

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Pickens County

Honorable G Edward Welmaker, Circuit Court Judge

Trial Court Case No 2008-GS-47-11-02

THE STATE,

Respondent,

vs

ANTHONY GRACELY

Appellant

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I Did the trial court judge commit reversible error when he did not allow defense counsel to cross-examine the State's witnesses regarding mandatory minimum sentences they could have faced on the same charge as the Defendant, but did allow cross-examination regarding the maximum sentence of the same charge as well as the maximum and mandatory minimum sentences of other charges?

II Did the trial court judge err when he denied Appellant's motion for a directed verdict when the evidence presented at trial was sufficient to support a conviction for conspiracy to traffic methamphetamine in an amount greater than 400 grams?

STATEMENT OF THE CASE

Anthony Gracely was indicted by way of a superseding indictment for unlawful drugs by the State Grand Jury on June 10 2009 He was tried in his absence by the Honorable G Edward Welmaker and a jury on June 28, 2010 He was convicted of conspiracy to traffic methamphetamine in an amount greater than 400 grams and sentenced to 28 years imprisonment This appeal follows

STATEMENT OF FACTS

In this trial, Gracely only faced the charge of conspiracy to traffic 400 grams or more of methamphetamine. The State presented a historical case to prove the existence of and Gracely's connection to the conspiracy. The State's case included the testimony of admitted coconspirators Frank Posey, Joel Hall, Stacy Anderson, Ernest Craft, and Lance Holloway. The State also presented testimony from Brian Stegall and Kimberly Taylor who were charged in separate counts of the indictment.

Frank Posey testified that Lance Holloway brokered a deal between Posey and Gracely in which Posey and Gracely agreed for Posey to "front," or give to Gracely on credit, one half pound of methamphetamine for Gracely to sell and repay Posey. R. p. 66, line 16 – p. 68, line 16. Gracely started to repay Posey up to \$1,500 over the course of five to eight meetings in which Gracely gave Posey drugs which Posey in turn sold and converted to cash. R. p. 73, lines 2-16, R. p. 73, line 24– p. 74, line 12. Posey further testified that at these meetings, Gracely also tried to sell Posey methamphetamine from his other supplier, Joey DiFresco. R. p. 73, lines 19-23.

At the beginning of cross-examination, trial counsel reviewed Posey's criminal history. R. p. 74, line 19 – p. 76, line 1. After further questioning, Posey admitted that he was charged with two counts of trafficking 400 grams or more, facing up to 60 years (up to 30 years on each count), but pled guilty to trafficking 10-28 grams of methamphetamine with a recommendation from the State that he be sentenced to five years in exchange for his cooperation. R. p. 78, line 23- p. 81, line

15 During this examination, trial counsel asked Posey if trafficking in methamphetamines, 400 grams and over, carried a minimum of 25 years and up to 30 years. Posey answered "[t]rue." R. p. 79, lines 9-13. Posey was again asked about the potential sentence of 25-30 years when an objection was made by the State at which time counsel approached the bench for a conference with no announced ruling from the Court. R. p. 79, lines 14-24. Trial counsel asked about that sentencing range a third time when the State objected and the Court sustained the objection without any curative instructions. R. p. 80, lines 2-6.

Brian Stegall testified Gracely would front him methamphetamine to sell so Stegall could get high, sell the rest, and bring the money back to Gracely. R. p. 93, lines 7-17. Stegall further testified he would act as a middle-man by bringing people to Gracely to buy methamphetamine and Gracely would give him a proportionate amount of drugs for brokering the deal. R. p. 94, line 10 – p. 95, line 20. On four or five occasions, he brought Joel Hall to Gracely to purchase a quarter to half of an ounce on each occasion. R. p. 95, lines 6-13. Stegall also testified that Gracely and Lance Holloway sold methamphetamine together and he saw them selling methamphetamine together many times. R. p. 99, line 13 – p. 100, line 12. He also testified he knew Stacy Anderson was one of Gracely's sources because Stegall would act as Anderson's driver and was present during at least one transaction when Anderson gave Gracely two ounces of methamphetamine on front, meaning that Gracely did not need to pay for it until he resold it. R. p. 95, line 24 – p. 98, line 11. He identified Joey DiFresco as another of Gracely's methamphetamine sources.

