

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from Pickens County

Robin B. Stilwell, Circuit Court Judge

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S.C. Supreme Court

ISRAEL COLECIO,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000054

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

STATE OF SOUTH CAROLINA, )

2009-GS-39-1750, 1751, 1752

PLAINTIFF, )

-VS- )

ISRAEL COLECIO, )

TRANSCRIPT OF RECORD

DEFENDANT. )

\_\_\_\_\_ )

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

BAKER CLEVELAND, ESQUIRE  
ATTORNEY FOR PLAINTIFF

BILL GODFREY, ESQUIRE  
ATTORNEY FOR DEFENDANT

DANETTE P. HANKS  
CIRCUIT COURT REPORTER

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*The State -vs- Israel Colecio (2009-GS-39-1750,1751, 1752)*  
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NO	DESCRIPTION	ID	EV
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	(NONE)		

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### JURY VOIR DIRE

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Def.	
98	Rahn, Henry J	W	M				x
25	Cureton, Melvin E	W	M				x
2	Aikens, Anna L	B	F			x	
122	Truax, Douglas R Jr	W	M			x	
20	Cater, Margaret N	W	F				x
126	Watson, Jennifer C	W	F				x
82	Jenkins, Anne M	W	F				x
71	McJunkin, Walter S	W	M			x	
91	Perry, Joshua G	W	M		x		
43	Halstead, Rene V	W	F				x
17	Bryant, Timothy R	W	M				x
100	Rhoads, Roger N	W	M		x		
44	Hamilton, Timothy P	W	M				x
50	Henson, Jennifer J	W	F				x
62	Ladd, Joseph W	B	M			x	
21	Chappell, Sherrill A	W	F				x
81	Mussro, Robert J	W	M				x
5	Attaway, Candace E	W	F				x
127	Whaley, Lyna R	W	F			x	
34	Gallimore, Baker A	W	M				x

1           (WHEREUPON, court convened with all parties present  
2           and the following proceedings were had.)

3           (WHEREUPON, State Exhibit Numbers 1 through 56  
4           marked for identification.)

5           THE COURT: Ladies and gentlemen, we're now  
6           ready to select a jury for the trial in the first case  
7           we're going to have in here in this courtroom. You've  
8           been qualified to serve as a juror already. I need to  
9           ask you some additional questions, however, to make sure  
10          you're qualified to serve on this particular jury.

11          The State of South Carolina has presented  
12          indictments to me. They charge Mr. Israel Colecio with  
13          certain offenses, one of which is entitled trafficking  
14          methamphetamine. And the indictment substantially says  
15          that on or about December the 11th, 2008, that he  
16          knowingly sold or manufactured or delivered or brought  
17          into the State or provided assistance, financial or  
18          otherwise, to conspire or aid or abet or deliver this  
19          illegal drug that he -- or that he was in actual or  
20          constructive possession. And there is an indictment for  
21          possession, or attempting to sell, or deliver more than  
22          ten grams of methamphetamine.

23          There's another indictment on the same day for the  
24          possession, or the manufacture, sale, or delivery of  
25          twenty-eight grams or more of methamphetamine.

1           There's also a charge on that same day, of December  
2 the 11th 2008, that he possessed or visibly displayed a  
3 thirty-two caliber handgun during the commission of a  
4 violent crime, that being the crime of drug trafficking.

5           Now, the Defendant in this case, Mr. Colecio, has  
6 entered a plea of not guilty. By entering a plea of not  
7 guilty, the State of South Carolina has the burden of  
8 proving his guilt beyond a reasonable doubt. Every  
9 person that's tried in a court of law in our State, in  
10 our Country, is presumed innocent until the State meets  
11 that burden of proof beyond a reasonable doubt. You and  
12 I are going to be judges in this case. I'm going to be  
13 the judge of the law. We need to find twelve fair and  
14 impartial jurors to judge the facts in the case. The  
15 indictment basically sets forth the allegations about  
16 this as to the date.

17           Is there any member of the jury panel who has any  
18 prior knowledge, first-hand, second-hand, media,  
19 otherwise, about this particular incident. If you have  
20 prior knowledge, would you please stand?

21           (No response.)

22           THE COURT: Thank you. There is no response.

23           Is there any member of the jury panel who knows Mr.  
24 Israel Colecio? If so, would you please stand. If you  
25 are related by blood or marriage, if you have a close

*The State -vs- Israel Colecio (2009-GS-39-1750,1751, 1752)*  
*Jury Voir Dire*

9

1 business or social or a personal relationship with Mr.  
2 Colecio? Any member of the panel?

3 (No response.)

4 THE COURT: Thank you. There is no response.  
5 Several witnesses may be called upon to testify in this  
6 case, ladies and gentlemen. I'm going to read a list of  
7 those names for you. After that, I'll ask some follow-  
8 up questions. Among the potential witnesses from the  
9 Pickens County Sheriff's Office would be Henry Campbell,  
10 Tommy Blankenship, Tony Robinson. From SLED would be  
11 Constance Sonnefeld, also possibly Angil Landrum. Also  
12 from the Pickens County Sheriff's Department would be  
13 Chad Brooks, Charles Barwick, Graham Adcox. Other  
14 witnesses that may be called upon to testify would be  
15 Neal Powell, Cathy Powell, Leon Antonio Davis. From  
16 the Police Department of Easley, possible witnesses  
17 would be John Hamby and Jason Lovell. Is there any  
18 member of the jury panel related by blood or marriage  
19 to any of these potential witnesses? If so, would you  
20 please stand.

21 (No response.)

22 THE COURT: Is there any member of the panel  
23 who has a close business or social or a personal  
24 relationship with any of these potential witnesses? If  
25 so, would you please stand.

1 (No response.)

2 THE COURT: Thank you. There is no response.

3 Is there any member of the jury panel expressed or  
4 formed an opinion in any way about the facts in this  
5 case? If so, would you please stand.

6 (No response.)

7 THE COURT: Is there any member of the jury  
8 panel aware of any bias or prejudice that would  
9 interfere with your ability to be a fair juror both to  
10 the State and the Defendant in this case? If so, would  
11 you please stand.

12 (No response.)

13 THE COURT: Is there any member of the jury  
14 panel a contributing member of any organization having  
15 its primary concern the promotion of law enforcement or  
16 victims' rights, such as MADD, SADD, CAVE, PARR, any of  
17 those organizations? If you're a contributing member of  
18 any of those, would you please stand.

19 (No response.)

20 THE COURT: Is there any member of the jury  
21 panel who has a member of your immediate family in the  
22 law enforcement? If so, would you please stand?

23 Yes, ma'am, your name, please?

24 JUROR: Lyna Whaley.

25 THE COURT: All right. You have a husband, I

1 believe, who is in law enforcement in Greenville?

2 JUROR: Yes.

3 THE COURT: The fact that you have a husband  
4 in law enforcement, would that affect your ability to be  
5 a fair juror in this case?

6 JUROR: No, I don't believe so.

7 THE COURT: Could you be fair to the State  
8 and to the Defendant and make a decision on the  
9 evidence that you hear in this courtroom and that  
10 alone?

11 JUROR: Yes, I could.

12 THE COURT: Okay. Thank you very much. You  
13 may be seated.

14 Yes, ma'am. Your name, please?

15 JUROR: My name is Anna Aikens. I have a  
16 brother that's a detective.

17 THE COURT: Okay. And where is he a  
18 detective?

19 JUROR: In Anderson County.

20 THE COURT: In Anderson County. All right.  
21 The fact that you have a brother in law enforcement, in  
22 another county, would that affect your ability to be a  
23 fair juror in this case? This case will have to be  
24 decided on the facts that you hear in this courtroom;  
25 the evidence that's presented, the testimony that's

1 given, the law that I give you, and that alone. Do you  
2 believe that you could be a fair juror to both the state  
3 and to the defendant in this case?

4 JUROR: I do.

5 THE COURT: Thank you very much. You may be  
6 seated.

7 Yes, ma'am, your name, please?

8 JUROR: Anne Jenkins.

9 THE COURT: Yes, ma'am.

10 JUROR: My father is a retired police  
11 officer.

12 THE COURT: Okay. And where did he work?

13 JUROR: He was the Director of Public Safety  
14 at Clemson University. And prior to that he was a  
15 Juvenile Officer for Pickens County.

16 THE COURT: All right. Your father has  
17 retired from law enforcement. The fact that he was in  
18 law enforcement, would that affect your ability to be a  
19 fair juror?

20 JUROR: No.

21 THE COURT: You could be fair to both sides  
22 and base the decision on the evidence that takes place  
23 in this courtroom, the law that I give you and that  
24 alone?

25 JUROR: Yes, sir.

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*Jury Voir Dire*

13

1 THE COURT: Thank you. You may be seated.

2 At this time, I would ask the attorneys, if you  
3 would, please, stand and introduce yourselves to the  
4 jury. Mr. Cleveland.

5 MR. CLEVELAND: Thank you, Your Honor.  
6 Ladies and gentlemen, my name is Baker Cleveland. I'm  
7 an Assistant Solicitor here in the Thirteenth Judicial  
8 Circuit and I prosecute cases brought to me by the  
9 various law enforcement agencies within Pickens County.

10 THE COURT: Mr. Newton.

11 MR. NEWTON: My name is Chris Newton. I'm  
12 also an Assistant Solicitor with Pickens County.

13 THE COURT: Mr. Godfrey.

14 MR. GODFREY: My name is Bill Godfrey and I  
15 represent Israel Colecio. Please stand up, sir.

16 THE COURT: Thank you. Is there any member  
17 of the jury panel related by blood or marriage to either  
18 -- any of these attorneys? If so, would you please  
19 stand.

20 (No response.)

21 THE COURT: Is there any member of the jury  
22 panel who has a close business or social or personal  
23 relationship with any of these attorneys? If so, would  
24 you please stand.

25 (No response.)



1 Jury, and we'll get one alternate.

2 THE CLERK: As I call you name, if you would  
3 please stand so the attorneys can see you.

4 Juror number 98, Henry J. Rahn. What says the  
5 State?

6 MR. CLEVELAND: Please present the juror.

7 THE CLERK: And the Defense?

8 MR. GODFREY: Please seat the juror.

9 THE CLERK: If you would, come forward,  
10 please, sir.

11 Juror number 25, Melvin E. Cureton. What says the  
12 State?

13 MR. CLEVELAND: Please present the juror.

14 THE CLERK: And the Defense?

15 MR. GODFREY: Please seat the juror.

16 THE CLERK: If you would, come forward,  
17 please, sir.

18 Juror number 2, Anna L. Aikens. What says the  
19 State?

20 MR. CLEVELAND: Please present the juror.

21 THE CLERK: And the Defense?

22 MR. GODFREY: Please excuse the juror from the  
23 call of this case.

24 THE CLERK: If you would just have a seat,  
25 ma'am.

1 Juror number 122, Douglas R. Truax, Jr. What says  
2 the State?

3 MR. CLEVELAND: Please present the juror.

4 THE CLERK: And the Defense?

5 MR. GODFREY: Please excuse the juror from the  
6 call of this case.

7 THE CLERK: Okay. Juror number 20, Margaret  
8 N. Cater. What says the State?

9 MR. CLEVELAND: Please present the juror.

10 THE CLERK: And the Defense?

11 MR. GODFREY: Please seat the juror.

12 THE CLERK: If you would come forward, please,  
13 ma'am.

14 Juror number 126, Jennifer C. Watson. What says  
15 the State?

16 MR. CLEVELAND: Please present the juror.

17 THE CLERK: And the Defense?

18 MR. GODFREY: Please seat the juror.

19 THE CLERK: Please come forward.

20 Juror number 82, Anne M. Jenkins. What says the  
21 State?

22 MR. CLEVELAND: Please present the juror.

23 THE CLERK: And the Defense?

24 MR. GODFREY: Please seat the juror.

25 THE CLERK: If you would come forward, please,

1 ma'am.

2 Juror number 71, Walter S. McJunkin. What says the  
3 State?

4 MR. CLEVELAND: Please present the juror.

5 THE CLERK: And the Defense?

6 MR. GODFREY: Please excuse the juror from the  
7 call of this case.

8 THE CLERK: Juror number 91, Joshua G. Perry.  
9 What says the State?

10 MR. CLEVELAND: Please excuse the juror from  
11 the trial in this case.

12 THE CLERK: Juror number 43, Rene V. Halstead.  
13 What says the State?

14 MR. CLEVELAND: Please present Ms. Halstead.

15 THE CLERK: And the Defense?

16 MR. GODFREY: Please seat the juror.

17 THE CLERK: If you would come forward, please,  
18 ma'am.

19 Juror number 17, Timothy R. Bryant. What says the  
20 State?

21 MR. CLEVELAND: Please present the juror.

22 THE CLERK: And the Defense?

23 MR. GODFREY: Please seat the juror.

24 THE CLERK: If you would come forward, please,  
25 sir.

1 Juror number 100, Roger N. Rhoads. What says the  
2 State?

3 MR. CLEVELAND: Please excuse Mr. Rhodes from  
4 the trial in this case.

5 THE CLERK: Okay. If you would have a seat,  
6 please, sir.

7 Juror number 44, Timothy P. Hamilton. What says  
8 the State?

9 MR. CLEVELAND: Please present the juror.

10 THE CLERK: And the Defense?

11 MR. GODFREY: Please seat the juror.

12 THE CLERK: If you would come forward, please,  
13 sir.

14 Juror number 44, Timothy P. Hamilton. Excuse me.  
15 Wrong one.

16 Juror number 50, Jennifer J. Henson. What says the  
17 State?

18 MR. CLEVELAND: Present the juror.

19 THE CLERK: And the Defense?

20 MR. GODFREY: Please seat the juror.

21 THE CLERK: If you would come forward, please,  
22 ma'am.

23 Juror number 62, Joseph W. Ladd. What says the  
24 State?

25 MR. CLEVELAND: Please present the juror.

1 THE CLERK: And the Defense?

2 MR. GODFREY: Please excuse the juror from the  
3 call of this case.

4 THE CLERK: If you would have a seat, sir.

5 Juror number 21, Sherrill A. Chappell. What says  
6 the State?

7 MR. CLEVELAND: Please present Ms. Chappell.

8 THE CLERK: And the Defense?

9 MR. GODFREY: Please seat the juror.

10 THE CLERK: If you would come forward, please,  
11 ma'am.

12 Juror number 81, Robert J. Mussro. What says the  
13 State?

14 MR. CLEVELAND: Please present the juror.

15 THE CLERK: And the Defense?

16 MR. GODFREY: Please seat the juror.

17 THE CLERK: If you would come forward, please,  
18 sir.

19 Juror number 5, Candace E. Attaway. What says the  
20 State?

21 MR. CLEVELAND: Please present the juror.

22 THE CLERK: And the Defense?

23 MR. GODFREY: Please seat the juror.

24 THE CLERK: If you would come forward, please,  
25 ma'am.

1           This will be for the alternate. Juror number 127,  
2   Lyna R. Whaley. What says the State?

3           MR. CLEVELAND: Please present the juror.

4           THE CLERK: And the Defense?

5           MR. GODFREY: Please excuse Ms. Whaley.

6           THE CLERK: Okay. Juror number 34, Baker A.  
7   Gallimore. What says the State?

8           MR. CLEVELAND: Please present Mr. Gallimore.

9           THE CLERK: And the Defense?

10          MR. GODFREY: Please seat the juror.

11          THE CLERK: If you would come forward, please,  
12   sir.

13          THE COURT: Any legal matters we need to take  
14   care of as far as the selection of the jury in this  
15   case?

16          MR. CLEVELAND: None from the State, Your  
17   Honor.

18          MR. GODFREY: None from the defense as far as  
19   the selection of the jury. But I have a point of law I  
20   would like to take up before the jury is sworn.

21          THE COURT: All right. It won't involve the  
22   jury, the other panel? All right. Ladies and gentlemen  
23   who were not selected, I can excuse you at this time to  
24   go back downstairs. We have another jury to be selected  
25   for the trial in courtroom number one. Thank you very

1 much for your participation in this process. If you'll  
2 go back downstairs at this time, Judge McIntosh can use  
3 your services, I'm sure.

4 (Whereupon the jury panel exited the open court.)

5 THE COURT: Ladies and gentlemen, you've seen  
6 the process by which a jury is selected. You've been  
7 specially selected for this particular case that we're  
8 about to start. We need to take a short break. I know  
9 that you may have felt a little bit of warmth up here  
10 compared to downstairs. They're trying to work on the  
11 air conditioning unit. But we've got a matter that we  
12 need to take care of before we get started here. We'll  
13 be ready to start in just a few moments.

14 While you're back in your jury room -- you'll go  
15 with Mr. Duncan. He'll explain to you how you'll be  
16 operating back there. You shouldn't be discussing this  
17 case anytime you're back there. You haven't heard all  
18 the evidence. You haven't heard my instructions on the  
19 law. While the case is going on, you should not be  
20 discussing it. I'll give you further instructions about  
21 that in just a few moments. You noticed we selected  
22 thirteen jurors. We'd have twelve to conduct a trial.  
23 The last juror picked, he'll be the alternate. He's  
24 every bit as much a part of the jury as anyone else, but  
25 we have that in case there were to be an emergency that

1 comes up with one of you first twelve. Instead of  
2 having to start the trial all over again, he can step  
3 into your shoes and we won't have to lose some time that  
4 we had in the trial to begin with. So he'll -- always  
5 when you come and go, he'll occupy the seat on the back  
6 row, the one closest over here to the door. I'm going  
7 to appoint Mr. Hamilton as the foreman of this jury.  
8 What the foreman -- his seat will be on the front row,  
9 the seat closest here to the witness box. A foreperson,  
10 that doesn't mean that he has any more responsibility  
11 than anyone else. Sometimes when you're back in the  
12 jury room, there might be a need that you have. He --  
13 that foreperson is going to be the one to communicate  
14 with the Court when a need happens. You might have a  
15 question of law that I can answer. A question  
16 procedurally about, you know, how much longer until we  
17 break or can we get some snacks, or we need to make a  
18 phone call. Whatever the need might be from whatever  
19 juror, the foreperson will write that out on behalf of  
20 the fellow jurors and give the note to the bailiffs.  
21 The bailiffs will then get it to us, and whatever  
22 responsible person that needs to be, be it I or be it  
23 the Clerk, they'll try to get that matter taken care of  
24 for you. Sometimes the evidence that is admitted into  
25 evidence and the lawyer wants to pass it around to the

1 jury. They'd show it to the foreperson to pass around  
2 to everyone else to see. Ultimately, what the  
3 foreperson will do, when the case is over and all the  
4 evidence is in and I've instructed you on the law, what  
5 the foreperson will do will be the one who will  
6 facilitate that discussion, to make sure everyone has an  
7 opportunity to voice their opinion about what the facts  
8 are, what's been presented and, on behalf of the fellow  
9 jurors, write out the verdict form that will be provided  
10 for you to present back to the Court for us to read here  
11 in the courtroom. So his responsibility -- he doesn't  
12 have any more votes than anyone else, but his  
13 responsibility will be that of primarily to have a  
14 liaison with the Court when a need arises that you have  
15 a special need back there that you need taken care of.

16 We'll try not to keep you back there very long.  
17 Sometimes as a trial progresses there might be a special  
18 legal matters that have to be taken care of. Part of my  
19 job during the course of the trial is to take care of  
20 those legal matters. I'm honored to have the chance to  
21 work with you. You're going to be a fellow, fellow  
22 judges. I'm going to be the one referred to as Judge.  
23 I will wear the black robe. But you're going to be  
24 every bit as much judges as I am, because you're going  
25 to judge the facts in this case. And while I judge the

1 law, you have an equal responsibility to be the fact  
2 finders and judge just what the facts are. You may have  
3 some apprehension about that title I've just thrust upon  
4 you, being a judge, and think to yourself, I've never  
5 been in a courtroom before, I've never been a juror,  
6 never taken a legal ed course or had any involvement,  
7 never been to the courthouse before.

8 Let me assure you ladies and gentlemen, you have  
9 every skill you need to be a judge of the facts to serve  
10 as a juror, because you bring into this courtroom the  
11 everyday experiences that you've enjoyed in your life,  
12 in the home and the work environment, social activities.  
13 You bring into this courtroom the good common sense with  
14 which you've been blessed. And that's what you're going  
15 to need to utilize as the skill to judge credibility of  
16 witnesses, to determine just what the facts are that are  
17 presented.

18 I'll be the judge of the law and I'll explain the  
19 law to you at the end of the case. You must accept that  
20 law and apply the law to the facts, just as I state the  
21 law to you. Your involvement in trials might be a  
22 favorite television show or a movie or John Grisham  
23 novel. Normally, in a trial, there's not moments of  
24 high drama. It's a deliberative process by which  
25 witnesses are called, and you listen to what they have

1 to say, and you make a determination of what the facts  
2 are on that.

3 Cases normally begin with an opening statement by  
4 the attorneys. Then there will be witnesses who are  
5 called. They will be sworn in and given an oath. And  
6 then they'll tell you information, based on questions  
7 that the lawyers ask. After all the evidence is in,  
8 then I'll instruct you on the law after the lawyers have  
9 had a chance to close, make a closing statement to you,  
10 and then the case will be yours to deliberate.

11 As I said before, until that time it would be  
12 improper for you to discuss the case, to do any  
13 speculation about the case. When we take a lunch break  
14 later today, it would be improper for you to discuss it  
15 with each other or with anyone else, your business  
16 associates, your family, your friends. You've made a  
17 commitment, through this selection process, to make a  
18 decision on this case from what takes place in this  
19 courtroom and that alone, not from any other input from  
20 anyone else.

21 Sometimes during the course of presentation of  
22 evidence, objections are made and part of my job is not  
23 to just preside during the course, but to rule upon  
24 those objections. Often, you've seen already, as you  
25 were coming in that sometimes the lawyers can huddle up

1 here and we can whisper and get a legal matter resolved.  
2 When an objection is made I can rule on it, say,  
3 overruled or sustained. Sometimes, however, there might  
4 be a legal issue that comes up that I have to ask you to  
5 go back to your jury room for a temporary basis for me  
6 to make that decision. I want to make the very best  
7 judgement that I can as a matter of law. And sometimes  
8 in order to do that, I have to hear some evidence that  
9 wouldn't even be presented to you normally, or hear some  
10 argument from the lawyers, or read a legal case, or look  
11 at the statute, things of that nature, that I want to  
12 make the best decision I can. And it would be improper  
13 for you to be here during that process to hear the  
14 things that wouldn't be any part of this trial. It's  
15 very similar to the factual process that you'll do when  
16 the case is concluded and you have an opportunity to  
17 then start your deliberations and discuss the case.  
18 You're judges of the facts and I'm another judge, but  
19 I'm not going to be in that jury room with you deciding  
20 what the facts are because that's your prerogative and  
21 your's alone, just as the law is mine and mine alone.  
22 So I hope you understand that.

23 Normally, we'll take periodic breaks. We'll  
24 usually operate an hour or an hour and a half at a time  
25 hearing testimony. We'll take a lunch break. Normally,

1 at the end of the day, we'll stop at five, five-thirty,  
2 sometimes six o'clock, depending on how far witnesses  
3 have gone. Usually, we'll start about nine o'clock in  
4 the mornings, so you can make your plans accordingly.

