

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

Appeal from Greenville County Court of Common Pleas
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2025-000100

Clyde Bowen Davis, #00357153,.....Petitioner,

v.

State of South Carolina,.....Respondent.

APPENDIX - VOLUME II

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Letitia H. Verdin, Circuit Court Judge

Opinion No. 5476 (S.C. Ct. App. filed March 29, 2017)
2011-GS-47-06

The State of South Carolina, ... Respondent,
v.
Clyde Bowen Davis, ... Petitioner.

APPELLATE CASE NO. 2013-002207

APPENDIX
VOLUME II

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1 Dendy and, uh, Clyde Davis.

2 Q Now, you mentioned you made a lot of controlled
3 purchases, can you summarize how many controlled
4 purchases you made on each person in this conspiracy
5 group?

6 A Yes, sir. Amy Brock, we made, uh, I believe it
7 was two. Clyde Davis, we made one. Michael Robinson, we
8 made, uh, four. Josh Byers, we made three. Keith
9 Sekerchak, we made, uh, five. Nick Dendy, we made two.

10 Q And out of those individuals, how much actual
11 methamphetamine was seized?

12 A Just off the controlled buys and the search
13 warrant was approximately 88 grams.

14 Q So actual dope that law enforcement seized is
15 88 grams?

16 A That's correct.

17 Q And that's just involving -- just involving
18 individuals in this conspiracy?

19 A Just involving this conspiracy, yes, sir.

20 Q Now, you mentioned -- just one moment please.
21 How long did this investigation go on?

22 A We started in late 2009. We really got going
23 good in 2010. So three years. Two years, I'm sorry.

24 Q And that's including all the different groups?

25 A That's correct.

1 Q Now, when you are doing narcotics
2 investigation, can you explain what working up the ladder
3 means? That term.

4 A Yes, sir. Every investigation has got a
5 starting point to it. When you start out, naturally you
6 want to interview that particular cooperating individual
7 with where they are getting their narcotics from, where
8 they are getting their dope from. They will indicate to
9 you who some of their suppliers are. Then you buy from
10 them. Once you make a few buys, it's a common technique
11 to approach them before they are arrested and interview
12 them and talk to them and basically let them know that
13 law enforcement is onto them and that they have been
14 caught and if they want to cooperate and help themselves
15 out and try to go up to the next, where they are getting
16 their particular narcotics and dope from and if they want
17 to cooperate.

18 Q And from that person, once you've identified
19 one person is willing to cooperate, how do you move on
20 from there?

21 A You take that person and try to get that person
22 to buy from who their supplier is.

23 Q And then what's the next step after that?

24 A You can try to do the same thing and find out
25 more about that supplier, maybe find out a little bit

1 more about their criminal history and whether or not
2 they've been in the narcotics dealing trafficking game a
3 while. And based on that, you may see if they want to
4 cooperate.

5 Q And let's say that person cooperates, what
6 would next step be?

7 A Go to the next one. Try to find out where they
8 are getting their narcotics from and see if they want to
9 cooperate on that person.

10 Q So is it a continuous chain of working up the
11 ladder basically by saying, All right, we've got this
12 person cooperating, he's identified this source. That
13 source cooperates and then you go to their source and so
14 on and so forth?

15 A That is correct.

16 Q Now, I know that we've mentioned that there are
17 several different conspiracy groups out of this
18 investigation. What is this investigation known as?

19 A We gave it the name Operation Icehouse.

20 Q What's the significance of that name?

21 A Methamphetamine on the street is often
22 referred to -- especially crystals are often referred to
23 as ice.

24 Q So in Operation Icehouse, there's different
25 conspiracy groups. How do they relate to each other?

1 A A lot of the defendants or the individuals that
2 are in one conspiracy, you'll find them in another
3 conspiracy, whether they are buying from each other,
4 selling to each other, let's say they go to one and that
5 particular supplier doesn't have anything at the moment,
6 they might know a person that happens to be in this other
7 conspiracy. They'll call them. They are connected by
8 personal relationships.

9 Q Is there a lot of overlap in these particular
10 conspiracies?

11 A Yes, sir. There is.

12 Q Now, --

13 A I would just add that sometimes individuals
14 that they are buying from may get arrested. They
15 obviously can't sell anything. Then they would go to
16 another one. So, I mean, a lot of things change in
17 narcotics dealings.

18 Q Is that common place in methamphetamine
19 tracking -- trafficking?

20 A Yes. Yes, it is.

21 Q Do you typically find very structured
22 organizations with methamphetamine?

23 A No, I do not.

24 Q All right. How -- in general, how do
25 methamphetamine trafficking conspiracies work?

1 A Usually they are friendships. Maybe somebody
2 grew up with somebody. They meet them at a party. I
3 mean, it's endless. There's no rhyme or reason to it:
4 Somebody they may know, known all their lives. You know,
5 they find out each of them share that common interest,
6 methamphetamines. Then they start dealing with each
7 other. They know each other. They trust each other to
8 some point. Now, they will buy and sell to each other.
9 They might meet somebody at a party they become
10 comfortable with. Uh, they might know somebody who knows
11 somebody. And that may be an end to getting in to
12 dealing with them.

13 Q And in dealing with methamphetamine
14 conspiracies, how often does it turn out that the dealers
15 are also users?

16 A Quite often. More often than not.

17 Q And what result does that have on the structure
18 of the conspiracies?

19 A It's -- are you talking about in regards to
20 selling?

21 Q Yes.

22 A Quite often, they will mess their money up so
23 to speak. In other words, they run short. They don't
24 have enough money to re-up, to go buy more. If they were
25 buying an ounce at a time, they are using, they use more

1 product, have a big party or whatever, they don't have
2 enough money to go get another ounce because they haven't
3 kept up their money. Their money is messed up so they
4 have to start again at the bottom, maybe buying a gram
5 instead of an ounce because they've messed their money up
6 basically.

7 Q Is that fluctuation common with meth
8 conspiracies?

9 A It really is with methamphetamines.

10 Q Agent Asbill, this investigation went on for a
11 long period of time. You may have mentioned this
12 already. Out of all the controlled purchases that were
13 made, were there controlled purchases made against Clyde
14 Davis or attempted against Clyde Davis?

15 A Yes.

16 Q Explain that to the jury please.

17 A The, uh, --

18 MR. BEASLEY: Objection, Your Honor. I don't
19 think there's been any -- there's been no testimony
20 for him to -- everything else will be hearsay.

21 THE COURT: I'm sorry. I apologize. Can you
22 repeat your question for me please?

23 MR. UNDERWOOD: I asked if there were ever
24 any controlled purchases made against Clyde Davis
25 and for him to explain.

1 **MR. BEASLEY:** He's already testified that
2 there was a controlled purchase. But anything else
3 he says would be hearsay.

4 **THE COURT:** All right. Your objection is
5 noted. Uh, --

6 **MR. UNDERWOOD:** I could rephrase. I could
7 ask another question, Your Honor, to make this
8 easier.

9 ~~**THE COURT:**~~ All right. I'll allow you to
10 rephrase your question and let me hear it.

11 **BY MR. UNDERWOOD:**

12 **Q** Agent Asbill, did you participate in any
13 controlled purchases against Clyde Davis?

14 **A** Yes, I did.

15 **Q** All right. During your participation in that
16 controlled purchase, can you explain to the jury how that
17 purchase came about?

18 **A** Investigator Ayers had, uh, found an individual
19 that, uh, -- who indicated he could purchase --

20 **MR. BEASLEY:** Objection, Your Honor. That's
21 hearsay. He's testifying to --

22 **THE COURT:** Let me hear his response. What's
23 your response? I'm sorry.

24 **MR. UNDERWOOD:** I was going to re-ask the
25 question a different way, Your Honor.

1 **THE COURT:** All right. All right.

2 And if you -- sir, if you would, be careful not
3 to testify as to what anyone said. All right. Yes,
4 sir.

5 **BY MR. UNDERWOOD:**

6 **Q** Without going into what any particular person
7 said, generally -- well, let's start this way, how does a
8 controlled purchase take place?

9 **A** Investigator Ayers and myself and some other
10 members of Greenville County, we met with a confidential
11 informant and that confidential informant, uh, was wired
12 and issued stated documented funds and sent to purchase
13 methamphetamines from Mr. Davis.

14 **Q** Now, was the confidential informant searched
15 prior to the controlled buy?

16 **A** He was.

17 **Q** How was he searched?

18 **A** He was patted down. Pockets -- searched his
19 pockets. Also searched his vehicle.

20 **Q** And at that time, did he have any
21 methamphetamines on him or his vehicle?

22 **A** He did not.

23 **Q** After he was searched and wired with a device,
24 the audio device, did it transmit or did it just record?

25 **A** It transmitted.

1 Q Were you able to hear everything on that
2 transmitter as it was happening?

3 A We could intermittently hear. It's not like it
4 is in the movies. I mean, sometimes it comes in loud and
5 clear. The device is recording at the same time. But as
6 far as transmitting, sometimes it's in and out. So you
7 don't hear everything on some buys.

8 Q On this particular buy, were you able to hear
9 what was being transmitted?

10 A Most of it, yes, sir.

11 Q Agent Asbill, without going into what any
12 particular person said, after the informant was wired,
13 what took place?

14 A The informant went to Dobb Street, a residence
15 on Dobb Street which was Mr. Davis' residence. He spent
16 a period of time there. He received a phone call.

17 MR. BEASLEY: Objection, Your Honor. Again,
18 I mean, he's testifying to what this CI heard and
19 was doing.

20 MR. UNDERWOOD: He just said he received a
21 phone call. He didn't say what anyone said, Your
22 Honor.

23 MR. BEASLEY: He was saying that the CI was
24 going here and doing this and he got a phone call,
25 the CI got a phone call.

1 **THE COURT:** I'm going -- I'm going to allow
2 him to testify to that. It's certainly subject to
3 vigorous cross-examination that I know that's
4 coming. Let's be careful about this and keep this
5 testimony on a short leash.

6 **BY MR. UNDERWOOD:**

7 **Q** Agent Asbill, where were you located during the
8 controlled purchase?

9 **A** I was parked at the school that was located
10 nearby.

11 **Q** Were there other law enforcement personnel in
12 the area as well?

13 **A** Yes, there were.

14 **Q** Why is that?

15 **A** We had other law enforcement. We tried -- as
16 time and as personnel dictates, if we can have more law
17 enforcement officers in the area, we try to do that,
18 number one, for safety and, number two, hopefully,
19 witness -- to provide a witness later on.

20 **Q** So law enforcement has ears on the situation
21 through the wired transmitter, is that right?

22 **A** That is correct.

23 **Q** And law enforcement is in the area surveilling
24 what is going on?

25 **A** That is correct.

1 Q During this operation, were you able to
2 identify any particular vehicles of interest?

3 A Yes, we were.

4 Q What vehicle did you identify?

5 A It appeared to me to be a Chrysler 300.

6 Q What color was it?

7 A Silver. Gray.

8 Q And who was driving that car?

9 MR. BEASLEY: Objection, Your Honor.

10 THE COURT: What's your objection?

11 MR. BEASLEY: I don't think Ashley was -- I
12 don't think he was there. I don't think he saw what
13 transpired.

14 THE COURT: Did you see the car?

15 THE WITNESS: I saw the vehicle but I didn't
16 see who was driving.

17 THE COURT: All right. He can testify to
18 what he actually saw.

19 MR. UNDERWOOD: Your Honor, may we approach?

20 THE COURT: Yes.

21 (WHEREUPON, a bench conference is held off the
22 record.)

23 THE COURT: Ladies and Gentlemen, I'm going
24 to ask you just to step to your jury deliberation
25 room for a moment.

1 (WHEREUPON, the jury exits at approximately
2 4:10 p.m.)

3 THE COURT: All right. Mr. Underwood, tell
4 me your question again. You're intending to ask if
5 he could identify a voice?

6 MR. UNDERWOOD: Yes, Your Honor. He was
7 listening to the transmission during this controlled
8 purchase. I wanted to ask the agent if he
9 recognized the voice, not what was being said. If
10 it was the defendant's voice, it would be an
11 admission and not hearsay. I just want to know if
12 he could identify whose voices he heard.

13 THE COURT: All right. And tell me this,
14 Agent Asbill, are you able to identify voices from
15 that recording? Tell me that.

16 THE WITNESS: No, ma'am.

17 THE COURT: You don't know who it was?

18 THE WITNESS: No, ma'am.

19 THE COURT: Okay. I'll accept that he
20 doesn't know.

21 MR. UNDERWOOD: That's why I wanted -- before
22 I even broached that subject.

23 THE COURT: Let's just talk about this a
24 little further, while the jury is out. Let's talk
25 about what you intend to ask him about this

1 recording. Let's just go ahead and play it out so
2 we're not stopping and starting. Of course, if
3 there are objections, I'll let you make them for the
4 record and contemporaneously.

5 MR. UNDERWOOD: Well, Your Honor, if Agent
6 Asbill is not able to recognize the voice, I'm just
7 going to ask if it was recorded and leave it at
8 that. I have nothing else to ask him about it if he
9 can't recognize the voices.

10 THE COURT: Okay. All right. All right.
11 Anything else, Mr. Beasley?

12 MR. UNDERWOOD: Just to be clear, nothing
13 else about the recording. Nothing else about the
14 recording.

15 THE COURT: Okay.

16 MR. BEASLEY: I object and I object and I
17 object.

18 THE COURT: And your objection and objection
19 and objection are noted for the record.

20 MR. BEASLEY: The fact that they don't -- I
21 can not confront a witness there. Law enforcement
22 is testifying to their report and their surveillance
23 equipment when they were not part of it. It's
24 hearsay. They shouldn't allow it. It's a violation
25 of the confrontation clause.

1 **THE COURT:** I understand that you disagree
2 with my ruling.

3 **MR. BEASLEY:** Just wanted it for the record.

4 **THE COURT:** Yes, sir.

5 (WHEREUPON, the jury enters at approximately
6 4:15 p.m.)

7 **THE COURT:** Thank you, Ladies and Gentlemen,
8 for your patience with us.

9 Mr. Underwood?

10 **BY MR. UNDERWOOD:**

11 **Q** We were discussing a controlled purchase
12 against the target Clyde Davis. What were the results of
13 that controlled purchase?

14 **A** The confidential informant returned to us with
15 a purchase of methamphetamine.

16 **Q** And how much methamphetamine was it?

17 **A** Approximately 3.5 grams.

18 **Q** And was that paid for with documented
19 government funds?

20 **A** That is correct.

21 **Q** Is that the only controlled purchase attempted
22 against Clyde Davis?

23 **A** Yes, sir. The only one I'm aware of.

24 **Q** Agent Asbill, in the long course of this
25 investigation, why did this particular conspiracy group

1 stop there?

2 A It was as high as we could go. We had nobody
3 else cooperating and we had no other witnesses to
4 interview. So it stops there.

5 Q And Nick Dendy has come here. He's testified
6 here today. Prior to being charged, was he cooperating
7 with law enforcement?

8 A Prior to being charged?

9 Q Yes, prior to being charged.

10 A No, sir.

11 Q In this particular conspiracy group as we have
12 alleged, was Amy Brock the highest cooperating
13 individual?

14 A Yes, sir.

15 Q Agent Asbill, earlier you testified that there
16 were 88 grams of actual methamphetamines seized in this
17 investigation. Does that include the 3.5 grams you just
18 mentioned?

19 A Yes, it does.

20 Q That's just the amount seized, not the amount
21 that there's information about, correct?

22 A That is correct. That's just what we actually
23 either purchased or recovered on the search warrant, the
24 result of the search warrant.

25 Q Thank you, Agent Asbill. Please answer any

1 questions Mr. Beasley has.

2 THE COURT: Mr. Beasley.

3 MR. BEASLEY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. BEASLEY:

6 Q Prior to, uh, you investigating Dendy and those
7 guys, was it known in Greenville county that Felipe was
8 the big dealer, he was the big boss?

9 A He was a -- yes, sir. He was in another
10 conspiracy.

11 Q But he was involved with some of the same
12 people, you said, correct? He hung out at these
13 apartments. You, uh, -- didn't you actually have a CI
14 say that Flores would drop off?

15 A Mr. Beasley, I honestly don't, uh, -- I don't
16 recall that. I'm not saying it didn't. I just don't
17 recall it without looking at the file.

18 Q Well, uh, alright. You don't recall a CI or
19 any witnesses stating to you in your report that other
20 individuals were dropping off meth to Robinson?

21 A I just don't recall anybody right now, not
22 without looking. Nothing stands out.

23 Q Uh, were you present, uh, when you executed the
24 search warrant at Amy Brock's house?

25 A I was not.

1 Q Uh, these 88 grams you talked about, did you
2 bring any of those -- did you bring 88 grams to court?

3 A No, sir. I did not.

4 Q But you have them?

5 A They are in evidence, yes.

6 Q They are not in evidence. Not today. I can
7 tell you that. But you mean back at the detention
8 center?

9 A I'm sorry. What was your question?

10 Q I was asking if you were planning on bringing
11 the 88 grams to court. Are they here?

12 A They are not here, no, sir.

13 MR. BEASLEY: Thank you. No questions.

14 THE COURT: Anything else for this witness?

15 MR. UNDERWOOD: Nothing further, Your Honor.

16 THE COURT: All right, sir. You can step
17 down. Will the attorneys approach just a moment?

18 (WHEREUPON, a bench conference is held off the
19 record.)

20 THE COURT: Mr. Underwood?

21 MR. UNDERWOOD: The State rests, Your Honor.

22 THE COURT: All right. Ladies and Gentlemen,
23 we've come to a point in a break -- a break for the
24 evening. I will tell you what I told you yesterday
25 before I let you go. That is, that, uh, please do

1 not discuss this case with anyone or do any
2 independent research in any way on it. I thank you
3 so much for your attention throughout the day today.

4 We -- I just spoke with the attorneys. We very
5 much anticipate that this case will be in your hands
6 tomorrow, uh, to decide tomorrow. And so as I told
7 you yesterday, go home and forget you're jurors in
8 this case for one evening. I will see you back
9 tomorrow morning. I'm going to ask you to be back
10 at 9 a.m. tomorrow morning so we can get started
11 very shortly thereafter. Thank you so much. I'll
12 see you tomorrow morning.

13 (WHEREUPON, the jury exits at approximately
14 4:23 p.m.)

15 THE COURT: All right. Mr. Beasley, do you
16 have any motion at this time?

17 MR. BEASLEY: Uh, not at this time. I would
18 like to maybe reserve the right to make that motion
19 in the morning.

20 THE COURT: You want to just do it tomorrow
21 morning? All right.

22 MR. UNDERWOOD: We can do motions in the
23 morning, Your Honor.

24 THE COURT: Okay. I think there's no problem
25 with that whatsoever. All right. Let's talk about

1 the charge.

2 Mr. Davis, I do not know what your intention is
3 about testifying and you don't need to make that
4 decision right now.

5 MR. BEASLEY: Your Honor, we could actually
6 do that right now. We're prepared to go ahead and
7 do that.

8 THE COURT: Okay. All right.

9 MR. BEASLEY: That will save you some time in
10 the morning.

11 THE COURT: All right. Mr. Davis, will you
12 stand please. Raise your right hand.

13 (WHEREUPON, the defendant is first duly sworn.)

14 THE COURT: Okay. You can put your hand
15 down. You and I spoke yesterday about the fact that
16 you would have to make a decision as to whether or
17 not you wanted to testify in the trial of this case.
18 Do you remember that conversation?

19 MR. DAVIS: Yes, ma'am.

20 THE COURT: I told you that that had to be
21 your decision and your decision alone. You remember
22 that as well?

23 MR. DAVIS: Yes, ma'am.

24 THE COURT: Have you had enough time to talk
25 to your attorney about this decision?

1 MR. DAVIS: Yes, ma'am.

2 THE COURT: Have -- uh, have you listened to
3 his advice?

4 MR. DAVIS: Yes, sir.

5 THE COURT: But have you come to a decision
6 on your own?

7 MR. DAVIS: Yes, ma'am.

8 THE COURT: If Mr. Davis were to testify, are
9 there any prior convictions that will be used
10 against Mr. Davis?

11 MR. UNDERWOOD: None of his convictions are
12 eligible for impeachment.

13 THE COURT: All right. All right. So Mr.
14 Davis, the State is saying there are no convictions
15 that they would use against you for impeachment.
16 Has anybody forced you to make this decision here
17 today?

18 MR. DAVIS: No, ma'am.

19 THE COURT: Has anybody promised you to maybe
20 get you to make this decision?

21 MR. DAVIS: No, ma'am.

22 THE COURT: Are you under the influence of
23 drugs or alcohol here today?

24 MR. DAVIS: No, ma'am.

25 THE COURT: You understand that you have an

1 absolute right to testify in the trial of this case,
2 you understand that?

3 MR. DAVIS: Yes, ma'am.

4 THE COURT: You also understand you have an
5 absolute right to remain silent. You know that as
6 well?

7 MR. DAVIS: Yes, ma'am.

8 THE COURT: And the flip side, as I told you,
9 you have a right to testify, that will be your one
10 day in court. You understand that?

11 MR. DAVIS: Yes, ma'am.

12 THE COURT: Mr. Beasley, have you had enough
13 time to talk to your client about this decision?

14 MR. BEASLEY: Yes, Your Honor.

15 THE COURT: And you think he's understood all
16 your conversations with him?

17 MR. BEASLEY: Absolutely.

18 THE COURT: Mr. Davis, you have any questions
19 for me about this decision that you've made?

20 MR. DAVIS: No, ma'am.

21 THE COURT: What is your decision?

22 MR. DAVIS: Oh, I don't want to testify.

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

24 Any other questions, Mr. Beasley, you want me
25 to ask him?

1 **MR. BEASLEY:** No, Your Honor.

2 **THE COURT:** Anything from the State?

3 **MR. UNDERWOOD:** Nothing, Your Honor.

4 **THE COURT:** All right. Let's talk about the
5 charge.

6 And I did not tell you this, Mr. Davis. I knew
7 there was something I was leaving out. Uh, I will
8 instruct the jury that they can not discuss in any
9 way the fact that you did not testify. It can not
10 even be brought up in the jury room. Can not be
11 held against you in any way. You understand that?

12 **MR. DAVIS:** Yes, ma'am.

13 **THE COURT:** And you knew that before you made
14 your decision about testifying?

15 **MR. DAVIS:** Yes, ma'am.

16 **THE COURT:** All right. All right. I am
17 going to instruct them about that.

18 All right. Reasonable doubt, I charge both
19 ways. Hesitate to act. It's late. I can't think.

20 **MR. UNDERWOOD:** Firmly convinced, Your Honor.

21 **THE COURT:** Firmly convinced. Thank you so
22 much. I charge both. I don't think they are
23 confusing in any way to put them in the same charge,
24 so I do it. I also do not mind printing off a copy
25 of my charge for you if either of you want to use it

1 during your closing arguments. I have no objection
2 to that. Do not hold me to this. There may be some
3 typos.

4 MR. BEASLEY: I was about to say. Elizabeth
5 did it.

6 THE COURT: Elizabeth's perfect. But there
7 could be something old that could have gotten in
8 there and messed up. But don't hold me to any typos
9 that are in here. Conspiracy to Traffic
10 Methamphetamine 100 grams or more but less than 200.
11 The defendant is charged with Conspiracy to Traffic
12 Methamphetamine for 100 grams or more but less than
13 200 grams.

14 The State has to prove beyond a reasonable
15 doubt that the defendant, combined with one or more
16 persons for the purpose of committing an unlawful
17 act or committing a lawful act by unlawful means.
18 The State alleges the defendant conspired to commit
19 the unlawful act of Trafficking Methamphetamine.
20 The State must prove beyond a reasonable doubt the
21 defendant conspired to traffic.

22 "Trafficking" means to knowingly sell,
23 manufacture, cultivate, deliver, so on and so forth.
24 In order to prove that he conspired to traffic
25 methamphetamine, it is not necessary to prove that

1 he did traffic methamphetamine. All that is
2 necessary to prove is that he conspired to traffic.

3 In order to prove conspiracy, the State must
4 also prove that there existed a mutual understanding
5 or common intention and plan to carry out the
6 unlawful act. Mere passing knowledge or consent to
7 the criminal conduct of another is not enough. To
8 make the person, uh, there must be guilty knowledge
9 and participation. Those are just standard.

10 Similarly, the mere fact that the defendant may
11 have associated with another person or met with
12 another person and discussed common aims and
13 interest does not necessarily establish conspiracy.
14 On the other hand, it is not necessary that the
15 agreement be a formal one or be in writing. Of
16 course, the defendant must have agreed to combine
17 for the purpose of accomplishing the unlawful act.

18 Uh, I think it's pretty much the standard.
19 I'll give it to you. You can take a look at it.
20 Anything else that -- any other charges y'all are
21 asking for?

22 MR. UNDERWOOD: I'm going to ask for one line
23 to be added as to the weight of the charge. Could
24 Your Honor explain to the jury that the State
25 doesn't need to prove that it was less than 200

1 grams. It would still be -- if it was more than
2 200, it would still include 100 to 200.

3 **THE COURT:** Okay. Did this happen to you
4 somewhere?

5 **MR. UNDERWOOD:** I just want to make sure that
6 was clear to the jury that we had to disprove 200.

7 **THE COURT:** Okay. All right. What about
8 you, Mr. Beasley? Anything?

9 **MR. BEASLEY:** I guess throw in there if you
10 think it's less than 100.

11 **MR. UNDERWOOD:** As to that, Your Honor -- are
12 you asking for a lesser included?

13 **MR. BEASLEY:** No, I'm just saying if it's
14 less than 100, it's not guilty.

15 **THE COURT:** The way I think we'll word it is
16 something to the effect of the State doesn't have to
17 prove that it was less than 200, only that it was
18 greater than 100.

19 **MR. BEASLEY:** That's fine.

20 **THE COURT:** The final thing I was going to
21 talk to you about is -- this is up to y'all. I
22 don't do it if either side objects, but I normally
23 send a copy of the charge back to the jury. I read
24 my charge verbatim. I give them a charge that says
25 I will give each of you a copy of these instructions

1 in written form. You may refer to the instructions
2 to guide your decision-making. You must consider
3 the instructions as a whole and not follow some and
4 ignore others. Please return the copy of the
5 instructions to the court at the time your verdict
6 is rendered. If either of you have an objection to
7 sending a copy of the written charge back to the
8 jury, I will not do it.

9 MR. BEASLEY: No objection.

10 MR. UNDERWOOD: No objection, Your Honor.

11 THE COURT: All right. Uh, All right. We'll
12 print off -- is it alright if I give y'all each --
13 if I give y'all a collective copy and give you one
14 copy?

15 MR. UNDERWOOD: None, Your Honor.

16 THE COURT: All right. We'll print those off
17 just now and bring them to you.

18
19 (WHEREUPON, the Court recessed for the day at
20 approximately 4:27 p.m.)
21

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 18th day of September, 2013 at approximately 9:05 a.m.)

THE COURT: Mr. Beasley, I took a look at your proposed jury charge this morning. Although I liked it and I thought it was an accurate statement of the law, we went through it pretty carefully and feel like everything is covered in our jury charge.

MR. BEASLEY: I just didn't remember seeing anything about a buyer/seller relationship is not enough. That was one thing I thought was pretty important especially with the evidence that was presented which is, you know, there was conspiracy going -- I mean, there were dealings going all the way back to 2004. Yet, you know, Dendy wasn't involved until like 2010, I guess. They were buying, selling and using at the same time. I just think that's -- you know, the charge that I gave, I just think that fits the evidence more appropriately.

It talks about -- I mean, this is a statewide Grand Jury case. They are talking about they are doing it in a certain area. This charge says just because they are doing it in the same area doesn't make it a conspiracy because people are in

1 competition with each other to buy and sell. I just
2 thought it was more appropriate. Although I think
3 the charge you were going to read is appropriate, I
4 thought this one was more appropriate and fit the
5 evidence better. That's what I thought was why I
6 brought it or proposed it.

7 **THE COURT:** All right. Well, uh, I'm going
8 to -- I'm going to print a clean copy of your
9 request to charge and mark it as a Court's Exhibit
10 so it will be preserved for the record. But I'm
11 going to stick with the charge that I've got.

12 **MR. BEASLEY:** Okay.

13 **THE COURT:** Although, like I said, I do
14 think your charge is an accurate statement of law.
15 Do you have any motions this morning?

16 **MR. BEASLEY:** I'll just make a motion for
17 directed verdict based on the fact that, number
18 one, all the witnesses testify that everything is
19 done within Greenville county. I don't think the
20 statewide Grand Jury would have jurisdiction and
21 this court would not have jurisdiction to hear a
22 case not in Greenville county. Number two, uh, you
23 know, these are a bunch of meth addicts buying,
24 selling and using going all the way back to 2004
25 with all these different people that weren't even

1 involved in the conspiracy and for the -- I should
2 say -- the alleged conspiracy, I just don't think
3 it -- there's no question of fact for the jury to
4 consider that there was any sort of agreement in
5 law. I don't think there was a conspiracy. I
6 think there ought to be a directed verdict.

7 THE COURT: All right. Uh, well, your, uh,
8 motion is certainly noted for the record. I think
9 there is at least enough evidence to submit that
10 the case to the jury.

11 Yes, sir?

12 MR. PAULING: Yes, Your Honor. One matter
13 as to the jury charge. Mr. Beasley has an
14 additional request. We also have one after looking
15 at the charge. As far as conspiracy is concerned,
16 we want to request language that essentially states
17 that it is not necessary for each and every member
18 of the conspiracy to know all the other members of
19 the conspiracy.

20 I'll point the Court -- and I was trying to
21 get it pulled up, Your Honor. It's State v.
22 Vasquez. It's at 341 S.C. 648. I believe it's
23 also U.S. v. Bruno, 308 U.S. 287. Basically states
24 in a chain conspiracy, you're not going to have
25 every individual -- the person at the bottom may

1 not know the individual at the top but it doesn't,
2 uh, obviate the fact that they were still working
3 in concert with the same objective, which was to
4 distribute illegal narcotics. I just wanted that
5 language in there.

6 It looks like Mr. Underwood has it pulled up.
7 Let me see if I can get the specific language, Your
8 Honor. In this particular case, Vasquez indicated
9 that there was no evidence that tied into 23 of the
10 25 individuals. I guess it was only two others.
11 That was sufficient. The reason I'm asking for
12 that, Your Honor, is during open arguments, Mr.
13 Beasley stated to the jury that everybody has to
14 know every one in the conspiracy.

15 **THE COURT:** Here's what I'm going to do. I
16 think that is an accurate statement of law as well.
17 But what's good for the goose is good for the
18 gander. If I add that, I'm going to add your
19 statement about the buyer/seller relationship. I
20 think that is one thing in your charge as you point
21 out and accurately point out that is not in there.
22 I will add some language with regard to don't have
23 to know everything that's going on. I'm going to
24 add that buyer/seller is not enough. All right.

25 **MR. PAULING:** Thank you, Your Honor.

1 **THE COURT:** All right. Thank you.

2 All right. We all in agreement that the
3 defense did not enter any evidence in this case and
4 thus would have last argument?

5 **MR. PAULING:** We are, Your Honor.

6 **THE COURT:** All right. Very well then.
7 I'll bring the jury in, allow you to rest in front
8 of the jury and then we'll move to closing
9 arguments.

10 **(WHEREUPON, the jury enters at approximately**
11 9:12 a.m.)

12 **THE COURT:** Good morning, Ladies and
13 Gentlemen. I first want to begin this morning by
14 telling you that the bailiffs have told me y'all
15 have just been a terrific jury to work with this
16 week. I thank you so much. I can tell you they
17 don't always say that. I really am most
18 appreciative and most appreciative of your
19 attention. When we broke yesterday, the State had
20 rested their case.

21 Mr. Beasley?

22 **MR. BEASLEY:** The defense rests as well,
23 Your Honor.

24 **THE COURT:** All right then. Thank you, sir.
25 Ladies and Gentlemen, we are ready to move to

1 closing arguments in this case. Mr. Underwood?

2 MR. UNDERWOOD: May it please the Court,
3 Your Honor.

4 THE COURT: Yes, sir.

5 MR. UNDERWOOD: Counsel.

6 Good morning, Ladies and Gentlemen. Pardon my
7 voice. I've been fighting something all week.
8 It's getting progressively worse. I'll do the best
9 I can. This case boils down to two questions. Two
10 questions. One, who supplied Nick Dendy with
11 methamphetamine, ice, methamphetamine? Two, was it
12 about 100 grams of methamphetamine or more? Those
13 are the only two questions that really matter when
14 you boil it all down.

15 Question one, who supplied Nick Dendy with
16 methamphetamine? You heard from Nick Dendy very
17 clearly all the meth in this case, he got from the
18 defendant Clyde Davis. That question is answered.
19 The source of methamphetamine has been identified
20 as Clyde Davis. It wasn't only Nick Dendy that
21 told you that. Yes, Nick Dendy was on the stand.
22 He testified about his friend, since he was 14
23 years old, Clyde Davis, selling him methamphetamine
24 to sell to other people.

25 He testified to the scenario of someone would

1 call him. Someone would call Nick. Nick would
2 then go to their house, get the money, call Clyde
3 Davis. Clyde Davis comes, brings the
4 methamphetamine, gives it to Nick who gives it to
5 the customer. That was a very consistent pattern.
6 It happened time after time after time after time
7 with Amy Brock and with Michael Robinson. We heard
8 that same pattern described by Amy Brock and
9 Michael Robinson to the extent that Michael
10 Robinson, he didn't know about who was bringing the
11 dope to him but it was the same scenario. He would
12 call Nick. Nick would come and give him the dope.

13 Amy Brock, very clearly, she would call him
14 up. Every single time she'd call Nick, Nick would
15 come. He would have to call somebody else that she
16 only knew as Nick's cousin. Didn't know if they
17 were actually related or not, but that's what she
18 called him. She never knew his name. She just
19 knew what he looked like. She said that half the
20 time that Nick would come over, she would be
21 outside and she would see this person bringing the
22 meth. She was able to identify that person as
23 Clyde Davis.

24 She also talked about the car that Clyde Davis
25 drove up in. She said it was a silver Chrysler 300

1 or Dodge Charger. Her stories backed up by Brian
2 Sekerchak, as you may remember also known as
3 Batman, he testified that he would come over and
4 he'd still be sitting in the car. His brother
5 might go in the house to be with Amy, but Brian
6 would still be out in the car. Nick Dendy comes up
7 and then another vehicle comes up. He said it was
8 a silver Charger.

9 If anyone knows much about cars, the Chrysler
10 300 and the Dodge Charger are basically the same --
11 it's the same body. It's the same car with a
12 couple of different finishing touches on it. So
13 it's easy to confuse the two of them. They both
14 said it was a silver Charger or 300.

15 Sekerchak described the same scenario. Davis
16 comes and brings the dope to Dendy who gives it to
17 Amy who then gives it to Sekerchak. It's a very
18 consistent pattern of where the source of this
19 methamphetamine is coming from. They all
20 identified the same vehicle. They all identified
21 the same person.

22 Now, the other question, weight. There's a
23 magic number in this case. 100. That's the magic
24 number. As soon as we get to 100 grams, we've met
25 it. Once you've got 100 grams or more, the charge

1 has been established.

2 Let's talk about a little bit of math. I
3 don't like math either, but I'll keep it as
4 painless as possible. If you listen to just Nick
5 Dendy's testimony alone, by himself -- remember,
6 this is Nick Dendy who has a history of minimizing
7 his involvement. The first time he spoke to
8 police, yeah, he lied. He tried to downplay how
9 much dope he was dealing. He had a history of
10 minimizing what he sells.

11 He came up here on the witness stand. He
12 talked about selling nine or ten times to Amy Brock
13 a quarter ounce. That's seven grams. He said at
14 least another five or six times, he sold an eight
15 ball, just three and a half grams. You add that
16 altogether, that right there is 91 grams just to
17 Amy Brock. Coming from the guy that is very
18 concerned with numbers.

19 Then he also said he sold at least 14 or 15
20 eight balls at 3.5 grams a piece to Michael
21 Robinson. That puts you way over 100, way over
22 100. So just based on Nick Dendy's testimony
23 alone, the State has proven 100 grams or more.

24 But there's more than Nick Dendy. You've also
25 got Michael Robinson and Amy Brock. Michael

1 Robinson testified that he would get an eight ball
2 a week from Nick Dendy for a year. 3.5 grams, 52
3 weeks is 182 grams. Let's knock it down a little
4 bit. Let's say that Michael Robinson took a week
5 off every month because you know drug addicts can
6 just take a week off of their habit. Let's just
7 assume that he took a week off every month, so
8 you've only got 40 weeks. That's still 140 grams
9 for Michael Robinson alone.

10 You've got Amy Brock. She talked about getting
11 -- from the spring of 2010 until October or
12 November of 2010 getting meth from Nick Dendy with
13 this same scenario of Nick Dendy shows up, Clyde
14 Davis brings in the dope one to four times a week.
15 All were buying at least an eight ball, 3.5 grams,
16 and many times buying a quarter ounce or 7 grams.
17 If you were to put that together, we're talking
18 about -- if it was just one eight ball, just one
19 eight ball one time a week, that's 84 grams.
20 That's the absolute minimum that she got from Nick
21 Dendy. But she said it was actually much more than
22 that because she was buying multiple times a week
23 and sometimes more than that minimum of 3.5 grams.

24 Amy Brock got more than 100 grams. You got
25 more than 100 grams to Amy Brock. You got more

1 than 100 grams to Michael Robinson. The weight has
2 been met, Ladies and Gentlemen. There is no doubt
3 about that.

4 Now, it's important to realize that all of
5 these three scenarios, Nick's testimony, Amy's
6 testimony, Michael Robinson's testimony and if you
7 throw in Brian Keith Sekerchak which supports
8 those, Clyde Davis was bringing more than 100 grams
9 of methamphetamine over a period of time to these
10 people through Nick Dendy. You don't have to take
11 just Nick's word for it. Amy Brock and Brian Keith
12 Sekerchak saw Clyde Davis. There's no doubt who he
13 was.

14 Nick Dendy, his friend, sat up here on this
15 witness stand, looked him in the eye and pointed at
16 him and said that is the man that gave me the meth.
17 Amy Brock came on this witness stand saying that is
18 the guy. I didn't know his name at the time, but
19 that's the guy that brought Nick the meth. They
20 said that here in open court. They looked him in
21 the eye and they identified him.

22 Now, one thing to consider is this is not a
23 case where we're charging that at one time Clyde
24 Davis had or sold 100 or more grams. This is a
25 conspiracy case. It involves six people or more.

1 Now, remember we've got Clyde Davis bringing meth
2 to Nick Dendy who's then bringing it down the line.
3 Amy Brock who also sells to Michael Robinson and
4 Brian Sekerchak who is selling directly to Michael
5 Robinson. It's way more than 100 grams. This is
6 where our threshold matters.

7 Remember, Agent Asbill testified that out of
8 their controlled purchases and busts in this case,
9 just in this part of the case. Remember, it was a
10 big investigation. Just this part, they have 88
11 grams of actual methamphetamine. That doesn't
12 include all the meth that got sold and used that
13 law enforcement never got. They have 88 grams of
14 methamphetamine. Ask yourself, where is that
15 methamphetamine? Why isn't it here?

16 This trial is about conspiracy. This trial is
17 not about the individual distributions of that
18 methamphetamine. This trial is about the agreement
19 to sell methamphetamine. That's why you don't see
20 all this dope right here in front of you.
21 Distributions are another matter entirely.

22 Now, the defense would have you believe that
23 one, there is no conspiracy. These are just random
24 drug deals that happen to be around each other.
25 They'd also have you believe that the State has

1 manufactured this case and has wrongfully pointed
2 the finger at Clyde Davis for no reason or for a
3 reason. I don't know. I'm not going to have the
4 last word about that. Mr. Beasley will have the
5 last chance to speak to you.

6 But this is what you need to remember when you
7 go to that jury room. These people were in a
8 business. Think of BMW for example. They make
9 cars. That's their business. You've got lots of
10 people working at BMW for the common goal of a
11 finished car coming off that line, going to a lot
12 -- going to a wholesaler, then going to a lot and
13 eventually getting sold.

14 Lots of people are involved in lots of
15 different things. You got people putting
16 windshields in. You got people putting seats in.
17 You got people building engines. You got people
18 putting doors together. All the defendant parts of
19 a plan. Some of them even in different countries
20 where different parts come from. Not all of those
21 people know each other, but they are all working
22 together to make that car.

23 The windshield guy doesn't need to know what
24 the car seat guy is doing. He just knows that
25 somebody is doing it. He doesn't need to know it.

1 They are working together for that final common
2 goal.

3 In a situation like this with this network
4 marketing kind of sale structure dealing with
5 illegal drugs, this is more than just a simple
6 buy/sell relationship on a one-time deal. We're
7 not talking about Amy Brock one time sold, you
8 know, 3.5 grams to Brian Sekerchak. This is a
9 repetitive business amongst dealers. These people
10 were not only users. They would buy meth from the
11 person higher up. They would have to sell that
12 meth and get more money to come back and buy more
13 meth.

14 That shows a continuing interest in everybody
15 up the chain. They are not going to be able to
16 keep making money unless the people below them come
17 back. The people below them will only come back if
18 they sell their meth. This is where conspiracy
19 comes from. All these people are working together
20 to continue to make money for this guy. He's not
21 using it. He's not using it. They are just making
22 money. That's the only goal is to make the money.
23 These people are using and making money. Using and
24 making money. Using and making money. It's a
25 cycle. It's an understanding amongst them that you

1 got to keep selling to keep coming back to buy.

2 That is a conspiracy, Ladies and Gentlemen.

3 Now, as far as the idea that the State is
4 making this up, I know Mr. Beasley in his opening
5 statements talked about the State trying to scare
6 people, talked about threatening to take people's
7 kids away from them. That's a very inappropriate
8 attempt to tug at people's heartstrings. It's also
9 not true.

10 You saw Amy Brock on the stand, she already
11 had lost her children because of her involvement
12 with drugs. They were already out of her custody.
13 No one ever threatened to take her kids away, not
14 in any way, shape or form. So you can ignore that
15 because it's just not true.

16 Think about this. If the State was trying to
17 manufacture this case and have people come in here
18 and lie, don't you think they'd do a better job of
19 it? Don't you think they'd say a little bit more
20 than what they did? For example, Joshua Byers
21 comes in here and talks about the one time he dealt
22 with Clyde Davis, he got a single gram. Well, if
23 he's just making that up, why doesn't he say it's
24 an ounce? Why doesn't he say it's a pound? Why
25 doesn't he say it's a kilo? He says one little

1 gram. Cause that's the truth. If he was making it
2 up, he'd probably try to make it sound a little bit
3 getter to get a better deal for himself. Don't you
4 think?

5 The car, the silver Chrysler 300 or the Dodge
6 Charger, whichever it is. Agent Asbill identified
7 it was a Chrysler 300 during the controlled
8 purchase against Clyde Davis. We'll talk about
9 that a little bit more in a minute. But if the
10 witnesses were told what to say, don't you think
11 they'd only be told one car and they all get it
12 right without even thinking about it? The reason
13 there's that slight "I don't know if it was a 300
14 or a Charger" is because they actually saw a car,
15 not because somebody told them what to say.

16 We talked about plea deals. Now, all these
17 people right here, this circle of five, they all
18 admitted to being in this conspiracy, that the
19 conspiracy existed. They pled guilty to it and
20 admitted it. There's the conspiracy and they
21 admitted their guilt. In exchange, they got
22 offers, one, if they were willing to cooperate and
23 also just for pleading guilty.

24 Now, you might think well, that's good
25 incentive to lie. Well, let's think about these

1 offers for a second. The lowest one was for Amy
2 Brock who was cooperating early in the
3 investigation and doing controlled purchases.
4 These people didn't do controlled purchases in this
5 investigation, she did. She's still looking at
6 five to eight years. That's a long time.

7 If you think about five years, that's how long
8 it takes for a child to be born, roll over, eat
9 solid food, stand, walk, potty train, kindergarten.
10 All of that happens in five years. That is a long
11 time to go to prison. But the rest of these offers
12 are a lot harsher than that. There was not that
13 much of benefit given to these people.

14 Michael Robinson who was already in prison
15 when he was charged with this crime took on another
16 12 to 15 years and he's never spoken to law
17 enforcement before. The first time he's talked
18 about this was yesterday in front of you.

19 Nick Dendy is looking at 15 to 18 years.
20 Brian Sekerchak is looking at 15 to 18 years.
21 Joshua Byers is looking at up to 25 years. What
22 incentive is there to lie for that? And they've
23 already pled guilty. The point that I'm trying to
24 make is there's no real incentive for the people to
25 lie. Not anymore. They have admitted to their

1 guilt. They've accepted that. Three people
2 identified Clyde Davis as the source of the meth.
3 Three different people.

4 Now, I'll talk to you just briefly a little
5 bit about the law. I'll keep it brief. First,
6 this is about drug trafficking. What is
7 trafficking? It's got lots of different
8 definitions. You got people who are manufacturing
9 meth, actually making it or labeling it, packaging
10 it. You've got people that are delivering it. It
11 could be people who are helping people do those
12 things or just conspiring to do those things.
13 That's what we're dealing with here. A conspiracy
14 to traffic methamphetamine.

15 Now, why is this trafficking and not
16 distribution? It's all about weight. When I said
17 that 100 was a magical number, that's why. The
18 amount of methamphetamine is what turns it from
19 distribution to trafficking. At 100 grams, we're
20 in the trafficking range now. This is no longer
21 people getting dope just to distribute.

22 Now in this particular case, as I said, it's
23 about conspiracy. We've got to prove beyond a
24 reasonable doubt to you that two or more people got
25 together and agreed to commit an unlawful objective

1 or a lawful objective through unlawful means. Now,
2 this agreement, don't be mistaken, it doesn't have
3 to be a big meeting where everybody in the
4 conspiracy gets together, hashes out the terms and
5 come to some formal written document that this is
6 what we're going to do. That's not necessary. It
7 doesn't have to be in writing. Not everybody has
8 to talk to each other. Not every single person in
9 a conspiracy needs to know each other. That's the
10 law.

11 Think about it. Just like the BMW example,
12 there's no need for a windshield guy and a tire guy
13 to talk to each other for the end result to happen.
14 They just have to agree that I'm doing my part to
15 make this car. In this situation, all these people
16 are doing their part to sell meth. They are each
17 doing their part. That's what makes this a
18 conspiracy.

19 Now, when you think about the facts that you
20 heard and the law that I just talked about, there's
21 only one way that you can really start to go with
22 this verdict that you've got to decide on. Was
23 there a conspiracy? Yes. Five or six people
24 charged in it have pled guilty and came here and
25 testified that, yeah, I was part of the conspiracy

1 so a conspiracy exists. What was that conspiracy
2 for? To traffic methamphetamine.

3 Now, it doesn't have to be all at one time
4 like I said. The weight adds up over the course of
5 the conspiracy. Starting in 2010 and 2011, did
6 this group intend together to conspire together to,
7 over that period of time, distribute, manufacture,
8 deliver 100 grams or more of methamphetamine? The
9 evidence prove that they have.

10 But as I told you in opening statements, the
11 State has this burden. We have to prove to you
12 beyond a reasonable doubt that Clyde Davis is
13 guilty. What is a reasonable doubt? First, let's
14 focus on the word reasonable. What is reasonable?
15 Let's say that last night the weatherman said it
16 was going to rain today. Then, as you are sitting
17 in the jury room waiting for the very last person
18 to come in, they walk in and have a wet umbrella.

19 Now, there are a lot of things that are
20 possible as to why that umbrella was wet. Maybe
21 they dropped it in the bathtub. Maybe they are
22 outside and are walking down the street and a fire
23 hydrant flows out and is spewing all over the
24 place. Maybe as they come into the building, the
25 sprinklers are going off. Some malfunction. Maybe

1 there's some crazy person outside with a hose just
2 squirting. Lots of possible things. But what's
3 reasonable? The reasonable thing is that it
4 rained.

5 Reasonable doubt is the same thing. We're not
6 talking about any statistically possible doubt.
7 We're talking about a reasonable doubt. Now, the
8 legal definition of reasonable doubt, there's a
9 couple of different ways you can talk about it.
10 One is a doubt or kind that would cause a
11 reasonable person to hesitate to act.

12 Now, think about that word hesitate. That
13 doesn't mean you can't take your time and
14 deliberate and discuss the case. That's not what
15 it means. You should take your time to fully
16 examine all the testimony and discuss the case. It
17 doesn't mean you have to rush to judgement. That's
18 not what hesitate means. It means it would give
19 you pause, wait a minute, something's wrong.
20 That's what we're talking about on hesitate to act.

21 Reasonable doubt is a doubt that leaves you
22 firmly convinced of the defendant's guilt. After
23 hearing all this testimony of three different
24 people identifying Clyde Davis as the inevitable
25 source of their methamphetamine, if you are firmly

1 convinced he provided that methamphetamine and you
2 are firmly convinced that they intended for that to
3 eventually total up to 100 grams or more, than he's
4 guilty. Once you are firmly convinced that he's
5 guilty, he is guilty. Once you are firmly
6 convinced of that, you must find a verdict of
7 guilty based on the evidence in this case. If you
8 are firmly convinced that he is guilty, I ask that
9 you return a verdict that Clyde Davis is, in fact,
10 guilty of conspiracy to traffic 100 grams or more
11 of methamphetamine. Thank you.

12 **THE COURT:** Thank you, Mr. Underwood.
13 Mr. Beasley?

14 **MR. BEASLEY:** Thank you, Your Honor.
15 Good morning. It's time for my closing. I
16 was going to say I want to talk a little bit to you
17 about what your role is when you are back there
18 deliberating. It's not to determine what happened.
19 It's not to judge Clyde. You are not supposed to
20 judge him.

21 Our founding fathers, they lived under a
22 system where people had very few rights. Those
23 acting on behalf of the king had object power. So
24 they could and did bring criminal charges against
25 people. There was very little these people could

1 do about it. It's terrifying to be accused by the
2 government. There's no question. Nobody wants to
3 be accused by their government of anything. So our
4 founding fathers understood how lonely and helpless
5 these citizens were. They set up a system. They
6 distrusted the power the government had. They
7 distrusted the government period. So they set out
8 to construct, uh, a government with three branches.
9 They couldn't come up with any conclusion except
10 that they distrusted power.

11 I say that because I want you to think for a
12 second that the prosecutor says he represents the
13 State of South Carolina. By the State of South
14 Carolina, he claims to represent you, the people.
15 You twelve jurors. You twelve jurors are at stake.
16 Well, to restrain the government and keep it from
17 throwing citizens in jail and protect the innocent,
18 our founding fathers decided that the people, you,
19 would have the final say, you twelve jurors. You
20 represent the people.

21 The prosecutor doesn't represent you. I just
22 want you to remember that. He doesn't represent
23 you. He answers to you. I say that because in
24 this courtroom, you twelve jurors, you citizens
25 have the power. The government always answers to

1 you. So you're not twelve people sitting here in
2 judgement of Clyde. You are not. You are twelve
3 people sitting here in judgement of the government
4 represented here by the prosecutor and law
5 enforcement.

6 As I told you in my opening, the prosecutor
7 and the government and law enforcement, they have
8 not done their job beyond a reasonable doubt to
9 show that these six alleged coconspirators
10 conspired with each other to deal meth. They
11 haven't. As I told you in my opening, it's not
12 enough for these six individuals to be in
13 Greenville county doing meth. It's not enough for
14 them to know each other, just associate with each
15 other. It's not enough for them to have a
16 buyer/seller relationship. The State must show an
17 agreement between these six alleged coconspirators.
18 There must be an agreement. There has to be.

19 I told you in my opening that you will not
20 only come out of this courtroom and enter a verdict
21 of not guilty but also said you would come out of
22 here sort of angry and disappointed with the State
23 for not doing their job as well as they should. I
24 still feel that's the case. I really do. Most of
25 the witnesses, I really think they were a waste of

1 time. I didn't know what the purpose of some of
2 those witnesses were. You know, in the grand
3 scheme of things, it appears to me to be a bunch of
4 methamphetamine addicts. They are buying and
5 selling and using all at the same time. That's
6 their way of life.

7 It's not an agreement. It's not a bunch of
8 individuals that got together and said, hey, let's
9 figure out how we're going to sell meth. They get
10 it wherever they can. These are addicts. You
11 heard them.

12 You know, I represented meth addicts for
13 years. It is the hardest thing to get in the
14 world. I'm impressed some of those people are
15 getting it. But those people aren't getting it
16 being dealers. They are just buying and selling to
17 whoever they can.

18 And really, the only testimony that's probably
19 worth talking about is probably Amy Brock and Nick
20 Dendy. As I said, first of all, Amy is doing great
21 now. She's been clean for two years. She's got
22 kids. I'm proud of her. She needs to take care of
23 those kids. But at the time when she was
24 cooperating with the government and giving
25 statements, she wasn't in that state of mind she is

1 now. She was high. She was high when she
2 identified Clyde with a one-photo lineup.

3 She was high when she was sleeping with Nick
4 Dendy. She denied even doing that. It wouldn't
5 surprise me. She doesn't even remember it. It
6 wouldn't surprise me one bit. Those people would
7 be high for days. They don't know what they are
8 doing.

9 Like Amy and like everybody else who
10 testified, they were buying, selling and using all
11 over the place. It started all the way back in
12 2004. All of a sudden, the government's going to
13 pick, well, when Dendy started selling to Amy in
14 2010, he was supplying everybody. Dendy had
15 already -- he even testified I was hanging out at
16 Mike -- Mike Robinson's house. They were smoking
17 meth. I saw there was a need for it. Mikey Mike
18 even testified that he never saw anybody pull up
19 and drop off drugs, meth. None of those witnesses
20 proved anything. The sources of meth for all this
21 crowd were in this. As you heard, they were
22 getting it. They were getting it from Hispanics,
23 they were getting it from Mexicans that they can't
24 find. It's just everywhere.

25 Like Amy, no one ever met Clyde or Dendy's

1 cousin for that matter. Amy and Batman described
2 the vehicle which was either a black Honda Accord
3 or a silver Chrysler. Well, wouldn't you think --
4 they never met Clyde, by the way, or never
5 introduced to him. Wouldn't you think that Dendy
6 who was so close and grew up with Clyde would know
7 what kind of car Clyde drove? He didn't even know
8 what kind of car he drove.

9 I asked him what kind of car did Bokie drive.
10 He didn't know that either. You know why? Cause
11 Bokie is Dendy's cousin. That's why. Bokie is his
12 cousin. That's why he refused to testify about
13 what kind of car they drove. None of these other
14 people really knew whose car it was. They were
15 high on drugs.

16 Law enforcement said it was a Chrysler. They
17 could have run the tag. Whose car does it belong
18 to? They could have presented video. Why not?
19 They could have presented audio. Why not? Why
20 couldn't they present anything like they do with
21 every single person who came up here who was caught
22 with drugs, was wired up, they had buy money. They
23 didn't have any of that. Why didn't they just
24 present it to you so easily to show you beyond a
25 reasonable doubt that Clyde was doing this?

1 They had buys off Dendy. They set him up. If
2 everything went according to the plan as the State
3 would have you believe, as Amy Brock would have you
4 believe, as Dendy has you believe, wouldn't they
5 just set it up where Clyde come rolling up in to
6 drop off the drugs to Dendy. That's Police 101.
7 That's an easy thing to do. They didn't do it.

8 They got 88 grams in buys. They don't even
9 bring them in here. Why wouldn't they bring 88
10 grams to show you they made 88 grams of buys with
11 all these other individuals? They didn't. I've
12 never seen anything like this where they don't
13 present any evidence in court. They don't produce
14 it.

15 In a DUI trial, you show a video. A murder
16 trial, you put in forensics. I hear the government
17 say it's a conspiracy. I'll tell you, if I'm
18 coming in here to try to prove a conspiracy, I'm
19 going to have me some evidence. I'm going to show
20 you a video of Clyde coming up. I'm going to show
21 you an audio of Clyde coming up. I'm going to show
22 you that I've got a car and I've got a picture of
23 it. I've run his tag and belongs to Clyde Davis.
24 They did not do any of that. Didn't do it.

25 You know, maybe Amy is covering for Dendy. At

1 the time, she was, you know had a relationship with
2 Dendy. She was still getting her drugs from him
3 and Bokie. I don't know, but it's not very
4 reliable. It's really not.

5 Dendy, I'm sure I don't have to say too much
6 about that. His testimony was not the most
7 reliable. I think when he left here, he was
8 worried they were going to violate his plea
9 agreement when he started talking about Bokie. I
10 really do. He was scared. I do believe some of
11 his half truths. He finally said, yeah, I did so
12 15 to 20 times to Amy using Clyde. The other 15 or
13 20 times, I used Bokie. Well, if you take -- this
14 is after now taking the polygraph, if that's 20
15 times and he's doing three and a half grams, that's
16 still only 70 grams. You know, it's mind-boggling
17 that the State has not been better at proving their
18 case. It really is.

19 Like I said, it's -- the most disappointing
20 thing, I think, of you guys being here this week is
21 they hadn't done a better job for you. I mean,
22 they really haven't. They have not. So every
23 single defendant that you heard testify, they
24 admitted, yeah, we were caught with drugs. No one
25 testified that they bought drugs in an undercover

1 capacity from Clyde. No one presented any evidence
2 that they did any buys. There aren't any video.
3 No drugs.

4 And at one point, just Police 101 again, they
5 execute search warranted after these buys on
6 everybody's houses. They were going there. They
7 did drugs on them. Why didn't they do that with
8 Clyde? If they had a buy on him, why arrest him?
9 Take a picture of him as he's getting out of the
10 car and handing off the drugs. They didn't do it.
11 They didn't do it. They failed at their job. They
12 didn't do it.