R p 100, lines 13-21 Stegall estimated that during the time of this conspiracy he helped Gracely sell “half a pound, if not more ” R p 101, lines 8-14

During cross-examination, Stegall testified that he faced up to 30 years on a separate count of trafficking more than 400 grams of methamphetamine and that he could have been charged in Count II with Gracely and face up to another 30 years R p 102, line 17 – p 103, line 9 Trial counsel also questioned Stegall about his prior record and elicited testimony that he would have faced another 25 or 30 years for third or subsequent distribution of methamphetamine R p 104, lines 20-22, R p 105, line 23 – p 107, line 2 In response to trial counsel’s question, Stegall admitted that after facing up to 90 years he received a deal of 15 years in exchange and filed a motion to reconsider, asking the court to reduce his sentence even lower, all in exchange for his cooperation with the State R p 108, lines 14-18

Following the testimony of Brian Stegall, the defense and the State presented arguments regarding the limitation of cross-examination that prohibited questions concerning the minimum sentence for trafficking 400 grams or more of methamphetamine the subject of the earlier bench conference R pp 112-117 The Court also heard arguments concerning questions pertaining to the minimum sentence of 15 years each of the witnesses faced for their third or subsequent distribution offense R pp 117-124 The trial judge ruled that trial counsel could not cross-examine the witnesses about the minimum sentence on trafficking, but could question them about the maximum for trafficking and both the minimum and maximum sentence for distribution R p 112, lines 5-9, R p 124, lines 7-10

Kimberly Taylor testified she purchased methamphetamine from Lance Holloway and Holloway's source of methamphetamine was Anthony Gracely. She was involved in a drug transaction with Holloway and Gracely in which Gracely provided two ounces of methamphetamine to Holloway. Taylor, in turn, purchased one of those ounces to use and resell. R p 129, line 10 – p 130, line 17. On another occasion, Holloway and Gracely came to her ex-boyfriend's shop and made arrangements to sell him an ounce of methamphetamine for \$1,600 which they later did at another location. R p 130, line 21 – p 133, line 5.

During cross-examination, trial counsel questioned her regarding her criminal history. R p 134. Trial counsel then questioned her about her pending charges, pointing out that she faced a minimum of 30 years and a maximum of 90 years before accepting a deal for 20 years in exchange for cooperating with the State. R p 142, line 21- p 143, line 18. In response to trial counsel's question, she also admitted she did not identify Gracely until after accepting the plea deal. R p 143, lines 19-22.

Joel Hall testified that on one occasion he purchased half an ounce of methamphetamine from Anthony Gracely but did not pay for it all at once and had to pay another \$200 after he sold some of it. R p 160, line 14 – p 162, line 14. Hall also testified about numerous other coconspirators. R p 153, line 17 – p 168, line 18.

Trial counsel cross-examined Hall that, due to his criminal record and pending charges, Hall faced a minimum of 15 years and up to 150 years

imprisonment R p 170, line 8 – p 172, line 18 Trial counsel also elicited testimony that in exchange for Hall's cooperation, the State offered reduced charges and a recommendation of only 10 years to run concurrent to Hall's federal sentence R p 172, lines 19-25 In response to another question from trial counsel, Hall admitted that if not for his cooperation he faced significantly more than 10 years R p 175, lines 8-11

Stacy Anderson testified that he got his methamphetamine from a source in Hendersonville, NC R p 183, lines 5-8 He regularly sold methamphetamine for \$1,450 an ounce and Gracely owed him \$7,300 for methamphetamine R p 184, line 18 – p 185, line 5 , R p 187, lines 8-14 On cross-examination trial counsel asked Anderson about needing to continue cooperating with the State to get a favorable recommendation of 15 years to run concurrent with an expected federal sentence R p 194, line 19 – p 195, line 16

Ernest Craft testified he was present and saw at least an ounce of methamphetamine in Gracely's hotel room when Gracely sold half an ounce of methamphetamine to Dwayne Mitchell, who in turn sold an eighth of an ounce, or an eight ball, to Craft R p 210, line 14 – p 212, line 10 Craft also testified that for a period of time Stacy Anderson supplied Gracely and him with methamphetamine R p 212 line 21 – p 213, line 7

During cross-examination, trial counsel asked Craft if he had at least four prior drug convictions R p 215, lines 16-25 Counsel also confronted Craft about

potentially facing up to 60 years in prison before the State offered 15 years in exchange for his cooperation R p 217, lines 1-16

Lance Holloway testified that between June 2007 and February 2008 he and Gracely worked together to profit by selling methamphetamine at a rate of one and half to two ounces per week R pp 231-233 At that time, Joey DiFresco and Stacy Anderson were supplying Gracely with methamphetamine R p 232, lines 2-8