5 You've already had a chance to meet several of the  
6 folks here. You've met the attorneys. Mr. Duncan is  
7 over here, the bailiff. He'll certainly assist you  
8 while you're back in your jury room in any way. Mr.  
9 Hendricks is in the back. They'll be here working with  
10 us on this trial. They'll certainly give you any  
11 assistance you need. Mr. Welborn, the Clerk of Court,  
12 you've already met him. The young lady seated with her  
13 back to you is Ms. Danette Hanks. She's taking down  
14 everything that's said during the course of these  
15 proceedings to protect the record and make sure that  
16 exhibits are properly marked, things of that nature.  
17 Seated beside me, Ms. Anna Lake, a recent law school  
18 graduate. She's a law clerk, a valuable asset. You may  
19 see her coming and going as the case progresses, taking  
20 care of things back in the office. Any of these folks  
21 will certainly get your attention, particularly if we  
22 haven't had a break when you feel like you need one.  
23 You need to make sure that you let us know if we haven't  
24 taken a break, because you've got to be a good listener.  
25 That's your job, is to be a good listener. Your comfort

1 level is important for you to be a good listener. And  
2 if we need to take a break, please get one of their  
3 attention if you can't get mine.

4 Sometimes as you come and go in the courthouse, on  
5 the elevator or coming in the front door, or out in the  
6 hallway, you may see the attorneys. If they seem a  
7 little unfriendly towards you or distant, that's because  
8 of their training. They want to make sure that even  
9 frivolous discussion or innocent discussion with a juror  
10 is not misconstrued and considered an untoward act  
11 toward the juror. So if they seem like they're just  
12 totally unfriendly, I hope you understand and you should  
13 not hold that against any of them. That's based on the  
14 training that they have. They don't want any appearance  
15 of any impropriety that they're talking to a juror, even  
16 about innocent matters.

17 I look forward to working with you on this case,  
18 ladies and gentlemen. We're going to take a short break  
19 before we begin. Again, when you come back, the  
20 alternate will sit on the last seat by the jurors and on  
21 the back row. The foreperson that I've named will sit  
22 on the front seat closest to the witness stand here.  
23 The rest of you may like a front-row seat, a back-row  
24 seat, or your same seat each time. You can sit in any  
25 other seats that you like, except for those two. We'll

1 take a short break, ladies and gentlemen. We'll be  
2 ready to start the trial in just a moment. You may be  
3 excused to your jury room.

4 (WHEREUPON, the jury exited the open court at  
5 approximately 11:33 a.m.)

6 THE COURT: All right. Anything we need to  
7 take care of before the jury is called back or sworn?  
8 And we'll take a short break, too. Yes, sir.

9 MR. GODFREY: May it please the court?  
10 Frankly, Judge, I was surprised. My client leaned over  
11 and told me that he needed an interpreter. Judge, I've  
12 been representing him for more than a year. The first  
13 time I met my client, I asked him if he needed an  
14 interpreter, and he said no. I've been able to  
15 communicate with him. I've told him what all the  
16 evidence is in the case. He didn't appear to ever have  
17 any problems understanding what I was saying. And, in  
18 fact, the State called me on Friday afternoon and asked  
19 me if we needed an interpreter, and I told them no. My  
20 client has been in this country since 1998. And at this  
21 point, he says he would be more comfortable if he had an  
22 interpreter.

23 THE COURT: All right. We'll make  
24 arrangements. Get him an interpreter.

25 Probably -- are there any other, Jackson Denno, or

1     *Biggers*, or any other hearings we need to take care of?  
2     I'm just thinking from a logistics standpoint. We might  
3     just have to take an earlier lunch, then we can get the  
4     interpreter here in time. The cooling system might be  
5     working for the jurors then. But if there's other things  
6     that we can be doing, that would be fine, too. And then  
7     we could hit the ground running. Surely, we could start  
8     at one fifteen. Would that be -- with the jury, opening  
9     statements I'm talking about. We can do whatever other  
10    work we need to do. Are there any statements that y'all  
11    are planning to offer?

12           MR. CLEVELAND: There were no statement from  
13    the defendant in this case, Your Honor, so the State  
14    won't be needing a hearing on those.

15           THE COURT: Well, maybe y'all can take some  
16    time to mark some exhibits, get that done. But we'll,  
17    we'll certainly provide him with an interpreter if he  
18    feels he needs one. I'm sure we can find one in the next  
19    couple of hours to be here. You can take care of that,  
20    Mr. Cleveland?

21           MR. CLEVELAND: Yes, sir.

22           THE COURT: Very good.

23           MR. CLEVELAND: The only other thing, and this  
24    may not be the appropriate time, myself and Mr. Godfrey  
25    have entered into a stipulation regarding part of the

1 chain of custody regarding evidence in this case. I plan  
2 on bringing that in just when that particular point in  
3 the chain of custody is stipulated to. We can do that  
4 now or we can just do it at a later time.

5 THE COURT: Is that true, Mr. Godfrey?

6 MR. GODFREY: That is true, Your Honor. I made  
7 a stipulation regarding the chain of custody. I checked  
8 the chain of custody. There was no problem with it  
9 whatsoever, and there was no reason to have unnecessary  
10 witnesses. We can mark it as a Court's Exhibit and he  
11 can publish it at the time.

12 THE COURT: All right. That would be fine.  
13 Y'all can maybe do that during the break now. Your  
14 interpreters will be from Greenville, I guess?

15 MR. CLEVELAND: I don't have personal knowledge  
16 of how we get interpreters. I'll have to check with my  
17 investigator.

18 THE COURT: I'm assuming we can have one here  
19 in a couple of, a couple of hours, or an hour and a half.  
20 Maybe we can start at one, would be better. Let them  
21 have an early lunch today.

22 MR. GODFREY: If there turns out to be any  
23 problem, I do know two Spanish interpreters who are  
24 certified in Federal Court and maybe one of those two,  
25 if their interpreters are tied up, we could get one of

1     them.

2                   MR. CLEVELAND:  If it suits the Court, Your  
3     honor, I'd ask Mr. Godfrey to go ahead and call his  
4     people while we're calling ours, and kind of do a first  
5     man here.

6                   THE COURT:  As long as they meet all the  
7     credentials for State Courts.  We just need to make sure  
8     of that.

9                   MR. GODFREY:  I'm sorry.  I didn't hear all of  
10    that.

11                  THE COURT:  We need to make sure they're fully  
12    qualified for all of the reasons that we need.

13                  MR. GODFREY:  Well, both are certified in State  
14    Court, Your Honor.

15                  THE COURT:  Okay.  Good.  We -- one-fifteen  
16    going to push you time-wise?  That's an hour and a half,  
17    plus get a bite to eat.  And then, you know, you may need  
18    to talk again with your client, through the interpreter,  
19    make sure there's rapport there.

20                  MR. CLEVELAND:  For the record, Your Honor, I  
21    just -- if in some event that it would be difficult to  
22    get an interpreter today, the State would move that we  
23    would move forward with the case, and let that be the  
24    Defense's responsibility.  Like I said, we've -- numerous  
25    occasions I've asked him if he needed an interpreter and

1 ---

2 THE COURT: We're going to get it tried.

3 MR. CLEVELAND: Okay.

4 THE COURT: We can have an interpreter here at  
5 three o'clock. I'm sure that we can find an interpreter.  
6 The trial is ready to proceed. We're going to go  
7 forward.

8 MR. CLEVELAND: Thank you, Your Honor.

9 THE COURT: Okay. Anything else? I'll dismiss  
10 the jury then, just tell them we'll take an early lunch  
11 hour, ask them to be back at -- let's shoot for one  
12 o'clock, okay?

13 If they're ready, Mr. Duncan, you can have them  
14 come in. We'll just have them sworn when we come back at  
15 one.

16 (WHEREUPON, the jury entered the open court at  
17 approximately 11:39 a.m.)

18 THE COURT: Ladies and gentlemen, rather than  
19 keeping you waiting while we take care of these legal  
20 matters, normally we'd start about nine, take a break  
21 during the morning, and stop around one o'clock for  
22 lunch. But there's nothing -- the Court can continue  
23 working even though we don't take lunch at one o'clock.  
24 We're going to take lunch a little earlier today. We're  
25 going to work through some of these matters we need to

1 take care of so that hopefully at one o'clock we're going  
2 to be start this trial, and be ready for the opening  
3 statements. So, if you'd be back in your jury room at  
4 one o'clock, we'll be ready to start at that time.

5 Let me remind you again that while you're out and  
6 about, you shouldn't be discussing this case. You've  
7 obviously got curious family members, business associates  
8 that you may get together with at lunch. They're going  
9 to want to know, if they know you had jury service, did  
10 you get picked, what's the case about, and all those  
11 kinds of things. And certainly you can tell them that  
12 you've been picked for a jury and it's a drug case, but  
13 it would certainly be improper for you to be discussing  
14 any matter about this case with anyone. By the same  
15 token, it would be improper for anyone to talk to you  
16 about a case if you're out eating lunch somewhere and you  
17 overhear a conversation on another table, or you hear  
18 some conversations in the elevator coming back, you  
19 should refrain from listening to any that. I would not  
20 suspect anyone would approach you and want to give you  
21 information or ask you questions about this particular  
22 case. If any of that were to happen, please explain to  
23 that person that you are a juror, that you've been  
24 instructed by me, and you've committed to these parties  
25 to be fair and impartial and you can't be listening to

1 anything or giving any information or listening to any  
2 comments about the case. If an individual were to  
3 approach you and want to give you that information, and  
4 persisted even after you told them that, please excuse  
5 yourself as soon as you can. If possible get the name of  
6 that individual and report it back to me, and we'll  
7 certainly take care of that. I don't expect anything  
8 like that to happen, but I want to remind you of the  
9 purity of the process that we're in now. You've been  
10 specially selected, seen how the attorneys thought you  
11 were the best jurors to hear this particular case, and I  
12 want you to be constantly reminded of the commitment that  
13 you've made to both sides, to well and truly try the case  
14 and be fair to both sides. I say this not to tempt you  
15 in any way, but by way of instruction of the importance.  
16 Sometimes we get real curious and we've got a trial going  
17 on and we want to get on the internet or go by the  
18 library and check on some things, or find old newspapers.  
19 That would be highly improper for you to do, ladies and  
20 gentlemen, to do any kind of independent investigation  
21 about this, even as the trial goes on and you hear some  
22 words that perhaps you haven't heard before concerning  
23 the matter.

24 These attorneys are going to present everything they  
25 need for you to make a good decision about this case

1 right here in this courtroom. And it would be improper  
2 for you to do any kind of independent investigation  
3 whatsoever. Remember that you've made a commitment.  
4 Have a good lunch, ladies and gentlemen. I'll see you  
5 back at one o'clock. Mr. Duncan will show you where you  
6 are to report back at that time. You're dismissed at  
7 this time.

8 (WHEREUPON, the jury exited the open court at  
9 approximately 11:44 a.m.)

10 THE COURT: You'll have an interpreter by one  
11 o'clock? That'll be great. And if you need a little  
12 time for talking through the interpreter for your client.  
13 We'll be ready to start back at one o'clock with opening  
14 statements. Have a good lunch.

15 (WHEREUPON, the court stood at recess for a lunch  
16 break.)

17 THE COURT: All right. Everybody ready to  
18 proceed?

19 MR. CLEVELAND: The State's ready, Your Honor.

20 MR. GODFREY: Yes, Your honor.

21 THE COURT: I'll let you, if you desire, to  
22 introduce the interpreter to the jury, if you want to do  
23 that, Mr. Godfrey, in your opening statement.

24 MR. GODFREY: Okay.

25 THE COURT: All right. If the jury is ready,

1 you can have them come in, Mr. Duncan.

2 (WHEREUPON, the jury panel entered the open court  
3 at approximately 1:18 p.m.)

4 THE COURT: Thank you for your patience with  
5 us, ladies and gentlemen. We're now ready to proceed  
6 with the trial of the case. At this time, I'm going to  
7 ask the Clerk to administer an oath to you. After that,  
8 the attorneys will have an opportunity to address you in  
9 their opening statements. I told you earlier that what  
10 the lawyers say to you, that's not evidence. The  
11 evidence is going to be presented from the witness stand  
12 here, from the -- any documents or other tangible  
13 evidence that may be presented. While this is not  
14 evidence, I urge you to listen carefully as these  
15 attorneys address you. They can give you some valuable  
16 insights, I'm sure, into the conduct of the case, and  
17 things that you need to be alerted to as the case  
18 develops.

19 At this time, I'll ask Mr. Welborn if he would  
20 administer the oath to you, if you would please stand.

21 THE CLERK: After the oath, if you will, answer  
22 by saying I will. Raise your right hand. You shall well  
23 and truly try the issue joined in this case of the State  
24 versus Israel Colecio, and a true verdict render, so help  
25 you God.

1 (WHEREUPON, the jury was duly sworn.)

2 THE COURT: Mr. Cleveland, you may address the  
3 jury.

4 MR. CLEVELAND: Thank you, Your Honor. May it  
5 please the Court, Mr. Godfrey.

6 **OPENING STATEMENT**

7 **BY MR. CLEVELAND:**

8 Ladies and gentlemen of the jury, today we've got a  
9 drug trial, plain and simple. Mr. Colecio is charged  
10 with two counts of trafficking methamphetamine and  
11 possession of a firearm during a violent crime, which the  
12 South Carolina Legislature defines trafficking  
13 methamphetamine is a violent crime in this State.

14 I'm not going to get too much into the facts now.  
15 The officers and witnesses who were involved in the case  
16 directly are going to tell you that from the witness  
17 stand. But basically this situation was what we call a  
18 buy/bust type situation. Law enforcement used an  
19 undercover informant, A person that was not a police  
20 officer, but was working with police, to set up and  
21 organize a proposed drug transaction. This transaction  
22 was carried out and after the fact, the police moved to  
23 the location where the transaction was carried out, and  
24 investigated the scene from there on out.

25 We're talking about trafficking drugs in this case.

1 Just to clarify a little bit, drug crimes are generally  
2 on three tiers. You've got simple drug crimes, which are  
3 basically possession. Possession usually focuses on one  
4 person, someone who actually has possession of those  
5 drugs on their person. Like that, but one step up, is  
6 distribution or possession with intent to distribute  
7 those drugs. That's a little more serious of a crime,  
8 but it still focuses generally on one person. You have  
9 to prove that someone either distributed those drugs or  
10 they had them in their possession.

11 Trafficking is a little different. Trafficking  
12 drugs is a lot higher up in the chain of illicit commerce  
13 as you would say with drugs. And to offer sort of an  
14 analogy, I like to think of apples. If you've got one  
15 apple, that's just possession of the apple. You're the  
16 only person that has that apple. You can manage that  
17 apple. You can eat it, you can hold onto it. But it's  
18 just you that has that apple. There's not a lot of  
19 people involved just having an apple. Very similar would  
20 be like a farmer sitting on the side of the road, selling  
21 a bushel of apples. Just, you know, you're really just  
22 concerned with that one farmer. He can manage his bushel  
23 of apples fine. He's intending on distributing them, but  
24 it's not an overwhelming quantity to where -- he's in  
25 control of the situation. When you get to trafficking, I

1 like to think of it as a semi-tractor load full of  
2 apples. When you're talking about selling or picking up  
3 that much apples, one person has a really hard time  
4 managing the complete situation by himself. If you think  
5 about, if you've got a tractor trailer load, you're going  
6 to have people to buy the gas for it. Well, the driver  
7 can do that, maybe. You're going to have people there to  
8 maintain it. You're going to have to have people that  
9 supply you that many apples to get. You can -- have to  
10 have people that actually want to buy that many apples.  
11 Usually, you or I don't want to buy a whole truck load  
12 full of fruit.

13 So, the crime of trafficking like drugs involves  
14 such a large quantity to where it's really hard for one  
15 person to actually be the culprit that's doing it. The  
16 State of South Carolina defines trafficking drugs -- it's  
17 not just possessing an amount or, you know, distributing  
18 an amount, but it's anyone involved in a specified  
19 quantity of drugs. In this case, the charges are ten  
20 grams or higher and twenty-eight grams or higher. Anyone  
21 that sells the drugs is involved in trafficking. Anyone  
22 that manufactures the drugs, delivers the drugs.  
23 Furthermore, anyone that purchases the drugs, brings  
24 drugs into this State. The law goes so far as to say  
25 anyone who provides financial assistance to anyone that

1 handles this large quantity of drugs. Anyone who aids,  
2 abets, attempts, conspires to manufacture, deliver or  
3 purchase into this State. Anybody that plans to do  
4 something with that large of a quantity of drugs, is in  
5 -- someone who is in knowing or actual possession, even  
6 if you are not doing anything with it. If you've just  
7 got that much drugs on your person, or is in constructive  
8 possession of it, which means it's under your dominion or  
9 your control, like in your car or in your couch, that you  
10 own and you have the keys to.

11 So ladies and gentlemen what I'm getting at is, the  
12 evidence in this trial will tie the Defendant, Mr.  
13 Colecio, to a large amount of drugs. That's what the  
14 evidence the State is going to put forward is attempting  
15 to prove. He doesn't have to be holding the drugs at any  
16 given time. He doesn't have to be the one that supplies  
17 the drugs or sells them. I'm going to put forward that  
18 he was the one that did that. But all it takes to  
19 convict him of trafficking methamphetamine, on both of  
20 these counts, is that he met any of these requirements  
21 that I just listed to you, including providing financial  
22 assistance, conspiring to, aiding and abetting in the  
23 sale, purchase or delivery of these drugs. That's all  
24 that's required.

25 Admittedly, the testimony in this case may be a bit

1 tedious at points in time. I'm doing that for two  
2 reasons. One is to show you the painstaking attention to  
3 detail that law enforcement carried out when they were  
4 investigating this crime. They covered their bases  
5 exceptionally well, and you're going to hear that from  
6 this witness stand.

7 Furthermore, there's lots of elements to  
8 trafficking. All this conspiracy, manufacturing, you  
9 know, all of the elements that could be. I'm going to  
10 let you see all of the evidence the State has against  
11 this Defendant, Mr. Israel Colecio, to let you decide  
12 that, well, if you're not convinced he was the one that  
13 sold the drugs, maybe you're convinced that he was -- had  
14 knowledge of it or conspired to sell the drugs. Or if  
15 another one of you thought he sold the drugs, but didn't  
16 think he conspired. I'm going to attempt to prove as  
17 many of these elements as possible to convince you of his  
18 guilt.

19 Now, of the folks that go to the stand, most of them  
20 are going to be law enforcement, but you're going to hear  
21 from lay witnesses. It's up to you to determine the  
22 credibility of each witness. Listen to their testimony  
23 carefully. Listen to their experience and their  
24 background. Listen to their circumstances, because it's  
25 your ultimate decision whether they're a credible witness

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1 or not. They're going to take an oath to tell the truth,  
2 but it's your ultimate decision to decide, to make the  
3 decision whether they're telling the truth or not.  
4 Lastly, I want to talk about burden of proof, and I want  
5 to talk about responsibility and how important your job  
6 in the courtroom is today. The reason that I'm sitting  
7 at this table closest to you is because the State of  
8 South Carolina bears the burden of proof in this trial.  
9 Right now, Mr. Colecio sits there an innocent man. It  
10 doesn't matter all of the work the police have done. It  
11 doesn't matter the investigation. It doesn't matter the  
12 evidence. He is not guilty until you decide that he is  
13 guilty, after determining -- after listening to all of  
14 the evidence heard in this case.

15 Now, I proudly accept that burden because law  
16 enforcement has done such a fantastic job in this case.  
17 It is my, it is my belief, and I submit to you that you  
18 will have no problem whatsoever convicting this Defendant  
19 of the crimes that he is charged with today.

20 And, lastly, just remembering that you are the  
21 twelve that matter. That's all. Like I said, all of  
22 that doesn't matter until you actually -- you know, it's  
23 in your hands right now. Nothing law enforcement did has  
24 convicted him at this point in time. You're the ones  
25 that are -- that have that responsibility.



1 you from this witness stand, and they have to show you  
2 what the evidence is and why they believe my client is  
3 involved in anything. The question for you, as you  
4 listen to the evidence is, what was the physical location  
5 of the drugs? Where were the drugs found? Whose drugs  
6 were they? There were drugs found. I'll tell you that  
7 right now. You'll see the drugs. But who actually  
8 possessed and owned the drugs? Where were the drugs  
9 found? Who did the drugs actually belong to? Do some of  
10 the drugs belong to one person, as opposed to another, or  
11 do all the drugs belong to one person?

12 It's a case where you have to put together the facts  
13 that you're going to hear, and use your common sense to  
14 make a determination as to who actually possessed the  
15 drugs. You have to have knowledge, possession, and  
16 intent to control. The State has to prove all of the  
17 elements to you beyond a reasonable doubt. Reasonable  
18 doubt has been defined in the law as a doubt that would  
19 cause a reasonable person to hesitate to act. My client  
20 has looked forward to this day. He wanted the case to  
21 come to court. He wanted the jury to be able to listen  
22 to all of the evidence and make the independent  
23 determination of what is actually going on here.

24 My client only wants you to do one thing. He wants  
25 you to do what you're supposed to do as a jury. And that

1 is to consider all of the evidence that you hear, the  
2 testimony, all the physical evidence that you will see,  
3 judge the credibility of the witnesses, and find the  
4 verdict that speaks the truth. Thank you.

5 THE COURT: Solicitor, you may call your first  
6 witness.

7 MR. CLEVELAND: Thank you, Your Honor. The  
8 State calls Special Operative Henry Campbell to the  
9 stand.

10 THE CLERK: Place your left hand on the bible  
11 and raise your right hand. Do you solemnly swear or  
12 affirm the testimony you're about to give in this case to  
13 be the truth, the whole truth and nothing but the truth,  
14 so help you God?

15 MR. CAMPBELL: I do.

16 THE CLERK: Thank you, sir. If you would have  
17 a seat and state your name for the record.

18 MR. CAMPBELL: My name is Henry Campbell.

19 HENRY CAMPBELL,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. CLEVELAND:

23 Q. Thank you, Agent Campbell. Who do you work for?

24 A. I work for Pickens County Sheriff's Office.

25 Q. And how long have you worked for the Sheriff's Office

1 of Pickens County?

2 A. I've been there for twelve years.

3 Q. All right. What division in the Pickens County  
4 Sheriff's Office are you a part of?

5 A. I work in the -- it's called Special Operations,  
6 Narcotics Division.

7 Q. And what is your educational background to support  
8 your career in Law enforcement?

9 A. I've been in law enforcement for approximately  
10 twenty-three years. I've been to basic Academy Training  
11 in Columbia. I've been to numerous advancement training  
12 for law enforcement itself. I've been to probably  
13 twenty, thirty advanced training classes for narcotics,  
14 and doing narcotics work, identification of narcotics,  
15 and undercover work.

16 Q. All right. You mentioned undercover work. So you  
17 are involved -- just to lead you a little bit -- involved  
18 in undercover operations within your duties at the  
19 Sheriff's Office?

20 A. That's correct, yes.

21 Q. About how often or how many of these operations have  
22 you taken place in, or taken a part of?

23 A. It's probably been, over the last ten years,  
24 thousands.

25 Q. Now, do you ever personally go undercover in these

1 investigations or do you send someone undercover?

2 A. It's a little of both. We do more using individuals.

3 Q. Okay. So there is occasions where your office  
4 employs individuals to go undercover to purchase, sell or  
5 observe illegal -- activities surrounding illegal  
6 narcotics.

7 A. That is correct; that would be a confidential  
8 informant.

9 Q. How many of these types of -- about the same number?  
10 How many of these type investigations with using  
11 confidential informants have you been a part of?

12 A. That's probably a few thousand, easily so.

13 Q. Okay. The -- are you the lead investigator on the  
14 case that we're at trial on?

15 A. That's correct, yes, sir.

16 Q. Discussing the evening of December 11, 2008, were you  
17 involved in an investigation that evening?

18 A. I was.

19 Q. Who was the subject or mark, if you will, of that  
20 investigation?

21 A. At that time, it was an individual we was  
22 understanding his name to be Willie.

23 Q. So this Willie -- what type of operation was it? Did  
24 it involve an undercover informant like you said?

25 A. It did. We used a confidential informant in this

1 operation.