13 The State talked about reasonable doubt. The
14 goal of those who chose the beyond a reasonable
15 doubt standard was to reduce the chances as much as
16 possible of juries mistakenly convicting innocent
17 men and by holding the government to a very, very
18 high burden of proof. Yes, it's true that if
19 juries apply that standard correctly some guilty
20 people will be acquitted. No question about it.

21 But that is not the fault of the jury, not the
22 fault of you, not the fault of our standard. It's
23 the fault of the prosecution. If the prosecution
24 has insufficient evidence of someone's guilt, then
25 they shouldn't be prosecuting them in the first

1 place. They really shouldn't. They shouldn't be
2 doing this case. This standard ensures that both
3 those against whom the government does not have
4 compelling evidence of guilt, they are acquitted.
5 It's the most important instruction the judge will
6 give you, the standard by which you judge the
7 credibility of witnesses.

8 Proof beyond a reasonable doubt is proof so
9 strong, so compelling and so irrefutable that it
10 grabs you and does not let go. And just to give
11 you an idea of how powerful reasonable doubt is, if
12 you think Clyde didn't do it, not guilty. If you
13 think I'm pretty sure Clyde didn't do it, not
14 guilty. If you think Clyde probably didn't do it,
15 not guilty. If you think, I don't know if Clyde
16 did it, not guilty. If you think Clyde probably
17 did it, not guilty. If you think I'm pretty sure
18 Clyde did it, not guilty. You must be 100 percent
19 free of reasonable doubt if you vote to convict.
20 The vote must be unanimous. But your individual
21 reasonable doubts make it so even if you really,
22 really, really are sure that Clyde did it but the
23 State did not prove to you beyond a reasonable
24 doubt, then you must vote not guilty for Clyde.

25 The State talks about these witnesses, why

1 would they lie, why would they lie? Because they
2 are looking at 25 years. Of course, they're going
3 to say whatever they can to get a better deal.
4 They wouldn't need them to testify. Of course,
5 they are showing up right before court and saying,
6 yeah, I did one buy. They never did it before.
7 They never helped the court before when they were
8 doing these buys. Why didn't they do undercover
9 buys with Amy and Dendy? They never did.

10 Thank you, guys and ladies, for being here
11 this week. I hope you found this interesting. I
12 know y'all paid attention in great detail to
13 everything. Y'all have been taking notes. I'm
14 very impressed. But, uh, it's a neat system. It
15 goes back a long time. I know you take your oath
16 seriously. I know I believe in the system and I
17 know Clyde does. I want to thank you for being
18 here.

19 **THE COURT:** Thank you, Mr. Beasley.

20 Oh, yes, sir? Certainly.

21 Mr. Beasley.

22 (WHEREUPON, a bench conference is held off the
23 record.)

24 **THE COURT:** Thank you, Ladies and
25 Gentlemen, for your patience with us. Mr.

1 Foreperson and Ladies and Gentlemen of the jury,
2 you have seen and heard the evidence presented as
3 well as the arguments of counsel. It now therefore
4 becomes my duty and obligation to instruct you on
5 the law that is applicable in this case. It will
6 then be your duty and obligation to begin your
7 deliberations through which process you will decide
8 the facts, apply the law as instructed by the Court
9 and render a fair and impartial decision.

10 It is your exclusive duty to determine what
11 the facts are. You do that based upon your own
12 commonsense examination and evaluation of the
13 testimony and other evidence received during the
14 trial of this case. You twelve jurors alone will
15 decide what weight, value and effect that is to be
16 given to any particular testimony or other evidence
17 received. Your ultimate goal is to simply reach
18 the truth in this matter and, by doing so, you will
19 have fulfilled your obligation as jurors and that
20 is to give both the State and the defendant a fair
21 and impartial trial based upon the evidence
22 presented and the law applicable to this case.

23 In this case, the State of South Carolina
24 through the Attorney General has charged the
25 defendant with the criminal offense known as

1 Conspiracy to Traffic in Methamphetamine for more
2 than 100 grams but less than 200 grams. The
3 allegations charging the defendant with this crime
4 is set forth in the indictment that has previously
5 been explained to you. As I have previously
6 explained, the indictment is not evidence in this
7 case and may not be considered by you as evidence
8 against the defendant.

9 As to the charge set forth in the indictment,
10 the defendant has entered a plea of not guilty.
11 That plea of not guilty has therefore placed upon
12 the State the burden of proving the allegations
13 that are set forth in the indictment, the burden of
14 proving each of the essential elements of any crime
15 charged and, therefore, the burden of proving the
16 guilt of the defendant to the satisfaction of you
17 twelve jurors beyond a reasonable doubt before a
18 verdict of guilty could be returned as to any
19 indictment.

20 The burden is never upon a defendant to prove
21 that he is not guilty or to prove that he is
22 innocent because, in some cases, that might not be
23 possible. The burden is always upon the State
24 because they have made the allegations to prove the

1 You are further instructed that it is a vital,
2 important and cardinal rule of law that every
3 defendant in a criminal trial, no matter how
4 serious the offense might be for which he stands
5 charged, the defendant shall always be presumed
6 innocent of that charge and that presumption of
7 innocence shall be with the defendant from the
8 moment of his arrest, throughout the course of the
9 criminal process and even throughout the course of
10 the actual trial.

11 The presumption of innocence shall be with the
12 defendant even as you go into the jury room to
13 begin your deliberations and that presumption of
14 innocence shall be with him there and be with him
15 forever unless you twelve jurors determine that he
16 is no longer entitled to that presumption of
17 innocence. It is only if, unless and until you are
18 satisfied of the defendant's guilt beyond a
19 reasonable doubt that he would no longer be
20 entitled to the presumption of innocence.

21 I remind you that during this trial, you and I
22 have certain duties to perform. As the trial
23 judge, it is my responsibility to preside over the
24 trial of this case and I also have the duty to rule
25 on the admissibility of evidence offered during

1 this trial. You are to consider only the competent
2 evidence before you. If there was any testimony
3 ordered stricken from the record in this case
4 during this trial, you must disregard that
5 testimony. You are to consider only the testimony
6 which has been presented from this witness stand,
7 any exhibits which have been made part of the
8 record in this case along with any stipulations of
9 counsel.

10 I have the additional duty to charge you on
11 the law applicable to this case. As the presiding
12 judge, I am the sole judge of the law in this case.
13 It is your duty as jurors to accept and apply the
14 law as I now state it to you. If you already have
15 any idea as to what the law is or what the law
16 ought or should be and it does not agree with what
17 I tell you now the law is, you must abandon this
18 idea because you are sworn to accept the law and
19 apply the law exactly as I state it to you.

20 In every case tried in this court before a
21 jury, the jury becomes the sole and exclusive judge
22 of the facts. A trial judge can not intimate,
23 state, comment on or make any statement to a trial
24 jury about the facts in a case. Since you, the
25 jury, are the sole judge of the facts in this case,

1 you are not to infer from what I might have said
2 during the progress of this trial in ~~ruling~~ upon
3 the admissibility of evidence or otherwise or
4 anything that I say now during the course of this
5 instruction to you that I have any opinion about
6 the facts in this case. I do not. ~~The law does~~
7 not allow me to have an opinion about ~~the~~ facts in
8 this case. This is a matter solely for you, the
9 jury, to determine. As jurors, it is ~~your~~ duty to
10 determine the effect, value and weight ~~and~~ truth of
11 the evidence presented during this trial.

12 The State has the burden of proving the
13 defendant guilty beyond a reasonable ~~doubt~~. Some
14 of you may have served as jurors in civil cases
15 where you were told that it is only necessary to
16 prove that a fact is more likely true ~~than~~ not
17 true, such as by the greater weight ~~or~~
18 preponderance of the evidence. In criminal cases,
19 the State's proof must be more powerful ~~than~~ that.
20 It must be beyond a reasonable doubt.

21 Reasonable doubt is the kind of ~~doubt~~ that
22 would make a reasonable person hesitate to act.
23 Proof beyond a reasonable doubt is ~~proof~~ that
24 leaves you firmly convinced of the defendant's
25 guilt. There are very few things in ~~this~~ world

1 that we know with absolute certainty. In criminal
2 cases, the law does not require proof that
3 overcomes every possible doubt.

4 If, based on your consideration of the
5 evidence, you are firmly convinced that the
6 defendant is guilty of the crime charged, you must
7 find the defendant guilty. If, on the other hand,
8 you think there is a real possibility that the
9 defendant is not guilty, you must give the
10 defendant the benefit of the doubt and find him not
11 guilty.

12 Facts and circumstances that merely place upon
13 the defendant a grave suspicion of the crime
14 charged or that merely raise a speculation or
15 conjecture of the defendant's guilt are not
16 sufficient to authorize a conviction of the
17 accused.

18 There are two types of evidence which are
19 generally presented during a trial: direct evidence
20 and circumstantial evidence. Direct evidence is
21 the testimony of a person who claims to have actual
22 knowledge of a fact such as an eyewitness. It is
23 evidence which immediately establishes the main
24 fact to be proved.

25 Circumstantial evidence is a proof of a chain

1 of facts and circumstances indicating the existence
2 of a fact. It is evidence which immediately
3 establishes collateral facts from which the main
4 fact may be inferred. Circumstantial evidence is
5 based on inference and not on personal knowledge or
6 observation.

7 The law makes absolutely no distinction
8 between the weight or value to be given to either
9 direct or circumstantial evidence, nor is a greater
10 degree of certainty required of circumstantial
11 evidence than of direct evidence. You should weigh
12 all of the evidence in this case. After weighing
13 all the evidence, if you are not convinced of the
14 guilt of the defendant beyond a reasonable doubt,
15 you must find the defendant not guilty.

16 Necessarily, you must determine the
17 credibility of the witnesses who have testified in
18 this case. Credibility simply means believability.
19 It becomes your duty as jurors to analyze and to
20 evaluate the evidence and determine which evidence
21 convinces you of its truth. In determining the
22 believability of witnesses who have testified in
23 this case, you may believe one witness over several
24 witnesses or several witnesses over one witness.
25 You may believe a part of the testimony of a

1 witness and reject the remaining part of the
2 testimony of that same witness. You may believe
3 the testimony of a witness in its entirety or
4 reject the testimony of a witness in its entirety.

5 You may consider whether any witness has
6 exhibited to you any interest, bias, prejudice or
7 other motive in this case. You may also consider
8 the appearance and manner of a witness while on the
9 witness stand. In other words, you are to judge a
10 witness' credibility in the same way you would
11 judge a person's credibility in your daily life.

12 I instruct you and emphasize that the fact
13 that the defendant did not testify is not a factor
14 to be considered by you in any way in your
15 deliberation and in your consideration on the
16 question of the guilt or innocence of the
17 defendant. It must not be considered by you in any
18 manner whatsoever. A defendant has the
19 constitutional right to remain silent and the
20 assertion of this right must not be considered by
21 you in your deliberations.

22 I repeat, under your oath, you are to draw no
23 conclusion whatsoever from the fact that the
24 defendant in this case did not testify. The fact
25 that the defendant did not testify should not even

1 be discussed in the jury room. The burden of
2 proof, as I have stated it to you, is on the State.
3 The defendant is not required to prove his
4 innocence. The burden of proof remains on the
5 State to prove guilt beyond a reasonable doubt.

6 In order to establish criminal liability,
7 criminal intent is required. For example, the
8 mental state required to be proven by the State for
9 a particular crime might be purpose, intent,
10 knowledge, recklessness or criminal negligence.
11 Criminal intent must be proven by the State beyond
12 a reasonable doubt. Criminal intent is always a
13 matter that must be determined by the jury from the
14 circumstances surrounding the situation. There is
15 no way to prove criminal intent to a mathematical
16 certainty. So the law says that criminal intent
17 may be inferred from the circumstances shown to
18 have existed.

19 This is how you make a determination of
20 whether or not the element requiring intent was
21 present. It is not necessary to establish intent
22 by direct evidence but intent may be established by
23 inference in the same way as any other fact. By
24 taking into consideration the acts of the parties
25 and all the facts and circumstances of the case.

1 Criminal intent is a mental state of conscious
2 wrongdoing. It is up to you to determine what the
3 defendant intended to do based on the circumstances
4 shown to have existed. Criminal intent can arise
5 from action or failure to act. It may arise from
6 negligence, reckless or an indifference to duty or
7 to consequences that is considered by the law to be
8 the equivalent of criminal intent.

9 The defendant is charged with Conspiracy to
10 Traffic Methamphetamine for 100 grams or more but
11 less than 200 grams. The State must prove beyond a
12 reasonable doubt that the defendant combined with
13 one or more persons for the purpose of committing
14 an unlawful act or of committing a lawful act by
15 unlawful means.

16 The State alleges that the defendant conspired
17 to commit the unlawful act of trafficking in
18 methamphetamine for 100 grams or more but less than
19 200 grams. The State must prove beyond a
20 reasonable doubt that the defendant conspired to
21 traffic methamphetamine for 100 grams or more but
22 less than 200 grams. The State need not prove the
23 defendant conspired to traffic methamphetamine for
24 less than 200 grams, only that he conspired to
25 traffic methamphetamine for more than 100 grams.

1 "Trafficking" means to knowingly sell,
2 manufacture, cultivate, deliver, purchase, bring
3 into this state, provide financial assistance or
4 otherwise aid, abet, attempt or conspire to sell,
5 manufacture, cultivate, deliver, purchase or bring
6 into this state or knowingly be in actual or
7 constructive possession or knowingly attempt to
8 become in actual or constructive possession of more
9 than 100 grams of methamphetamine.

10 In order to prove that the defendant
11 conspired to traffic methamphetamine, it is not
12 necessary to prove that he did traffic
13 methamphetamine. All that is necessary is to prove
14 that he conspired to traffic more than 100 grams of
15 methamphetamine. In order to prove conspiracy, the
16 State must also prove that there existed a mutual
17 understanding, agreement or common intention or
18 plan to carry out the unlawful act.

19 Mere passive knowledge of or consent to the
20 criminal conduct of another is not enough to make a
21 person a conspirator. Proof of a buyer/seller
22 relationship without more is inadequate to tie the
23 buyer or seller to a larger conspiracy. There must
24 be guilty knowledge and participation. Similarly,
25 the mere fact that the defendant may have

1 associated with another person or met with another
2 person and discussed common aims and interest does
3 not necessarily establish proof of existence of a
4 conspiracy or that the defendant was involved in a
5 conspiracy. On the other hand, it is not necessary
6 that the agreement be a formal one, that it be in
7 writing, that the persons hold a meeting and
8 expressly state the terms of the common plan or
9 that the agreement be stated in words between them.

10 The agreement of a criminal conspiracy may
11 come into being through an implied mutual
12 understanding. The willful intentional and knowing
13 adoption by two or more persons of a common plan is
14 sufficient. Once a conspiracy has been
15 established, evidence connecting a defendant to the
16 conspiracy even though the connection is slight is
17 sufficient to establish knowing participation in
18 the conspiracy. No overt acts need to be shown to
19 establish a conspiracy. A conspiracy may be shown
20 by circumstantial evidence and the conduct of the
21 parties.

22 In order to convict the defendant of
23 conspiracy, the State must prove beyond a
24 reasonable doubt not only did that the defendant
25 knew of the unlawful conduct but that the defendant

1 agreed to combine with the other persons for the
2 purpose of accomplishing the unlawful conduct.

3 (Pause.)

4 If you would, bear with me for just one
5 moment, ladies and gentlemen. (Pause.)

6 Ladies and gentlemen, you may have noticed
7 that I have been reading my instructions to you.
8 There are two reasons I do that. First, I want to
9 be right. Secondly, I am going to give you a copy
10 of my instructions in written form for use during
11 your deliberations. During your deliberations, you
12 may refer to the instructions to guide your
13 decision making. You must consider the
14 instructions as a whole and not follow some and
15 ignore others. Please return the copy of these
16 instructions to the court at that time your verdict
17 is rendered.

18 Ladies and gentlemen, your verdict must be a
19 unanimous one.

20 Mr. Foreperson, when the jury agrees on a
21 verdict, you will mark a verdict on the verdict
22 form and sign your name as foreperson. Then, knock
23 on the jury room door and inform that the bailiff
24 that you have reach a verdict. At that time, we
25 will see you back in the courtroom.

1 Let's talk about the verdict form here
2 briefly. It is a very simple one. It says, we,
3 the jury, unanimously find the defendant not guilty
4 of Conspiracy to Traffic Methamphetamine; guilty of
5 Conspiracy to Traffic Methamphetamine -- of course
6 that is more than 100 grams but less than 200
7 grams. I want to tell you that these verdicts,
8 possible verdicts are in no particular order. I
9 just have to put one first. There is no
10 significance to the way that I list these
11 particular verdicts.

12 I ask you now to return to your jury room. Do
13 not begin your deliberations until you were told by
14 the bailiff to do so. There are some matters that I
15 need to take up with the attorneys very briefly. It
16 will be your signal to begin deliberations once you
17 have received the verdict form, any evidence that
18 was entered in this trial and my instructions in
19 written form. Thank you so much.

20 (WHEREUPON, the jury exits at approximately
21 10:14 a.m.)

22 **THE COURT:** Any objections to my charge on the
23 law from the State?

24 **MR. PAULING:** Your Honor, I may have missed.
25 Your Honor, I am not sure. I just didn't hear the

1 Vasquez language. That was my only concern.

2 THE COURT: We did quote the case in here.
3 Let me tell you what we said. Hold on just one
4 second. The direct quote from that case was once a
5 conspiracy has been established, evidence connecting
6 the defendant to the conspiracy even though the
7 connection is slight is sufficient to establish
8 knowing participation.

9 MR. PAULING: I did not hear that.

10 THE COURT: That was the Vasquez. Am I saying
11 it right?

12 MR. PAULING: Yes.

13 THE COURT: That was that -- that was directly
14 from that case. Yes, sir?

15 MR. BEASLEY: So that was put in there, so my
16 buyer/seller was not put in there?

17 THE COURT: That was put in here.

18 MR. PAULING: I heard that.

19 THE COURT: I turned to her and said I read
20 that, right? If y'all are anything like I am when I
21 try cases, by the time the judge is charging the
22 law, he could have said anything. But yes, I did
23 say buyer/seller for sure. All right. Anything
24 else?

25 MR. PAULING: Nothing from the State.

1 **THE COURT:** Okay. Anything from the defense?

2 **MR. BEASLEY:** No, Your Honor.

3 **THE COURT:** We need to take out those two
4 little phrases about less than 200 and we need to
5 take those out before I can send the written
6 instructions back. There is only one exhibit that I
7 know, right?

8 **MR. BEASLEY:** It was for ID purposes only.

9 **THE COURT:** Okay. So there are no exhibits.
10 Okay. All right. Let me tell you this. I told you
11 yesterday I thought both tried -- have all tried an
12 excellent case. Y'all's closing argument as far as
13 -- both of your closing arguments were as good as I
14 have ever heard. I thought they were both
15 excellent.

16 **MR. UNDERWOOD:** Thank you, Your Honor.

17 **THE COURT:** All right. We will be in recess
18 pending a verdict then.

19 **MR. BEASLEY:** Thanks, Judge.

20 (WHEREUPON, deliberation of the jury from
21 approximately 10:21 a.m. to 12:45 p.m.)

22 (WHEREUPON, the Court resumes at approximately
23 1:30 p.m.)

24 (WHEREUPON, the jury enters at approximately
25 1:32 p.m.)

1 **THE COURT:** Mr. Foreperson, it is my
2 understanding that the jury has reached a verdict.
3 Is that correct?

4 **THE JUROR:** Yes, ma'am.

5 **THE COURT:** Do you mind handing the verdict
6 form to the bailiffs please?

7 (WHEREUPON, the verdict form is passed up to the
8 Court.)

9 **THE COURT:** All right, the verdict form
10 appears to be in order. Before we publish it, I
11 don't think I need to remind anybody here. I
12 normally do this before the jury comes back in, that
13 either way that the verdict turns out, there should
14 be no reaction whatsoever or I will deal with that
15 astringently.

16 Yes, ma'am?

17 **THE CLERK:** In Indictment number
18 2011-GS-47-06, the jury finds the State of South
19 Carolina versus Clyde Bowen Davis guilty of
20 Conspiracy to Traffic Methamphetamine more than 100
21 grams but less than 200 grams.

22 Mr. Foreman, is this your verdict and the
23 verdict of the entire jury?

24 **THE JUROR:** Yes, ma'am.

25 **THE CLERK:** Thank you.

1 **THE COURT:** Anything from the State before I
2 released the jury?

3 **MR. UNDERWOOD:** Nothing from the State, Your
4 Honor.

5 **THE COURT:** Anything from the defense?

6 **MR. BEASLEY:** I ask that we poll the jury.

7 **THE COURT:** All right. Very well.

8 **THE CLERK:** Okay. Ladies and gentlemen of
9 the jury, I'm going to ask you two questions related
10 to your verdict. As I call your juror number,
11 please answer yes or no to both questions. I'm
12 going to start with the foreman.

13 Juror number 153, was this your verdict?

14 **THE JUROR:** Yes.

15 **THE CLERK:** Is this still your verdict?

16 **THE JUROR:** Yes.

17 **THE CLERK:** Juror number 93, was this your
18 verdict?

19 I'm sorry. Juror number 131. Was this your
20 verdict?

21 **THE JUROR:** Yes.

22 **THE CLERK:** Is this still your verdict?

23 **THE JUROR:** Yes.

24 **THE CLERK:** Juror number 103, was this your
25 verdict?

1 THE JUROR: Yes.
2 THE CLERK: Is this still your verdict?
3 THE JUROR: Yes.
4 THE CLERK: Juror number 159, was this your
5 verdict?
6 THE JUROR: Yes.
7 THE CLERK: Is this still your verdict?
8 THE JUROR: Yes.
9 THE CLERK: Juror number 158, was this your
10 verdict?
11 THE JUROR: Yes.
12 THE CLERK: Is this still your verdict?
13 THE JUROR: Yes.
14 THE CLERK: Juror number 35, was this your
15 verdict?
16 THE JUROR: Yes.
17 THE CLERK: Is this still your verdict?
18 THE JUROR: Yes.
19 THE CLERK: Juror number 132, was this your
20 verdict?
21 THE JUROR: Yes.
22 THE CLERK: Is this still your verdict?
23 THE JUROR: Yes.
24 THE CLERK: Juror number 101, was this your
25 verdict?

1 THE JUROR: Yes.
2 THE CLERK: Is this still your verdict?
3 THE JUROR: Yes.
4 THE CLERK: Juror number 60, was this your
5 verdict?
6 THE JUROR: Yes.
7 THE CLERK: Is this still your verdict?
8 THE JUROR: Yes.
9 THE CLERK: Juror number 71, was this your
10 verdict?
11 THE JUROR: Yes.
12 THE CLERK: Is this still your verdict?
13 THE JUROR: Yes.
14 THE CLERK: Juror number 41, was this your
15 verdict?
16 THE JUROR: Yes.
17 THE CLERK: Is this still your verdict?
18 THE JUROR: Yes.
19 THE CLERK: Juror number 99, was this your
20 verdict?
21 THE JUROR: Yes.
22 THE CLERK: Is this still your verdict?
23 THE JUROR: Yes.
24 THE CLERK: That completes the polling of the
25 jury.

1 **THE COURT:** All right. Very well. Again, I
2 ask is there anything from the State before I
3 release the jury?

4 **MR. UNDERWOOD:** Nothing, Your Honor.

5 **THE COURT:** Anything from the defense?

6 **MR. BEASLEY:** Nothing, Your Honor.

7 **THE COURT:** All right. Ladies and Gentlemen,
8 I know I speak for all of the attorneys involved in
9 this. We appreciate your service so much. I know
10 that some of you are probably still midway through
11 your lunch. I'm going to let you go back to your
12 jury deliberation room. I want to speak to you
13 before you leave. All right. Thank you so much.

14 (WHEREUPON, the jury exits at approximately
15 1:37 p.m.)

16 **THE COURT:** I am going to go let the jury go.
17 Do we need to move to sentencing now?

18 **MR. UNDERWOOD:** We can do it now, Your Honor.
19 It is a mandatory sentence.

20 **THE COURT:** Okay. All right. I will be back
21 in just one moment.

22 (WHEREUPON, a short recess is taken.)

23 **THE COURT:** All right. Oh, y'all be seated.
24 Y'all be seated. It is my understanding that this
25 is a mandatory 25 years, is that correct?

1 MR. UNDERWOOD: That is correct, Your Honor.

2 THE COURT: I'll tell you what, I will give
3 you 10 days to make your motions, post-trial motions
4 that you would like to make if that is acceptable to
5 you.

6 MR. BEASLEY: Thank you, judge.

7 THE COURT: All right. There is some sort of
8 fine, is that a mandatory fine?

9 MR. UNDERWOOD: 50,000, Your Honor.

10 THE COURT: Anything I need to -- anything we
11 need to take up before sentencing?

12 MR. BEASLEY: I don't think so.

13 MR. UNDERWOOD: Nothing from the State, Your
14 Honor.

15 THE COURT: All right. Mr. Davis, the
16 sentence of the court is 25 years and a fine of
17 \$50,000. I wish you the best of luck. I do want to
18 at least say this much to you, Mr. Davis. I do
19 appreciate your good conduct during the trial. Good
20 luck to you.

21 (WHEREUPON, Court's Exhibit 2 is marked for
22 identification purposes.)

23 (WHEREUPON, the proceedings conclude at
24 approximately 1:49 p.m.)

25

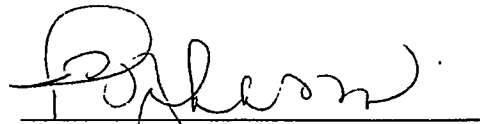
CERTIFICATE

397

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 3rd day of July, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.



Teresa B. Johnson

Circuit Court Reporter

1 BEFORE THE SOUTH CAROLINA STATE GRAND JURY # 22

2 STATE OF SOUTH CAROLINA
3 COUNTY OF RICHLAND

4 - - - - -
5 INVESTIGATION NO: SGJ2010-0206
6 - - - - -

7 TESTIMONY OF SENIOR AGENT B. ASHLEY ASBILL
8 - - - - -

9 Columbia, South Carolina
10 Thursday, January 13, 2011
11 3:13 p.m. to 3:37 p.m.
12 - - - - -

13 PRESENT:

14 OFFICE OF THE ATTORNEY GENERAL
15 STATE OF SOUTH CAROLINA
16 STATE GRAND JURY DIVISION
17 The Rembert C. Dennis Building
18 Columbia, South Carolina 29201

19 TAKEN BY: JOSHUA R. UNDERWOOD, ESQUIRE,
20 Assistant Attorney General
21 ROBERT E. MALDONADO, ESQUIRE
22 Assistant Attorney General

23 REPORTED BY: ROBBIE KOON DeFREESE
24 Court Reporter

25 QUORUM OF GRAND JURORS
- - - - -

21 Robbie Koon DeFreese
22 Court Reporter
23 142 George Addy Road
24 Little Mountain, South Carolina 29075-9635
25 803-345-6587
rkdefreese@bellsouth.net

ROBBIE KOON DeFREESE, COURT REPORTER

1 Thursday, January 13, 2011.

2 3:11 p.m.

3 (Mr. Underwood and Mr. Maldonado enter the Grand
4 Jury Room.)

5 MR. UNDERWOOD: Good afternoon.

6 Mr. Foreman, do we have quorum?

7 THE FOREPERSON: We do.

8 MR. UNDERWOOD: All right.

9 Ladies and Gentlemen, we're now going to introduce
10 to you a new case. This is State Grand Jury Case Number
11 2010-0206. It's titled Operation Ice House. Senior Agent
12 Ashley Asbill is here.

13 If you could step forward and be sworn.

14 THE FOREPERSON: State your name, please.

15 THE WITNESS: Brunson Ashley Asbill.

16 SENIOR AGENT B. ASHLEY ASBILL,
17 being first duly sworn by the Foreperson at 3:13 p.m.,
18 testified as follows:

19 EXAMINATION

20 BY MR. UNDERWOOD:

21 Q All right.

22 Agent Asbill, today we are going to start with
23 introductory testimony into a new case called Operation Ice
24 House.

25 If you would, could you please state your full

ROBBIE KOON DeFREESE, COURT REPORTER

1 name and spell your last name for the Record?

2 A I will.

3 First name is Brunson, B-r-u-n-s-o-n; middle name
4 Ashley, A-s-h-l-e-y; last name is Asbill, A-s-b-i-l-l.

5 Q Okay.

6 And have you previously testified before this
7 Grand Jury?

8 A I have not. No, sir.

9 Q Could you please tell the Grand Jury Panel then where
10 you're currently employed?

11 A I'm employed with the South Carolina State Law
12 Enforcement Division.

13 Q And how long have you been with SLED?

14 A I've been with SLED 18 years.

15 Q Okay.

16 And Lawful Enforcement in general?

17 A I've been in Law Enforcement 26 years.

18 Q All right.

19 And in what capacity do you work for SLED?

20 A I am a Senior Agent with the State Law Enforcement
21 Division.

22 Q Are you assigned to a particular unit?

23 A I'm assigned to the Special Operations Unit.

24 Q And what are your job responsibilities there?

25 A My job responsibilities are mostly narcotics cases,

ROBBIE KOON DeFREese, COURT REPORTER

1 alcohol cases, and some public corruption cases.

2 Q Could you please summarize your experience
3 investigating narcotics cases?

4 A I've got probably about 18 years of investigating
5 narcotics cases throughout the State.

6 Q And could you summarize any specific or special
7 training you've had regarding narcotics investigations,
8 particularly, as it may result with methamphetamines?

9 A I've gone to numerous training programs offered at the
10 South Carolina Criminal Justice Academy. I'm also a
11 graduate of DEA School of Methamphetamines -- on
12 Methamphetamines.

13 Q In regards to this case, are you the Case Agent
14 assigned to Operation Ice House?

15 A I am.

16 Q Has there been any previous Grand Jury testimony on
17 this case?

18 A No, there hasn't.

19 Q In general terms, is it still an ongoing
20 investigation?

21 A Yes, it is.

22 Q In your background and experience, will the power of
23 this Grand Jury such as subpoenas and further testimony be
24 needed to complete this ongoing investigation?

25 A Yes, it will.

ROBBIE KOON DeFREESE, COURT REPORTER

1 Q What Law Enforcement Agencies are involved in this
2 case?

3 A The Greenville County Sheriff's Office, the Pickens
4 County Sheriff's Office, and Anderson County Sheriff's
5 Office.

6 Q Okay.

7 Based on the Agencies that you've named, is it
8 fair to say that this case is of multi-County significance?

9 A Yes, I would.

10 Q And what Counties are involved?

11 A Anderson, Pickens, Greenville.

12 Q Are there any other Counties in South Carolina
13 involved?

14 A Not -- not at the present time.

15 Q And, again, this is an ongoing investigation?

16 A It is an ongoing investigation.

17 Q Will you briefly explain to the Grand Jurors why this
18 case is named Operation Ice House?

19 A The investigation considered is centered around the
20 trafficking and the distribution of ice -- methamphetamine,
21 which is the crystallized form of meth.

22 Q Okay.

23 And what is the difference between ice and other
24 forms of methamphetamine such as crank? What's the
25 difference?

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1 A The -- ice is made through a different process in
2 making methamphetamines. It's a much more potent form of
3 methamphetamines than the regular crank, which is the --
4 known on the street as dirty dope or dirty methamphetamines.

5 Q Based on the number of Investigators and targets of
6 this investigation, would it be fair to say that it's a
7 rather large investigation?

8 A Yes, we would.

9 Q Approximately, how many people so far have been
10 targeted in this investigation?

11 A Approximately, thirty.

12 Q Okay.

13 And as this is an ongoing investigation, is it
14 likely that more targets could be identified in the future?

15 A Yes, sir, in my belief it is.

16 Q As this case develops, is it likely that some sort of
17 visual aids are going to be prepared to assist the Grand
18 Jurors in keeping track of all the testimony and individuals
19 involved?

20 A Yes, there will.

21 Q Okay.

22 To give the Panel a view of the big picture, how
23 many different conspiracies are part of this investigation?

24 A So far there's approximately three different
25 conspiracies.

ROBBIE KOON DeFREese, COURT REPORTER

1 Q Would you briefly identify all three; then we'll get
2 into each of them in more depth afterwards?

3 A The first one is -- it started in Greenville County.
4 In Greenville County, we've made a number of buys through
5 Confidential Informants and identified several different
6 people and this conspiracy went back and forth from people
7 that lived in Pickens County and they also lived and resided
8 in Greenville County. That was one conspiracy that we
9 identified. It ultimately was traced back to
10 Hendersonville, North Carolina is where the methamphetamine
11 or the ice was coming from.

12 Q So would it be fair to refer to that conspiracy as the
13 North Carolina conspiracy?

14 A I refer to that as the North Carolina conspiracy.

15 Q Okay.

16 A That's correct.

17 Q And what are the other two?

18 A The other one is the Atlanta or I labeled it Atlanta.
19 During the course of this investigation, there was one
20 individual who was distributing methamphetamines who began
21 to purchase methamphetamines that was distributed throughout
22 the Counties and he was going to Atlanta. So I referred to
23 that as the Atlanta conspiracy.

24 Q All right.

25 And the third?

ROBBIE KOON DeFREESE, COURT REPORTER

1 A . . . The third one is one that's kind of new, but it's
2 based in Greenville County; and it also involves some of the
3 same people that are buying from the other conspiracies but
4 it's a smaller one, but it's there. It's a Greenville
5 conspiracy.

6 Q Okay.

7 And how did this investigation initially start?

8 A The investigation initially started -- there was an
9 Investigator with the Greenville Sheriff's Office who had
10 developed an Informant and that Informant ultimately wanted
11 to cooperate. She began to relay information about the
12 folks that she was buying methamphetamines from and also
13 selling methamphetamines to. She began to cooperate and
14 ultimately assisted us in making controlled purchases of ice
15 from different individuals; and we continued to buy until we
16 developed or identified some of the people in these various
17 conspiracies.

18 Q Now, this -- this Confidential Informant does that
19 individual have a nickname or code number to reference them?

20 A She does. We've identified her in some of the reports
21 as "T.M."

22 Q Okay.

23 And after "T.M." came forward and began to
24 cooperate, where did that lead the investigation?

25 A That led the investigation into identifying the

ROBBIE KOON DeFREUSE, COURT REPORTER

1 Hendersonville connection or the folks involved in the
2 distributing of methamphetamines -- ice from Hendersonville;
3 and it also ultimately led to the Atlanta conspiracy.

4 Q Okay.

5 Could you summarize how the development of the
6 investigation regarding the North Carolina conspiracy took
7 place?

8 A Yes.

9 The North Carolina conspiracy began with her
10 purchasing or making buys from several different targets.
11 One of them being Malva Martinez, who is also known as
12 "Grandma" in that area -- in that particular area.

13 Q Now, when you say making buys, could you explain to
14 the Grand Jury what that means?

15 A Yeah. Controlled purchases. These purchases are
16 controlled by Law Enforcement, by us. She is searched by an
17 Officer. Her vehicle -- in these particular cases, she was
18 driven by another Officer because she didn't have a Drivers
19 License. So she was searched; the vehicle was searched;
20 she's issued money, documented State funds that we issue
21 her; and in these particular cases, she was also equipped
22 with an electronic recording device that recorded the
23 conversations. We also recorded telephone conversations
24 that she made to the individuals setting up the purchases.

25 Q Okay.

ROBBIE KOON DeFREESE, COURT REPORTER

1 Now utilizing this Confidential Informant and
2 controlled buys, what target were you able to identify?

3 A Kimberly Jean Rushton, Malva -- Kimberly Jean Rushton
4 is also known as "Stripper Kim"; Malva Martinez, who is also
5 known as "Grandma"; Eduardo Preciado, who is also known as
6 "Gordo"; and Felipe Sandoval; and he's known as Felipe.

7 Q All right.

8 Now, after identifying those individuals, where
9 did the investigation go from there?

10 A The investigation also identified an individual known
11 as Jason Griffin and Mr. Griffin, who was initially buying
12 from Felipe Sandoval, found a better connection in Atlanta
13 from an individual known as "Ant". His last name is unknown
14 at this moment, but he began buying methamphetamines from
15 him out of Atlanta basically over economics. He could get
16 it cheaper from a guy in Atlanta than he could in
17 Hendersonville; so, therefore, he was making more money by
18 doing that. He began to purchase from Atlanta and then come
19 back and distribute the ice through the connections in
20 Greenville and Pickens County.

21 Q Now, did he sell in both Greenville and Pickens
22 County?

23 A He did.

24 Q Okay.

25 A Yes.

ROBBIE KOON DeFREese, COURT REPORTER

1 Q What other individuals were you able to identify?

2 A We were also able to identify Nicholas Dendy. We were
3 also able to identify Warren Chastain; also Anthony Gracely;
4 also Albrie Nate' Bashaw.

5 Q Okay.

6 A Is some of them --

7 Q And how were they --

8 A -- it's not all of them --

9 Q -- related in this particular conspiracy? What's
10 their role?

11 A In the Atlanta?

12 Q In the --

13 A In the --

14 Q -- in the North Carolina conspiracy?

15 A North Carolina conspiracy, they were either -- most of
16 those were buying from either "Stripper" -- from "Stripper"
17 -- Kimberly Rushton, Malva Martinez, Eduardo Preciado, or
18 Felipe Sandoval. They were buying from them and then
19 distributing it to their people.

20 Q Okay.

21 And when you say their people, what did -- after
22 they distributed it, what happened to the ice at that point?

23 A Uh -- I'm not sure I understand.

24 Q Were -- when these individuals that you just named --

25 A Right.

ROBBIE KOON DeFREese, COURT REPORTER

1 Q -- you stated that they passed it down to their people

2 --

3 A That's correct.

4 Q -- then what happened?

5 A They would go and buy more to redistribute the meth --

6 the ice that they were buying to their people. They were

7 buying from them. Is that what you're --

8 Q Were the people that you've named, are they the actual

9 users or are they still selling to other people who also

10 sell?

11 A Some of them were selling to other people that were

12 also involved; some of them were using.

13 Q Okay.

14 And --

15 A The majority of them were selling to others though.

16 Q Okay.

17 Were you -- was Law Enforcement ever able to

18 identify the primary source in this North Carolina

19 conspiracy where the ice was coming from?

20 A We believe -- we believe we have one of them, but we

21 believe there are some others that were in with him. But we

22 identified one of them we believe.

23 Q And who have we identified so far?

24 A Ulysess Garcia Gonzales.

25 Q Okay.

ROBBIE KOON DeFREESE, COURT REPORTER

1 And starting from him, can you explain the
2 framework to the Grand Jury? Starting him as the top for
3 now --

4 A Right.

5 Q -- explain how the flow of ice would come down.

6 A Okay.

7 Ulysess Garcia Gonzales would basically distribute
8 to Adrian Hernandez. Adrian supplied to Kim Rushton, Malva
9 Martinez, Eduardo Preciado, and Felipe Sandoval; and from
10 there, it would be distributed to Albrie Nate' Bashaw,
11 Warren Chastain, Carol Ann Lachino, Jason Griffin; and from
12 there, there is -- there are several under them.

13 Do you want me to go through them or --

14 Q All right.

15 Now, have any of those individuals been approached
16 by Law Enforcement and cooperated?

17 A They have. Some of them have, yes.

18 Q And what information has Law Enforcement been able to
19 learn from their cooperation?

20 A Their cooperation corroborated a lot of what the
21 testimony has been today as far as to who is selling and who
22 is actually out here buying the ice, the methamphetamines;
23 and on some of these -- some of these cases they have
24 cooperated also with Law Enforcement and assisted in other
25 controlled purchases of ice.

ROBBIE KOON DeFREESE, COURT REPORTER

1 Q And so some of these individuals have actually made
2 controlled buys?

3 A They have.

4 Q Okay. All right.

5 From that conspiracy were you able -- was Law
6 Enforcement able to take the investigation into any other
7 conspiracies?

8 A From that conspiracy led to the Atlanta conspiracy.

9 Q And how did that link take place?

10 A The -- that conspiracy -- when Jason Griffin was under
11 a controlled purchase that Pickens County did, they -- they
12 arrested him. He ultimately wanted to cooperate at the time
13 and gave statements to the fact that he was going to pick up
14 from "Ant" -- Anthony LNU -- last name unknown in Atlanta --
15 and he basically spelled out the framework of how he got
16 involved with "Ant" in Atlanta. He also spelled out the
17 relationship that he had with the North Carolina people.

18 Q As far as the Atlanta conspiracy is concerned, could
19 you explain the framework for that?

20 A Yeah.

21 The framework for that is George -- and we don't
22 know his last name yet -- he lives in Atlanta. He
23 distributes to "Ant" -- Anthony, who last name we don't know
24 yet; but from there, it was Jason Griffin, who was buying
25 from them; Wendy Lollis, and an individual named Chad Moore;

ROBBIE KOON DeFREese, COURT REPORTER

1 and those three, Lollis and Moore live in Pickens County;
2 Griffin, at the time -- now lives in Pickens, but at the
3 time was bouncing back between Greenville and Pickens County
4 and they would distribute to different people under them.

5 Q Okay.

6 And would the people under them then distribute
7 again as well?

8 A That's correct.

9 Q Okay.

10 And through that conspiracy, were you able to
11 identify any other targets or links to other conspiracies?

12 A Yes.

13 From that conspiracy, we linked to a smaller
14 conspiracy in Greenville County that involves Clyde Davis,
15 who being at the top, distributed to Nicholas Dendy, who
16 distributes to Amy Brock, Keith Sekerchak and Warren
17 Chastain.

18 Q Okay.

19 A And those distributed to Michael Robinson and Felipe
20 Sandoval ultimately.

21 Q All right.

22 And at this point, as far up the chain, how -- who
23 is the leader of that conspiracy as far as we can identify
24 at this point?

25 A Clyde Davis.

ROBBIE KOON DeFREESE, COURT REPORTER

1 Q Okay.

2 Now, have -- has Law Enforcement been able to
3 establish connections between all three of these
4 conspiracies?

5 A All three of these conspiracies have individuals in
6 them that buy from each other.

7 In other words, they don't solely buy from the
8 same person. If that person happens not to have any, they
9 know people that they can get it from who, not necessarily
10 would be connected with North Carolina people, but they may
11 be connected with the Atlanta people. Basically, whoever
12 has got it. They'll call until they find somebody who's got
13 it and then they'll deal with them.

14 Q All right.

15 Could you explain to the Grand Jury one conspiracy
16 at a time how much, as far as quantity and street value, of
17 ice is moving through each conspiracy to the best of Law
18 Enforcement's knowledge at this point?

19 A I can tell you through the North Carolina conspiracy
20 at the time when it was running -- running big, there was, I
21 would say close to several hundred pounds of
22 methamphetamines or ice running through that conspiracy.

23 Q And over how long a period of time?

24 A Over at least two to three years that I know about.

25 Q Okay.

ROBBIE KOON DeFREESE, COURT REPORTER

1 And if you were to break that poundage into, you
2 know, individual uses or street value, how would that
3 compare?

4 A If I was to break it down to ounces and grams?

5 Q Yes.

6 A It's a substantial amount. I don't know that I can
7 estimate how many breaking it down ounces -- in pounds. I
8 mean, I don't know.

9 Q But it's a lot?

10 A It's a lot. It's a substantial amount. It really is.

11 Q And does Law Enforcement have any kind of an estimate
12 of how much monetary value was going through that
13 conspiracy?

14 A For the two or three years that we know about, I would
15 say at least half a million dollars.

16 Q And what about the Atlanta conspiracy?

17 A The Atlanta conspiracy, I would say it's -- it's in
18 the hundreds of thousands. I'd be scared to estimate that
19 one because we -- we're in that one, but we really don't
20 know as much about that one as we do the North Carolina one
21 at this point.

22 Q And the Greenville conspiracy?

23 A The Greenville conspiracy is -- I'd say that was in
24 the tens of thousands right now. Close to a hundred
25 thousand.

ROBBIE KOON DeFREese, COURT REPORTER

1 Q The controlled buys that you speak of, typically, how
2 large was each one of those purchases?

3 A They can -- they can range from anywhere to an eight-
4 ball, which is an eighth -- an eighth of an ounce to an
5 ounce buy.

6 Q And that's per controlled buy?

7 A That's correct.

8 Q And --

9 A With an ounce normally costing sixteen -- fifteen --
10 \$1600 an ounce.

11 Q And in addition, you briefly spoke earlier about
12 individuals from one conspiracy were also involved in the
13 other conspiracies and they were, I guess, shopping to each
14 other. Could you explain that a little bit more?

15 A Yeah.

16 They would shop to each other. Like I said,
17 basically, if they called one person that they knew was in
18 -- that was involved in the buying and selling of meth and
19 that particular person may not have anything right now, they
20 would know somebody else to call or know somebody who knew
21 somebody they would call and basically, you know, have you
22 got anything? Can we set this up? That sort of thing.
23 And so they would -- it would bounce between those Counties,
24 Greenville and Pickens Counties, and some of the same
25 people. They just know each other through -- through being

ROBBIE KOON DeFRESE, COURT REPORTER

1 involved in the buying and selling and using of ice.

2 Q Could you explain if there are any particular family
3 or other relationships between any of these individuals?

4 A Yes.

5 At the time when we started this, we believe Malva
6 Martinez and Adrian Hernandez were living together. They
7 were cohabitating.

8 Felipe Sandoval and Eduardo Preciado were living
9 together when we first started this investigation.

10 I'm trying to look through here and see if I see
11 any that stand out.

12 Q Can --

13 A Uh --

14 Q Go ahead --

15 A "Stripper Kim" -- Kim Rushton and Malva Martinez also,
16 at one point in time during this investigation, they kind of
17 stayed together -- lived together.

18 Q Okay.

19 Going to the what you identified as the Greenville
20 conspiracy, could you explain the relationship between Keith
21 and Edward Sekerchak?

22 A Yeah.

23 Keith and Edward Sekerchak are brothers. They
24 live very, very close to each other and I overlooked that
25 one; but that's one close connection.

ROBBIE KOON DeFREese, COURT REPORTER

1 Q All right.

2 Were these conspiracies -- you know, you've
3 mentioned that there's a multi-County impact -- how exactly
4 did that take place that these conspiracies are taking place
5 over multiple Counties? Could you explain that?

6 A Yeah.

7 Some of the -- some of the controlled purchases of
8 ice that we made, that individual may live in Pickens
9 County, but when we would set up the purchase, they may end
10 up riding over into Greenville County to do the deal and to
11 sell the ice and that's -- that's nothing new. They cross
12 the County lines to do their business and to get their money
13 and then go back to where they live.

14 Q In these controlled buys, who was it that chose the
15 locations?

16 A Sometimes it was us. We try to as much as we can, but
17 sometimes they would tell the Confidential Informant where
18 to come and where to go and where to wait at. That kind of
19 thing.

20 Q Now, were the targets of this investigation, were they
21 selling in multiple Counties without Law Enforcement doing
22 controlled buys and naming the places?

23 A Yes, they were.

24 Q Agent Asbill, that's all the questions I have at this
25 time since this is only an introduction for the Grand Jury.

.. ROBBIE KOON DeFRESE, COURT REPORTER

1 We expect much more testimony in the future.

2 At this time, I would open up to the Members of
3 the Panel if they have any questions for you.

4 Are there any questions?

5 (No Response.)

6 MR. UNDERWOOD: All right.

7 Seeing that there are no questions, Agent Asbill,
8 you are excused.

9 (Senior Agent Asbill exits the Grand Jury Room.)

10 3:37 p.m.

11 MR. UNDERWOOD: All right.

12 Ladies and Gentlemen, according to the schedule,
13 that is it. I'm not aware of any further business. So you
14 are released for this Term.

15 3:38 p.m.

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ROBBIE KOON DeFREESE, COURT REPORTER

CERTIFICATE OF REPORTER

1

2

3

I, Robbie Koon DeFreese, Court Reporter and Notary

4

Public for the State of South Carolina at large, do hereby

5

certify:

6

That the foregoing testimony/dialogue was taken

7

before me on the date and at the time and location stated on

8

page 1 of this transcript; and that the foregoing transcript

9

of that testimony/dialogue is a true, accurate, and complete

10

record to the best of my ability.

11

I further certify that I am neither related to nor

12

counsel for, nor employed by any party to the investigation,

13

nor am I financially interested in the investigation.

14

Witness my hand, I have hereunto affixed my

15

official seal this 18th day of January, 2011, at Little

16

Mountain, Richland County, South Carolina.

17

18

19

20

Robbie Koon DeFreese

Court Reporter

Notary Public

21

State of South Carolina at Large

My Commission expires:

22

March 7, 2015

23

24

25

ROBBIE KOON DeFREESE, COURT REPORTER

BEFORE THE SOUTH CAROLINA STATE GRAND JURY # 22

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

INVESTIGATION NO: SGJ2010-0206

TESTIMONY OF INVESTIGATOR CHAD G. AYERS

Columbia, South Carolina
Tuesday, February 15, 2011
11:12 a.m. to 12:00 p.m.

PRESENT:

OFFICE OF THE ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
STATE GRAND JURY DIVISION
The Rembert C. Dennis Building
Columbia, South Carolina 29201

TAKEN BY: JOSHUA R. UNDERWOOD, ESQUIRE
Assistant Attorney General
ROBERT E. MALDONADO, ESQUIRE
Assistant Attorney General

REPORTED BY: ROBBIE KOON DeFREESE
Court Reporter

QUORUM OF GRAND JURORS

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ROBBIE KOON DeFREESE, COURT REPORTER

1 Tuesday, February, 15, 2011.

2 11:11 a.m.

3 (Mr. Pauling and Mr. Underwood enter the Grand
4 Jury Room.)

5 MR. PAULING: ~~Mr. Foreperson~~, do we have a quorum?

6 THE FOREPERSON: Yes, sir, we do.

7 MR. PAULING: All right.

8 We will get started. We have a little scheduling
9 change. Don't hold me to we're going to be out quicker, but
10 we've got a little ~~scheduling~~ change. We are going to go
11 ahead and begin with the Ice House Case. Investigator Chad
12 Ayers will be the next witness.

13 Again, if you recognize Mr. Ayers and you believe
14 you have some personal connection to him at all, please,
15 bring that to the attention of Mr. Underwood so we can deal
16 with that issue, if necessary.

17 Now, ~~as to Fish Fry~~, we will still present that
18 particular matter ~~but it will~~ be after lunch. So this next
19 witness, Investigator Ayers, will be testifying and then we
20 will have our ~~lunch break and~~ then resume beginning with the
21 Fish Fry matter. Okay.

22 (State Grand Jury Exhibit Number One, Three Flow
23 Charts/North Carolina Crew, Atlanta Crew, and Greenville
24 Crew, marked for identification at this time.)

25 THE FOREPERSON: State your name, please.

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1 THE WITNESS: Chad Ayers.

2 INVESTIGATOR CHAD G. AYERS, being
3 first duly sworn by the Foreperson at 11:12 a.m., testified
4 as follows:

5 EXAMINATION

6 BY MR. UNDERWOOD:

7 Q Good morning, Mr. Ayers.

8 If you could, would you please state your full
9 name for the Record?

10 A It's Chad Gregory Ayers, A-y-e-r-s.

11 Q And where are you currently employed?

12 A With the Greenville County Sheriff's Office.

13 Q And what is your title there?

14 A Investigator.

15 Q Okay.

16 And how long have you worked for the Sheriff's
17 Office?

18 A For almost five years.

19 Q And in Law Enforcement in general?

20 A The same.

21 Q How long have you been an Investigator with the
22 Sheriff's Office?

23 A Been in Investigations right at a year.

24 Q All right.

25 And are you assigned to any particular unit or

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1 division?

2 A I am assigned to the Vice Narcotics Unit.

3 Q And what exactly are your job responsibilities as a
4 Member of the Vice Narcotics Unit?

5 A I investigate long-term narcotics cases reference to
6 distribution or trafficking of controlled substance in
7 Greenville County.

8 Q And as part of a -- being an Investigator in
9 narcotics cases, what do your day-to-day duties entail?

10 A Run Confidential Informants, making controlled
11 purchases of controlled substances. I also work in an
12 undercover capacity from time-to-time while I'm purchasing
13 controlled substances myself and gathering information,
14 intelligence coming in from people on the streets
15 corroborating that information.

16 Q And are you connected in any way with the State Grand
17 Jury Case known as Operation Ice House?

18 A I am.

19 Q How so?

20 A Approximately a year ago, I was contacted by a female,
21 Tonya Smith, who was in the Greenville Detention Center.
22 She reached out, wanting some help on some charges; and I
23 went down and spoke to her and she said that she had some
24 information on the trafficking of methamphetamine across
25 State lines that she wanted to provide some information

ROBBIE KOON DeFREESE, COURT REPORTER

1 about and that's how we began this investigation.

2 Q And as a result of the information provided to you by
3 Tonya Smith, were you able to establish that there were any
4 particular conspiracies involving illegal narcotics?

5 A Yes, sir. Over the past year, we -- as we continue to
6 investigate, it ended up being three separate conspiracies
7 involved ranging from Georgia and North Carolina into South
8 Carolina and across multiple Counties in South Carolina.

9 Q And what kind of drugs are involved with each of these
10 conspiracies?

11 A It's methamphetamine.

12 Q All right.

13 And starting, when you -- actually, before I get
14 to that -- do all the Members of the Grand Jury have three
15 separate pages of handouts? If any one does not, please
16 raise your hand?

17 (No Response.)

18 MR. UNDERWOOD: All right.

19 Seeing there are no hands.

20 Investigator Ayers, if you could, what was the
21 first conspiracy identified by Tonya Michelle Smith and, if
22 you will -- first, do you have any handouts that you brought
23 with you?

24 THE WITNESS: I do.

25 Q And do you have any enlargements of those handouts?

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1 A They are; they are right here(indicates).

2 Q All right.

3 And are those enlargements of the same Exhibit
4 Number One that's been distributed to the Grand Jury?

5 A They are.

6 Q All right.

7 If you need to refer to those enlarged handouts to
8 assist in your explanation to the Grand Jury, at any time,
9 please feel free to do so.

10 A Okay.

11 Q What was the first conspiracy identified through this
12 witness -- or this Informant?

13 A It's titled as the North Carolina Crew. It was --
14 when I first met with her, she stated that she was selling
15 methamphetamines for Felipe Sandoval, a Hispanic male, that
16 was affiliated -- kind of partnered with this Eduardo
17 Preciado, who is also known in the statements as "Gordo".

18 Ms. Smith stated that she was selling multiple
19 ounces, like four ounces, daily for Sandoval and "Gordo".
20 Through further investigation, we found out that they were
21 actually going up to North Carolina on a daily basis to
22 purchase methamphetamines from a subject we later identified
23 as a Ulysess Gonzales.

24 Adrian Hernandez lives here locally and he's kind
25 of the middle man between these Hispanics here (indicates).

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1 Q And from there, where did the case develop?

2 A We started making purchases. One of our first -- we
3 made one purchase for, I believe, it was a quarter ounce of
4 methamphetamine from Mr. Sandoval. During this time, Felipe
5 had started messing his money up with his supplier so they
6 were starting to cut him off a little bit.

7 As we started to work this case, we realized that
8 a lot of these players were changing. There's a lot of
9 money going through their hands, and so when they'd mess
10 their money up, someone new would pop up and kind of take
11 over the business..

12 We started making -- like I said, we started
13 making purchases from Felipe; and "Gordo" was always there
14 when the deals would go down, but he'd kind of would try to
15 monitor Sandoval's money.

16 Tonya stated that she bought several times from
17 "Gordo", but he was really there kind of just to oversee the
18 operation.

19 We then started purchasing from Tanja Perez and
20 Tasha Williams, who is -- she might be on the Greenville
21 Sheet.

22 Q Well, Investigator Ayers, if you could, to help it
23 ring clear for the Grand Jury, if you could start on this
24 flow chart you've got, I believe with North Carolina Crew,
25 with Felipe Sandoval and then starting with him, work your

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1 way down that line and explain how each of those individuals
2 are involved?

3 A All right, sir.

4 Again, Felipe was the supplier. We have multiple
5 statements from people stating that Felipe was supplying the
6 majority of the West side of Greenville with
7 methamphetamine. We made the purchases off of Sandoval.

8 Gary Jason Griffin was also purchasing from
9 Sandoval. We've made purchases of methamphetamine from
10 Mr. Griffin. An Undercover ATF Agent purchased several
11 times from Mr. Griffin multiple ounces.

12 Warren Chastain, he also gave a written statement
13 that he was affiliated and had purchased methamphetamines
14 from Sandoval; also stated that he had purchased directly
15 from Mr. Hernandez here.

16 Like I said, Tonya Smith, she's the one that
17 started the case. She contacted me. She has also purchased
18 from Tanja Perez; and Tanja Perez has also purchased from
19 her in the past.

20 Q Now, Investigator, before you move on, the
21 relationship between Tonya Smith and Tanja Perez, you said
22 that they bought from each other. What was the reason that
23 they were buying from each other and not one instead of the
24 other?

25 A There are times where -- where Tonya's source would

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1 have methamphetamine and there were times where if Tonya was
2 out, she might go to Tanja and purchase.

3 The dope was changing hands as time progressed
4 over this past -- over the year. These people, when they're
5 under the influence of methamphetamine, they become very
6 paranoid and if word gets out that, you know, they think
7 Tonya is working for Law Enforcement, certain people might
8 not deal with her. So she then started purchasing -- we
9 made a purchase from Tanja Perez. So they kind of whoever
10 had the dope, they were the ones that they were purchasing
11 from at that time.