Trial counsel briefly cross-examined Holloway about his prior convictions R p 245, lines 5-14 Counsel then confronted Holloway about facing up to 30 years for trafficking plus 15 to 30 years for distribution before agreeing to cooperate with the State for a sentence of 12 years R p 245, line 15 – p 247, line 23

After the conclusion of the State's case, trial counsel moved for a directed verdict which was denied by the trial court R p 270, line 11 – p 274, line 12 The jury found Anthony Gracely guilty of trafficking more than 400 grams of methamphetamine by conspiracy R p 334, lines 1-7

ARGUMENTS

I The trial judge did not commit reversible error when he prohibited defense counsel from cross-examining State's witnesses about the mandatory minimum sentence they could have faced on a conspiracy charge in common with the Defendant because the Defendant was not unfairly prejudiced and any error was harmless beyond a reasonable doubt

Gracely alleges that his confrontation clause rights were violated because his trial counsel was not permitted to cross-examine the State's witnesses concerning the mandatory minimum sentence they could have faced for conspiring to traffic 400 grams or more of methamphetamine. However, he was not unfairly prejudiced by this alleged error because trial counsel was permitted to cross-examine the witnesses concerning the potential maximum exposure they faced on the trafficking charge as well as the minimum and maximum sentences they faced on third or subsequent unlawful distribution charges. Further, any error was harmless beyond a reasonable doubt.

A THE DEFENDANT SUFFERED NO UNFAIR PREJUDICE

The Confrontation Clause of the Sixth Amendment guarantees a defendant the right to cross-examine witnesses concerning facts which tend to show bias, interest, or partiality. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105 (1974), State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991), State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002). This constitutional protection includes the right to cross-examine

State's witnesses about possible sentences faced when a substantial possibility exists that the witness would give biased testimony in an effort to receive more favorable treatment from the State State v Gillian, 360 S C 433, 602 S E 2d 62 (Ct App 2004)

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 " Gillian, 360 S C at 455, 602 S E 2d at 73

In Sherard, our Supreme Court held that a defendant is not prejudiced when a trial court refused to allow cross-examination of a witness regarding the minimum sentence for a charged offense after another witness had already revealed the minimum sentence for the same offense and defense counsel was otherwise able to demonstrate bias on the part of the witnesses 303 S C at 175, 399 S E 2d at 596 Sherard was charged with murder and armed robbery in General Sessions Court Two codefendants, Outen and Clark, pled guilty to reduced charges in Family Court in exchange for their cooperation against Sherard and two other codefendants On cross-examination Outen testified he was previously convicted of other crimes and had been incarcerated He admitted he did not want to go back to prison Later in that cross-examination it came out that he was charged with murder and was facing a life sentence if tried and convicted in General Sessions Court During the cross-

examination of Clark, the defense was not able to elicit the specific sentences Clark would have faced in General Sessions Court. However, Clark did testify he knew the sentences were much less severe in Family Court and that he had to testify for the State to have his charges reduced in Family Court. Our Supreme Court found this line of questioning sufficiently revealed the witnesses' motives for testifying. Id.

The cross-examination issues in this case constitute a nearly perfect parallel to those in Sherard, thus Gracely was not unfairly prejudiced. During cross-examination of the first codefendant witness in this case, Frank Posey, the following discussion took place:

Q You were charged with trafficking in methamphetamine, four hundred grams and over?

A Uh-huh (affirmative)

Q That's a yes?

A Yes, sir

Q And as a matter of fact trafficking in methamphetamine, four hundred grams and over, carries a minimum of twenty-five years and up to thirty years isn't [sic] it?

A True

Q And they came up to you and told you that when they wanted you to cooperate. You face a minimum of twenty-five years and up to thirty years. And you want to help yourself?

(R p 79, lines 4-17) Immediately after this exchange, the State made an objection and all counsel approached the bar for a bench conference. Following the bench

conference trial counsel again stated that the witness would have faced between twenty-five and thirty years, prompting the State to object and the Court to sustain the objection. Trial counsel then asked “[a]nd on that one you faced up to thirty years?” to which the witness acknowledged. (R p 79, line 18 – R p 80, line 11) No “curative” instruction from the Court was ever requested or given concerning this perceivably improper questioning regarding the minimum sentence of the trafficking methamphetamine charge. The remaining cooperating codefendants all testified that they could have faced the same charge with the same maximum sentence, that they could have faced a mandatory minimum sentence of 15 years for distribution of methamphetamines, and that they were cooperating to avoid these sentences. (R pp 102-108, 138-143, 170-171, 193-195, 201, 215-217, 245-247)