2 Q. Just to briefly outline for the jury, tell them how  
3 these operations with a confidential informants are  
4 typically carried out?

5 A. A confidential informant is someone that's working  
6 under our supervision and control. You'll hear a lot of  
7 people refer to them as CI's. That's what we call the  
8 individuals. A CI is someone that's under our control.  
9 Basically, what they do is they're working for us.  
10 Normally, they know the information, know the people that  
11 are involved, and a drug transaction may take place. A  
12 lot of times, they're our main information source. When  
13 they're working with us, what we do is they are searched.  
14 Their vehicles are searched, anytime we used these  
15 individuals, before and after the deals, to ensure  
16 there's no drugs or illegal money or anything that's not  
17 belonging to them being involved in the transaction.  
18 Once that takes place, if everything's okay, we then will  
19 -- after we search them, we wire them with a -- some kind  
20 of a hidden transmitter so we can hear audio of what's  
21 going to happen. We put recording devices on them. And  
22 we supply them with documented money to buy, if we're  
23 going to go buy narcotics.  
24 Q. Once they buy the narcotics, in this type  
25 investigation, what do they do then with it?

- 1 A. Any time a transaction takes place and we're using a  
2 CI, once he's searched and he's wired up, as we call it,  
3 he'll be surveillanced by several agents. We'll be in  
4 different vehicles. We'll follow the individual to where  
5 we're going. We'll be real close to this incident  
6 location. We'll monitor everything that's going on.  
7 Once they leave, they're immediately surveillanced back  
8 to a meeting location that was already predetermined.  
9 Once they get back, they're immediately searched again  
10 and their drugs are turned over to one of us as agents.
- 11 Q. After they're searched, can anything else happen once  
12 they turn the evidence over to the agents, just ---
- 13 A. Well, I mean, we -- once we've turned everything  
14 over, we search them. We record everything that we've  
15 got. We take off all of the equipment and secure  
16 everything for evidence.
- 17 Q. Thank you, Agent Campbell. Was that the basic  
18 outline of the plan that was to be carried out on the  
19 night of December 11, 2008?
- 20 A. That's -- yes, sir, it was.
- 21 Q. Were you -- did you personally meet with an informant  
22 that night?
- 23 A. I was one of many agents there, correct.
- 24 Q. After you met with the informant, where was he sent  
25 to carry out this transaction, I presume, as going by the

1 description you gave earlier?

2 A. He was instructed to go to a house that's located on  
3 Lacy Lane in Easley, and the house number was  
4 Lane.

5 Q. In the City of Easley. Is that within Pickens  
6 County, I assume?

7 A. It's in the County. It's not in the actual City  
8 Limits, but it's in the County of Pickens.

9 Q. Okay. It's within Pickens County. What was that  
10 informant instructed to buy, or what had he displayed to  
11 you that he could buy? What was the transaction going to  
12 involve?

13 A. The CI made contact with Willie and we was told that  
14 he could purchase half an ounce of methamphetamine ice.  
15 That's what we were controlling the purchase of. It was  
16 going to cost us eight hundred dollars. So that's what  
17 our arrangements were, to buy a half an ounce of  
18 methamphetamine.

19 Q. Once he was dispatched, what surveillance position  
20 did you take, once the CI was sent on his mission to  
21 purchase these drugs?

22 A. I was on the surveillance team. I'll back up a  
23 second. Lieutenant Brooks with our office, and Agent  
24 Sonnefeld and Agent Driggers with SLED, were kind of in  
25 control of the confidential informant when we went to do

1 the operation. Once the operation was complete, he got  
2 there, my team, the surveillance team, we monitored the  
3 house where the deal location took place. When the CI  
4 left that location, Agent Sonnefeld, Lieutenant Brooks  
5 and Agent Driggers followed him back to the predetermined  
6 location.

7 Q. All right. How long -- so you were surveilling the  
8 residence when the transaction was to be carried out.  
9 How long did that transaction last?

10 A. It lasted approximately fourteen minutes.

11 Q. Once the informant left, where did he -- he went to  
12 meet -- pardon me. He went to meet back up with -- who  
13 did you say, for the jury, which other agent?

14 A. He met with Lieutenant Brooks with the Sheriff's  
15 Office and he met with Special Agent Sonnefeld with SLED  
16 and Special Agent Driggers with SLED.

17 Q. Thank you. What did you do once the informant left  
18 the scene?

19 A. We monitored him leaving. Once he left the  
20 residence, went up into the top of the neighborhood, he  
21 turned onto Crest Drive. Once he departed out of our  
22 sight, he was in sight of the surveillance agents then.  
23 We let him depart the area. We in turn went to the  
24 residence at that time.

25 Q. This same residence at Lane?

1 A. That's correct.

2 Q. In the County. How long was it between when that  
3 informant left the residence did you enter that  
4 residence?

5 A. It was probably maybe five, seven minutes.

6 Q. Where did your team enter that residence?

7 A. We approached -- actually approached the back door of  
8 the residence. We appeared at the front door. No one  
9 came to it. But there was about five or six of us that  
10 went to the location, and we ended up having to go into  
11 the back door.

12 Q. All right.

13 MR. CLEVELAND: I beg the Court's indulgence  
14 for one moment, Your Honor.

15 THE COURT: Yes, sir.

16 Q. We have a tight space. I'm going to present a  
17 diagram in this corner. It's not the best place, but you  
18 and the jury can see it. For demonstration purposes  
19 only, is that an accurate representation of the residence  
20 you went to that evening at Lane?

21 A. That's correct.

22 Q. Just so you don't have to stretch, I'll hand you this  
23 laser pointer. It's that red button right there.

24 A. Okay.

25 Q. Could you demonstrate for the jury which door you --

1 re-erect for the jury which door you said you entered in  
2 the residence?

3 A. Okay. This is Lacy Lane. The driveway actually  
4 comes right here. We probably all stopped our vehicles  
5 right here. We had an individual -- one of us did go to  
6 the front door. Couldn't get anybody to the door. And  
7 the four of us came around to the back. We had to use  
8 the back porch entrance. It's actually a single-wide  
9 trailer.

10 Q. Did you force your way in or were you permitted to  
11 enter?

12 A. We were allowed to enter the residence.

13 Q. Once you were inside did you identify yourself to the  
14 homeowner or whoever let you in the residence?

15 A. That's correct. I spoke with the homeowner, Mr. Neal  
16 Powell, at the door before we ever entered.

17 Q. Okay. So the homeowner was present, I take it, when  
18 you entered this location?

19 A. Yes. Mr. Neal Powell and his wife Kathy Powell, were  
20 both there.

21 Q. Describe your interaction with the homeowners once  
22 you went in and began talking to them. What procedure  
23 did you follow?

24 A. Okay. When we first got to the back door, there was  
25 an individual in the back yard, at the back door, Mr.

1 Swafford.

2 Q. Okay.

3 A. We had information he was involved in some of the  
4 transaction earlier. So we placed him in detention  
5 custody. Because we were going to approach the  
6 homeowner, we know -- I didn't know who all was inside,  
7 had no idea who was -- the people were there. Once I go  
8 to the door and knock on the door, it's got the, the  
9 diamond shaped window in the back door. So when I'm  
10 looking through the door, I see Mr. Powell looking at me.  
11 I show him my badge. I'm in plain clothes. Show him my  
12 badge, tell him we're law enforcement. He looks back  
13 into the living room, then he looks at me, and he comes  
14 to the door.

15 Q. That's fine. Once you were inside, did you give the  
16 Powells, the homeowners, their *Miranda* Rights?

17 A. I did.

18 Q. Did they acknowledge intelligently and waive those  
19 rights?

20 A. They did.

21 Q. Did you explain the circumstances of what was going  
22 on that night to them?

23 A. I did. I explained to them that we were doing a  
24 narcotics investigation.

25 Q. Did you ask them for their consent to search their

1 home?

2 A. Yes. After they waived their *Miranda* Rights, I asked  
3 if we could have consent to search and they granted that.

4 Q. They granted that? I'm going to show you what I have  
5 marked -- if you'll bear with me for one moment. I have  
6 two pieces of paper marked, pre-marked for  
7 identification, as State's Exhibit 16 and 17. Could you  
8 identify those pieces of paper for me?

9 A. Yes. The first one, Number 16, is a Waiver of  
10 *Miranda* Rights that we served on Ms. Kathy Powell.

11 Q. What about the second sheet of paper?

12 A. The second piece of paper, Exhibit 17, this is a  
13 Pickens County Sheriff's Office form that we use to get  
14 consent. It's written that we can search their  
15 residence, and Ms. Powell signed that.

16 Q. Did you witness her signing that document?

17 A. I did.

18 MR. CLEVELAND: Your Honor, at this time, I'd  
19 like to enter State's Exhibit 16 and 17 into evidence as  
20 proof that consent was granted to search the home.

21 THE COURT: Any objection?

22 MR. GODFREY: Without objection.

23 THE COURT: Without objection Exhibit 16 and 17  
24 are into evidence.

25 (WHEREUPON, State Exhibit Numbers 16 and 17 were

1 admitted into evidence.)

2 Q. Describe the practice of using a standard form like  
3 those, just briefly, for the jury.

4 A. The *Miranda* form you use, you advise someone of their  
5 rights. They have the right to talk to law enforcement  
6 and advise them that they don't have to. You advise that  
7 before you ask anybody any questions involved in an  
8 investigation. And I wanted to talk to both individuals.  
9 I talked to them. They waived their right. They were  
10 willing to talk to law enforcement. Once they agreed to  
11 talk to us, told them what we had, what was going on, and  
12 Ms. Powell said that she was on the lease there and that  
13 she could grant permission for us to search. And then  
14 she in turn signed a waiver allowing us to have consent  
15 without having to acquire a search warrant or anything  
16 like that. She was more than cooperative. And well by  
17 doing that, that just shows they're voluntarily giving us  
18 the consent to do what we were doing.

19 Q. Was the target of your investigation present inside  
20 that residence when you entered?

21 A. Yes, he was.

22 Q. Do you see the target of your investigation in this  
23 court room today?

24 A. I do.

25 Q. Could you point him out for the jury please?

1 A. Sitting at Defendant table.

2 MR. CLEVELAND: Let the record reflect that  
3 Agent Campbell pointed out the Defendant, Israel Colecio,  
4 to the jury.

5 Q. Other than law enforcement, and the people you  
6 mentioned earlier, the homeowners and Mr. Colecio, who  
7 was inside that residence that night?

8 A. There were two children with the Powell family that  
9 were inside the residence. Mr. Colecio had a small child  
10 with him. There was another Hispanic male -- I'm trying  
11 to remember his last -- I can't remember his last name.  
12 And another individual, Mr. Michael Swafford, and Smith,  
13 Jonathan Smith.

14 Q. Now, with law enforcement with you, who entered the  
15 residence with you?

16 A. It was myself, Agent Tommy Blankenship, Agent Brett  
17 Barwick, Lieutenant Lovell with the Easley Police  
18 Department and Deputy Adcox, I believe was the five of us  
19 that entered.

20 Q. Was the residence searched at that time, once she  
21 granted consent?

22 A. Yes, it was.

23 Q. If you would, I'm going to show you some photographs.  
24 I had these pre-marked as State's Exhibits, but I just  
25 want you to flip through them and take a look at each of

1     them, starting with -- okay. If you could just look  
2     through those for me, please.

3     A. Okay.

4     Q. Now in your testimony, you said you were present when  
5     this residence was searched. And you've looked through  
6     these photos. Do these photos represent an accurate and  
7     clear depiction of the crime scene as it was that night,  
8     December 11, 2008, when you were present?

9     A. Yes, it does.

10    Q. Thank you.

11                 MR. CLEVELAND: Your Honor, at this time, the  
12    State would move to enter the following photographs into  
13    evidence. These are Exhibit Numbers 40, 41, 42, 18, 19,  
14    20, 21, 22, 23, and 24, 27, 28, 29, 43, 44, and 45,  
15    Number 33, Number 35, 36, 37, 38, and 39, into the  
16    State's evidence.

17                 MR. GODFREY: Without objection.

18                 THE COURT: Without objection, these  
19    photographs as identified shall be entered into evidence,  
20    and may be published to the jury at this time.

21                 (WHEREUPON, State Exhibit Numbers 18, 19, 20, 21,  
22                 22, 23, 24, 27, 28, 29, 33, 35, 36, 37, 38, 39, 40,  
23                 41, 42, 43, 44, and 45 were admitted into evidence.)

24                 MR. CLEVELAND: At this time, Your honor, like  
25    you said, the State will publish these photos to the

1 jury.

2 Q. Agent Campbell, when I place these photos on the  
3 stand, would please you just tell the jury what they  
4 depict?

5 A. Yes, sir.

6 Q. This is State's Exhibit Number 40. Go ahead and tell  
7 us what that Exhibit is.

8 A. Okay. That is the front of the residence that we  
9 went to that night,

10 Q. And Number 41?

11 A. That is the back door where we went to, that address,  
12 on Lacy Lane.

13 Q. This is State's Exhibit 18.

14 A. This is what I think we was considering the master  
15 bedroom, the main bedroom of the residence. We located a  
16 quantity of methamphetamine, which is laying on the top  
17 of the dresser at this time in that bedroom.

18 Q. Could you point out on the diagram where this picture  
19 -- where this photograph was taken?

20 A. This is what we called the front bedroom. This is  
21 where this picture is at at this time.

22 Q. This is State's 19. Pardon me. Is that a close-up  
23 of the same dresser in the photo?

24 A. That's correct. That's the methamphetamine that was  
25 found in the bedroom.

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1 Q. What other items do you see?

2 A. To the left is a small quantity of baggies, right  
3 here, individual baggies.

4 Q. What about this photo? Does that represent what was  
5 also on that dresser that night?

6 A. That's correct. We found a quantity of money.

7 Q. And this one?

8 A. That is the wallet that we were informed belonged to  
9 Mr. Colecio, and money.

10 Q. Jumping forward. The jury can look at all of these  
11 at length on their own, but just so we could get through  
12 this. What's pictured in this photo?

13 A. That is a film cannister. It will contain a bag of  
14 methamphetamine.

15 Q. Is this that?

16 A. That's correct.

17 Q. Where was this found, to your knowledge?

18 A. I'm drawing a quick blank. I'm trying to remember if  
19 that was actually -- I'm not sure who actually pulled  
20 that one out.

21 Q. Okay.

22 A. I don't remember where that was found. I'd have to  
23 refer -- look back through my notes.

24 Q. That's okay. We can move forward. How about these?  
25 These are going to be a little difficult to see, but this

1 is State's Number 43. Can you tell us what we're looking  
2 at here?

3 A. Right here, right here there's little flakes of  
4 actually methamphetamine, the ice, that was involved.

5 Q. Is this a photo of the same thing?

6 A. Correct. I believe that's it right there.

7 Q. And this, same thing?

8 A. Yes, sir. That's all underneath the couch.

9 Q. What is this a photograph of? This is State's  
10 Exhibit Number 38.

11 A. This is in the bathroom. What you're looking at  
12 right here is a set of digital scales.

13 Q. 39, is that a close up view of the same scales?

14 A. That's correct. That's digital scales.

15 Q. And just for the record, would you point out on the  
16 diagram where this was found?

17 A. This was in the bathroom back here.

18 Q. Thank you. Some more photos, apparently, from the  
19 same location. Describe what's in State's Exhibit 27  
20 here?

21 A. It's hard to see here. There's actually a small  
22 firearm laying right here.

23 Q. Let me show you -- is that a closer view of the same  
24 thing?

25 A. That's correct. It's a little thirty-two semi-

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1 automatic.

2 Q. And is this the same firearm in State's Exhibit 29  
3 that was found?

4 A. That's correct.

5 Q. All this in the same location, I presume, as the  
6 scales we saw a picture of?

7 A. Yes. In that back bedroom. I'm sorry, the back  
8 bathroom.

9 Q. Was this individual present when you entered the  
10 trailer?

11 A. Yes. That is Mr. Colecio that night.

12 Q. And the other gentleman you testified to?

13 A. That's the second Hispanic male. If I can refresh my  
14 memory with my notes, I can tell you his name. But I  
15 apologize. I can't remember off the top of my head.

16 Q. If you'd like to see a copy of your report would that  
17 refresh -- it's -- we'll get through it and I'll give you  
18 the opportunity to do that. This individual?

19 A. Yes. That's Mr. Michael Swafford. He was there that  
20 night.

21 Q. And this individual?

22 A. Jonathan Smith. He was also there.

23 Q. If I show you a copy of your report from that  
24 evening, would that refresh your memory on who's ---

25 A. Yes, sir.

1                   MR. CLEVELAND:    May I approach the witness,  
2    Your Honor?

3                   THE COURT:     You may, sir.

4    Q.   Is that your incident report that you filed that  
5    evening?

6    A.   That's correct.

7    Q.   And just for the record purposes, State's Exhibit 37  
8    again?

9    A.   That gentleman's name was Octavio Avista.

10   Q.   Thank you.  Who, of the occupants we just went  
11   through, was arrested that evening?

12   A.   All four of those individuals were arrested that  
13   night.

14   Q.   Four of the individuals whose photographs were shown?

15   A.   Mr. Avista, Mr. Colecio, Mr. Swafford and Mr. Smith,  
16   all four were arrested that night.

17   Q.   But if you recall your testimony, there were other  
18   people in the trailer that night.

19   A.   That's correct.

20   Q.   Who -- why wasn't everybody arrested during that  
21   investigation?

22   A.   Our investigation determined that those four  
23   individuals were involved in the transaction that took  
24   place right before our arrival to the residence.  Though  
25   Mr. and Mrs. Powell lived there, they were not involved

1 in that specific transaction when that happened, so our  
2 main focus was on Willie and the people that were with  
3 him that night in the other bedroom. They were in the  
4 front part of the house when we were there. And they  
5 gave us information that they were in the back bedroom,  
6 but they were not back there with them.

7 Q. Was this a one-shot deal? Could you, after reviewing  
8 the evidence, have arrested the other occupants of the  
9 residence that night?

10 A. That's correct. I mean, our further investigation we  
11 feel like that -- the best I could determine, they were  
12 not involved in that drug transaction that night. That  
13 was not -- they were not part of that, and my focus was  
14 on the other four individuals.

15 Q. So it's fair to say that the evidence did not support  
16 granting an arrest warrant to the home owners, Neal and  
17 Kathy Powell that night?

18 A. That's correct.

19 Q. Clarify for the jury, probably at the risk of being  
20 repetitive, you said you were -- the target of your  
21 investigation was a gentleman by the name of Willie. Who  
22 -- did you identify Willie that night?

23 A. Yes. We identified Willie later as being Mr.  
24 Colecio, Israel Colecio.

25 Q. Now, after looking at the photos and the evidence,

1 considering your training and experience, based upon the  
2 presence of those scales, the baggies, the crystalline  
3 substance, and that type of cash, what is that indicative  
4 of what's going on in that trailer?

5 A. That's indicative of drug dealers doing their drug  
6 transactions. You've got to have the quantity of a  
7 product. You've got weights to weigh it. You want to be  
8 precise for the money. And, of course, your money comes  
9 into play. I mean, they're pretty precise on how much  
10 you get for your dollar.

11 Q. Thank you.

12 MR. CLEVELAND: The State doesn't have any  
13 further questions for Agent Campbell at this time, Your  
14 Honor.

15 THE COURT: Mr. Godfrey, you may cross  
16 examine, if you wish.

17 MR. GODFREY: May it please the court.

18 **CROSS EXAMINATION**

19 **BY MR. GODFREY:**

20 Q. Agent Campbell, you had a target that evening, and  
21 your target was Willie?

22 A. Yes, sir.

23 Q. And you had information which indicated that Willie  
24 may be at this address on Lacy Lane?

25 A. Yes, sir.

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1 Q. How -- when did you set up surveillance on the  
2 trailer on Lacy Lane?

3 A. After the phone call was made by the CI to Mr.  
4 Colecio, Willie, at that time, told us to go to that  
5 location, we followed our CI to that location, and we  
6 immediately put it under surveillance then.

7 Q. From the time your first put it under surveillance  
8 until the time that the confidential informant went in,  
9 how much time elapsed? How much surveillance time did  
10 you have?

11 A. You're asking me ---

12 Q. From the first time you saw the trailer ---

13 A. Yes, sir.

14 Q. -- to the time the CI went in, how much time is that?

15 A. Five or ten minutes.

16 Q. Five or ten minutes.

17 A. Something like that, yeah.

18 Q. Did -- when you first saw the trailer, did you have  
19 any idea who was in that trailer?

20 A. No, we did not.

21 Q. What kind of vehicles were outside of the trailer?

22 A. There was a GMC Yukon parked out there at that time.

23 Q. Who did it belong to? Do you know?

24 A. We were told it belonged to Willie. But, I mean, it  
25 wasn't -- his name's not on it but that was his vehicle,

1 is what the CI told us.

2 Q. Well, of these people, are you saying that -- all  
3 right, you arrested Octavio Avista?

4 A. Yes, sir.

5 Q. Thomas Swofford and Jonathan Smith?

6 A. Correct.

7 Q. How did they get there? Did they all go in the same  
8 vehicle?

9 A. I have reason to believe that Mr. Smith and Mr.  
10 Swofford probably walked there, seeing as how they lived  
11 in the neighborhood.

12 Q. Okay. But you really don't know, do you?

13 A. I don't know how they got there. No, I do not. They  
14 were already there when our CI got there.

15 Q. Okay. Now, this trailer on Lacy Lane, you determined  
16 through your investigation that it was leased under the  
17 name of Kathryn Powell?

18 A. That's correct.

19 Q. And her husband is Neal Powell?

20 A. That's right.

21 Q. Once you set up surveillance on the trailer, did  
22 anyone leave the trailer before the CI went in?

23 A. No.

24 Q. So based on your knowledge, everybody was in the  
25 trailer at the same time?

- 1 A. Yes, sir. They were all in the same trailer, but  
2 different parts of the trailer during the transaction.  
3 Q. Okay. And that is a single-wide trailer?  
4 A. Yes, sir.  
5 Q. So inside the trailer we had Jerry Neal Powell?  
6 A. Uh-huh (affirmative.)  
7 Q. Kathryn Powell, their two children?  
8 A. Correct.  
9 Q. We had Israel?  
10 A. That's right.  
11 Q. Israel's child?  
12 A. Yes, sir.  
13 Q. Octavio Avista, Michael Swofford, and Edward Smith?  
14 A. Yes, sir.  
15 Q. All inside the one trailer?  
16 A. That's right.  
17 Q. Now, when the CI went in, how long was he actually in  
18 there, do you think?  
19 A. Right at fourteen minutes, from the time he went in  
20 and came back out the door.  
21 Q. Now, when he left, you all watched him go up until he  
22 turned on the other road?  
23 A. Yes, sir.  
24 Q. Which is Crest View.  
25 A. It's Crest Drive.