12 Q And I noticed on your flow chart that Tonya Smith and
13 Tanja Perez are beneath Warren Chastain. What's the
14 relationship between them and Warren Chastain?

15 A The way this works here, Tonya has never purchased
16 from Warren. She's met him one time. The way this works is
17 these are all people in this line who have purchased from
18 Felipe at some time or another. So Felipe is kind of the
19 top man; and these are people that he was supplying during
20 that time; and there are other people throughout this
21 network purchasing from him also. But right here, as this
22 chart goes, these are people who were purchasing from Felipe
23 during this time.

24 Q So on the chart, just because one person and their
25 picture is beneath another does not necessarily mean they

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1 bought directly from that person?

2 A Correct.

3 Q Okay.

4 All right.

5 If you could move on to the next person on your
6 flow chart?

7 A Eduardo Preciado "Gordo", these are people -- and,
8 again, you'll notice and there's a little guide down at the
9 bottom -- but you'll notice that some of these people were
10 -- their picture is underneath multiple groups, which shows
11 that they're dealing with multiple traffickers.

12 Like Mr. Griffin here, he gave a statement that he
13 was also dealing directly with Preciado. The same with
14 Warren Chastain and Tonya and Carol Lachino.

15 Carol Lachino, at one point, was -- she's
16 currently incarcerated, but at one point, was a female that
17 had -- that kind of introduced many of these people down
18 here to Preciado. She's -- hung out in a lot of the
19 Hispanic Clubs and that's where she was getting her
20 methamphetamine from.

21 Underneath Chastain, we have written statements
22 from Christy Blankenship and Brian Leslie, stated that they
23 had purchased methamphetamine from Chastain. On one
24 occasion, we were in a hotel room with these two subjects
25 who called Chastain, ordered up a quantity of

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1 methamphetamine. When Chastain arrived, he noticed some
2 suspicious vehicles in the parking lot and gave a statement
3 that he noticed there were some vehicles in the parking lot,
4 threw the methamphetamine in the bushes, showed up at the
5 hotel room, but still had ecstasy on him, along with Leslie
6 Center and Robert Gracely. All these people have given
7 written statements and stated that they were purchasing from
8 Chastain during the past year and a little bit over the past
9 year.

10 Q Okay.

11 And moving on, how is the -- if you could then
12 explain if there are any specific instances that you are
13 aware of where Warren Chastain has transferred narcotics to
14 any of these individuals?

15 A Yes, sir.

16 We have written statements where they are --
17 implicating that Warren did provide them with the
18 methamphetamine they were caught with.

19 On multiple -- multiple subjects here, when they
20 were arrested, I would go in and interview them and they
21 would give sworn written statements that they were
22 purchasing their methamphetamine from Chastain. As far as a
23 controlled purchase from Chastain, we don't have them.

24 Q Okay.

25 Now, when you say that people have given

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1 statements that they purchased from Warren Chastain, I think
2 you mentioned that Chastain had given statements, has he
3 corroborated their admissions?

4 A He has corroborated that he does sell
5 methamphetamine. He corroborated that he was affiliated
6 with Robert Gracely, but as far as the details, I can't
7 recall which people he specifically stated that he sells
8 to. He did corroborate, though, that he does purchase his
9 methamphetamine from Preciado. He also stated that he was
10 dealing directly with Adrian Hernandez. He lived -- Warren
11 Chastain lived with Malva -- with Malva Martinez, who is
12 over here (Indicates). Malva and Warren lived together.
13 Adrian was Malva's boyfriend at the time.

14 So Warren tried to keep Malva out of it as much as
15 -- as much as possible and kind of cut her out and was
16 dealing directly with one of the top guys, Adrian
17 Hernandez.

18 Q Now, you mentioned Warren living with Malva Martinez.
19 Did she ever live with Felipe Sandoval, Eduardo -- "Gordo"
20 or anyone else involved in this flow chart?

21 A She stayed -- Martinez stayed with Preciado and
22 Felipe in an apartment. I don't know for how long she
23 stayed, but gave -- also gave a written statement that she
24 was purchasing her methamphetamine from them.

25 Preciado and Felipe went to jail for a little

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1 while. When they did, Martinez took over their business and
2 begin selling methamphetamines to all these people down
3 here, who have corroborated through written statements.

4 Q Okay.

5 Now, before we get to her direct line, what other
6 information do you have on either Warren Chastain or Gary
7 Jason Griffin as they relate on this flow chart?

8 A Mr. Griffin is also tied into another chart. This was
9 early on was when he was dealing with these -- with these
10 subjects here. Again, he stated that he got a better price
11 from a source in Atlanta, which you'll see on another chart,
12 but many of these people here have -- as prices change, they
13 go for the better deal. So they switched their hierarchy.
14 They -- if they could get a better deal from someone else,
15 they'd switch; but, again, Griffin stated that he was
16 getting a better deal from someone in Atlanta so he switched
17 sources to someone in Atlanta. So he's traveling to
18 Atlanta, picking up multiple ounces at a time, and coming
19 back.

20 Again, Griffin has been caught on several times
21 with methamphetamine. At one point, he was -- he was -- we
22 did a controlled purchase. Some things didn't go as
23 planned. We went ahead and took him down. He had multiple
24 ounces of methamphetamines on him, a stolen gun underneath
25 his seat. So it kind of proves -- it kind of corroborates

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1 all the stories that everyone has been telling us.

2 Q Okay.

3 Now, what about Kim Taylor and Chad Moore, who are
4 located under him?

5 A Chad Moore and Griffin kind of go hand-in-hand. Kim
6 Taylor is currently incarcerated, but Griffin gives a
7 statement that he was providing and gave specific instances
8 where he was providing Kim Taylor with methamphetamine on a
9 daily to every other day basis.

10 Chad Moore -- he was also providing to Chad
11 Moore.

12 As you'll see on the Atlanta Chart, these two
13 subjects that were introduced to the Atlanta source from a
14 female -- another female said they were affiliated with this
15 group here buying from the Hispanics and then they're
16 introduced to another source in Atlanta and both of these
17 subjects then broke apart from each other. Chad Moore
18 wasn't necessarily getting from Griffin anymore. He went
19 directly to his source in Atlanta and kind of back-doored
20 Mr. Griffin here.

21 Q Okay.

22 Now, the individuals who are towards the bottom of
23 these flow charts, do we or does Law Enforcement know
24 whether or not those are and users or if they are also
25 distributing methamphetamine?

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1 A Some -- most of these people, down towards the bottom,
2 are users. Christy Blankenship and Brian Leslie were caught
3 with close to a pound of methamphetamine in their
4 apartment. So they were tied in directly to Lachino. They
5 gave statements that the -- gave written statements that the
6 methamphetamine they were caught with in their apartment did
7 come from Carol Lachino, who is referred to in statements as
8 "Pantera", which is Panther in Spanish.

9 So they're users and, again, it changes so much.
10 It's not like the which I refer to as the cocaine -- a high-
11 end cocaine where it takes time to build up to this level.
12 These people can be users one day and overnight turn their
13 money the right way and become and switch places and become
14 a rather high-end dealer overnight.

15 Q And would the -- would the inverse be true? They
16 could also fall from a high-end dealer to a user very
17 quickly?

18 A Very quick. Most of the time, they -- a lot of these
19 people -- and Ms. Smith will tell you -- their habit
20 overtakes them and so they're go buy forty -- you know
21 \$40,000 worth of methamphetamine and they mess their money
22 up and they smoke half their product up and so they're fall
23 back to the bottom just like that.

24 Q Okay.

25 Now, you've mentioned Carol Ann Lachino, also

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1 known as "Pantera" --

2 A Right..

3 Q -- have -- can you explain how she's involved and then
4 work your way down her portion of the flow chart?

5 A Right.

6 We spoke to her briefly. Miss Hernandez, we did a
7 consent to search on her residence, found trafficking weight
8 of methamphetamine. She was living with Juan Castello. He
9 was there that night. I believe there was about 25 to 30,
10 grams of methamphetamine in their house that night they were
11 caught with. Hernandez gives a written statement, under
12 Miranda, that she was purchasing her methamphetamine from
13 Lachino. So we've got Blankenship and Brian Leslie,
14 Hernandez all stating that they would purchase their
15 methamphetamine from Lachino.

16 Q Now, this individual Jason Crane, who is located under
17 Juan Daniel Castello --

18 A Correct.

19 Q -- how is he involved?

20 A We have written statements from other sources stating
21 that Crane -- and also have a written statement from him
22 himself that he gave to, I believe, Anderson County
23 Sheriff's Office that he was -- he was caught with some
24 methamphetamine. He gave a written statement that he had
25 purchased the methamphetamine from Juan Daniel Castello, who

- ROBBIE KOON DeFREESE, COURT REPORTER

1 is Donna Hernandez's boyfriend.

2 Q Okay.

3 Was Jason Crane purchasing to resale or was he
4 purchasing as a user?

5 A I can't advise.

6 Q Okay. All right.

7 I guess, now --

8 THE COURT REPORTER: I'm sorry, what was your
9 answer?

10 THE WITNESS: I don't know; I can't advise.

11 MR. UNDERWOOD: Is that you couldn't advise?

12 THE WITNESS: Correct.

13 Q Moving on over to Malva Martinez, explain how she is
14 involved and then work your way down that chain.

15 A Again, she was the boyfriend(sic) to Mr. Hernandez.
16 When "Gordo" and Felipe went to jail, she took over and was
17 selling multiple ounces; and for about six months, her name
18 was all over Greenville, but she was very, very particular
19 as to who she sold to. She would only sell to people she
20 trusted, being Warren Chastain, who she lived with; and she
21 lived with Warren Chastain and Miranda Harris. Miranda
22 Harris and Warren Chastain are boyfriend and girlfriend.

23 In January -- I believe it was January of last
24 year, Kim Rushton and Malva Martinez were in an apartment
25 together. The Greenville County Sheriff's Office directed a

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1 Patrol Unit -- received information that narcotics sales
2 were taking place there and observed -- they were afraid
3 someone was going to run out the back. They went to the
4 back door. There was a window open and observed Martinez
5 put about 80 -- I believe it was 80 grams of methamphetamine
6 under Rushton's bed. They made entry into the house,
7 located that methamphetamine; and Rushton stated that this
8 narcotics was coming from Malva Martinez.

9 Again, we have multiple statements from Jason
10 Griffin and also Tony Gracely, who state that Martinez was
11 the one that they were getting their methamphetamine from.
12 So, again, we've got the same people. "Tony G", Jason
13 Griffin. A lot of these people were in multiple groups and
14 just whoever had the -- whoever had the meth at the time,
15 they'd go to. Malva was selling larger amounts.

16 Q Okay.

17 Is there any other significant involvement of
18 anyone else in that chain that you can explain?

19 A She -- I might not have mentioned. Martinez states
20 that they were getting from a Ulysess Gonzales in
21 Hendersonville, North Carolina, going down daily or every
22 other day. Gonzales is in the Department of Corrections in
23 North Carolina. A raid was done on his house and multiple
24 ounces of methamphetamine were located in his residence.
25 I've been in contact with the Hendersonville Sheriff's

ROBBIE KOON DeFREESE, COURT REPORTER

Volume Two of Two

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Latitia H. Verdin, Circuit Court Judge

C.A. No.: 2011-GS-47-06

The State of South Carolina Respondent

v.

Clyde Bowen Davis Appellant

APPELLATE CASE NO. 2013-002207

RECORD ON APPEAL

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1 Office with that. So he is -- he's currently incarcerated
2 at this time.

3 Q Now, you mentioned that Malva Martinez -- I guess, did
4 she give a statement?

5 A She has.

6 Q Since she's given that statement, are you aware if she
7 has continued to engage in selling methamphetamines?

8 A She has. She was released probably three or four
9 months ago and we have since, within the last several weeks,
10 again, began purchasing methamphetamine from her again.

11 On one occasion, "Gordo" was with her; but we
12 introduced an Undercover Investigator to her who she's been
13 dealing with. So she is still currently selling
14 methamphetamine.

15 Q And move over to -- and you've mentioned her briefly
16 -- Kimberly Rushton has the next spot on the upper level of
17 that flow chart. Could you explain her involvement to the
18 conspiracy as a whole and then work your way down that path?

19 A Again, she's -- she's in -- she's in multiple groups.
20 She was dealing with Martinez on several occasions. I've
21 also got written statements from these subjects down here
22 who stated that they were also purchasing from Ms. Rushton.

23 Rushton was on a deal. We purchased just an eight
24 ball of methamphetamine from a David Norris subject, who is
25 on another sheet. She showed up to that deal. She's

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1 currently incarcerated. We also have a statement that
2 Albrie Bashaw, who has now kind of taken Rushton's place;
3 Rushton -- since Rushton's been incarcerated. Bashaw and
4 Charles Adams have taken her place and they are over in
5 Anderson County and they have taken her place and have also
6 removed themselves from these Hispanics because these
7 Hispanics aside from Preciado, Hernandez is incarcerated and
8 Felipe has moved to Atlanta. So a majority of these people
9 up here (indicates) are no longer the head people, you know,
10 ~~selling the meth in Greenville~~. Bashaw and Charles Adams --
11 Bashaw was purchasing from Rushton, but has moved up and is
12 now using the same source that's on your Atlanta Sheet,
13 which is "Ant", which is LNU, which is last name unknown,
14 and they're using him now as a source.

15 Q Okay.

16 A Robert Gracely was dealing directly with Rushton
17 purchasing multiple ounces at a time. We caught him in a
18 hotel room with about 60 grams of methamphetamine several
19 months ago. And, again, you see the same names: Christy
20 Blankenship, Brian Leslie, and Allen Cagle, who stated that
21 he was purchasing from Kimberly Rushton.

22 And, again, Christy Blankenship, Brian Leslie are
23 tied in with this Crew and also with people over here.

24 Q Allen Cagle, is he -- he seems to be towards the
25 bottom of that chain. Is that of any significance --

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1 A I'd say Allen Cagle is more of a user than a supplier;
2 but he was caught with some methamphetamine and gave a
3 pretty detailed written statement as to who he was
4 purchasing from and people who he had purchased from which
5 he stated that he was purchasing from Rushton and also Jason
6 Griffin.

7 Q And I'm not sure if you mentioned, what's the
8 significance of Autumn Scarberry also in that chain?

9 A Scarberry -- Scarberry should also -- let me -- be
10 over here in this middle chart. Scarberry was affiliated
11 with Juan Castello, Donna Hernandez, and Carol Lachino; and
12 as you'll hear later when Tonya Smith testifies, she was a
13 go-to for Felipe. Tonya was getting originally her
14 methamphetamine from Scarberry, who was -- who was dealing
15 with the Hispanics; but she also gives a statement that she
16 was dealing with Kimberly Rushton, too; and also getting
17 some methamphetamine from Kimberly Rushton.

18 Q All right.

19 The -- and just to clarify since, I guess, there's
20 -- she should also be on another spot on this form --

21 A She should also be -- she's also affiliated with this
22 middle group, Carol Ann Lachino, Tonya Smith. Tony Smith,
23 who is up here, was telling me this morning that she was --
24 she had -- was purchasing multiple ounces from Scarberry,
25 who was getting from Felipe. Tonya then cuts Scarberry out

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1 and starts dealing directly with Felipe herself.

2 Q Okay.

3 And just to be clear, this investigation into
4 Operation Ice House, it's still an ongoing investigation, is
5 that right?

6 A Correct.

7 We're still making purchases from a large number
8 of these subjects. We've made purchases recently from
9 Bashaw, still receiving information, listening to jail --
10 jail calls from people who are incarcerated who are still
11 calling Bashaw, and actually saying, Investigators want me
12 to wear a wire on you and she's bragging over the phone,
13 well, they'll never catch me. So people will know that
14 there's an investigation going on and they're trying to be
15 careful, but even with that being said, they're still out
16 here selling methamphetamine.

17 Q Okay.

18 Now, as this investigation continues to move
19 forward, is it possible or likely that these flow charts
20 that you've had put together are subject to changes?
21 Deletions? Additions?

22 A Overnight.

23 Q Okay.

24 A I'd say -- and I'd say just in the last little while.
25 This is basically how it was to begin with when we first

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1 started this investigation; and as -- as we move on to the
2 Atlanta Crew, you'll see how a lot of these people are in
3 the Atlanta Crew and this chart has changed completely over
4 weeks.

5 Q Let's go ahead and move on then to that chart for the
6 Atlanta Crew.

7 Investigator, if you could, please, explain how
8 the individuals on this flow chart and how this conspiracy
9 known as the Atlanta Crew is related to the North Carolina
10 Crew.

11 A Gary Jason Griffin was arrested -- he was the one that
12 had done some hand-to-hand purchases with an Undercover ATF
13 Agent.

14 Once he was arrested for some other charges; he
15 came in and gave a very detailed statement as to his history
16 of trafficking methamphetamines. He was the one that --
17 he's -- again, he's on the North Carolina Crew and was
18 dealing directly with the Hispanics. Stated that he got
19 introduced to a black male in Atlanta known as "Ant". He
20 was introduced to "Ant" through Wendy Lollis. The way we
21 understand it is Miss Lollis here has a boyfriend or a
22 husband that's in prison that was also -- and her boyfriend
23 that was in prison was in prison with "Ant" at one time.
24 "Ant" has since moved to Atlanta. All we know "Ant" is --
25 is a black male and the information we're receiving is he's

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1 from the Upstate of South Carolina, but has since moved to
2 Atlanta.

3 Griffin states that he was introduced by Lollis
4 to "Ant" and would make multiple trips, several times a week
5 to Atlanta to "Ant" to purchase methamphetamine. He states
6 that "Ant" has a house and also has a condo that he -- he
7 uses both to do his trafficking in, to sell his meth out
8 of. We have corroborated that through several other
9 subjects: Chad Moore and -- I can't -- but several other
10 subjects have corroborated the fact that "Ant" is a black
11 male who has several residences and numerous people now are
12 dealing with "Ant". "Ant's" the go-to guy now.

13 Q Okay.

14 And what's -- who is the individual George, last
15 name unknown, on flow chart?

16 A What we've -- Griffin stated that "Ant's" supplier was
17 George, who is a Hispanic-looking male. He says -- he
18 states he speaks good English. He stated that George lives
19 in Atlanta; his father owns numerous Strip Clubs in Atlanta,
20 kind of a high roller in Atlanta, drives flashy cars; and
21 that is "Ant's" connect. I've heard that one time and
22 haven't heard anything else about George other than from
23 Griffin.

24 Q Okay.

25 Are efforts being undertaken to try to identify

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1 "Ant" and George?

2 A Yeah. We're currently trying to identify "Ant".
3 We've got several people who -- we had one subject on board
4 that was going to go to Atlanta to purchase from "Ant" and
5 the morning of, he got high and we haven't seen him since.

6 So Griffin states that he knows one location where
7 "Ant" lives. We've got phone numbers -- we've got phone
8 numbers for "Ant"; and we're trying to run those phone
9 numbers to try to start locating that cell phone.

10 The thing about drug traffickers is they get
11 spooked and they'll throw these phones, you know, every few
12 weeks. So, once we get a good number on "Ant", he dumps the
13 phone and gets a new cell phone. So, I would say within the
14 next month, we are going to be able to get to Atlanta to
15 deal with "Ant".

16 Q And, I assume, then, work your way up the chain? Once
17 "Ant" could be identified, then the plan is to try to
18 identify George?

19 A Correct.

20 There is a subject that's not on here that was
21 arrested two weeks ago by the name of Nick
22 Trebuchon(phonetically). I don't know -- I don't know the
23 gentleman. He reached out to me. He was arrested for
24 shoplifting; and the -- on the North Carolina Crew, the --
25 Albrie Bashaw and Charles Adams, he was their runner and he

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1 would take trips every day or every other day to Atlanta and
2 stated that he was driving for Bashaw going to "Ant", who he
3 described as a black male with several locations; and,
4 again, which pretty much corroborates the same subject that
5 Griffin's dealing with. He states that he'd go there and he
6 stated that he's been there when two Hispanic males show up
7 in a sports car to "Ant's" house, drops off multiple pounds
8 of methamphetamine, and then leaves.

9 Chad Moore was also introduced to "Ant" by Wendy
10 Lollis. Chad was recently arrested. We had a chance to
11 interview him and under Miranda, he corroborated that he has
12 been making trips to Atlanta purchasing methamphetamines
13 from "Ant"; and then we have made a controlled purchase from
14 Chad Moore.

15 Q All right.

16 And the other individuals on this flow chart,
17 could you just briefly explain how each of them are involved
18 with this particular Crew?

19 A Right.

20 Again, Miss Rushton, who is on the other chart.

21 Jamie Stuart, we've been unable to identify, but
22 several subjects have given statements and stated that Jamie
23 Stuart -- I believe Jason Griffin stated that he was selling
24 to Jamie Stuart.

25 Then, again, Allen Cagle and Tony Gracely, who are

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1 on the other charts all were purchasing from Jason Griffin,
2 who Jason Griffin said the dope that he sold -- the
3 methamphetamine he sold these subjects came from "Ant" in
4 Atlanta.

5 Q And is it Law Enforcement's belief that more
6 individuals could be added to this Atlanta Crew as the
7 investigation goes forward or is this --

8 A Absolutely.

9 Q -- the basic framework --

10 A No, absolutely not.

11 Definitely Albrie Bashaw and Charles Adams.

12 Again, it's changing so quickly. They -- they definitely
13 can be added to the deal with "Ant" and they're on the other
14 sheet, North Carolina Sheet.

15 Q Is it likely that other individuals who have not yet
16 been identified could possibly be included in the Atlanta
17 Crew or is it unknown at this time?

18 A The information we are receiving is that from the
19 gentleman that was arrested for shoplifting that talked to
20 me said -- stated that there are several other people that
21 are going to Atlanta, but he didn't know any names. He just
22 knew that Chad Moore and some other people had introduced
23 some other subjects to the guy in Atlanta.

24 As far as names, I don't have any.

25 Q Now, how is the Atlanta Crew related to the next Crew,

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1 the Greenville Crew?

2 A Well, it's also related -- again, it's related to the
3 North Carolina Crew because you see Jason Griffin, Kim
4 Rushton, Robert Gracely, all of these subjects here were
5 also on the first Crew, the North Carolina Crew. So, again,
6 like I stated earlier, from here down, at one time, they
7 were dealing with the Hispanics in Greenville. They got a
8 better price from this guy here in Atlanta and switched
9 Crews and started going to there..

10 Q Now, were any of these individuals ever dealing
11 simultaneously with multiple Crews or was it always one or
12 the other?

13 A This Crew has come recently. So I can't -- I can't --
14 I can't testify that they were dealing with both Crews at
15 the same time.

16 Q Moving on then, how is the -- what's this Greenville
17 Crew on the next sheet?

18 A The Greenville Crew basically started with the initial
19 Confidential Informant that approached me, Tonya Smith. She
20 was the one that approached me over a year ago.

21 In a statement she gave initially, she stated that
22 the gentleman at the bottom, Josh Byers, she begin selling
23 multiple years ago -- I believe she said in May of 2008, she
24 begin selling approximately four ounces a day. It started
25 off low, but begin selling four ounces a day for Byers. She

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1 then switched and started dealing with the Hispanics that we
2 saw earlier. Smith then, as we started making controlled
3 purchases from subjects, as we started making purchases from
4 people, Smith stated that there's a gentleman by the name of
5 "Mikie Mike". The Sheriff's Office was receiving tips
6 coming in daily from the subject named "Mikie Mike", who we
7 identified as Michael Robinson. We've made multiple,
8 multiple purchases of methamphetamine from Robinson; also
9 executed a search warrant at his house.

10 We also received information that David Norris
11 here was selling meth, had a Confidential Informant that
12 could purchase from him. Norris stated that he was
13 purchasing his methamphetamine from Tasha Williams. Tonya
14 here had also made a purchase from Tasha Williams, a
15 controlled purchase while working with us. So we had two
16 people here that were dealing -- that were buying from Tasha
17 Williams. She was arrested for child support. We reached
18 out to her. We got a written statement from her and spoke
19 to her because she stated that she was purchasing her
20 methamphetamine from Michael Robinson.

21 Q And that was Tasha Williams you're referring to?

22 A Correct.

23 Q Okay.

24 A Tonya also stated that she knew that Robinson was
25 selling methamphetamine. She also was purchasing from

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1 Robinson. So we've got Tonya was purchasing from Tasha
2 Williams and also from Robinson herself.

3 Executed a search warrant on Robinson's residence
4 and didn't get much product that night, but, again, we've
5 probably got seven or eight purchases from him. I believe
6 it was -- I believe it was Tasha who stated that -- in
7 information coming in, Tasha stated that Robinson was
8 getting methamphetamine from an Amy Brock. We were having
9 trouble locating Miss Brock. Turns out she lives less than
10 a quarter mile from Robinson's house. Very particular as to
11 who she sells to. The main person she sold to was Brian
12 Sekerchak, known as "Batman". He's in numerous statements.

13 We reached out to Brock. We tried to get someone
14 to purchase from her and she was just -- she was very
15 skittish as to who she sold to. We showed up at her house
16 one day, identified ourselves. I told her that we had
17 received complaints as to what was going on. She broke down
18 crying, states that she had kids. She says, yes, I do have
19 meth in the house; I've been purchasing my methamphetamine
20 from Nick Dendy. She states that she purchases, I believe,
21 a quarter ounce every day. Don't hold me to that, but I'm
22 pretty sure it was a quarter ounce from Dendy every day.

23 Brock began purchasing for us methamphetamine from
24 Dendy. She has since stopped working with us and is back
25 selling narcotics again -- methamphetamine again.

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1 On a totally separate case, we had a gentleman
2 that stated he -- that he could deal with Nick Dendy. We
3 sent him to Dendy. Dendy says I get my methamphetamine from
4 Clyde Davis, who is my cousin. So Dendy sends another one
5 of our Informants directly to Clyde Davis. We purchased
6 methamphetamine from Clyde Davis. When we approached Amy
7 Brock, she states that Dendy shows up to her house and then
8 calls his cousin to show up. His cousin shows up in a car,
9 Dendy walks out to his cousin, gives the money, he gets the
10 methamphetamine. We showed Brock a photo lineup and she
11 picked Clyde Davis out as being the one who delivers the
12 methamphetamine to Dendy. So we've got two sources stating
13 that -- you know, we've got one Informant that went to Dendy
14 and he referred him to his cousin; and then Amy Brock states
15 that Dendy will show up to her house daily and then Davis
16 will show up.

17 Q Okay.

18 Now, how much do we know -- does Law Enforcement
19 know how much methamphetamine Clyde Davis is selling through
20 this chain?

21 A We don't.

22 He's -- he's -- Greenville City Police are also
23 investigating him for trafficking of crack cocaine and
24 cocaine. So he's not particular to meth.

25 North Carolina Crew was particularly all

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1 methamphetamine. This gentleman here is selling crack
2 cocaine, cocaine, and also methamphetamine; but he's very
3 particular as to who he sells to also. So it's been -- we
4 have not reached out to him and we have not -- again, we've
5 made one controlled purchase from him.

6 Q And how are -- I don't believe you've discuss them
7 much yet -- Warren Chastain and Edward Sekerchak related to
8 this --

9 A These guys are brothers and --

10 Q Now, when you say these guys, for the Record, who are
11 you referring to?

12 A Edward Sekerchak and Brian Sekerchak are brothers.
13 Edward is the older brother. For years, even before I
14 started working narcotics, Edward Sekerchak, that was known
15 as "Bud", people were calling in all the time stating they
16 could buy methamphetamines from "Bud". We have not
17 purchased ourselves from "Bud" Sekerchak, but Amy Brock
18 states that she has in the past purchased from -- herself,
19 she has purchased from "Bud" himself.

20 Keith Sekerchak -- Brian Keith right
21 here(indicates), again, is purchasing daily from Amy Brock
22 and he, himself, is then dispersing that meth to other
23 people. So he's getting enough to sell himself and we've
24 made two purchases off of him already, done a trash pull,
25 and also located other methamphetamine paraphernalia in his

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1 trash that was set outside of his residence.

2 Warren Chastain gives a statement that he was also
3 dealing some with Amy Brock when he wasn't dealing with
4 Malva Martinez and the other Hispanics.

5 Q Okay.

6 And you may have mentioned earlier, but just to be
7 sure. How was Felipe Sandoval Flores involved with this
8 particular conspiracy?

9 A And I'll have to look as to whose statement. There is
10 one person who gives a statement that states -- but I cannot
11 remember who it is at this time -- that states they were
12 there when Felipe Sandoval dropped off methamphetamine to
13 Michael Robinson. They saw him there.

14 David Norris purchased from Tasha Williams, like I
15 said. He also made several purchases from Michael Robinson.

16 Q So Felipe's involvement was that he was a source to
17 Michael Robinson?

18 A To Michael Robinson.

19 This person stating that they only saw that happen
20 on one occasion. So we know, at least, on one occasion,
21 Sandoval, before he moved, sold to Robinson. Right now and
22 the way everything is running, it still appears that Clyde
23 Davis, Nick Dendy, and Amy Brock are the sources right now.

24 Q And the -- so out of these three different
25 conspiracies, which as they're -- or at least closely to how

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1 they're illustrated on these charts, which are still in
2 operation and which are not?

3 A This Operation, the Greenville Crew, is still in
4 operation and the Atlanta Crew is still in operation with
5 new people. I would say with the North Carolina Crew,
6 numerous of these subjects are either incarcerated right now
7 for methamphetamine charges or other charges. I would say
8 the North Carolina Crew a year ago was the main Crew. It
9 has now changed to this group here because aside from
10 Mr. Chastain here and Mr. Flores, these people are still
11 actively or at least these people right here (indicates) are
12 still actively selling methamphetamines. We're still
13 purchasing off these subjects; and on the Atlanta Crew, most
14 of them -- several of them are still out selling. We've got
15 phone calls from Chad Moore. Chad Moore is still in jail.
16 I've heard him call and make phone calls from the jail to
17 his wife telling their runner, who he's sending to Atlanta,
18 tell him don't make anymore trips, they're on to it; tell
19 him to lay low. So they -- they're doing what they can to
20 stop, but it's a revolving door. Someone else is going to
21 be dealing with it.

22 Q And, Investigator, do you have anything further to add
23 to explain how these three different conspiracies are in
24 operation or related to each other?

25 A Again, as you can see and it states at the bottom, if

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1 they've got a blue line around them, they're in multiple
2 groups. So you've got a handful of people; and I'd say the
3 majority of these people are in several of these groups.
4 So they're all going across either the North Carolina line
5 or into Georgia, you know, purchasing -- purchasing meth.
6 They are all tying each other in. You know, there's -- when
7 the statements come out, they give statements corroborating
8 that they are dealing with all of these multiple groups.

9 Q And does Law Enforcement, at this time, have any
10 estimates as to how much methamphetamine, either in weight
11 or monetary value, is going through any of these
12 conspiracies?

13 A With statements and -- with statements and actual dope
14 on the table, I'd said close to 200 pounds of
15 methamphetamine.

16 Q And do you know off the top of your head, roughly,
17 what that would be worth?

18 A I'd say a pound of methamphetamine right now would be
19 going for 30,000 a pound.

20 That's -- you know, that's one thing that when we
21 talk to these people and we break it down, you know, they're
22 -- one gram of methamphetamine right now is going for about
23 \$150 -- \$100 to \$150. When we do the math, as to how much,
24 you know, money goes through these peoples' hands, it's --
25 the look on their face, you know, says enough. They don't

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1 realize that -- you know, when we talked to Tonya Smith that
2 over a year, you know, close to \$750,000 went through her
3 hand, yet, she -- she doesn't have a house to live in.

4 Q All right.

5 Investigator Ayers, at this time, if you would
6 answer any questions Members of the Grand Jury may have.

7 Are there any questions?

8 THE GRAND JUROR: All these people that made the
9 statements, did they give you the statements under the
10 assumption that they're going to avoid prosecution?

11 THE WITNESS: They're under the -- we tell them
12 that we can't --

13 THE GRAND JUROR: Like Tonya Smith.

14 THE WITNESS: Correct.

15 She had other charges on her. We advised
16 Ms. Smith that her cooperation would help towards those
17 charges, which they have.

18 Other people who have given their -- given written
19 statements, gave -- gave these statements freely and
20 voluntarily. We told them that we cannot promise them or
21 make any promises that they will, you know, not see any
22 jail time or get lower sentences. All we can tell them is
23 that -- what I tell them is that your cooperation, I can --
24 I can go to the Solicitor or to the Judge and tell them that
25 you did cooperate in this case, which 99 percent of the time

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1 goes in your favor.

2 THE GRAND JUROR: When Amy Smith was working with
3 you and you said she stopped, does that mean she's back
4 doing the same thing again and --

5 THE WITNESS: Amy Brock?

6 THE GRAND JUROR: Yeah.

7 THE WITNESS: Yes, sir, she is back. I conducted
8 a traffic stop last week, I believe, on a gentleman leaving
9 her house that had meth pipes, numerous baggies. I asked
10 him where he was coming from. He stated that he owed Amy
11 Brock \$200 for methamphetamines he had purchased. She's got
12 two or three kids also that stay between her house and the
13 grandparents' house. So this is all going on with young
14 children also in the house.

15 THE GRAND JUROR: But no deal was made with her
16 for avoiding prosecution?

17 THE WITNESS: No, sir.

18 Again, we just stated -- stated to her that her
19 cooperation would go towards, you know, kind of like those
20 scales right now, those old timely scales are like this
21 (indicates), the more you help, kind of help to even out
22 those scales a little bit. No promises have been made to
23 keep them out of jail or to keep them from being charged in
24 anything. No, sir.

25 MR. UNDERWOOD: And, Investigator, just to follow-

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1 up on the beginning of that question, Tonya Smith, you said
2 that she did have other charges that this may or may not
3 have been involved with, were those charges involved with
4 this investigation?

5 THE WITNESS: I can't -- I can't say -- when I --
6 about three years ago when I was still on the road in
7 uniform, I received information that she was selling
8 methamphetamines then. And these are charges that I put on
9 her then. So two -- two and a half years later, she's still
10 selling and she reached out to me. So these are the charges
11 that she has on her. I do not know where that
12 methamphetamine came from that day.

13 MR. UNDERWOOD: But the charges that she had
14 pending at that time were not related to this investigation?

15 THE WITNESS: Correct, no, they are not.

16 MR. UNDERWOOD: Okay.

17 I saw another --

18 THE GRAND JUROR: Are all of them users or are
19 some of them are just sellers?

20 THE WITNESS: I would -- from what I know, all of
21 these are users. Dendy is not a user. He's been a
22 narcotics trafficker in Greenville with cocaine, crack
23 cocaine for multiple years. Same with Mr. Davis.

24 On the North Carolina Crew, I can't speak on
25 Mr. Gonzales, who is at the very top, but from Hernandez,

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1 all the way down, are all users.

2 On the Atlanta Crew, I can't speak for "Ant", but
3 from Griffin, all the way down, are all users.

4 MR. UNDERWOOD: Now, Investigator, you say they're
5 users, does that mean that they are not sellers or that --

6 THE WITNESS: No. They are selling and using
7 methamphetamine, both.

8 MR. UNDERWOOD: So they are both users and
9 sellers?

10 THE WITNESS: Correct.

11 MR. UNDERWOOD: Okay.

12 Yes, ma'am, you had a question?

13 THE GRAND JUROR: I'm just -- I'm just a little
14 bit confused with this. We've got Georgia, South Carolina,
15 and North Carolina in this.

16 THE WITNESS: Yes, ma'am.

17 THE GRAND JUROR: And they're transporting drugs
18 over each State?

19 THE WITNESS: Correct.

20 THE GRAND JUROR: How is it the Federal Government
21 is not stepping in this in any kind of way? The FBI is not
22 involved in this in any kind of way? The DEA or whatever?
23 I mean, you know, in the Federal level.

24 THE WITNESS: No, ma'am. When we started the
25 investigation, it started out and it just kind of expanded

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1 into this. SLED -- when we started out -- again, when I
2 first started this investigation, Tonya Smith, all she said
3 is I'm dealing with Felipe here; and as we started doing our
4 homework and running investigations, that's when that North
5 Carolina Crew expanded to what it was and it was already --
6 SLED was already on board to work with us. We've reached
7 out to the other Agencies, Hendersonville, Buncombe County,
8 we've been up to. And we've got points of contact in
9 Georgia and North Carolina. The GBI in Georgia, which is
10 like the State Law Enforcement in Georgia, and also SBI in
11 North Carolina. So it's -- right now, it's just working as
12 a State level.

13 The threshold for Federal -- and correct me if I'm
14 wrong -- but the amount of hard dope initially, it's -- it's
15 just -- it's tough work working with the Federal System.

16 THE GRAND JUROR: So they'll go to State prison,
17 not Federal prison if they're caught --

18 THE WITNESS: Correct.

19 THE GRAND JUROR: -- and convicted?

20 THE WITNESS: There are -- there are pending --
21 some of these people do have some pending Federal charges
22 for firearms, but -- where they could go to Federal prison,
23 but right now this is a State Case, yes, ma'am.

24 THE GRAND JUROR: Thank you.

25 MR. UNDERWOOD: Any other --

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1 THE GRAND JUROR: Of all the Members on that Crew,
2 how many are in jail and how many are out?

3 THE WITNESS: The Greenville Crew, Chastain is in
4 jail; David Norris is in jail; Tonya Smith is the jail.

5 On North Carolina -- if you go to your North
6 Carolina Sheet, Hernandez up at the top, he's in. If you
7 come down to the next level, Rushton, on the far right,
8 she's in prison; Warren Chastain is in prison; Tonya Smith
9 is in prison; Jason Griffin is in prison; Chad Moore is in
10 jail; Robert Gracely is in prison; Juan Daniel Castello is
11 in prison; Donna Hernandez and Carol Lachino are in Federal
12 prison on unrelated charges; Kim Rushton is in prison.

13 And on the Atlanta Crew, Jason Griffin and Chad
14 Moore, Kim Rushton are in prison.

15 MR. UNDERWOOD: Now, Investigator --

16 THE WITNESS: Some are for property crime
17 offenses; some are for drug offenses; some are for white
18 collar crimes.

19 MR. UNDERWOOD: Now, just to clarify,
20 Investigator, did you state that Gary Jason Griffin was in
21 prison or is he in --

22 THE WITNESS: He's in jail, I'm sorry.

23 MR. UNDERWOOD: He's in jail.

24 Now, when you say that they are in jail, is that
25 awaiting determination of the charges against them?

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1 THE WITNESS: Correct. They have other charges.

2 MR. UNDERWOOD: Okay.

3 And now, the individuals that you speak of that
4 were in prison or in jail -- and I think, you were starting
5 to go there -- are those on charges related to this
6 investigation or are those other charges that they are in
7 prison for?

8 THE WITNESS: Griffin is in jail on -- his bond
9 has been revoked on charges relating to this -- to this
10 case. But as far as anyone else being in jail on charges
11 for this case, we have not arrested anyone other than
12 Michael Robinson. We executed a search warrant. He is now
13 out; but he is the only one that we issued warrants on any
14 of the purchases or buys we made. We've bought off numerous
15 people and we have not served warrants on any of these
16 people. Most -- a lot of these people who are in prison are
17 in prison on other charges, nothing to do with this case
18 here.

19 MR. UNDERWOOD: Okay.

20 Any other questions from the Grand Jury?

21 (No Response.)

22 THE WITNESS: I'd also just like to point out,
23 there are several of these people who have been put into
24 jail, getting caught, you know, with methamphetamines or
25 paraphernalia who have been -- who have gone in -- like Miss

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1 Bashaw here, Albrie Bashaw, who is high up on the Atlanta
2 Crew -- she was -- she was put in on methamphetamine
3 charges, agreed to cooperate, never called, and is back out
4 selling again. Though -- you know the recovery rate for
5 methamphetamine once you're hooked on it is about six to
6 seven percent that you're ever going to get off of it. So
7 these people, when they get out, they can come to me and
8 tell me the world that they're going to help me, but 99.9
9 percent of them, they start -- they start, you know, using
10 again. They start telling Chad Ayers is looking at this,
11 this, and this and they're back out selling or using the
12 next day. They just can't get off of it.

13 MR. UNDERWOOD: Any further questions?

14 (No Response.)

15 MR. UNDERWOOD: All right.

16 Investigator, seeing that there are no further
17 questions, you are excused from testimony at this time.

18 Ladies and Gentlemen, if you could hang tight for
19 just one minute while I confirm what's going to be next on
20 your schedule and I'll let you know from there.

21 (Investigator Ayers exits the Grand Jury Room.)

22 12:00 p.m.

23 (Mr. Underwood exits the Grand Jury Room.)

24 (Mr. Pauling and Mr. Underwood enter the Grand
25 Jury Room.)

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1 MR. PAULING: Okay.

2 Ladies and Gentlemen, that's all that we have for
3 this morning. We are going to go ahead and break for
4 lunch. If you will be back, I guess, in an hour. So we'd
5 start up at 1:15, okay.

6 Thank you.

7 (Mr. Pauling and Mr. Underwood exit the Grand Jury
8 Room.)

9 (A lunch recess transpired from 12:10 p.m. to
10 1:15 p.m.)
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ROBBIE KOON DeFREESE, COURT REPORTER

1 CERTIFICATE OF REPORTER

2
3 I, Robbie Koon DeFreese, Court Reporter and Notary
4 Public for the State of South Carolina at large, do hereby
5 certify:

6 That the foregoing testimony/dialogue was taken
7 before me on the date and at the time and location stated on
8 page 1 of this transcript; and that the foregoing transcript
9 of that testimony/dialogue is a true, accurate, and complete
10 record to the best of my ability.

11 I further certify that I am neither related to nor
12 counsel for, nor employed by any party to the investigation,
13 nor am I financially interested in the investigation.

14 Witness my hand, I have hereunto affixed my
15 official seal this 22nd day of February, 2011, at Little
16 Mountain, Richland County, South Carolina.

17
18
19 _____
20 Robbie Koon DeFreese
21 Court Reporter
22 Notary Public
23 State of South Carolina at Large
24 My Commission expires:
25 March 7, 2015

ROBBIE KOON DeFREESE, COURT REPORTER

BEFORE THE SOUTH CAROLINA STATE GRAND JURY # 23

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

INVESTIGATION NO: SGJ2010-0206

TESTIMONY OF SENIOR AGENT B. ASHLEY ASBILL

Columbia, South Carolina
Tuesday, July 12, 2011
2:27 p.m. to 2:58 p.m.

PRESENT:

OFFICE OF THE ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
STATE GRAND JURY DIVISION
The Rembert C. Dennis Building
Columbia, South Carolina 29201

TAKEN BY: CURTIS A. PAULING, III, ESQUIRE
Assistant Deputy Attorney General
JOSHUA R. UNDERWOOD, ESQUIRE
Assistant Attorney General

REPORTED BY: ROBBIE KOON DeFREESE
Court Reporter

QUORUM OF GRAND JURORS

Robbie Koon DeFreese
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ROBBIE KOON DeFREESE, COURT REPORTER

1 Tuesday, July 12, 2011.

2 2:11 p.m.

3 MR. PAULING: Let's take a short break. Let's try
4 to be back in about 15 minutes and then we will begin with
5 the presentation of Operation Ice House; and, again,
6 Assistant Attorney General Joshua Underwood will be in here
7 to present that particular matter.

8 Now, again, as these witnesses appear before you
9 -- the first witness will be Ashley Asbill, who is with
10 SLED. If, when a witness comes into the Grand Jury Room and
11 you -- because as we call the name, you may not -- you may
12 recognize the name, but maybe not actually recognize the
13 person, obviously, until they enter into the Grand Jury Room
14 -- if it comes a time that you recognize a witness and you
15 know that you have some relationship to the witness, whether
16 business, personal, or otherwise, bring it to our attention
17 and we will take that up here with you if it's a matter of
18 something where -- and we'll ask you whether or not you can
19 be -- the fact that you know that individual if you can be
20 fair and impartial in this particular process and if there's
21 -- if it's a matter where there may be a conflict with you
22 sitting on this particular case, due to that fact, then we
23 would have you excused from this particular -- this
24 particular -- this particular case.

25 Again, there are going to be other cases that we

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1 will be presenting to you; but, again, if that happens, just
2 bring it to our attention, okay.

3 All right. We can take our break now.

4 2:14 p.m.

5 (Mr. Pauling exits the Grand Jury Room.)

6 (A recess transpired from 2:14 p.m. to 2:25 p.m.)

7 2:25 p.m.

8 (Mr. Pauling and Mr. Underwood enter the Grand
9 Jury Room.)

10 (State Grand Jury Exhibit Number One, Charts,
11 marked for identification at this time.)

12 MR. UNDERWOOD: Good afternoon.

13 Do we have a quorum?

14 THE FOREPERSON: We have a quorum, but it doesn't
15 look like everyone is here, though. A quorum is at least
16 twelve, right?

17 MR. UNDERWOOD: Yes, sir.

18 Does it appear that everyone is here?

19 THE FOREPERSON: This one is not here and one back
20 there is not here.

21 MR. UNDERWOOD: Do we have at least a quorum?

22 THE FOREPERSON: Yes, sir.

23 MR. UNDERWOOD: Here they come.

24 (The Two Grand Jurors enter the Grand Jury Room.)

25 MR. UNDERWOOD: All right.

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1 Mr. Foreman, are all the Grand Jurors present?

2 THE FOREPERSON: We now have a quorum. They are.

3 MR. UNDERWOOD: Thank you.

4 Good afternoon.

5 For those of you who don't remember me, my name is
6 Joshua Underwood, an Assistant Attorney General here.

7 Today we are going to be kicking off with your
8 first case. It is a drug case known as Operation Ice
9 House. We are going to begin with a general introduction of
10 the case to kind of make you familiar with who the different
11 players are and what the case is about; and then we'll move
12 into a couple of fact witnesses.

13 I just wanted to remind you all that you will have
14 an opportunity at the end of each witnesses' testimony to
15 ask them questions yourselves; however, I would ask that you
16 please refrain from any questions that would implicate who
17 other witnesses are, who have testified, and what their
18 testimony is. Each witness does not know who else is
19 involved with the case. So please restrict your questions
20 only to their testimony.

21 Does anyone have any questions for me before we
22 get started?

23 (No Response.)

24 MR. UNDERWOOD: All right.

25 Mr. Foreman, seeing that we have a quorum and that

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1 all Grand Jurors are present, we will now present Senior
2 Agent Ashley Asbill.

3 Okay.

4 Mr. Asbill, if you'll step forward to be sworn.

5 SENIOR AGENT B. ASHLEY ASBILL, being
6 first duly sworn by the Foreperson at 2:27 p.m., testified
7 as follows:

8 EXAMINATION

9 BY MR. UNDERWOOD

10 Q Good afternoon.

11 Could you please state your full name for the
12 Record and spell your last name?

13 A First name is Brunson, B-r-u-n-s-o-n; middle name,
14 Ashley, A-s-h-l-e-y; last name is Asbill, A-s-b-i-l-l.

15 Q All right.

16 Agent Asbill, could you please introduce yourself
17 to the Grand Jury?

18 A I'm an Agent with the State Law Enforcement Division,
19 better known in South Carolina as SLED. I've been a SLED
20 Agent for 18 years now.

21 Q And how long have you worked in Law Enforcement in
22 general?

23 A I've worked in Law Enforcement for -- going on 26
24 years now.

25 Q And what is your current position with SLED?

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1 A I am assigned right now to the Special Investigations
2 Unit at SLED.

3 Q And what exactly does that mean?

4 A Primarily, we handle mostly narcotics cases; there's
5 some alcohol cases that I do; and then there's some public
6 corruption cases I do.

7 Q All right.

8 And are you the Case Agent for Grand Jury
9 Investigation 2010-206?

10 A Yes, I am.

11 Q And what's the other name given to this case?

12 A It's Operation Ice House.

13 Q Generally speaking, could you please let the Grand
14 Jury know what kind of training you've had to prepare you
15 for these narcotic investigations?

16 A I've been to -- a graduate of numerous narcotics
17 classes provided by the South Carolina Criminal Justice
18 Academy. I've also been to several classes that have been
19 put on by the United States Drug Enforcement Administration
20 or the DEA. I've been to several of those and certified
21 with them.

22 Q And as the Investigator in this case, what are your
23 responsibilities?

24 A My responsibilities are to investigate the suspects in
25 this case through either taking statements or making

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1 controlled purchases of narcotics from some of the targets
2 in this investigation.

3 Q And is this the first time that you have testified
4 regarding this case?

5 A No, it's not.

6 Q When did you testify before?

7 A It's been several months back, but a previous Grand
8 Jury --

9 Q Was that during this current State Grand Jury?

10 A It was a previous Grand Jury.

11 Q All right.

12 And to your knowledge, has that case now been
13 transferred to this State Grand Jury?

14 A That is my understanding that, that case has been
15 transferred to this Grand Jury.

16 Q Is this still an ongoing investigation?

17 A Yes, it is.

18 Q What other Law Enforcement Agencies are involved?

19 A The Greenville County Sheriff's Office, the Pickens
20 County Sheriff's Office, and Anderson County Sheriff's
21 Office.

22 Q Could you briefly explain why this case has been named
23 Operation Ice House?

24 A It primarily deals with -- it's a methamphetamine drug
25 conspiracy case that deals with methamphetamines. Ice is

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1 what it's known as on the street -- by it's street name.

2 So, we came up with the name Ice House as an operation name.

3 Q And based on the number of Investigators and targets
4 in this investigation, would it be fair to say that it's a
5 rather large investigation?

6 A Yes, it is.

7 Q Approximately, how many people have been identified
8 and targeted so far?

9 A Approximately, I would say around 30 individuals.

10 Q And as this investigation is still ongoing, is it
11 likely that more targets could be identified in the future?

12 A Most likely, yes, there will.

13 Q Now, to give the Panel a big picture view, how many
14 different conspiracies so far have been identified in this
15 investigation?

16 A So far we have identified three different conspiracies
17 in this investigation. One of the conspiracies -- you want
18 me to go into them?

19 Q If you'd just briefly identify what each one of them
20 are?

21 A One of them is a North Carolina conspiracy that goes
22 back to North Carolina; the other one is an Atlanta -- what
23 we call the Atlanta conspiracy and it goes into Atlanta,
24 Georgia; and then we have a third one who -- it seems to be
25 centered around Greenville for right now.

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1 Q And now, bearing in mind the other Agencies that
2 you've identified, how many different Counties is this drug
3 activity taking place in?

4 A I would say at least five.

5 Q And which Counties are those?

6 A There are three Counties in South Carolina; the other
7 two are out of State. The three Counties in South Carolina
8 are Greenville, Pickens, and Anderson.

9 Q How did the -- how did this investigation originally
10 begin?

11 A The case was originally began with Greenville County
12 Sheriff's Investigator had an individual that he had made a
13 case on. She ended up cooperating with the State and helped
14 to identify her source, as well as some other sources that
15 are connected or interconnected; and that's how it got
16 started.

17 Q Now, was that individual a Confidential Informant?

18 A That is correct.

19 Q And what was that Confidential Informant known as?

20 A "T.M."

21 Q And how did the investigation fan out from there?

22 A The investigation fanned out from there. We started
23 identifying some of the targets that she had indicated were
24 involved in the buying and selling of methamphetamines. We
25 were able to make controlled purchases with her from some of

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1. these individuals and we've also been able to corroborate
2. some of her information through statements from other
3. individuals that are involved in the methamphetamine sales
4. and purchases.

5. Q Now, has there been any charts or visual aids prepared
6. to help keep lists of all these different individuals?

7. A Yes, sir.

8. During the previous Grand Jury, we had some charts
9. made up that identified three different groups that were
10. involved in this investigation.

11. Q All right.

12. Mr. Foreman, I have a stack of these. If you
13. could hand one of these out to everyone. I believe that's
14. been given to the Court Reporter and marked as Exhibit
15. Number One.

16. Now, Agent Asbill, has -- you mentioned this chart
17. had been used in -- during the previous Grand Jury -- have
18. there been -- has new information been learned and
19. identifications made since this chart was created?

20. A Yes, there have.

21. Q Is it your understanding that when this case is
22. concluded that more up-to-date and accurate charts will be
23. made?

24. A That is correct. It's an ongoing investigation and we
25. have some individuals that weren't identified, who are

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1 identified now.

2 Q And on the charts that the Grand Jury is getting right
3 now, the -- does the organization on each page have any
4 particular meaning or reference as to the pattern of where
5 individuals are placed?

6 A Yes.

7 The pattern that you see here on these charts here
8 are corroborated by statements and/or controlled purchases
9 of methamphetamines and that's how we initially got the
10 framework for what you are looking at now, some of the
11 charts.

12 MR. UNDERWOOD: Mr. Foreman, does everyone have a
13 copy?

14 THE FOREPERSON: Yes, sir.

15 MR. UNDERWOOD: Thank you.

16 Agent Asbill, starting from after the initial
17 information was learned from the CI, Confidential Informant
18 known as T.M.", could you, in a little bit more detail,
19 explain to the Grand Jury where the investigation went from
20 there?

21 A Yeah.

22 The investigation from there started out with some
23 controlled purchases utilizing "T.M." to purchase from
24 individuals where she had been obtaining her methamphetamine
25 or her ice from, as well as some individuals that she knew

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1 was selling methamphetamines -- ice that she knew was
2 selling; and we were able to make some controlled purchases
3 from those individuals also.

4 Q And of the three conspiracies that you've identified,
5 which was the first one that your investigation dealt with?

6 A The first one we dealt with would be the North
7 Carolina conspiracy, the North Carolina Crew.

8 Q And could you please explain to the Grand Jury what
9 the organization of that conspiracy is and how your
10 investigation got you there?

11 A Okay.

12 The investigation there through controlled
13 purchases of ice and also some individuals that she
14 identified as selling ice, they were -- some of them were
15 arrested by other Agencies and had charges -- drug charges
16 pending on them. We took those cases to corroborate what
17 she was telling us about the individuals that were involved
18 in the buying and selling of ice. We were able to make
19 controlled purchases with her from several different
20 individuals on the North Carolina Crew.

21 Do you want me to go into specifics on --

22 Q In a little bit of detail ---

23 A -- which ones --

24 Q -- without getting too bogged down.

25 A Okay. Without getting too bogged down.

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1 We were able to make controlled purchases of
2 methamphetamines from several individuals that she indicated
3 she was buying ice from; and when I say controlled
4 purchases, it was controlled where she was wearing a wire
5 and we issued the money. In most cases, she was wearing a
6 wire. We issued the money; and she would make the
7 purchases. We would retrieve the evidence and turn it in
8 and document the buy.

9 Q And who did you learn through her were her sources in
10 that conspiracy?

11 A Her sources at the time -- and it's ever changing.
12 It's hard to explain especially with methamphetamines, but
13 her sources, during the time, the main one was Malva
14 Martinez, also known as "Grandma". She had purchased
15 methamphetamines from Kim Rushton and also Eduardo Preciado,
16 who is also known as "Gordo". She begin -- and she also
17 purchased from Felipe Sandoval.

18 Q Now, you mentioned a moment ago that it's kind of hard
19 to keep track with the methamphetamine whose selling who.
20 Why is that?

21 A Methamphetamine, the trade there, it's easy to get
22 their money messed up; and when I say that, they -- they're
23 on top for two weeks; and then for lack of a better choice
24 of words, through their usage and mismanagement of their
25 money, they don't have enough to go back to go and re-up to

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1 get the same quantity that they bought previously so they
2 may be on top for awhile and then all of a sudden, they're
3 -- they're scrounging to buy small amounts because they
4 don't have the money.

5 Q Now, are many of the individuals in this case, in
6 addition to selling methamphetamine, are many of them also
7 using it?

8 A That's correct.

9 Q Okay.

10 And is that the reason why there's the constant
11 shifts?

12 A That is the reason there's a constant shift. They may
13 be using a lot of their products so they don't have as much
14 to sell. If they don't have as much to sell, they don't
15 have as much money and they can't go back to the supplier
16 and get the same amount they got previously.

17 Q Okay.

18 Now, moving back to the North Carolina Crew,
19 utilizing the chart that the Grand Jurors have in front of
20 them, could you kind of briefly explain how that conspiracy
21 works?

22 A That conspiracy, through the investigation, we went
23 all the way to North Carolina and the one we consistently
24 identified as being at the top was Ulysess Gonzales. He was
25 out of the Hendersonville area of North Carolina, which is,

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1 I don't know, about an hour or so, I guess, from
2 Greenville. But our Informant had ended up -- she had
3 gotten to the point or gotten big enough where she was going
4 directly to Hendersonville and -- and -- with Felipe
5 Sandoval and purchasing maybe two ounces at a time or a day
6 and coming back and selling it and distributing it in the
7 Greenville and Pickens area.

8 Q And how did the entire structure of the conspiracy
9 unfold?

10 A The structure of the conspiracy unfolded through the
11 purchases or the people that "T.M." was able to identify as
12 being persons that she had either directly bought meth from
13 or either she was selling meth to. The majority of these
14 folks on this chart would sell meth. If they had a little
15 bit extra, they have to sell it to support their next --
16 their next purchase to some extent; and what we found is a
17 lot of them are commingled. I mean, they are -- if one
18 person down here on the bottom knows this person and they
19 can't go up to their regular connect, who doesn't have
20 anything, they may call that person, just to ask them, do
21 they have anything and if they do, they will make a purchase
22 from them.

