequently dismissed the appeal and relieved appellate counsel. *State v. Patrick*, Op. No. 2020-UP-069 (Ct. App. filed March 11, 2020) (per curiam). The remittitur was issued on May 5, 2020.

CURRENT PROCEEDING

In her *pro se* application for post-conviction relief, filed on April 2, 2020, Applicant raised multiple claims, which this Court interprets as follows: (1) trial counsel was constitutionally ineffective for not representing Applicant adequately due to his lack of research; (2) trial counsel was constitutionally ineffective for not objecting to hearsay; (3) trial counsel was constitutionally ineffective for not making "proper" motions before and after trial that would have resulted in a dismissal of the charges; (4) trial counsel was constitutionally ineffective for allowing a "prejudicial" jury to decide Applicant's guilt; (5) trial counsel was constitutionally ineffective for not discrediting the testimony of law enforcement officers who, allegedly illegally, obtained no evidence; (6) the trial court erred in denying trial counsel's motion for a directed verdict; (7) the trial court erred by not ensuring that the jury was impartial; and (8) the trial court erred by not dismissing the charge based upon the alleged illegality of the search and seizure.

At the start of the March 1, 2022, hearing before this Court, Respondent noted for the record that Applicant, through counsel, had served Respondent with an amended application on

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the week prior to the hearing, which included the following claims: (1) trial counsel was constitutionally ineffective for not introducing legitimate evidence of third-party guilt; (2) trial counsel was constitutionally ineffective for not calling as a witness either Derek Green or Gary Patrick; (3) trial counsel was constitutionally ineffective for not adequately objecting to hearsay; and (4) trial counsel was constitutionally ineffective for not adequately preparing Applicant to testify and for failing to elicit certain testimony. Applicant withdrew the third claim raised in the amended application, and stated her intention to move forward only on the first, second, and fourth claims, as Respondent had laid them out. This Court finds that Applicant has abandoned and waived all claims other than these three, and will address only these in this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Anderson County Clerk of Court for Applicant's conviction and sentence; Applicant's records from the Department of Corrections; Applicant direct appeal records, including the notice of appeal, appellate counsel's *Anders* brief, the record on appeal, the Court of Appeals' letter to Applicant informing her that she could file a *pro se Anders* brief, the Court of Appeals' dispositive opinion, and the remittitur; and all filings in this matter. Set forth below are the relevant findings of facts and conclusions of law with regards to the claims that Applicant advanced at the evidentiary hearing, as required by S.C. Code Ann. §17-27-80 (1985).

Applicant's claim that trial counsel was constitutionally ineffective for not introducing legitimate evidence of third-party guilt.

Applicant raises a claim that trial counsel was constitutionally ineffective for not introducing evidence of third-party guilt. Applicant argues that trial counsel knew that Applicant's defense at trial would be that of third-party guilt, but that trial counsel did not introduce any evidence corroborating the fact that there had been third parties living in Applicant's home at the

time of the law enforcement officers' search of it, did not name anyone during the trial as a third party, and did not conduct any additional investigation into the people living in Applicant's home. Applicant argues that it was impossible to prove the defense due to trial counsel's failures.

In his opening statement at Applicant's trial, trial counsel said that the officers arrested Applicant because she was the only person at the home when the officers conducted their search, and questioned the reason that the officers charged only Applicant. Trial Tran. 104. During the prosecution's case-in-chief, trial counsel questioned one of the officers about whether he knew if anyone other than Applicant lived in the home. Trial Tran. 114. The officer answered that no one else had been present when the officers conducted the search because he knew that the officers would have stopped anyone who had tried to leave. Trial Tran. 115. Trial counsel also asked that officer about the number of bedrooms in Applicant's home. Trial Tran. 115. Trial counsel asked a second officer whether he had seen evidence that anyone else was living in the home with Applicant. Trial Tran. 124. A third officer testified that, based upon his surveillance of the home, he had determined that no women other than Applicant lived there. Trial Tran. 131. Trial counsel asked that officer whether he knew if anyone else lived in Applicant's home, and the officer testified that he had not seen any men's clothing in the home. Trial Tran. 131, 138. Trial counsel asked a fourth officer whether he had seen any men's clothing in the home, and used photographs of the interior of the home to do so. Trial Tran. 151. Trial counsel asked that officer whether officers had tested a crack pipe found in the home for fingerprints or DNA, and whether he had seen a guitar in the home. Trial Tran. 153. Trial counsel asked a fifth officer whether he had seen men's clothing and a guitar in the home. Trial Tran. 173. Trial counsel elicited testimony from the prosecution's forensic chemist that the officers could have, but did not, test the drugs' containers for fingerprints and DNA. Trial Tran. 192-93.