- 1 Q. Crest Drive.
- 2 A. Yes, sir.
- 3 Q. And that's when the other surveillance people could
- 4 see him; right?
- 5 A. Yes, sir.
- 6 Q. Then you immediately went to the trailer to get in?
- 7 A. Yes, sir.
- 8 Q. When you went to the door to get in, how long did it
- 9 take you to actually get someone to come to the door and
- 10 let you in?
- 11 A. Probably a good forty-five seconds to a minute for
- 12 the fact that we went to the front door and realized
- 13 later that they don't use the front door. Then we got --
- 14 had to go through the fence. We got in the back yard and
- 15 we saw Mr. Swofford first, approached him, made sure he
- 16 didn't have any weapons so we could get the door and
- 17 knock. It may have been a minute.
- 18 Q. So Was Mr. Swofford --- I'm sorry, go ahead.
- 19 A. I'm just saying it would have been about a minute, I
- 20 guess.
- 21 Q. Was Mr. Swofford outside at that point in time?
- 22 A. He was. As I remember, he was smoking a cigarette
- 23 outside, out on the back porch.
- 24 Q. Okay. When you first -- when you and the other
- 25 agents first went to the single-wide trailer to get in,

1 didn't you have agents both at the front and the back?

2 A. We did. We had one that stayed at the front and the  
3 rest of us went to the rear of the residence.

4 Q. Okay. So you wouldn't have knocked on the front door  
5 until the people were at the back door, until the agents  
6 were already at the back door; right?

7 A. Correct. We had one at the front door. The rest of  
8 us went towards the back. I approached the back yard and  
9 we came across Mr. Swofford immediately.

10 Q. And did you have any idea who he was at the time?

11 A. I'm familiar with Mr. Swofford, yes, sir.

12 Q. Okay. Did you expect him to be there that night?

13 A. I expected -- yes, I did. I stand corrected. I did  
14 expect him to be there.

15 Q. Did you pat him down, or did someone pat him down?

16 A. Yes. We did a protective pat-down of him. We put  
17 him in protective -- or I mean, investigative detention.

18 Q. When you or one of the -- you were present when he  
19 was patted down; right?

20 A. Yes, sir.

21 Q. Was there any contraband found on his person?

22 A. I don't think so. If I remember correctly, no.

23 Q. So no drugs, no weapon on Mr. Swofford?

24 A. No, sir.

25 Q. Okay. And then you all were let in by Ms. Powell?

- 1 A. Mr. Powell let us in.
- 2 Q. Mr. Powell let you in?
- 3 A. Yes.
- 4 Q. Okay. How did you determine who it was that actually  
5 leased the trailer?
- 6 A. By asking the Powells.
- 7 Q. Okay. And Kathryn Powell told you that she leased  
8 the trailer?
- 9 A. That's correct.
- 10 Q. So from the time that you attempted to enter the  
11 trailer, you say about a minute passed?
- 12 A. Correct.
- 13 Q. Okay.
- 14 A. A minute, yeah.
- 15 Q. And then once you got, once you got inside the  
16 trailer, and determined that Kathy Powell was the one who  
17 leased it, that's when -- well, you did two things. I'll  
18 do them both. You did the *Miranda* Form on Kathy Powell.
- 19 A. Yes, sir.
- 20 Q. And, of course I think you also, although it's not in  
21 evidence, did one on Neal Powell?
- 22 A. I did, correct.
- 23 Q. And then State's Exhibit 17 is the standard Pickens  
24 County Consent to Search Form; right?
- 25 A. Yes, sir.

1 Q. That's been used for years. And Kathy Powell signed  
2 that?

3 A. Yes, sir.

4 Q. Now, when you first went inside the trailer, isn't it  
5 true that the agents, that you all are taught to find out  
6 who all is in the trailer?

7 A. Yes, sir. We did a protective sweep of the trailer  
8 to see who all was there, because I already had knowledge  
9 that there was a weapon in the house.

10 Q. And so you got everybody and got them in one place;  
11 right?

12 A. I did, correct.

13 Q. And in what one place of the trailer did you put  
14 them?

15 A. We was -- mostly ended up coming towards the living  
16 room/kitchen area, right here, it's kind of open. It was  
17 all in this area.

18 Q. Okay. So from the time you -- the CI is on Crest  
19 Avenue going, and then you all go to the trailer, it  
20 takes you about a minute to get in?

21 A. Uh-huh (affirmative).

22 Q. And then you do a protective sweep?

23 A. Yes, sir.

24 Q. And then you get all of the people together for  
25 safety purpose, for agent safety purposes?

- 1 A. That's correct.
- 2 Q. Okay. Is it at that point that you searched?
- 3 A. What ---
- 4 Q. Did you search the house as soon as you got -- once
- 5 you found out who all was there and you made sure that
- 6 everybody was safe, the agents and the people there, then
- 7 did you all proceed to search the residence?
- 8 A. Yes, sir. After some discussion with the -- Kathy
- 9 and Neal Powell, they started giving us information on
- 10 what had transpired when we came to the door, that Mr.
- 11 Colecio had handed her a wallet and some money and told
- 12 her to hold that because -- for some reason, Mr. Powell
- 13 said that Colecio had told him, don't open the door.
- 14 Though he could see who we were, and he had opened it
- 15 anyway to allow us in.
- 16 Q. Well, what is the relationship between Israel and
- 17 Neal and Kathryn Powell?
- 18 A. They said they know of him. And I think they had
- 19 more of a relationship with Mr. Swofford, who I think is
- 20 better friends with Mr. Colecio.
- 21 Q. So why was Mr. Colecio in the house? Did they let
- 22 him in?
- 23 A. They did. They let every one of them in the house.
- 24 Q. What were they -- now, Mr. Colecio, did he live
- 25 there?

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1 A. He did not.

2 Q. Did have any clothes there?

3 A. No, sir.

4 Q. As far as you know, had he ever spent the night  
5 there?

6 A. No, he did not.

7 Q. Do you have any idea from your investigation how many  
8 times Mr. Colecio may have been there?

9 A. He had been there before, but I do not know how many  
10 times. He knew of that location because he's the one  
11 that instructed the CI to go there.

12 Q. Did the Powells tell you what their relationship was  
13 to Israel Colecio?

14 A. They're just all acquaintances.

15 Q. I'm sorry?

16 A. Acquaintances.

17 Q. Acquaintances?

18 A. Yes, sir.

19 Q. So I guess Michael Swofford and Edward Smith are  
20 acquaintances, too, since they just live down the road?

21 A. They all know each other, correct.

22 Q. Okay. So at that point in time, you and the other  
23 agents search the single-wide trailer?

24 A. That's correct.

25 Q. Now, in the master bedroom, and the jury's been shown

1 the picture, you all found a bag of crystal substance?

2 A. Yes, sir.

3 Q. You found currency of three thousand ninety-six  
4 dollars?

5 A. Yes, sir.

6 Q. You found some plastic baggies?

7 A. Yes, sir.

8 Q. That's the master bedroom?

9 A. Well, yes, sir. Well, I called it that, but it's the  
10 front bedroom on this map.

11 Q. Okay. Well, you call it the master bedroom because  
12 that where it appears the Powells slept?

13 A. That's correct, yes, sir.

14 Q. Okay. So that was their bedroom?

15 A. Yes.

16 Q. All right. And then in the living room, behind the  
17 love seat where a seven year old child was sleeping,  
18 there was a white film canister containing a clear  
19 plastic bag that contained a quantity of crystal  
20 substance found. Is that correct?

21 MR. CLEVELAND: Objection. Your Honor, I  
22 believe Mr. Campbell testified that he didn't recall  
23 where that was found.

24 THE COURT: I'll allow him to answer the  
25 question.

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- 1 A. It may have been found in there.
- 2 Q. Okay.
- 3 A. I did not locate it.
- 4 Q. What is the child's room?
- 5 A. The back bedroom.
- 6 Q. The back bedroom is what was known as the child's
- 7 room?
- 8 A. Yes, sir. That's where the original drug transaction
- 9 took place.
- 10 Q. Okay. And in there some loose shards of crystal
- 11 substance were found? Was that the pictures where it
- 12 showed some crystal substance?
- 13 A. I'm wanting to say that was in the couch, but I'd
- 14 have to refresh my memory on my notes. I can't remember
- 15 exactly where that ---
- 16 Q. Was it in a chair in the child's room?
- 17 A. It may have been. I didn't locate that item.
- 18 Q. Who was the scribe on the search warrant?
- 19 A. There was no search warrant. We did a Consent to
- 20 Search.
- 21 Q. I'm sorry. Who was the scribe on the Consent to
- 22 Search?
- 23 A. I think Agent Sonnefeld did most of the scribing.
- 24 Her or Lieutenant Chad Brooks. I did some notes, and
- 25 then we kind of compiled everything together. Then I did

1 -- I'm the case agent so I ended up doing the paperwork.

2 Q. Well, the bathroom where the digital scales were  
3 found, that ---

4 A. Yes, sir.

5 Q. -- was in the child's bedroom?

6 A. Yes, sir. Back here.

7 Q. Now where is it you said that the deal was done?

8 A. In this back bedroom is where the four individuals  
9 met our CI to do the drug transaction.

10 Q. Okay. Now, and a handgun was found there, too?

11 A. Yes, sir. It was. It was found in this bathroom.

12 Q. Did you run the handgun through NCIC?

13 A. We did.

14 Q. Were there any wants or holds?

15 A. Not on that one, no, sir.

16 Q. Was the serial number -- obviously, the serial number  
17 was still present on that gun?

18 A. It was.

19 Q. And were any fingerprints taken from that gun?

20 A. They were -- I believe Lieutenant Robinson tried, but  
21 no fingerprints were able to lift from the weapon. We  
22 weren't able to get anything from it.

23 Q. Who was the gun registered to?

24 A. Our check through ATF files, it was registered to  
25 nobody. It had no history to it.

1 Q. So who did the gun belong to?

2 A. From what we understand, it belonged to Willie.

3 Because it was brandished during the original drug  
4 transaction by our CI's statement.

5 Q. Who brandished the gun?

6 A. Willie did, which is Mr. Colecio, during the original  
7 transaction. He pulled it out when the CI was in the  
8 bedroom.

9 Q. Now, when you put -- when you did the protective  
10 sweep, everybody in the single-wide trailer was patted  
11 down for officers' safety; right?

12 A. That is correct, sir.

13 Q. And, of course, Kathryn Powell signed a *Miranda* Form.

14 A. Yes, sir.

15 Q. You all find marijuana in her pants pocket?

16 A. I believe there was a quantity found in her pocket.  
17 I did not find it. I believe -- excuse me -- Agent  
18 Sonnefeld did.

19 Q. So from -- the CI contacts you in the beginning and  
20 says, hey, I think I can get something from Willie?

21 A. Yes, sir.

22 Q. Is that right?

23 A. Yes, sir.

24 Q. He gives you an address?

25 A. Willie gave our CI the address.

- 1 Q. And then the CI gave you the address; right?
- 2 A. Yes, sir.
- 3 Q. Is there a taped phone call between your confidential  
4 informant and Willie?
- 5 A. I'm pretty sure we have that taped phone call.
- 6 Q. Okay.
- 7 A. I'd have to double check and make sure I have that  
8 one.
- 9 Q. And that was the same day that the buy/bust went  
10 down?
- 11 A. Yes, sir.
- 12 Q. So from the time you met with the CI until the time  
13 that arrests were made, how much time actually elapsed?
- 14 A. We met him approximately nine-thirty at night. We  
15 were in the residence about ten-forty. So a good hour,  
16 hour and fifteen minutes max, from when we started our  
17 initial phone call.
- 18 Q. But throughout your investigation, there's absolutely  
19 no question that Kathryn Powell leased that single-wide  
20 trailer?
- 21 A. Yes, sir. That was -- everybody admitted that --  
22 they did -- the four individuals arrested said they did  
23 not live there. The Powells said they did. They rent  
24 and lease -- or they rent the location.
- 25 Q. Okay. And these other people were just there in the

1 trailer with them?

2 A. That's correct.

3 Q. And the Powells weren't arrested for anything?

4 A. No, sir, they were not.

5 MR. GODFREY: Nothing further.

6 THE COURT: Any redirect?

7 MR. CLEVELAND: Briefly, Your Honor.

8 **REDIRECT EXAMINATION**

9 **BY MR. CLEVELAND:**

10 Q. To your knowledge, from the time the CI left to the  
11 time you entered that residence, did anybody enter or  
12 leave that premise, that residence or the curtilage  
13 around it?

14 A. No, they did not.

15 MR. CLEVELAND: Nothing further, Your Honor.

16 THE COURT: All right. Thank you, sir. You  
17 may step down, Officer. You may call your next witness.

18 MR. CLEVELAND: Thank you, Your Honor. The  
19 State calls Kathy Powell to the stand.

20 THE CLERK: Place your left hand on the bible  
21 and raise your right hand. Do you solemnly swear or  
22 affirm the testimony you're about to give in this case to  
23 be the truth, the whole truth and nothing but the truth,  
24 so help you God?

25 MS. POWELL: I do.

1 THE CLERK: If you would have a seat and state  
2 your name for the record.

3 MS. POWELL: My name is Kathryn Powell.

4 KATHY POWELL,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. CLEVELAND:

8 Q. Thank you, Ms. Powell. And where do you live?

9 A. Lane in Easley.

10 Q. How long have you lived there?

11 A. Going on four years now.

12 Q. Are you married, Ms. Powell?

13 A. Yes.

14 Q. How long have you been married?

15 A. Almost ten years.

16 Q. Is your husband with you in the courtroom today?

17 A. Yes, he is.

18 Q. Could you point him out for the jury.

19 A. Right there in the back.

20 Q. And he lives with you at Lane?

21 A. Yes.

22 Q. Do you have any children?

23 A. I have two.

24 Q. What are their names?

25 A. Damian and Dustin.

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- 1 Q. Do they live at Lane as well?
- 2 A. Yes, sir.
- 3 Q. Are you and your husband and your two children the  
4 only individuals that live at Lane?
- 5 A. Yes, sir.
- 6 Q. What do you do for a living?
- 7 A. I do shipping and receiving at the DOT in Easley.
- 8 Q. How long have you worked at DOT in Easley?
- 9 A. Going on six years.
- 10 Q. Let's go forward to December 11, 2008. Do you  
11 remember that night?
- 12 A. I remember a little bit of it, yeah.
- 13 Q. I would ask the court to decree that it was a  
14 Thursday that night. Do you have to work -- would you  
15 have had to work on Friday?
- 16 A. Oh, yes.
- 17 Q. If you'll look over your shoulder, there's a diagram.  
18 Is that an accurate representation of your home at  
19 Lane?
- 20 A. Yes, sir.
- 21 Q. At least as it was. I understanding y'all are doing  
22 some renovations.
- 23 A. Yeah.
- 24 Q. At least as it was on that night?
- 25 A. Yes, sir.

1 Q. This is a laser pointer. If I ask you any questions  
2 about it, you can hit that button and point.

3 A. All right.

4 Q. You may not need it but just in case.

5 A. Okay.

6 Q. Going to that night of December 11, 2008, can you  
7 tell us what happened inside your home that night, or  
8 what you remember from what happened inside your home  
9 that night?

10 A. Okay. I know I was asleep. I was jerked up off the  
11 couch.

12 Q. What time did you go to sleep that night, do you  
13 recall?

14 A. I go to bed every night about eight or eight-thirty.

15 Q. Where were you sleeping that night?

16 A. On the couch, in the living room with my oldest boy.

17 Q. Okay. You said you were jerked up. Elaborate on  
18 that a little bit.

19 A. I was pulled up by my arm.

20 Q. Who pulled you up by your arm?

21 A. Willie.

22 Q. Who's -- could you point out Willie?

23 A. (Indicating defendant.)

24 Q. The defendant, Mr. Colecio?

25 A. Yes.

- 1 Q. You said that he jerked you up. What happened then?
- 2 A. He handed me a bunch of money and two cell phones and
- 3 said, police, police.
- 4 Q. Did you say anything back to him?
- 5 A. I said, what the heck.
- 6 Q. What did you do with the money and the cell phones
- 7 that he handed you?
- 8 A. I proceeded to put them in my pocket. I mean, you
- 9 know, I was half asleep. I, you know ...
- 10 Q. Were you still in the living room at this time?
- 11 A. Yes.
- 12 Q. Was the money in any kind of container, a wallet or
- 13 anything like that, or how was it presented to you?
- 14 A. It was kind of balled up, bunched up.
- 15 Q. Okay. What happened next?
- 16 A. The police came in the back door. No, no. After he
- 17 done that, I heard something. He went back towards my
- 18 bedroom, right there.
- 19 Q. Willie went back towards you bedroom?
- 20 A. Willie, back to my bedroom. I heard something thump
- 21 or something against my wall. I didn't go back there
- 22 because before I could do anything, the police were
- 23 coming in my back door.
- 24 Q. So how long after, when you were awakened by the
- 25 Defendant, handed this money and cell phone, did the
- 26 police enter your house?

- 1 A. Probably two minutes, if that.
- 2 Q. Did you talk to the police once they came inside?
- 3 A. Yes.
- 4 Q. Did you allow them to search your home?
- 5 A. Yes, I did.
- 6 Q. I'm going to show you State's Evidence 16 and 17.
- 7 Would you look at those, please?
- 8 A. Uh-huh (affirmative).
- 9 Q. Is that your signature on these forms?
- 10 A. Yes, it is.
- 11 Q. Did you allow the police to search your person?
- 12 A. Myself?
- 13 Q. Yes.
- 14 A. Yeah. But before they even asked me, I handed them
- 15 what I had in my pocket.
- 16 Q. So you handed them what you had in your pocket.
- 17 After that, did you let them search your person?
- 18 A. Yes. Yes.
- 19 Q. Did they find anything on you?
- 20 A. Yes, they did.
- 21 Q. What did they find?
- 22 A. A little bit of marijuana.
- 23 Q. Did that marijuana belong to you?
- 24 A. No.
- 25 Q. How did it get in your pocket? How did it get there?

- 1 Where was it?
- 2 A. It was in this pocket where the money was. I assume  
3 it was with it. I'm not sure.
- 4 Q. Okay. When you were woken up by the Defendant, was  
5 that your first interaction with the Defendant on that  
6 given day?
- 7 A. Yes.
- 8 Q. Were you aware that anyone, other than your family,  
9 was at home -- was in your home that night?
- 10 A. No, sir.
- 11 Q. Who was it that was in your house that night, other  
12 than your family?
- 13 A. Willie, Michael, Jonathan, and then some other  
14 Mexican. I don't know who he was.
- 15 Q. When did you realize who was there?
- 16 A. After they brought me back out of the bedroom, matter  
17 of fact.
- 18 Q. Okay. Those people in your home, let's go through  
19 them one by one.
- 20 A. Okay.
- 21 Q. How well do you know Willie?
- 22 A. Not very well.
- 23 Q. Had you seen him before that night?
- 24 A. I'd seen him before, yes.
- 25 Q. Talked to him?

1 A. No, not really.

2 Q. What about Michael?

3 A. I know Michael.

4 Q. Michael Swafford?

5 A. I know Michael.

6 Q. What about Jonathan Smith?

7 A. I know just that he was kin somehow to Michael. I  
8 mean, as far as knowing him, knowing him, I didn't know  
9 him, know him.

10 Q. And the other gentleman, Hispanic fellows name was  
11 Avista ---

12 A. I've never seen him before.

13 Q. Do you own a gun?

14 A. No. I'm scared of guns.

15 MR. CLEVELAND: I beg the Court's indulgence  
16 for one moment, Your Honor. May I approach the witness?

17 THE COURT: You may.

18 Q. I'm showing you three photographs that's entered into  
19 State's evidence. What's depicted in those photographs?

20 A. A gun.

21 Q. Where -- can you tell where those photos were taken?

22 A. At my toilet.

23 Q. Within your home at Lane?

24 A. Yes.

25 Q. Were you surprised ---

- 1 A. Yes.
- 2 Q. -- to find -- to discover that that was in your  
3 house?
- 4 A. I was surprised to find everything that was found in  
5 my house.
- 6 Q. Was anyone in your family charged with any crime ---
- 7 A. No, sir.
- 8 Q. -- resulting to this incident or surrounding it?
- 9 A. No, sir.
- 10 Q. Did law enforcement make any promises to you or your  
11 family relating to any charges, regarding your  
12 cooperation or participation in this investigation in any  
13 manner?
- 14 A. No, sir. I was glad to help them.
- 15 Q. Did anyone from my office, the Solicitor's Office,  
16 make you any promise regarding charges pertaining to your  
17 testimony today or anything of that nature surrounding  
18 these crimes?
- 19 A. No, sir.
- 20 Q. Did you have anything to do with the drug transaction  
21 that went on in your residence the night of December 11,  
22 2008?
- 23 A. No, sir.
- 24 Q. Thank you.
- 25 MR. CLEVELAND: No further questions for this

1 witness, Your Honor.

2 THE COURT: You may cross examine.

3 MR. GODFREY: May it please the Court.

4 THE COURT: Yes, sir.

5 **CROSS EXAMINATION**

6 **BY MR. GODFREY:**

7 Q. Ms. Powell, this is your home?

8 A. Yes, sir.

9 Q. And how long have you lived there?

10 A. Almost four years.

11 Q. And you say you normally go to bed about eight o'clock  
12 every night?

13 A. Eight or eight-thirty. I come home from work and eat  
14 supper, get the kids ready for bed about eight o'clock.

15 Q. So what's your -- at the time of this incident, what  
16 was your work schedule?

17 A. Eight to four-thirty, Monday through Friday.

18 Q. Eight in the morning to four-thirty in the afternoon?

19 A. Uh-huh (affirmative).

20 Q. Okay. And so you went to bed every night about eight  
21 o'clock?

22 A. Every night.

23 Q. Now, on the night that the police came in, you were  
24 there?

25 A. Yes, sir.

- 1 Q. Your husband was there?
- 2 A. Yes, sir.
- 3 Q. Your two children were there?
- 4 A. Yes, sir.
- 5 Q. Israel Colecio was there?
- 6 A. Yes, sir.
- 7 Q. Israel's child?
- 8 A. Yes, sir.
- 9 Q. And Octavio Avista was there?
- 10 A. Yes.
- 11 Q. Do you know him?
- 12 A. No.
- 13 Q. And Michael Swofford was there?
- 14 A. Uh-huh (affirmative).
- 15 Q. You know him?
- 16 A. Yes, sir.
- 17 Q. How well you know him?
- 18 A. I've known Michael for a few years.
- 19 Q. And Edward Smith was there?
- 20 A. Jonathan?
- 21 Q. Jonathan Smith?
- 22 A. Yeah.
- 23 Q. Jonathan Edward Smith?
- 24 A. Yeah.
- 25 Q. All of these people were in your house and you didn't

- 1 know they were in your single-wide trailer?
- 2 A. No, sir. I was asleep, like I said.
- 3 Q. Y'all lock the doors?
- 4 A. Do what?
- 5 Q. Do you lock the doors at night when you go to sleep?
- 6 A. Yeah.
- 7 Q. So you're saying your husband let these people in?
- 8 A. Well, I'm not sure. I can't tell you because I don't
- 9 know. I was asleep.
- 10 Q. You don't know?
- 11 A. No.
- 12 Q. Never asked to find out?
- 13 A. No.
- 14 Q. So you were asleep in the living room?
- 15 A. Yes, sir, on the couch, on the long couch.
- 16 Q. Okay. And the first thing you remember is you being
- 17 awakened by Israel Colecio coming ---
- 18 A. Right. Grabbed me by my arm, and jerked me up off the
- 19 couch, handed me money and cell phone.
- 20 Q. Money and a cell phone?
- 21 A. He said, police, police.
- 22 Q. And do you know how much money it was he gave you?
- 23 A. No, I don't. I don't know. It was just balled it up.
- 24 I don't know.
- 25 Q. What did you do with the cell phone?