23 Q And who are the -- who are the major players in the
24 North Carolina Crew?

25 A The major players in the North Carolina Crew at the

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1 time are Felipe Sandoval, Eduardo Preciado, also known as
2 "Gordo", Malva Martinez, Kimberly Rushton, also known as
3 "Stripper Kim", Adrian Hernandez, and Ulysess Gonzales.

4 Q And you say at the time. What has happened since you
5 initially identified that Crew?

6 A Felipe Sandoval has moved to Atlanta is the last known
7 address that I have or the last known I have. Kimberly
8 Rushton was sentenced on a previous State Grand Jury Case
9 and she's doing time now in prison for the previous case.

10 Q So is that case separate and apart from this
11 investigation?

12 A That's correct.

13 Q And what about the others?

14 A Malva Martinez was arrested, but she is now out; and
15 we are continuing to make buys from her. She is continuing
16 to sell.

17 Q And what about Eduardo Preciado, also known as
18 "Gordo"?

19 A I'm sorry.

20 And Eduardo Preciado, also known as "Gordo" and
21 Malva, they're evidently in together now and selling
22 together. So.

23 Q And can you explain how -- who these other individuals
24 on this chart are and how they play into things?

25 A The other individuals on this chart are people who we

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1 have identified. Some of them have wanted to cooperate;
2 some of the folks are in jail now, pending other charges;
3 but most everyone on here has been identified as --- from
4 "T.M.", as a person that's she either bought or sold
5 methamphetamines to and there are several people on here
6 that we've made controlled purchases from.

7 Q And could you identify those individuals?

8 A The controlled purchases?

9 Q Please?

10 A Okay.

11 We have made controlled purchases from Gary
12 Griffin. We've made controlled purchases from Chad Moore.
13 We've made controlled purchase from Tanja Perez. We've made
14 controlled purchase from Alibi Bashaw. We've made
15 controlled purchase from Charles Adam -- Charles Adams.
16 We've made controlled purchase from Autumn Scarberry and
17 controlled purchase from Amy Harris.

18 Q Now, as the

19 A I believe that's all.

20 Q I'm sorry.

21 Are there more?

22 A I believe that's all. I was looking real quick to see
23 if I left anybody out.

24 Q As the chart appears right now, is that the current
25 state of that conspiracy?

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1 A No, it's not.

2 Q And how -- how have things changed?

3 A Well, Kimberly Rushton is in prison right now; Felipe
4 Sandoval is in Atlanta right now as far as I know; and right
5 now on top is -- and Ulysess Gonzales was recently arrested
6 in North Carolina and I think his charges are pending -- but
7 right now Malva Martinez and Eduardo Preciado, also known as
8 "Gordo", is at the top right now.

9 Q Now, due to all the changes in the way the North
10 Carolina Crew was operating, have those individuals had to
11 look for other sources of meth?

12 A Yes, they have.

13 Q And has that led -- did that lead to any of these
14 other conspiracies?

15 A It did.

16 The Atlanta Crew was formed. That's on your
17 second page of your handout. We were able to identify,
18 through an Informant, that Gary -- Jason(sic) Griffin was
19 going to Atlanta, as well as Wendy Lollis and Chad Moore,
20 and they were purchasing methamphetamines from -- and on
21 your chart, it's "Ant" LNU and LNU is last name unknown, but
22 we have since identified him as Antonio Tate, T-a-t-e.

23 Q And how was -- how did operations with the Atlanta
24 Crew happen?

25 A For the most part, Wendy Lollis would introduce

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1 somebody, either Gary Griffin or Chad Moore, to "Ant" or --
2 and they would go to Atlanta to pick up methamphetamines
3 from "Ant" and bring it back to the Pickens or Greenville
4 County area to distribute.

5 Q And I don't see them on this chart, but were Albrie
6 Bashaw and Charles Adams involved with that Crew as well?

7 A They are. They need to be added to this chart, but
8 they hadn't been. But 'Albrie Nate' Bashaw and Charles
9 Adams, who were living together, started -- they got
10 introduced to "Ant" and they started going to Atlanta and
11 they started purchasing methamphetamines from "Ant" in
12 Atlanta.

13 Q Are there any other individuals that need to be added
14 onto the Atlanta Crew who were purchasing from Antonio Tate?

15 A There may be and I don't have the information in front
16 of me right now.

17 Q Did Albrie Bashaw or Charles Adams introduce anyone to
18 Antonio Tate, also known as "Ant"?

19 A I'm not real sure right now.

20 Q That's a lot of names to keep track of.

21 A I know and I'm not sure right now about that.

22 Q As far as the Atlanta Crew is concerned, where --
23 where is the investigation currently working right now?

24 A The investigation with the Atlanta Crew right now is
25 Albrie Nate' Bashaw and Charles Adams have not been -- they

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1 are not purchasing anything from "Ant" right now and have
2 made several attempts to purchase anything, but he doesn't
3 have anything right now. So, we're just kind of on hold
4 with that.

5 Q Is there any other introductory information that the
6 Grand Jury needs to be aware of to understand how the
7 Atlanta Crew fits into this case?

8 A Not at this time, no.

9 Q All right.

10 And what about this third Crew, the Greenville
11 Crew?

12 A The third crew is the Greenville Crew. We were only
13 able to structure it through the informant "T.M." and as
14 high as we've been able to go and it hasn't gotten out of
15 Greenville County, but, you know, we feel sure that at some
16 point it will, but right now Clyde Davis seems to be at the
17 top of that and right up under him is Nicholas Dendy; and
18 we've made controlled purchases of methamphetamines or ice
19 from both of these individuals. We've made a controlled
20 purchase from Brian Sekerchak; and we've also made
21 controlled purchases from Michael Wayne Robinson, Tasha
22 Williams, David Norris, and Josh -- Joshua Byers, who is
23 also known as "Fatboy".

24 Q And at this time, are there any other individuals that
25 you can think of off the top of your head that need to be

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1 added to that list?

2 A To the Greenville Crew?

3 Q Yes.

4 A No, sir, not at this time.

5 Q How do the -- how do these three Crews relate to one
6 another?

7 A Different individuals in each of these Crews may know
8 somebody so -- in the other ones and they also know that
9 they are involved in buying and selling methamphetamines or
10 ice; and if they can't get ahold of somebody -- let's say
11 that person, individual, they call who they normally would
12 obtain ice from is out, doesn't have any, or hadn't gone and
13 re-upped, and they may call somebody that they know is in
14 the -- "in the game" and see if they have any and will buy
15 from them. So, we've got documented where different ones on
16 the charts, the Crews kind of commingle or they may buy from
17 another individual from another different Crew that -- that
18 they know.

19 Q And we've identified these as the North Carolina Crew,
20 the Atlanta Crew, and the Greenville Crew. Are these
21 individuals acting in some sort of organization or how would
22 you describe the way they operate?

23 A It is a loose -- I would describe it as a loose
24 conglomeration of buying and selling when the opportunity
25 arises. There are some of them that they're real consistent

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1 about who they buy from and there are some that they are
2 going to get it from whoever they can get from at the time
3 when they want it or when they have the money for it.

4 Q Now, are these individuals operating under someone who
5 say, a boss, or is everyone kind of out for themselves?

6 A They're looking out for themselves. The majority of
7 them are.

8 Q Now, are these individuals selling each in just one
9 location or are they moving around?

10 A They are moving around. They're constantly -- there
11 are several different individuals who maybe have started out
12 in Greenville County. They had residences in Greenville
13 County and the next thing we know, they've picked up and
14 they've moved over into Anderson or Pickens County, that
15 general area.

16 Q And at this point, where is the focus of the
17 investigation right now?

18 A The focus of the investigation right now is we have --
19 some of the individuals on this -- on these charts have
20 agreed to cooperate with Law Enforcement and we are in the
21 process of making additional controlled purchases from
22 individuals who are already listed on these charts, as well
23 as new targets that they've indicated that have either
24 gotten into the meth game or have been in it and they have
25 not been the focus previously of Law Enforcement in these

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1 charts; and that's why it's changing and that's why it's,
2 you know, it's growing.

3 Q So is a large part of this investigation what could be
4 characterized as a historical case?

5 A A large part of it is, yes.

6 Q And can you explain what that term historical case
7 kind of means?

8 A Yeah.

9 Historical case, when you get an individual who
10 wants to cooperate and they have been involved in the buying
11 and selling of methamphetamines, we'll debrief them and talk
12 to them about if they have a regular source, how much have
13 they bought from that source over a period of time or
14 however long they've been dealing with that particular
15 source and try to get sworn testimony or sworn statements
16 from them about how many narcotics they've purchased or sold
17 and tie that individual or that target into the
18 investigation.

19 Q In addition to gathering this historical information,
20 is the investigation still undergoing current
21 methamphetamine sales?

22 A That's correct, it is. Yes.

23 Q And is that -- that's through the controlled purchases
24 that you spoke about?

25 A That's through controlled -- controlled purchases by

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1 the State or by Law Enforcement from existing individuals --
2 existing targets or new targets.

3 Q All right.

4 Agent Asbill, at this time, I'm going to open the
5 floor to Members of the Panel if any of them have questions
6 from you.

7 Ladies and Gentlemen, again, this is your
8 opportunity to ask questions to further enhance your
9 understanding of this investigation and what it's about.
10 Please focus your questions toward the testimony of this
11 particular witness; however, as the Case Agent, he does have
12 a wider field of knowledge than some of the other witnesses
13 you will encounter. So if you have any questions to help
14 understand the scope of the case, Agent Asbill would be a
15 good person to ask.

16 Are there any questions from the Panel?

17 THE GRAND JUROR: Yeah, I've got one.

18 THE WITNESS: Yes, sir.

19 THE GRAND JUROR: Yeah, I mean, you've done a heck
20 of a job identifying these people as either users or pushers
21 or distributors --

22 THE WITNESS: Yes, sir.

23 THE GRAND JUROR: -- so you've got evidence
24 against these people so who are you after now? You've
25 already got them, go out and get them.

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1 THE WITNESS: Yes, sir.

2 THE GRAND JUROR: So you must be after somebody
3 bigger than this.

4 THE WITNESS: We're trying to go as far as we can
5 go with it, yes, sir.

6 THE GRAND JUROR: Okay.

7 THE WITNESS: Try to run it as far as we can or go
8 up the ladder as far as we can.

9 THE GRAND JUROR: I guess, I'm wondering, well,
10 why are we here because you've already done your job to go
11 out and get them.

12 THE WITNESS: And a lot of these individuals have
13 been arrested --

14 THE GRAND JUROR: Right.

15 THE WITNESS: -- and they go through the system.
16 They're either out pending their charges, waiting on their
17 charges to be adjudicated, they're out on bond and they're
18 continuing to -- some of them are continuing to sell.

19 MR. UNDERWOOD: And, Agent Asbill, just to
20 clarify, some of these individuals that have been identified
21 in some roundabout ways, is there still -- to make cases
22 against them, is there still additional evidence that needs
23 to be gathered in order to make a firm case?

24 THE WITNESS: Absolutely. Absolutely.

25 There are some -- some individuals on here we need

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1 testimony from cooperating individuals -- cooperating
2 witnesses --

3 THE GRAND JUROR: Okay.

4 THE WITNESS: -- who are willing to cooperate and
5 willing to swear under oath that they purchased or sold
6 methamphetamines or ice to whoever.

7 THE GRAND JUROR: Okay. Thank you.

8 THE WITNESS: Yes, sir.

9 MR. UNDERWOOD: Are there any additional
10 questions?

11 (No Response.)

12 MR. UNDERWOOD: All right.

13 Agent Asbill, at this time, we'll excuse you.

14 2:58 p.m.

15 (Senior Agent Asbill exits the Grand Jury Room.)

16 MR. UNDERWOOD: Mr. Foreman, I just want to make
17 you and the Panel aware that there has been additional
18 testimony in this case to the previous Grand Jury. On this
19 table right here, there's a stack of papers. Those are
20 Transcripts from the prior testimony. If the Grand Jury, at
21 any point in time, wishes to request time for future terms
22 to review those Transcripts, we will always be happy to make
23 them available to you or during any breaks. I just wanted
24 you to be aware that those Transcripts were there for you to
25 review if you wished and they'll also -- and if an

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1 Indictment is presented to this Grand Jury, all of the
2 Transcripts or all the prior testimony related to this case
3 will also be made prior to any deliberations.

4 At this time --

5 THE FOREPERSON: Josh, excuse me, should we keep
6 these for our own records or?

7 MR. UNDERWOOD: You can keep them. You should
8 have -- you should each have folders from the Clerk's Office
9 for placing your notes in. You can go ahead and keep those,
10 along with your notes. So you can feel free to write on
11 those, make any comments you need to. Those are your
12 copies. Just make sure they stay in your folders.

13 Any other questions before we move to the next
14 witness?

15 (No Response.)

16 3:00 p.m.

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1 CERTIFICATE OF REPORTER

2
3 I, Robbie Koon DeFreese, Court Reporter and Notary
4 Public for the State of South Carolina at large, do hereby
5 certify:

6 That the foregoing testimony/dialogue was taken
7 before me on the date and at the time and location stated on
8 page 1 of this transcript; and that the foregoing transcript
9 of that testimony/dialogue is a true, accurate, and complete
10 record to the best of my ability.

11 I further certify that I am neither related to nor
12 counsel for, nor employed by any party to the investigation,
13 nor am I financially interested in the investigation.

14 Witness my hand, I have hereunto affixed my
15 official seal this 20th day of July, 2011, at Little
16 Mountain, Richland County, South Carolina.

17
18
19 _____
20 Robbie Koon DeFreese
21 Court Reporter
22 Notary Public
23 State of South Carolina at Large
24 My Commission expires:
25 March 7, 2015

ROBBIE KOON DeFREESE, COURT REPORTER

BEFORE THE SOUTH CAROLINA STATE GRAND JURY # 23

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

INVESTIGATION NO: SGJ2010-0206

TESTIMONY OF AMY E. BROCK

Columbia, South Carolina
Wednesday, September 14, 2011
3:49 p.m. to 4:21 p.m.

PRESENT:

OFFICE OF THE ATTORNEY GENERAL
STATE OF SOUTH CAROLINA

STATE GRAND JURY DIVISION
The Rembert C. Dennis Building
Columbia, South Carolina 29201

TAKEN BY: CURTIS A. PAULING, III, ESQUIRE
Assistant Deputy Attorney General
JOSHUA R. UNDERWOOD, ESQUIRE
Assistant Attorney General

REPORTED BY: ROBBIE KOON DeFREESE
Court Reporter

QUORUM OF GRAND JURORS

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ROBBIE KOON DeFREESE, COURT REPORTER

1 Wednesday, September 14, 2011.

2 3:48 p.m.

3 (Mr. Pauling and Mr. Underwood enter the Grand
4 Jury Room.)

5 MR. UNDERWOOD: All right.

6 Mr. Foreman, do we have a quorum?

7 THE FOREPERSON: Yes, sir, we have a quorum.

8 MR. UNDERWOOD: All right.

9 We are going to present one more witness today.
10 This is going to be in Operation Ice House.

11 Mr. Foreman, so that you are aware, the
12 Transcripts of prior testimony are on this table right here
13 if the Grand Jury needs to review any of those.

14 Also, I remind the Grand Jury that any questions
15 asked of this Witness should be directed specifically
16 towards that Witness' testimony. As this is an ongoing
17 investigation, sometimes individuals don't know what other
18 individuals are involved or have testified. So I just ask
19 that you please limit your questions to this Witness'
20 testimony and not ask questions that would identify any
21 other Witnesses.

22 At the time, we call Amy Elizabeth Brock.

23 And do any Members of the Grand Jury recognize
24 that name?

25 (No Response.)

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1 MR. UNDERWOOD: All right.

2 When Ms. Brock comes into the room, if anyone does
3 recognize her, please, raise your hand, identify yourself,
4 and we'll address it at that time.

5 THE FOREPERSON: Place your left hand on the
6 Bible, raise your right.

7 State your name.

8 THE WITNESS: Amy Brock.

9 AMY E. BROCK, being first duly
10 sworn by the Foreperson at 3:49 p.m., testified as follows:

11 EXAMINATION

12 BY MR. UNDERWOOD:

13 Q Good afternoon, Ms. Brock.

14 If you could, please, state your full name and
15 spell your last name for the Record?

16 A It's Amy Elizabeth Brock, B-r-o-c-k.

17 Q Now, Ms. Brock, you are appearing before the South
18 Carolina State Grand Jury. This Grand Jury is investigating
19 possible violations of criminal law involving illegal drugs
20 and related matters. The people that are seated before you
21 are Members of the Grand Jury Panel. Seated to my right and
22 your left is our Court Reporter. She will be making a
23 Record of everything that transpires during the Grand Jury
24 Session in which you are testifying. I'll ask you a series
25 of questions regarding your involvement in the matter that's

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1 being investigated by this Grand Jury. Afterwards, the
2 Panel may also have some questions to ask you as well.

3 Now, Ms. Brock, you've just been sworn by the
4 Foreperson of the Grand Jury and have taken an oath to
5 testify truthfully. So you are under a legal obligation to
6 do just that. You must give truthful answers today in
7 response to all those questions put to you, either by
8 myself, Mr. Pauling, or Members of the Panel.

9 Do you understand that?

10 A Yes, sir.

11 Q If you should lie or knowingly make false statements
12 in your testimony, you could be prosecuted in a criminal
13 action, separate and distinct, from the matter that's being
14 investigated regarding your testimony. If you are convicted
15 of perjury, you could be sentenced to imprisonment and
16 fined.

17 Do you understand that?

18 A Yes, sir.

19 Q You do not have a constitutional right to remain
20 silent, but you do have a constitutional right to refuse to
21 answer any questions if a truthful answer to those questions
22 would tend to incriminate you.

23 Do you understand that you have a right to be
24 represented by an Attorney?

25 A Yes, sir.

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1 Q Are you represented by an Attorney?

2 A No, sir.

3 Q Do you understand that your Attorney could not be here
4 in the Grand Jury with you, but could be outside and you
5 could consult with that Attorney during your testimony.

6 A Yes, sir.

7 Q Do you wish to go forward today?

8 A Yes, sir.

9 Q Ms. Brock, has any promise been made to you in any way
10 or manner for your testimony here before the State Grand
11 Jury?

12 A No, sir.

13 Q Has anyone threatened you or coerced you to testify
14 here today?

15 A No, sir.

16 Q Has anyone promised you any leniency or offered you
17 any hope of reward for your testimony?

18 A No, sir.

19 Q Have you and I spoken before today?

20 A No, sir.

21 Q Have you and Mr. Pauling spoken before today?

22 A No, sir.

23 Q Now, did you speak with myself and Mr. Pauling earlier
24 this afternoon?

25 A Yes, sir.

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1 Q And during that time, did either of us make any
2 promises to you?

3 A No, sir.

4 Q Did we coerce or intimidate you in any way to testify
5 today?

6 A No, sir.

7 Q Your appearance and testimony here today, is that
8 completely voluntary?

9 A Yes, sir.

10 Q Now, were you -- are you also here under a subpoena?

11 A Yes, sir.

12 Q But aside from the subpoena, you are still here
13 voluntarily, is that correct?

14 A Yes, sir.

15 Q At this time, have you been charged with any violation
16 of the criminal law related to this investigation of illegal
17 drug activity?

18 A I was charged a week ago for trafficking
19 methamphetamines.

20 Q Okay.

21 And, again, has anyone promised you anything for
22 exchange for your cooperation and testimony here today?

23 A No, sir.

24 Q And at this time, is it your goal to continue to
25 cooperate with the Law Enforcement?

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- 1 A Yes, sir.
- 2 Q Ms. Brock, how old are you?
- 3 A I'm 30-years-old.
- 4 Q And how far did you go in school?
- 5 A I graduated.
- 6 Q And today, are you under the influence of any drugs or
7 alcohol, including prescription drugs?
- 8 A No, sir.
- 9 Q During the past year, have you come in contact with
10 Investigator Chad Ayers of the Greenville County Sheriff's
11 Office and Agent Brett Barwick of the Pickens County
12 Sheriff's Office?
- 13 A Yes, sir.
- 14 Q Under what circumstances have you come in contact with
15 them?
- 16 A Just to give them a written statement of mine.
- 17 Q Okay.
- 18 And did you cooperate and provide a statement to
19 Investigator Ayers on October 26, 2010 --
- 20 A Yes --
- 21 Q -- about your involvement with illegal drugs --
- 22 A Yes, sir --
- 23 Q -- particularly meth?
- 24 A Yes, sir.
- 25 Q And were you advised of your rights before giving that

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1 statement?

2 A Yes, sir.

3 Q Did you knowingly and voluntarily waive those rights

4 and agree to give the statement?

5 A Yes, sir.

6 Q Were you completely truthful?

7 A Yes, sir.

8 Q And did you cooperate and provide another statement to

9 Investigator Ayers and Agent Barwick on September 8th of

10 this year about your involvement with illegal drugs,

11 particularly methamphetamine?

12 A Yes, sir.

13 Q Were you advised of your rights before giving that

14 statement?

15 A Uh-huh; yes, sir.

16 Q Did you knowingly and voluntarily waive those rights

17 and agree to give the statement?

18 A Uh-huh.

19 Q And was that statement also completely truthful?

20 A Yes, sir.

21 Q Have you had an opportunity to review their summaries

22 of those statements?

23 A Yes, sir.

24 Q And were their summaries accurate and truthful?

25 A Yes, sir.

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1 Q Ms. Brock, when did you first become involved with
2 methamphetamine?

3 A Uh -- in -- are you talking about selling or just
4 using -- or using?

5 Q In general?

6 A Probably about five years ago.

7 Q And how did you become involved?

8 A My boyfriend that I was seeing at the time. He's the
9 father of my two youngest sons.

10 Q Okay.

11 And what was your involvement at that time?

12 A Just -- I was just a user.

13 Q How often did you use?

14 A Every other day.

15 Q And how much did you use any particular day?

16 A In a day's time, I guess, about half a gram.

17 Q And did the amount of your use increase?

18 A Yes, sir.

19 Q When did that occur?

20 A When I started selling.

21 Q Okay.

22 And when was that?

23 A Two years ago.

24 Q How did you get involved with selling methamphetamine?

25 A A friend of mine came to me and told me that he had

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1 some methamphetamines and asked if I would help sell it for
2 him to help him and myself make money.

3 Q And who was that?

4 A Westbrook.

5 Q What's his first name?

6 A Steve Westbrook.

7 Q Okay.

8 And at that time, do you know -- you said it was
9 about -- you said it was two years ago?

10 A Yes, sir.

11 Q So this would be the Summer of 2009.

12 A Uh-huh.

13 Q Okay.

14 How -- how much meth did you sell for him at that
15 time?

16 A Around a quarter ounce. I would get a quarter ounce
17 every time.

18 Q Is that a quarter ounce per sale or quarter ounce per
19 day?

20 A A quarter ounce, I wouldn't say everyday. I would say
21 , a quarter ounce every other day.

22 Q Okay.

23 A Or everyday, just depending on how much I sold.

24 Q Okay.

25 And by selling for him, did he just hand it to you

ROBBIE KOON DeFREESE, COURT REPORTER

1 and have you go sell it and bring him the money back? What
2 was the arrangement like?

3 A He would front it to me and when I was through selling
4 all of it, he -- I would call him up and give him the money
5 that he -- for -- for the meth.

6 Q Okay.

7 And how much profit did you make off of that?

8 A Uh -- with him, I probably profited maybe -- it was --
9 I really just was using -- when I was paying with him, I
10 just used -- it was more or less just for using. I didn't
11 profit much off Westbrook.

12 Q So you were selling in order to support your own
13 habit?

14 A Yes, sir.

15 Q All right.

16 When did that relationship change?

17 A Uh -- when I -- he -- I'm not sure what had happened
18 with him. I don't know if he went to jail or what, but I
19 started messing with his -- a friend of his named "TT."

20 Q And do you know "TT's" real name?

21 A No, sir.

22 Q All right.

23 The individual you know as "TT", how did you get
24 involved with him?

25 A Through mutual friends and -- just through mutual

ROBBIE KOON DeFREese, COURT REPORTER

1 friends. I seen him at a friend of ours house and spoke
2 with him and he said that, you know, that he could get stuff
3 and he started supplying me.

4 Q And at what point in time was this when you started
5 getting your supply from "TT"?

6 A It was probably around -- let's see -- that Summer --
7 it was probably around the beginning of the year in 2010 or
8 the end of 2009.

9 Q And how much meth were you buying from him at that
10 time?

11 A Anywhere from a ball to a half -- to a quarter ounce.

12 Q Okay.

13 So anywhere from an eight-ball to -- was it a half
14 or a quarter ounce, I'm sorry?

15 A I might have gotten a half ounce from him one day, but
16 normally, it was just an eight-ball to a quarter ounce.

17 Q Okay.

18 And how much were you paying him for that?

19 A Let's see. 450 -- 450 for the half ounce -- I mean,
20 for the quarter ounce, I'm sorry.

21 Q Okay.

22 And how many times did you buy from him, do you
23 remember?

24 A Uh -- probably, I would say four -- four or five times
25 -- three or four or five times, not many.

ROBBIE KOON DeFREese, COURT REPORTER

1 Q All right.

2 And out of those four or five times, was it about

3 a quarter ounce each time?

4 A Yes, sir.

5 Q Why did you stop dealing with "TT"?

6 A I believe he went to jail.

7 Q Do you know an individual named Michael Robinson?

8 A Yes, sir.

9 Q Does he have any nicknames?

10 A "Mikey Mike".

11 Q How do you know him?

12 A He lives about a mile up the road from me. So I just

13 knew him through mutual friends living in the same

14 neighborhood.

15 Q Okay.

16 Did you ever buy or sell meth with him?

17 A I sold meth to him--

18 Q Sold to him?

19 A Yes, sir, I sold meth to him.

20 Q And how much did you sell to him?

21 A Uh -- a half eight.

22 Q How many times?

23 A Uh -- I would say over a period of -- at least 15 to

24 20 times.

25 Q And was that half an eight-ball each time?

ROBBIE KOON DeFREESE, COURT REPORTER

1 A Yes, sir.

2 Q How much were you selling that to him?

3 A Daily.

4 Q Okay.

5 How much were you charging him?

6 A 140.

7 Q Okay.

8 And what time frame was that?

9 A Uh -- it was right around the same time. I guess, it

10 was from the beginning of that year to that Spring.

11 Q Okay.

12 And did Michael Robinson introduce you to anyone

13 else?

14 A Yes, sir. He introduced me to Nick Dendy.

15 Q And who is Nick Dendy?

16 A He is the guy that I was -- the last supplier that I

17 was buying stuff from.

18 Q Okay.

19 And when did you start buying from Nick Dendy?

20 A - It was that Summer.

21 Q Of 2010?

22 A Yes, sir.

23 Q How often would you deal with him?

24 A Uh -- every other day, if not everyday.

25 Q And how much would you buy at a time?

ROBBIE KOON DeFREESE, COURT REPORTER

1 A A quarter ounce.

2 Q So a quarter ounce everyday or every other day?

3 A Every other -- yeah. Either everyday or every other
4 day, just depending on how much I sold.

5 Q And how much did you pay for that?

6 A To begin with, I was paying 560 for a quarter.

7 Q Okay.

8 And that's a quarter of an ounce?

9 A Yes, sir.

10 Q And how long did that relationship last?

11 A Uh -- let's see. Probably for the next -- I want to
12 say a year I sold -- I got stuff from him and then that's
13 when some things got, you know, the Police was watching my
14 house and all that. So I stopped messing with him then and
15 then I started again messing with him about a month ago.

16 Q Okay.

17 So when was the time frame that you stopped
18 selling because the Police were watching you?

19 A That was this past -- this past -- let's see, I'd say
20 within the last four to five months, I quit selling.

21 Q Okay.

22 Until about a month ago, you started --

23 A Until about a month ago, yes.

24 Q Okay.

25 So from -- when did you first start buying from

ROBBIE KOON DeFRESE, COURT REPORTER

1 Nick Dendy?

2 A In the -- it was around the Spring or the Summertime
3 of 2009 or 2010 -- 2010, I think. 2010.

4 Q Okay.

5 So from the Spring or Summer of 2010 --

6 A Yeah.

7 Q -- until the Spring of 2011, you were buying from --

8 A From Nick --

9 Q -- him regularly?

10 A Yes, sir.

11 Q And at that same amount, a quarter of an ounce at a
12 time every other day?

13 A Yes, sir.

14 Q And were there any breaks in that time?

15 A Uh -- just that one.

16 Q Did you ever take any vacations or anything where you
17 were out of Town?

18 A Yeah, I did. I took a vacation. It was the -- in
19 June I want to say, the beginning of June or, I think, it
20 was the beginning of June or beginning of July. I'm not
21 sure. I went to the beach for a week.

22 Q Okay.

23 And is that the only time that you weren't selling
24 or weren't buying from him?

25 A Uh -- I wasn't buying from him when I was scared that

ROBBIE KOON DeFREESE, COURT REPORTER

1 the Police was watching my house, I didn't --

2 Q Aside from that time, was that -- When you were on
3 that vacation in -- is that June of 2010?

4 A Yes.

5 Q Is that the only other time for an extended period you
6 didn't buy?

7 A Yes, sir.

8 Q Okay.

9 Now, when you would buy from Nick Dendy, how did
10 you buy from him? How -- what was the arrangement that you
11 had with him?

12 A The first go around, he would come to my house and he
13 would have his cousin pull up shortly after he did in my
14 driveway and he would go get the stuff from his cousin and
15 then he would bring it to me.

16 Q Okay.

17 Did you ever meet his cousin?

18 A No, sir.

19 Q Do you know what he looked -- did you ever get a good
20 look at him?

21 A Yeah, they gave me a photo lineup and I positively
22 identified him in that.

23 Q Okay.

24 And that's the cousin, not Nick Dendy?

25 A Yeah, that's the cousin, not Nick.

ROBBIE KOON DeFREESE, COURT REPORTER

1 Q Okay.

2 But you know Nick regularly?

3 A Yes, sir.

4 Q Okay.

5 And how many times would you say that you observed

6 Nick's cousin bring him the drugs?

7 A Every time that he brought me the drugs for that --

8 for that first little except for this past month, this last

9 time, every single time he come to my house, he would have

10 his cousin pull up and bring him the drugs.

11 Q Okay.

12 Do you know where his cousin got the drugs from?

13 A No, sir.

14 Q But Nick Dendy was getting you the drugs from his

15 cousin?

16 A Yes, sir.

17 Q Now, when you gave the money to Nick, did he keep the

18 money or did he give the money to his cousin?

19 A He gave the money to his cousin.

20 Q Do you know if he gave him all of it or just some of

21 it?

22 A I'm not sure.

23 Q Let's talk about this -- the more recent time that you

24 started dealing with him again.

25 When did you start dealing with Nick Dendy again?

ROBBIE KOON DeFREese, COURT REPORTER

1 A About a month ago.

2 Q And what was your relationship like at that point?

3 A With Nick?

4 Q Yes.

5 A He called me one morning and told me that he was, you
6 know, doing something again and asked me if I needed
7 anything. I told him yeah. So I went to his shop -- I
8 believe his daddy owns the shop -- and gave him some money
9 and then he called me back a short time period later and I
10 met back up with him and got -- got the meth.

11 Q Okay.

12 Now, the shop, what's the name of it, do you know?

13 A I'm not sure. I know it's in front of the Cracker
14 Jack. I'm not sure the name of the shop, though. They
15 service cars. They do tire changes and oil changes and
16 stuff like that.

17 Q Okay.

18 Do you know where the shop is? What Town?

19 A It's in Greenville County. It's off of White Horse
20 Road. It's going -- like going towards downtown Greenville.

21 Q Okay.

22 And after that purchase, did you make any other
23 purchases from Nick Dendy?

24 A Yes, sir.

25 After that -- that was the only time that I went

ROBBIE KOON DeFREESE, COURT REPORTER

1 to his -- the shop. After that, he always come to my house
2 and brought me the meth.

3 Q Okay.

4 And did the amount that you purchased from him in
5 August or this year increase from what it was before?

6 A No, sir.

7 Q Okay.

8 So, how -- so how much were you buying from him
9 then?

10 A In August or this past month?

11 Q Since you started buying from him again?

12 A I only -- I got maybe a ball to a quarter ounce.

13 Q And how much did you pay him for it?

14 A This past time? 425.

15 Q Okay.

16 And what was the price that you paid him the first
17 time around?

18 A 560. 560 for a quarter and then this past time, it was
19 425 for a quarter.

20 Q Did he tell you why the price went down?

21 A I'm assuming it was because he was getting it from
22 somewhere else when I was paying the 560; and then, when I
23 was getting it from him, from this past time, for the 425,
24 it was -- at first, it was 425 and then it went down to 400,
25 I guess, just because I had been dealing with him for a

ROBBIE KOON DeFREese, COURT REPORTER

1 little bit longer.

2 Q Now, when you first were buying from him back in the
3 Summer of 2010 --

4 A Uh-huh.

5 Q -- did you ever buy more than a quarter ounce at a
6 time from him?

7 A I got a half ounce from him.

8 Q Okay.

9 And how much did he charge you for a half ounce?

10 A Eight hundred.

11 Q Okay.

12 Did you ever deal with his cousin directly?

13 A No, sir.

14 Q And the period of time when you thought the Police
15 were watching you, were you still using meth?

16 A Yes, sir.

17 Q Where were you getting it from?

18 A I got -- a couple of times, I got it from Arnie
19 Valdez.

20 Q And who is that?

21 A He lives the street over from my house and he's just a
22 dealer.

23 Q And how much would you buy from him?

24 A Like, maybe a gram.

25 Q How often?

ROBBIE KOON DeFREese, COURT REPORTER

1 A Uh -- I just bought -- it was just on occasion. You
2 know, a couple -- a couple, like maybe two or three times I
3 bought from him for personal.

4 Q Did you purchase from anyone else other than him
5 during that time frame?

6 A I also got something from a guy named J.R.

7 Q And what -- do you know J.R.'s full name?

8 A No, sir.

9 Q Where -- where were you buying from J.R. from?

10 A Uh -- I got -- it was in a trailer in Powdersville. A
11 girl -- I can't think of her name. I just know it was a
12 trailer in Powdersville.

13 Q Is that the only place that you bought from him?

14 A Yes, sir.

15 Q How many times did you buy from him?

16 A Three or four times.

17 Q And how much did you buy each time?

18 A Uh -- I bought a quarter -- a quarter from him.

19 Q Each time?

20 A Yeah. Well, I think, I bought -- I think it might
21 have been a ball one time and then a quarter the next couple
22 times.

23 Q Do you remember how much he charged you?

24 A Uh -- it was 525.

25 Q Each time?

ROBBIE KOON DeFREESE, COURT REPORTER

1 A For the quarter, yeah.

2 Q Did Nick Dendy ever express to you that he was
3 concerned about Police involvement?

4 A When he called me back this past time, he thought --
5 he told me that he thought -- he said that he had been
6 hearing a lot that my boyfriend was associated or been
7 talking to the Police; and I told him then that I did -- I
8 was almost positive that he hadn't been.

9 Q And who is that, your boyfriend?

10 A Michael Reddick.

11 Q And after that conversation, did you continue to buy
12 meth from him?

13 A Yes, sir.

14 Q From Nick Dendy?

15 A (No Response.)

16 Q Did he ever call you from any particular phone numbers
17 that you remember?

18 A Uh -- he called me -- I'm not sure. I knew the Area
19 Code. It was a 404 Area-Code, I believe. It was always an
20 out-of-State Area Code.

21 Q Okay.

22 Do you know where he got his phones from?

23 A No, sir.

24 Q Now, you said that you had pending charges in this
25 investigation. How did those come about?

ROBBIE KOON DeFRESE, COURT REPORTER

1 A A week from Tuesday, I was charged with trafficking
2 methamphetamines.

3 Q Okay.

4 And how were you caught with the methamphetamine?

5 A They come in. I believe somebody wore a wire in and
6 then they come in within 72 hours after somebody making a
7 buy from me.

8 Q Okay.

9 And how much meth did you have at that time?

10 A Uh -- they charged me with over ten grams, less than
11 28 grams.

12 Q Is that amount not accurate to what you thought you
13 had?

14 A Yes.

15 Q Over the past month, have -- who have you been selling
16 meth to over the past month?

17 A I been selling it to Keith Sekershak. I been selling
18 it to a guy named "Cookie?"

19 Q Do you know "Cookie's" real name?

20 A Oh, what is his -- David, I think, is -- maybe his
21 first name. I'm not -- I'm not really sure what his real
22 name is.

23 Q Is that David Cook?

24 A Yeah, that's him; and I've been selling it to "Bud"
25 Sekershak; and to a guy named Austin and -- from

ROBBIE KOON DeFREESE, COURT REPORTER

1 Spartanburg.

2 Q Do you know Austin's last name?

3 A No, sir.

4 Q Now, "Bud" Sekershak, does he have any nicknames?

5 A Uh -- "Bud".

6 Q Okay.

7 How about Keith Sekershak, are you aware of him
8 having any nicknames?

9 A "Batman".

10 Q Okay.

11 And how much would you sell to each of those
12 individuals you just named?

13 A Uh -- around a ball.

14 Q Okay.

15 Each -- each transaction?

16 A Yes, sir.

17 Q And how much did you charge?

18 A Uh -- usually 280.

19 Q Okay.

20 Do you know how much times you've dealt with any
21 of those individuals over the past month or so?

22 A "Bud", I just dealt with him, I guess, on five or six
23 occasions.

24 Q Just within the past month or so?

25 A Uh-huh.

ROBBIE KOON DeFREese, COURT REPORTER

1 Q Okay.

2 How often have you dealt with him, other than the

3 past month or so?

4 A "Bud"?

5 Q Yes.

6 A I -- I was -- purchased some meth from "Bud", I guess,

7 it was this past winter -- not this winter, but the winter

8 before that. I was purchasing meth from him and other than

9 that, I haven't had any other dealings with him.

10 Q Okay.

11 And what about Keith Sekershak?

12 A Uh -- I was just selling it to him.

13 Q Okay.

14 Other than just the past month, how often have you

15 sold or bought from him?

16 A From Keith?

17 Q Yes.

18 A I haven't never bought anything from him. Now, I've

19 sold to him probably about a ball every other day.

20 Q Over what span of time?

21 A Within the last year.

22 Q So about every other day over the past year while you

23 were selling?

24 A Uh -- well, no, there was -- there was a gap that I

25 didn't sell to him. It was probably -- I want to say five

ROBBIE KOON DeFREESE, COURT REPORTER

1 months I didn't sell anything to him; and then I just
2 recently started selling to him within the past month or
3 two.

4 Q How much would you say you've sold to him total?

5 A Keith?

6 Q Yes.

7 A Uh -- at least, I'd say 75 times.

8 Q Okay.

9 And that's an eight-ball each time?

10 A Sometimes he would get a quarter ounce, but no more
11 than a quarter ounce.

12 Q So an eight-ball -- so an eight-ball to a quarter
13 ounce each time over that time span?

14 A Yeah, it was more -- more or less an eight-ball than
15 it was a half ounce -- I mean, not a half ounce, a quarter
16 ounce.

17 Q Who is Leonard Rackley?

18 A Uh -- he's the guy I was selling to. I guess, it's
19 been -- it was right before he went to jail.

20 Q And when was this?

21 A Uh -- it's been about a year ago.

22 Q Okay.

23 So when did you start selling to him?

24 A Uh -- I guess right after I started selling drugs,
25 period. It's been, I guess, maybe -- not that Summer -- I

ROBBIE KOON DeFREese, COURT REPORTER

1 guess, that Fall -- Fall or either -- either -- or in the
2 beginning of the Fall or the -- I mean, the end of the Fall
3 or the beginning of the Winter when I first started selling
4 drugs.

5 Q Okay.

6 And how many times did you sell to him?

7 A Uh -- probably around 50 to 60 times.

8 Q And how much did you sell to him each time?

9 A Half a ball.

10 Q What about Albrie Nate' Bashaw, how do you know her?

11 A Through selling -- I sold her about a ball daily.

12 Q Over what span of time?

13 A Uh -- I'd say within about a month.

14 Q So about -- so an eight-ball everyday for about a
15 month?

16 A Yes, sir.

17 Q And how much did you charge her?

18 A Uh -- 280.

19 Q Okay.

20 And how much were you charging Leonard Rackley for
21 the half an eight-ball?

22 A 140.

23 Q What about David Satterfield?

24 A I just sold him personal for himself. I guess, maybe
25 half a gram or so.

ROBBIE KOON DeFREese, COURT REPORTER

1 Q And how often?

2 A Just a couple of times.

3 Q And what about Tonya Satterfield?

4 A That was just his wife. I didn't really sell anything
5 to her.

6 Q Okay.

7 Do you know a lady named Monica Williams?

8 A Yes, sir.

9 Q What was your relationship with her?

10 A I sold her drugs. I sold her half an eight on one
11 occasion and maybe just personal after that.

12 Q Okay.

13 How much times total would you say you sold to
14 her?

15 A Maybe three or four times.

16 Q And did she pay the same price as everyone else?

17 A Yes, sir.

18 Q What about Warren Chastain, do you know him?

19 A Yes, sir.

20 Q How do you know him?

21 A I sold him -- I sold him a quarter ounce.

22 Q Just on one occasion?

23 A Yes, sir.

24 Q How much did he pay for it?

25 A Uh -- I believe, it was 450.

ROBBIE KOON DeFREese, COURT REPORTER

1 Q Okay.

2 And how did you meet him?

3 A Through mutual friends. Not friends, but just people

4 in the meth.

5 Q Do you remember who made the introduction to you?

6 A I believe it was "Bud's" son Austin.

7 Q "Bud" Sekershak's son?

8 A Uh-huh.

9 Q And is that the only time that you dealt with Warren

10 Chastain?

11 A Yes, sir.

12 Q Do you know an individual named Josh Byars?

13 A Yes, sir.

14 Q How do you know him?

15 A I -- I purchased meth from him.

16 Q And how often did you purchase from him?

17 A Uh -- just on a couple of occasions.

18 Q And how much did you buy?

19 A An eight-ball.

20 Q Each time?

21 A Uh-huh.

22 Q And do you remember what you paid him for it?

23 A Uh -- \$200.

24 Q Okay.

25 A Or two -- no 250. I'm sorry, 250.

ROBBIE KOON DeFREese, COURT REPORTER

1 Q 250 per eight-ball?

2 A Yeah.

3 Q And do you know where he was getting his meth from?

4 A No, sir.

5 Q At any time have you cooperated with the -- in
6 addition to giving the statements that we've already
7 mentioned, have you done anything else to cooperate with
8 Law Enforcement?

9 A Yes, sir, I made two controlled buys from Nick Dendy.

10 Q And when was that?

11 A Uh -- this -- over -- in October of 2010.

12 Q Okay.

13 So in October of 2010, you were cooperating with
14 Law Enforcement?

15 A Yes, sir.

16 Q And then is it fair to say that then after that, you
17 got back into selling meth?

18 A Yes, sir.

19 Q And not with Law Enforcement, but on your own?

20 A On my own, yes, sir.

21 Q Okay.

22 And it's your intention now, again, to cooperate
23 with Law Enforcement?

24 A Yes, sir.

25 Q What -- what changed your mind?

ROBBIE KOON DeFREese, COURT REPORTER

1 A This last time when I got -- when they come in and
2 arrested me.

3 Q And why did that make you decide to cooperate?

4 A It just wasn't worth it. I seen -- I guess that was
5 rock bottom for me pretty much.

6 Q Okay.

7 Now, earlier you mentioned that you had children.
8 Do they live with you?

9 A No, sir.

10 Q So were they at your house when you were selling meth?

11 A No, they were in the custody of my mom.

12 Q And why were they in her custody?

13 A Because of meth.

14 Q The -- the -- when your house was raided and you were
15 arrested, I guess, this past week or so --

16 A Yes, sir.

17 Q -- where did that meth come from?

18 A Nick.

19 Q When did you purchase it from him?

20 A Uh -- prior that day.

21 Q And do you remember how much you paid him for it?

22 A Uh -- it was -- I got a quarter ounce from him, so I
23 paid him 425.

24 Q And did you ever keep any records of who you bought or
25 sold --

ROBBIE KOON DeFREese, COURT REPORTER

1 A No, sir.

2 Q Did anybody ever owe you money?

3 A Uh -- a couple of people did.

4 Q And how did you -- how did you keep track of who owed
5 you money?

6 A Because it was only -- it was only a few people and
7 they owed me for the whole amount and it was just
8 continuously like that. Every time I sold to them, they
9 would just get everything on front; so, therefore, I already
10 -- I already knew what they owed me.

11 Q So it was the same people over and over again --

12 A Yeah.

13 Q -- the same amounts?

14 A Yes, sir.

15 Q Does anybody owe you any money right now?

16 A No, sir.

17 Q Do you owe anybody any money right now?

18 A No, sir.

19 Q At this time, I'll open the floor to Members of the
20 Grand Jury Panel.

21 Do any Members of the Panel have any questions for
22 this Witness?

23 (No Response.)

24 MR. UNDERWOOD: All right, Ms. Brock.

25 Seeing that there are no questions from the Grand

ROBBIE KOON DeFREESE, COURT REPORTER

1 Jury, I would remind you that proceedings are secret, that
2 no one in here who has heard your testimony, including
3 myself and Mr. Pauling, can tell anyone else who is not
4 involved with the proceedings that you came here to testify
5 or what the nature of your testimony was. Now, you are
6 free to tell anyone that you were here, but as this is an
7 ongoing investigation, I would strongly caution you to use
8 extreme discretion in disclosing that information. The only
9 exception to that would be if you decide at some point to
10 hire an Attorney, that you feel free to converse with your
11 Attorney and discussion everything that's taken place here
12 today.

13 Do you understand that?

14 THE WITNESS: Yes, sir.

15 MR. UNDERWOOD: Also, if, in the future, you
16 realized that you've left something out of your testimony or
17 you need to make any corrections to your testimony, it's
18 important that you contact our Office or Investigator Ayers
19 with the Greenville County Sheriff's Office and let him know
20 so we can afford you an opportunity to come back before the
21 Grand Jury and correct your testimony.

22 Do you understand that?

23 THE WITNESS: Yes, sir.

24 MR. UNDERWOOD: All right.

25 At this time, you are excused from your subpoena.

ROBBIE KOON DeFREese, COURT REPORTER

1 Thank you.

2 4:21 p.m.

3 (Ms. Brock exits the Grand Jury Room.)

4 MR. UNDERWOOD: All right.

5 Ladies and Gentlemen, that concludes our
6 proceedings today. I will check with the Clerk's Office to
7 make sure there's nothing else, but I believe that, that is
8 it for today if there's no other questions. Nothing.

9 THE GRAND JUROR: May I ask something?

10 MR. UNDERWOOD: Is it concerning the case?

11 Yes, ma'am.

12 Is it a factual question or a legal proceedings
13 question?

14 THE GRAND JUROR: No. There's a gentleman here --

15 THE COURT REPORTER: I'm sorry, can you speak up,
16 please?

17 THE GRAND JUROR: There's a gentleman on this list
18 here that I recognize.

19 MR. UNDERWOOD: On the handout that you guys got a
20 few terms ago?

21 THE GRAND JUROR: Yes.

22 MR. UNDERWOOD: Who is that individual?

23 THE GRAND JUROR: Clyde Davis.

24 MR. UNDERWOOD: You recognize him?

25 THE GRAND JUROR: I don't recognize him, but meet

ROBBIE KOON DeFRESE, COURT REPORTER

1 him very often in the gas station where I put gas and just
2 the other day I saw him.

3 MR. UNDERWOOD: Now, do you know him other than
4 seeing him at a gas station?

5 THE GRAND JUROR: He hold the door for me to come
6 out. I don't know --

7 MR. UNDERWOOD: Okay.

8 THE GRAND JUROR: -- but I see him there.

9 MR. UNDERWOOD: And that was Clyde Davis that you
10 recognize?

11 THE GRAND JUROR: By the neighborhood where I live
12 and she talked about a couple of places here that I
13 recognized in her testimony.

14 MR. UNDERWOOD: Just one second, please.

15 (Whereupon, Mr. Underwood and Mr. Pauling confer
16 at this time off the Record.)

17 MR. PAULING: Ma'am, what's your Juror Number?
18 What's your Juror Number? What's your Juror Number?

19 THE GRAND JUROR: Seven.

20 MR. PAULING: Okay.

21 In light of what Mr. Underwood has just told me
22 about what you were -- had brought to our attention, what we
23 will do is before the next Session begins, we will bring
24 this matter before the Chief Administrative Judge, Judge
25 Newman, and we'll put that information on the Record and

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1 then we will handle that matter as deemed appropriate by the
2 Chief Administrative Judge, okay.

3 MR. UNDERWOOD: Now, ma'am, did you recognize any
4 other individuals other than that one you've already
5 identified?

6 THE GRAND JUROR: No. That one I remember him
7 because he hold the door for me --

8 MR. PAULING: Okay.

9 Well --

10 MR. UNDERWOOD: But he's the only one you
11 recognize, is all I want to know.

12 THE GRAND JUROR: That's all.

13 MR. UNDERWOOD: Do any other Members of the Panel
14 recognize any other individuals so far involved in this
15 investigation?

16 (No Response.)

17 MR. UNDERWOOD: No.

18 Now, we would just ask that you refrain from any
19 further discussion about the individual that you think you
20 recognize until we have an opportunity to take that before
21 Judge Newman, okay.

22 MR. PAULING: As far as this Session is concerned,
23 that's all the testimony we have to bring before you for
24 this Session for this month.

25 Ms. Self is coming down from the Clerk's Office,

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1 I'm not sure -- I'm sure she may need to speak with you
2 about some administrative matters; but she will be here in
3 just a minute.

4 Thank you for your time.

5 4:24 p.m.

6 (Mr. Pauling and Mr. Underwood exit the Grand Jury
7 Room.)

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ROBBIE KOON DeFRESE, COURT REPORTER

1 CERTIFICATE OF REPORTER

2
3 I, Robbie Koon DeFreese, Court Reporter and Notary
4 Public for the State of South Carolina at large, do hereby
5 certify:

6 That the foregoing testimony/dialogue was taken
7 before me on the date and at the time and location stated on
8 page 1 of this transcript; and that the foregoing transcript
9 of that testimony/dialogue is a true, accurate, and complete
10 record to the best of my ability.

11 I further certify that I am neither related to nor
12 counsel for, nor employed by any party to the investigation,
13 nor am I financially interested in the investigation.

14 Witness my hand, I have hereunto affixed my
15 official seal this 26th day of September, 2011, at Little
16 Mountain, Richland County, South Carolina.

17
18
19
20 Robbie Koon DeFreese
Court Reporter
Notary Public
21 State of South Carolina at Large
My Commission expires:
22 March 7, 2015
23
24
25

ROBBIE KOON DeFREESE, COURT REPORTER

BEFORE THE SOUTH CAROLINA STATE GRAND JURY # 23

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

INVESTIGATION NO: SGJ2010-0206

TESTIMONY OF INVESTIGATOR CHAD AYERS

Columbia, South Carolina
Tuesday, November 8, 2011
9:28 a.m. to 10:03 a.m.

PRESENT:

OFFICE OF THE ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
STATE GRAND JURY DIVISION
The Rembert C. Dennis Building
Columbia, South Carolina 29201

TAKEN BY: CURTIS A. PAULING, III, ESQUIRE
Assistant Deputy Attorney General
JOSHUA R. UNDERWOOD, ESQUIRE
Assistant Attorney General

REPORTED BY: ROBBIE KOON DeFREESE
Court Reporter

QUORUM OF GRAND JURORS

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ROBBIE KOON DeFREESE, COURT REPORTER

1 Tuesday, November 8, 2011.

2 9:26 a.m.

3 (Mr. Pauling and Mr. Underwood enter the Grand
4 Jury Room.)

5 MR. UNDERWOOD: Good morning, Ladies and
6 Gentlemen.

7 Mr. Foreman, do we have a quorum?

8 THE FOREPERSON: We have a quorum.

9 MR. UNDERWOOD: Thank you.

10 We are going to continue testimony in the case of
11 Operation Ice House. This morning we are going to be
12 bringing in Investigator Chad Ayers to provide a summary of
13 the case. Then we're going to take a very short break and
14 then we will actually be working on presenting some
15 Indictments in this case to you for your consideration.

16 Before we get started, are there any questions
17 from the Grand Jury about this case?

18 (No Response.)

19 MR. UNDERWOOD: All right.

20 Seeing that there are no questions, we will
21 present Investigator Chad Ayers to you and we're also
22 working on getting a blowup poster put up on the wall for
23 you to view as well.

24 THE FOREPERSON: State your name.

25 THE WITNESS: Chad Ayers.

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1 INVESTIGATOR CHAD AYERS, being first
2 duly sworn by the Foreperson at 9:28 a.m., testified as
3 follows:

4 MR. UNDERWOOD: Mr. Foreman, before we get into
5 the testimony, could I ask you to confirm that Juror Number
6 Seven was excused from this case and she's not present in
7 the room, is that correct?

8 THE FOREPERSON: She's not present.

9 MR. UNDERWOOD: All right.

10 Thank you.

11 EXAMINATION

12 BY MR. UNDERWOOD:

13 Q Good morning, Investigator Ayers.

14 A Good morning.

15 Q Have you testified before this Grand Jury in this
16 matter before?

17 A I have.

18 Q And do you recall when that was?

19 A Not right offhand.

20 Q All right.

21 But this is not the first time you've testified to
22 the Grand Jury in this case?

23 A No, sir.

24 Q All right.

25 If you, would, could you briefly reintroduce

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1 yourself to the Grand Jury? I know it's been some time
2 since you were here.

3 A Investigator Chad Ayers. I'm with the Greenville
4 County Sheriff's Office, assigned to the Vice/Narcotics
5 Unit.

6 Q And what's your connection to this case?

7 A Myself and two other Investigators are the Lead
8 Investigators on this case.

9 Q And who are those other individuals?

10 A Agent Barwick with the Pickens County Sheriff's Office
11 and Agent Asbill with the State Law Enforcement Division.

12 Q All right.

13 Could you very briefly and generally explain how
14 this investigation began?

15 A I was approached by a female subject in late 2009 who
16 had -- was in the Detention Center wanting to cooperate
17 reference to methamphetamine being trafficked around
18 Greenville County --

19 Q And I hate to interrupt you, but who was that subject?

20 A Tonya Michelle Smith.

21 Q All right.

22 Please continue.

23 A And she provided information about various subjects in
24 Pickens County, Greenville County that were trafficking
25 methamphetamine, going up to Hendersonville, North Carolina,

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1 also to Atlanta, Georgia, picking up large quantities of
2 methamphetamine and bringing them back. Ms. Smith got out
3 of jail on her own. She then started cooperating with us,
4 making controlled purchases of methamphetamine from several
5 subjects. We then, through those buys, were able to
6 establish more Confidential Informants, who then begin
7 cooperating with Law Enforcement, where we were able to
8 expand again into the North Carolina and Atlanta Area into
9 our investigation.

10 Q Okay.

11 Now, as far as the North Carolina Area is
12 concerned, could you identify who the primary targets are of
13 that portion of the investigation?

14 A It's a Juan Daniel Castillo, Carol Ann Lachino,
15 Christie Elaine Blankenship, Brian Scott Lesley, Donna Rai
16 Hernandez, Adrian Raul Hernandez, Felipe Sandoval Flores,
17 Eduardo Preciado, Malva Martinez, Warren Brent Chastain,
18 Gary Jason Griffin, and Kimberly Jean Rushton.

19 Q Now, how did the beginning of the North Carolina --
20 this -- this particular crew, how did the beginning of that
21 investigation come back?

22 A Did we get that tape and I can --

23 Q All right.

24 Investigate Ayers, we have just put a chart up on
25 the wall. Is that the same chart that the Grand Jury was

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1 given smaller versions of at a previous Term?

2 A It is.

3 Q Okay.

4 If you could, please explain how the North
5 Carolina Investigation came about.

6 A Bear in mind for the purpose of -- with
7 methamphetamine, a lot of times the game changes a lot. You
8 can be a lower tier person one day and the next day you can
9 -- you know, you can be a little higher up, just by getting
10 your money -- just by getting your money squared away
11 overnight. It's a lot different. Methamphetamine is a lot
12 different than a cocaine dealer or anything else. I would
13 say the majority of these people involved in this case are
14 all users, where in cocaine, a lot of the upper -- the upper
15 level people are just dealers and they don't use. So this
16 chart is constantly changing at times due to sometimes they
17 are, you know, they're using their own product and getting
18 their money screwed up.

19 But from when this investigation started, it all
20 started basically with these two gentlemen, Felipe Sandoval
21 and Eduardo Preciado, also known as "Gordo". These two
22 gentlemen were living in an apartment complex off of White
23 Horse Road in Greenville. And at the time, when this
24 investigation started, they were the two head guys over this
25 operation, methamphetamine operation. We did not know who

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1 their upper level person was up in North Carolina. We just
2 received information that they were going up to North
3 Carolina purchasing the methamphetamine.

4 Tonya Smith, here, this is the Confidential
5 Informant that we were using; and through our investigation,
6 we were able to determine, through statements and also
7 controlled purchases, that underneath Felipe Sandoval, Gary
8 Jason Griffin was dealing directly with him; Warren Chastain
9 was dealing with him; Tonya Smith was buying from him; and
10 Tanja Perez was also buying from him.

11 You'll also notice on your sheets, several of
12 these individuals were dealing with multiple people in this
13 group -- and not just this group, but when we get into the
14 Atlanta conspiracy and also the Greenville Crew. So you are
15 going to see several of these people on several of these
16 charts.