During the first break in testimony, the defense and the State were permitted to present arguments concerning the scope of cross-examination related to potential sentences. (R p 112-124) The Court ruled that trial counsel could cross-examine the witnesses regarding the potential 30 year maximum sentence for their common trafficking charge, but not the mandatory minimum 25 year sentence. (R p 112, lines 5-9) The Court further permitted trial counsel to cross-examine the witnesses regarding the mandatory minimum sentence of 15 years each of the witnesses potentially faced on third or subsequent distribution charges. (R p 124, lines 7-10)

Sherard eviscerates Gracely’s entire argument concerning this issue. Just as exemplified in Sherard, there is no unfair prejudice in this case. Here the jury was made aware of the mandatory minimum sentence for trafficking 400 grams or more

of methamphetamine during the cross-examination of Frank Posey. The Court never instructed the jury that they could not consider that mandatory sentence. Each of the subsequent codefendant-witnesses testified that they potentially faced the same charge. All of the codefendant-witnesses testified during cross-examination as to the specific total maximum punishments they faced, including the mandatory minimum punishment for third or subsequent distribution offenses, and admitted the benefits of the plea deals they were receiving in exchange for their testimony. Therefore, just as in Sherard, there was no unfair prejudice to the Defendant because the jury was made fully aware of the information that Gracely argues he was unfairly permitted to elicit. Thus, Gracely's conviction should be affirmed because the Court did not commit reversible error.

B ANY ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT

Even if Gracely did suffer unfair prejudice, any error committed by the trial court was harmless beyond a reasonable doubt and not subject to reversal.¹

The improper denial of a defendant's right to impeach a witness for bias 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 (1986). 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

¹ As discussed above, the State contends that Gracely suffered no unfair prejudice.

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 ”

Id., 475 U S at 684, 106 S Ct at 1438 (emphasis added)

Reversible error can occur when defense counsel is prohibited from eliciting **any** testimony concerning an adverse witness' potential sentence or when counsel is limited to an examination that only results in vague descriptions of a long prison sentence Brown, supra, Mizzell, supra However, when the extent of the permitted cross-examination is not overly restricted, the reviewing court may determine that the error is harmless and does not warrant reversal State v Clark, 315 S C 478, 445 S E 2d 633 (1994), State v Whitner, 380 S C 513, 670 S E 2d 655 (Ct App 2008)

Gracely's argument relies upon Brown and Mizzell to establish his claim that a Confrontation Clause violation occurred, but fails to address all of the Van Arsdall factors to determine if the error is harmless beyond a reasonable doubt The defendant in Brown was unfairly prejudiced when cross-examination was improperly limited The State's witness testified on direct examination that she was allowed to plead guilty to one charge for which the maximum sentence was seven and one-half years as part of a plea agreement On cross-examination the witness testified she was originally charged with trafficking cocaine but that charge was dropped per the agreement Defense counsel attempted to elicit testimony from the witness concerning the mandatory minimum punishment of twenty-five years for the dropped charge, but the court did not allow **any** questions as to the possible sentence

Brown, 303 S C at 171, 399 S E 2d at 594, see Sherard, 303 S C at 176, 399 S E 2d at 596 (distinguishing Sherard's case from Brown where no evidence was presented concerning the sentence avoided by the witness)

In Mizzell, the defendant and the State's witness were both charged with the same crime. There, the trial court only allowed the defense to cross-examine the witness in general terms about the sentence he could face if he did not cooperate with the State. Due to the witness' vague testimony that "he could go to jail for a 'long time'" and admission that he "could get a long sentence for these crimes," the Supreme Court reversed and found that the trial court committed prejudicial error by imposing such stringent limitations on the defendant's cross-examination into the witness' possible sentence. Mizzell, 349 S C at 334, 563 S E 2d at 319

Although this case bears certain factual similarities to Brown and Mizzell, a legal analysis compares better with Clark, Whitner, and, as discussed above, Sherard. In Clark, our Supreme Court determined that the cross examination of a State's witness was in accord with Van Arsdall when the trial court prohibited questions about a pending murder charge against the witness but allowed Clark to impeach the witness' credibility with a prior conviction, a parole revocation, and an admission that the witness had recently gotten into "some trouble." Clark, 315 S C at 481-482, 445 S E 2d at 635