- 1 A. The phone -- there was two phones. There wasn't just  
2 one, there was two.
- 3 Q. What did you do with them?
- 4 A. In my pocket.
- 5 Q. You put them in your pocket?
- 6 A. Yes.
- 7 Q. And you still had the money and the cell phones when  
8 the police came in?
- 9 A. Right.
- 10 Q. And you gave that to the police?
- 11 A. Yes, sir, before they ever even asked.
- 12 Q. Well, do you have a TV in that single-wide trailer?
- 13 A. Yes.
- 14 Q. What room is it in?
- 15 A. I have one in just about every room?
- 16 Q. Just about every room?
- 17 A. Uh-huh (affirmative).
- 18 Q. Were the TVs on?
- 19 A. I want to say the one in the living room was.
- 20 Q. Where you were?
- 21 A. Right.
- 22 Q. Okay.
- 23 A. Because I go to sleep watching TV.
- 24 Q. You go to sleep watching TV?
- 25 A. Uh-huh (affirmative).

- 1 Q. Okay. But you had no idea these people were in your  
2 house?
- 3 A. No, sir.
- 4 Q. Had no idea what was happening?
- 5 A. No, sir.
- 6 Q. And were you present when the officers searched your  
7 house?
- 8 A. Yes.
- 9 Q. You were in the living room?
- 10 A. Yes, sir.
- 11 Q. Were you surprised when the officers found a plastic  
12 bag of crystal substance behind the love seat?
- 13 A. Yes.
- 14 Q. You're saying that wasn't yours?
- 15 A. No.
- 16 Q. The love seat was where your seven year old was  
17 sleeping; right?
- 18 A. No. My seven year old was on the couch with me, on  
19 the long couch, not on the love seat.
- 20 Q. Okay. And in the master bedroom, there was more  
21 crystal substance found. You're saying that's not yours?
- 22 A. I'm positive that's not mine. Yes.
- 23 Q. And the three thousand ninety-six dollars is not  
24 yours?
- 25 A. No. I wish, but no.

1 Q. And you sleep soundly and you didn't know anybody was  
2 in your house until the police knocked on the door?

3 A. Until he got me up off the couch.

4 Q. Okay. Thank you very much.

5 THE COURT: Any redirect?

6 MR. CLEVELAND: I beg the Court's indulgence one  
7 moment.

8 THE COURT: Yes, sir.

9 MR. CLEVELAND: Just one, Your Honor.

10 **REDIRECT EXAMINATION**

11 **BY MR. CLEVELAND:**

12 Q. Was there -- can you recall if there was any other  
13 commotion, motion around the trailer going on while you  
14 were being jerked up?

15 A. No, I just -- right after that happened, I was trying  
16 to get awake. I didn't know what was going on. And then  
17 the police was coming in the back door. That's -- I just  
18 ---

19 Q. Because you'd been asleep ---

20 A. Yes.

21 Q. -- for about two hours ---

22 A. Oh, yeah.

23 Q. -- I think you testified here today?

24 A. Oh, yeah.

25 Q. Thank you.

1 A. Thank you.

2 MR. CLEVELAND: Nothing further.

3 THE COURT: Thank you, ma'am. You may step  
4 down. This might be a good time to take a short break.  
5 Ladies and gentlemen, I'll ask you to go back to your jury  
6 room and let me remind you not to discuss the case. We'll  
7 take a short break and call you back in just a few  
8 moments.

9 (WHEREUPON, the jury exited the open court at  
10 approximately 2:26 p.m.)

11 THE COURT: Let's take about a ten minute  
12 break.

13 (WHEREUPON, the court stood at recess for a short  
14 break.)

15 THE COURT: Are you ready to proceed, Solicitor.

16 MR. CLEVELAND: The State's ready, Your Honor.

17 MR. GODFREY: Yes, Your Honor.

18 THE COURT: If the jury is ready, you can have  
19 them come in.

20 MR. CLEVELAND: Your Honor, one brief question.

21 THE COURT: Wait. Hang on just a minute.

22 MR. CLEVELAND: I might stick a number for  
23 identification on that chart just to make it easier to  
24 refer to the jury if that's okay with you.

25 THE COURT: Is that going to ---

1 MR. CLEVELAND: It's not going back for  
2 evidence, but it's just demonstrative. It's your call.

3 THE COURT: That would be fine.

4 MR. CLEVELAND: Okay.

5 THE COURT: You can mark it for ID only or  
6 whatever.

7 MR. CLEVELAND: Yeah.

8 THE COURT: Okay. If they're ready, have them  
9 come in.

10 (WHEREUPON, the jury entered the open court at  
11 approximately 2:48 p.m.)

12 THE COURT: Mr. Cleveland, you may call your  
13 next witness.

14 MR. CLEVELAND: Thank you, Your Honor. The  
15 State calls Special Operative Tommy Blankenship.

16 THE CLERK: Place your left hand on the bible  
17 and raise your right hand. Do you solemnly swear or  
18 affirm the testimony you're about to give in this case to  
19 be the truth, the whole truth and nothing but the truth,  
20 so help you God?

21 MR. BLANKENSHIP: I do.

22 THE CLERK: If you would have a seat and state  
23 your name for the record.

24 MR. BLANKENSHIP: Tommy Blankenship.

25 **TOMMY BLANKENSHIP,**

1                   **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

2                   **DIRECT EXAMINATION**

3   **BY MR. CLEVELAND:**

4   Q. Thank you, Agent Blankenship. Who do you work for?

5   A. I work for the Pickens County Sheriff's Office.

6   Q. How long have you worked for the Pickens County  
7   Sheriff's Office?

8   A. It will be five years in May.

9   Q. What division within the Sheriff's Office do you work  
10   for?

11   A. I'm currently employed in the Pickens County Special  
12   Operations Division.

13   Q. Is that with Agent Campbell?

14   A. Yes, sir, me and Agent Campbell work out of the same  
15   office.

16   Q. Could you describe for the jury your educational  
17   background that qualifies you to work in the Special  
18   Operations Unit, and experience, if you would?

19   A. Yes, sir. I worked at the Sheriff's Office for two  
20   years before moving to the Special Operations Division.  
21   Before that, I received a Bachelor of Science in  
22   Education, which is one of the requirements to move to the  
23   Special Operations Division, that you have advancement in  
24   school. On top of that, I also completed the Academy in  
25   Columbia. I've received a couple of different advanced

1 classes offered through the Academy as well, as well as  
2 Meridian, Mississippi.

3 Q. Thanks, Tommy. Have you ever been involved in  
4 undercover investigations in your line of duty regarding  
5 investigation of illegal narcotic activities?

6 A. Yes, sir, I have.

7 Q. How often or how many of these investigations would  
8 you say you've been involved in during your tenure at the  
9 Sheriff's Office?

10 A. Over the three years, I would say it would have to  
11 exceed five hundred.

12 Q. Let's go to December 11th. Were you involved in an  
13 investigation on December 11, 2008?

14 A. Yes, sir, I was.

15 Q. Were you present at the scene of that investigation?

16 A. Yes, sir. I was there.

17 Q. Describe for us where that investigation took place?

18 A. It's in Easley, South Carolina, which is within  
19 Pickens County. I believe the residence is Lane,  
20 which turns off of Crest Drive.

21 Q. All right. I've ---

22 MR. CLEVELAND: The jury has seen my diagram.  
23 At this point, I'm going to mark it just for  
24 identification purposes, as Number 57 to make things  
25 easier.

1 (WHEREUPON, State Exhibit Number 57 was marked for  
2 identification.)

3 Q. Did you go inside that residence at Lane?

4 A. Yes, sir. I did.

5 Q. Where did you enter that residence on the night of  
6 December 11, 2008?

7 A. I made entrance into the residence through the back  
8 door on the back porch.

9 Q. Okay. Did you accompany Agent Campbell when you  
10 entered?

11 A. Yes, sir, I did.

12 Q. At the same time or did you follow a short while  
13 after?

14 A. I would have been a short while after. I was the  
15 agent that was assigned to the front porch to make sure no  
16 one exited before we could make entrance.

17 Q. Okay. Once inside that residence, did you assist in  
18 searching the residence?

19 A. Yes, sir. I did assist in the consent search.

20 Q. What areas of that residence did you search?

21 A. I remained in the front bedroom area.

22 Q. Could you show it with the laser pointer?

23 A. I can. All the searching that I did was within this  
24 bedroom right here.

25 Q. Within that front bedroom, what did you find?

1 A. I located a grocery bag that contained another bag,  
2 which contained a quantity of crystal methamphetamine.  
3 It also contained some smaller baggies, jewelry baggies.

4 Q. Did you know that it was methamphetamine at the time  
5 or were you just supposing that it was methamphetamine  
6 based on your training?

7 A. Based on training and experience, it appeared to be  
8 methamphetamine.

9 Q. Describe the appearance of that item that you found?

10 A. It was a crystal substance within a, kind of a cheap  
11 zip-lock baggie.

12 MR. CLEVELAND: I beg the Court's indulgence,  
13 Your Honor.

14 THE COURT: Yes, sir.

15 Q. Agent Blankenship, I'm going to show you some  
16 photographs previously entered into evidence as State's  
17 Exhibits. I believe this is 18, 19, 20, 21, and 22. Can  
18 you identify those photographs?

19 A. Yes, sir. I can identify these.

20 Q. Where were those photographs taken?

21 A. Each one of these photographs were taken in the back  
22 bedroom where I performed my search.

23 Q. The back bedroom or the -- where? Point out.

24 A. Front bedroom. Excuse me. I misspoke.

25 Q. Okay. I'll put these few -- these photos back up on

1 the photo presenter. If you would, is that how it appears  
2 in this photo, how you found this evidence?

3 A. No, sir. That's not how the evidence was. I placed  
4 the evidence on top of the dresser.

5 Q. Please describe for the jury, regarding each piece of  
6 evidence, how it was found and what you did with it  
7 between the time you found the evidence and between the  
8 time this photo was taken?

9 A. Yes, sir, I located it -- if I may use the laser  
10 pointer.

11 Q. Yes, absolutely.

12 A. Will it work up here? It was behind the dresser right  
13 here, caught up probably half-way between the top and the  
14 floor. It was in a grocery bag. These bags -- this was  
15 inside the grocery bag, as well as the bag of  
16 methamphetamine was in here. This larger bag is one of  
17 our evidence bags, and I placed it in it because I  
18 questioned the integrity of the bag that the  
19 methamphetamine was in. I was afraid that we would lose a  
20 quantity of the evidence.

21 Q. You can see in the background -- in this photo it's a  
22 little clearer, I believe -- there's some money. Was that  
23 money located in there at the time?

24 A. The money was actually taken off of Kathy Powell  
25 whenever we spoke with her. And Mr. Campbell read her

1 Miranda Rights, she pulled that, as well as some marijuana  
2 out of her front pocket. And I believe she had two cell  
3 phones as well.

4 Q. Okay. Just one more close look. Please point out for  
5 the jury which bag you questioned the integrity of and  
6 which bag you then placed it in?

7 A. Okay. The bag right here, the zip lock baggie, is the  
8 one that I was afraid may not -- may burst or could tear  
9 or for any reason cause us to lose any quantity of  
10 evidence. So I placed it in this larger bag, which is the  
11 bag we use to put our evidence in.

12 Q. Did you place the other evidence in the photo -- I  
13 believe it's these small -- with the red ---

14 A. The smaller bags, that's right.

15 Q. What did you refer to those as?

16 A. Jewelry bags is what their legal purpose is usually  
17 for.

18 Q. Okay. You didn't place them in any other kind of  
19 container?

20 A. No, sir. They are in the bag in which they were  
21 found.

22 Q. But they were also in the grocery bag that you  
23 testified was behind the dresser?

24 A. Yes, sir. I found them located in a grocery bag  
25 packaged together thrown behind the dresser?

1 Q. Where was the grocery bag when this photo was taken?

2 This photo. It had been removed?

3 A. Yeah. The grocery bag was probably laying -- just  
4 laying in the floor.

5 Q. Now, when -- once the evidence was in this state, what  
6 did you do with it after it was photographed like this,  
7 once it was on the dresser?

8 A. The evidence remained there and in my custody until it  
9 was removed by Agent Connie Sonnefeld. She would had  
10 taken possession of the methamphetamine.

11 Q. Did you see her take possession of it that night?

12 A. Yes, sir. I did.

13 Q. Would you -- just for identification purposes, would  
14 you point out Ms. Sonnefeld?

15 A. Yes, ma'am. She's the blonde with the dark colored  
16 jacket.

17 Q. Is there any other evidence that you located inside  
18 the home at Lane that's not in these photographs?

19 A. No, sir. That's all that I located.

20 Q. We heard testimony from Agent Campbell that the  
21 transaction at this point in time was believed going on in  
22 the back bedroom. Why did you search the front bedroom?

23 A. Any time we're given consent to search the residence,  
24 we're going to search the entire area. When we were  
25 speaking with Ms. Powell, she advised us that Colecio, the

1 Defendant, had ran into the back bedroom, and she heard a  
2 thud. So we had reason to believe that maybe he had tried  
3 to get rid of some evidence in that bedroom.

4 Q. Thank you.

5 MR. CLEVELAND: Your honor, at this time, I  
6 don't have any more questions for Agent Blankenship.

7 THE COURT: Any cross examination?

8 MR. GODFREY: May it please the Court.

9 **CROSS EXAMINATION**

10 **BY MR. GODFREY:**

11 Q. Agent Blankenship, in the picture of the evidence from  
12 the master bedroom, or the bedroom, or front bedroom as  
13 you call it, you say there was a grocery bag that was  
14 behind that little chest?

15 A. Yes, sir. That's correct.

16 Q. And how far was it stuck behind the chest?

17 A. It was, I would estimate, halfway between the top of  
18 the chest and the bottom.

19 Q. Okay. And what was in that grocery bag?

20 A. It contained a zip lock bag that contained what I  
21 believe to be a quantity of methamphetamine, and a small  
22 bag that contained numerous smaller baggies.

23 Q. Now, there was also money in the picture. Now, you  
24 say that money was not found in that bedroom?

25 A. No. The money was not found in the bedroom. It was

1 removed from Ms. Powell.

2 Q. Okay. And you took it back there and put it with the  
3 other stuff?

4 A. I didn't, but Agent Henry Campbell did lay it there  
5 for photographing purposes.

6 Q. Okay. Now, the CI that was sent in there, what was he  
7 supposed to do?

8 A. I would have to base this on a general operation. To  
9 the best of my knowledge, a confidential informant is  
10 given documented funds, and he is supposed to make a,  
11 what's called a controlled purchase of some sort of  
12 illegal drug. When he makes the purchase, he comes back  
13 to us, he turns it over to us, where he's searched and  
14 made sure there's no further contraband on him.

15 Q. Did you know what the CI was -- how much drugs the CI  
16 was supposed to purchase at that residence?

17 A. I believe it was half of an ounce.

18 Q. Okay. You weren't in on that end of -- that part of  
19 the investigation; were you?

20 A. I did not play an integral part. I was more of a  
21 support unit for that portion of the investigation.

22 Q. Okay. Well, I'll leave that alone then.

23 A. Okay.

1 Q. Now, on the grocery bag that you found that had the  
2 crystal substance in it, was the grocery bag also placed  
3 into evidence?

4 A. No, sir. I don't believe so.

5 Q. Was the bag that had the crystal substance in it, was  
6 it checked for fingerprints?

7 A. I do not know.

8 Q. Did you request that it be checked for fingerprints?

9 A. No, sir. I did not.

10 Q. So when you went into the house -- you were initially  
11 at the front door; right?

12 A. Originally, yes, sir, I was.

13 Q. And then once the agents got inside and did the  
14 protective sweep, that's when you went around and went  
15 inside?

16 A. Yes, sir, I did.

17 Q. And once you went inside, your job was to search the  
18 front or master bedroom?

19 A. Yes, sir, that's correct.

20 Q. And what you found there is that crystal meth?

21 A. Yes, sir. That is correct.

22 Q. Okay.

23 MR. GODFREY: Nothing further.

24 THE COURT: Any redirect.

25 MR. CLEVELAND: Just briefly, Your Honor.



1 THE CLERK: If you would have a seat and state  
2 your name for the record.

3 MR. ROBINSON: Tony Robinson.

4 TONY ROBINSON,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. CLEVELAND:

8 Q. Thank you, Lieutenant Robinson. Would you please  
9 state for the jury who you work for?

10 A. I with the Pickens County Sheriff's Office.

11 Q. And how long have you been with Pickens County  
12 Sheriff's Office?

13 A. I was a reserve starting in 1986, and I went full-time  
14 in 1989. So I've been there about twenty -- twenty-two  
15 years, twenty-three years.

16 Q. What division with the Sheriff's Office do you  
17 currently work in?

18 A. With the Identification Division, which is also known  
19 as the Crime Scene Unit, and the Property and Evidence.

20 Q. Could you describe your educational background that  
21 qualifies you to work in the ID Division of the Sheriff's  
22 Office for the jury, please?

23 A. I attended basic law enforcement training, which all  
24 law enforcement officers have to go through. After that,  
25 I went to -- I've been to numerous schools on crime scene

1 related activities such as photography, fingerprinting,  
2 evidence collection.

3 Q. Describe for the jury, briefly, your normal scope of  
4 duties within the ID Department.

5 A. We maintain all the evidence that is brought into the  
6 Sheriff's Office. We maintain it in our secured evidence  
7 room for court. We also respond to any crime scene we're  
8 requested to respond to, and collect evidence at that  
9 location.

10 Q. Do you personally conduct forensic analysis on these  
11 crime scenes?

12 A. On some items we do. Some items we have to send off  
13 to be analyzed after we collect it.

14 Q. Is taking photographs of a crime scene within the  
15 scope of your duties?

16 A. It is.

17 Q. What about fingerprint analysis of the crime scene or  
18 items found within the crime scene?

19 A. I normally do the fingerprinting of items that we are  
20 requested to fingerprint.

21 Q. Anything else notable for the jury that's within your  
22 scope of duties?

23 A. No, sir.

24 Q. What about evidence, gathering evidence at crime  
25 scenes? Do you typically perform the analysis at the

1 crime scene, any type of forensic analysis or  
2 identification analysis, or do you do that back at the  
3 Sheriff's Office?

4 A. Normally, we try to take evidence back to the lab and  
5 do anything we can in a little more controlled  
6 environment. If that's possible, we'll do that.

7 Q. So you can test for fingerprints back at the lab?

8 A. We can.

9 Q. You can test for DNA back at the lab, I presume, can't  
10 you?

11 A. I cannot test for DNA at the Sheriff's Office. I have  
12 to send any type of DNA analysis off.

13 Q. What about information -- informational forensics such  
14 as searching serial numbers of items or firearms or  
15 anything like that. Do you conduct that analysis?

16 A. We can do that, yes.

17 Q. Moving to December 11, 2008. Were you called to a  
18 scene on December 11, 2008?

19 A. I was.

20 Q. How did you become involved?

21 A. Special Operations. I think Agent Campbell called and  
22 requested that I respond to assist with some evidence  
23 collection at Lane.

24 Q. All right. Where -- Lane. So you arrived  
25 at the scene. If you look over your right shoulder at

1 what's marked for identification now as item Number 57 of  
2 the State. Did you enter the residence at Lacy Lane?

3 A. I did.

4 Q. Is that a fairly accurate description of the floor  
5 plan or layout of Lane?

6 A. Yes, it is.

7 Q. When you arrived at the scene, what was the first  
8 thing that you did? Do you recall?

9 A. I met with the agents to find out what they, what they  
10 were doing, what was going on at this location. And then  
11 I photographed -- I took the photographs you've been  
12 showing.

13 Q. Okay. Did you gather some evidence from the scene?

14 A. I did.

15 Q. Can you tell -- actually, I'm going to hand you what I  
16 have marked as State's Exhibit Number 50. Can you  
17 describe to the jury what that piece of information is?

18 A. This is a Pickens County Sheriff's Office Property  
19 Report. It's the form we list any evidence that we take  
20 out of the location. It's the form we list what we take  
21 on.

22 Q. That particular form, did you fill out that form?

23 A. I did.

24 Q. Does that form list the evidence that you took from  
25 Lane on December 11, 2008?

1 A. Yes, it does.

2 Q. Please read for the jury what items you took into your  
3 possession from Lane?

4 A. I took possession of two thousand two hundred and  
5 ninety six dollars in U.S. currency, a Larson Model L-32,  
6 a thirty-two caliber semi-automatic pistol, with one  
7 magazine, a Triton T-2 digital scale, a wallet containing  
8 assorted gift cards, credit cards, receipts and photos, an  
9 LG Verizon cell phone, a package of small ziplock type  
10 bags. And we had a vehicle towed from the scene, a 2000  
11 GMC Yukon.

12 Q. Is that form the standard form that you would use on  
13 any crime scene that you gathered evidence from?

14 A. It is.

15 MR. CLEVELAND: Your Honor, at this time, the  
16 State wishes to introduce item Number 50, a Pickens County  
17 Sheriff's Office Property Report into evidence.

18 THE COURT: Any objection?

19 MR. GODFREY: Without objection.

20 THE COURT: Without objection, Exhibit 50 is  
21 admitted into evidence.

22 (WHEREUPON, State Exhibit Number 50 was admitted  
23 into evidence.)

24 MR. CLEVELAND: Thank you, Your Honor.

25 Q. So you personally gathered the items on that form?

1 A. I did.

2 Q. What did you do with those items once they were  
3 brought into your possession?

4 A. I carried each of those items back to the Pickens  
5 County Sheriff's Office and secured them in our evidence  
6 room.

7 Q. Where are they kept? You said the evidence room.  
8 Describe the evidence room at the Sheriff's office. Is  
9 that a secure location?

10 A. It's a secure location that only the officers in my  
11 division have access to. No one else goes in there unless  
12 one of us is with them.

13 Q. How many officers are in your division that has access  
14 to that?

15 A. Three.

16 Q. I see you've got a box in front of you.

17 MR. CLEVELAND: May I approach the witness, Your  
18 Honor?

19 THE COURT: You may, sir.

20 MR. CLEVELAND: I beg the Court's indulgence  
21 briefly, Your Honor.

22 Q. Lieutenant Robinson, you testified that you were the  
23 one that actually took these photos. You took into  
24 possession, based on that form, the baggies shown in that  
25 photo?

1 A. Those small pink colored baggies. Yes, I did.

2 Q. Would you look at what I have marked as State's  
3 Exhibit Number 12 for Identification?

4 A. Yes, sir.

5 Q. Are those the same baggies in that photo?

6 A. They are.

7 Q. Since you collected them, since you took this photo  
8 and collected those baggies, have they been under the  
9 control of anybody else?

10 A. No. They've been secured in our evidence room.

11 Q. Thank you.

12 MR. CLEVELAND: At this time, Your Honor, the  
13 State would like to move Exhibit 12, plastic jewelry  
14 baggies, into evidence.

15 MR. GODFREY: Without objection.

16 THE COURT: Exhibit 12 is into evidence without  
17 objection.

18 (WHEREUPON, State Exhibit Number 12 was admitted  
19 into evidence.)

20 Q. Lieutenant Robinson, you took this photograph. What's  
21 in that photograph?

22 A. That's a photograph of a Triton T-2 digital scale.

23 Q. Let me show you what's marked as State's Exhibit  
24 Number 10.

25 A. This is the scale.

1 Q. That's the same scale in the photograph?

2 A. It is.

3 MR. CLEVELAND: At this time, Your Honor, the  
4 State moves -- wishes to move Exhibit Number 10, a Triton  
5 T-2 Digital Scale into evidence.

6 MR. GODFREY: Without objection.

7 THE COURT: Without objection, Exhibit 10 is  
8 moved into evidence.

9 (WHEREUPON, State Exhibit Number 10 was admitted  
10 into evidence.)