17 Eduardo Preciado, we have statements and
18 information linking, again, Warren Chastain to Eduardo
19 Preciado. These two guys, like I said, lived together. We
20 believe that "Gordo" was kind of over Felipe. He wasn't
21 using as much in the beginning so he was kind of making sure
22 the money stayed straight.

23 Again, Gary Griffin, Carol Ann Lachino, and Tonya
24 Smith are all dealing directly with "Gordo".

25 There was a time when Felipe and Eduardo got put

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1 in jail over in Pickens County. When that happened, this
2 whole -- you'll notice later on, the conspiracy kind of
3 splits into two. Carol Lachino kind of became the topnotch.
4 She's been married and has lived with several Hispanics in
5 Greenville and speaks Spanish fluently. So it was easy for
6 her to reestablish a connection up in North Carolina with
7 the Hispanic Community up there.

8 So what happened is basically if you take this
9 tier right here, it all became it's own conspiracy. Lachino
10 was dealing directly with North Carolina and she was taking
11 trips up there with Juan Daniel Castillo, Donna Hernandez,
12 and they were selling to Christie Blankenship and Brian
13 Lesley, who were caught with a large amount of
14 methamphetamine, who they stated came from Carol Lachino.

15 Over here, Malva Martinez. Malva Martinez came
16 into the picture, again, when those two subjects here went
17 to jail, and she became -- I mean, she rose up the ranks
18 pretty quick. She had a boyfriend that we identified and
19 she gave a statement on as an Adrian Hernandez and he had
20 direct ties and family up in Hendersonville, North Carolina.
21 Malva then moved into a house with Warren Chastain and Amy
22 Miranda Harris. And from that house, they basically set up
23 their operation over there and, again, Warren Chastain,
24 Jamie Chastain, which is Warren's brother, Kim Rushton,
25 Jason Griffin, Miranda Harris, and Robert Anthony Gracely,

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1 were all purchasing methamphetamine from Malva Martinez,
2 which the methamphetamine was coming from Adrian Hernandez.
3 Adrian Hernandez did live in Greenville, but -- but, like I
4 said, was going up to North Carolina to purchase the
5 methamphetamine.

6 Kim Rushton gave a statement and testified before
7 the Grand Jury that she was dealing with these gentlemen
8 here. She was tied in pretty tight with Martinez and was
9 actually caught with a little less than an ounce of
10 methamphetamine in an apartment with Malva Martinez.

11 Albrie Nate' Bashaw, Charles Javin Adams, Robert
12 Gracely, Autumn Scarberry, Brian Lesley, all these people
13 also had purchased at times from Kimberly Rushton.

14 Q Investigator Ayers, could you explain the
15 relationships between Malva Martinez, Felipe Sandoval
16 Flores, and Eduardo Preciado?

17 A Again, they all lived in the same apartment complex.
18 It's a small apartment complex, but it's mainly a Hispanic
19 apartment complex; and while these two individuals were at
20 the top, Malva was just kind of buying small amounts --
21 she's also a user -- from them. She saw the opportunity to
22 step up when these two individuals went to jail in Pickens.
23 That's when she -- when she came into play and actually
24 moved to the top. When these two gentlemen went to -- after
25 these two gentlemen went to jail, they kind of fell off.

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1 They got their money screwed up and as far as them being the
2 top, they kind of fell off the picture. Felipe moved away;
3 "Gordo" was in and out of jail and was only kind of getting
4 small amounts; and then about six months ago, he kind of
5 rose back up. Malva went to jail for about four or five
6 months and when Malva got out, these two kind of linked back
7 up, reestablished a source, and we, again, started buying
8 methamphetamine from them.

9 Q Now, Investigator, when you say these two had linked
10 back up, are you referring to Malva Martinez and Eduardo
11 Preciado --

12 A And Eduardo Preciado.

13 Q So is it fair to say then that as time went on, those
14 three individuals: Felipe Flores, Eduardo Preciado, and
15 Malva Martinez had kind of worked in concert together in
16 various different levels?

17 A They did.

18 Q Okay.

19 I'm sorry, did you have anything else to explain
20 to the Grand Jury concerning this particular portion of the
21 investigation?

22 A No.

23 Q All right.

24 A This gentleman here at the top, Ulysess Gonzales, is
25 who we received information from Martinez was Hernandez's

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1 source. He was placed into -- he's incarcerated up in North
2 Carolina now for trafficking methamphetamine. I think he
3 was caught with -- I think he was sentenced to like 13 or 15
4 years.

5 Q Now, Investigator Ayers, what leads did you develop
6 from this particular conspiracy or conspiracies into the
7 rest of your investigation?

8 A As --

9 Q How does this particular portion of the case link in
10 with the rest of the case?

11 A Well, a lot of these individuals branch off and you
12 will see the people that have the blue line around them are
13 in multiple conspiracies. So this game is always changing.
14 So if Felipe didn't have anything or Eduardo didn't have
15 anything, Gary Griffin might move and find another source,
16 which he did, which led to the Atlanta Conspiracy that we
17 have. He found a -- he was introduced to a source in
18 Atlanta. So several of these subjects here: Chad Moore,
19 Warren Chastain, Tony Gracely, a lot of these people weren't
20 just dealing just with people out of North Carolina. So,
21 you know, the dope wasn't coming just out of North Carolina.
22 They then switched and were going to North Carolina and all
23 over the Upstate.

24 Q Now, when you talk about these methamphetamine
25 conspiracies, you know, being, I guess, in a state of flux,

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1 due to people messing up their money and using too much,
2 does that change the fact that these same individuals are
3 still conspiring together to sell methamphetamine or is it
4 just changing? Can you explain that a little bit more?

5 A No, they -- they're all -- it's one big web and the
6 methamphetamine circle is a very tight knit circle, but, you
7 know, these people -- the habit is so strong that, you know,
8 they'll steal from each other, rob each other, but the next
9 day, they're back on good enough terms. You know, Eduardo
10 might know that Warren stole from him or robbed him two days
11 prior, but the money and the methamphetamine was so good
12 that he would still continue to sell methamphetamine to
13 these people. So, even though the chart is changing, they
14 are still in constant talk and communication with each other
15 to get that money or the narcotics.

16 Q So even though the levels of the conspiracy may
17 frequently change, they are still working in concert
18 together --

19 A They are still in talk with each other and constantly
20 working with each other.

21 Q Now, following your investigation into this, what we
22 have been calling the North Carolina Crew, where did your
23 investigation go from there?

24 A Once we -- once we kind of established this one, Tonya
25 Smith received information and stated that she had purchased

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1 methamphetamine from a person about two miles down the road
2 named Michael Robinson -- and I've got that chart.

3 Q Now, Investigator Ayers, are we now viewing the poster
4 that's labelled the Greenville Crew?

5 A It is.

6 Q Okay.

7 Please carry on with your debriefing.

8 A Tonya Smith stated that Michael Robinson was selling a
9 substantial amount of small weight methamphetamine to a
10 large portion of people in Greenville. We, again, started
11 making controlled purchases on numerous occasions from
12 Mr. Robinson. Tonya Smith was the Confidential Informant
13 that was making the purchases, along with David Norris was
14 also making purchases for us as a Confidential Informant
15 from Michael Robinson. We determined that Michael Robinson
16 was being supplied -- everyone was talking about a gentleman
17 by the name of "Black Nick" on a motorcycle. That's all
18 anyone ever referred to him as; and we were able to
19 determine, through a photo lineup, identify him as Nicholous
20 Cosall Dendy. And Dendy was coming over to Robinson's house
21 about three to four times a day, dropping off
22 methamphetamine; and then Robinson was then cutting it --
23 which when I say cutting it, he's adding a product to it to
24 increase the weight. So if he received -- let's say he
25 received three grams of methamphetamine -- pure

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1 methamphetamine, what they would consider pure
2 methamphetamine -- he would then put a cutting agency,
3 whether it would be a vitamin supplement or anything used to
4 add more weight, mix it altogether so actually he's -- he's
5 increasing his product and then, you know, that way, he's
6 making more money off of it. So then, Robinson would then
7 disperse it out to other individuals in Greenville.

8 We also made contact, I believe, it's David Norris
9 one time called Robinson, needing some methamphetamine. He
10 referred Robinson -- or he referred Norris up to Amy Brock.
11 Brock lives about half a mile away from Robinson; and Brock
12 was talking to Norris on the phone, referred him back to
13 Robinson, said, hey, I've just dropped off some stuff to
14 Robinson. We confirmed that Amy Brock was also -- if
15 Robinson couldn't get in touch with Dendy, Amy was bringing
16 meth over to Robinson. We -- we approached Amy Brock. One
17 day, she was in her front yard, advised her that we had
18 received information that she was selling narcotics. She
19 agreed to cooperate and gave a written statement under
20 Miranda that she was purchasing methamphetamines directly
21 from Nicholous Dendy. We made two controlled purchases from
22 Nick Dendy, using Amy Brock as a Confidential Informant.
23 She stated that she had dealt with Dendy for a substantial
24 amount of time and was purchasing daily from him.

25 Brock then fell off, quit cooperating with us, and

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1 went back to selling narcotics again for about a year.

2 We then had warrants and found narcotics on
3 Mr. Sekerchak, who stated that he was buying -- and this is
4 four months ago probably -- stating that he was buying from
5 Amy Brock on a daily or every other day basis.

6 Q Now, Investigator, not to interrupt, but when you say
7 Mr. Sekerchak, what's his first name?

8 A Brian Keith Sekerchak.

9 Q Okay.

10 A And he's referred to by everyone else on the streets
11 as "Batman."

12 Q Thank you.

13 A So we used Mr. Sekerchak as a Confidential Informant.
14 He made two purchases from Amy Brock; then executed a search
15 warrant one night at Amy Brock's house. When we executed
16 the search warrant, I believe, there were six individuals
17 inside the house; and when we made entry, they were
18 currently smoking methamphetamine there and Brock's two
19 young children were asleep in the bedroom in the same house,
20 which they -- both children in the bedroom tested positive
21 for methamphetamine. Their methamphetamine levels were that
22 of a daily meth user -- adult meth user.

23 And, again, more methamphetamine was found in her
24 house also. Brock, again, stated that she wanted to
25 cooperate; and that night made a phone call to Dendy to

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1 order up one ounce of methamphetamine. Dendy said that's
2 fine, I'll be at your house in just a second.

3 Let me take a step back.

4 Initially, when Brock was -- when she first
5 started cooperating with us, Brock stated that what would
6 happen is that she would call Nick Dendy. Dendy would show
7 up at her residence, come inside, she would give him the
8 money, and someone, referred to as his cousin, would show
9 up. She identified Mr. Davis here as the gentleman that
10 would show up. Dendy would walk outside. She never dealt
11 directly with him, but Davis would show up, come to the
12 driveway, Dendy would walk outside, give him the money, and
13 then Dendy would bring the product back into Brock.

14 This next time, after, you know, eight -- ten
15 months later, Brock stated every time Dendy was showing up
16 with the narcotics. It wasn't going through Davis anymore.
17 So we felt confident that Mr. Dendy would bring the
18 narcotics straight to the house. A short time later, Dendy
19 arrives at the house. We do a takedown on the vehicle.
20 There's a strong odor of marijuana coming from the car, but
21 we find no methamphetamine or anything. What we believe
22 happened is that the amount was so high that he was probably
23 going to have to get the money and go to his supplier to
24 pick it up. But, again, he was released that day.

25 We did use a Confidential Informant that knew

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1 Davis and made a purchase of methamphetamine from Clyde
2 Davis on one occasion. And I know the State Law Enforcement
3 Division is still running a separate investigation on
4 Mr. Davis where he's also selling cocaine. So he's not --
5 he's kind of a high-ranking guy in Greenville. He sells
6 methamphetamine; he sells cocaine. So he's kind of -- he's
7 brought a lot of problems to Law Enforcement in Greenville.

8 Mr. Chastain had given a statement that he had
9 also dealt with Nick Dendy. We have a Confidential
10 Informant that stated that he had seen Flores drop off
11 narcotics to Michael Robinson before while he was there.

12 And then, Josh Byers, down here on the bottom, we
13 made two or -- I'm sorry -- we made one purchase of a
14 quarter ounce of methamphetamine from Byers and then set up
15 a delivery of one ounce to the Informants, which we did,
16 what's called a buy-bust operation, which when he pulled up
17 to meet with an Informant and the exchange was done, we came
18 in and took the vehicle down where he was taken into
19 custody and charged with trafficking methamphetamine.

20 We got a statement where Byers -- Amy Brock gives
21 a statement that she has dealt on numerous occasions,
22 purchased methamphetamine from Byers. Granted, he's showed
23 here as a lower tier, but, you know, again, at times, when
24 Brock couldn't get in touch with this person, you know,
25 above her, these people, it's all about the money a lot of

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1 times and getting their next high. So they'll do whatever
2 they can. They'll call someone that, again, he might be
3 down here today, but tomorrow he could be back up here. So
4 it's all just a revolving wheel.

5 Q Now, Investigator Ayers, as far as Joshua Byers is
6 concerned, is Law Enforcement still investigating further
7 where his source of methamphetamine is coming from?

8 A It is. We believe, you know -- he was approached when
9 he was taken down and stated that all he knew his supplier
10 as was "Amigo". We got other information that he was tied
11 to several of these groups, but he just didn't want to
12 cooperate with us. So as far as knowing -- like I said, we
13 have confirmed that, you know, he was dealing with these
14 people. As far as where his actual supplier was, no, we
15 haven't determined.

16 Q So that portion of the investigation is still ongoing?

17 A Correct. He is still out on the streets and in the
18 narcotics game.

19 Q Okay.

20 Now, Investigator, could you, for the convenience
21 of the Grand Jury, identify who the primary targets are in
22 this particular crew?

23 A For the Greenville Crew: Clyde Davis, Nick Dendy, Amy
24 Brock, Michael Robinson, Brian Keith Sekerchak, and
25 Mr. Joshua Byers, also known as, "Fatboy."

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1 Q Okay.

2 Now, are other individuals, as you've indicated
3 before, who appear on some of these charts, were they
4 cooperating with Law Enforcement?

5 A Yeah. Some of them -- there are several of them that
6 have cooperated as Informants; also have come down to
7 testify before this term and a previous term.

8 Q And it's -- all right.

9 Following this group or crew, do you have any
10 other information concerning this portion of the
11 investigation?

12 A Not on this crew.

13 Q All right.

14 Where did that part of the investigation lead you
15 to next?

16 A We had been told that Amy Brock had known a female and
17 we were getting information about a female known as Nate',
18 which I was able to identify as Albrie Nate' Bashaw. Bashaw
19 had been in and out of jail. I had approached her coming
20 out of jail one time, advised her that she was under
21 investigation, and that, you know, now would be a good time
22 to jump on board and cooperate. Basically, she told me to
23 get bent and we continued on with our investigation, which
24 I've got a chart, which led us to a crew -- and this chart
25 here has been added and I'll add on both Nate' and her

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1 boyfriend Javin and several other individuals -- as we -- as
2 we continue our investigation have been added to this
3 chart.

4 Q And is this the chart labelled Atlanta Crew?

5 A It is.

6 Q Now, if you could, before you work too much into the
7 outline, could you identify the primary targets in the
8 Atlanta Crew?

9 A Okay.

10 The primary targets: "Ant", which at the time,
11 we didn't know his last name. He's since been identified
12 through multiple photo lineups as Antonio Emerson Tate,
13 T-a-t-e; and Tate lives in Atlanta, Georgia, in the Gwinnett
14 Area.

15 Wendy Lollis. We can add Javin Adams, Nate'
16 Bashaw, and Norman Bergholm. Also down here, going down
17 this way, you can add -- you've got Chad Dewayne Moore; and
18 then underneath Griffin, if this chart continued, add Rachel
19 Elizabeth Eades and Christopher Simmons.

20 Q Okay.

21 Now, if you could explain to the Grand Jury the
22 link up from the Greenville Crew in your investigation of
23 the Atlanta Crew?

24 A The first person we made contact with Mr. Griffin was
25 -- was caught with a substantial amount of methamphetamine

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1 one night. He agreed to give a written statement and
2 cooperate. He stated that he was dealing with a black male
3 that he had been introduced to by Wendy Lollis, known as
4 "Ant" or "Amp". He didn't know exactly what it was. He
5 didn't know if it was A-n-t or A-m-p. He couldn't really
6 tell. People said it so fast he doesn't know.

7 What we've gathered from Lollis is Lollis had a
8 boyfriend named David Moore, who is Chad Moore's brother.
9 Somehow David Moore was introduced to this source "Ant" in
10 Atlanta. David Moore was caught with something like \$40,000
11 in a hotel room getting ready to go to Atlanta to purchase
12 methamphetamine from "Ant"; and he was then sent to prison.
13 Wendy was put in contact with Tate and then Lollis
14 introduced several people to Antonio Tate in Atlanta. These
15 -- and Bashaw, Adams, Griffin, Lollis, Moore, and Bergholm
16 and there's one more individual that testified, I believe,
17 last term and I just drew a blank --

18 Q Is that Larry Gambrell?

19 A Larry Gambrell. Were all introduced to Antonio Tate
20 and were driving from Pickens County -- the majority of
21 those people live in Pickens County -- were driving from
22 Pickens County to Atlanta, picking up large quantities,
23 multiple ounces of methamphetamine, driving back across
24 state lines into Greenville and Pickens and selling that
25 methamphetamine.

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1 Again, Griffin gave a statement kind of advised us
2 how it worked. We got a Confidential Informant by the name
3 of Christopher Bishop. Bishop established a relationship
4 with Bashaw and Adams, was able to make two purchases of
5 methamphetamine, one directly from Nate' and one from --
6 both of them were there at the time of the purchase. We
7 then executed a search warrant on that residence, located a
8 small amount of methamphetamine; but these two individuals
9 here begin cooperating extremely with Law Enforcement,
10 making purchases. Bashaw and Adams have made purchases for
11 us from Lollis, Chad Moore, and several other people.

12 We've made a trip on two occasions to Atlanta.
13 One -- one trip was before Bashaw got caught. We had a
14 Confidential Informant with a recorder on him, put him in
15 the car, we followed them. We got Gwinnett County
16 involved. Followed them to Atlanta to drop a -- or to pick
17 up a transmission from Tate. Once there -- on the way
18 there, Bashaw is talking about, in the car, very clearly,
19 about how many times she has dealt with Tate, how many times
20 that she's been pulled over on the way home and that Law
21 Enforcement hasn't found the narcotics, how they've pulled
22 off on the side of the road and thrown it in the woods and
23 come back because they thought they were being followed.
24 Bashaw agrees to try to get Bishop set up with Tate. When
25 they get there, Tate agrees to sell Bishop some

ROBBIE KOON DeFREese, COURT REPORTER

1 methamphetamine, but he says follow me. We had about 15 Law
2 Enforcement people involved and, basically, Tate is pretty
3 smart. He's been doing this awhile. So he was kind of
4 taking them all around, making sure Law Enforcement wasn't
5 following him, all through the downtown Atlanta. We were
6 getting caught at red lights and Tate picked up on a black
7 Charger, which was a Gwinnett County Undercover, that ran
8 through a light trying to keep up with him. He picked up on
9 it, called the deal off, said, hey, I'm getting followed,
10 we're not doing this. When that happened, he basically cut
11 Bashaw and Adams out. He called Javin and said, hey, I
12 think your girl is trying to set me up, what's up with
13 that? But he continued to deal with Chad Moore and Jason
14 Griffin and also Norman Bergholm.

15 We then took another trip up to Atlanta and had
16 them make contact with Tate and just said, hey, we're in
17 Atlanta, hanging out partying, we were just going to see if
18 you wanted to grab dinner. We sent them to dinner with Tate
19 just to kind of not bring up narcotics. Tate was very
20 nervous, had someone -- a relative kind of sitting in the
21 parking lot, watching out, looking for Law Enforcement to
22 make sure nobody was watching this conversation. He stated
23 no, I don't -- I don't mess with methamphetamine anymore
24 whatsoever, I don't know what you're talking about, giving
25 the size that he felt that they were wired and trying to

ROBBIE KOON DeFREese, COURT REPORTER

1 play the I don't do this anymore game.

2 About four weeks ago, Chad Moore was back in
3 jail. We interviewed him and he picked -- again, he picked
4 Tate out of a photo lineup. Chad Moore, Wendy Lollis,
5 Griffin, Bashaw, Adams, and Bergholm have all positively
6 identified Antonio Tate on a six-person photo lineup. They
7 picked him out as being the subject they were dealing with
8 in Atlanta.

9 Chad Moore stated about four weeks ago that he had
10 been called by Tate on the phone and Antonio Tate said --
11 carried on small talk, went into detail about how he thought
12 that Nate' and Javin had set him up and said -- basically
13 said, hey, I trust you, you looking to buy any blue jeans,
14 which he knew what that meant, wanting to know if, you know,
15 he wanted to buy anything. He said that yeah, let him get
16 his money right, he'll get back up with him. Moore agreed
17 to work with us. Got out of jail and disappeared and,
18 again, didn't work with us. We believe that he is back in
19 contact with Tate, but at this time, we can't confirm that.

20 Q All right.

21 Investigator, is there anything further to add as
22 to the Atlanta Crew?

23 A Like I said, there are several individuals, lower tier
24 people that have dealt and, again, I just -- I stress the
25 fact that you see how many people here have the blue line

ROBBIE KOON DeFREESE, COURT REPORTER

1 around them and, again, the blue line around them means they
2 are in multiple groups. So, if -- I mean, there are several
3 of these -- multiple of these individuals that are in all
4 three conspiracies and are all dealing with each other in
5 these groups, North Carolina, Greenville, and Atlanta.

6 Q So is it fair to say that despite which crew these
7 individuals might appear in, the affects of their drug
8 trafficking is having an impact on multiple Counties in
9 South Carolina?

10 A Big time.

11 Q At this time, I'll open the floor to Members of the
12 Grand Jury if they have any questions for Investigator Ayers
13 concerning this case?

14 (No Response.)

15 (State Grand Jury Exhibit Number One, Chart/North
16 Carolina Crew; State Grand Jury Exhibit Number Two,
17 Chart/Greenville Crew; and State Grand Jury Exhibit Number
18 Three, Chart/Atlanta Crew, marked for identification at this
19 time.)

20 MR. UNDERWOOD: Seeing that there are no
21 questions, at this time, Investigator Ayers, you are
22 excused.

23 THE WITNESS: Thank you.

24 Is it okay to leave this stuff here --

25 MR. UNDERWOOD: Yeah. We're going to bring you

ROBBIE KOON DeFRESE, COURT REPORTER

1 back in a little while so you can leave it right there.

2 (Investigator Ayers exits the Grand Jury Room.)

3 10:03 a.m.

4 MR. UNDERWOOD: Mr. Foreman, at this time, it's
5 probably in the Grand Jury's best interest, we're going to
6 give you a five-minute break to kind of get up, stretch your
7 legs, use the restroom, get something to drink; and then we
8 will come back with additional information concerning this
9 case.

10 All right. Thank you. We are at ease.

11 10:04 a.m.

12 (Mr. Pauling and Mr. Underwood exit the Grand Jury
13 Room.)

14 (A recess transpired from 10:04 a.m. to
15 10:16 a.m.)

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ROBBIE KOON DeFREese, COURT REPORTER

1 CERTIFICATE OF REPORTER

2
3 I, Robbie Koon DeFreese, Court Reporter and Notary
4 Public for the State of South Carolina at large, do hereby
5 certify:

6 That the foregoing testimony/dialogue was taken
7 before me on the date and at the time and location stated on
8 page 1 of this transcript; and that the foregoing transcript
9 of that testimony/dialogue is a true, accurate, and complete
10 record to the best of my ability.

11 I further certify that I am neither related to nor
12 counsel for, nor employed by any party to the investigation,
13 nor am I financially interested in the investigation.

14 Witness my hand, I have hereunto affixed my
15 official seal this 21st day of November, 2011, at Little
16 Mountain, Richland County, South Carolina.

17
18
19 _____
20 Robbie Koon DeFreese
21 Court Reporter
22 Notary Public
23 State of South Carolina at Large
24 My Commission expires:
25 March 7, 2015

ROBBIE KOON DeFREESE, COURT REPORTER

BEFORE THE SOUTH CAROLINA STATE GRAND JURY # 23

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

INVESTIGATION NO: SGJ2010-0206

TESTIMONY OF AGENT C. BRETT BARWICK

Columbia, South Carolina
Tuesday, December 13, 2011
9:34 a.m. to 9:44 a.m.

PRESENT:

OFFICE OF THE ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
STATE GRAND JURY DIVISION
The Rembert C. Dennis Building
Columbia, South Carolina 29201

TAKEN BY: CURTIS A. PAULING, III, ESQUIRE
Assistant Deputy Attorney General
JOSHUA R. UNDERWOOD, ESQUIRE
Assistant Attorney General

REPORTED BY: ROBBIE KOON DeFREESE
Court Reporter

QUORUM OF GRAND JURORS

Robbie Koon DeFreese
Court Reporter
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Little Mountain, South Carolina 29075-9635
803-345-6587
rkdefreese@bellsouth.net

ROBBIE KOON DeFREESE, COURT REPORTER

1 Tuesday, December 13, 2011.

2 9:33 a.m.

3 (Mr. Pauling and Mr. Underwood enter the Grand
4 Jury Room.)

5 MR. UNDERWOOD: Good morning.

6 Mr. Foreman, are all the Grand Jurors with the
7 exception of Juror Number Seven present?

8 THE FOREPERSON: That's correct.

9 MR. UNDERWOOD: All right.

10 This morning we're going to present some very
11 brief testimony regarding Operation Ice House and then we
12 will present to you two Superseding Indictments.

13 Before we get started, are there any questions or
14 concerns from the Grand Jury?

15 (No Response.)

16 MR. UNDERWOOD: All right.

17 At this time, we will present Agent Brett Barwick.

18 THE FOREPERSON: Place your left hand on the
19 Bible. State your name.

20 THE WITNESS: Brett Barwick.

21 AGENT CHARLES BRETT BARWICK, being first
22 duly sworn by the Foreperson at 9:34 a.m., testified as
23 follows:

24 EXAMINATION

25 BY MR. UNDERWOOD:

ROBBIE KOON DeFREESE, COURT REPORTER

1 Q Good morning.

2 Could you please state your -- state and spell
3 your full name for the Record?

4 A My entire -- my full name is Charles Brett Barwick;
5 last name B-a-r-w-i-c-k.

6 Q And could you please -- is this the first time you've
7 testified before this Grand Jury?

8 A It is.

9 Q Could you please introduce yourself?

10 A Yes, ma'am -- yes, sir.

11 My name is Brett Barwick, as I said. I'm a
12 Narcotics Agent for the Sheriff's Office in Pickens County.
13 I've been employed there for 12 years and I've been in that
14 Division for the last six.

15 Q And what is your involvement with this case known as
16 Operation Ice House?

17 A I became involved in this case from its beginning.
18 Investigator Ayers, with the Greenville County Sheriff's
19 Office, contacted our Agency and said he had a Confidential
20 Informant was relaying information about some narcotics
21 trafficking through Pickens and Greenville County; and so, I
22 met with him and interviewed this particular CI and we
23 started our investigation from there.

24 Q And what other Agencies have you been working with
25 other than the Greenville County Sheriff's Office?

ROBBIE KOON DeFREese, COURT REPORTER

1 A Primarily SLED. We've done a little bit with Anderson
2 County.

3 Q And in relations to this investigation, since
4 Indictments were first sought, has any new information come
5 to light?

6 A Yes, sir.

7 Q Could you please summarize that for the Grand Jury?

8 A Well, since the Indictments were originally issued,
9 more people have been interviewed, more things have come to
10 light as far as who -- who is involved, statements have been
11 taken, more deals have been done, things of that nature.

12 Q And have any specific statements bearing new
13 information in this case been taken?

14 A They have.

15 Investigator Ayers has interviewed several people
16 which I have copies of the statements he took from them
17 here.

18 Q All right.

19 Who was the first individual that he obtained a
20 statement from?

21 A Let's see.

22 I believe the first individual is going to be a
23 Lee Ann Ramsey.

24 Q All right.

25 And when was that statement taken?

ROBBIE KOON DeFRESE, COURT REPORTER

1 A It was taken December 5th of 2011.

2 Q All right.

3 And could you please summarize the relevant
4 portions of that statement to the Grand Jury?

5 A Yes, sir.

6 As they pertain to this case, Ms. Ramsey stated
7 that she was introduced to Josh Byers, a/k/a "Fatboy", in
8 2008. Ramsey stated that she knew Byers before then but not
9 in a drug relationship. Ramsey stated that she -- she was
10 introduced to Byers through her boyfriend at the time;
11 Fulghum was his last name and his full name is Josh Fulghum.
12 He was in a serious motorcycle accident in November of 2008;
13 and at that time, she began dealing directly with Josh
14 Byers.

15 Ramsey states that from November of 2008 through
16 June of 2010, she would purchase anywhere from one to four
17 ounces of crystal methamphetamine one to several times a
18 week from Josh Byers. Ramsey states that she purchased a
19 quarter ounce on the first occasion, but then purchased
20 mainly ounce weight or more from that point on. Ramsey
21 stated that she was paying \$1300 per ounce. She said Byers
22 would usually come to her house with the methamphetamine and
23 does not know -- did not know who his source was at the
24 time.

25 In addition, Ms. Ramsey states that she had also

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1 purchased methamphetamine from Amy Brock in the past and
2 also a white male known as "Batman", who is Brian Sekerchak.
3 Ramsey also stated that in 2009, she purchased
4 methamphetamine several times from a Hispanic male named
5 Felipe that lived in the Broadway Apartments.

6 Q All right.

7 And were any other statements taken by
8 Investigator Ayers regarding this case?

9 A Yes, sir.

10 He also interviewed a Miss Asa Thomason; and Miss
11 Thomason indicates that -- that she has known Nick Dendy
12 from hanging out over at "Mikie Mike's" house, which is
13 Michael Wayne Robinson. Thomason states that Dendy would
14 drop off methamphetamine at "Mikie Mike's" house two to
15 three times a day and would drop off eight-balls at a time.
16 Thomason states that he believes Dendy is purchasing his
17 methamphetamine from a Hispanic male named Felipe, who was
18 getting it from North Carolina. Thomason states that Amy
19 Brock is also purchasing her methamphetamine from Dendy.
20 Thomason states that he observed a white male known as
21 "Fatboy", who he believes is named Josh, deliver one ounce
22 of methamphetamine to Robinson's house on one occasion.
23 Thomason also stated that he observed Felipe to show up at
24 Robinson's house on one occasion to bring a brown bag
25 inside. Thomason states that Felipe left -- left and there

ROBBIE KOON DeFREese, COURT REPORTER

1 was methamphetamine there after he left. So he assumed that
2 Felipe was dropping off the drugs.

3 Q And are there statements from any other individuals?

4 A Those are the two that I have now.

5 Q Okay.

6 Agent Barwick, is there any other additional
7 information that you wish to present to the Grand Jury at
8 this time before we get into the Superseding Indictments?

9 A Uh -- let's see. I think that's it. We are going to
10 go into some other things --

11 Q All right.

12 A -- that I brought to you yesterday.

13 Q Okay.

14 (Whereupon, copies of the Superseding Indictments
15 are handed to the Grand Jurors at this time.)

16 MR. UNDERWOOD: Agent Barwick, before we get into
17 those Indictments, did -- was a statement also taken from an
18 individual named Norman Trebuchon?

19 A It was.

20 Q Could you please summarize that information for the
21 Grand Jury?

22 A Yes, sir.

23 This week I interviewed Norman Trebuchon, who was
24 a person with an involvement in this case. He indicated
25 that he had made trips back and forth to Atlanta, Georgia,

ROBBIE KOON DeFREESE, COURT REPORTER

1 with people involved in this case, at which time, he had
2 purchased methamphetamine or went with people who purchased
3 methamphetamine from a black male known as "Amp". He also
4 looked at a six picture photo lineup and identified Number
5 Three as "Amp", which is Antonio Emerson Tate, in our
6 Indictment. I think he made around eight to nine trips to
7 Atlanta and where he met with him.

8 Q Is there any additional information before we present
9 these new Indictments?

10 A I don't think so.

11 Q All right.

12 9:44 a.m.

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ROBBIE KOON DeFREese, COURT REPORTER

1 CERTIFICATE OF REPORTER

2
3 I, Robbie Koon DeFreese, Court Reporter and Notary
4 Public for the State of South Carolina at large, do hereby
5 certify:

6 That the foregoing testimony/dialogue was taken
7 before me on the date and at the time and location stated on
8 page 1 of this transcript; and that the foregoing transcript
9 of that testimony/dialogue is a true, accurate, and complete
10 record to the best of my ability.

11 I further certify that I am neither related to nor
12 counsel for, nor employed by any party to the investigation,
13 nor am I financially interested in the investigation.

14 Witness my hand, I have hereunto affixed my
15 official seal this 28th day of December, 2011, at Little
16 Mountain, Richland County, South Carolina.

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19
20 Robbie Koon DeFreese
21 Court Reporter
22 Notary Public
23 State of South Carolina at Large
24 My Commission expires:
25 March 7, 2015

ROBBIE KOON DeFREESE, COURT REPORTER

BEFORE THE SOUTH CAROLINA STATE GRAND JURY # 23

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

INVESTIGATION NO: SGJ2010-0206

PRESENTATION OF INDICTMENT
DELIBERATIONS AND VOTING

Columbia, South Carolina
Tuesday, December 13, 2011
9:44 a.m. to 11:40 a.m.

PRESENT:

OFFICE OF THE ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
STATE GRAND JURY DIVISION
The Rembert C. Dennis Building
Columbia, South Carolina 29201

TAKEN BY: CURTIS A. PAULING, III, ESQUIRE
Deputy Assistant Attorney General
JOSHUA R. UNDERWOOD, ESQUIRE
Assistant Attorney General

REPORTED BY: ROBBIE KOON DeFREESE
Court Reporter

QUORUM OF GRAND JURORS

Robbie Koon DeFreese
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142 George Addy Road
Little Mountain, South Carolina 29075-9635
803-345-6587
rkdefreese@bellsouth.net

ROBBIE KOON DeFREESE, COURT REPORTER

1 Tuesday, December 13, 2011.

2 9:44 a.m.

3 MR. UNDERWOOD: Mr. Foreman, you should have in
4 your possession now two original Indictments: one Case
5 Number 2011-GS-47-06; the other Case Number 2011-GS-47-07.

6 THE FOREPERSON: Yes, sir.

7 MR. UNDERWOOD: And also -- all right.

8 And do all Members of the Grand Jury have a copy
9 of each of those Indictments?

10 (Whereupon, all Grand Jurors responded in the
11 affirmative at this time.)

12 MR. UNDERWOOD: All right.

13 AGENT CHARLES BRETT BARWICK, being
14 already duly sworn by the Foreperson, returned to the
15 witness stand at 9:45 a.m., and testified as follows:

16 EXAMINATION

17 BY MR. UNDERWOOD:

18 Q All right.

19 Beginning with Case Number 2011-GS-47-06, State
20 Grand Jury of South Carolina: State of South Carolina
21 versus Clyde Bowen Davis, Nicholous Cosall Dendy, Amy
22 Elizabeth Brock, Michael Wayne Robinson, Brian Keith
23 Sekerchak, Joshua Ellis Byers, Defendants; Superseding
24 Indictment for Unlawful Drugs: Trafficking Methamphetamine
25 by Conspiracy, South Carolina Code Annotated Section

ROBBIE KO₆₃₂ eFREESE, COURT REPORTER

1 44-53-375(C) (3) (1 Count); Distribution of Methamphetamine,
2 South Carolina Code Annotated Section 44-53-375(B) (15
3 Counts); Exposing a Child to Methamphetamine, South Carolina
4 Code Annotated Section 44-53-378 (2 Counts); Possession With
5 Intent to Distribute Methamphetamine, South Carolina Code
6 Annotated Section 44-53-375(B) (1 Count); Trafficking
7 Methamphetamine 10- 28 Grams, South Carolina Code Annotated
8 Section 44-53-375(C) (1) (1 Count).

9 At a session of the State Grand Jury of South
10 Carolina, convened in Columbia, South Carolina, on December
11 13, 2011, the State Grand Jurors present upon their oath:

12 Count I: Trafficking Methamphetamine (Conspiracy)
13 South Carolina Code Annotated Section 44-53-357(C) (3):

14 That Clyde Bowen Davis, Nicholous Cosall Dendy,
15 Amy Elizabeth Brock, Michael Wayne Robinson, Brian Keith
16 Sekerchak, Joshua Ellis Byers, and others persons whose
17 names are both known and unknown to the State Grand Jury,
18 did in Greenville County and Pickens County of South
19 Carolina, during the period of time extending from on or
20 about January 1, 2010 until November 8, 2011, conspire to
21 sell, manufacture, deliver, purchase, or bring into this
22 State, one hundred(100) grams or more but less than two
23 hundred(200) grams of methamphetamine ("ice" or "crank"), a
24 controlled substance under provisions of Section 44-53-110,
25 et seq., Code of Laws of South Carolina(1976), as amended,

1 such conduct not having been authorized by law and such
2 Activity occurring and/or having significance in more than
3 one County of this State.

4 Agent Barwick, could you please present to the
5 Grand Jury what evidence and information the State has to
6 establish probable cause for trafficking methamphetamine by
7 conspiracy by these individuals?

8 A Yes, sir.

9 Pickens County Sheriff's Office, Greenville County
10 Sheriff's Office, and the State Law Enforcement Division
11 entered into a joint investigation several years ago
12 actually. We have been conducting this investigation for
13 some time; and through the use of Confidential Informants,
14 making controlled purchases, historical interviews,
15 testimony that has taken place here in the State Grand Jury
16 Office, surveillance operations, Agents have been able to
17 determine that Clyde Bowen Davis, Nicholous Cosall Dendy,
18 Amy Elizabeth Brock, Michael Wayne Robinson, Brian Keith
19 Sekerchak, and Joshua Ellis Byers have conspired together to
20 traffic methamphetamine throughout the Upstate of South
21 Carolina.

22 Q Count II: Distribution of Methamphetamine, South
23 Carolina Code Annotated Section 44-53-375(B):

24 That Clyde Bowen Davis did in Greenville County,
25 on or about September 8, 2010, knowingly distribute,

1 dispense, or deliver methamphetamine ("ice" or "crank"), a
2 controlled substance under provisions of Section 44-53-110,
3 et seq., Code of Laws South Carolina(1976), as amended, such
4 conduct not having been authorized by law and such activity
5 occurring and/or having significance in more than one County
6 of this State or arising out of or in connection with a
7 crime having significance in more than one County of this
8 State.

9 Please summarize what evidence and information the
10 State has to establish probable cause for Count II.

11 A Yes, sir.

12 On September 8, 2010, Law Enforcement Agents
13 associated with this case supervised a controlled purchase
14 of methamphetamine from Clyde Bowen Davis. This was a
15 Confidential Informant purchase that took place at 112 Dobbs
16 Street in Greenville, South Carolina. The substance
17 purchased by Agents tested positive for methamphetamine in
18 an amount of 3.51 grams.

19 Q Count III, Distribution of Methamphetamine:

20 That Nicholous Cosall Dendy did in Greenville
21 County, on or about October 26, 2010, knowingly distribute,
22 dispense, or deliver methamphetamine ("ice" or "crank"), a
23 controlled substance under provisions of Section 44-53-110,
24 et seq., Code of Laws South Carolina(1976), as amended, such
25 conduct not having been authorized by law and such activity

1 occurring and/or having significance in more than one County
2 of this State or arising out of or in connection with a
3 crime having significance in more than one State.

4 Please present what evidence and information the
5 State has to establish probable cause for Count III.

6 A On October 26, 2010, Law Enforcement Agents associated
7 with this case, again, supervised a controlled purchase of
8 methamphetamine from Nicholous Cosall Dendy. This also was
9 a Confidential Informant purchase. It took place on White
10 Horse Road behind the McDonald's in Greenville, South
11 Carolina. The substance purchased tested positive for
12 methamphetamine in the amount of 6.71 grams.

13 Q Count IV: Distribution of Methamphetamine, South
14 Carolina Code Annotated Section 44-53-375(B):

15 That Nicholous Cosall Dendy did in Greenville
16 County, on or about November 2, 2010, knowingly distribute,
17 dispense, or deliver methamphetamine ("ice" or "crank"), a
18 controlled substance under provisions of Section 44-53-110,
19 et seq., Code of Laws South Carolina (1976), as amended, such
20 conduct not having been authorized by law and such activity
21 occurring and/or having significance in more than one County
22 of this State or arising out of or in connection with a
23 crime having significance in more than one State.

24 Please present what evidence and information the
25 State has to establish probable cause for Count IV.

1 A Yes, sir.

2 On November 2, 2010, Law Enforcement Agents
3 associated with this case supervised a controlled purchase
4 of methamphetamine from Nicholous Cosall Dendy. This was a
5 Confidential Informant purchase that took place at the
6 Wendy's Restaurant on White Horse Road at Anderson Road
7 Intersection in Greenville, South Carolina. The substance
8 purchased tested positive for methamphetamine in the point
9 of 6.80 grams.

10 Q Count V: Distribution of Methamphetamine, South
11 Carolina Code Annotated Section 44-53-375(B):

12 That Amy Elizabeth Brock did in Greenville County,
13 on or about August 30, 2011, knowingly distribute, dispense,
14 or deliver methamphetamine ("ice" or "crank"), a controlled
15 substance under provisions of Section 44-53-110, et seq.,
16 Code of Laws South Carolina(1976), as amended, such conduct
17 not having been authorized by law and such activity
18 occurring and/or having significance in more than one County
19 of this State or arising out of or in connection with a
20 crime having significance in more than one County of this
21 State.

22 Please present what evidence and information the
23 State has to establish probable cause for Count V.

24 A On August 30, 2011, Law Enforcement Officers
25 associated with this case supervised a controlled purchase

1 of methamphetamine from Amy Elizabeth Brock. This was a
2 Confidential Informant purchase that took place at 21 -- 216
3 New Dunham Bridge Road in Greenville, South Carolina. The
4 substance purchased tested positive for methamphetamine in
5 the amount of 3.95 grams.

6 Q Count VI: Distribution of Methamphetamine, South
7 Carolina Code Annotated Section 44-53-375(B):

8 That Amy Elizabeth Brock did in Greenville County,
9 on or about August 30, 2011, knowingly distribute, dispense,
10 or deliver methamphetamine ("ice" or "crank"), a controlled
11 substance under provisions of Section 44-53-110, et seq.,
12 Code of Laws South Carolina(1976), as amended, such conduct
13 not having been authorized by law and such activity
14 occurring and/or having significance in more than one County
15 of this State or arising out of or in connection with a
16 crime having significance in more than one County of this
17 State.

18 Please present what information and evidence the
19 State has to establish probable cause for Count VI.

20 A Again, on August 30th, Law Enforcement Agents
21 associated with this case supervised a controlled purchase
22 of methamphetamine from Amy Elizabeth Brock. This was a
23 Confidential Informant purchase that took place at 216 New
24 Dunham Bridge Road in Greenville, South Carolina. The
25 substance purchased tested positive for methamphetamine in

1 the point of 6.53 grams. This was -- the Count V and VI
2 were on the same day, but two separate incidents at the same
3 location.

4 Q Count VII, Exposing a Child to Methamphetamine, South
5 Carolina Code Annotated Section 44-53-378:

6 That Amy Elizabeth Brock did in Greenville County
7 on or about September 6, 2011, knowingly permit a child to
8 be in an environment where a person was selling, offering
9 for sale, or having in such person's possession with intent
10 to sell, deliver, distribute, prescribe, administer,
11 dispense, manufacture, or attempt to manufacture
12 methamphetamine, a controlled substance under provisions of
13 Section 44-53-110, et seq., Code of Laws South
14 Carolina(1976), as amended, such conduct not having been
15 authorized by law and such activity occurring and/or having
16 significance in more than one County of this State or
17 arising out of or in connection with a crime having
18 significance in more than one County of this State.

19 Please present what evidence and information the
20 State has to establish probable cause for Count VII.

21 A On September 6, 2011, Law Enforcement Agents
22 associated with this case executed a search warrant at 216
23 New Dunham Bridge Road in Greenville, South Carolina. This
24 is the residence of Amy Brock. As a result of this search
25 warrant, Amy Brock was charged with trafficking

1 methamphetamine. Agents located Amy's two young children in
2 the residence: a Lawson Andrew German, date of birth of
3 4/21/09; and a Cal Matthew German, date of birth of 4/17/07.
4 Department of Social Services was notified of this incident
5 and the Greenville County Sheriff's Office Juvenile
6 Investigator Dirton began an investigation. Throughout this
7 investigation, they found that both of the children tested
8 positive for methamphetamine and this was also a violation
9 of a DSS Safety Plan for them to be in the residence.

10 Q And, Agent Barwick, to which child do we attribute
11 Count VII?

12 A Count VII would be with Lawson Andrew German.

13 Q All right.

14 Now, moving to Count VIII, Exposing a Child to
15 Methamphetamine, South Carolina Code Annotated Section
16 44-53-378:

17 That Amy Elizabeth Brock did in Greenville County
18 on or about September 6, 2011, knowingly permit a child to
19 be in an environment where a person was selling, offering
20 for sale, or having in such person's possession with intent
21 to sell, deliver, distribute, prescribe, administer,
22 dispense, manufacture, or attempt to manufacture
23 methamphetamine, a controlled substance under provisions of
24 Section 44-53-110, et seq., Code of Laws South
25 Carolina (1976), as amended, such conduct not having been

1 authorized by law and such activity occurring and/or having
2 significance in more than one County of this State or
3 arising out of or in connection with a crime having
4 significance in more than one County of this State.

5 Please present what evidence and information the
6 State has to establish probable cause for Count VIII.

7 A Yes, sir.

8 Count VIII will be the same fact pattern: that on
9 September 6, 2011, Law Enforcement Officers associated with
10 this case executed a search warrant at 216 New Dunham Bridge
11 Road, Greenville, South Carolina, the residence of Amy
12 Brock. As a result of this search warrant, Amy Brock was
13 charged with trafficking methamphetamine. Agents located
14 her two children in the residence as a Lawson Andrew German,
15 date of birth 4/21/09, and Cal Matthew German, date of birth
16 4/14/07. DSS was notified of the incident and Greenville
17 County Sheriff's Office Juvenile Investigator Dirton began
18 an investigation. Both of the children tested positive for
19 methamphetamine and it was also a violation of the DSS
20 Safety Plan for them to be in the residence with their
21 mother; and as Count VIII pertains to Cal Matthew German.

22 Q Count IX, Distribution of Methamphetamine, South
23 Carolina Code Annotated Section 44-53-375(B):

24 That Michael Wayne Robinson did in Greenville
25 County, on or about February 23, 2010, knowingly distribute,

1 dispense, or deliver methamphetamine ("ice" or "crank"), a
2 controlled substance under provisions of Section 44-53-110,
3 et seq., Code of Laws South Carolina(1976), as amended, such
4 conduct not having been authorized by law and such activity
5 occurring and/or having significance in more than one County
6 of this State or arising out of or in connection with a
7 crime having significance in more than one County of this
8 State.

9 Please present what evidence and information the
10 State has to establish probable cause for Count IX.

11 A February 23, 2010, Law Enforcement Officers associated
12 with this case supervised a controlled purchase of
13 methamphetamine from Michael Wayne Robinson. This was a
14 Confidential Informant purchase that took place at 110
15 Watson Drive in Greenville, South Carolina. The substance
16 purchased tested positive for methamphetamine. There were
17 two bags: One in the amount of 3.40 grams; the other in the
18 amount of 3.52 grams.

19 Q Count X, Distribution of Methamphetamine, South
20 Carolina Code Annotated Section 44-53-375 (B):

21 That Michael Wayne Robinson did in Greenville
22 County, on or about March 3, 2010, knowingly distribute,
23 dispense, or deliver methamphetamine ("ice" or "crank"), a
24 controlled substance under provisions of Section 44-53-110,
25 et seq., Code of Laws South Carolina(1976), as amended, such

1 conduct not having been authorized by law and such activity
2 occurring and/or having significance in more than one County
3 of this State or arising out of or in connection with a
4 crime having significance in more than one County of this
5 State.

6 Please present what evidence and information the
7 State has to establish probable cause for Count X.

8 A On March 3, 2010, Law Enforcement Agents associated
9 with this case supervised a controlled purchase of
10 methamphetamine from Michael Wayne Robinson. This was a
11 Confidential Informant purchase that took place at 110
12 Watson Drive, Greenville, South Carolina. Substance tested
13 positive for methamphetamine. It was two bags with the
14 weight of one being 3.65 grams; the second bag being 3.46
15 grams.

16 Q Count XI: Distribution of Methamphetamine, South
17 Carolina Code Annotated Section 44-53-375(B):

18 That Michael Wayne Robinson did in Greenville
19 County, on or about July 27, 2010, knowingly distribute,
20 dispense, or deliver methamphetamine ("ice" or "crank"), a
21 controlled substance under provisions of Section 44-53-110,
22 et seq., Code of Laws South Carolina (1976), as amended, such
23 conduct not having been authorized by law and such activity
24 occurring and/or having significance in more than one County
25 of this State or arising out of or in connection with a

1 crime having significance in more than one County of this
2 State.

3 Please present what evidence and information the
4 State has to establish probable cause for Count XI.

5 A On July 27, 2010, Law Enforcement Officers associated
6 with this case supervised a controlled purchase of
7 methamphetamine from Michael Wayne Robinson. This
8 transaction was set up by an undercover phone call from a
9 Confidential Informant to Amy Brock who arranged for the CI
10 to meet with Mr. Robinson. At that time, the CI went to 110
11 Watson Drive, Greenville, South Carolina, where they
12 purchased a quantity of methamphetamine. This
13 methamphetamine or the substance purchased tested positive
14 in the amount of 1.54 grams.

15 Q Count XII, Distribution of Methamphetamine, South
16 Carolina Code Annotated Section 44-53-375(B):

17 That Michael Wayne Robinson did in Greenville
18 County, on or about August 17, 2010, knowingly distribute,
19 dispense, or deliver methamphetamine ("ice" or "crank"), a
20 controlled substance under provisions of Section 44-53-110,
21 et seq., Code of Laws South Carolina (1976), as amended, such
22 conduct not having been authorized by law and such activity
23 occurring and/or having significance in more than one County
24 of this State or arising out of or in connection with a
25 crime having significance in more than one County of this

1 State.

2 Please present what evidence and information the
3 State has to establish probable cause for Count XII.

4 A On August 17, 2010, Law Enforcement Officers
5 associated with this case supervised a controlled purchase
6 of methamphetamine from Michael Wayne Robinson. This was a
7 Confidential Informant purchase, again, that took place at
8 110 Watson Drive in Greenville, South Carolina. The
9 substance purchased tested positive for methamphetamine in
10 the amount of .31 grams.

11 Q Count XIII, Distribution of Methamphetamine South
12 Carolina Code Annotated Section 44-53-375(B):

13 That Brian Keith Sekerchak did in Greenville
14 County, on or about June 23, 2010, knowingly distribute,
15 dispense, or deliver methamphetamine ("ice" or "crank"), a
16 controlled substance under provisions of Section 44-53-110,
17 et seq., Code of Laws South Carolina(1976), as amended, such
18 conduct not having been authorized by law and such activity
19 occurring and/or having significance in more than one County
20 of this State or arising out of or in connection with a
21 crime having significance in more than one County of this
22 State.

23 Please present what evidence and information the
24 State has to establish probable cause for Count XIII.

25 A On June 23, 2010, Law Enforcement Agents associated

1 with this case supervised a controlled purchase of
2 methamphetamine from Brian Keith Sekerchak. This was a
3 Confidential Informant purchase that took place at Bent
4 Ridge Road in Greenville, South Carolina. The substance
5 purchased tested positive for methamphetamine in the amount
6 of 5.2 grams.

7 Q Count XIV: Distribution of Methamphetamine, South
8 Carolina Code Annotated Section 44-53-375(B):

9 That Brian Keith Sekerchak did in Greenville
10 County, on or about January 27, 2011, knowingly distribute
11 dispense, or deliver methamphetamine ("ice" or "crank"), a
12 controlled substance under provisions of Section 44-53-110,
13 et seq., Code of Laws South Carolina(1976), as amended, such
14 conduct not having been authorized by law and such activity
15 occurring and/or having significance in more than one County
16 of this State or arising out of or in connection with a
17 crime having significance in more than one County of this
18 State.

19 Please present what evidence and information the
20 State has to establish probable cause for Count XIV.

21 A January 27, 2011, Law Enforcement Officers associated
22 with this case supervised a controlled purchase of
23 methamphetamine from Brian Keith Sekerchak. This was a
24 Confidential Informant purchase that took place, again, at
25 Bent Ridge Road -- excuse me, Bent Ridge Road in Greenville,

1 South Carolina. The substance purchased tested positive for
2 methamphetamine in the amount of point -- correction 1.60
3 grams.

4 Q Count XV, Distribution of Methamphetamine, South
5 Carolina Code Annotated Section 44-53-375(B):

6 That Brian Keith Sekerchak did in Pickens County,
7 on or about March 15, 2011, knowingly distribute, dispense,
8 or deliver methamphetamine ("ice" or "crank"), a controlled
9 substance under provisions of Section 44-53-110, et seq.,
10 Code of Laws South Carolina(1976), as amended, such conduct
11 not having been authorized by law and such activity
12 occurring and/or having significance in more than one County
13 of this State or arising out of or in connection with a
14 crime having significance in more than one County of this
15 State.

16 Please present what evidence and information the
17 State has to establish probable cause for Count XV.

18 A On March 15, 2011, Agents -- Agents or Law Enforcement
19 Agents associated with this case supervised a controlled
20 purchase of methamphetamine from Brian Keith Sekerchak.
21 This was a Confidential Informant purchase that took place
22 at 3910 Calhoun Memorial Highway, Easley, South Carolina.
23 This is the Hot Spot Gas Station within Pickens County. The
24 substance purchased tested positive for methamphetamine in
25 the amount of point one -- correction 1.38 grams.

1 Q Count XVI: Distribution of Methamphetamine, South
2 Carolina Code Annotated Section 44-53-375(B):

3 That Brian Keith Sekerchak did in Pickens County,
4 on or about June 1, 2011, knowingly distribute, dispense, or
5 deliver methamphetamine ("ice" or "crank"), a controlled
6 substance under provisions of Section 44-53-110, et seq.,
7 Code of Laws South Carolina(1976), as amended, such conduct
8 not having been authorized by law and such activity
9 occurring and/or having significance in more than one County
10 of this State or arising out of or in connection with a
11 crime having significance in more than one County of this
12 State.

13 Please present what evidence and information the
14 State has to establish probable cause for Count 16.

15 A On June 1, 2011, Law Enforcement Officers associated
16 with this case supervised a controlled purchase of
17 methamphetamine from Brian Keith Sekerchak. This was a
18 Confidential Informant purchase that took place at the
19 intersection of Highway 124 and North-Fishtrap Road, which
20 is a location in Pickens County. Substance purchased tested
21 positive for methamphetamine in the amount of .48 grams.

22 Q Count XVII: Distribution of Methamphetamine, South
23 Carolina Code Annotated 44-53-375(B):

24 That Brian Keith Sekerchak did in Greenville
25 County, on or about August 16, 2011, knowingly distribute,

1 dispense, or deliver methamphetamine ("ice" or "crank"), a
2 controlled substance under provisions of Section 44-53-110,
3 et seq., Code of Laws South Carolina(1976), as amended, such
4 conduct not having been authorized by law and such activity
5 occurring and/or having significance in more than one County
6 of this State or arising out of or in connection with a
7 crime having significance in more than one County of this
8 State.

9 Please present what evidence and information the
10 State has to establish probable cause for Count XVII.

11 A On August 16, 2011, Law Enforcement Officers
12 associated with this case supervised a controlled purchase
13 of methamphetamine from Brian Keith Sekerchak. This is a
14 Confidential Informant purchase. It took place at a plot of
15 land where Mr. Sekerchak had his camper in Greenville
16 County. Greenville County Tax Office identified it as Plot
17 Number 0240040100700. Substance purchased tested positive
18 for methamphetamine in the amount of 1.8 grams.

19 Q Count XVIII: Possession With Intent to Distribute
20 Methamphetamine, South Carolina Code Annotated Section
21 44-53-375(B) :

22 That Brian Keith Sekerchak did in Pickens County,
23 on or about August 30, 2011, knowingly manufacture,
24 distribute, dispense, deliver, purchase, or aid, abet, or
25 conspire to manufacture, distribute, dispense, deliver, or

1 purchase or possess with intent to manufacture, distribute,
2 dispense, or deliver a quantity of methamphetamine ("ice" or
3 "crank"), a controlled substance under provisions of Section
4 44-53-110, et seq., Code of Laws South Carolina (1976), as
5 amended, such conduct not having been authorized by law and
6 such activity occurring and/or having significance in more
7 than one County of this State or arising out of or in
8 connection with a crime having significance in more than one
9 County of this State.

10 Please present what evidence and information the
11 State has to establish probable cause for Count XVIII

12 A. On August 30, 2011, Property Crimes Investigators with
13 the Greenville County Sheriff's Office and Pickens County
14 Sheriff's Office obtained a search warrant for
15 Mr. Sekerchak's residence, which is a camper. At the time,
16 he had moved it to West Carolina Avenue in Easley, South
17 Carolina, which is in Pickens. They notified us of the
18 search warrants so some of our Agents assisted with the
19 execution of that warrant. Agents made entry into the
20 camper as Mr. Sekerchak refused to come to the door.
21 Mr. Sekerchak was taken into custody. During this incident,
22 there was a bag of crystal substance, which appeared to be
23 methamphetamine, in plain view on the counter top. At that
24 time, Agents went and obtained a search warrant for drugs or
25 narcotic search warrant for the residence, which several

1 baggies with residue and small amounts of crystal substance
2 were seized. The substance -- the substances were sent for
3 testing, but I don't have those results yet.