In Whitner this Court determined that the limitation on cross-examination was not reversible error. Whitner was only prevented from asking the witness, "Do you know how much time you're looking at in prison?" He was allowed to ask the

witness if she had pled guilty to the same offense and if she hoped that her testimony would help with her sentencing Whitner, 380 S C at 517, 670 S E 2d at 657

In light of the Van Arsdall factors and the examples set forth in Clark, Whitner and Sherard any error in limiting Gracely's cross-examination of the State's witnesses proves harmless beyond a reasonable doubt. This court must consider the extent of cross-examination otherwise allowed. In contrast to Brown, where the defense was prohibited from asking any questions about the sentence the witness could have faced on the dropped charge, and Mizzell, where the defense could only elicit vague terms about a long sentence, Gracely was permitted to ask the witnesses a great deal about their plea agreements and the specific amount of potential prison time they could have faced. Just as in Whitner, trial counsel was permitted to ask the witnesses what charges they faced and if they hoped their cooperation would help them with their own sentencing. R pp 74-79, 102-108, 138-143, 170-171 193-195, 201 215-217, 245-247. Similarly to Clark, trial counsel was able to cross-examine the witnesses about their prior offenses and the charges they faced in connection to Gracely's case. R pp 74-79, 102-108, 138-143 170-171, 193-195, 201, 215-217 245-247

More importantly, trial counsel was permitted to cross-examine each of the witnesses about their potential minimum and maximum sentences on the other charges they faced in connection to the indictment, the maximum potential sentence they faced on the same trafficking charge faced by Gracely, and to contrast the

witnesses' potential liability with their expected reduced sentences based on their assistance given to the State R pp 112, 124, 74-79, 102-108, 138-143, 170-171, 193-195 201, 215-217, 245-247 When comparing the trial court's minor limitation of cross-examination to the vast amount of cross-examination otherwise allowed, any error committed by the trial court was harmless beyond a reasonable doubt

II The trial judge did not err by denying Appellant's motion for a directed verdict because sufficient evidence was presented at trial to support a conviction for conspiracy to traffic methamphetamine in an amount greater than 400 grams

Gracely argues that the trial court should have granted a directed verdict on the charge of conspiracy to traffic methamphetamine in an amount greater than 400 grams, ignoring the testimony of Lance Holloway that two of them worked together to sell methamphetamine for profit, that between June 2007 and February 2008 they sold at least one and a half to two ounces of methamphetamine per week and that Stacy Anderson and Joey DiFresco were Gracely's methamphetamine suppliers This evidence is sufficient for the jury to determine that Gracely and others conspired together to traffic 400 grams or more of methamphetamine

When reviewing a trial court's denial of a directed verdict, this Court must view all of the evidence in the light most favorable to the State and affirm the denial if there is any direct or substantial circumstantial evidence State v Horne, 324 S C 372, 478 S E 2d 289 (Ct App 1996) When addressing a motion for directed

verdict the courts are concerned with the existence or nonexistence of evidence, not the weight of the evidence State v Williams, 303 S C 274, 400 S E 2d 131 (1991)

The uncorroborated testimony of a coconspirator can be sufficient to sustain a conviction for conspiracy State v Steadman, 257 S C 528, 186 S E 2d 712 (1972)

The crime of conspiracy consists of the agreement or mutual understanding to achieve a criminal or unlawful object. A criminal conspiracy does not require proof of overt acts, but substantive crimes committed in furtherance of the conspiracy can be used as circumstantial evidence to prove the existence of the conspiracy State v Wilson, 315 S C 289, 433 S E 2d 864 (1993). The State must prove that the coconspirators intended to act together for their shared, mutual benefit within the scope of the charged conspiracy State v Gunn, 313 S C 124, 437 S E 2d 75 (1993). Although proof of a buyer-seller relationship, alone, is not sufficient to connect a buyer to the larger conspiracy, the fact-finder can infer an agreement to distribute drugs from frequent contacts among the coconspirators and their joint appearances at drug transactions and negotiations State v Barroso, 320 S C 1, 462 S E 2d 862 (Ct App 1995), *reversed on other grounds*, 328 S C 268, 493 S E 2d 854 (1997). The State does not need to prove direct contact or explicit agreement between all of the coconspirators, provided that it proves defendants knew or had reason to know the scope of the conspiracy while believing that each defendant believed that his own benefit from the conspiracy depended upon the success of the conspiracy as a whole Id