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Trial counsel elicited testimony from Applicant that her husband Gary Patrick ("Patrick") had been living with her in the house, that she had falsely claimed possession of methamphetamine ("meth") because she had been trying to protect Patrick, who had been ill, that the closet in which the bulk of the meth had been found was not hers. Trial Tran. 209, 211, 213, 228, 231. Applicant testified that someone named Derrick Green ("Green") had been staying at the house off and on, and that Green had left her house shortly before the officers' search began. Trial Tran. 212. The trial court overruled the solicitor's objection to trial counsel's questions that raised a third-party guilt inference. Trial Tran. 215. Applicant testified that she had heard that Green was a drug dealer. Trial Tran. 227-28. In his closing argument, trial counsel argued that the photographs from the interior of the home showed that there had been men's clothing in there. Trial Tran. 267, 271. Trial counsel argued that the officers had done an incomplete investigation by not testing the meth's wrappings for fingerprints and DNA. Trial Tran. 268. Trial counsel argued that people other than Applicant had been in and out of her house. Trial Tran. 271.

Applicant testified before this Court about the officers' search of her home. She testified that she had been in the bathroom when the officers arrived, and that they found meth in her home. She testified that no one else was in the house at the time, although she said that Patrick and Green had been living there, too. She testified that the officers found the meth in multiple locations throughout the home. She testified that the officers found meth in the closet of Green's bedroom—which was how she described the room in her house—and found some in a pair of shorts that were located on the floor in her bathroom. She testified that the meth found in her "part" of the home weighed eighteen grams, while there were over 200 grams in Green's room. She testified that the officers found drug paraphernalia in her bathroom and scales in the kitchen. She testified that she told the officers at the scene that the meth was hers because she had been naked at the time, and

the officers told her that they would not let her get dressed until she told them to whom the meth belonged. She testified that the officers' testimony that she had been wearing a shirt and underwear during the interview had not been true, and she said that the officers had given her a towel or blanket to use to cover herself up. She testified that she had been naked at the scene for an hour during the questioning, and that none of the officers present had been female.

Applicant testified that she told trial counsel that the meth had not been hers. She testified that Green had claimed ownership of the meth in front of trial counsel, but that Green had not shown up for trial. She testified that she had told trial counsel that Patrick had also been involved with the meth. She denied that the meth found in her shorts had been hers. In explaining the meth's presence in her pocket, she testified that she had picked the meth up off of a table and put it in her pocket before taking a shower. She testified that Patrick had talked to trial counsel once, but she could not remember what the two discussed. She testified that Green asked trial counsel what would happen if Green claimed ownership of the meth at Applicant's trial, and that trial counsel told Green that he needed to have a good lawyer when he gave his testimony. She testified that trial counsel had known that Patrick and Green had had the meth, and that Applicant had not had it. She testified that trial counsel did not issue a subpoena for either Patrick or Green. She testified that Patrick had been in the hospital on the first day of her trial; she said that someone asked about his presence, but did not ask again after the first day. She testified that Patrick had been present on the final two days of trial, but that trial counsel had still not called him as a witness. She believed that Patrick would have truthfully admitted at trial that the meth was his, if he had been called as a witness. She testified that Patrick has since died and that she does not know Green's whereabouts. She thinks her trial would have ended different had Green testified truthfully. She testified that

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trial counsel did not ask her while she was testifying at trial if the meth had belonged to Patrick or Green.