11 MR. CLEVELAND: And lastly, I'm about to handle  
12 a firearm, Your Honor, just -- I'll be extra careful,  
13 just to let the Court know.

14 Q. You took this photograph, didn't you, Lieutenant  
15 Robinson?

16 A. Yes, I did.

17 Q. I'm going to hand you what's marked as State's Exhibit  
18 Number 9. Can you identify that item?

19 A. Yes, I can.

20 Q. What is that item?

21 A. This is the item, the Larson thirty-two semi-automatic  
22 pistol.

23 Q. Could you compare the serial number of that item to  
24 the serial number on your property report?

25 A. I did.

1 Q. Does it match?

2 A. I does.

3 Q. And has that firearm been in anyone else's possession,  
4 other than yours, since the time you collected it and  
5 right now?

6 A. No, sir.

7 Q. Thank you.

8 MR. CLEVELAND: Your Honor, at this time the  
9 State moves Exhibit Number 9, a Larson firearm.

10 THE COURT: Is there any objection.

11 MR. GODFREY: Without objection.

12 THE COURT: Without objection. Has the firearm  
13 been disabled?

14 (WHEREUPON, State Exhibit Number 9 was admitted  
15 into evidence.)

16 MR. CLEVELAND: Yes, sir.

17 THE COURT: Ladies and gentlemen, let me  
18 instruct you just briefly because that's always a concern.  
19 This exhibit has been admitted into evidence without  
20 objection. Firearms have been disengaged and checked by  
21 the officer to make sure that it cannot misfire  
22 accidentally. It will not be -- it doesn't have any  
23 ammunition in it. It will never be given to you at any  
24 time with ammunition. It has been thoroughly checked. So  
25 that you know it's unloaded, the chamber will be opened at

1 all times. And handle it only by the barrel anytime you  
2 might be handling it. You can be at ease as far as that  
3 weapon's ability to be discharged. Any other questions of  
4 the witness?

5 MR. CLEVELAND: Yes, Your honor.

6 Q. Lieutenant Robinson, you mentioned you perform  
7 fingerprint analysis for the Sheriff's Office; correct?

8 A. I do.

9 Q. And you've testified to the training you have in that  
10 field. Would you please reiterate on that real quickly?

11 A. I've attended several courses on fingerprint  
12 development and lifting of fingerprints at the South  
13 Carolina Criminal Justice Academy. I attended a one-week  
14 course taught by the FBI.

15 Q. How long have you been performing fingerprint analyses  
16 for the Sheriff's Office?

17 A. For the twenty years that I've been full-time there,  
18 I've been doing fingerprints.

19 Q. Could you estimate how many items you've actually  
20 tested for fingerprints or crime scenes?

21 A. Thousands of items and hundreds of crime scenes.

22 Q. Have you ever testified as an expert in the Courts of  
23 South Carolina regarding fingerprint analysis?

24 A. Yes, I have.

25 Q. How many times have you testified as an expert in the

1 field of fingerprints?

2 A. At least four times. I may have lost track of a few  
3 times.

4 MR. CLEVELAND: Your Honor, at this time, the  
5 State would like to present Lieutenant Tony Robinson as an  
6 expert in the field of fingerprint analysis for the  
7 purpose of the next line of questions.

8 THE COURT: Any objection or an Voir Dire?

9 MR. GODFREY: No objection.

10 THE COURT: Without objection. Ladies and  
11 Gentlemen, again, let me just explain to you an expert  
12 witness. Normally when a person is called upon to testify  
13 in the courtroom, they can talk about what they have  
14 experienced, what they've seen, or smelled, or touched,  
15 what they can identify as far as first-hand knowledge. We  
16 do have an exception for what's referred to as expert  
17 witnesses. When a person, because of their background and  
18 training have a skill in a certain discipline then they're  
19 allowed to give an opinion about that particular field of  
20 which they are experts. They can give the reason for that  
21 opinion. This doesn't mean that you must accept that  
22 opinion. It's evidence that you are to consider as any  
23 other evidence and give it the weight that you see fit.

24 All right. Mr. Cleveland, you may continue with the  
25 witness.

1 MR. CLEVELAND: Thank you, Your Honor.

2 Q. Lieutenant Robinson, did you test any of the items in  
3 evidence or anything at the crime scene for fingerprints?

4 A. I tested the pistol and the scales for fingerprints.

5 Q. What did you find regarding fingerprint analysis on  
6 the pistol?

7 A. I did not find any fingerprints on the pistol.

8 Q. What did you find regarding fingerprints on the scale?

9 A. The same on the scale. There was no useable  
10 fingerprints on the scale.

11 Q. Being qualified as an expert in the field, please tell  
12 the jury what variables could affect the likelihood  
13 fingerprints could be withdrawn for something and not?

14 A. A fingerprint -- I'll have to explain what a  
15 fingerprint is, basically. A fingerprint is when you  
16 touch an object, the oil and water from your skin is  
17 transferred onto that object. But if you look closely at  
18 the end of your fingers, you're going to see little  
19 ridges. We call this friction skin. And in those little  
20 ridges, if you really looked close, you'd see that some of  
21 those ridges split off into two ridges, some of them end  
22 abruptly, some of them are very short ridges. Those  
23 ridges, those characteristics of those ridges are what  
24 makes them unique to each individual. So that's what we  
25 have to look for when we're trying to match fingerprints

1 on something. When you touch an object, you may transfer  
2 the moisture from your skin onto that object, but it's not  
3 automatic that you transfer us a useable fingerprint onto  
4 that object.

5 Q. So variables in the, in the actual hand of the toucher  
6 can affect whether a fingerprint is transferred?

7 A. Sure. Some people transfer more of the moisture of  
8 the oils and the water onto the surface than other people  
9 do. The surface that you're trying to fingerprint has a  
10 lot to do with it. A rough surface -- well, a smooth  
11 surface is much easier to print than a rough surface for  
12 us. We have more success with that.

13 Q. So if I understand your testimony correctly, not only  
14 is the person -- variables within the person can affect  
15 the outcome of a fingerprint analysis, but also the  
16 surface of the actual object touched can affect the  
17 likelihood of gaining a -- being able to gather a viable  
18 fingerprint?

19 A. That's correct.

20 Q. Describe real quick just what types of surfaces are  
21 best for withdrawing a fingerprint from, and which ones  
22 you'll usually be successful at?

23 A. Smooth, clean, shiny surfaces are better for  
24 fingerprinting than rough, textured surfaces, I guess  
25 you'd say.

1 Q. So is it uncommon in the field of fingerprint analysis  
2 to have an item that you find no fingerprints on?

3 A. It's not uncommon.

4 Q. What term, specifically, do you use when you find  
5 fingerprints, or when you don't, in the field of  
6 fingerprint analysis? Like what do you say when you find  
7 a fingerprint?

8 A. I'll either put that I found no fingerprints or that I  
9 found no identifiable ridge detail, which is the ridges  
10 that I'm looking for. There just wasn't enough there to  
11 identify.

12 Q. So if I understand you correctly, that means that  
13 there is a fingerprint on the object, but the fingerprint  
14 is not uniquely identifiable?

15 A. That's correct.

16 Q. So is it uncommon not to find fingerprints or not to  
17 find identifiable ridge detail when you fingerprint  
18 something?

19 A. It's not uncommon not to find it, no.

20 Q. When did you fingerprint these items?

21 A. I think it was just a couple of weeks ago.

22 Q. And the crime we're talking about happened December  
23 11, 2008.

24 A. That's correct.

25 Q. Does a lapse of time have anything to do -- could that

1 contribute to the lack of fingerprints on an item?

2 A. It could in an outdoor situation where an object is  
3 exposed to the weather. In this situation where the  
4 object has been in a controlled environment for over a  
5 year, I wouldn't think that would have a whole lot to do  
6 with it.

7 Q. So in your expert opinion, does the lack of  
8 fingerprint analysis mean that any specific person did not  
9 touch an item?

10 A. No. Anybody could have touched it. They just didn't  
11 leave me a good enough fingerprint to identify it.

12 Q. So the fact that there's no fingerprints on it is not  
13 dispositive that anybody didn't touch it in any manner in  
14 your expert opinion?

15 A. Yeah. Somebody had to have touched it at some time.  
16 I just didn't find their fingerprints.

17 Q. Thank you.

18 MR. CLEVELAND: No further questions from  
19 Lieutenant Robinson at this time, Your Honor.

20 THE COURT: Any cross examination, Mr. Godfrey.

21 MR. GODFREY: May it please the Court.

22 **CROSS EXAMINATION**

23 **BY MR. GODFREY:**

24 Q. Hello, Lieutenant Robinson. You tested this pistol  
25 for fingerprints?

1 A. I did.

2 Q. And based on your testimony, what I believe you're  
3 saying is that pistols, because of their surface, the way  
4 they're curved and the texture of the grip and the gun, is  
5 not conducive to leaving a print. Is that correct?

6 A. I have always had difficulty fingerprinting firearms.  
7 It just doesn't seem to work as well as it does other  
8 objects.

9 Q. And isn't that because of the curvature of the gun and  
10 the type of grip?

11 A. The grips where you hold it the most, and usually the  
12 grips are made out of plastic or maybe a more -- a rougher  
13 surface than the rest of the firearm. The way you hold it  
14 would have a lot to do with that, too. Not many people  
15 hold them by their fingertips. Now, we can match palm  
16 prints and things, but that's much more difficult. And  
17 when you touch something with your palm, you're much more  
18 likely to smear it.

19 Q. And, of course, a palm print you couldn't get off of a  
20 textured handle like that; could you?

21 A. Well, you could possibly, but it didn't work in this  
22 case.

23 Q. Okay. And in order to pull the slide on pistols,  
24 normally people hold them by these edges at the end?

25 A. That's correct.

1 Q. So that's a problem in getting fingerprints off a gun?

2 A. Yes, sir.

3 Q. You were requested to search for prints on the gun?

4 A. I was.

5 Q. And when you search for prints or when you look at  
6 items in the lab for prints, that's because you have  
7 received a request from an agent to process an item for  
8 prints?

9 A. Yes.

10 Q. Now you say you also processed these scales, and you  
11 found no useable prints off these scales?

12 A. That's correct.

13 Q. And based on your testimony, I would assume that's  
14 because people use the buttons?

15 A. That's possible.

16 Q. And is this -- this scale has like ridges in it?

17 A. Correct.

18 Q. Multiple ridges?

19 A. Correct.

20 Q. If you have an item with multiple ridges, it's very  
21 difficult to get a print?

22 A. It is.

23 Q. And no useable prints were found?

24 A. Correct.

25 Q. So when -- the best chance of finding a useable print

1 is on a very smooth surface?

2 A. I would certainly -- if you gave me a rough surface  
3 and a smooth surface, I'm going to try the smooth surface  
4 first, probably.

5 Q. Well, like paper, for instance, if somebody put their  
6 finger on paper, would the oils transfer to the paper so  
7 you could get a print?

8 A. Yes.

9 Q. If somebody put ---

10 A. They will transfer to the paper. You've still got to  
11 develop the print that you can match.

12 Q. Right. Now, if somebody put their hand on a window,  
13 like a window at a house, would that be conducive to  
14 lifting a print?

15 A. It would be, yes, something I would try.

16 Q. Now, obviously, even if you have a smooth surface  
17 doesn't mean you can lift a print. Somebody could smear  
18 it; right?

19 A. That's correct.

20 Q. It would have to be a touch?

21 A. That's correct, sir.

22 Q. That's a problem with prints; isn't it?

23 A. That is one of many, yes.

24 Q. Now, did any one of the agents ask you to process the  
25 outside of this plastic bag, not the evidence bag, but the

1 little baggies themselves for prints?

2 A. No. There was no request for that.

3 Q. And according to -- did you take back the drugs that  
4 were found to your lab?

5 A. No. I did not collect the drugs.

6 Q. Okay. What about the U.S. Currency, did you check any  
7 of the U.S. Currency for prints?

8 A. No, sir.

9 Q. Did anybody ever ask you to check it for prints?

10 A. No, sir.

11 Q. And you say it was two thousand two hundred and  
12 ninety-six dollars in U.S. Currency?

13 A. That's what I collected, yes.

14 Q. Okay. Was some collected by another agent?

15 A. Eight hundred dollars was, I guess, you'd call buy  
16 money that Agent Sonnefeld collected.

17 Q. Okay. So nobody asked you to -- you never had control  
18 of the crystal substance?

19 A. No, sir.

20 Q. And nobody ever asked you to run a fingerprint  
21 analysis on the plastic bag?

22 A. No, sir.

23 Q. And you never ran a fingerprint analysis on the  
24 outside of this plastic bag, which is marked as Exhibit

25 12, because nobody asked you?

1 A. Correct.

2 Q. Plastic is very smooth; is it not?

3 A. Yes.

4 Q. And it is possible to leave a print on plastic; is  
5 that correct?

6 A. It is possible.

7 Q. In fact, it would be more likely than having a surface  
8 that had ridges?

9 A. Yes.

10 MR. GODFREY: Nothing further.

11 THE COURT: Any redirect?

12 MR. CLEVELAND: No redirect of Lieutenant  
13 Robinson.

14 THE COURT: Thank you, sir. You may step down,  
15 Officer Robinson. You may call your next witness.

16 MR. CLEVELAND: Thank you, Your Honor. The  
17 State calls Lieutenant Chad Brooks to the stand.

18 THE CLERK: Place your left hand on the bible  
19 and raise your right hand. Do you solemnly swear or  
20 affirm the testimony you're about to give in this case to  
21 be the truth, the whole truth and nothing but the truth,  
22 so help you God?

23 MR. BROOKS: I do.

24 THE CLERK: If you would have a seat and state  
25 your name for the record.

1 MR. BROOKS: Chad Brooks.

2 CHAD BROOKS,

3 HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. CLEVELAND:

6 Q. Thank you, Lieutenant Brooks. Please tell the jury  
7 who you work for.

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

9 Q. How long have you worked with the Pickens County  
10 Sheriff's Office.

11 A. Just over twenty-one years.

12 Q. What division within that office do you work with?

13 A. I'm assigned to Special Operations Division, which  
14 basically we're in charge of investigating all of the vice  
15 crimes that occur in the County, drugs, prostitution,  
16 gambling, and gangs.

17 Q. What educational background do you have to qualify you  
18 to work in the Special Operations Division?

19 A. Of course, I'm a 1985 graduate of Easley High School.  
20 I have an Associates Degree in Criminal Justice. I  
21 graduated from the Criminal Justice Academy. Since that  
22 time, I've attended numerous in-service training  
23 throughout the twenty-one years at the Sheriff's Office.  
24 For the last eighteen years, I've been in narcotics with  
25 Special Operations. During those eighteen years, I've

1 attended in excess of sixty or seventy specialized schools  
2 in just narcotics enforcement, be it search and seizure  
3 issues or undercover operations or things of that nature.

4 Q. So you're involved, within the scope of your work, in  
5 undercover operations?

6 A. Yes, sir.

7 Q. How often or how many of these investigations would  
8 you say you've been on during your tenure with the  
9 Sheriff's Office?

10 A. Oh, thousands.

11 Q. Do you yourself personally go undercover during these  
12 operations?

13 A. In my earlier years, a lot more than now. But  
14 occasionally I still do from time to time.

15 Q. Do you ever, I guess on the flip side, do you ever  
16 just make investigations where you've got a person in your  
17 employment or working for you that actually goes  
18 undercover?

19 A. Yes, sir.

20 Q. How many of those types investigations have you been a  
21 part of?

22 A. Thousands. In excess of ten thousand, easy.

23 Q. Were you involved in an investigation the night of  
24 December 11, 2008?

25 A. Yes, sir. I was.

1 Q. Did your office utilize an undercover informant during  
2 that investigation?

3 A. Yes, sir, we did.

4 Q. What do you typically refer to an undercover informant  
5 as?

6 A. A confidential informant or CI.

7 Q. Okay. What was your involvement in the investigation?

8 A. Basically, I met with Agent Campbell and other agents  
9 on the night of the 11th, and met with the confidential  
10 informant, and I was part of the ---

11 Q. What -- pardon me. I didn't meant to interrupt you.  
12 What prompted you to meet with the confidential informant  
13 that night. In the investigation in general, what  
14 prompted it?

15 A. He had contacted our office. I'm not sure if he  
16 contacted Agent Campbell directly or myself, but I did go  
17 by his residence and speak with him earlier that afternoon  
18 and made arrangements for him to meet with us later on  
19 that evening. And he met with us at approximately nine  
20 thirty p.m. that night.

21 Q. What did he indicate when he made contact with the  
22 office?

23 A. He indicated that he could purchase a quantity of  
24 methamphetamine from a Hispanic male that he knew as  
25 Willie.

1 Q. So you testified you met with him that afternoon at  
2 his house?

3 A. That's correct.

4 Q. When was your next contact with this informant?

5 A. Approximately nine-thirty that evening.

6 Q. And the goal in gathering the informant as you said  
7 was to carry out, I believe I'm using the words of Agent  
8 Blankenship, a controlled buy?

9 A. That's correct.

10 Q. A controlled buy makes one think that there's got to  
11 be some type of control in the situation?

12 A. That's correct.

13 Q. Basically, how do you go about, starting with the  
14 beginning, controlling the situation?

15 A. Basically, when we first initially meet with an  
16 informant, the informant is searched. His or her vehicle  
17 is searched. They're provided with documented currency  
18 from an agent. They're also wired with a transmitter for  
19 voice recording. We do this for basically two reasons.  
20 Number one is the safety of the informant so we can hear  
21 what's going on. And, also, for the gathering of  
22 evidence. The informant is -- we maintain surveillance on  
23 the informant. After the purchase is made, the informant  
24 comes straight back to us and meets with us again where he  
25 turns over the evidence to us. He's again searched along

1 with his or her vehicle, and the equipment is removed.

2 Q. The idea, I take it from that description, is to have  
3 control of the whole situation?

4 A. That's correct, yes, sir.

5 Q. At anytime during these buys or any of the ones that  
6 you've been on, do you lose control of the informant or  
7 have you lost control of the informant; i.e., was the  
8 surveillance -- what happens if the surveillance is  
9 broken, if you lose control?

10 A. I don't -- I'm no understanding exactly what you're  
11 asking me.

12 Q. From your testimony, you indicate you have an eye on  
13 the suspect, at least an ear on the suspect, via  
14 transmitter the whole time?

15 A. That's correct.

16 Q. What happens if you lose control or lose surveillance  
17 of the suspect at any time during a buy like this?

18 A. Utter chaos until we can gather it back, yes, sir.

19 Q. You testified you searched the informant before and  
20 after. What if you find anything illicit during the  
21 search before and after that you weren't expecting to  
22 find?

23 A. He'd be arrested and the operation would be  
24 terminated.

25 Q. Would you terminate the investigation if you had a

1 break in surveillance?

2 A. No, sir. We have to maintain -- we have to gather  
3 that back, ---

4 Q. Okay.

5 A. -- I mean, to our -- to the best of our ability.

6 Q. In this investigation ---

7 A. Yes, sir.

8 Q. -- on December 11, 2008, what was your role in  
9 preparing the confidential informant or CI?

10 A. Basically myself and Lieutenant Jesse Lovell of the  
11 Easley Police Department searched the informant prior to  
12 the deal, and I also wired the informant with a hidden  
13 transmitter for voice recordings, and also wired him with  
14 a video recording device.

15 Q. Prior to you wiring the informant, was he searched,  
16 his person?

17 A. Yes, sir, he was.

18 Q. Was his car searched?

19 A. Yes, it was.

20 Q. He was driving a car that evening?

21 A. That's correct.

22 Q. Please describe for us real quick, just for the jury,  
23 what type of equipment this audio transmitter is?

24 A. Well, without getting too specific, it's just a one  
25 watt transmitter that transmits over a frequency that goes

1 to a receiver in our vehicle so we can monitor everything  
2 that's being said.

3 Q. Everything that's being said. Everything that -- I  
4 would assume any sound that's within the area of the  
5 informant.

6 A. That's correct.

7 Q. You testified you supplied the informant with that.  
8 Describe the other piece of equipment. I believe you said  
9 it was a video?

10 A. Basically, it's just a covert video camera used for  
11 video and audio recording.

12 Q. Placed on the CI's person?

13 A. That's correct.

14 Q. This isn't like a bug that he place -- he carries with  
15 him or anything like that?

16 A. No, sir.

17 Q. What's the goal of that video camera?

18 A. To capture any video evidence that may be available.

19 Q. You talked about the safety of the informant. Have  
20 you ever been on an occasion where the -- because of the  
21 transmitter, you were alerted to the fact that the  
22 informant was actually in danger and you took care of the  
23 situation?

24 A. Yes, sir.

25 Q. Was that the case in this instance?

1 A. No, sir.

2 Q. After you wired the informant with these items, did  
3 you give him any instructions?

4 A. Basically, typically our normal spiel is during the  
5 transaction we try to at least get them to have  
6 conversations about the drugs, get a name on tape, who  
7 they're buying from or who they know their name to be, and  
8 also, get the amount of currency that's being spent for  
9 the illegal narcotics.

10 Q. How much currency was being spent on the illegal  
11 narcotics this evening?

12 A. Eight hundred dollars.

13 Q. And what narcotic was being purchased?

14 A. Methamphetamine.

15 Q. And what quantity of methamphetamine?

16 A. It would have been a half an ounce or fourteen grams.

17 Q. Is that the going rate for that quantity of  
18 methamphetamine?

19 A. Yes, sir. At that time, yes, sir.

20 Q. Who provided this eight hundred dollars to the  
21 informant?

22 A. Special Agent Connie Sonnefeld from SLED.

23 Q. Did you witness her providing him that money?

24 A. I did.

25 Q. What -- do you remember what denominations?

1 A. I do not. I want to say it was hundred dollar bills,  
2 but I'm not sure if she had some twenties mixed in or not.  
3 I'm not quite sure.

4 Q. Do you just give the informant -- in a situation like  
5 this, do you just give the informant random money or is  
6 the money recorded, documented?

7 A. It's documented. Yes, sir.

8 Q. So the informant, if I can just reiterate briefly, he  
9 was searched?

10 A. That's correct.

11 Q. He was wired with surveillance equipment. In this  
12 case, an audio transmitter and a video recorder?

13 A. That's correct.

14 Q. He was provided instructions on what he was to buy and  
15 how he was to do it?

16 A. That's correct.

17 Q. He was provided a quantity of money?

18 A. Yes, sir.

19 Q. And then at that point in time, he was deployed, I  
20 assume?

21 A. Yes, sir.

22 Q. Was he deployed by himself? Did he drive himself or  
23 was he riding with somebody?

24 A. He drove himself with myself and other surveillance  
25 agents following him.

1 Q. How close did you follow him?

2 A. I was right behind him until he turned onto Lacy Lane.

3 Q. From the time you searched him to the time he arrived  
4 at Lacy Lane, did he stop?

5 A. He did. We actually stopped him on the way because I  
6 was having some technical difficulties with his audio  
7 transmitter. It was kind of fading in and out ---

8 Q. Okay.

9 A. -- and I wanted to make some adjustments. So we  
10 actually pulled -- motioned for him to pull over. We  
11 adjusted the equipment and then we traveled on.

12 Q. When you adjusted the equipment, did that remedy the  
13 fuzziness in the audio transmission?

14 A. Yes, sir, it did.

15 Q. Was he under constant surveillance from the time he  
16 left until the time you stopped him?

17 A. Yes, sir.

18 Q. He was obviously in your custody when you stopped him.  
19 Was he under constant surveillance from the time he left  
20 that stop until he arrived at Lacy Lane?