4 Q Count XIX: Distribution of Methamphetamine, South
5 Carolina Code Annotated Section 44-53-375(B):

6 That Joshua Ellis Byers did in Greenville County,
7 on or about April 16, 2010, knowingly distribute, dispense,
8 or deliver methamphetamine ("ice" or "crank") a controlled
9 substance under provisions of Section 44-53-110, et seq.,
10 Code of Laws South Carolina(1976), as amended, such conduct
11 not having been authorized by law and such activity
12 occurring and/or having significance in more than one County
13 of this State or arising out of or in connection with a
14 crime having significance in more than one County of this
15 State.

16 Please present what evidence and information the
17 State has to establish probable cause for Count XIX.

18 A On April 16, 2010, Law Enforcement Officers associated
19 with this case supervised a controlled purchase of
20 methamphetamine from Joshua Ellis Byers. This was a
21 Confidential Informant purchase that took place at H&H Food
22 Stores, which is off Allen Street in Greenville, South
23 Carolina. The substance purchased tested positive for
24 methamphetamine in the amount of 6.89 grams.

25 Q Count XX: Trafficking Methamphetamine 10 - 28 Grams,

1 South Carolina Code Annotated Section 44-53-375(C) (1) :

2 That Joshua Ellis Byers did in Greenville County,
3 on or about July 30, 2010, knowingly possess (actually or
4 constructively), deliver, sell, or bring into this State,
5 ten (10) grams or more but less than twenty-eight (28) grams
6 of methamphetamine ("ice" or "crank"), a controlled
7 substance under the provisions of Section 44-53-110, et
8 seq., Code of Laws of South Carolina (1976), as amended, such
9 conduct not having been authorized by law and such activity
10 occurring and/or having significance in more than one County
11 of this State.

12 Please present what evidence and information the
13 State has to establish probable cause for the Count XX.

14 A On July 30, 2010, Law Enforcement Officers associated
15 with this case conducted a buy-bust operation in which
16 Joshua Ellis Byers delivered, along with other people in his
17 vehicle, a quantity of methamphetamine to a Confidential
18 Informant. This incident took place at T Bob's Bar at the
19 parking lot at the corner of Staunton Bridge Road and White
20 Horse Road in Greenville, South Carolina. The substance
21 taken from Mr. Byers tested positive for methamphetamine.
22 Several bags were located. One was 25.89 grams; one was
23 1.97 grams; one was .04 grams; and one was .67 grams.

24 MR. UNDERWOOD: Mr. Foreman, that concludes that
25 Indictment.

1 Does the Grand Jury wish to take a short break
2 before we move into the next one or plug on through?

3 THE FOREPERSON: What do y'all want to do?

4 THE GRAND JUROR: Move on, move on.

5 THE FOREPERSON: Move on.

6 MR. UNDERWOOD: All right.

7 Now, moving to the next Indictment, Case Number
8 2011-GS-47-07: State Grand Jury of South Carolina, State of
9 South Carolina versus Antonio Emerson Tate, Wendy Christine
10 Lollis, Charles Javin Adams, Albrie Nate' Bashaw, Chad
11 Dewayne Moore, Norman Victor Bergholm, IV, Gary Jason
12 Griffin, Christopher Michael Simmons, Rachel Elizabeth
13 Eades, Defendants.

14 Superseding Indictment for Unlawful Drugs:
15 Trafficking Methamphetamine (Conspiracy) South Carolina Code
16 Annotated Section 44-53-375(C) (5) (1 Count); Trafficking
17 Methamphetamine 10 - 28 Grams, South Carolina Code Annotated
18 Section 44-53-375(C) (1) (4 Counts); Trafficking
19 Methamphetamine 28 - 100 Grams, South Carolina Code
20 Annotated Section 44-53-375(C) (2) (3 Counts); Distribution of
21 Methamphetamine, South Carolina Code Annotated Section
22 44-53-375(B) (13 Counts); Possession of a Stolen Pistol,
23 South Carolina Code Annotated Section 16-23-30(C) (1 Count);
24 Possession of a Firearm During the Commission of or Attempt
25 to Commit a Violent Crime, South Carolina Code Annotated

1 Section 16-23-490(1 Count); Unlawful Carrying of a Pistol,
2 South Carolina Code Annotated Section 16-23-20(1 Count).

3 At a Session of the State Grand Jury of South
4 Carolina, convened in Columbia, South Carolina, on December
5 13, 2011, the State Grand Jurors present upon their oath:

6 Count I, Trafficking Methamphetamine (Conspiracy)
7 South Carolina Code Annotated Section 44-53-375(C) (5):

8 That Antonio Emerson Tate, Wendy Christine Lollis,
9 Charles Javin Adams, Albrie Nate' Bashaw, Chad Dewayne
10 Moore, Norman Victor Bergholm, IV, Gary Jason Griffin,
11 Christopher Michael Simmons, Rachel Elizabeth Eades, and
12 other persons whose names are both known and unknown to the
13 State Grand Jury, did in Greenville County and Pickens
14 County of South Carolina, during the period of time
15 extending from on or about November 1, 2009 until November
16 8, 2011, conspire to sell, manufacture, deliver, purchase,
17 or bring into this State, four hundred(400) grams or more of
18 methamphetamine ("ice" or "crank"), a controlled substance
19 under provisions of Section 44-53-110, et seq., Code of Laws
20 of South Carolina(1976), as amended, such conduct not having
21 been authorized by law and such activity occurring and/or
22 having significance in more than one County of this State.
23 Agent Barwick, please present what evidence and
24 information the State has to establish probable cause for
25 Count I?

1 A Agents with Pickens County Sheriff's Office,
2 Greenville County Sheriff's Office, and the State Law
3 Enforcement Division have been going -- conducting an
4 ongoing drug investigation.

5 During this investigation, Agents have utilized
6 controlled purchases, historical interviews, and testimony,
7 search warrants, surveillance operations to establish that
8 Antonio Emerson Tate, Wendy Christine Lollis, Charles Javin
9 Adams, Albrie Nate' Bashaw, Chad Dewayne Moore, Norman
10 Victor Bergholm, Gary Jason Griffin, Christopher Michael
11 Simmons, and Rachel Elizabeth Eades did conspire to traffic
12 methamphetamine across the Upstate of South Carolina.

13 Also, a lot of the methamphetamine in question was
14 purchased and brought from Atlanta, Georgia, in the Gwinnett
15 County Area to South Carolina.

16 Q And just to elaborate, the methamphetamine that was
17 coming from Gwinnett County Area of Georgia, who was
18 involved with that -- with that methamphetamine in Georgia?

19 A Oh! Antonio Emerson Tate was the person distributing
20 that to the people traveling to Atlanta, Georgia, to see
21 him.

22 Q All right.

23 Count II, Distribution of Methamphetamine, South
24 Carolina Code Annotated Section 44-53-375(B):

25 That Wendy Christine Lollis did in Pickens County,

1 on or about July 31, 2010, knowingly distribute, dispense,
2 or deliver methamphetamine ("ice" or "crank"), a controlled
3 substance under provisions of Section 44-53-110, et seq.,
4 Code of Laws South Carolina(1976), as amended, such conduct
5 not having been authorized by law and such activity
6 occurring and/or having significance in more than one County
7 of this State or arising out of or in connection with a
8 crime having significance in more than one County of this
9 State.

10 Please present what evidence and information the
11 State has to establish probable cause for Count II.

12 A July 31, 2010, Law Enforcement Agents associated with
13 this case supervised a controlled purchase of
14 methamphetamine from Wendy Christine Lollis. This was a
15 Confidential Informant purchase. It took place at 113-A
16 Newton Avenue, Pickens, South Carolina, which is within
17 Pickens County. The substance purchased tested positive for
18 methamphetamine in the amount of .88 grams.

19 Q Count III, Distribution of Methamphetamine, South
20 Carolina Code Annotated Section 44-53-375(B):

21 That Wendy Christine Lollis did in Pickens County,
22 on or about July 31, 2010, knowingly distribute, dispense,
23 or deliver methamphetamine ("ice" or "crank"), a controlled
24 substance under provisions of Section 44-53-110, et seq.,
25 Code of Laws South Carolina(1976), as amended, such conduct

1 not having been authorized by law and such activity
2 occurring and/or having significance in more than one County
3 of this State or arising out of or in connection with a
4 crime having significance in more than one County of this
5 State

6 Please present what evidence and information the State
7 has to establish probable cause for Count III.

8 A Again, on July 31, 2010, Law Enforcement Agents
9 associated with this case supervised a controlled purchase
10 of methamphetamine from Wendy Christine Lollis. This was a
11 Confidential Informant purchase that took place at 11 --
12 correction -- 113-A Newton Avenue in Pickens, South
13 Carolina, a location within Pickens County. The substance
14 purchased tested positive for methamphetamine in the amount
15 of .69 grams. This is the same location and same day as
16 Count II. It's just two separate deals.

17 Q Count IV, Distribution of Methamphetamine, South
18 Carolina Code Annotated Section 44-53-375(B):

19 That Wendy Christine Lollis did in Pickens County,
20 on or about September 13, 2011, knowingly distribute,
21 dispense, or deliver methamphetamine ("ice" or "crank"), a
22 controlled substance under provisions of Section 44-53-110,
23 et seq., Code of Laws South Carolina(1976), as amended, such
24 conduct not having been authorized by law and such activity
25 occurring and/or having significance in more than one County

1 of this State or arising out of or in connection with a
2 crime having significance in more than one County of this
3 State.

4 Please present what evidence and information the
5 State has to establish probable cause for Count IV.

6 A On September 13, 2011, Law Enforcement Officers
7 associated with this case supervised a controlled purchase
8 of methamphetamine from Wendy Christine Lollis. This was a
9 Confidential Informant purchase. It took place in Mount
10 Lake Estates in Pickens County, which is -- correction -- in
11 Pickens area, which is within Pickens County. The substance
12 purchased had a field weight of .80 grams and has been sent
13 to lab for testing, but don't have results yet.

14 Q Count V, Distribution of Methamphetamine, South
15 Carolina Code Annotated Section 44-53-375(B):

16 That Charles Javin Adams did in Anderson County,
17 on or about March 29, 2011, knowingly distribute, dispense,
18 or deliver methamphetamine ("ice" or "crank") a controlled
19 substance under provisions of Section 44-53-110, et seq.,
20 Code of Laws South Carolina(1976), as amended, such conduct
21 not having been authorized by law and such activity
22 occurring and/or having significance in more than one County
23 of this State or arising out of or in connection with a
24 crime having significance in more than one County of this
25 State.

1 Please present what evidence and information the
2 State has to establish probable cause for Count V.

3 A On March 19, 2011, Law Enforcement Officers associated
4 with this case supervised a controlled purchase of
5 methamphetamine from Charles Javin Adams. This was a
6 Confidential Informant purchase. It took place at 226
7 Wadmalaw Drive in Piedmont, South Carolina, which is within
8 Anderson County. The substance purchased tested positive
9 for methamphetamine -- or correction -- it was a -- field
10 tested positive for methamphetamine in the amount of 4.2
11 grams.

12 Q Count VI, Trafficking Methamphetamine 10 - 28 Grams,
13 South Carolina Code Annotated Section 44-53-375(C) (1) :

14 That Albrie Nate' Bashaw did in Pickens County, on
15 or about August 27, 2010, knowingly possess (actually or
16 constructively), deliver, sell, or bring into this State
17 ten (10) grams or more but less than twenty-eight (28) grams
18 of methamphetamine ("ice" or "crank"), a controlled
19 substance under the provisions of Section 44-53-110, et
20 seq., Code of Laws of South Carolina (1976), as amended, such
21 conduct not having been authorized by law and such activity
22 occurring and/or having significance in more than one County
23 of this State.

24 Please present what evidence and information the
25 State has to establish probable cause for Count VI.

1 A On August 27, 2010, Law Enforcement Officers
2 associated with this case supervised a controlled purchase
3 of methamphetamine from Albrie Nate' Bashaw. This was a
4 Confidential Informant purchase that took place at 100
5 Parkway Drive in Easley, South Carolina, which is within
6 Pickens County. The substance purchased tested positive for
7 methamphetamine in the amount of 12.74 grams.

8 Q Count VII, Distribution of Methamphetamine, South
9 Carolina Code Annotated Section 44-53-375(B):

10 That Albrie Nate' Bashaw did in Anderson County,
11 on or about March 29, 2011, knowingly distribute, dispense,
12 or deliver methamphetamine ("ice" or "crank"), a controlled
13 substance under provisions of Section 44-53-110, et seq.,
14 Code of Laws South Carolina(1976), as amended, such conduct
15 not having been authorized by law and such activity
16 occurring and/or having significance in more than one County
17 of this State or arising out of or in connection with a
18 crime having significance in more than one County of this
19 State.

20 Please present what evidence and information the
21 State has to establish probable cause for Count VII.

22 A On March 19(sic), 2011, Law Enforcement Officers
23 associated with this case supervised a controlled purchase
24 of methamphetamine from Albrie Nate' Bashaw. This was a
25 Confidential Informant purchase that took place at 226

1 Wadmalaw Drive, Piedmont, South Carolina, which is in
2 Anderson County. The substance purchased field tested
3 positive for methamphetamine and field weight of 4.2 grams.
4 This is actually going to be the same incident as Count V;
5 both parties actively participated in the transaction.

6 Q Agent Barwick, I believe you said March 19th. Was
7 that on March 19th or March 29th?

8 A Oh, 29th, I'm sorry. Excuse me.

9 Let me -- it's -- I think -- I said the 19th on
10 the first and the actual date is the 29th. My apologies.

11 Q Count VIII, Distribution of Methamphetamine, South
12 Carolina Code Annotated Section 44-53-375(B):

13 That Chad Dewayne Moore did in Pickens County, on
14 or about March 17, 2010, knowingly distribute, dispense, or
15 deliver methamphetamine ("ice" or "crank") a controlled
16 substance under provisions of Section 44-53-110, et seq.,
17 Code of Laws South Carolina(1976), as amended, such conduct
18 not having been authorized by law and such activity
19 occurring and/or having significance in more than one County
20 of this State or arising out of or in connection with a
21 crime having significance in more than one County of this
22 State.

23 Please present what evidence and information the
24 State has to establish probable cause for Count VIII.

25 A On March 17, 2010, Law Enforcement Officers associated

1 with this case supervised a controlled purchase of
2 methamphetamine from Chad Dewayne Moore. This was a
3 Confidential Informant purchase that took place at 902 B
4 South Fifth Street in Easley, South Carolina, which is a
5 location within Pickens County. The substance purchased
6 tested positive for methamphetamine in the amount of 3.23
7 grams.

8 Q Count IX, Distribution of Methamphetamine, South
9 Carolina Code Annotated Section 44-53-375(B):

10 That Chad Dewayne Moore did in Pickens County, on
11 or about April 19, 2011, knowingly distribute, dispense, or
12 deliver methamphetamine ("ice" or "crank"), a controlled
13 substance under provisions of Section 44-53-110, et seq.,
14 Code of Laws South Carolina(1976), as amended, such conduct
15 not having been authorized by law and such activity
16 occurring and/or having significance in more than one County
17 of this State or arising out of or in connection with a
18 crime having significance in more than one County of this
19 State.

20 Please present what evidence and information the
21 State has to establish probable cause for Count IX.

22 A April 19, 2011, Law Enforcement Officers associated
23 with this case supervised a controlled purchase of
24 methamphetamine, heroin, and alprazolam from Chad Dewayne
25 Moore. This was a Confidential Informant purchase that took

1 place on East Second Avenue in Easley, South Carolina, a
2 location within Pickens County. The substance purchased
3 tested positive. There were two bags of methamphetamine:
4 one in the amount of .23 grams; one in the amount of .40
5 grams; there were two foils of heroin testing positive in
6 the amount of .01 grams and .02 grams; and there were six
7 pills, which were alprazolam, a Schedule IV Controlled
8 Substance, I believe.

9 Q Count X, Distribution of Methamphetamine, South
10 Carolina Code Annotated Section 44-53-375(B):

11 That Norman Victor Bergholm, IV, did in Greenville
12 County, on or about March 31, 2011, knowingly distribute,
13 dispense, or deliver methamphetamine ("ice" or "crank"), a
14 controlled substance under provisions of Section 44-53-110,
15 et seq., Code of Laws South Carolina(1976), as amended, such
16 conduct not having been authorized by law and such activity
17 occurring and/or having significance in more than one County
18 of this State or arising out of or in connection with a
19 crime having significance in more than one County of this
20 State.

21 Please present what evidence and information the
22 State has to establish probable cause for Count X.

23 A March 31, 2011, Law Enforcement Officers associated
24 with this case supervised a controlled purchase of
25 methamphetamine from Norman Victor Bergholm, IV. This was a

1 Confidential Informant purchase that took place at 9 Darwin
2 Avenue, Greenville, South Carolina. The substance was field
3 tested positive for methamphetamine in the amount of 3.6
4 grams.

5 Q Count XI, ~~Distribution~~ of Methamphetamine, South
6 Carolina Code Annotated Section 44-53-375(B):

7 That Norman Victor Bergholm, IV, did in Pickens
8 County, on or about May 31, 2011, knowingly distribute,
9 dispense, or deliver methamphetamine ("ice" or "crank"), a
10 controlled substance under provisions of Section 44-53-110,
11 et seq., Code of Laws South Carolina (1976), as amended, such
12 conduct not having been authorized by law and such activity
13 occurring and/or having significance in more than one County
14 of this State or arising out of or in connection with a
15 crime having significance in more than one County of this
16 State.

17 Please present what evidence and information the State
18 has to establish probable cause for Count XI.

19 A On May 31, 2011, Law Enforcement Officers associated
20 with this case supervised a controlled purchase of
21 methamphetamine from Norman Victor Bergholm, IV. This was a
22 Confidential Informant purchase that took place at the
23 intersection of Saluda Dam Road and Fleetwood Drive, a
24 location within Pickens County. The substance was field
25 tested by Investigator Ayers, but I do not have a field

1 weight or a drug analysis to refer to at this time.

2 Q Was the field test a positive test?

3 A It was.

4 Q Count XII, Trafficking Methamphetamine 10 - 28 Grams,
5 South Carolina Code Annotated Section 44-53-375(C) (1) :

6 That Gary Jason Griffin did in Greenville County,
7 on or about January 27, 2010, knowingly possess(actually or
8 constructively), deliver, sell, or bring into this State
9 ten(10) grams or more but less than twenty-eight(28) grams
10 of methamphetamine ("ice" or "crank"), a controlled
11 substance under the provisions of Section 44-53-110, et
12 seq., Code of Laws of South Carolina(1976), as amended, such
13 conduct not having been authorized by law and such activity
14 occurring and/or having significance in more than one County
15 of this State.

16 Please present what evidence and information the
17 State has to establish probable cause for Count XII.

18 A On January 27, 2010, Agents with the Bureau of
19 Alcohol, Tobacco, and Firearms, also known as ATF,
20 supervised a controlled purchase of methamphetamine from
21 Gary Jason Griffin. This was an Undercover Officer purchase
22 that took place at 2301 Wade Hampton Boulevard, Greenville,
23 South Carolina. The substance purchased tested positive for
24 methamphetamine in the amount of 13.89 grams.

25 Q Count XIII, Trafficking Methamphetamine 10 - 28 Grams,

1 South Carolina Code Annotated Section 44-53-375(C) (1) :

2 That Gary Jason Griffin did in Greenville County,
3 on or about February 3, 2010, knowingly possess (actually or
4 constructively), deliver, sell, or bring into this State
5 ten (10) grams or more but less than twenty-eight (28) grams
6 of methamphetamine ("ice" or "crank"), a controlled
7 substance under the provisions of Section 44-53-110, et
8 seq., Code of Laws of South Carolina (1976), as amended, such
9 conduct not having been authorized by law and such activity
10 occurring and/or having significance in more than one County
11 of this State.

12 Please present what evidence and information the
13 State has to establish probable cause for Count XIII.

14 A On February 3, 2010, Agents with the Bureau, Alcohol,
15 Tobacco and Firearms, again, ATF, supervised a controlled
16 purchase of methamphetamine from Gary Jason Griffin. This
17 was also an Undercover Officer purchase that took place at
18 2301 Wade Hampton Boulevard, Greenville, South Carolina.
19 The substance purchased tested positive for methamphetamine
20 in the amount of 25.35 grams.

21 Q All right.

22 Now, I'm going to read multiple Counts at one
23 time.

24 Count XIV, Trafficking Methamphetamine 28 - 100
25 Grams, South Carolina Code Annotated Section

1 44-53-375 (C) (2) :

2 That Gary Jason Griffin did in Pickens County, on
3 or about March 10, 2010, knowingly possess (actually or
4 constructively), deliver, sell, or bring into this State
5 twenty-eight (28) grams or more but less than one
6 hundred (100) grams of methamphetamine ("ice" or "crank"), a
7 controlled substance under the provisions of Section
8 44-53-110, et seq., Code of Laws of South Carolina (1976), as
9 amended, such conduct not having been authorized by law and
10 such activity occurring and/or having significance in more
11 than one County of this State.

12 Count XV, Distribution of Methamphetamine, South
13 Carolina Code Annotated Section 44-53-375 (B) :

14 That Gary Jason Griffin did in Pickens County, on
15 or about March 10, 2010, knowingly distribute, dispense, or
16 deliver methamphetamine ("ice" or "crank"), a controlled
17 substance under provisions of Section 44-53-110, et seq.,
18 Code of Laws South Carolina (1976), as amended, such conduct
19 not having been authorized by law and such activity
20 occurring and/or having significance in more than one County
21 of this State or arising out of or in connection with a
22 crime having significance in more than one County of this
23 State.

24 Count XVI, Possession of a Stolen Pistol, South
25 Carolina Code Annotated Section 16-23-30 (C) :

1 That Gary Jason Griffin did in Pickens County, on
2 or about March 10, 2010, knowingly possess, a stolen pistol,
3 knowing that the pistol was stolen or converted under
4 circumstances constituting a crime in violation of Section
5 16-23-0030(C), Code of Laws of South Carolina(1976), as
6 amended.

7 Count XVII, Possession of a Firearm During
8 Commission of or Attempt to Commit a Violent Crime, South
9 Carolina Code Annotated Section 16-23-490:

10 That Gary Jason Griffin did in Pickens County, on
11 or about March 10, 2010, possess or visibly display a
12 firearm during the commission of or attempt to commit a
13 violent crime, to wit: Trafficking Methamphetamine in
14 violation of Section 16-23-490, Code of Laws of South
15 Carolina(1976), as amended.

16 Count XVIII, Unlawful Carrying of a Pistol, South
17 Carolina Code Annotated Section 16-23-20:

18 That Gary Jason Griffin did in Pickens County, on
19 or about March 10, 2010, willfully and unlawfully have in
20 his possession, a deadly weapon, described as follows: A
21 semiautomatic pistol, he not being authorized by law to so
22 possess the said pistol, in violation of Section 16-23-0020,
23 Code of Laws of South Carolina(1976), as amended.

24 If you would, one at a time, please present the
25 probable cause -- the evidence and information the State has

1 to establish probable cause for Counts XIV, XV, XVI, XVII,
2 and XVIII.

3 THE COURT REPORTER: Excuse me, I've got a
4 technical problem.

5 MR. UNDERWOOD: Okay.

6 THE COURT REPORTER: Give me just one second.

7 THE WITNESS: Yes, ma'am.

8 THE COURT REPORTER: I think I'm ready.
9 Thank you.

10 THE WITNESS: Okay.

11 MR. UNDERWOOD: Robbie, where did we leave off?

12 THE COURT REPORTER: He was getting ready to give
13 his answer --

14 MR. UNDERWOOD: So you did get my question?

15 THE COURT REPORTER: Yes, I got the question.

16 THE WITNESS: Okay.

17 On March 10, 2010, Law Enforcement Officers
18 associated in this case were in the purchase or in the
19 process of conducting a controlled purchase of
20 methamphetamine from Christopher Simmons. During this
21 transaction, Gary Jason Griffin and Rachel Elizabeth Eades
22 were en route to the location where this transaction was
23 taking place to deliver methamphetamine to Mr. Simmons.
24 Our Confidential Informant was in the residence.
25 Mr. Simmons left to go into the vehicle to meet with

1 Mr. Griffin and Ms. Eades. Before he went outside, he told
2 our Confidential Informant that Mr. Griffin was going to
3 search him when he got there to make sure he wasn't wearing
4 a wire. When Mr. Simmons exited the residence, the
5 Confidential Informant relayed that information to us. At
6 that time, Agents began to move in on the location. When we
7 got to the location, we secured Mr. -- Mr. Griffin,
8 Ms. Eades, and Mr. Simmons all in the vehicle. They were
9 removed from the vehicle and a search incident took place
10 where Agents found -- let's see, methamphetamine, a
11 handgun. This took place at 904 Old Vinland School Road in
12 Easley, South Carolina, a location within Pickens County.
13 The substance located in the vehicle tested positive for
14 methamphetamine, multiple bags in the amount of 1.64 grams,
15 .06 grams, 3.28 grams, 40.03 grams, and .46 grams.

16 Also, Agents located in the vehicle a firearm
17 which turned out to be stolen and it was next to where
18 Mr. Griffin was seated in the vehicle.

19 So as for Count XIV, would be trafficking, which
20 would be the amounts of methamphetamine; Count XV would be
21 the distribution was taking place with the deal with
22 Mr. Simmons; Count XVI would be a stolen firearm in his
23 possession; XVII, would be possession of a firearm during
24 commission of a violent crime, and Count XVIII was unlawful
25 for him to carry that firearm that he had at the time.

1 Q Now, as to the distribution count, did a distribution
2 actually take place?

3 A It was in the process. They -- he was delivering
4 methamphetamine to Mr. Simmons to conclude the sell inside.
5 I think Mr. Simmons may have already sold a small amount to
6 the Confidential Informant and was getting some more from
7 Mr. Griffin to continue the sale.

8 Q Okay.

9 So part of the sale had already taken place --

10 A Uh-huh.

11 Q -- and more was continuing?

12 A More continuing. I don't think he had enough to
13 finish the transaction.

14 Q Is that when Law Enforcement moved in?

15 A Uh-huh. We moved in once he said he was going to
16 search him.

17 Q All right.

18 Count XIX, Trafficking Methamphetamine, 10 - 28
19 Grams, South Carolina Code Annotated Section
20 44-53-375(C)(1):

21 That Gary Jason Griffin did in Pickens County, on
22 or about December 27, 2009, knowingly possess (actually or
23 constructively), deliver, sell, or bring into this State
24 ten (10) grams or more but less than twenty-eight (28) grams
25 of methamphetamine ("ice" or "crank"), a controlled

1 substance under the provisions of Section 44-53-110, et
2 seq., Code of Laws of South Carolina(1976), as amended, such
3 conduct not having been authorized by law and such activity
4 occurring and/or having significance in more than one County
5 of this State.

6 Please present what evidence and information the State
7 has to establish probable cause for Count XIX.

8 A On December 27, 2009, Members of the Pickens County
9 Sheriff's Office Uniform Patrol attempted a traffic stop on
10 a vehicle driven by Gary Jason Griffin. A vehicle chase
11 ensued where Mr. Griffin, accompanied by Mr. Simmons,
12 attempted to elude Officers where he led a chase all the way
13 in from Pickens County to Greenville County. He almost got
14 to the Greenville -- to the North Carolina line in
15 Greenville County when they were apprehended.

16 During the arrest, Mr. Simmons -- correction,
17 Mr. Griffin was found to be in possession of a small amount
18 of marijuana, which he was arrested. At that time, the
19 Officers also noticed a quantity of crystal substance on the
20 ground, looked like it had been removed from the car or
21 thrown, and it was -- tested positive for methamphetamine
22 and 20.64 grams.

23 Q Count XX, Distribution of Methamphetamine, South
24 Carolina Code Annotated Section 44-53-375(B) :

25 That Christopher Michael Simmons did in Pickens

1 County, on or about March 10, 2010, knowingly distribute,
2 dispense, or deliver methamphetamine ("ice" or "crank"), a
3 controlled substance under provisions of Section 44-53-110,
4 et seq., Code of Laws South Carolina(1976), as amended, such
5 conduct not having been authorized by law and such activity
6 occurring and/or having significance in more than one County
7 of this State or arising out of or in connection with a
8 crime having significance in more than one County of this
9 State.

10 Please present what evidence and information the State
11 has to establish probable cause for Count XX.

12 A Count XX is going to stem from the same incident on
13 March 10, 2010, with Mr. Griffin, as we've already outlined
14 the facts in that Agents -- Officers associated with this
15 case were in the process of supervising a controlled
16 purchase of methamphetamine from Christopher Simmons; and
17 during that transaction, Gary Jason Griffin and Rachel Eades
18 arrived at the location, which was 904 Old Vinland School
19 Road in Easley, South Carolina, a location within Pickens to
20 deliver more methamphetamine to Mr. Simmons during this
21 transaction. Mr. Simmons had made quote that Mr.Griffin had
22 told him on the phone he was going to search the CI when he
23 got there. When Mr. Simmons exited the residence and got to
24 the vehicle with Mr. Griffin and Miss Eades, the
25 Confidential Informant relayed that information to us and

1 he, at that time, left out the back door and that's when
2 Officers moved in.

3 Q All right.

4 And also moving on to Count XXI, Trafficking
5 Methamphetamine 28 - 100 Grams, South Carolina Code
6 Annotated Section 44-53-375(C) (2):

7 That Christopher Michael Simmons did in Pickens
8 County, on or about March 10, 2010, knowingly
9 possess(actually or constructively), deliver, sell, or bring
10 into this State twenty-eight(28) grams or more but less than
11 one hundred(100) grams of methamphetamine ("ice" or
12 "crank"), a controlled substance under the provisions of
13 Section 44-53-110, et seq., Code of Laws of South
14 Carolina(1976), as amended, such conduct not having been
15 authorized by law and such activity occurring and/or having
16 significance in more than one County of this State.

17 What evidence and information does the State have
18 to establish probable cause for Count XXI?

19 A Count XXI is also -- arose out of the same incident on
20 March 10, 2010. The trafficking charge in this particular
21 case related to once officers moved in on the location and
22 arrested the subjects. In the vehicle, there was a large
23 quantity of methamphetamine discovered in the vehicle and
24 they were in the process of cutting that out for a
25 transaction. Like I said, there was a total of around 45

1 grams of methamphetamine, which has been lab tested
2 positive.

3 Q Count XXII, Distribution of Methamphetamine, South
4 Carolina Code Annotated Section 44-53-375(B):

5 That Christopher Michael Simmons did in Pickens
6 County, on or about February 8, 2011, knowingly distribute,
7 dispense, or deliver methamphetamine ("ice" or "crank"), a
8 controlled substance under provisions of Section 44-53-110,
9 et seq., Code of Laws South Carolina(1976), as amended, such
10 conducted not having been authorized by law and such
11 activity occurring and/or having significance in more than
12 one County of this State or arising out of or in connection
13 with a crime having significance in more than one County of
14 this State.

15 Please present what evidence and information the
16 State has to establish probable cause for Count XXII.

17 A On February 8, 2011, Law Enforcement Officers
18 associated with this case supervised a controlled purchase
19 of methamphetamine from Christopher Michael Simmons. This
20 was a Confidential Informant purchase that took place at 904
21 Old Vinland School Road, Easley, South Carolina, a location
22 within Pickens County. The substance purchased was lab
23 tested positive for methamphetamine in the amount of 6.6
24 grams.

25 Q And Count XXIII, Distribution of Methamphetamine,

1 South Carolina Code Annotated Section 44-53-375(B):

2 That Christopher Michael Simmons did in Pickens
3 County, on or about February 8, 2011, knowingly distribute,
4 dispense, or deliver methamphetamine ("ice" or "crank"), a
5 controlled substance under provisions of Section 44-53-110,
6 et seq., Code of Laws South Carolina(1976), as amended, such
7 conduct not having been authorized by law and such activity
8 occurring and/or having significance in more than one County
9 of this State or arising out of or in connection with a
10 crime having significance in more than one County of this
11 State.

12 Please present what evidence and information the
13 State has to establish probable cause for Count XXIII.

14 A February 8, 2011, Agents -- Law Enforcement Officers
15 associated with this case supervised a controlled purchase
16 of methamphetamine from Christopher Michael Simmons. This
17 was a Confidential Informant purchase that took place at 904
18 Old Vinland School Road in Easley, South Carolina, a
19 location within Pickens County. The substance purchased
20 tested positive for methamphetamine in the amount of .3
21 grams. This incident was the same day as Count XXII. It
22 was just two separate purchases.

23 Q And, again, the amount of methamphetamine related to
24 Count XXIII?

25 A Count XXIII is .3 grams.

1 Q Count XXIV: Trafficking Methamphetamine 28 - 100
2 Grams, South Carolina Code Annotated Section
3 44-53-375 (C) (2) :

4 That Rachel Elizabeth Eades did in Pickens County,
5 on or about March 10, 2010, knowingly possess (actually or
6 constructively), deliver, sell, or bring into this State,
7 twenty-eight (28) grams or more but less than one
8 hundred (100) grams of methamphetamine ("ice" or "crank"), a
9 controlled substance under the provisions of Section 44-53-
10 110, et seq., Code of Laws South Carolina (1976), as amended,
11 such conduct not having been authorized by law and such
12 activity occurring and/or having significance in more than
13 one County of this State.

14 Please present what evidence and information the
15 State has to establish probable cause for Count XXIV.

16 A Count XXIV arose also out of the same incident as
17 March 10, 2010. Miss Rachel Eades and Mr. Gary Jason
18 Griffin went to 904 Old Vinland School Road, Easley, South
19 Carolina, to deliver methamphetamine to Mr. Christopher
20 Simmons. During that time while they were all in the
21 vehicle with around 45 grams of methamphetamine, Law
22 Enforcement Officers moved in and pulled the people out of
23 the vehicle and conducted our search from there. Like I
24 said, and it's the same -- the same methamphetamine which
25 has tested positive and is over 40 grams.

1 MR. UNDERWOOD: Ladies and gentlemen, that
2 concludes the counts in this Indictment.

3 Are there any factual questions at this time for
4 Agent Barwick?

5 (No Response.)

6 MR. UNDERWOOD: Seeing that there are no
7 questions, Agent Barwick, you are excused.

8 THE WITNESS: Just to reiterate on the Record, if
9 I did mistake on Count V, March 29, 2011. I'm not sure if I
10 said 19th on that date or not. So I wanted to reassure that
11 Count V is March 29th and Count VII is March 29th as well.

12 MR. UNDERWOOD: And, Agent Barwick, will you still
13 be available if the Grand Jury has any further factual
14 questions?

15 THE WITNESS: Certainly.

16 MR. UNDERWOOD: Thank you.

17 You are excused.

18 THE WITNESS: Thank you.

19 10:59 a.m.

20 (Agent Barwick exits the Grand Jury Room.)

21 MR. UNDERWOOD: All right.

22 Mr. Foreman, at this time, unless there are any
23 questions from the Grand Jury, I think now is probably a
24 good time for you to take a ten-minute break before we
25 formally present these Indictments and charge you on the

1 law.

2 Any there any questions from the Grand Jury before
3 we break?

4 (No Response.)

5 MR. UNDERWOOD: All right.

6 We'll stand at recess for ten-minutes.

7 11:00 a.m.

8 (Mr. Pauling and Mr. Underwood exit the Grand Jury
9 Room.)

10 (A recess transpired from 11:00 a.m. to
11 11:12 a.m.)

12 11:12 a.m.

13 (Mr. Pauling and Mr. Underwood enter the Grand
14 Jury Room.)

15 MR. UNDERWOOD: All right.

16 Mr. Foreman, are all the Grand Jurors back in the
17 Grand Jury Room?

18 THE FOREPERSON: Yes, we are all back.

19 MR. UNDERWOOD: All right.

20 Could you please confirm that Juror Number Seven
21 has been excused from this case and is not present in the
22 Grand Jury Room?

23 THE FOREPERSON: That is correct.

24 MR. UNDERWOOD: And an Alternate has taken her
25 place?

1 THE FOREPERSON: Yes.

2 MR. UNDERWOOD: So, therefore, we do have a
3 quorum?

4 THE FOREPERSON: We have a quorum.

5 MR. UNDERWOOD: All right.

6 Ladies and Gentlemen, we are about to present to
7 you two Superseding Indictments.

8 Now these Indictments are to be treated as new
9 Indictments. You may recall that the original Indictments
10 were presented and returned by you on November 8, 2011. You
11 are to treat these new Superseding Indictments as entirely
12 new Indictments. Changes have been made, additional charges
13 or corrections appear. You are not to give any weight or
14 deference to these Indictments solely because of the fact
15 you have seen prior charges before in an original
16 Indictment. Treat each of these Superseding Indictments as
17 new Indictments as if you were seeing them for the first
18 time.

19 Also, I would remind you that it only takes twelve
20 Grand Jurors to decide a true bill and that does not need to
21 be unanimous. Some of you can disagree as long as twelve
22 people agree to true bill. If less than twelve of you
23 agree to true bill an Indictment, then it is a no bill;
24 however, I would also remind you that Agent Barwick is still
25 available if you have any factual questions after your legal

ROBBIE KOON DeFRESE, COURT REPORTER

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1 instructions and myself and Mr. Pauling will also be
2 available if you have any legal questions.

3 In addition to that, all the Transcripts from this
4 case and I'll list them out for you now will be left here in
5 the room for your review should you desire to do so.

6 There are Transcripts for Agent Ashley Asbill on
7 -- on January 13, 2011; Investigator Chad Ayers on February
8 15, 2011; Tonya Smith, February 15, 2011; Gary Jason
9 Griffin, February 15, 2011; David Norris, April 12, 2011;
10 Kimberly Rushton, April 12, 2011; Autumn Scarberry, April
11 12, 2011; Ashley Asbill, again, on July 12th -- on July 12,
12 2011; Albrie Nate' Bashaw on July 12, 2011; Charles Javin
13 Adams on July 12, 2011; Norman Victor Bergholm, IV,
14 testifying on July 13, 2011; Amy Brock on November 14, 2011
15 -- excuse me, September 14, 2011; Larry Gambrell on October
16 11, 2011; Chad Ayers on October 11, 2011; Wendy Lollis on
17 October 11, 2011; and two Transcripts from Chad Ayers on
18 November 8, 2011.

19 I would encourage, if you have any questions, feel
20 free to review any of those Transcripts at your leisure.
21 Again, they will be left in the Grand Jury Room and made
22 available to you.

23 Also, you have heard testimony during this
24 investigation that some of the Defendants have been arrested
25 and incarcerated or involved with other criminal acts. Do

1 not consider this information in your deliberations. It's
2 only appropriate for you to consider whether or not probable
3 cause exist as to the specific allegations set out in these
4 Indictments.

5 Now, Mr. Foreman, I would ask -- I know that it
6 was just last Term when you were charged on the same law
7 involving most of these charges pertaining to trafficking
8 and conspiracy, distribution, possession with intent to
9 distribute, as well as the weapons charges.

10 Does the Grand Jury desire to be recharged on
11 those laws or only on the new offenses?

12 THE FOREPERSON: Just the new offenses.

13 MR. UNDERWOOD: Just the new offenses, Mr. Foreman,
14 is that correct?

15 THE FOREPERSON: New will be fine.

16 MR. UNDERWOOD: All right.

17 New offense appearing in Indictment 2011-GS-47-06
18 are two Counts of exposing a child to methamphetamine.

19 Now, as far as exposing a child to
20 methamphetamine:

21 It is unlawful for a person who is eighteen years
22 of age or older to:

23 Either directly or by extracting from natural
24 substances, or independently by means of a chemical process,
25 or both, unlawfully manufacture amphetamine, its salts,

1 isomers, or salts of isomers, or methamphetamine, its salts,
2 isomers, or salts of its isomers in the presence of a minor
3 child; or

4 To knowingly permit a child to be in an
5 environment where a person is selling, offering for sale, or
6 having in such person's possession with intent to sell,
7 deliver, distribute, prescribe, administer, dispense,
8 manufacture, or attempt to manufacture amphetamine or
9 methamphetamine; or

10 To knowing permit a child to be in an environment
11 where drug paraphernalia or volatile, toxic, or flammable
12 chemicals are stored for the purpose of manufacturing or
13 attempting to manufacture amphetamine or methamphetamine.

14 Do any Members of the Grand Jury have any question
15 about that new -- the law on that new charge?

16 (No Response.)

17 MR. UNDERWOOD: Seeing that there are no
18 questions, Ladies and Gentlemen, the State Grand Jury, in a
19 moment, Mr. Pauling, the Court Reporter, and I are going to
20 leave you to deliberate on the Indictments you've just been
21 presented. I ask that you review the testimony presented to
22 you, both today and previously, if you need to.

23 Again, the Transcripts will remain available to
24 you and I will remind you that you are to deliberate
25 regarding whether there is probable cause to believe the

1 Defendants committed the specific acts alleged in these
2 proposed Superseding Indictments.

3 If you have any questions concerning this case,
4 whether they be factual or legal questions, please call us
5 in before you make any decisions and we will be happy to
6 address your questions. If you need additional information
7 or investigation to determine if there is probable cause,
8 please let us know prior to voting on that Indictment.

9 That being said, please do not begin your
10 deliberations until Mr. Pauling, the Court Reporter, and I
11 have left the room; and when you have finished with your
12 deliberations, just please knock on the door and let us
13 know.

14 11:21 a.m.

15 (Mr. Pauling, Mr. Underwood, and the Court
16 Reporter exit the Grand Jury Room.)

17 (Grand Jury deliberations transpired from
18 11:21 a.m. to 11:40 a.m.)

19 11:40 a.m.

20 (Mr. Pauling and Mr. Underwood enter the Grand
21 Jury Room.)

22 MR. PAULING: Mr. Foreman, it's my understanding
23 you have concluded deliberations, is that correct, sir?

24 THE FOREPERSON: That's correct.

25 MR. PAULING: Okay.

1 There's been a little bit of a schedule change,
2 but, at this time, you will be excused for lunch and ask
3 that you return at 1:30.

4 THE FOREPERSON: One-thirty.

5 MR. PAULING: Be back here at 1:30 and then we
6 will resume with other cases that will be presented today.

7 Thank you.

8 11:41 a.m.

9 (Mr. Pauling and Mr. Underwood exit the Grand Jury
10 Room.)

11 (A lunch recess transpired from 11:41 a.m. to
12 1:30 p.m.)

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1 CERTIFICATE OF REPORTER

2
3 I, Robbie Koon DeFreese, Court Reporter and Notary
4 Public for the State of South Carolina at large, do hereby
5 certify:

6 That the foregoing testimony/dialogue was taken
7 before me on the date and at the time and location stated on
8 page 1 of this transcript; and that the foregoing transcript
9 of that testimony/dialogue is a true, accurate, and complete
10 record to the best of my ability.

11 I further certify that I am neither related to nor
12 counsel for, nor employed by any party to the investigation,
13 nor am I financially interested in the investigation.

14 Witness my hand, I have hereunto affixed my
15 official seal this 28th day of December, 2011, at Little
16 Mountain, Richland County, South Carolina.

17
18
19 _____
20 Robbie Koon DeFreese
21 Court Reporter
22 Notary Public
23 State of South Carolina at Large
24 My Commission expires:
25 March 7, 2015

ROBBIE KO⁶⁸⁶EFREESE, COURT REPORTER

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

CASE NO. **2011GS 47 06**

VS.

ORIGINAL FILED

NOV 08 2011

**INDICTMENT FOR
UNLAWFUL DRUGS**

CLYDE BOWEN DAVIS.
NICHOLOUS COSALL DENDY.
AMY ELIZBETH BROCK,
MICHAEL WAYNE ROBINSON,
BRIAN KEITH SEKERCHAK.
JOSHUA ELLIS BYERS.

JAMES R. PARKS
CLERK, STATE GRAND JURY

Trafficking Methamphetamine
(Conspiracy)
S.C. Code Ann. § 44-53-375(C)(2)
(1 Count)

DEFENDANTS.

Distribution of Methamphetamine
S.C. Code Ann. § 44-53-375(B)
(16 Counts)
15 counts, 1 count

Trafficking Methamphetamine
10 - 28 grams
S.C. Code Ann. § 44-53-375(C)(1)
(1 Count)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on November 8, 2011 the State Grand Jurors present upon their oath:

**COUNT I
TRAFFICKING METHAMPHETAMINE
(CONSPIRACY)
S.C. Code Ann. § 44-53-375(C)(2)**

That CLYDE BOWEN DAVIS, NICHOLOUS COSALL DENDY, AMY ELIZABETH BROCK, MICHAEL WAYNE ROBINSON, BRIAN KEITH SEKERCHAK, JOSHUA ELLIS BYERS, and other persons whose names are both known and unknown to the State Grand Jury, did in Greenville County and Pickens County of South Carolina, during the period of time extending from on or about January 1, 2010 until November 8, 2011, conspire to sell, manufacture, deliver, purchase, or bring into this State, twenty-eight (28) grams or more but less than one hundred (100) grams of methamphetamine ("ice" or "crank"), a controlled substance

under provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT II
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That CLYDE BOWEN DAVIS did in Greenville County, on or about September 8, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT III
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That NICHOLOUS COSALL DENDY did in Greenville County, on or about October 26, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT IV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That NICHOLOUS COSALL DENDY did in Greenville County, on or about November 2, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT V
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That AMY ELIZABETH BROCK did in Greenville County, on or about August 30, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT VI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That AMY ELIZABETH BROCK did in Greenville County, on or about August 30, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT VII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MICHAEL WAYNE ROBINSON did in Greenville County, on or about February 23, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT VIII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MICHAEL WAYNE ROBINSON did in Greenville County, on or about March 3, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT IX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MICHAEL WAYNE ROBINSON did in Greenville County, on or about July 27, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT X
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MICHAEL WAYNE ROBINSON did in Greenville County, on or about August 17, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Greenville County, on or about June 23, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Greenville County, on or about January ²⁷ 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XIII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Greenville County, on or about March 15, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

with intent to distribute

COUNT XIV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

Pickens 11/2/11

That BRIAN KEITH SEKERCHAK did in Greenville County, on or about June 1, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Greenville County, on or about August 16, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XVI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

P. 11, KENS 2/16/11

That BRIAN KEITH SEKERCHAK did in Greenville County, on or about August 30, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XVII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That JOSHUA ELLIS BYERS did in Greenville County, on or about April 16, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XVIII
TRAFFICKING METHAMPHETAMINE 10 - 28 GRAMS
S.C. Code Ann. § 44-53-375(C)(1)

That JOSHUA ELLIS BYERS did in Greenville County, on or about July 30, 2010, knowingly possess (actually or constructively), deliver, sell, or bring into this State, ten (10) grams or more but less than twenty-eight (28) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

Against the peace and dignity of the State and contrary to the statute in such case made and provided.

A True Bill

Michael E. Samuels
FOREMAN

Alan Wilson
ALAN WILSON
ATTORNEY GENERAL

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

CASE NO. 2011-GS-47-06

VS.

ORIGINAL FILED

DEC 31 3 2011

**SUPERSEDING
INDICTMENT FOR
UNLAWFUL DRUGS**

CLYDE BOWEN DAVIS,
NICHOLOUS COSALL DENDY,
AMY ELIZBETH BROCK,
MICHAEL WAYNE ROBINSON,
BRIAN KEITH SEKERCHAK,
JOSHUA ELLIS BYERS,

JAMES R. PARKS
CLERK, STATE GRAND JURY

DEFENDANTS.

**Trafficking Methamphetamine
(Conspiracy)
S.C. Code Ann. § 44-53-375(C)(3)
(1 Count)**

Distribution of Methamphetamine
S.C. Code Ann. § 44-53-375(B)
(15 Counts)

Exposing a Child to
Methamphetamine
S.C. Code Ann. § 44-53-378
(2 Counts)

Possession With Intent to Distribute
Methamphetamine
S.C. Code Ann. § 44-53-375(B)
(1 Count)

Trafficking Methamphetamine
10 - 28 grams
S.C. Code Ann. § 44-53-375(C)(1)
(1 Count)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on December 13, 2011 the State Grand Jurors present upon their oath:

COUNT I
TRAFFICKING METHAMPHETAMINE
(CONSPIRACY)
S.C. Code Ann. § 44-53-375(C)(3)

That CLYDE BOWEN DAVIS, NICHOLOUS COSALL DENDY, AMY ELIZABETH BROCK, MICHAEL WAYNE ROBINSON, BRIAN KEITH SEKERCHAK, JOSHUA ELLIS BYERS, and other persons whose names are both known and unknown to the State Grand Jury, did in Greenville County and Pickens County of South Carolina, during the period of time extending from on or about January 1, 2010 until November 8, 2011, conspire to sell, manufacture, deliver, purchase, or bring into this State, one hundred (100) grams or more but less than two hundred (200) grams of methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT II
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That CLYDE BOWEN DAVIS did in Greenville County, on or about September 8, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT III
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That NICHOLOUS COSALL DENDY did in Greenville County, on or about October 26, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT IV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That NICHOLOUS COSALL DENDY did in Greenville County, on or about November 2, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT V
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That AMY ELIZABETH BROCK did in Greenville County, on or about August 30, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT VI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That AMY ELIZABETH BROCK did in Greenville County, on or about August 30, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT VII
EXPOSING A CHILD TO METHAMPHETAMINE
S.C. Code Ann. § 44-53-378

That AMY ELIZABETH BROCK did in Greenville County on or about September 6, 2011 knowingly permit a child to be in an environment where a person was selling, offering for sale, or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture, or attempt to manufacture methamphetamine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State

COUNT VIII
EXPOSING A CHILD TO METHAMPHETAMINE
S.C. Code Ann. § 44-53-378

That AMY ELIZABETH BROCK did in Greenville County on or about September 6, 2011 knowingly permit a child to be in an environment where a person was selling, offering for sale, or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture, or attempt to manufacture methamphetamine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT IX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MICHAEL WAYNE ROBINSON did in Greenville County, on or about February 23, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT X
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MICHAEL WAYNE ROBINSON did in Greenville County, on or about March 3, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MICHAEL WAYNE ROBINSON did in Greenville County, on or about July 27, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That MICHAEL WAYNE ROBINSON did in Greenville County, on or about August 17, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XIII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Greenville County, on or about June 23, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XIV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Greenville County, on or about January 27, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Pickens County, on or about March 15, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XVI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Pickens County, on or about June 1, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XVII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Greenville County, on or about August 16, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XVIII
POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That BRIAN KEITH SEKERCHAK did in Pickens County, on or about August 30, 2011, knowingly manufacture, distribute, dispense, deliver, purchase or aid, abet or conspire to manufacture, distribute, dispense, deliver, or purchase or possess with intent to manufacture, distribute, dispense or deliver a quantity of methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XIX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That JOSHUA ELLIS BYERS did in Greenville County, on or about April 16, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XX
TRAFFICKING METHAMPHETAMINE 10 - 28 GRAMS
S.C. Code Ann. § 44-53-375(C)(1)

That JOSHUA ELLIS BYERS did in Greenville County, on or about July 30, 2010, knowingly possess (actually or constructively), deliver, sell, or bring into this State, ten (10) grams or more but less than twenty-eight (28) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

Against the peace and dignity of the State and contrary to the statute in such case made and provided.

A True Bill

Michael E. Farrell
FOREMAN

Alan Wilson
ALAN WILSON
ATTORNEY GENERAL



3 YEAR DRIVER RECORD



Customer No: 22963204		Driver License No: 7608132	
Name: DAVIS, CLYDE BOWEN			
Address: 110 DOBBS ST			
City: GREENVILLE	State: SC	Zip: 296053928	
County: GREENVILLE	Sex: M	Driver Training: N	
DOB: 08/24/1977			
Status - DL: NO SUSPENSION		CDL: NO DISQUALIFICATION	

License Information

Type	Class	Function	Issued	Expires	First Issued	Restrictions	Endorsements
Current							
DL	D	Reissue	07/13/2004	08/24/2014	10/19/1995	N	N
BP	M	Renewal	01/21/1999	01/21/2000	01/21/1999	N	N
Prior							
DL	D	Renewal	07/13/2004	08/24/2014	10/19/1995	N	N
DL	D	Reissue	07/13/2004	08/24/2014	10/19/1995	N	N
DL	D	Renewal	09/04/2003	08/24/2008	10/19/1995	N	N
DL	D	Renewal	03/04/1998	08/24/2003	10/19/1995	N	N
DL	D	Duplicate	01/21/1999	08/24/2003	10/19/1995	N	N
DL	D	Modify	02/12/2003	08/24/2003	10/19/1995	N	N

Point Summary

Total Current Points: 5
Driver Credit: 4
Adjusted Current Points: 1

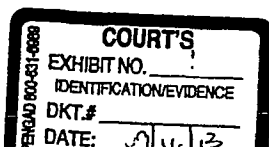
VIOL: 421 - Speeding 10-mph or less
Violation: 08/13/2009 **Conviction:** 01/06/2010
ACD: S51 Conviction Loc Ref:
Conviction State: GA

Ticket#: 78737
Recd: 01/17/2010 **Post:** 01/27/2010
Conviction Reference:
Court Type: COC
Violation Points: 2 **Current Points:** 1

9/13/2010 2:31:42 PM

Document obtained from DMV web site:
www.scdmvtonline.com

Page 1 of 2



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Latitia H. Verdin, Circuit Court Judge

C.A. No.: 2013-002207

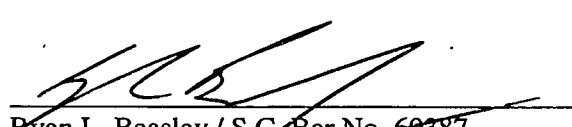
The State of South Carolina Respondent

v.

Clyde Bowen Davis Appellant

Certificate of Counsel

In accordance with Rule 210, *South Carolina Appellate Court Rules*, the undersigned, as counsel for Appellant, certifies that this Record on Appeal contains all material proposed by the Appellant and the Respondent to be included and not any other material.



Ryan L. Beasley / S.C. Bar No. 60387
RYAN L. BEASLEY, PA
650 East Washington Street
Greenville, South Carolina 29601
(864) 679-7777
rlb@ryanbeasleylaw.com

This 26th day of June, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

Trial Court Case No.: 2011-GS-47-06

Appellate Case No.: 2013-002207

THE STATE,

Respondent,

vs.

CLYDE BOWEN DAVIS,

Appellant.

SUPPLEMENTAL RECORD

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ATTORNEYS FOR RESPONDENT

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STATE GRAND JURY OF SOUTH CAROLINA

State of South Carolina,

v.

Clyde Bowen Davis,

Defendant.

) Case No.: 2011-GS-47-06
)
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)

**DEFENDANT'S MOTION FOR
VERDICT IN ARREST OF JUDGMENT
AND MOTION FOR A NEW TRIAL**

NOW COMES the defendant, Clyde Bowen Davis, by and through his attorney Ryan L. Beasley, and hereby moves this Honorable Court, pursuant to Rules 4 and 29 of the South Carolina Rules of Criminal Procedure, for a verdict in arrest of judgment and an entry of judgment of acquittal or, in the alternative, for a new trial. For the numerous reasons explained below, the Court should grant the defendant's Motion.

Subject matter jurisdiction of a State Grand Jury is limited to cases enumerated in Section 14-7-1630 of the South Carolina Code. S.C. Code Ann. § 14-7-1630. For jurisdiction to vest in the State Grand Jury for a crime involving narcotics, the crime must be "of a multi-county nature or has transpired or is transpiring or has significance in more than one county of this State." S.C. Code Ann. § 14-7-1630; *see also State v. Wilson*, 315 S.C. 289, 292, 433 S.E.2d 864, 866 (1993) ("multi-county impact is necessary to establish jurisdiction of the State Grand Jury"). "[T]he State Grand Jury may properly return an indictment alleging a single-county offense. However, such a charge conveys subject matter jurisdiction **only when the offense has multi-county significance** and the indictment contains this allegation." *Wilson*, 315 S.C. at 292 (bold added).

The jurisdiction over the subject matter of a proceeding is fundamental and "depends upon the authority granted by the Constitution and the laws of the state." *State v. Gorie*, 256

S.C. 539, 541, 183 S.E.2d 334, 335 (1971). The lack of subject matter jurisdiction may be raised at any time, even sua sponte by the Court, and cannot be waived. Gorie, 256 S.C. at 541; Town of Hilton Head Island v. Godwin, 370 S.C. 221, 223, 634 S.E.2d 59, 60-61 (Ct. App. 2006). The acts of the Grand Jury with respect to a matter as to which it has no jurisdiction are void. *See Godwin*, 370 S.C. at 223. The Grand Jury must have had subject matter jurisdiction over the crime alleged in Count I for it to validly indict the defendant for this alleged crime. S.C. Code Ann. § 14-7-1630; *see also Wilson*, 315 S.C. at 292. Here, the Grand Jury lacked jurisdiction to charge the crime alleged in Count I of the Superseding Indictment. The Greenville Conspiracy alleged in Count I was limited to Greenville County.

Even further, there was a material variance between the Superseding Indictment and the evidence. Count I of the Superseding Indictment charged a single conspiracy to sell, manufacture, deliver, purchase, or bring into this State methamphetamine between the defendant, Nicholous Dendy, Amy Brock, Michael Robinson, Brian Sekerchak, and Joshua Byers from January 1, 2010 until November 8, 2012. However, the evidence did not show a shared criminal objective between these alleged co-conspirators.