Trial counsel testified before this Court that Applicant's only defense had been third-party guilt. He testified that it was tough to defend Applicant because she had been the only person at the scene when the officers conducted their search, the officers found drugs in Applicant's clothing, and the officers had been tracking Applicant for some time beforehand. He testified that Applicant told the officers that the meth had been hers. He testified that he and Applicant discussed the fact that she had possessed the meth, that she brought two people to meet him whom she said would take responsibility for the drugs, and that neither of the people would take responsibility. He testified that he heard lots of different stories about the meth. He testified that Applicant would bring people to him whom she claimed knew stuff about the case, but that the people had never said the things that Applicant hoped they would. He testified that he did not think that there would be anybody who would go to trial and take responsibility for the meth because the case involved "a lot of time and a lot of drugs."

Trial counsel testified that he questioned the officers at trial about the presence of men's clothing in the home, which he felt was in pursuit of a third-party guilt defense. He testified that his questions about whether the officers tested for deoxyribonucleic acid ("DNA"), he had been grasping at straws to help her defense. He testified that Applicant denied at trial that she had had any knowledge about the meth and claimed that it had been Patrick's. He testified that he was not sure what "happened" with Patrick, but he knew that Patrick would not have taken responsibility for the meth, even though trial counsel told both Applicant and Patrick that Applicant was in a bad spot. He testified that Green had never told trial counsel that the meth was his, although he told trial counsel that he had bought meth from Applicant's house in the past. He testified that he

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questioned Applicant at trial about the layout of the house, and that the meth was found in a closet that was not hers. He testified that he chose not to call Green as a witness because he thought that his testimony would have harmed Applicant's defense and would not have helped. He testified that he would have called Green as a witness if he had thought it would help, but that Green had not been cooperative as trial approached. He testified that he was aware that Green had lived in the house. He testified that Patrick's and Green's stories changed frequently, so he had been unsure what they would say on the witness stand. He testified that he remembered that Applicant blamed Patrick for the drugs.

All defendants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). A post-conviction relief applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of his lawyer "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in *Strickland*. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler v. State*,

286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). “The proper measure of counsel’s performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases.” *Id.* (citations omitted). The “preeminent authority for all” courts when they are considering an applicant’s claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer’s performance because:

[I]t is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. “The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel’s conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen.” *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

Second, the deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for [the lawyer’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. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another. Even if a defendant shows that particular errors of counsel were

unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense.” *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) (quotation omitted).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether a lawyer’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. at 697. Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove that “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. *Id.* at 690.

This Court finds that Applicant has failed to prove that there was any deficiency in trial counsel’s performance with respect to his handling of the third-party guilt defense. “The admissibility of evidence of third-party guilt is governed by *State v. Gregory*, 198 S.C. 98, 16 S.E.532 (1941).” *State v. Cope*, 405 S.C. 317, 341, 748 S.E.2d 194, 206 (2013). “[T]he evidence offered by an accused as to the commission of a crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible.” *Gregory*, 198 S.C. 98, 16 S.E.2d at 534 (quotation omitted). But before

such testimony can be received, there must be proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose. An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty.” *Id.* 198 S.C. 98, 16 S.E.2d at 535 (quotation omitted). “[E]vidence of third-party guilt is appropriately managed by evidentiary rules such as Rule 403, SCRE.” *State v. Brooks*, 428 S.C. 618, 635, 837 S.E.2d 236, 245 (Ct. App. 2019) (citing *Holmes v. South Carolina*, 547 U.S. 319, 327 (2006)).

Based on the evidence admitted at trial, trial counsel did what he could on the issue of third-party guilt. His conduct was objectively reasonable in light of the inability to obtain a consistent, competing version of ownership or control of the drugs by others through witnesses who were realistically available. His own client was inconsistent and evasive regarding ownership and control issues. It is conjecture as to what these other witnesses would say on the witness stand. Applicant’s testimony at trial, and trial counsel’s questions of the prosecution’s witnesses about the presence of items in the home indicating that someone other than Applicant also lived there, was all that he could present, and so he was only able to “cast a bare suspicion upon another, or [] raise a conjectural inference as to the commission of the crime by another” *Gregory*, 198 S.C. 98, 16 S.E.2d at 534.