21 A. Yes, sir.

22 Q. What was your surveillance perspective once he arrived  
23 at Lacy Lane?

24 A. As he turned onto Lacy Lane, I actually turned a  
25 street short of him and was traveling parallel to him. I

1 could look between houses and see his vehicle. I actually  
2 parked in the driveway of a residence a street over, and I  
3 could actually see his vehicle pull into the residence at  
4 Lane.

5 Q. Could you see him get out of his car?

6 A. It was dark. I heard the car door shut and briefly  
7 just saw him pass in front of his vehicle as he was going  
8 toward the residence.

9 Q. You heard the car door shut via the audio  
10 surveillance?

11 A. That's correct, yes, sir.

12 Q. Did you maintain that surveillance position in the  
13 driveway of the neighbors across the way the entire time  
14 the informant was inside the residence?

15 A. Yes, sir, I did.

16 Q. Could you have -- did you have constant audio  
17 surveillance the entire time, from when he walked into the  
18 residence until he left the residence?

19 A. Yes, sir.

20 Q. How long was the informant inside the residence?

21 A. Approximately fifteen minutes.

22 Q. Can you describe to the jury in general terms what you  
23 heard through the surveillance?

24 A. Basically, when he got inside the residence, we could  
25 hear him go back, it sounded like he went to a back part

1 of the residence, had a brief conversation with somebody.  
2 We could hear a Hispanic voice, a Hispanic accented voice  
3 ask him about his cell phone, because he had actually  
4 called from a different number than he normally called  
5 from. They found that unusual and kind of quizzed him  
6 about that cell phone that -- the cell phone he actually  
7 used was one provided by us. It was just a small  
8 Tracfone. So he covered that story by just saying that  
9 he'd just bought the phone at Wal-Mart. It was just a  
10 Tracfone. And they kind of pushed that issue a little bit  
11 with him, asked him again. Because anything out of the  
12 ordinary with these guys kind of sends up a red flag. I  
13 also heard them say something about cables or something.  
14 I took that to be they thought he might be wired, working  
15 for the police, which is typically asked in a lot of  
16 situations during these deals, so we kind of pay attention  
17 closely when that's going on. He kind of talked his way  
18 out of that. He kind of laughed it off. He said, no, no,  
19 no, you know. And later on they went ahead and did the  
20 transaction.

21 Q. Could you tell via the audio transmission whether he  
22 left the residence immediately after the transaction, or  
23 did he stay a while?

24 A. He stayed for just a couple of minutes, just shooting  
25 the bull. Asking them what they were doing later, if he

1 could come back. Just typical conversation.

2 Q. The audio you testified was live. But the video was  
3 not at this point in time; correct?

4 A. We could not view it live, no, sir, but it was being  
5 recorded the whole time.

6 Q. Did you hear the Defendant leave the residence?

7 A. I did.

8 Q. At that point in time from your surveillance position,  
9 what could you see of the Defendant? Not the defendant, I  
10 apologize, of the informant.

11 A. I heard him get back in his vehicle. I saw his brake  
12 lights come on on the vehicle. As he backed out of the  
13 driveway I also backed out of the driveway, ran parallel  
14 with his vehicle again, and as he turned left onto Crest,  
15 I fell right in behind him.

16 Q. Where ultimately did you meet back up with the  
17 informant?

18 A. We had a pre-determined meeting location where we met  
19 back.

20 Q. Was that the same location as you met prior or was it  
21 different?

22 A. It was the same location, yes, sir.

23 Q. Was there ever a break in the audio surveillance from  
24 once he left the residence until the time you met back up  
25 with him at the pre-determined location?

1 A. No, sir. And I was also right behind him.

2 Q. If there was a break in the audio surveillance, would  
3 you have known it?

4 A. Yes, sir.

5 Q. Back at the pre-determined location, you personally  
6 met with the Defendant, is that -- back with the  
7 informant. I apologize. Is that what you're testifying  
8 to?

9 A. Yes, sir. I did

10 Q. Was he searched again at that point in time?

11 A. Yes, sir. I searched him afterwards.

12 Q. Was his car searched?

13 A. It was.

14 Q. Was anything found on his person?

15 A. No, sir.

16 Q. Was anything found in his car?

17 A. No, sir. Other than what he turned over to Agent  
18 Sonnefeld.

19 Q. Did you witness the informant turning over something  
20 to Agent Sonnefeld.

21 A. I believe he had it sitting in his car seat. I'm not  
22 sure if she actually picked it up or he handed it to her,  
23 but it was what he had purchased.

24 Q. He said that's what he'd purchased?

25 A. Yes, that's correct.

- 1 Q. The equipment that was on him at that time ---
- 2 A. Yes, sir.
- 3 Q. -- did you personally remove that ---
- 4 A. I did.
- 5 Q. -- audio surveillance equipment?
- 6 A. I did.
- 7 Q. Did you personally remove the covert video recorder?
- 8 A. Yes, sir, I did.
- 9 Q. To your knowledge, once you removed that equipment
- 10 from him, did you inspect the equipment?
- 11 A. Yes, sir.
- 12 Q. Based on your inspection, could you determine if the
- 13 equipment had been tampered with by him or anybody else at
- 14 that location?
- 15 A. No, sir.
- 16 Q. Not the audio surveillance equipment?
- 17 A. No, sir.
- 18 Q. Not the video surveillance equipment?
- 19 A. No, sir.
- 20 Q. What did you do with the equipment once you took it
- 21 off the informant?
- 22 A. I secured it back in the case that it goes with and
- 23 secured it in my vehicle.
- 24 Q. Was the informant ultimately released that evening?
- 25 A. After debriefing, yes, sir.

1 Q. After debriefing. What did he say -- did anything he  
2 say in the debriefing contradict what you heard or  
3 supposedly purported to hear via the live audio  
4 transmission?

5 A. No, sir.

6 MR. CLEVELAND: No further questions of this  
7 witness at this time, Your Honor.

8 THE COURT: You may cross examine, Mr. Godfrey.

9 MR. GODFREY: May it please the Court.

10 **CROSS EXAMINATION**

11 **BY MR. GODFREY:**

12 Q. Lieutenant Brooks, I just have a couple of questions.

13 A. Yes, sir.

14 Q. Your part in this investigation was primarily to  
15 provide surveillance on the confidential informant.  
16 That's part of it; right?

17 A. Yes, sir.

18 Q. To search the informant and his car to make sure that  
19 he was searched or had his car search both before and  
20 after the transaction?

21 A. That's correct, yes, sir.

22 Q. And you were the agent responsible for putting on the  
23 audio and visual equipment on the confidential informant?

24 A. That's correct. Yes, sir.

25 Q. And so your total involvement on this particular

1 evening, at least ---

2 A. Yes, sir.

3 Q. -- is that you followed the confidential informant to  
4 the target, single-wide trailer?

5 A. That's correct. Yes, sir.

6 Q. And granted, you were one street over, but you ran  
7 parallel, you could see him?

8 A. Yes, sir.

9 Q. And you were listening on the audio device that you  
10 had in your car?

11 A. That's correct. Yes, sir.

12 Q. And after it was over you went parallel with him up,  
13 and followed him back to the predetermined spot where you  
14 took the equipment off, and he turned over the drugs that  
15 he purchased?

16 A. That's correct.

17 Q. You had nothing to do with the search of the single-  
18 wide trailer?

19 A. I did respond back to the residence afterwards, but I  
20 was not involved in the initial search. No, sir.

21 Q. Okay. Did you do anything with the vehicle that was  
22 towed?

23 A. No, sir, other than I was there when the vehicle was  
24 towed.

25 Q. Was the vehicle searched?

1 A. I don't recall.

2 Q. Okay. The confidential informant, that's not a law  
3 enforcement officer; is it?

4 A. No, sir, it's not.

5 Q. This confidential informant, was he working down  
6 charges or was he being paid for the buy by the Sheriff's  
7 Office?

8 A. Actually, he was approached in another investigation  
9 and was cooperating with law enforcement.

10 Q. Does that mean he was working down charges?

11 A. He was technically never charged, no, sir. I mean, he  
12 was approached in an investigation but not arrested at  
13 this point in time.

14 Q. All right. So he could have been arrested on the  
15 other investigation, but he decided to work with ---

16 A. Yes, sir.

17 Q. Okay. I understand.

18 A. Yes, sir.

19 Q. Thank you. Nothing else.

20 THE COURT: Any redirect?

21 MR. CLEVELAND: Just briefly, Your Honor.

22 **REDIRECT EXAMINATION**

23 **BY MR. CLEVELAND:**

24 Q. Mr. Godfrey touched on the fact that the informant was  
25 not a member of law enforcement. At any point -- at your

1 initial meeting, when you first made contact with this  
2 informant, did you make him any promises regarding his  
3 cooperation and that -- the correlation with any charges  
4 that may be brought against him?

5 A. No, sir. I did not.

6 Q. Prior to this investigation on December 11, 2008, did  
7 you make the informant any promises regarding his  
8 cooperation and any correlation to charges that may or may  
9 not be brought against him based on that cooperation?

10 A. No, sir, I did not.

11 Q. Has this informant actually worked -- have you ever  
12 paid this informant for work?

13 A. Yes, sir.

14 Q. Was that payment completely unrelated to any  
15 investigation that he may have been involved with?

16 A. Yes, sir.

17 Q. Thank you.

18 MR. CLEVELAND: No further questions for  
19 Lieutenant Brooks, Your Honor.

20 THE COURT: Thank you, sir. You may step down,  
21 Lieutenant Brooks.

22 Mr. Foreman, ladies and gentlemen, this may be a good  
23 time for us to take a short break for the afternoon. I'll  
24 ask you to go back to your jury room and remind you not to  
25 discuss the case in any way. We'll take a short break and

1 call you back for more testimony.

2 (WHEREUPON, the jury exited the open court at  
3 approximately 3:45 p.m.)

4 THE COURT: All right. Let's take a short  
5 break.

6 (WHEREUPON, the court stood at recess for a short  
7 break.)

8 THE COURT: Are you ready to proceed?

9 MR. CLEVELAND: Your Honor, may I approach real  
10 quick?

11 THE COURT: Yes, sir.

12 (WHEREUPON, Mr. Cleveland and Mr. Godfrey approached  
13 the bar.)

14 THE COURT: We'll be at ease for a moment.

15 (WHEREUPON, the court stood at recess for a short  
16 break.)

17 THE COURT: You ready, gentlemen?

18 MR. CLEVELAND: The State's ready, Your Honor.

19 MR. GODFREY: Yes, Your Honor.

20 THE COURT: If the jury is ready, have them come  
21 in.

22 (WHEREUPON, the jury entered the open court at  
23 approximately 4:21 p.m.)

24 THE COURT: All right. Solicitor, you may call  
25 your next witness.

1 MR. CLEVELAND: Thank you, Your Honor. The  
2 State calls Special Operative Brett Barwick to the stand.

3 THE CLERK: Place your left hand on the bible  
4 and raise your right hand. Do you solemnly swear or  
5 affirm the testimony you're about to give in this case to  
6 be the truth, the whole truth and nothing but the truth,  
7 so help you God?

8 MR. BARWICK: I do.

9 THE CLERK: If you would have a seat and state  
10 your name for the record.

11 MR. BARWICK: My name is Brett Barwick.

12 **BRETT BARWICK,**

13 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

14 **DIRECT EXAMINATION**

15 **BY MR. CLEVELAND:**

16 Q. Thank you, Brett. Who do you work for?

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

18 Q. And how long have you been with the Pickens County  
19 Sheriff's Office.

20 A. Ten -- a little over ten years now.

21 Q. What division within the Sheriff's Office do you work  
22 with?

23 A. I'm currently assigned to the Special Operations  
24 Division, which has an extended background. We do most of  
25 the drug cases in the County, or pretty much all of them,

1 plus the uniform patrol makes one, and vice oriented  
2 crimes, prostitution, things of that nature.

3 Q. Have you -- please describe your educational  
4 background to prepare you for your career within Special  
5 Operations?

6 A. I graduated from Clemson University in August of '98  
7 with a Bachelor of Arts Degree in History. I was shortly  
8 hired after the -- after that, I was hired by the  
9 Sheriff's Office where I was sent to the Criminal Justice  
10 Academy in Columbia. I graduated from there in 2000. And  
11 since that point in time, I have had numerous training  
12 courses involving the realm of narcotics investigations.

13 Q. Within your duties, do you ever participate in any  
14 undercover narcotics investigations?

15 A. Yes, sir. That's fairly common for us.

16 Q. And during these investigations, do you ever utilize  
17 informants?

18 A. Yes, sir. We utilize informants on a regular basis.

19 Q. Were you involved in such an operation on December 11,  
20 2008?

21 A. Yes, sir. I was a part of that operation.

22 Q. Did that investigation employ an undercover informant?

23 A. It did.

24 Q. We heard the testimony of how he was prepared from  
25 Agent Brooks, but could you please reiterate what type of

1 equipment he was provided with prior to the operation  
2 beginning?

3 A. Lieutenant Brooks wired him with one of our standard  
4 undercover transmitters, which allows agents to monitor  
5 and listen to the, listen to the transaction for evidence  
6 purposes and also safety of the confidential informant and  
7 the people involved. We have to have a special receiver  
8 to be able to listen to it, and so he was wired with that.  
9 He was also wired with a video recording system.

10 Q. Let's talk about that video recording system real  
11 quick. It was used on the informant that night. Is that  
12 video recording system -- well, just describe it to the  
13 jury briefly.

14 A. Yes, sir. The digital recording system used in this  
15 case is known as a Hawk 40 recording system. It was  
16 designed by Data Digital Systems. It was originally  
17 contracted by the US Government for the Federal Law  
18 Enforcement. It's a specific recorder. If you saw it,  
19 you would have no idea what you were looking at. It looks  
20 like a little box and you basically hook a camera system  
21 into it, and it's designed to be tamper proof and things  
22 of that nature. It has to be downloaded through special  
23 software and things of that nature that we have in our  
24 office.

25 Q. You said it's a little box with a camera. Is the

1 camera separate from the little box that you described?

2 A. It's wired to the recording system.

3 Q. Does the typical user of this piece of equipment or  
4 someone supplied with it, do they wear the camera or do  
5 they have control of the camera and actually have to point  
6 it where they want it to see?

7 A. It's worn. This particular one is set up to go on a  
8 body and it's worn. A lot of times, we don't even tell  
9 people they're operating with a camera.

10 Q. All right. During this investigation, did you tell  
11 the informant that he was wired with a video recorder?

12 A. We did not.

13 Q. Does the video recorder also record audio?

14 A. It does. It's real-time video and audio recorded  
15 together. The only issue you run into sometimes with not  
16 telling someone is, depending on where you place the  
17 camera, you know, they don't know exactly where they're  
18 pointing their body, so it's -- you know, when you watch  
19 the video you'll see it. A jacket will fall over in front  
20 of the camera a few times and blur your vision and stuff  
21 like that.

22 Q. You mentioned it was tamper resistant. Are there any  
23 buttons or switches on the equipment that a wearer could  
24 disable and enable the video while he's wearing it, while  
25 it's operable?

1 A. It would be possible for someone to turn off the video  
2 system, the same as we turn it on or off, but not without  
3 us knowing about it. It would break down the file  
4 separately and we'd be able to tell.

5 Q. Now ---

6 A. And plus you'd have, you'd have a breakdown in what  
7 you watched.

8 Q. That equipment was utilized during this operation;  
9 correct?

10 A. Yes, sir. It was.

11 Q. Did you handle that equipment after it was used during  
12 this -- in this operation?

13 A. I did. Typically after the == after we use this  
14 particular piece of equipment in a transaction or deal, I  
15 do the downloads. I'm pretty much the only person at the  
16 office who's familiar with the software and the operations  
17 of it. I became familiar with it at a two-week undercover  
18 surveillance school with the Department of Homeland  
19 Security. It just kind of became my responsibility.

20 Q. Did you download the video from this recorder on this  
21 particular occasion with this investigation?

22 A. Yes, I did.

23 Q. Please describe that process. I mean, do you -- how  
24 do you typically download it? And what do you download it  
25 to?

1 A. The system -- the Hawk Recorder has to be hooked into  
2 your computer with the USB software that can actually read  
3 the, read the information. And then it downloads it. And  
4 then from there, we have a system with it to burn it to a  
5 disk. It's untamperable. It's what you see is what you  
6 get.

7 Q. So it can't be done on anyone's local, anyone's  
8 computer, basically is what you're saying?

9 A. No, sir.

10 Q. Did you review the video contents from the recorder  
11 after the investigation?

12 A. I did.

13 Q. I'm going to show you the disk right now.

14 MR. CLEVELAND: And I need this marked. I beg  
15 the Court's indulgence, Your Honor.

16 THE COURT: Yes, sir.

17 MR. CLEVELAND: It's Number 13.

18 May I approach the witness, Your Honor?

19 THE COURT: You may do so.

20 Q. Do you recognize the disk I just handed you, Agent  
21 Barwick?

22 A. Yes, I do.

23 Q. Please describe the contents of that disk for the  
24 jury?

25 A. It is a representation or the actual transaction that

1 took place on December 11, 2008, that we've been  
2 discussing here today. It bears my initials, our case  
3 number and the date on the disk, which I put on there.

4 Q. Did you view the contents of that particular disk?

5 A. I did.

6 Q. Does the contents of this disk exactly match the  
7 contents that were stored in that video recorder  
8 subsequent to this investigation?

9 A. Yes, sir. It is one in the same.

10 Q. Did you or anybody alter the video in any manner or  
11 make any additions or deletions to the video that's on  
12 this disk from the video that was captured by the recorder  
13 that night?

14 A. No, sir. It's what you see is what you get with that  
15 particular recorder.

16 Q. So just to reiterate. Is it possible, to your  
17 knowledge to edit, make additions or omissions to the  
18 video that's stored on that recorder when you download it  
19 to a disk?

20 A. No. It's a simple system. Once you download it,  
21 that's what you have.

22 Q. How many times before this investigation have you  
23 downloaded the contents of that recorder to a disk, in  
24 your estimate?

25 A. I would have to guess. Probably -- it's a fairly

1 newer piece of equipment. I think it was seven thousand  
2 dollars. We've only used it probably the past couple of  
3 years, so probably thirty-five to sixty-five times  
4 somewhere in there. Every deal doesn't call for a video.  
5 Sometimes, it's not, you know, sometimes, it's just not  
6 viable to the situation.

7 Q. Have you ever been part of an investigation when the  
8 disk you downloaded was presented in court as evidence?

9 A. I have. Yes.

10 Q. Thank you.

11 MR. CLEVELAND: At this time, Your Honor, I  
12 would like to move in State's Exhibit Number 13 into  
13 evidence. It's a DVD, video disk.

14 MR. GODFREY: Judge, at this point in time, I  
15 don't think we have a complete foundation. I believe we  
16 need to have the testimony of the CI.

17 THE COURT: Subject to the proper foundation.

18 MR. CLEVELAND: Thank you, Your Honor. I beg  
19 the Court's indulgence for one more second.

20 Q. Agent Barwick, that disk in the format that it is now,  
21 can it be played on standard audio and video equipment?

22 A. I don't believe -- I believe it has to be played on a  
23 laptop, the format that it's in now. It may be able to.

24 I haven't tried. I normally review them on computers.

25 Q. It doesn't require proprietary or special software to

1 play the disk. It just requires ---

2 A. Oh, no. Not after it's downloaded onto -- no, not  
3 after it's downloaded to the disk, only to remove it from  
4 the recorder to the a recordable format.

5 Q. Thank you.

6 MR. CLEVELAND: No further questions for Agent  
7 Barwick, Your Honor.

8 THE COURT: You may cross examine.

9 **CROSS EXAMINATION**

10 **BY MR. GODFREY:**

11 Q. Probably just one question.

12 A. Yes, sir.

13 Q. Did you have anything else to do with the  
14 investigation, other than taking care of the equipment?

15 A. I was present. That night I was part of the  
16 surveillance team, and I was one of the people on the  
17 outside of the trailer. I approached Mr. Swafford as we  
18 got there. And pretty much after that, I was just  
19 basically in control of some of the people who were there.

20 Q. All right. Were you one of the first people through  
21 the back door?

22 A. No, sir. I was really towards the last. I stayed in  
23 the yard with Mr. Swafford when he was approached until a  
24 lot of the stuff on the inside was done. And then we  
25 moved everyone into the living room area.

1 Q. Okay.

2 MR. GODFREY: Nothing further, Your Honor.

3 THE COURT: Any redirect?

4 MR. CLEVELAND: Nothing from the State, Your  
5 Honor.

6 THE COURT: All right. Thank you, sir. You may  
7 step down. You may call your next witness, Solicitor.

8 MR. CLEVELAND: Thank you, Your Honor. The  
9 State calls Connie Sonnefeld to the stand, please.

10 THE CLERK: Place your left hand on the bible  
11 and raise your right hand. Do you solemnly swear or  
12 affirm the testimony you're about to give in this case to  
13 be the truth, the whole truth and nothing but the truth,  
14 so help you God?

15 MS. SONNEFELD: I do.

16 THE CLERK: If you would have a seat and state  
17 your name for the record.

18 MS. SONNEFELD: Sir, my name is Constance  
19 Sonnefeld, but everybody calls me Connie.

20 **CONSTANCE SONNEFELD,**

21 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

22 **DIRECT EXAMINATION**

23 **BY MR. CLEVELAND:**

24 Q. Thank you, Connie. Just be sure to speak up enough to  
25 where they can hear you at the back of the jury box. Who

1 do you work for, Connie?

2 A. I work for the South Carolina State Law Enforcement  
3 Division, also known as SLED.

4 Q. And please describe to the jury your education and  
5 career in law enforcement up until this point?

6 A. Yes, sir. I attended and graduated from the  
7 University of North Carolina. I graduated in May of 1998.  
8 In July of 1998, I was hired by the University of South  
9 Carolina Police Department. They hired me as a patrol  
10 officer and sent me through the South Carolina Criminal  
11 Justice Academy where I graduated in October of 1998. I  
12 continued to work for the University of South Carolina  
13 Police Department until January of 2001. And in February  
14 of 2001, I began my work at the South Carolina State Law  
15 Enforcement Division.

16 Q. Thank you, Connie. And what's your title at South  
17 Carolina Law Enforcement Division?

18 A. Special Agent.

19 Q. And please describe your duties as a Special Agent,  
20 for the jury, with SLED.

21 A. Yes, sir. Currently I'm assigned to what's called  
22 SIU, Special Investigations Unit. We work mainly  
23 narcotics unit. And SLED is an assisting agency so we  
24 come in and help local law enforcement.

25 Q. Is there ever an occasion where you get to work with a

1 non-police informant as part of an undercover narcotics  
2 investigation?

3 A. Yes, sir.

4 Q. How many of these types of investigations have you  
5 participated in to date?

6 A. Hundreds.

7 Q. Now, you spoke with a -- you spoke about being a  
8 supplemental or assisting agency. Did you have the  
9 opportunity to assist the Pickens County Sheriff's  
10 Department in an investigation on December 11, 2008?

11 A. Yes, sir. I did.

12 Q. Which law enforcements, including the Sheriff's  
13 Office, did you work with that day, do you remember?

14 A. The Pickens County Sheriff's Office, as well as the  
15 Easley Police Department.

16 Q. And did that investigation utilize an undercover  
17 informant?

18 A. Yes, it did.

19 Q. What was your role in that investigation, from when it  
20 started out, throughout the investigation, just briefly?

21 A. Well, I was to take surveillance notes, to write down  
22 what was happening, as well as I took custody of the drug  
23 evidence after the undercover buy and after the consensual  
24 search at Lane.