The Court should also grant the defendant's motion because the testimony of SLED Agent Ashley Asbill regarding Terrance Albert's alleged undercover purchase from the defendant violated the defendant's confrontation rights and the Rules of Evidence, and was further irrelevant and unduly prejudicial to the defendant. As a matter of law, and as acknowledged by the State, Terrance Albert's alleged purchase of methamphetamine from the defendant *could not* make Albert a co-conspirator. This is because "one cannot enter into a conspiracy with another who only feigns acquiescence in a crime . . ." State v. Holmes, 277 S.C. 232, 233, 285 S.E.2d 353, 354 (1981) (citing U.S. v. Chase, 372 F.2d 453, 459 (4th Cir. 1967)).

Because Terrance Albert is not a co-conspirator, the defendant's alleged sale of drugs to him *could not* be a substantive crime of the alleged conspiracy. See U.S. v. Jimenez-Recio, 537 U.S. 270, 274-75, 123 S.Ct. 819, 822, 154 L.Ed.2d 744 (2003). Only the *substantive crimes* committed in furtherance of the conspiracy are admissible as circumstantial evidence of the conspiracy. Wilson, 315 S.C. at 294. Evidence regarding Terrance Albert's alleged undercover purchase from the defendant was irrelevant and inadmissible at trial. Rule 402, SCRE.

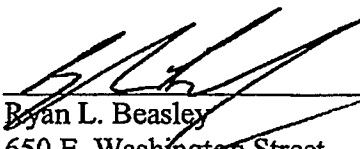
Agent Asbill's testimony also consisted of hearsay and violated the defendant's confrontation rights. "Included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses." State v. Graham, 314 S.C. 282, 285, 444 S.E.2d 525 (1994). Here, Agent Asbill testified regarding Terrance Albert's alleged undercover purchase from the defendant, yet Terrance Albert was not available to be cross-examined regarding this undercover purchase.

Even further, Amy Brock's testimony regarding the one-person "photo lineup" and subsequent in Court identification of the defendant were inadmissible. As stated by the United States Supreme Court, "[t]he vagaries of eyewitness identification are well-known; the annals of criminal law are rife with instances of mistaken identification." U.S. v. Wade, 388 U.S. 218, 228, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967). In fact, "[a] criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification." State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (citing State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000)). "An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification." Id. "It is the likelihood of misidentification which violates a defendant's right to due process . . . Suggestive confrontations

are disapproved because they increase the likelihood of misidentification and unnecessarily suggestive ones are condemned for the further reason that the increased chance of misidentification is gratuitous." Neil v. Biggers, 409 U.S. 188, 198, 93 S.Ct. 375, 4 L.Ed.2d 401 (1972). Here, the single-photograph lineup containing only the photograph of the defendant was unduly suggestive and there was a substantial likelihood of Brock's misidentification. Manson v. Brathwaite, 432 U.S. 98, 109, 97 S.Ct. 2243, 53 L.Ed.2d 140 (parties agreed that that a single-photograph lineup was unduly suggestive); Moore, 343 S.C. at 287 (the trial court erred in finding that a single person show-up was not unduly suggestive); Simmons v. U.S., 390 U.S. 377, 383-84, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968) (discouraging use of a "picture of a single individual who generally resembles the person" the witness observed); U.S. v. Hines, 387 F.3d 690, 693-94 (8th Cir. 2004) (a single-person photo lineup is unduly suggestive). Due process required that Brock's out-of-court identification of the defendant be excluded, and any in-court identification be prohibited.

For these reasons, the Court should grant the defendant's motion for a verdict in arrest of judgment and enter a judgment of acquittal, or, in the alternative, it should grant the defendant a new trial.

Dated this 24th day of September, 2013
Greenville, South Carolina


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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

Trial Court Case No.: 2011-GS-47-06

Appellate Case No.: 2013-002207

THE STATE,

Respondent,

vs.

CLYDE BOWEN DAVIS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Record contains only material proposed to be included by one of the parties and not any other material.

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August 10, 2015

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Clyde Bowen Davis, Appellant.

Appellate Case No. 2013-002207

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge

Opinion No. 5476
Heard December 6, 2016 – Filed March 29, 2017

AFFIRMED

Ryan Lewis Beasley, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson, Assistant
Deputy Attorney General Samuel Creighton Waters,
Assistant Attorney General Joshua Richard Underwood,
and Assistant Attorney General James Clayton Mitchell,
III, all of Columbia, for Respondent.

WILLIAMS, J.: Clyde Bowen Davis appeals his conviction for conspiracy to traffic 100 grams or more but less than 200 grams of methamphetamine, arguing the circuit court erred in (1) refusing to dismiss Count II of the superseding indictment, (2) failing to find the State abused the grand jury process, (3) failing to find the State withheld material, exculpatory evidence, (4) admitting an unduly

suggestive out-of-court identification, and (5) admitting an investigator's testimony that included hearsay from a confidential informant (CI). We affirm.

FACTS/PROCEDURAL HISTORY

From 2009 to 2011, law enforcement officials were involved in "Operation Icehouse," a complex, interagency investigation into the sale of methamphetamine in upstate South Carolina. During the operation, investigators used CIs to make controlled purchases of the drug from suspected dealers, and they soon learned Michael Robinson was selling methamphetamine he had purchased from either Amy Brock or Nicholous "Nick" Dendy.¹

In September or October 2010, Investigator Chad Ayers and another officer with the Greenville County Sheriff's Office met with Brock at her Greenville home. Brock admitted she had been buying methamphetamine from Dendy after meeting him through Robinson. During a typical deal, Brock told the investigators that Dendy would either come inside her home or meet her outside in the driveway. After giving money to him, Brock alleged Dendy would take it to a silver car, which she believed was being driven by Dendy's cousin, and retrieve the methamphetamine for her. Brock stated that, although she never learned his name, she had seen Dendy's cousin in his car when she met Dendy in the driveway to buy methamphetamine.

About a month after their first visit, Investigator Ayers and another officer returned to Brock's home. They showed her a color photograph of Clyde Davis from a copy of his South Carolina Department of Motor Vehicles (DMV) driving record and folded down any identifying information. When Investigator Ayers asked Brock who the man was, she identified him as Dendy's cousin. Then, on or around September 8, 2010, South Carolina Law Enforcement Division (SLED) Agent Brunson Ashley Asbill had a CI complete a controlled purchase of methamphetamine from Davis at Davis's home.

¹ Through controlled purchases by other CIs, investigators also found Brian Sekerchak had been buying methamphetamine from Brock and selling it to others. Additionally, investigators discovered Joshua Byers had sold methamphetamine to Brock three to five times and he once bought an ounce of the drug from Dendy.

On December 13, 2011, the state grand jury returned a superseding indictment against Davis relating to his alleged involvement in the sale of methamphetamine.² Count I accused Davis of conspiracy to traffic 100 grams or more but less than 200 grams of methamphetamine in violation of subsection 44-53-375(C)(3) of the South Carolina Code (Supp. 2016), in Greenville and Pickens counties with Dendy, Brock, Robinson, Sekerchak, and Byers. Count II alleged Davis distributed methamphetamine in Greenville County in violation of subsection 44-53-375(B) of the South Carolina Code (2010) (amended 2016), on or around September 8, 2010.

During pretrial motions, Davis moved to dismiss the superseding indictment, arguing the state grand jury had no subject matter jurisdiction and the State presented no evidence amounting to probable cause on Count II. Additionally, Davis filed a motion to sever Count I from Count II of the indictment and a *Brady v. Maryland*³ motion, alleging the State failed to disclose information relating to the CIs in the investigation. Davis also moved to suppress Brock's out-of-court identification of Davis, arguing the identification process was unduly suggestive.

At the motions hearing, the circuit court denied Davis's motion to dismiss the superseding indictment; however, the State consented to Davis's motion to sever the charges and agreed to proceed only on Count I for conspiracy to traffic methamphetamine. Additionally, the court denied Davis's *Brady* motion. After conducting a *Neil v. Biggers*⁴ hearing, the court also denied Davis's motion to suppress Brock's out-of-court identification of Davis.

The case was called for a jury trial in Greenville County on September 17, 2013. During the two-day trial, each of Davis's alleged co-conspirators—all having pled guilty to various related charges—testified for the State in exchange for a recommendation for a lesser sentence. The State began its "historical case," of what law enforcement coined as the "Greenville Conspiracy," with testimony from two CIs involved in purchases of methamphetamine from Robinson, Sekerchak,

² The state grand jury filed its first indictment on November 8, 2011. Count I of that indictment accused Davis of conspiring to traffic twenty-eight grams or more but less than 100 grams of methamphetamine.

³ 373 U.S. 83 (1963).

⁴ 409 U.S. 188 (1972).

Byers, and Dendy, and from a cooperating defendant in a separate trafficking conspiracy who had bought methamphetamine from Sekerchak and Brock.

Byers, one of Brock's suppliers, testified he met Davis one time through his cousin's boyfriend in a vehicle at a local car wash. While Byers sat in the back seat, he claimed Davis gave approximately one gram of methamphetamine to his cousin's boyfriend in the driver seat. Byers said his cousin's boyfriend then passed the drugs back to him, which he later resold.

Sekerchak testified he and his brother purchased methamphetamine from Brock and Dendy on numerous occasions, which they would resell. Sekerchak stated he waited in the car while his brother went into Brock's house to give them the money. According to Sekerchak, Davis drove up in either a black Honda or silver Dodge Charger and Dendy came outside to exchange the money for methamphetamine. Sekerchak stated Dendy and Brock sometimes mentioned they had to wait on Davis to deliver the drugs.

Robinson testified he purchased an "eight-ball," or 3.5 grams, of methamphetamine a week from Dendy, which he resold to others for about a year. During that period, Robinson also said he bought about 1.5 grams of methamphetamine from Brock every week. Robinson maintained he never met Davis.

Brock testified she bought between a "half-eighth" to a quarter ounce, or approximately 7.0 grams, of methamphetamine up to several times a week from Dendy and his cousin from spring 2010 to October or November 2010. She stated she was able to see the person in a silver car on numerous occasions because roughly half of the deals occurred in her driveway during daylight hours. When the State showed Davis's DMV driving record to Brock in the courtroom, she reaffirmed her prior identification of Davis as Dendy's supplier.

Dendy testified he sold between 3.0 and 3.5 grams of methamphetamine, which he got from Davis, to Robinson on at least fifteen occasions. Dendy stated he first met Brock during a visit to Robinson's home. After they developed a buyer-seller relationship, Dendy stated he would go to Brock's house to collect her money and then call Davis to bring the amount of methamphetamine that Brock requested. Dendy testified Brock asked for a quarter ounce of the drug nine to ten times and an eight-ball five to six times. When Davis arrived, Dendy said he would go out to meet him and exchange the money for methamphetamine. Dendy confirmed that

Brock would sometimes come outside next to where he and Davis completed the transactions. On cross-examination, Dendy admitted Davis was not his cousin.

Last, the State called Agent Asbill, the SLED investigator who initiated the CI's undercover purchase of methamphetamine from Davis. When the State began to elicit testimony from Agent Asbill about the CI's purchase, Davis made multiple objections that such testimony was inadmissible hearsay from a nontestifying witness and violated his confrontation rights. The circuit court overruled the objections, stating Agent Asbill could testify about his personal observations and experiences during the controlled purchase.

During his testimony, Agent Asbill did not reveal the CI's identity to the jury. Agent Asbill testified that he and another officer searched the CI, placed a transmitting device on him, and gave him documented government money. Thereafter, Agent Asbill stated that, while he was parked at a nearby school, the CI went to Davis's residence on Dobb Street, spent a period of time there, and received a phone call. Agent Asbill also noted he saw a silver Chrysler 300 in the area, but he did not see who was driving the car. The State then requested a bench conference outside the jury's presence to discuss its desire to ask Agent Asbill if he could identify the voices in the CI's wired recording of the controlled purchase. After Agent Asbill informed the circuit court that he could not determine who was speaking in the recording, the State conceded the issue. Once the jury returned, the following colloquy took place:

The State: We were discussing a controlled purchase against the target Clyde Davis. What were the results of that controlled purchase?

Agent Asbill: The confidential informant returned to us with a purchase of methamphetamine.

The State: And how much methamphetamine was it?

Agent Asbill: Approximately 3.5 grams.

The State: And was that paid for with documented government funds?

Agent Asbill: That is correct.

The State: Is that the only controlled purchase attempted against Clyde Davis?

Agent Asbill: Yes, sir. The only one I'm aware of.

At the conclusion of trial, the jury found Davis guilty of conspiracy to traffic 100 grams or more but less than 200 grams of methamphetamine. The circuit court sentenced Davis to a mandatory twenty-five years' imprisonment and issued a \$50,000 fine. Davis subsequently filed a "motion for verdict in arrest of judgment" and a motion for a new trial. In his motions, Davis argued Agent Asbill's testimony regarding the CI's alleged undercover purchase was inadmissible hearsay and violated his confrontation rights. Davis also contended Brock's out-of-court identification was a result of unduly suggestive police tactics, and thus, was inadmissible. The circuit court denied both motions by written order on October 3, 2013. This appeal followed.

ISSUES ON APPEAL

- I. Did the circuit court err in refusing to dismiss Count II of the superseding indictment?
- II. Did the circuit court err in failing to find the State abused the state grand jury process?
- III. Did the circuit court err in failing to find the State violated Davis's due process rights under *Brady*?
- IV. Did the circuit court err in admitting Brock's out-of-court identification of Davis?
- V. Did the circuit court err in admitting Agent Asbill's testimony concerning the CI's alleged controlled purchase from Davis?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Jenkins*, 412 S.C. 643, 650, 773 S.E.2d 906, 909 (2015). The decision of whether to admit or exclude evidence is within the sound discretion of the circuit court. *State v. Jackson*, 384 S.C. 29, 34, 681 S.E.2d 17, 19 (Ct. App. 2009). Likewise, the determination of whether to admit an eyewitness's identification is at the discretion of the circuit court. *State v. Moore*, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000). This court will not disturb the circuit court's admissibility determinations absent a prejudicial abuse of discretion. *State v. Adkins*, 353 S.C. 312, 326, 577 S.E.2d 460, 468 (Ct. App. 2003). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001).

LAW/ANALYSIS

I. Count II of the Superseding Indictment

Davis first argues the state grand jury lacked subject matter jurisdiction over Count II because the charge for distribution of methamphetamine in Greenville County did not have multi-county significance.⁵

During oral argument, Davis's counsel informed the court that Count II was eventually dismissed after the filing of this appeal. Therefore, we find any issue arising from Count II of the superseding indictment is moot. *See Sloan v. Greenville Cty.*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003) ("[M]oot appeals result when intervening events render a case nonjusticiable. . . . A case becomes moot when judgment, if rendered, will have no practical legal effect upon

⁵ At the outset, the State points out that Davis only served a notice of appeal from the circuit court's order denying his motions for verdict in arrest of judgment and a new trial. Thus, the State contends Issues 1–3 are not preserved for this court's review because Davis did not raise them to the circuit court in his post-trial motions. Upon our review of the case law, we do not believe Davis was required to file a motion for a new trial to preserve arguments previously presented to and passed upon by the circuit court. *See State v. Holliday*, 333 S.C. 332, 339, 509 S.E.2d 280, 283 (Ct. App. 1998) ("A motion for new trial is not necessary to preserve for review on appeal a question which has been fairly and properly raised in the trial court and passed upon there." (quoting *Bowers v. Watkins Carolina Express, Inc.*, 259 S.C. 371, 376, 192 S.E.2d 190, 192 (1972))).

[the] existing controversy." (second alteration in original) (internal citations omitted)).

II. Abuse of the Grand Jury Process

Davis next asserts the circuit court erred in refusing to dismiss the superseding indictment due to several instances of the State's abuse of the grand jury process.

"A grand jury is not a prosecutor's plaything and the awesome power of the State should not be abused but should be used deliberately, not in haste." *State v. Capps*, 276 S.C. 59, 61, 275 S.E.2d 872, 873 (1981). However, "[g]rand jury proceedings are presumed to be regular unless clear evidence indicates otherwise." *State v. Moses*, 390 S.C. 502, 520, 702 S.E.2d 395, 405 (Ct. App. 2010).

In his motion to dismiss the superseding indictment, Davis stated, "Count II should also be dismissed because the State abused the grand jury process by not presenting evidence that would amount to probable cause." Specifically, Davis claimed the State presented no evidence concerning the CI's veracity or reliability in the alleged controlled purchase of methamphetamine.

On appeal, however, Davis maintains the State abused the state grand jury proceedings when it allowed Investigator Ayers to falsely testify that Agent Asbill's CI completed another controlled purchase from Davis at the suggestion of Dendy.⁶ Moreover, Davis contends on appeal that the State had Brock and Investigator Ayers falsely testify before the state grand jury that Brock identified Davis through a "photo line-up"—suggesting a line-up including more than one person—when she was only shown Davis's photograph from his DMV record.

Because Davis argues different issues on appeal from the one presented to the circuit court, we find they are not preserved for our review. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). To the extent Davis again contends on appeal that the State abused the grand jury process by failing to produce sufficient evidence amounting to probable cause on Count II, we find the issue is moot as discussed in Part I, *supra*.

⁶ We address the merits of this claim under *Brady* in Part III, *infra*.

III. Due Process

Davis argues the circuit court erred in failing to dismiss the indictment when the State failed to preserve and turn over material exculpatory evidence in violation of his due process rights. We disagree.

"The *Brady* disclosure rule requires the prosecution to provide the defendant with any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment." *State v. Anderson*, 407 S.C. 278, 286, 754 S.E.2d 905, 909 (Ct. App. 2014). "[A]n individual asserting a *Brady* violation must demonstrate the evidence was (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) suppressed by the State; and (4) material to the accused's guilt or innocence, or was impeaching." *Id.* at 287, 754 S.E.2d at 909. "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *State v. Von Dohlen*, 322 S.C. 234, 241, 471 S.E.2d 689, 693 (1996).

At the pretrial motions hearing, Davis claimed the State failed to turn over requested discovery pursuant to Rule 5, SCRCrimP, regarding an alleged drug transaction between Agent Asbill's CI and Dendy. Investigator Ayers testified to the state grand jury that law enforcement sent the CI to purchase methamphetamine from Dendy who, in turn, sent the CI to purchase the drug from his supplier, Davis. Therefore, Davis argued evidence concerning this purchase was exculpatory because it showed the CI never completed a transaction with Davis and that no conspiracy agreement existed between the alleged co-conspirators.

Upon our review of the record, we find Davis failed to establish that his due process rights were violated under *Brady*. We first note the State claimed it possessed no discovery to offer to the defense on this alleged transaction because it was aborted and never occurred. In addition, the State maintained the CI only completed one controlled purchase from Davis, which is the underlying crime for Count II of the indictment for distribution of methamphetamine. Therefore, even if evidence that a transaction between the CI and Dendy did not occur is favorable to the defense, we find Davis has failed to show it was in the State's possession or somehow suppressed.

Furthermore, the State did not call the CI as a witness, and it did not discuss this alleged transaction at trial. We fail to see how the fact that Davis did not sell methamphetamine to the CI on this particular occasion would have led to a different result regarding his guilt or innocence on his conspiracy to traffic methamphetamine charge with his five alleged co-conspirators. *See Von Dohlen*, 322 S.C. at 241, 471 S.E.2d at 693. Therefore, we affirm the circuit court's denial of Davis's *Brady* motion.

IV. Brock's Identification

Davis contends the circuit court erred in failing to suppress Brock's out-of-court identification of him to investigators. We disagree.

"A criminal defendant may be deprived of due process of law by an identification procedure [that] is unnecessarily suggestive and conducive to irreparable mistaken identification." *State v. Traylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). "An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification." *Id.* "Single person show-ups are particularly disfavored in the law." *Moore*, 343 S.C. at 287, 540 S.E.2d at 448.

In *Neil v. Biggers*, the United States Supreme Court set forth a two-pronged test to determine whether due process requires the suppression of an eyewitness identification. 409 U.S. at 198–200. To ensure due process, *Neil v. Biggers* requires courts to assess, on a case-by-case basis, the following: (1) whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, (2) whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012).

Under the totality of the circumstances, the factors to be considered in assessing the reliability of an otherwise unduly suggestive identification procedure are: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation.

Id.

In the instant case, following its in camera hearing, the circuit court seemed to find the investigators' strategy of showing only one photograph of Davis to Brock was unduly suggestive and "concerning" because Davis "was already known to law enforcement" prior to the identification. Moving to the second prong of the *Neil v. Biggers* test, the court found that, under the totality of the circumstances, Brock's out-of-court identification was reliable enough to submit to the jury. In its analysis, the court found Brock identified Davis with a high level of certainty. Moreover, the court noted Brock had numerous opportunities to see Davis, and at least part of the time, she observed him at a very close range, albeit through a car windshield. The court also explained a great deal of time had not passed between Brock's identification and the last time she had seen Davis.

On appeal, Davis argues the court abused its discretion in its analysis of the reliability factors. First, Davis asserts Brock never spoke to Dendy's supplier or observed him for a considerable period of time. Second, Davis contends Brock's degree of attention was insufficient because she was merely a casual observer and admitted to being under the influence of methamphetamine during the drug deals. Third, Davis points out Brock gave no prior description of Dendy's supplier to authorities. Fourth, Davis argues Brock never revealed her level of certainty to authorities after making the identification. Fifth, Davis claims the length of time of a month or two between when investigators first contacted her and the identification was substantial.⁷

While meritorious disagreement exists on the *Neil v. Biggers* reliability factors, we cannot say the circuit court committed a prejudicial abuse of discretion in

⁷ While concurring with the circuit court's analysis, the State concedes Brock never provided a physical description of Dendy's cousin before the single photograph identification but claims the procedure was a "confirmation identification" accepted by our supreme court in *Liverman*. See 398 S.C. at 141–42, 727 S.E.2d at 427–28 (stating "[t]he suggestive nature of a show-up is mitigated by the witness's prior knowledge of the accused" and concurring with other jurisdictions that consider the procedure as "merely confirmatory"). Regarding the second factor, the State claims Brock had a high level of attention because she was a drug user who had a vested interest in knowing who was providing her with methamphetamine.

admitting Brock's prior identification of Davis because its decision was supported by the evidence. Brock testified she saw Dendy's cousin on multiple occasions with the car window down during daylight hours. Brock's level of certainty was high because she directly identified the man in the photograph as Dendy's cousin when investigators asked who it depicted. Indeed, the investigators did not suggest a response by asking Brock if it was Dendy's cousin. Moreover, given that Brock testified the five-to-ten minute transactions took place several times a week over the span of several months and she saw Dendy's cousin on about half of those occasions, the length of time between her encounters with the suspect and her identification to the investigators was not so prolonged to be unreliable. Therefore, we affirm the circuit court's decision to admit the identification.

V. Agent Asbill's Testimony

Davis argues Agent Asbill's testimony that the CI completed a controlled purchase at his residence was inadmissible hearsay and violated his confrontation rights. We agree.

"Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. As a general rule, hearsay is inadmissible unless an exception applies. Rule 802, SCRE; *see also* Rules 803 and 804, SCRE (providing exceptions to the hearsay rule).

In the instant case, Agent Asbill testified his CI went to Davis's residence, spent some time there, received a phone call, and returned to him with approximately 3.5 grams of methamphetamine. Agent Asbill also said the CI paid for the drugs with government funds. When the State questioned whether this was the only controlled purchase attempted against Davis, he replied, "Yes, sir."

During his testimony, however, Agent Asbill stated he was parked at a nearby school during the alleged transaction between the CI and Davis. Moreover, law enforcement had no visual surveillance of Davis's residence, and Agent Asbill told the circuit court he could not identify the voices in the CI's wired recording. Consequently, Agent Asbill had no personal knowledge concerning the CI's activities during the purchase of methamphetamine. As a result, Agent Asbill was allowed to relay to the jury the CI's multiple implied statements to him upon return for debriefing that he had, in fact, gone to Davis's residence and purchased

methamphetamine.⁸ Therefore, we find the circuit court erred in admitting the portion of Agent Asbill's testimony in which he had no personal knowledge of the CI's activities during the controlled purchase because it was inadmissible hearsay without an exception under our rules of evidence. *See* Rule 802, SCRE.

Furthermore, we find the admission of this portion of Agent Asbill's testimony violated Davis's constitutional right to confront witnesses against him. The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. CONST. amend. VI. This bedrock procedural guarantee is applicable to the states under the Fourteenth Amendment. *Pointer v. Texas*, 380 U.S. 400, 406 (1965).

The United States Supreme Court has held the Confrontation Clause prohibits the admission of out-of-court testimonial statements of a witness unless the witness is unavailable to testify and the defendant had a prior opportunity to cross-examine the witness. *Crawford v. Washington*, 541 U.S. 36, 68 (2004). The *Crawford* Court stated the "core class of 'testimonial' statements" includes: (1) ex parte in-court testimony or its functional equivalent, (2) extrajudicial statements contained in formalized testimonial materials, (3) statements made under circumstances that would lead an objective witness to reasonably believe that the statement would be available for use at a later trial, and (4) statements taken by police officers in the course of interrogations. *State v. Ladner*, 373 S.C. 103, 112, 644 S.E.2d 684, 688–89 (2007) (citing *Crawford*, 541 U.S. at 51–52). However, the Court noted the Confrontation Clause "does not bar the use of testimonial statements for purposes

⁸ Nevertheless, the State argues Agent Asbill never repeated any statements from the CI to the jury and that the facts of this case are similar to *State v. Sachs*, 264 S.C. 541, 216 S.E.2d 501 (1975). In *Sachs*, our supreme court found officers' testimony that the defendant's sister accompanied them to a courthouse, typed affidavits for search warrants, and delivered a package containing drugs to the defendant's home was not inadmissible hearsay. *Id.* at 567–68, 216 S.E.2d at 515. The court reasoned the testimony was based upon the officers' personal observations of the defendant's sister and no conversations between them were related to the jury. *Id.* In the instant case, however, Agent Asbill testified as to the CI's activities at Davis's residence that he did not personally observe from his car parked at a nearby school. Therefore, the jury could only infer from Agent Asbill's testimony that the CI communicated to him, in some form, that he successfully purchased methamphetamine at Davis's residence.

other than establishing the truth of the matter asserted." *Crawford*, 541 U.S. at 59 n.9. Accordingly, "an out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken." *State v. Brown*, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994) (citing *United States v. Love*, 767 F.2d 1052, 1063 (4th Cir. 1985)).

We find the CI's implied statements to investigators that he completed a drug deal at Davis's residence were testimonial because an objective witness would reasonably believe the government would use such statements in a later trial—as they did in this case. *See Crawford*, 541 U.S. at 51–52; *see also, e.g., United States v. Cromer*, 389 F.3d 662, 675 (6th Cir. 2004) ("Tips provided by confidential informants are knowingly and purposely made to authorities, accuse someone of a crime, and often are used against the accused at trial. The very fact that the informant is confidential—*i.e.*, that not even his identity is disclosed to the defendant—heightens the dangers involved in allowing a declarant to bear testimony without confrontation. The allowance of anonymous accusations of crime without any opportunity for cross-examination would make a mockery of the Confrontation Clause."). Moreover, Agent Asbill's testimony about the controlled purchase was not offered for context or background information as to why authorities were investigating Davis. *See Crawford*, 541 U.S. at 59 n.9; *Brown*, 317 S.C. at 63, 451 S.E.2d at 894. Upon our review of the record, we cannot locate any trial testimony from Agent Asbill providing background information such as the date of the alleged controlled purchase or how it played into the investigation of Davis and the other co-conspirators. Therefore, we find the CI's statements regarding the controlled purchase were offered to prove the truth of the matter asserted: Davis was a drug dealer. Because Davis had no opportunity to cross-examine the CI, we find the circuit court's admission of this hearsay violated Davis's Sixth Amendment right to confrontation.

VI. Harmless Error

The State asserts any error in the admission of the hearsay was harmless. We agree.

"A violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis." *State v. Gracely*, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012) (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986)).

Whether such an error is harmless in a particular case depends upon a host of factors These factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and[] of course, the overall strength of the prosecution's case.

Van Arsdall, 475 U.S. at 684.

In this case, Agent Asbill's testimony about the CI's controlled purchase of 3.5 grams of methamphetamine had little significance to the State's case against Davis for conspiracy to traffic 100 grams or more of the drug with his five co-conspirators. Focusing on that charge, we find the State presented cumulative testimony from Brock, Dendy, and Sekerchak regarding Davis's involvement in the conspiracy. Indeed, their testimony corroborated each other's allegation that Davis drove to Brock's home and delivered methamphetamine to Dendy on numerous occasions over a substantial period of time. Robinson also testified he purchased a large amount of methamphetamine from Dendy, who confirmed in his testimony that he was selling the drugs for Davis.

From the co-conspirators' testimony, the jury had more than enough evidence to find Davis conspired to traffic 100 grams or more of methamphetamine. Moreover, Davis rigorously cross-examined the co-conspirators, especially Dendy on the issue of whether Davis was his cousin. *Cf. Gracely*, 399 S.C. at 375-77, 731 S.E.2d at 886-87 (finding a Confrontation Clause error was not harmless when the circuit court disallowed the defendant from questioning his co-conspirators about the possible mandatory minimum sentences they avoided by testifying for the State because the case relied exclusively on their credibility). Upon our review of the entire trial transcript, we find the circuit court's error in admitting hearsay during Agent Asbill's testimony was harmless beyond a reasonable doubt.

CONCLUSION

Based on the foregoing analysis, Davis's conviction for conspiracy to traffic methamphetamine is

AFFIRMED.

THOMAS and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

State Grand Jury

Letitia H. Verdin, Circuit Court Judge

Appellate Case No.: 2013-002207

Trial Case No.: 2011-GS-47-06

State of South Carolina Respondent

v.

Clyde Bowen Davis Appellant.

PETITION FOR REHEARING

On March 29, 2017, this Court held that (1) any issue arising from Count II of the superseding indictment is moot; (2) the State's abuse of the grand jury process is not preserved for appellate review and even if it were with respect to Count II, it is moot; (3) the appellant's due process rights were not violated when the State failed to preserve and turn over material exculpatory evidence; (4) the circuit court did not error in failing to suppress Brock's out-of-court identification; and (5) Agent Asbill's testimony that a confidential informant completed a controlled purchase at his residence was inadmissible hearsay and violated the appellant's confrontation rights, however the admission of this evidence was harmless beyond a reasonable doubt. State v. Davis, Appellate Case No. 2013-002207, Opinion No. 5476. Pursuant to Rule

221(a), SCACR, the appellant respectfully requests this Court rehear the matter based upon the following points overlooked and/or misapprehended in the opinion.

I. The State Grand Jury Lacked Jurisdiction over Count II of the Superseding Indictment Requiring Dismissal.

The Court held that this issue is moot because the State dismissed Count II after filing the appeal. Opinion No. 5476, p. 7. The State maintains that Count II was not dismissed but rather *nolle prosequi* on April 3, 2017. See April 4, 2017 letter to Court and attached *Nolle Prosequi*. Because the *nolle prosequi* was entered after the jury was empaneled and sworn, the State cannot bring future prosecution for the same offense. State v. Patrick, 318 S.C. 352, 358, 457 S.E.2d 632, 636 (Ct. App. 1995). However, this Court has not held (and the State has not conceded) that the State cannot bring future prosecution for the same offense. “A criminal case is moot only if there is no possibility that any legal consequences will be imposed.” State v. Green, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (Ct. App. 1999) (citation omitted). Therefore, it is not moot.

Even assuming this issue is moot, the exceptions to the mootness doctrine are applicable here, *to wit*, the issue is capable of repetition but evading review and the decision of the trial court may affect future events. See State v. Passmore, 363 S.C. 568, 582, 611 S.E.2d 273, 280 (Ct. App. 2005). For example, the State may attempt to prosecute the appellant for the same offense, and may argue that the issue was already decided by the trial court. Thus, the appellant may not have another opportunity to litigate or seek appellate review of this issue. The appellant respectfully requests that this Court reach the issues on the merits.

Moreover, the respondent did not dispute the merits of the appellant’s argument, however asserted that this issue is premature. (Response at 9-11). This issue was extensively briefed, argued, and ruled upon by the trial court without objection from the State. It would be a waste of judicial resources for the Court to only examine the indictment with respect to Count I and not

examine Count II. *See Hewins*, 409 S.C. at 113, 760 S.E.2d at 824. It would offend notions of fundamental fairness, fair play, and substantial justice to permit an indictment to stand, and the appellant to be tried on a charge, over which the grand jury lacked jurisdiction.

II. The Trial Court Erred in Refusing to Dismiss the Superseding Indictment Due to the State's Abuse of the Grand Jury Process.

This issue with respect to Count II is not moot. *See I, supra*, incorporated fully herein by reference. With respect to Count I and Count II, the appellant presented this issue to the trial court with sufficient specificity to inform the trial court judge of the point being urged by the appellant. *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011); *see also State v. Tapp*, 398 S.C. 376, 386, 728 S.E.2d 468 (2012) (preservation rules "most certainly do not require clairvoyance"). In fact, the very argument presented in the appellant's Motion to Dismiss the Indictment was that "the State abused the Grand Jury proceedings by its presentation of these charges." (R. p. 9; *see also* R. p. 16, "[t]he Superseding Indictment is insufficient, and the State abused the Grand Jury proceedings by its presentation of these charges"; R. p. 44). As argued by the appellant, "[o]rdinarily, the Court does not inquire into the nature of sufficiency of the evidence before a Grand Jury. *State v. Thrift*, 312 S.C. 282, 302, 440 S.E.2d 341, 352 (1994). However, an exception to this rule exists where the defendant makes a colorable claim of misconduct in the abuse of Grand Jury proceedings."

The appellant repeatedly raised the alleged truthfulness of Agent Ayers' testimony before the Grand Jury, objected to why there was no discovery produced with respect to this testimony, and objected to the fact that the State was using false testimony to support its argument that the Superseding Indictment was proper. (*See, e.g.*, R. p. 9; R. p. 29 - 38; R. p. 62; R. p. 97, ln. 15-23; R. p. 99, ln. 4-7; R. p. 101, ln. 9-12; R. p. 103, ln. 9-14; R. p. 108, ln. 1-9; R. p. 109, ln. 1-4; R. p. 110, ln. 18-19; R. p. 116, ln. 1-24; R. p. 125, ln. 4-7; R. p. 166, ln. 17-25; R. p. 167, ln. 1-2). The

appellant also repeatedly questioned the Grand Jury testimony regarding the photo lineup, how Agent Ayers came about the information that the appellant was supplying Dendy, and why this discovery was not produced to the defense. (*See, e.g.*, R. p. 75-77; R. p. 138, ln. 5-19; R. p. 140, ln. 1-15; R. p. 158, ln. 4-13; R. p. 162, ln. 21-25; R. p. 163, ln. 1-24; R. p. 165, ln. 17-21; R. p. 166, ln. 1-25; R. p. 167, ln. 1-2). The appellant also objected to moving forward without this discovery or Terrance Albert being produced as a witness. (R. p. 108, ln. 21-25; R. p. 109, ln. 1-8; R. p. 166, ln. 17-25; R. p. 167, ln. 1-2). The appellant argued that the State failed to present evidence which would amount to probable cause with respect to Count II. (*See, e.g.*, R. p. 13-15; R. p. 41-43; R. p. 111, ln. 2-25; R. p. 112, ln. 1-25; R. p. 113, ln. 1-13; R. p. 116, ln. 1-24). The trial court ruled on all of the appellant's motions, and expressly stated that they would all be preserved for appeal. (R. p. 120, ln. 12-14). This issue was presented to the trial court with sufficient specificity to inform the trial court judge of the point being urged by the appellant. *See Byers*, 392 S.C. at 444, 710 S.E.2d at 58. The appellant respectfully requests that the Court reach these issues on the merits.

III. The State Failed to Preserve Evidence in Violation of the Appellant's Due Process Rights.

The Assistant Attorney General implied that the State had discovery regarding Transaction Number 2, but it would not produce the discovery because the appellant failed to "establish why he is entitled to and why the State should provide such information." (R. p. 52). It was not until after the jury was picked that the State revealed that it did not have the requested discovery. During pre-trial motion hearings, the State told the trial court that it did not have discovery regarding Transaction Number 2 because "it didn't get that far":

First, Your Honor, the reason that the State has not provided any documentation about control purchase on Nick Dendy involving Terrance Albert is because there was no control purchase attempt. That was aborted before it ever got [] that far.

There was conversation of Terrance Albert - - just my understanding from law enforcement that Terrance Albert was involved in a conversation with Nick Dendy and was told to make a purchase with [the appellant]. There was no actual attempt to make a control purchase. It was a matter of Terrance Albert had arrangements with Nick Dendy to buy a certain amount of dope on a certain day. They had a wire. None of that ever happened, Your Honor. That is why there was no report of that because it didn't get that far.

(R. p. 104, ln. 3-18); *see also* Opinion No. 5476, p. 9. Yet, it continued to rely on Transaction Number 2 to support the alleged validity of the Superseding Indictment:

Also, Your Honor, just to clarify, as far as whether or not this undercover purchase constitutes a charge related to subject matter jurisdiction of the State Grand Jury, whether Nick Deny bought dope from [the appellant] and resold it, whether he was involved in arranging and brokering a deal with [the appellant], that shows evidence of a conspiracy arrangement.

This is just a substantive count of Distribution of Methamphetamine. [The appellant] is charged with a Conspiracy to Traffic Methamphetamine in this area. Therefore, it's connected, this distribution is connected to that charge of conspiring to traffic methamphetamine, particularly the fact that another individual, Nick Dendy, is potentially involved at least at some small level in arranging the deal, Your Honor.

(R. p. 106, ln. 5-21); *see also* II, *supra*.

Agent Ayers' testified before the Grand Jury regarding Transaction Number 2, however he apparently did not preserve the evidence because it did not get as far as his testimony implied. Agent Ayers also testified before the Grand Jury that Brock "picked" the appellant out of a "photo lineup." Neither Agent Ayers nor the Assistant Attorney General attempted to correct this testimony. Further, the Assistant Attorney General never corrected Brock's testimony that she "picked" the appellant out of a "photo lineup." The State's continuous bad acts demonstrate that its failure to preserve discovery was done in bad faith.

The evidence regarding Transaction Number 2 was materially exculpatory. It showed that there was no conspiracy agreement between the alleged co-conspirators. That is, it showed that Dendy did not wait for the appellant to deliver the drugs to him. so that he could then deliver the

drugs to Terrance Albert. It instead showed a buyer-seller relationship. Further, the very fact that Terrance Albert *did not* purchase methamphetamine from the appellant during Transaction Number 2 was also materially exculpatory. If Dendy sent Terrance Albert to the appellant to purchase methamphetamine, but then Terrance Albert did not make the purchase, it shows that the appellant was not selling methamphetamine and was not conspiring to distribute methamphetamine. It showed there was no conspiracy because Dendy did not take part in arranging a deal to purchase methamphetamine from the appellant. The purchase never happened. Moreover, it showed that Dendy told Terrance Albert that Dendy purchased methamphetamine from his cousin. Dendy then sent Terrance Albert to his cousin. The appellant is not Dendy's cousin.

Further, the evidence regarding Transaction Number 2 was materially exculpatory because the State used Transaction Number 2 to argue that the Grand Jury had jurisdiction over Count II. Transaction Number 1, not Number 2, formed the basis of Count II. There was no evidence whatsoever that Dendy (or any other co-conspirator) was involved in Transaction Number 1. The appellant argued that the State Grand Jury had no jurisdiction over Count II because there was no evidence that Count II had multi-county significance. If anything, Count II was a simple buyer-seller relationship between Terrance Albert and the appellant.

The Court states that “even if evidence that a transaction between the CI and Dendy did not occur is favorable to the defense, we find Davis has failed to show it was in the State’s possession or somehow suppressed.” Opinion No. 5476, p. 9. However, the State cannot evade its duty under Brady, Rule 5, and related jurisprudence by failing to preserve evidence. Because the State preserved no evidence that Terrance Albert said he could deal with Nick Dendy, law enforcement sent Terrance Albert to Nick Dendy, who in turn said go to the appellant, to whom

Terrance Albert went and was *not* able to make a controlled purchase of methamphetamine, the appellant's due process rights were not violated. Similarly, because the State preserved no evidence regarding how Terrance Albert made the identification of the appellant, when he made the identification, where he made the identification, under what circumstances he made the identification, and to whom he made the identification, the appellant's due process rights were not violated.

The State has the obligation to preserve evidence that is favorable to the defendant. State v. Moses, 390 S.C. 502, 518, 702 S.E.2d 395, 403 (Ct. App. 2010). This evidence shows that Dendy did not wait for the appellant to deliver the drugs to him, so that he could then deliver the drugs to Terrance Albert. (*See* R. p. 99, ln. 8-25). The very fact that Terrance Albert *did not* purchase methamphetamine from the appellant, after apparently being sent to the appellant by Dendy, is materially exculpatory. If Dendy sent Terrance Albert to the appellant to purchase methamphetamine, but then Terrance Albert did not make the purchase, it shows that the appellant was not selling methamphetamine and was not conspiring with Dendy to distribute methamphetamine. (*See* R. p. 101, ln. 2-16).

Although Terrance did not testify at trial, the appellant still suffered prejudice and the result of the proceeding would have been different. (*See* Response at 27-28); *see also* Opinion No. 5476, p. 10. The exculpatory evidence showed that there was no conspiracy agreement and that the indictment should have been dismissed during pretrial motions. It also contradicts Agent Asbill's inadmissible hearsay testimony that Terrance Albert purchased methamphetamine from the appellant. It further contradicts Agent Asbill's testimony that the appellant was involved in this conspiracy. (R. p. 379, ln. 18-20). It supports the appellant's theory that Bokie, not the appellant, was the conspirator. The discovery also shows that the trial court's conclusion in the Biggers

hearing - - that the appellant was already known to law enforcement as Dendy's supplier - - was false. Transaction Number 2, which allegedly demonstrated the appellant's involvement in the conspiracy and provided the basis for law enforcement to show Brock a single photo of the appellant, never even occurred. The appellant suffered substantial prejudice from the State's failure to preserve this evidence.

IV. The Trial Court Erred in Refusing to Exclude an Unduly Suggestive Photo Lineup and Subsequent In-Court Identification.

The Court states “[w]hile meritorious disagreement exists on the *Neil v. Biggers* reliability factors, we cannot say the circuit court committed a prejudicial abuse of discretion in admitting Brock’s prior identification of Davis because its decision was supported by the evidence.” Opinion No. 5476, pp. 11-12. This analysis is incorrect. Unlike *Perry v. New Hampshire*, -- U.S. --, 132 S.Ct. 716, 721, 181 L.Ed.2d 694 (2012), and *State v. Tisdale*, 338 S.C. 607, 618, 527 S.E.2d 389, 395 (Ct. App. 2000), here the State arranged the suggestive photo identification. “[A]n eyewitness identification which is unreliable because of suggestive line-up procedures is constitutionally inadmissible as a matter of law.” *State v. Moore*, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000) (citations omitted).

Nevertheless, even if the standard of review is abuse of discretion, the trial court abused its discretion and committed prejudicial legal error. The evidence supports but one reasonable inference, the single photo lineup was unduly suggestive and Brock’s identification was not so reliable that no substantial likelihood of misidentification existed. *Moore*, 343 S.C. at 288, 540 S.E.2d at 448.

The single-photo lineup here was unduly suggestive. See *Manson*, 432 U.S. at 109, 97 S.Ct. 2243, 53 L.Ed.2d 140 (parties agreed that a single-photograph lineup was unduly suggestive); *Moore*, 343 S.C. at 287 (the trial court erred in finding that a single person show-up was not unduly

suggestive); U.S. v. Hines, 387 F.3d 690, 693-94 (8th Cir. 2004) (a single-person photo lineup is unduly suggestive); Michigan v. Woolfolk, 848 N.W.2d 169, 174 (Mich. Ct. App. 2014) (“[s]howing a witness a single photograph is considered to be one of the most suggestive photographic identification procedures”); Mysholowsky v. New York, 535 F.2d 194, 197 (2nd Cir. 1976) (“We have consistently condemned the exhibition of a single photograph as a suggestive practice, and, where no extenuating circumstances justify the procedure, as an unnecessarily suggestive one”¹).

Moreover, the only “knowledge” Brock had of the appellant was as a witness to the alleged crime itself. She did not know the appellant outside of her observations as a witness. Law enforcement suggested that the person in the photograph was a drug dealer and may have a connection to Brock. The trial court erroneously found that “the [appellant] was already known to law enforcement.” (R. p. 164, ln. 22-23). Law enforcement testified that this information came from Terrance Albert. (R. p. 138, ln. 5-9; R. p. 163, ln. 13-14). However, the State failed to preserve discovery regarding this information, which was exculpatory because it revealed that Terrance Albert was wrong. (R. p. 138, ln. 5-19; R. p. 140, ln. 5-9; R. p. 158, ln. 4-9; R. p. 163, ln. 13-18). The appellant vigorously objected to the consideration of Terrance Albert’s identification, which was overruled. (R. p. 166, ln. 17-25; R. p. 167, ln. 1-2). Further, the single photo lineup was not less suggestive than a showup identification.

With respect to the second prong of Biggers, Brock did not have a sufficient opportunity to view the perpetrator at the time of the alleged transactions. She never spoke to Dendy’s cousin.

¹ No emergency or extenuating circumstances existed here. Brock testified that law enforcement first approached her in October 2010 regarding her involvement in methamphetamine. (R. p. 151, ln. 5-8). A month or two later, law enforcement approached her again and showed her the single photograph of the appellant from which she made the identification of the appellant as Dendy’s cousin. (R. p. 154, ln. 9-16).

(R. p. 148, ln. 14-16). She never had the opportunity to observe Dendy's cousin in close proximity, nor was she able to observe him for a considerable period of time. (R. p. 150, ln. 14-20). Brock's "knowledge" of the appellant derives solely from being a witness to the crime alleged. The trial court's conclusion that Brock identified the appellant "by relationship to the person that she dealt with on a regular basis" was erroneous.

Second, Brock's degree of attention was insufficient. She was a "casual observer" rather than "the victim of one of the most personally humiliating of all crimes." Neil, 409 U.S. at 200; *see also* Moore, 343 S.C. at 289 (the witness's "attention was likely not as acute as it might have been had she been the victim of a crime"). Moreover, Brock was high on methamphetamine during her observations. (R. p. 330, ln. 1-4).

Third, Brock gave *no* prior description of Dendy's cousin, much less an accurate description of the appellant. (R. p. 154, ln. 5-8). The trial court's conclusion that Brock "had already identified the defendant" was erroneous. (R. p. 164, ln. 21-22). The respondent does not dispute that Brock gave *no* prior description of Dendy's cousin, much less an accurate description of the appellant. (Response at 22). To the extent that "Dendy's cousin" is a description of the perpetrator, Brock's description is wrong because the appellant is not Dendy's cousin.

Fourth, respectfully, this Court's statement that "Brock's level of certainty was high because she directly identified the man in the photograph as Dendy's cousin when instigators asked who it depicted" is incorrect. Opinion No. 5476, p. 12. The appellant is not Dendy's cousin - - this is undisputed. The Court's reasoning is flawed because it assumes that Brock would have told law enforcement if she was uncertain in her identification. At the confrontation, Brock never expressed her level of certainty. *See* Biggers, 409 U.S. at 199, 93 S.Ct. at 382, 34 L.Ed.2d 401; *see also* Liverman, 398 S.C. at 138, 727 S.E.2d at 426 (stating the factor as "the level of certainty

demonstrated by the witness at the confrontation”). Similarly, the trial court’s finding that Brock identified the appellant with “a high level of certainty” was based on an error of law and is without evidentiary support. (R. p. 165, ln. 4-5).

Fifth, the Court’s statement that “the length of time between her encounters with the suspect and her identification to the investigators was not so prolonged to be unreliable” is misplaced. Opinion No. 5476, p. 12. The issue is not whether the lapse of time “would diminish the reliability” of the identification. The reliability of the identification is already diminished due to the unnecessarily suggestive single photo lineup. Biggers, 409 U.S. at 198, 93 S.Ct. 375, 4 L.Ed.2d 401. The issue is whether, despite the unnecessarily suggestive single photo lineup, Brock’s identification was so reliable that no substantial likelihood of misidentification existed. State v. Singleton, 395 S.C. 6, 14, 716 S.E.2d 332, 336 (Ct. App. 2011) (citing Moore, 343 S.C. at 287, 540 S.E.2d at 447).

Moreover, as fully briefed, the error was not harmless beyond a reasonable doubt and there was unfair prejudice. The appellant respectfully requests that the Court reach this issue.

V. Agent’s Asbill’s testimony that the confidential informant made a controlled purchase from the appellant was not harmless beyond a reasonable doubt.

“‘Harmless beyond a reasonable doubt’ means the reviewing court can conclude the error did not contribute to the verdict beyond a reasonable doubt.” State v. Mizzell, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002) (citing Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)). The State bears the burden of establishing that constitutional error is harmless beyond a reasonable doubt. Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). This Court does not hold that the State met its burden. Even if the Court held that the State met its burden, respectfully, that holding is incorrect. Moreover, even if it was not the State’s burden to meet, the error was not harmless beyond a reasonable doubt. Rather, there is a reasonable possibility that

the error might have contributed to the conviction. State v. Mouzon, 326 S.C. 199, 205, 485 S.E.2d 918, 921-22 (1997).

Agent Asbill testified that the confidential informant made a controlled purchase from the appellant. This testimony was reiterated by the State throughout its questioning and closing:

Q: . . . Out of all the controlled purchases that were made, were there **controlled purchases made against [the appellant]** or attempted against [the appellant]?

A: Yes.

Q: Agent Asbill, did you participate in any **controlled purchases against [the appellant]**?

A: Yes, I did.

Q: . . . After [Terrance Albert] was wired, what took place?

A: [Terrance Albert] went to Dobb Street, a residence on Dobb Street which was [the appellant's] residence. [Terrance Albert] spent a period of time there. [Terrance Albert] received a phone call.

Q: Agent Asbill, where were you located during the **controlled purchase**?

A: I was parked at the school that was located nearby.

Q: We were discussing a **controlled purchase against [the appellant]**. What were the results of the **controlled purchase**?

A: [Terrance Albert] returned to us with a **purchase of methamphetamine**.

Q: And how much methamphetamine was it?

A: Approximately **3.5 grams**.

Q: And was that paid for with documented government funds?

A: That is correct.

Q: Is that the only **controlled purchase attempted against [the appellant]**?

A: **Yes, sir.** The only one I'm aware of.

(R. p. 385, ln. 10-15; R. p. 386, ln. 12-14; R. p. 388, ln. 12-16; R. p. 389, ln. 7-10; R. p. 393, ln. 11-23) (bold added).

Agent Asbill testified that that law enforcement seized 88 grams of methamphetamine involving the conspiracy, which included the controlled purchase made from the appellant:

Q: And how did the investigation of this particular conspiracy group play out from the beginning?

A: From the beginning - - very beginning, we made, uh, some **controlled purchases from** Amy Brock, from, uh, Michael Robinson, Josh Byers, Keith Sekerchak and Nick Dendy and, uh, **[the appellant]**.

Q: . . . can you summarize how many **controlled purchases** you made on each person in this conspiracy?

A: Yes, sir. Amy Brock, we made, uh, I believe it was two. **[The appellant], we made one.** Michael Robinson, we made, uh four. Josh Byers, we made three. Keith Sekerchak, we made, uh, five. Nick Dendy, we made two.

Q: And out of those individuals, how much actual methamphetamine was seized?

A: Just off the controlled buys and the search warrant was approximately **88 grams.**

(R. p. 379, ln. 18-25; R. p. 380, ln. 1-16) (bold added). After testifying that Terrance Albert made a 3.5 gram controlled purchase of methamphetamine from the appellant using government funds, Agent Asbill testified that these 3.5 grams was included in the 88 gram figure:

Q: Agent Asbill, earlier you testified that there were **88 grams of actual methamphetamines seized in this investigation. Does this include the 3.5 grams you just mentioned?**

A: Yes, it does.

(R. p. 394, ln. 15-19). During closing, the State focused on these 88 grams of methamphetamine, which included Terrance Albert's alleged 3.5 gram controlled purchase from the appellant:

Remember, Agent Asbill testified that out of their **controlled purchases** and busts in this case, just in this part of the case. Remember, it was a big investigation. Just this part, **they have 88 grams of actual methamphetamine.**

(R. p. 417, ln. 7-11) (bold added). It again asserted that a controlled purchase was made against the appellant:

The car, the silver Chrysler 300 or the Dodge Charger, whichever it is. Agent Asbill identified it was a Chrysler 300 **during the controlled purchase against [the appellant.]** We'll talk about that a little bit more in a minute. But if the witnesses were told what to say, don't you think they'd only be told one car and they all get it right without even thinking about it? The reason there's that slight "I don't know if it was a 300 or a Charger" is because they actually saw a car, not because somebody told them what to say.

(R. p. 421, ln. 5-15) (bold added).

This is much more than passing reference to a controlled purchase. See Chapman, 386 U.S. at 25-26 ("it is completely impossible for us to say that the State has demonstrated, beyond a reasonable doubt, that the prosecutor's comments and the trial judge's instruction did not contribute to petitioners' convictions"); United States v. Edwards, 792 F.3d 355, 358 (3rd Cir. 2015) ("Here, the Government has failed to meet its burden. The Government's references to [the appellant's] silence were not made in passing").

This Court states that "the jury had more than enough evidence to find Davis conspired to traffic 100 grams or more of methamphetamine." Opinion No. 5476, p. 15. Respectfully, the Court's focus is incorrect. See Government of Virgin Islands v. Davis, 561 F.3d 159, 165-66 (3rd Cir. 2009) ("As an initial matter, we are unsatisfied with this conclusion insofar as the Appellate Division focused on whether the evidence was sufficient to convict despite the error, as opposed to whether there was a reasonable possibility that the error contributed to the jury verdict") (citing Satterwhite v. Texas, 486 U.S. 249, 258-59, 108 S.Ct. 1792, 100 L.Ed.2d 284 (1988) ("The question, however, is not whether the legally admitted evidence was sufficient ... but rather, whether the [Government] has proved 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained'")).

Further, the Court's focus is wrong when it states that "[f]ocusing on [the conspiracy to traffic] charge, we find the State presented cumulative testimony from Brock, Dendy, and Sekerchak regarding Davis's involvement in the conspiracy." Opinion No. 5476, p. 15. The cumulative testimony factor turns on whether the disputed testimony was cumulative. *See, e.g., State v. Rhodes*, 688 So.2d 628, 636 (La. Ct. App. 1997) (any confrontation clause violation that occurred through admission of statement that officer heard from unnamed member of the crowd following a shooting was harmless beyond a reasonable doubt where the statement was merely cumulative of extensive eyewitness testimony); *United States v. Wipf*, 397 F.3d 677, 682 (8th Cir. 2005) (testimony of psychologist as to statements made by students that he had interviewed regarding gym teacher's alleged sexual abuse, any such error was harmless beyond a reasonable doubt in prosecution of gym teacher for this abuse, where each of these students testified at trial, and psychologist's testimony was cumulative of that of students); *United States v. Summers*, 666 F.3d 192, 204 (4th Cir. 2011) (admission of forensic examiner's report was harmless beyond a reasonable doubt because the report was "almost wholly cumulative" of the forensic examiner's live testimony). Agent Asbill's testimony was not cumulative. There were no witnesses to the controlled purchase that testified in the same manner as did Agent Asbill. Throughout the trial, the State presented evidence of various controlled purchases. However, this was the only evidence of a controlled purchase that involved the appellant.

Further, there was no corroborating evidence to Agent Asbill's testimony. *See State v. Gracely*, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012). There was no evidence of an audio or video recording of the controlled purchase, there were no photographs of the controlled purchase, there were no photographs of the buy money, and there were no drugs introduced from the controlled purchase.

As in Gracely, Byers, Brock, and Dendy had significant involvement with illegal drugs and other criminal activities, and cooperated following the possibility of long prison terms. Gracely, 399 S.C. at 377, 731 S.E.2d at 887. Also as in Gracely, here the State chose not to present any physical evidence tying the appellant to the conspiracy or even to any of the vehicles observed by Agent Asbill, Brock, and Sekerchek. See Gracely, 399 S.C. at 376, 731 S.E.2d at 887.

Other than Agent Asbill's testimony of Terrance Albert's controlled purchase, the only evidence that implicated the appellant in the conspiracy was that of Joshua Byers, Amy Brock, and Nick Dendy.

Brock never met the appellant. Brock testified that she purchased methamphetamine from Dendy, who told her he got the methamphetamine from his cousin. (R. p. 310, ln. 23-25; R. p. 311, ln. 1-4). Brock identified the appellant as Dendy's cousin from a single photo "lineup" of the appellant. (R. p. 318, ln. 2-7). In reality, Bokie is Dendy's cousin, not the appellant. (R. p. 359, ln. 12-14).

Prior to trial, Dendy told law enforcement that he got methamphetamine from his cousin Bokie. (R. p. 365, ln. 1-4). At trial, Dendy changed his story and denied getting methamphetamine from Bokie. (R. p. 365, ln. 4-8). He testified that the transactions with Brock and his cousin were actually transactions with Brock and the appellant. (R. p. 354, 6-25; R. p. 355, ln. 1).