Trial counsel’s closing argument raised the issue of mere presence and was essentially that Applicant could not be found guilty just because meth had been found in her home. He pointed out that there was evidence that others had been in Applicant’s home, and he offered explanations

for the officers' failure to find the true identity of the person to whom the meth belonged. Applicant has failed to prove that trial counsel could have done more at trial to establish the defense of third-party guilt. In her testimony before this Court, Applicant did something that she did not do at trial: she explicitly stated that the meth belonged to Patrick and Green. Other than this, she offered no evidence that could arguably be used to support a defense of third-party guilt; however, Applicant did not offer in "proof of connection with [her testimony], such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party." *Id.* 198 S.C. 98, 16 S.E.2d at 535. Applicant had every opportunity to testify at her trial in the same way that she did before this Court, to the extent her testimony would be admissible in a trial. In view of all the circumstances presented here, it is doubtful that trial counsel could have done enough to warrant a jury charge on third-party guilt and doubtful that any such instruction would sway the jury to decide the case differently.

This Court turns now to the prejudice prong of *Strickland*. The officers who testified in the pre-trial hearing pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964), testified that they let Applicant get dressed before they questioned her, or that she had been wearing clothing during the questioning. Trial Tran. 66, 72, 80. The officers also testified about the changes in Applicant's statements throughout the questioning, which included the following: a denial that there were any drugs in the home because she had already gotten rid of them, a statement that the drugs found in Applicant's pocket were the only drugs in the house and that they belonged to someone named Nathan Blake Kelly, a statement that Applicant helped Kelly break up the methamphetamine into individual baggies in her house for sale, a statement that she had gotten drugs from someone named Gene Finley, a statement that Applicant insinuated that the meth found in her pocket was hers, and a statement that the drugs found in the closet had been delivered to her by Kelly for distribution

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from her home. Trial Tran. 69-71, 74-76, 83-84. In finding that Applicant's statements were given voluntarily, the trial court found that the officers remedied Applicant's initial lack of clothing best they could under the circumstances fairly timely." Trial Tran. 87-88.

During the prosecution's case-in-chief at trial, the jury heard from the officers about the changes in Applicant's statements throughout the course of the questioning. Trial Tran. 112-14, 122-23. The jury also heard from Applicant, who testified that she did not know that there had been drugs in the house, that she had falsely told the officers that the drugs were hers to keep Patrick from getting arrested and because she was scared, that the drugs may have belonged to one or more people whom Applicant had "seen [] that night and [] told them to take them out of [the] house," and that she did not know anything about the drugs. Trial Tran. 210-11. On cross-examination, Applicant admitted that the shorts in which some meth was found had been located near her when the officers arrived, denied that she had known that there was meth in the pocket of the shorts, which she had just taken off, denied that the shorts looked like they were hers, denied that she had known that there was a drug pipe laying on the vanity of the bathroom in which she was located when the officers arrived, said that she did not remember what she told the officers, said that she told the officers whatever they wanted to hear, denied that she knew the drug dealers whom she had named to the officers, said that she claimed the drugs only to keep Patrick out of trouble, denied that the drugs had been hers, and said that she told the officers that Kelly delivered to her about the same amount of meth at a time that the officers found in her house because she had been merely agreeing with the officers. Trial Tran. 223-30.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome of trial would have been different but for the alleged deficiency in trial counsel's performance. After considering all of the evidence at trial, the jury obviously found that