The State presented more than sufficient evidence to submit this case to the jury. The testimony of admitted coconspirator Lance Holloway, in and of itself, meets the State's burden of presenting sufficient evidence to prove Gracely's involvement in the conspiracy and guilt beyond a reasonable doubt. *Accord Steadman, supra*. Holloway testified that he partnered with the Defendant to sell methamphetamine from June 2007 until February 2008. He explained that they "had the same agenda to make money." R. p. 231, lines 7-9. Holloway estimated that he and the Defendant together sold one and a half to two ounces of methamphetamine a week during this time period, conservatively totaling more than 1100 grams. R. p. 233, lines 6-25. Holloway further testified he knew Stacy Anderson and Joey DiFresco supplied Gracely with his methamphetamine because Holloway partnered with Gracely and was present on at least a couple occasions when they delivered the drugs to Gracely. R. p. 232, lines 2-8.

Holloway's testimony demonstrates sufficient evidence to prove the existence of a conspiracy to traffic methamphetamine in an amount of 400 grams or more. Calculations using the rate of sales from Holloway's testimony establish that they worked together to sell far more than the threshold amount of 400 grams of methamphetamine. By testifying that he and Gracely were dealing in methamphetamine to make money, Holloway established that more than a simple buyer-seller relationship such as from dealer to consumer existed. The jury could infer that an agreement existed based upon the regular contacts Gracely had with Anderson and DiFresco as his suppliers. It was in their shared interest to sell

methamphetamine Gracely and Holloway bought and sold the drugs to make money Gracely used some of the money from his sales to purchase more drugs from Anderson and DiFresco Therefore, it was in their interest for Gracely to continue selling his drugs so that he would buy more from them This arrangement constitutes a conspiracy, directly involving Gracely, to traffic more than 400 grams of methamphetamine

The testimony of other codefendant-witnesses corroborates the testimony of Lance Holloway and adds additional evidence to sustain Gracely's conviction Frank Posey testified that he fronted Gracely half of a pound of methamphetamine and that Gracely tried to sell him methamphetamine from his other supplier, Joey DiFresco R p 66, line 16 – p 68, line 16, R p 73, lines 19-23 The fact that Gracely accepted drugs on front constitutes evidence of a conspiracy because indicates cooperation and a mutual interest State v Hammit, 341 S C 638, 645, 535 S E 2d 459, 463 (Ct App 2000)

Brian Stegall testified that Gracely fronted him methamphetamine to sell R p 93, lines 7-17 He admitted to brokering four or five drug deals between Gracely and Joel Hall for up to half an ounce on each occasion R p 95, lines 6-13 Stegall also confirmed that Gracely and Holloway sold drugs together and that Anderson and DiFresco supplied Gracely with methamphetamine R p 99, line 13 – p 100, line 21, R p 95, line 24 – p 98, line 11

Kimberly Taylor also confirmed that Gracely and Holloway sold drugs together while testifying about two drug transactions involving them R p 129, line

10 – p 133, line 5 Joel Hall testified about several other individuals involved with the conspiracy and about one incident in which Gracely sold him half an ounce of methamphetamine, partially on front R p 153, line 17 – p 168, line 18 Stacy Anderson testified that he sold methamphetamine for \$1,450 an ounce and that Gracely owed him \$7,300 for methamphetamine R p 184, line18 – p 185, line 5, R p 187, lines 8-14 Ernest Craft testified that Stacy Anderson supplied Craft and Gracely with methamphetamine R p 212, line 21 – p 213, line 7

The testimony of Lance Holloway, Frank Posey, Brian Stegall, Kimberly Taylor, Joel Hall, Stacy Anderson, and Ernest Craft constitute ample sufficient evidence to warrant the trial court's denial of Gracely's request for a directed verdict Therefore, the trial judge properly denied the motion for a directed verdict

CONCLUSION

Based upon the foregoing arguments, the State respectfully requests that this Court affirm the trial court's rulings, verdict, and sentencing

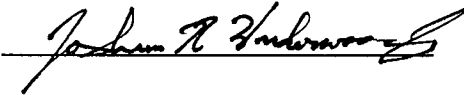
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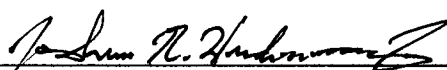
vs

ANTHONY GRACELY

Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b) SCACR



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Appellant

PROOF OF SERVICE

I, Ellen R DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record,

Elizabeth A Franklin-Best, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia SC 29211-1589

I further certify that all parties required by Rule to be served have been served

This 23rd day of January, 2012



ELLEN R DuBOIS
Legal Assistant

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