Byers testified that at a car wash, the appellant handed about a gram of methamphetamine to Charles Brown, and then Charles Brown handed the methamphetamine to Byers. (R. p. 239, ln. 14-15; R. p. 240, ln. 16-18). Charles Brown was in the driver's seat, the appellant was in the front passenger's seat, and Byers was sitting behind Charles Brown. (R. p. 240, ln. 3-9). This was the only time that Byers met the appellant and the only time Byers had any dealings with the appellant. (R. p. 238, ln. 20-23).

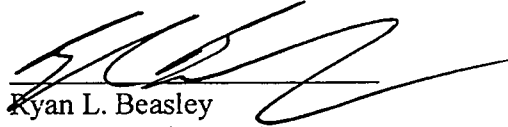
Similar to Gracely, all three of these individuals were cooperating witnesses with whom the State made deals. *See Gracely*, 399 S.C. at 374, 731 S.E.2d at 885-86. Byers entered into a plea deal with the State and pled guilty to a lesser charge. (R. p. 231, ln. 11-22). Brock entered into a plea deal with the State, pled guilty to a lesser charge, and received a recommendation of five to eight years. (R. p. 321, ln. 7-22). Dendy entered into a plea deal with the State, pled guilty to a lesser charge, and received a recommendation of 15 – 18 years. (R. p. 340, ln. 21-25; R. p. 341, ln. 1-9). As in Gracely, these witnesses had significant involvement with illegal drugs and other criminal activities, and cooperated following the possibility of long prison terms. Gracely, 399 S.C. at 377, 731 S.E.2d at 887. Also as in Gracely, the State here chose not to present any physical evidence tying the appellant to the conspiracy. *See Gracely*, 399 S.C. at 376, 731 S.E.2d at 887.

Agent Asbill's testimony that Terrance Albert went to Dobbs Street, he went to the appellant's house, he spent time at the appellant's house, he received a phone call, he purchased methamphetamine from the appellant, and he paid for the methamphetamine using documented government funds was not harmless beyond a reasonable doubt. Given the State's heavy reliance on circumstantial evidence, and the abysmal credibility of the State's witnesses, there is a reasonable possibility that the error might have contributed to the conviction. The State did not meet its burden.

CONCLUSION

For these reasons, the appellant respectfully requests this Court rehear the matter based upon the foregoing points overlooked and/or misapprehended in the opinion.

Respectfully submitted,



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Dated the 26th day of April, 2017
Greenville, South Carolina

The South Carolina Court of Appeals

The State, Respondent,

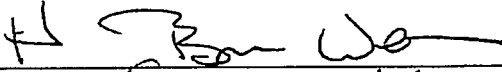
v.

Clyde Bowen Davis, Appellant.

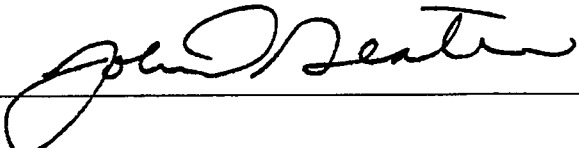
Appellate Case No. 2013-002207

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Specifically in respect to sections one and two of the petition, Appellant's counsel represented to this court during oral argument that Count II of the superseding indictment was dismissed. Thus, we decline Appellant's request to reconsider issues relating to Count II. Accordingly, the petition for rehearing is denied.



J.


J.


J.

Columbia, South Carolina

cc:

Joshua Richard Underwood, Esquire
Alan McCrory Wilson, Esquire

FILED

June 20, 2017

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Letitia H. Verdin, Circuit Court Judge

Opinion No. 5476 (S.C. Ct. App. filed March 29, 2017)
2011-GS-47-06

The State of South Carolina, ... Respondent,
v.
Clyde Bowen Davis, ... Petitioner.

APPELLATE CASE NO. 2013-002207

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 20, 2017.

QUESTIONS PRESENTED

- I. Did the Court of Appeals error in finding that Agent Asbill's testimony that a confidential informant completed a controlled purchase at his residence was inadmissible hearsay and violated the appellant's confrontation rights, however, the admission of this evidence was harmless beyond a reasonable doubt?
- II. Did the Court of Appeals error in finding that the trial court did not error in failing to suppress Brock's out-of-court identification?

STATEMENT OF THE CASE

This is drug conspiracy case driven by inadmissible hearsay testimony from law enforcement and unreliable and biased testimony of known drug user co-defendants. On December 13, 2011, the State Grand Jury indicted Clyde Davis on two counts: Count I accused Davis of conspiracy to traffic 100 grams or more but less than 200 grams of methamphetamine and Count II alleged Davis distributed methamphetamine in Greenville County on or around September 8, 2010. State v. Davis, Appellate Case No. 2013-002207, Opinion No. 5476, p. 3.

During pre-trial motions, Davis moved to dismiss the superseding indictment, arguing the State Grand Jury had no subject matter jurisdiction and the State presented no evidence amounting to probable cause on Count II. Additionally, Davis filed a motion to sever Count I from Count II of the indictment. The State consented to Davis' motion to sever and proceeded only on Count I of the indictment. State v. Davis, Appellate Case No. 2013-002207, Opinion No.

5476, p. 3. Davis also moved to suppress Brock's out-of-court identification of Davis, arguing the identification process was unduly suggestive, however, the trial court denied the motion.

The trial began in Greenville County on September 17, 2013 and on September 19, 2013, the jury found Davis guilty of conspiracy to traffic 100 grams or more but less than 200 grams of methamphetamine. State v. Davis, Appellate Case No. 2013-002207, Opinion No. 5476, p. 6. The circuit court sentenced him to the mandatory minimum of twenty-five years and issued a \$50,000 fine. The petitioner timely filed his Notice of Appcal. (R. p. 8).

The petitioner briefed the following issues to the Court of Appeals: (1) Did Law Enforcement's testimony that a confidential informant made a controlled purchase from the appellant qualify as inadmissible hearsay which violated the appellant's confrontation rights; (2) Did the trial court err in refusing to exclude an unduly suggestive photo lineup and subsequent in-court identification (3) Did the trial court error in refusing to dismiss the superseding indictment due to the State's abuse of the Grand Jury process (4) Did the State fail to preserve evidence in violation of the appellant's due process rights; and (5) Did the grand jury lack jurisdiction over Count II of the superseding indictment requiring dismissal? (Appellant's Brief).

On December 6, 2016, the Court of Appeals held oral arguments on the above issues. On March 29, 2017, it filed an opinion holding that (1) the circuit court erred in admitting the portion of Agent Asbill's testimony in which he had no personal knowledge of the CI's activities during the controlled purchase because it was inadmissible hearsay and violated Davis's constitutional right to confront witnesses against, however, the error in admitting the testimony was harmless error; (2) affirming the circuit court's decision to admit the photo lineup and in-court identification (3) any issue arising from Count II of the superseding indictment was moot

(4) there was no violation of Davis's due process rights; and (5) the issue regarding Count II of the superseding indictment was moot. State v. Davis, Appellate Case No. 2013-002207, Opinion No. 5476, Appx. 1-16. It therefore affirmed the petitioner's conviction for conspiracy to traffic methamphetamine. Id.

On April 26, 2017, the petitioner timely filed and served his Petition for Rehearing. On June 20, 2017, the Court of Appeals filed an Order denying the Petitioner's Petition for Rehearing. This Petition follows.

ARGUMENT

- I. Did the Court of Appeals error in finding that Agent Asbill's testimony that a confidential informant completed a controlled purchase at his residence was inadmissible hearsay and violated the appellant's confrontation rights, however, the admission of this evidence was harmless beyond a reasonable doubt?**

"Error is only harmless 'when it could not reasonably have affected the result of the trial.'" State v. Mitchell, 286 S.C. 573, 336 S.E. 2d at 151 (1985). It is impossible to conclude that the testimony offered by Agent Asbill in Davis's trial regarding the *only* controlled purchase alleged to have been made from him would not have affected the result of his trial in a drug conspiracy case. That testimony was fundamental to the State's case and its admission bolstered what was otherwise a case based on nothing more than unreliable co-defendant testimony.

There was no corroborating evidence to Agent Asbill's testimony put forth at trial. There was no evidence of an audio or video recording of the controlled purchase. There were no photographs of the controlled purchase. There were no photographs of the undercover buy money. There were no drugs introduced at trial from the controlled purchase. There was no witness to the controlled purchase to corroborate Agent Asbill's testimony about what happened.

To summarize, there was zero evidence of a controlled purchase of drugs involving Clyde Davis at all without this testimony. Other than Agent Asbill's testimony of Terrance Albert's controlled purchase, the only evidence that implicated the appellant in the alleged Greenville drug conspiracy was the biased and unreliable testimony of Joshua Byers, Amy Brock and Nick Dendy.

Amy Brock never met Clyde Davis. She never purchased drugs from him. She identified him in a "photo lineup" which in actuality was just a single photograph of Clyde Davis's DMV picture without any other photographs to compare it to. She never had any direct contact with Davis in any capacity whatsoever. She admitted to being high during the methamphetamine purchases from Nick Dendy. Those purchases consisted of Dendy either coming into her house or her running out of the house to Dendy's car. She would give the money to Dendy and he would give it to another person who had pulled up. Amy Brock was never told this person's name, never approached the car he was in and never had a face-to-face conversation or interaction with him. She saw him from a distance inside of a car at the closest vantage point.

Nick Dendy changed his story to law enforcement more times than one can count. Prior to trial, Nick Dendy told law enforcement that he got methamphetamine from his cousin Bokie which he then sold to Amy Brock. At trial, he changed his story and denied getting methamphetamine from Bokie for the transactions with Brock, instead saying that he got the drugs from Davis. The inconsistencies in Dendy's cooperation and ultimate testimony to the jury cannot be overlooked or downplayed.

Joshua Byers' testimony consisted of a narrative that on one single occasion at a car wash, Clyde Davis, who was sitting in the passenger seat, handed about a gram of

methamphetamine to Charles Brown who was sitting in the driver's seat. Charles Brown then handed the methamphetamine to Byers who was in the backseat. That interaction was the only time that Byers ever supposedly met Davis or had any dealings with him.

This was the sum total of the admissible testimony against Clyde Davis in his drug conspiracy trial. If Agent Asbill's hearsay testimony had been properly excluded, these statements are all the jury would have had to consider when determining whether Clyde Davis was guilty of conspiring to traffic more than 100 grams of methamphetamine.

The State spent part of its closing argument trying to persuade the jury that they should believe the co-defendants because even given their cooperation, they were still facing offers that carried significant prison time. In closing, the State told the jury that "Nick Dendy is looking at 15 to 18 years. . . what incentive is there to lie for that?" (Tr. P. 422, ln. 19) As it turns out, Nick Dendy was ultimately sentenced to only 8 years in prison. That sentence is barely half of what the State told the jury was the *minimum* he was looking at. Given that a juror's focus should have properly been on only the testimony of the co-defendants, had Asbill's impermissible statements been excluded, each juror determining if the co-defendants had any bias was a proper factor to weigh in consideration of their overall testimony. Someone who was looking at a prison term of 15-18 years, even after cooperating, may not be nearly as inclined to lie and testify to what the State wanted him to as someone who was only looking at 8 years would be.

The instant case has a number of similarities to a recent drug conspiracy case, State v. Gracely, 399 S.C at 374, 731 S.E.2d 880, 886 (2012), that arose out of Pickens County. As was the case in Gracely, all three co-defendants who testified against Clyde Davis at trial were cooperating witnesses with whom the State made plea deals. See Gracely, 399 S.C. at 374, 731

S.E.2d at 885-86. Byers entered into a plea deal with the State and pled guilty to a lesser charge. (Tr. P. 168, ln 12-22). Brock entered into a plea deal with the State, pled guilty to a lesser charge, and received a recommendation of five to eight years (Tr. 258, ln. 7-22). Dendy entered into a plea deal with the State and pled guilty to a lesser trafficking charge (Tr. P. 277, ln. 21-25; 278, ln. 1-9). As in Gracely, these witnesses had significant involvement with illegal drugs and other criminal activities, and cooperated following the possibility of long prison terms. Gracely, 399 S.C. at 377, 731 S.E.2d at 887. Also similar to Gracely, the State in this case chose not to present any physical evidence tying the appellant to the conspiracy. See Gracely, 399 S.C. at 376, 731 S.E.2d at 887. There was no physical evidence in any form presented to the jury to tie Clyde Davis to the activities admitted to by his co-defendants and whom there was substantial physical evidence against each individually.

Agent Asbill's testimony that Terrance Albert, the confidential informant, went to Dobbs Street, that he went to the appellant's house, that he spent time at the appellant's house, that he received a phone call, that he purchased methamphetamine from the appellant and that he purchased the methamphetamine using documented government funds was not harmless. It was crucially important testimony to the State's case to try and tie in the Appellant to the greater "drug conspiracy" they alleged was going on between the co-defendants.

The jury found Clyde Davis guilty on the sole count presented to them—conspiracy to traffic methamphetamine. By its very nature, a conspiracy charge requires a common goal that two or more people are working towards. In his closing, the Assistant Attorney General offered this summary of what needed to be proven. "We've got to prove beyond a reasonable doubt to you that two or more people got together and agreed to commit an unlawful objective or a lawful

objective through unlawful means. Now, this agreement, don't be mistaken, it doesn't have to be a big meeting where everybody in the conspiracy gets together, hashes out the terms and comes to some formal written document that this what we're going to do. That's not necessary. It doesn't have to be in writing. Not everybody has to talk to each other. Not every single person in a conspiracy needs to know each other. That's the law...In this situation, all these people are doing their part to sell meth. They are each doing their part. That's what makes this a conspiracy." (Tr. P. 424 ln. 1-18). There is no question that methamphetamine was being bought and sold between Dendy, Brock, Byers and others. They were all users and would get meth wherever they could over a period of years, sometimes from the same person and sometimes not. What there is a question regarding, is if Clyde Davis was a part of this buying and selling conspiracy that the State claimed. Was Davis "doing [his] part" in furtherance of some common objective to move methamphetamine around the Upstate of South Carolina? In this case, which without Agent Asbill's testimony, would have relied solely on the testimony of the three co-defendants who had plenty of incentive to testify as the State wanted them to, the State could not have proved beyond a reasonable doubt that he was and it is impossible to say that the error in admitting the Agent's testimony did not affect the result of Clyde Davis' trial.

In the State's closing argument, references are made numerous times to Agent Asbill's testimony. "Agent Asbill identified it was a Chrysler 300 during the controlled purchase against Clyde Davis." (R. p. 421, ln. 5-15) This is much more than a passing reference to a controlled purchase. Not only does this statement reference inadmissible testimony as it related to the alleged controlled buy, it also put forth the notion to the jury that Agent Asbill could independently verify some of the co-defendant testimony, ie: what car was used by Dendy's

supplier. The error in admitting this kind of testimony and allowing the jury to consider it in their deliberations could never be harmless.

“Whether an error is harmless in a particular case depends on a host of factors... the factors include the importance of the witnesses testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution’s case.” State v. Gracely, 399 S.C. at 375, Van Arsdall, 475 U.S. 673, 680, 106 S. Ct. 1431, 89 L.E. 2d 674 (1986). In Gracely, which was also a drug conspiracy case, the testimony presented only corroborated other testimony and the State did not present any physical evidence tying the appellant to the activities charged. The same holds true in the instant case. There was no physical evidence tying Clyde Davis to any of the activities charged. This differed greatly from the situation facing each of his co-defendants who opted to plead guilty. There was substantial physical evidence, including undercover purchases of methamphetamine for some, tying each of them to the purchase and sale of drugs.

The key factor for determining whether a trial error constitutes reversible error is “whether it appears ‘beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.’ ” State v. Charping, 313 S.C. 147, 157, 437 S.E.2d 88, 94 (1993) (quoting Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967), overruled on other grounds by Franklin v. Catoe, 346 S.C. 563, 552 S.E.2d 718 (2001)). “Whether an error is harmless depends on the circumstances of the particular case.” State v. Mitchell, 378 S.C. 305, 316, 662 S.E.2d 493, 499 (2008). “No definite rule of law governs this finding; rather, the

materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it ‘could not reasonably have affected the result of the trial.’ ” Id. (quoting State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971)). State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012).

The Court in Tapp stated that engaging in this harmless error analysis requires the court not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the jury verdict. See State v. Mizzell, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002) (harmless error jurisprudence requires that the error not contribute to the verdict obtained). State v. Tapp, 398 S.C. 376, 390, 728 S.E.2d 468, 475 (2012). In conducting a harmless error analysis, the reviewing court looks to the basis on which the jury actually rested its verdict. Lowry v. State, 376 S.C. 499, 508, 657 S.E.2d 760, 765 (2008). “[T]o conclude that the error did not contribute to the verdict, the Court must ‘find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.’ ” Id. (quoting Yates v. Evatt, 500 U.S. 391, 403, 111 S.Ct. 1884, 114 L.Ed.2d 432 (1991)). State v. Portillo, 408 S.C. 66, 74, 757 S.E.2d 721, 726 (Ct. App. 2014), aff’d in part, vacated in part, No. 2015-MO-007, 2015 WL 790299 (S.C. Feb. 25, 2015).

The Court of Appeals opinion states that “the jury had more than enough evidence to find Davis conspired to traffic 100 grams or more of methamphetamine.” State v. Davis, Appellate Case No. 2013-002207, No. 5476, p. 15. Respectfully, the Court’s focus is incorrect. See Government of Virgin Islands v. Davis, 561 F.3d 159, 165-66 (3rd Cir. 2009) (“As an initial matter, we are unsatisfied with this conclusion insofar as the Appellate Division focused on

whether the evidence was sufficient to convict despite the error, as opposed to whether there was a reasonable possibility that the error contributed to the jury verdict”) (citing Satterwhite v. Texas, 486 U.S. 249, 258–59, 108 S.Ct. 1792, 100 L.Ed.2d 284 (1988) (“The question, however, is not whether the legally admitted evidence was sufficient ... but rather, whether the [Government] has proved ‘beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained’”)).

Further, the Appellate Court’s focus is wrong when it states that “[f]ocusing on [the conspiracy to traffic] charge, we find the State presented cumulative testimony from Brock, Dendy, and Sekerchak regarding Davis’s involvement in the conspiracy.” Opinion No. 5476, p. 15. The cumulative testimony factor turns on whether the disputed testimony was cumulative. *See, e.g., State v. Rhodes*, 688 So.2d 628, 636 (La. Ct. App. 1997) (any confrontation clause violation that occurred through admission of statement that officer heard from unnamed member of the crowd following a shooting was harmless beyond a reasonable doubt where the statement was merely cumulative of extensive eyewitness testimony); United States v. Wipf, 397 F.3d 677, 682 (8th Cir. 2005) (testimony of psychologist as to statements made by students that he had interviewed regarding gym teacher’s alleged sexual abuse, any such error was harmless beyond a reasonable doubt in prosecution of gym teacher for this abuse, where each of these students testified at trial, and psychologist’s testimony was cumulative of that of students); United States v. Summers, 666 F.3d 192, 204 (4th Cir. 2011) (admission of forensic examiner’s report was harmless beyond a reasonable doubt because the report was “almost wholly cumulative” of the forensic examiner’s live testimony). The Court of Appeals analyzed the very concept of cumulative testimony in this case incorrectly. Agent Asbill’s testimony was not cumulative.

There were no witnesses to the controlled purchase that testified in the same manner as did Agent Asbill. Throughout the trial, the State presented evidence of various controlled purchases. However, this was the only evidence of a controlled purchase that allegedly involved the appellant.

The admission of this evidence was not harmless and the Court of Appeals erred in their finding of such. In the Court of Appeals opinion itself, not once does the Court cite to a standard for what the evidence presented at trial must be for an error in admitting testimony which violated the Confrontation Clause to be considered harmless. Frankly, the Court of Appeals seems to breeze right through the portion of their opinion discussing what makes an error to admit testimony at the Circuit Court level harmless or not. Absent the improperly included testimony of Agent Asbill, the evidence against Clyde Davis as to a conspiracy to traffic methamphetamine was neither cumulative nor overwhelming. It was not strong. It was not even moderately strong. The Court of Appeals opinion, much like the evidence presented against Davis at trial, was legally unsound. The Court of Appeals erred in their analysis and conclusion of whether or not admitting the hearsay testimony of Agent Asbill was "harmless beyond a reasonable doubt". It was not.

The evidence legally allowed to be presented to a jury is one of the most fundamentally important safeguards a criminal defendant has at trial. The analysis and determination of whether evidence that should not have been presented for the jury's consideration "reasonably affected the result of the trial" must be thorough and take into consideration the entire big picture of what the jury had before them to find a defendant guilty or not guilty. In this case, the underwhelming evidence presented against Clyde Davis on the charge of conspiracy to traffic methamphetamine

could not have led to a verdict of guilt without the improper hearsay testimony of Agent Asbill included.

II. Did the Court of Appeals error in finding that the trial court did not error in failing to suppress Brock's out-of-court identification?

"The vagaries of eyewitness identification are well-known; the annals of criminal law are rife with instances of mistaken identification," U.S. v. Wade, 388 U.S. 218, 228, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967). "A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification." State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (citing State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000)). "An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification." Traylor, 360 S.C. at 81, 600 S.E.2d at 526 (citing Moore, 343 S.C. 82, 540 S.E.2d 445). "It is the likelihood of misidentification which violates a defendant's right to due process . . . Suggestive confrontations are disapproved because they increase the likelihood of misidentification and unnecessarily suggestive ones are condemned for the further reason that the increased chance of misidentification is gratuitous." Neil v. Biggers, 409 U.S. at 198, 93 S.Ct. 375, 4 L.Ed.2d 401.

In Neil v. Biggers, the United States Supreme Court developed a two-prong inquiry to determine the admissibility of an out-of-court and in-court identification. "First, a court must ascertain whether the identification process was unduly suggestive. The court must next decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood

of misidentification existed.” Traylor, 360 S.C. at 81, 600 S.E.2d at 526-27. If the identification was unduly suggestive and there is a substantial likelihood of misidentification, due process requires that the out-of-court identification be excluded and any in-court identification be prohibited. Traylor, 360 S.C. at 84; *see also* Perry v. New Hampshire, 565 U.S. ___, 132 S.Ct. 716, 726, 181 L.Ed.2d 694 (2012); Moore, 343 S.C. at 290, 540 S.E.2d at 449. Not only does the exclusion of this identification evidence protect the defendant’s due process rights, it also “deter[s] law enforcement use of improper lineups, showups, and photo arrays . . .” Perry, 565 U.S. ___, 132 S.Ct. at 726 (citing Manson v. Brathwaite, 432 U.S. 98, 112, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977)).

“[W]hether an eyewitness identification is sufficiently reliable is a mixed question of law and fact.” Moore, 343 S.C. at 288, 540 S.E.2d at 448. “In reviewing mixed questions of law and fact, where the evidence supports but one reasonable inference, the question becomes a matter of law for the court.” Moore, 343 S.C. at 288, 540 S.E.2d at 448 (citing Clyburn v. Sumter Co. Sch. Dist., 317 S.C. 50, 53, 451 S.E.2d 885, 887-88 (1994)). “Generally, the decision to admit an eyewitness identification is at the trial judge’s discretion and will not be disturbed on appeal absent an abuse of such, or the commission of prejudicial legal error.” Moore, 343 S.C. at 288, 540 S.E.2d at 448 (citing State v. Johnson, 311, S.C. 132, 427 S.E.2d 718 (Ct. App. 1993)). “However, an eyewitness identification which is unreliable because of suggestive line-up procedures is constitutionally inadmissible as a matter of law.” Moore, 343 S.C. at 288, 540 S.E.2d at 448 (citing Caver v. Alabama, 537 F.2d 1333, 1335 (5th Cir. 1976), *cert. denied*, 430 U.S. 910, 97 S.Ct. 1183, 51 L.Ed.2d 587 (1977)).

The single-photo show up at issue in this case was unduly suggestive. See Manson, 432 U.S. at 109, 97 S.Ct. 2243, 53 L.Ed.2d 140 (parties agreed that a single-photograph lineup was unduly suggestive); Moore, 343 S.C. at 287 (the trial court erred in finding that a single person show-up was not unduly suggestive); U.S. v. Hines, 387 F.3d 690, 693-94 (8th Cir. 2004) (a single-person photo lineup is unduly suggestive); Michigan v. Woolfolk, 848 N.W.2d 169, 174 (Mich. Ct. App. 2014) (“[s]howing a witness a single photograph is considered to be one of the most suggestive photographic identification procedures”); Mysholowsky v. New York, 535 F.2d 194, 197 (2nd Cir. 1976) (“We have consistently condemned the exhibition of a single photograph as a suggestive practice, and, where no extenuating circumstances justify the procedure, as an unnecessarily suggestive one”¹).

Moreover, there was a substantial likelihood of irreparable misidentification. The following factors should be considered in evaluating the totality of circumstances to determine the likelihood of a misidentification: (1) the witness’s opportunity to view the perpetrator at the time of the crime; (2) the witness’s degree of attention; (3) the accuracy of the witness’s prior description of the perpetrator; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. Traylor, 360 S.C. at 82, 600 S.E.2d at 527.

First, Brock did not have a sufficient opportunity to view the perpetrator at the time of the alleged transactions. This is not a rape case where Brock “spent a considerable period of time

¹ No emergency or extenuating circumstances existed here. Brock testified that law enforcement first approached her in October 2010 regarding her involvement in methamphetamine. (R. p. 151, ln. 5-8). A month or two later, law enforcement approached her again and showed her the single photograph of the appellant from which she made the identification of the appellant as Dendy’s cousin. (R. p. 154, ln. 9-16).

with [the perpetrator], up to a half an hour” under “artificial light in her house.” Neil, 409 U.S. at 200. In fact, Brock never dealt directly with Dendy’s cousin and never met Dendy’s cousin. She “never went over to where his cousin was.” (R. p. 147, ln. 22-23). She never spoke to Dendy’s cousin. (R. p. 148, ln. 14-16). She never had the opportunity to observe Dendy’s cousin in close proximity, nor was she able to observe him for a considerable period of time. (R. p. 150, ln. 14-20); *See Moore*, 343 S.C. at 289. This factor indicates a very substantial likelihood of irreparable misidentification.

Second, Brock’s degree of attention was insufficient. She was a “casual observer” rather than “the victim of one of the most personally humiliating of all crimes.” Neil, 409 U.S. at 200; *see also Moore*, 343 S.C. at 289 (the witness’s “attention was likely not as acute as it might have been had she been the victim of a crime”). Further, Brock was not an experienced police officer specially trained to make accurate identifications. Manson, 432 U.S. 98 (the witness was a “specially trained, assigned, and experienced officer [who] could be expected to pay scrupulous attention to detail” so that she could “find and arrest” the perpetrator). Moreover, Brock was high on methamphetamine during her observations. (R. p. 330, ln. 1-4). This factor indicates a very substantial likelihood of irreparable misidentification.

Third, Brock gave *no* prior description of Dendy’s cousin, much less an accurate description of the appellant. (R. p. 154, ln. 5-8). *Compare Manson*, 432 U.S. at 115 (no substantial likelihood of misidentification where the description contained the perpetrator’s “race, his height, his build, the color and style of his hair, and the high cheekbone facial feature” in addition to the perpetrator’s clothes); State v. Rogers, 263 S.C. 373, 378, 210 S.E.2d 604, 607 (1974) (no substantial likelihood of misidentification where the witness “told the officer in exact

detail a description of her assailant, which included his age, color of his hair, glasses, missing front teeth, tattoo on arm, and shirt over one pocket of which appeared the word 'Joe' and over the other pocket which appeared 'Sherriff's Department.' She also described the car, stating that the car was light blue in color, had a black interior; brown panel on the dash and that the trunk of the car there was a blue light which looked like the light that goes on top of police cars and there was a radio in the trunk") *with Moore*, 343 S.C. at 289 (there was a substantial likelihood of misidentification when the witness's description was based "primarily on the suspects' clothing and race, and that one was taller than the other"). Again, Brock gave no description other than identifying Dendy's supplier as Dendy's cousin. The appellant is not Dendy's cousin. This factor indicates a very substantial likelihood of irreparable misidentification.

Fourth, Brock's level of certainty was insufficient. At the time she made the identification from the single photograph, she did not mention her level of certainty to law enforcement. (R. p. 155, ln. 8-13). She did not testify as to her level of certainty before the Grand Jury. (R. p. 572, ln. 19-22). It was only on re-direct examination, at the prompting from the prosecutor and over the objection of the appellant, she said did not have trouble identifying the appellant. (R. p. 156, ln. 10-11). She never offered any percentage or qualifier as to her level of certainty. This factor indicates a likelihood of misidentification.

Fifth, the length of time between the transactions and her identification was substantial. In October 2010, Brock was approached by law enforcement about her trafficking of methamphetamine. (R. p. 151, ln. 5-7). She did not make the identification from the single photograph until a month or two later. (R. p. 154, ln. 9-16). This is not a case like *Moore* in which the South Carolina Supreme Court held that 1 ½ to 2 hour time period between the crime

and the confrontation was sufficient to meet this factor. Moore, 343 S.C. at 289. Further, this is not a case like Manson in which the United States Supreme Court held that a two-day period was sufficient to meet this factor because the witness's description of the perpetrator was given within minutes of the crime. Manson, 432 U.S. at 115-16 (the witness's description of the perpetrator "was given . . . within minutes of the crime. The photographic identification took place only two days later. We do not have here the passage of weeks or months between the crime and the viewing of the photograph"). Here, Brock gave no description of Dendy's cousin, and only identified the appellant as Dendy's cousin after she was provided the single photograph of the appellant. This factor indicates a very substantial likelihood of misidentification. Under the totality of the circumstances, there was a substantial likelihood of irreparable misidentification such that the identification was unreliable as a matter of law. Due process required that the out-of-court identification be excluded and Brock's in-court identification be prohibited.

The Court of Appeals chooses to use the language that "meritorious disagreement" exists on the Neil v. Biggers reliability factors but declines to hold that the Circuit Court committed a prejudicial abuse of discretion in admitting Brock's prior identification of Davis because "its decision was supported by the evidence" State v. Davis, Appellate Case No. 2013-002207, Opinion No. 5476, p. 11. To support this conclusion, they cite to "evidence" that is blatantly incorrect. The Court of Appeals opinion states, "Brock's level of certainty was high because she directly identified the man in the photograph as Dendy's cousin when investigators asked who it depicted." State v. Davis, Appellate Case No. 2013-002207, Opinion No. 5476, p. 11. Both clauses of that sentence alone are incorrect. First, as previously noted, Amy Brock never testified

to a level of certainty of her identification. She did not qualify it as being low, moderate, high or any particular percentage. It was clearly and unequivocally confirmed at trial, through the testimony of Nick Dendy himself, that Clyde Davis was *not* Dendy's cousin. While not the main focal point of concern, this statement alone goes to show the Court of Appeals lackluster effort to get simple facts regarding the evidence presented at Clyde Davis' trial correct.

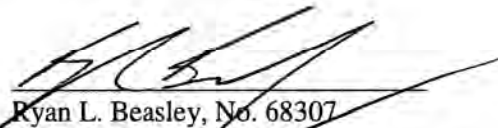
For the Court of Appeals to impart their own opinion or understanding as to the level of certainty and attach it to Brock's identification, whether intentionally or just an oversight, is unacceptable. The Court of Appeals opinion is rife with examples of inconsistencies and errors that make it abundantly clear that they did not properly review and assess the two issues now before the Supreme Court of South Carolina on a Petition for a Writ of Certiorari.

CONCLUSION

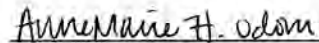
By reason of the foregoing arguments, a Writ of Certiorari should be issued to allow full briefing on these issues.

Dated this 8 day of August, 2017

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

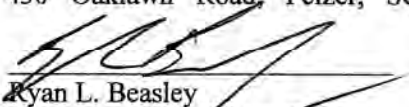
Letitia H. Verdin, Circuit Court Judge

Opinion No. 5476 (S.C. Ct. App. filed March 29, 2017)

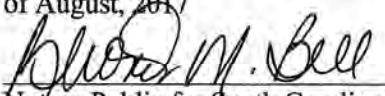
The State of South Carolina Respondent
v.
Clyde Bowen Davis Petitioner

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on Alan Wilson, Joshua R. Underwood, Samuel Creighton Waters, and James Clayton Mitchell, III, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, Jenny Abbott Kitchings, SC Court of Appeals, P.O. Box 11629, Columbia, SC 29211 and upon Clyde Bowen Davis, #00357153, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29609, this 9 day of August, 2017.


Ryan L. Beasley
Attorney for the Petitioner

SWORN TO BEFORE ME this 8th day
of August, 2017


Notary Public for South Carolina

My Commission Expires: May 19, 2024

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2017-001504

THE STATE,

Respondent,

vs.

CLYDE BOWEN DAVIS,

Petitioner.

Opinion No. 5476 (S.C. Ct. App. filed March 29, 2017)

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES PRESENTED

- I. The Court of Appeals correctly affirmed the trial court's admission of Amy Brock's out-of-court identification and subsequent in-court identification of Davis by finding that the trial court's decision to admit the identifications was not an abuse of discretion but was supported by the evidence.
- II. The Court of Appeals correctly found that any error in admitting hearsay during the testimony of Agent Asbill was harmless beyond a reasonable doubt.

STATEMENT OF THE CASE

Procedural History

The State Grand Jury indicted Petitioner, Clyde Bowen Davis, by way of a Superseding Indictment for Unlawful Drugs on December 13, 2011. Davis was named as a defendant in Counts I and II. Count I accused Davis of Trafficking Methamphetamine, 100-200 Grams (Conspiracy). Count II accused Davis of Distribution of Methamphetamine.

Davis was tried by the Honorable Letitia H. Verdin and a jury between September 16 -18, 2013. Davis made a pre-trial request to sever the charges. The State agreed to try the charges separately and elected to go forward on only Count I of the superseding indictment, the more serious of the two charges.¹ The jury found Davis guilty of Count I, as indicted, and the Circuit Court sentenced Davis to 25 years imprisonment.

On or about September 24, 2013, Davis filed a written Motion for Verdict in Arrest of Judgment and Motion for a New Trial. Those motions were denied by a written order on October 3, 2013.

Davis timely filed and served a Notice of Intent to Appeal. The Court of Appeals affirmed the conviction and sentence by Opinion No. 5476 filed on March 29, 2017. Davis' Petition for Rehearing was denied on June 20, 2017. Davis served his Petition for Writ of Certiorari on August 9, 2017. This Return follows.

¹ The State subsequently filed a *Nolle Prosequi* regarding Count II due to the conviction and sentence regarding Count I.

Factual History

In this trial Clyde Bowen Davis only faced the charge of Trafficking Methamphetamine, 100-200 Grams (Conspiracy). The State presented a historical case to prove the existence of and Davis' connection to the conspiracy. The State's case included the testimony of codefendants and admitted coconspirators Nicholous Dendy, Amy Brock, Michael Robinson, Brian Keith Sekerchak, and Joshua Byers. The State also presented testimony from Tonya Smith and David Norris, who were not charged, and Warren Chastain who was charged in a separate indictment resulting from the same investigation. Agent Ashley Asbill, of the South Carolina Law Enforcement Division, also testified.

Amy Brock testified that she was using, buying, and selling methamphetamine during the time alleged in this indictment. Another methamphetamine dealer, Michael Robinson, introduced her to Nicholous "Nick" Dendy who became her regular supplier of methamphetamine. (R. p. 306, line 6 – p. 308, line 4; R. p. 350, lines 9-16). Brock's methamphetamine transactions with Dendy usually took place at her home in Greenville County. (R. p. 308, lines 11-15). When she would order methamphetamine from Dendy he would never bring it with him. (R. p. 310, line 12). When Dendy would arrive Brock would pay him for the drugs and then they would wait for Dendy's supplier, believed by Brock to be Dendy's cousin. (R. pp. 257-259; R. p. 311, line 4; R. p. 352, line 15 – p. 353, line 2; R. p. 354, line 6 – p. 355, line 1). When the supplier would arrive in a silver car, possibly a [Chrysler] 300 or Dodge Charger, Dendy would give him the money provided from Brock in exchange for the methamphetamine that Dendy then gave to Brock. (R. p. 257-259; R. p. 311, line 4; R. p. 352, line 15 – p. 353, line 2; R. p.

354, line 6 – p. 355, line 1). This scenario took place up to 4 times a week between the Spring of 2010 and October or November 2010. (R. p. 309, lines 1-4; R. p. 314, line 10- p. 315, line 20; R. p. 154, lines 20-23). On approximately half of these occasions Brock went outside with Dendy at the time the supplier came to her house and she was able to see the supplier in his car, during daylight. (R. p. 313, lines 12-24; R. p. 315, line 25 – p. 316, line 5). Dendy's testimony corroborated the methamphetamine transaction pattern described by Brock. (R. p. 352, line 13 – p. 353, line 2; R. p. 354, line 6 – p. 355, line 1).

After informing law enforcement that the methamphetamine sold by Dendy was supplied by someone believed to be his cousin, Brock was shown a single photograph of Davis whom she identified as Dendy's supplier. (R. p. 709; R. p. 132, line 8 – p. 133, line 6; R. p. 134, line 20 – p. 135, line 3; R. p. 152, line 5 – p. 153, line 19; R. p. 318, line 18 – p. 320, line 3). The Circuit Court conducted a hearing pursuant to Neil v. Biggers, after which the Court ruled to allow testimony concerning the photographic identification of Davis by Brock and subsequent, in-court identification of Davis by Brock. (R. pp. 127 – 165). Brock and Dendy both made in-court identifications of Davis as the man who supplied Dendy with methamphetamine. (R. p. 327, line 9 – p. 328, line 13; R. p. 358, lines 3-18).

Brian Sekerchak testified that Amy Brock regularly supplied him with methamphetamine and that he was present during at least ten such transactions between Brock, Dendy, and Davis in which Brock gave money to Dendy and Dendy gave the money to Davis in exchange for methamphetamine. (R. pp. 257-258; R. p.

262, lines 17-21). He described the same scenario except that he testified that Davis would drive a black Honda or silver Dodge Charger. (R. p. 259, lines 1-2).

Michael Robinson sold methamphetamine for Dendy and was also supplied by Brock. (R. p. 276, lines 15-19; R. p. 282, line 7 – p. 283, line 19; R. p. 199, line 14 – p. 200, line 22). When Dendy sold methamphetamine to Robinson he would get the drugs from Davis and give the money to Davis who then gave Dendy his share of the profit. (R. p. 348, lines 2-12).

At trial, Agent Asbill testified that he participated in a controlled purchase operation in which law enforcement agents intended to purchase methamphetamine from Clyde Davis. (R. p. 386, lines 12-14; R. p. 387, lines 6-13). As part of that operation, the confidential informant and his vehicle were searched to confirm that the CI did not possess any methamphetamine, the CI was provided an audio transmitter, and the CI was issued documented funds to use before being sent to purchase methamphetamine from Davis. (R. p. 391, lines 14-22). The informant went to Davis' residence on Dobbs Street for a period of time. (R. p. 388, lines 11-16). During the controlled purchase operation Agent Asbill was able to identify a silver/gray Chrysler 300 as a vehicle of interest, the same type of vehicle described by Amy Brock and Brian Sekerchak. (R. p. 390, lines 1-7). After going to Davis' residence, the CI returned to the law enforcement agents with 3.5 grams of methamphetamine. (R. p. 393, lines 11-17).

ARGUMENT

- I. **The Court of Appeals correctly affirmed the trial court's admission of Amy Brock's out-of-court identification and subsequent in-court identification of Davis by finding that the trial court's decision to admit the identifications was not an abuse of discretion but was supported by the evidence.**

Davis contends that the Court of Appeals demonstrated a "lackluster effort to get simple facts regarding the evidence presented at Clyde Davis' trial correct," that the Court of Appeals "impart[ed] their own opinion or understanding as to the level of certainty and attach[ed] it to Brock's identification, whether intentionally or just an oversight is unacceptable," and that the Court of Appeals' "opinion is rife with examples of inconsistencies and errors that make it abundantly clear that they did not properly review and asses the two issues now before the Supreme Court of South Carolina on a Petition for a Writ of Certiorari." (Petition for a Writ of Certiorari. p. 18). On the contrary, the Court of Appeals properly reviewed and assessed the issues brought before this Court in Davis' Petition for a Writ of Certiorari and correctly applied the law to the facts of the case in affirming the admission of Brock's identifications and the conviction. The facts and evidence as presented at trial and found in the record are simply not in Davis' favor.

In criminal cases, the appellate court reviews only errors of law and is bound by the trial court's factual findings unless those findings are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence." State v. Wood, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct. App. 2004). "The admission or

exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." State v. Hughes, 346 S.C. 339, 342, 552 S.E.2d 35, 36 (Ct. App. 2001). The reliability of an eyewitness identification is a mixed question of law and fact which becomes a matter of law for the appellate court when the evidence only supports one reasonable inference. State v. Liverman, 398 S.C. 130, 137-138, 727 S.E.2d 422, 425 (2012). "Accordingly, a trial court's decision to allow the in-court identification of an accused will not be reversed absent an abuse of discretion or prejudicial legal error." State v. Tisdale, 338 S.C. 607, 611, 527 S.E.2d 389, 391 (2000)

A trial court must suppress an out-of-court identification of the accused if the identification procedure used by police was impermissibly suggestive and conducive to a substantial likelihood of misidentification because such a procedure violates due process. State v. Dukes, 404 S.C. 553, 558, 745 S.E.2d 137, 139 (Ct. App. 2013)(citing Liverman, 398 S.C. at 138, 727 S.E.2d at 425). The subsequent in-court identification by the witness is inadmissible if the suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). Trial courts must utilize the two-pronged inquiry, as developed by the Supreme Court of the United States in Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972), to determine if an out-of-court

identification must be suppressed to satisfy due process requirements. Liverman, 398 S.C. at 138, 727 S.E.2d at 425.

The first prong requires the court to determine if the identification resulted from "unnecessarily suggestive" police identification procedures. Biggers, 409 U.S. at 198-199, 93 S.Ct. at 381-382, 34 L.Ed.2d at 410-411; see also Traylor, 360 S.C. at 81, 600 S.E.2d at 526 (stating that the standard is "unduly suggestive"); Liverman, 398 S.C. at 138, 727 S.E.2d at 426 (using the standard of "unnecessary and unduly suggestive"). If the court determines the out-of-court identification did not result from impermissibly suggestive police procedures, the inquiry ends there and the court does not need to consider the second prong. Dukes, 404 S.C. at 557-58, 745 S.E.2d at 139. Single person show-up identifications are generally disfavored by the courts because their nature is suggestive. State v. Brown, 356 S.C. 496, 504, 589 S.E.2d 781, 785 (Ct. App. 2003)(citing State v. Blassingame, 338 S.C. 240, 525 S.E.2d 535 (Ct.App.1999)). However, this suggestive nature is mitigated by the witness's prior knowledge of the accused converting a procedure normally considered unduly suggestive into a mere confirmation. Liverman, 398 S.C. at 141-42, 727 S.E.2d at 427-28 (citing State v. Taylor, 594 N.W.2d 158 (Minn.1999))(holding that a show-up identification procedure was not suggestive but confirmatory where a witness previously singled out her assailant by nickname and had seen him around her building at least ten times before the identification took place); People v. Rodriguez, 79 N.Y.2d 445, 583 N.Y.S.2d 814, 593 N.E.2d 268, 272 (1992)("A court's invocation of the 'confirmatory identification' exception is thus tantamount to a conclusion that, as a matter of law, the witness is so

familiar with the defendant that there is 'little or no risk' that police suggestion could lead to a misidentification.").

The single-photograph identification procedure used by police with Amy Brock was not unduly or impermissibly suggestive. The police had information that Dendy was supplied methamphetamine by Clyde Davis. Investigator Ayers showed Brock a driver's license photograph of Davis and simply asked her who was in the picture to which she responded that it was Nick Dendy's cousin who provided Nick and her with methamphetamine. (R. p. 151, line 14 – p. 153, line 21; R. p. 131, line 3 – p. 133, line 15; R. p. 318, line 2 – p. 320, line 3). Investigator Ayers did not suggest who was featured in the photograph or that the person depicted in the photograph was the person Brock would know as Dendy's cousin. (R. p. 152, line 25 – p. 153, line 21). Brock did not know his name but identified Dendy's supplier as an individual she believed to be his cousin. She had seen the man she thought to be Dendy's cousin, Davis, at her home ten times or more. This identification method is also less suggestive than a show-up identification because Brock was shown a photograph of Davis in civilian clothes instead of seeing him in a secure location after he had been taken into custody. This procedure was not impermissibly suggestive because it was merely a confirmation that the supplier was the person Brock knew as Nick's cousin and the police did not suggest that the person in the photograph was a drug dealer or in any way suggest who he was or what connection, if any, he may have to Brock or Dendy. Therefore, the out-of-court identification and in-court identification were both properly admitted at trial and there is no need to further analyze the out-of-court identification procedure.

Even when a suggestive procedure has been used, an identification may still be reliable under the totality of the circumstances. Brown, 356 S.C. at 504, 589 S.E.2d at 785 (citing Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401; State v. Stewart, 275 S.C. 447, 272 S.E.2d 628 (1980); State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999). The reliability of the identification is the linchpin in determining its admissibility. Manson v. Brathwaite, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977); Blassingame, 338 S.C. at 251, 525 S.E.2d at 541.

The second prong of the Biggers inquiry determines the reliability of an identification under the totality of the circumstances by considering the following factors: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the amount of time between the crime and the confrontation. State v. Simmons, 384 S.C. 145, 166-67, 682 S.E.2d 19, 30 (Ct. App. 2009).

Brock's identification of Davis passes the first factor of reliability. Brock had numerous opportunities to view Dendy's methamphetamine supplier on her own property during daylight hours. The supplier came to her house regularly more than once a week beginning in Spring 2010 until October or November 2010. (R. p. 314, line 6 – p. 316, line 5). Sekerchak testified that he saw Clyde Davis bring methamphetamine to Dendy at Brock's residence on at least 10 occasions. (R. pp. 257-259; R. p. 262, lines 17-21). See State v. Taylor, 594 N.W.2d 158 (Minn.1999)(approving a show-up identification procedure where witness previously singled out her assailant by nickname and had seen him around her building at least ten

times before the identification took place). The transactions between Dendy and Davis at Brock's residence may have been short in duration but they were high in frequency. The number of times the supplier came to her residence provided ample opportunity for Brock to observe him. When the supplier arrived at her house, Brock would often go outside to Dendy's car to give him the money for drugs. Dendy would then go to his supplier who was parked directly behind him in a short driveway to make the exchange of money for methamphetamine. This would place Brock approximately a car-length away from Dendy's supplier during broad daylight where she would easily be able to see the supplier through an open car window as she testified. This repeated scenario suggests a reliable identification because Brock was given frequent opportunities to see Dendy's supplier on her property, during daylight, and from the close proximity equivalent to the length of a car.

No error was found when a trial court found the identification reliable and admissible where an informant was shown a single photograph in State v. Roach, 364 S.C. 422, 613 S.E.2d 791 (Ct. App. 2005)(vacated in part on other grounds, State v. Roach, 377 S.C. 2, 659 S.E.2d 107 (2008). In Roach the crack-smoking informant was shown a photograph of Roach and identified him as the person from whom he had been purchasing crack during a four-month period. Like the informant in Roach, Brock had a high degree of attention when observing Dendy's supplier. She was not a "casual observer" as Davis asserts in his Petition. She was a coconspirator and drug user who had a vested interest in knowing who was providing her methamphetamine. This would enhance her degree of attention, not diminish it. Therefore, Brock had a sufficient

degree of attention at the times she observed Dendy's supplier to substantiate a reliable identification of Davis.

Admittedly, there is no evidence in the record that Brock provided a physical description of Dendy's supplier to the police prior to the single-photograph identification. However, she was not being asked to identify someone she had only seen on one occasion. Instead, Brock was asked to identify a methamphetamine supplier she had seen on her property numerous times whom she singled out as someone she thought to be Dendy's cousin. This was a confirmation identification as accepted in Liverman, 398 S.C. 130, 727 S.E.2d 422. In addition, her identification of Davis is cumulative. During his testimony, Sekerchak identified Dendy's supplier by name, Clyde Davis. Even more compelling, Dendy testified that Clyde Davis was his supplier of methamphetamine and identified Davis in open court, without objection. Therefore, under the totality of the circumstances, this was still a reliable identification.

Brock's level of certainty at the time of confrontation sufficiently suggests a reliable identification of Davis as Dendy's methamphetamine supplier. When asked if she recognized who was in the photograph presented by Inv. Ayers, Brock simply responded that it was Dendy's supplier who she thought was Dendy's cousin. There is nothing in the record to indicate that she was uncertain or doubtful in any way about her identification from the single photograph. In fact, Brock testified at the Neil v. Biggers hearing and during the trial that she had no trouble identifying the individual in the photograph. (R. p. 319, lines 14-16; R. p. 155, line 8 – p. 156, line 11).

The amount of time between Brock's observations of Dendy's supplier and the presentation of the single photograph was not so great that it would diminish the

reliability of Brock's identification of Davis from the photograph. The lapse of one month between a crime and the photographic identification is not long enough to render an identification unreliable. See Simmons, 384 S.C. at 170, 682 S.E.2d at 32. Brock testified that the presentation of the photograph was a month or two after she was first approached by Inv. Ayers in October 2010. (R. p. 154, lines 9-16). Brock's methamphetamine arrangement with Dendy and Davis was still ongoing until October or November 2010. That means that the identification took place very close to the end of her dealings with Dendy and his supplier, possibly while they were still taking place, but after she had seen Dendy's supplier numerous times over several months. Under the totality of the circumstances, this suggests that Brock's identification of Davis as Dendy's supplier was timely and reliable.

The trial court, who is in the best position to perceive and judge the credibility of the witnesses, ruled that Brock's out-of-court identification of Davis was not impermissibly suggestive and that under the totality of the circumstances there was no substantial likelihood of misidentification. The trial court's rulings are supported by the evidence and not by an error of law, thus the rulings should not be disturbed on appeal. Therefore, the Court of Appeals correctly found that Brock's out-of-court identification and her in-court identification were properly admitted so the Petition should be denied.

II. The Court of Appeals correctly found that any error in admitting hearsay during the testimony of Agent Asbill was harmless beyond a reasonable doubt.

Davis also contends that the Court of Appeals erred in finding that the admission of certain portions of Agent Asbill's testimony was harmless error because the Court "seems to breeze right through the portion of their opinion discussing what makes an error to admit testimony at the Circuit Court level harmless or not." The Court of Appeals concisely identified the applicable case law and correctly applied the law to the facts of the case.

Davis' Petition understates the overall strength of the State's case. The State presented a strong historical conspiracy case without considering the testimony that the Court of Appeals determined to be hearsay and a violation of the Confrontation Clause. The combined testimony of Amy Brock, Nick Dendy, Brian Sekerchak, Joshua Byers, Michael Robinson, Tonya Smith, Warren Chastain, and David Norris clearly proved the existence of a trafficking conspiracy involving more than 100 grams of methamphetamine. As stated above, Brock and Sekerchak both identified Clyde Davis as the person they saw supply Dendy with methamphetamine that was then distributed to them. Dendy also testified that the methamphetamine that he sold to the other members of the conspiracy was directly supplied to him by Clyde Davis. When viewed together this evidence presents a very strong case proving guilt beyond a reasonable doubt even without the testimony of Agent Asbill.

If the trial court committed error by allowing certain portions of Agent Asbill's testimony, such error is harmless beyond a reasonable doubt and does not require reversal. A violation of the defendant's Sixth Amendment right to cross-examine witnesses is not reversible if the defendant was not unfairly prejudiced or if the error

was harmless beyond a reasonable doubt. State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991). "The materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Gillian, 360 S.C. 433, 455, 602 S.E.2d 62, 73 (Ct. App. 2004). The improper denial of a defendant's right to confront a witness is not *per se* reversible error, but is subject to a harmless-error analysis to determine if the error was harmless beyond a reasonable doubt. Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986); State v. Gracely, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012). When determining if a Confrontation Clause violation is harmless error appellate courts may consider a number of factors, including:

"the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course, the overall strength of the prosecution's case."

Van Arsdall, 475 U.S. at 684, 106 S.Ct. at 1438. (emphasis added).

Davis exaggerates the importance of Agent Asbill's testimony. The State's case did not rely on the controlled purchase of methamphetamine from Clyde Davis to prove that he was guilty of trafficking by conspiracy. The State did not even mention details of the controlled purchase transaction itself during its closing argument. (R. pp. 411-427). In closing argument the State did remind the jury that during an attempt to purchase methamphetamine Agent Asbill personally saw a Chrysler 300 at Davis' residence. That portion of testimony is not hearsay because it is not an out of court statement by anyone. Instead this portion of testimony addresses his own visual observation that provides a possible connection of a Chrysler 300, the same type of car described by Davis' codefendants as the type of car driven to deliver methamphetamine, to Davis.

In fact, the State specifically argued to the jury that the case was about a conspiracy agreement, not individual distributions of methamphetamine. (R. p. 417, lines 16-21). Terrance Albert, the confidential informant used in the controlled purchase, was never alleged to be a conspirator with Davis. Therefore, the controlled purchase and the drugs obtained from it were not important to the State's case because the controlled purchase was not part of the conspiracy agreement. The crux of the State's case and Davis' conviction was not Asbill's testimony about the controlled purchase but the testimony from Davis' coconspirators and other methamphetamine users and dealers about the historical conduct of Davis along with his coconspirators and the historical, aggregate weight of methamphetamine associated with that conduct which amounted to more than 100 grams without including the amount associated with the controlled purchase by Terrance Albert. Thus, any error associated with Agent Asbill's testimony was harmless beyond a reasonable doubt because it was not important to the case and could not have attributed to the conviction by the jury.

To a certain extent, Agent Asbill's testimony about one transaction is generally cumulative. The testimony that the Court of Appeals found to be erroneously admitted generally states that on one occasion Clyde Davis sold methamphetamine. While no other witness testified about that specific transaction, the testimony was still cumulative in the sense that Amy Brock, Nick Dendy, Brian Sekerchak, and Joshua Byers all testified that Clyde Davis had on occasions sold methamphetamine. Therefore any error in the admission of the testimony of Agent Asbill was harmless beyond a reasonable doubt because the testimony was generally cumulative in nature.

As stated above, the State presented a very strong historical conspiracy case. Removing the hearsay testimony from Agent Asbill about one transaction with someone who was not involved in the conspiracy does not affect the overall strength of the prosecution's case. Therefore, any error in admitting Agent Asbill's testimony about the controlled purchase is harmless beyond a reasonable doubt.

Davis incorrectly compares this case to the facts in State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012). In Gracely, this Court found that it is was not harmless error when the trial court prohibited defense counsel from cross examining cooperating codefendant witnesses about the mandatory minimum sentences they avoided by entering into plea agreements with the State. In that case each and every one of the non-law enforcement witnesses was tainted by the Confrontation Clause violation and there was no untainted evidence to corroborate their testimony.

Here, the Court of Appeals found error in only a part of Agent Asbill's testimony and correctly found that error to be harmless beyond a reasonable doubt. Unlike in Gracely, in this case there were no restrictions placed on the cross examination of the codefendant witnesses. This lack of restrictions produced both corroborative and cumulative evidence making any error in the admission of Agent Asbill's testimony harmless beyond a reasonable doubt.

Therefore, after analyzing and applying the Van Arsdall factors and Gracely, any error associated with Agent Asbill's testimony about the controlled purchase is harmless beyond a reasonable doubt because of the overall strength of the prosecution's case, the testimony in question was not important to the prosecution's case, the testimony was cumulative, and there were no other restraints on the extent of cross-examination.

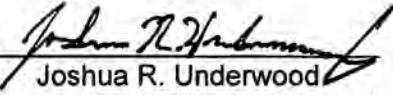
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

September 27, 2017

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2017-001504

THE STATE,

Respondent,

vs.

CLYDE BOWEN DAVIS,

Petitioner.

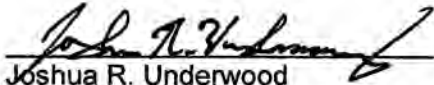
Opinion No. 5476 (S.C. Ct. App. filed March 29, 2017)

PROOF OF SERVICE

I, Joshua R. Underwood, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by delivering a copy of the same to:

Ryan L. Beasley, Esquire
650 E. Washington Street
Greenville, SC 29601

I further certify that all parties required by Rule to be served have been served.
This 27th day of September, 2017.


Joshua R. Underwood
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The Supreme Court of South Carolina

The State, Respondent,

v.

Clyde Bowen Davis, Petitioner.

Appellate Case No. 2017-001504

Trial Court Case No. 2011-GS-47-00006

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Few, J., not participating.

Columbia, South Carolina

March 28, 2018|

cc:

Ryan Lewis Beasley, Esquire
Joshua Richard Underwood, Esquire
Alan McCrory Wilson, Esquire
Samuel Creighton Waters, Esquire
James Clayton Mitchell, III, Esquire
The Honorable Paul B. Wickensimer
The Honorable Jenny Abbott Kitchings

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MAR 29 2018

STATE GRAND JURY-
PROS SECTION



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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April 03, 2018

The Honorable Paul B. Wickensimer
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Greenville SC 29601-2121

REMITTITUR

Re: The State v. Clyde B. Davis
Lower Court Case No. 2011GS4700006
Appellate Case No. 2013-002207

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Joshua Richard Underwood, Esquire
Alan McCrory Wilson, Esquire
Ryan Lewis Beasley, Esquire
Samuel Creighton Waters, Esquire
James Clayton Mitchell, III, Esquire
The Honorable Letitia H. Verdin

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PROS SECTION