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Applicant's testimony was not credible, and that the officers' testimony was credible. It is easy to see the reason for that, as Applicant's trial testimony ranged widely, in contradictory directions, and provided no credible explanation for the presence of the drugs found in her home and pants pocket and the presence of drug paraphernalia in the home. By way of contrast, the testimony from the officers was consistent in relaying Applicant's statements to them. Applicant's lack of credibility did not end with her trial, as this Court finds that her testimony before this Court was not credible, either. Applicant repeated her testimony that the officers questioned her while she was in a state of undress, but the trial court found that the officers remedied that situation before questioning her, and this Court will not contradict that finding here. This Court finds that Applicant's testimony that she was naked during the questioning is not credible. Applicant testified before this Court that none of the meth was hers, but she then contradicted herself by saying that she had put into her pocket the baggie of meth that the officers found there during the search. Applicant's testimony on that point contradicted her trial testimony, wherein she denied having any knowledge of the drugs and tried to deny that the shorts were even hers. In a contradictory fashion, she blamed both Green and Patrick for the presence of the meth in her house. And Applicant still has not given a credible and satisfactory explanation for the presence of drug paraphernalia in her home in places where she reasonably should have seen them. Overall, Applicant's testimony before this Court about the meth was not credible. Additionally, trial counsel's testimony suggested that Applicant's statements to him about the meth were not always consistent. Applicant has failed to convince this Court that, even if she had presented the testimony at trial that she gave before this Court, there is a reasonable likelihood that the jury's verdict would have been any different.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not introducing legitimate evidence of third-party guilt because she has failed to prove that there was any deficiency in trial counsel's performance with respect to the issue and because she has failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

Applicant's claim that trial counsel was constitutionally ineffective for not calling as a witness either Derek Green or Gary Patrick.

This Court finds that Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to his decision not to call Green and Patrick as witnesses at trial. Trial counsel testified before this Court that neither Patrick nor Green had ever claimed responsibility for the drugs, although he understood that Applicant wanted one or both of them to do so. He testified that their stories to him changed over time. He testified that Green became less cooperative with him as the trial approached. He testified that he decided ultimately that neither witness would help Applicant's defense at trial. Additionally, there is evidence that Patrick was in the hospital for at least part of Applicant's trial. Under those circumstances, Applicant's decision to proceed without calling Green or Patrick as a witness was reasonable under prevailing professional norms. *See Edwards v. State*, 392 S.C. 449, 458, 710 S.E.2d 60, 65 (2011) ("A witness's credibility and demeanor is crucial to an attorney's trial strategy, and an attorney cannot be said to be deficient if there is evidence to support his decision not to call a witness with serious credibility questions . . ."). Applicant's testimony that Green and Patrick told trial counsel that the meth had been theirs is not credible, but trial counsel's testimony that they did not tell him that is credible.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome of trial would have been different had Green or Patrick testified. An "applicant must

produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' [sic] failure to testify at trial." *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998); see also *Dempsey v. State*, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2015) (holding that the PCR court's finding that Dempsey was prejudiced by trial counsel's failure to call an expert at trial to rebut the State's expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). An applicant's "mere speculation" as to what a witness's testimony at trial would have been "cannot, by itself, satisfy the applicant's burden of showing prejudice." *Glover v. State*, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995). Applicant did not produce the testimony of either Green or Patrick for this Court's consideration, but merely speculated that they would claim responsibility for the meth, absolving her. Applicant has therefore failed to meet her burden with respect to the prejudice prong of *Strickland*.

Applicant has failed to prove that trial counsel was constitutionally ineffective for not calling as a witness either Green or Patrick because she has failed to prove that there was any deficiency in trial counsel's performance and because she has failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

Applicant's claim that trial counsel was constitutionally ineffective for not adequately preparing Applicant to testify and for failing to elicit certain testimony.

Applicant raises a claim that trial counsel was constitutionally ineffective for not adequately preparing her to testify at trial and for failing to elicit certain testimony. Applicant did not present any argument in support of this claim before this Court. The only testimony from Applicant that could be used to support the claim was that trial counsel did not ask her while questioning her at trial if Patrick or Green owned the meth. Trial counsel testified before this Court

that he talked with Applicant in advance about what she could expect if she were to testify at trial. He testified that he prepared Applicant for her testimony as best as he could, and that he spent a lot of time preparing with her.

This Court finds that Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to his preparation of Applicant for her testimony and his questioning of her at trial. Trial counsel asked Applicant if she "[knew] who those drugs might belong to?" Trial Tran. 210-11. Applicant answered as follows, "I know they could belong to – I seen them that night and I told them to take them out of my house. And he left to take them out, but he came back to stay the night." Trial Tran. 211. Applicant did not specifically identify the person or people to whom she was referring, but that was her chance to do so. Applicant has not proven that there was any reason for trial counsel to question her further about that person's identity. It appears to this Court that her answer was intentionally vague about the person's identity, and such was not trial counsel's fault. The only evidence before this Court about trial counsel's pre-trial preparation with Applicant regarding her testimony was trial counsel's testimony that he worked with Applicant to prepare her. Applicant has not proven that there was anything additional that trial counsel should have done that he did not do.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome of trial would have been different but for the alleged deficiency in trial counsel's performance. As already noted in this order, trial counsel elicited testimony from the prosecution's witnesses and from Applicant that could have caused the jury to believe that someone other than Applicant was living in her home, Applicant testified that the meth was not hers and that others had been in her home who could have left the meth there, and trial counsel argued that Applicant's mere proximity to the meth did not make it hers. Applicant's explicit testimony now that the meth

was Patrick's or Green's has not made her defense more convincing than it was at trial, and she has not proven that there it is likely that she would have been found not guilty had trial counsel pulled one or both of those names out of her at trial. Neither has Applicant proven to this Court that it is more likely that she would have been found not guilty had trial counsel spent even more time preparing her for her trial testimony.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not adequately preparing her to testify at trial and for failing to elicit certain testimony because Applicant has not proven that there was any deficiency in trial counsel's performance and because she has failed to prove that there was any resulting prejudice. This claim is denied and dismissed with prejudice.

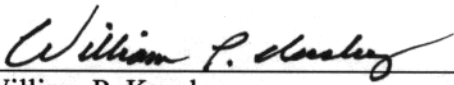
CONCLUSION

Based on all the foregoing, this Court finds that Applicant has not proven any constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 11TH day of AUGUST, 2022.


 William P. Keesley
 Presiding Judge

EDGEFIELD, South Carolina

WITNESSES

Anderson Co. Sheriff's Office

Andres F. Acevedo

ARREST WARRANT NUMBER

2017A0410200788

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

OCT 17 2017

Foreperson

VERDICT

Foreperson of Grand Jury
Date: 9-18-18

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS
OCT 17 2017, TERM

THE STATE

VS.

MARY N PATRICK

INDICTMENT FOR

TRAFFICKING IN METHAMPHETAMINE

SC Code: § 44-53-375(C)
CDR Code: 0369

A TRUE COPY

APR - 1 2020

Richard X. Kelly
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

OCT 17 2017

At a Court of General Sessions, convened on _____, the Grand
Jurors of Anderson County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE

The defendant, Mary N Patrick, did on or about May 11, 2017, in Anderson County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of two hundred (200) grams or more of Methamphetamine as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). All in violation of 44-53-375(C) 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.


CHELSEY L. MOORE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON
STATE VS.

MARY N PATRICK

AKA: Mary Darlene Patrick

Race: White Sex: F Age: 55

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Belton, SC 29627-9705

DL#: [REDACTED] SID# SC00206457

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Traff Meth/Crack 200g but <400g (25 yrs 9 \$100K fine)

In violation of § 44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 0369

INDICTMENT/CASE#:

2017-618-04-02570

A/W:

2017A0410200788

Date of Offense:

05/11/2017

S.C. Code §:

44-53-375(C)

CDR Code #:

0369

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Chelsey L. Moore, Assistant Solicitor SC Bar # 100701

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 25 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 \$ 100,000; plus costs and assessments as applicable*; the balance is suspended with probation for 2 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐☐ Set by SCDPPPS _____

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 _____

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/ea

\$

\$100,000.00

\$101,500.00

\$100.00

\$

\$

\$

\$25.00

\$150.00

\$

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\$

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TOTAL

Clerk of Court/Deputy Clerk: Richard A. Shirley

Court Reporter: S. Hudgins

SCCA/217 (07/2016)

☐ Appointed PD or appointed other counsel,

Proviso 61.6 requires \$500 be paid to Clerk

during probation and shall be collected before any other fees

Presiding Judge: [Signature]

Judge Bar ID: [Signature]

Sentence Date: 7-18-18

Judge Code: 225

Sentence Date: 7-18-18