25 Q. Did you provide the documented funds that the CI was

1 to use to make the controlled buy?

2 A. Yes, sir. I did.

3 Q. How -- just describe for the jury briefly how those  
4 funds are documented?

5 A. You write down the serial numbers.

6 Q. At any point in that investigation, did you recover  
7 that money?

8 A. Yes, we did.

9 Q. I'm going back a little bit. Did you meet with the  
10 informant prior to the execution of the operation?

11 A. Yes, sir. Myself and other agents did.

12 Q. And you testified you provided him with the money?

13 A. Yes, sir, I did.

14 Q. Did you give him any instructions separate to what  
15 Lieutenant Brooks instructed him to do?

16 A. The only additional information was that the money was  
17 to be used for the drug transaction only. Any left over  
18 money would be returned to me.

19 Q. You said you took surveillance notes. Once he was  
20 deployed, was he under constant surveillance from the time  
21 he left your person to when he was back in your company?

22 A. Yes, sir.

23 Q. When you met back up with him, what did he provide?

24 A. He provided me with drug evidence.

25 Q. Can you describe that drug evidence?

1 A. Yes, sir. It was a quantity of a crystal liked  
2 substance. It was contained inside of like a part of a  
3 grocery bag.

4 Q. What did you do with the evidence once it was handed  
5 over to you?

6 A. I put it into another clear plastic baggie, and then I  
7 sealed that plastic baggie inside what's called a SLED  
8 best kit. A SLED best kit is a plastic bag that is sealed  
9 on three sides, and on the top of it, it has a flap that  
10 you pull over on to an adhesive part so once you get your  
11 evidence and you put it inside your bag, you close it  
12 completely, and then there's forms that go along with it  
13 that tell you where you got the drugs and where they went  
14 to.

15 Q. Once you seal this best evidence kit you've talked  
16 about, is it possible to tamper with it without it being  
17 apparent that it's been tampered with?

18 A. No, sir, it would be obvious if it was tampered with.

19 Q. What did you do with that best evidence kit that you  
20 put the evidence in after that purchase?

21 A. I turned it into the SLED drug lab for analysis.

22 Q. I've got a couple of forms, Connie. I'm handing you  
23 what I had marked as State's Exhibit Number 54. I believe  
24 that is a front and back copy. State's Exhibit 55, again,  
25 that's a front and back copy, and 56, a front and back

1 copy. Starting with Number 54, will you describe what  
2 that form is, how it's typically used and whether it was  
3 you that filled it out that night?

4 A. Yes, I filled it out. It's a part of the SLED best  
5 kit. It is an analysis request. Essentially, I'm asking  
6 that the drugs be tested.

7 Q. All right. How about Number 55?

8 A. Number 55 is what's known as the Form B, a chain of  
9 custody from when the confidential informant purchased the  
10 quantity of crystal substance, where it was purchased at,  
11 that it was an undercover buy, what it looked like and  
12 then who he gave it to.

13 Q. And number -- the third form I handed up, Number 56.

14 A. This is the Form C. It's a continuation of the chain  
15 of custody after he gave them to me. Then I fill out this  
16 form that says that I received it in person, what it  
17 looked like and then I turn it in to the SLED drug lab.

18 Q. So that's your handwriting on those forms?

19 A. Yes, sir.

20 Q. And they were all completed relating precisely to the  
21 evidence that you placed in that best kit that you  
22 received from the informant that night?

23 A. Yes, sir.

24 Q. You have, I believe, up there with you a bag that's  
25 been pre-numbered as State's Exhibit Number 1?

- 1 A. Yes, sir.
- 2 Q. May I see that, please?
- 3 A. Yes, sir.
- 4 Q. Do you recognize that, that item?
- 5 A. I do.
- 6 Q. What is that? Tell the jury, please.
- 7 A. That's the bag, the SLED best kit bag.
- 8 Q. Does that bag have any identifying markers or numbers
- 9 that would allow you to keep track of it?
- 10 A. Yes, sir. It has a -- the best kit has a number on it
- 11 as well as there is a lab number that corresponds to the
- 12 paperwork that I filled out.
- 13 Q. Okay. You say the bag number, what paperwork does
- 14 that correspond with?
- 15 A. The same paperwork.
- 16 Q. And the lab number, when is that assigned a lab
- 17 number?
- 18 A. Once I turn it in, they give me a lab number that
- 19 they'll track it, they'll track it by.
- 20 Q. Is there any doubt in your mind that the evidence
- 21 contained in that bag is the same evidence that you were
- 22 handed by the informant on that night of December 11,
- 23 2008?
- 24 A. No, sir. My handwriting is on it, case number,
- 25 whatever.

1 MR. CLEVELAND: Your Honor, at this point in  
2 time, I would like to introduce what's marked as State's  
3 Exhibit Number 1 into evidence, just for the purpose that  
4 it is the crystalline substance that was seized from the  
5 informant on the night of December 11th. I'm not, not  
6 getting into what the actual chemical composition of the  
7 contents is, just it is the same composition that she  
8 received from them.

9 Your Honor, never mind. Withdraw the submission.

10 THE COURT: Okay.

11 MR. CLEVELAND: I'm going to let Ms. Sonnefeld  
12 hold onto that evidence for the time being.

13 Q. Agent Sonnefeld, you testified you met with the  
14 informant. Did you ever actually go into Lane  
15 that night?

16 A. Yes, sir, I did.

17 Q. Did you gather any evidence at that location?

18 A. Yes, sir, I did.

19 Q. Is this evidence in addition to that that you received  
20 from the informant?

21 A. It is evidence in addition, yes, sir, but I did not  
22 receive it from the informant.

23 Q. Okay. Please describe what evidence you gathered that  
24 night for the jury, please?

25 A. There were three separate quantities of a crystal

1 substance, as well as a quantity of a green plant  
2 material.

3 Q. When you arrived at that scene, who did you receive  
4 that substance from?

5 A. The green plant material I received it from Ms.  
6 Powell. And the crystal substance was -- part of it was  
7 in the master bedroom. Part of it was found behind a love  
8 seat in the living room. And the other part was found,  
9 the other crystal substance was found in what I referred  
10 to as the child's bedroom, but it's the back bedroom,  
11 inside a chair.

12 Q. Thank you. Did you place that evidence as well in a  
13 best evidence kit?

14 A. Yes, sir. I did.

15 Q. Was it the same best evidence kit as before or was it  
16 a different best evidence kit?

17 A. It was a separate one.

18 Q. In a similar light, I have two forms marked as State's  
19 Exhibits Number 51 and 52. Could you identify those forms  
20 for the jury, please?

21 A. Yes, sir, those are the forms that I filled out at the  
22 consent to search.

23 Q. Describe what -- there's only two forms there and  
24 there were three forms to the other one. Is there a  
25 difference in the evidence you gathered -- in the process

1 from which you gathered the evidence from the informant to  
2 the process -- to the evidence you gathered at the scene?

3 A. Yes, sir. In the undercover buy there was a  
4 confidential informant that was involved, so he actually  
5 took custody of it first. In the consensual search, I  
6 took custody of it so we didn't need a Form C. I took  
7 custody of it and turned it in directly to SLED.

8 Q. What did you do with the evidence after you gathered  
9 it and placed it in the best evidence kit?

10 A. I sealed it in the best kit, and then I turned it into  
11 the SLED drug lab for analysis and storage.

12 Q. Does the number on that second best kit correspond  
13 with that paperwork you filled out that night?

14 A. Yes, sir. It does.

15 MR. CLEVELAND: Your Honor, I have nothing  
16 further for Agent Sonnefeld. Actually, at this time -- I  
17 apologize, Your Honor. I would like to move the forms,  
18 the Chain of Custody forms, Exhibits 51, 52, 54, 55, and  
19 56 be moved into evidence.

20 MR. GODFREY: Without objection.

21 THE COURT: Without objection. Exhibits 51, 52,  
22 54 through 56 are into evidence.

23 (WHEREUPON, State Exhibit Numbers 51, 52, 54, 55,  
24 and 56 were admitted into evidence.)

25 MR. CLEVELAND: Thank you, Your Honor. I have

1 nothing further from the witness.

2 THE COURT: You may cross examine this witness,  
3 Mr. Godfrey.

4 MR. GODFREY: May it please the Court.

5 CROSS EXAMINATION

6 BY MR. GODFREY:

7 Q. Agent Sonnefeld, when did you actually become involved  
8 in this investigation?

9 A. I believe it was December 3rd.

10 Q. December 3rd?

11 A. 3rd. Yes, sir.

12 Q. And on the day of the incident, December 11th, you  
13 were present at the scene?

14 A. Yes, sir.

15 Q. Were you present when the single-wide trailer was  
16 entered?

17 A. No, sir, I was not.

18 Q. Okay. Where were you at that time?

19 A. I was talking to the informant.

20 Q. Okay.

21 A. Taking the evidence from him.

22 Q. And then how long -- when you got to the single-wide  
23 trailer, what was happening?

24 A. They were talking to the people inside the trailer. I  
25 believe the searches had already been basically finished.

1 Q. Had the searches already taken place?

2 A. It was still going. It was a long process. They were  
3 still talking, still walking around.

4 Q. And did you prepare a report about the search and  
5 where things were found?

6 A. Yes, sir.

7 Q. Now, in the master bedroom, which apparently is also  
8 called the front big room, ---

9 A. Yes, sir.

10 Q. -- a bag of crystal substance was found there?

11 A. Yes, sir.

12 Q. And three thousand ninety-six dollars in currency?

13 A. That's where it was when I got there. Yes, sir.

14 Q. Okay. And there were some plastic baggies found?

15 A. Yes, sir.

16 Q. Now, the living room, behind the love seat was found a  
17 film canister with some crystal substance in it?

18 A. Yes, sir.

19 Q. And according to your notes, the love seat is where  
20 the seven year old was sleeping?

21 A. That's where he was when I got there. Yes, sir.

22 Q. Did the love seat have to be moved to find the crystal  
23 substance?

24 A. No, sir.

25 Q. Now, in the child's room, which is all the way at the

1 end of the trailer, there was loose shards of crystal  
2 substance found?

3 A. Yes, sir.

4 Q. And inside the child's room -- bathroom there were  
5 digital scales and a handgun?

6 A. Yes, sir.

7 Q. And in the pocket of Kathryn Powell, there was green  
8 plant material?

9 A. Yes, sir.

10 Q. You were functioning as the person that wrote down  
11 where the evidence was located, that was one of your  
12 responsibilities that night?

13 A. Yes, sir.

14 Q. And did you also talk with Ms. Powell?

15 A. Yes, sir, I did.

16 Q. And did Ms. Powell tell you that she was sleeping on  
17 the couch in the living room at eight p.m.?

18 A. Yes, sir, she did.

19 Q. And did she tell you that Willie came by and put  
20 money, cell phones and a child on her?

21 A. Yes, sir, he did -- she did.

22 Q. When you got there, had everybody already been patted  
23 down for officer safety?

24 A. Yes, sir.

25 Q. So when you got there, primarily you were functioning

1 to keep a written record of what had occurred and what was  
2 occurring?

3 A. Yes, sir.

4 Q. Other than that, do you have any further interest in  
5 this investigation or any further activity in this  
6 investigation?

7 A. Other than taking custody of the drugs, no, sir.

8 Q. Okay. And State's -- what's marked for identification  
9 State's Number 1, that is the drugs that you got from the  
10 informant?

11 A. Yes, sir.

12 Q. Thank you.

13 MR. GODFREY: Nothing further.

14 THE COURT: Any redirect?

15 MR. CLEVELAND: Nothing on redirect, Your Honor.

16 THE COURT: Thank you, Ms. Sonnefeld. You may  
17 step down. Solicitor.

18 MR. CLEVELAND: All right. Your Honor, at this  
19 time, it's the State's intention to present into evidence  
20 what will be Court's Exhibit Number 1. It is a written  
21 stipulation regarding the chain of custody of the drug  
22 evidence from the time that Agent Sonnefeld deposited the  
23 drugs with the SLED lab to the current date, basically.  
24 If it's all right with Mr. Godfrey, I'd like to enter this  
25 in and then have Your Honor instruct the jury on what a

1 stipulation is, and then publish the stipulation for the  
2 jury.

3 THE COURT: All right. Ladies and gentlemen,  
4 what a stipulation is is a means by which attorneys can  
5 agree to avoid -- for evidence to come in by way of  
6 testimony or otherwise. Rather than taking your time up  
7 with more testimony, then the attorneys often can agree  
8 that if the people came and testified, what the substance  
9 of their testimony would be. It saves the Court time. It  
10 certainly saves the jury time. And it's considered to be  
11 evidence, just as any other evidence that you could hear.  
12 With consent, you may publish the stipulation if you like,  
13 Mr. Cleveland.

14 MR. CLEVELAND: Thank you, Your Honor. Ladies  
15 and gentlemen of the jury, the stipulation reads as  
16 follows: The following stipulation is hereby agreed to by  
17 all parties for the trial in this case. Documents bearing  
18 the SLED seal entitled South Carolina Law Enforcement  
19 Division Chain of Custody, L08-17706 and South Carolina  
20 Law Enforcement Division Chain of Custody, L08-17705,  
21 shall be entered into evidence as a State's Exhibit and  
22 shall serve to protect a valid, complete and unbroken  
23 chain of custody for all drug evidence collected by  
24 Special Agent Connie Sonnefeld, especially the following  
25 -- specifically the following: evidence placed in best

1 evidence kit number 198030 on 12/11/2008, and evidence  
2 placed in best kit number 198027 on 12/12 of 2008. The  
3 chain shall exist from the time those items were deposited  
4 with the SLED lab by Agent Sonnefeld, through chemical  
5 analysis, until the evidence was returned to the SLED  
6 evidence room. With the Court's permission, Your Honor, I  
7 would like to enter that into evidence and according to  
8 the stipulation, I have the two documents mentioned, SLED  
9 chains of custody 06 ---

10 THE COURT: That will be marked as a Court  
11 Exhibit and these are without objection.

12 MR. GODFREY: Without objection.

13 (WHEREUPON, Court Exhibit Number 1 was marked for  
14 identification.)

15 THE COURT: What numbers are those, now?

16 MR. CLEVELAND: These are State's Exhibit Number  
17 7, pre-marked for identification, and State's Exhibit  
18 Number 5, Your Honor.

19 THE COURT: Exhibits 5 and 7 are admitted into  
20 evidence without objection.

21 (WHEREUPON, State Exhibit Numbers 5 and 7 were  
22 admitted into evidence.)

23 MR. CLEVELAND: May I approach briefly, Your  
24 Honor?

25 THE COURT: Yes, sir.

1 (WHEREUPON, Mr. Cleveland and Mr. Godfrey approached  
2 the bar.)

3 THE COURT: Mr. Foreman, ladies and gentlemen, I  
4 understand we have a legal matter we need to take care of,  
5 along with some equipment that we need to work on. I  
6 don't think this will take very long. I'll ask you to go  
7 back to your jury room. Hopefully, we can not be very  
8 long for you and we'll be able to continue a little bit  
9 more of the trial this afternoon. Don't discuss the case  
10 while you're back in your jury room. We'll call you back  
11 in just a few moments while we take care of this matter  
12 and get some equipment set up as well.

13 (WHEREUPON, the jury exited the open court at  
14 approximately 4:53 p.m.)

15 THE COURT: Okay. Solicitor.

16 MR. CLEVELAND: Thank you, Your Honor. May it  
17 please the Court. At this time, the State would move to  
18 have the public removed from the courtroom. Pursuant to  
19 the South Carolina Supreme Court Case *State versus Gee*,  
20 282 SC 373, published in 1974, for the record it has come  
21 to the attention to State's evidence, that there may be a  
22 threat and a safety issue regarding the informant in this  
23 case. Specifically, the case cited indicates that the  
24 Judge was -- it was not abuse of discretion nor a right --  
25 a violation of the right to a public trial when the Judge

1 asked all members of the public to clear the courtroom  
2 because of evidence of a safety threat to the informant,  
3 for lack of better terms.

4 At this time though, the State would so move that the  
5 courtroom be cleared of the public for the continuation of  
6 the testimony of the State's next witness.

7 THE COURT: I want to hear the position from the  
8 defense.

9 MR. GODFREY: May it please the Court. I have  
10 been advised by the State of the information that they  
11 have. I have reviewed some of the evidence. I've also  
12 talked with the investigators. I, unfortunately,  
13 understand the State's position on this. American  
14 courtrooms are supposed to be open, but this case allows  
15 for discretion under situations like this.

16 Judge, I would request that if anybody's in the  
17 courtroom who is related by blood or marriage to my  
18 client, they be allowed to stay. Otherwise, I have no  
19 objection to other members of the public being excluded  
20 for the purpose of this testimony alone.

21 THE COURT: All right. Solicitor, you're  
22 convinced that the threat for the safety of the witnesses  
23 is real and substantial?

24 MR. CLEVELAND: Yes, Your Honor. The State has  
25 substantial evidence that the threat is real and

1 substantial, and has also been corroborated by several  
2 sources, other than the evidence originally produced by  
3 the State.

4 THE COURT: Well, obviously, there's a strong  
5 presumption in our court for a balance between the First  
6 Amendment Rights and the Sixth Amendment Rights and I find  
7 that the presumption against a closed courtroom can  
8 certainly be overridden by, as our court more recently  
9 said, and closure is necessary sometimes to preserve  
10 higher values and certainly the safety of an individual  
11 who testifies would be, in my judgement, a higher value,  
12 although it's to be narrowly tailored to serve that  
13 interest. I think what the State has presented with the  
14 consent of the Defendant is narrowly tailored because it's  
15 just a closure during this one particular witness who's  
16 going to testify.

17 And I certainly can appreciate the Defense standpoint  
18 that if family members need to be here and that they  
19 certainly would be allowed to stay. I think it's a  
20 reasonable alternative in this case, based upon the Gee  
21 case that I've examined, which the attorneys presented to  
22 me earlier, along with the more recent cases that also go  
23 to this issue.

24 I think the strong presumption has been overcome  
25 based upon the information that's been provided to me. If

1 there are any folks not associated with the relative of  
2 the defendant or directly involved in the Solicitor's  
3 Office or law enforcement on this case, then I will ask  
4 that after the break that they be excluded from the  
5 courthouse.

6 I'd be glad to hear from anyone that has any  
7 opposition to that. If there is anyone, I'll be glad to  
8 hear from you at this time. Otherwise, you indicated to  
9 me that -- I hear no opposition and I understand you will  
10 need a little time to get your equipment set up. How  
11 little a time?

12 MR. CLEVELAND: About five minutes, Your Honor.

13 THE COURT: All right. Let's take five minute  
14 break and we'll be ready to proceed with the trial of the  
15 case.

16 MR. CLEVELAND: Thank you.

17 THE COURT: And after the break, the courtroom  
18 will be closed for the benefit of this one witness  
19 testifying. And after that, of course, it will be open  
20 again. All right. Let's take a five minute break.

21 (WHEREUPON, the court stood at recess for a short  
22 break.)

23 THE COURT: The closure certainly doesn't affect  
24 the interpreter who's here on the -- assisting the  
25 defendant in this case. He can certainly -- certainly

1 will be allowed to stay.

2 (WHEREUPON, the jury entered the open court at  
3 approximately 5:14 p.m.)

4 THE COURT: Solicitor, you may call your next  
5 witness.

6 MR. CLEVELAND: Thank you, Your Honor. The  
7 State calls Leon Antonio Davis to the stand.

8 THE CLERK: Place your left hand on the bible  
9 and raise your right hand. Do you solemnly swear or  
10 affirm the testimony you're about to give in this case to  
11 be the truth, the whole truth and nothing but the truth,  
12 so help you God?

13 MR. DAVIS: Yes, sir.

14 THE CLERK: If you would have a seat and state  
15 your name for the record.

16 MR. DAVIS: Leon Davis.

17 **LEON ANTONIO DAVIS,**

18 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

19 **DIRECT EXAMINATION**

20 **BY MR. CLEVELAND:**

21 Q. How old are you, Leon?

22 A. Thirty.

23 Q. Leon, if you wouldn't mind, speak loudly into the  
24 microphone so the people on each of the far ends of the  
25 courtroom can hear you, please.

1 A. Thirty years old.

2 Q. And where are you from?

3 A. Easley.

4 Q. There's members of the Sheriff's Office in this room.

5 Do you know, particularly, Agent Campbell, with the  
6 Sheriff's Office?

7 A. Yes, sir.

8 Q. Do you know Lieutenant Chad Brooks with the Sheriff's  
9 Office?

10 A. Yes, sir.

11 Q. How about Agent Brett Barwick?

12 A. Yes, sir.

13 Q. Also, we have Connie Sonnefeld with SLED. Do you know  
14 her?

15 A. Yes, sir.

16 Q. Let's go to December 11th, 2008. Do you remember that  
17 date?

18 A. Yes, sir.

19 Q. Were you involved with an investigation with the  
20 Sheriff's Office on that date?

21 A. Yes, sir.

22 Q. Describe what was supposed to happen with that  
23 investigation. What did you -- did you make any contact  
24 with anybody in particular on that day to start that  
25 investigation?

- 1 A. Yes, sir.
- 2 Q. Who did you contact that day?
- 3 A. I contacted Willie.
- 4 Q. This Willie, had you ever seen this person before?
- 5 A. Yes.
- 6 Q. And you had -- you spoke to him on the telephone that
- 7 day or you saw him in person that day?
- 8 A. I spoke to him on the telephone.
- 9 Q. Okay. At that point, did you contact the Sheriff's
- 10 Office or did they contact you?
- 11 A. I contacted them.
- 12 Q. Who did you contact in particular?
- 13 A. Chad Brooks.
- 14 Q. Later on that night, did you meet up with them?
- 15 A. Yes, sir.
- 16 Q. What was the purpose of that meeting?
- 17 A. So I could purchase some methamphetamine.
- 18 Q. Was this their idea, the Sheriff's Office idea?
- 19 A. Yes.
- 20 Q. When you met with them that night, what did they
- 21 instruct you to do?
- 22 A. They had me to -- the three things I had to do was
- 23 name, name the person I was getting it from, how much I
- 24 was getting it for, and what I was getting.
- 25 Q. All right. When you say that, did they want you to

- 1 say that or tell them that when you were done or what?
- 2 A. Yes. But in the process of the purchase.
- 3 Q. Okay. Did they put -- when you met with them, where
- 4 did they tell you were going to go? Or where did you tell
- 5 them you could go and buy this quantity of
- 6 methamphetamine?
- 7 A. Lacy Lane.
- 8 Q. All right. Did they give you any equipment before
- 9 they sent you to Lacy Lane?
- 10 A. Yes.
- 11 Q. What did they give you that you recall?
- 12 A. They give me a hidden device.
- 13 Q. Did they tell you they had a video camera on you that
- 14 night?
- 15 A. No, sir.
- 16 Q. Do you now know that you did, indeed, have a video
- 17 camera on you that night?
- 18 A. Yes.
- 19 Q. Did they provide you with any money or did you use
- 20 your own money to purchase this methamphetamine?
- 21 A. They provided me with money.
- 22 Q. How much money, do you recall?
- 23 A. Eight hundred dollars.
- 24 Q. And how much methamphetamine were you supposed to
- 25 purchase for eight hundred dollars?

1 A. A half ounce.

2 Q. After you met with them, did they send you to the  
3 location at Lane?

4 A. Yes, sir.

5 Q. And did you go to Lane?

6 A. Yes, sir.

7 Q. Did you do anything in between when you left the  
8 police and when you got to Lacy Lane, other than drive  
9 your car straight there?

10 A. Right.

11 Q. If you'll turn around, I've got a poster, it's marked  
12 State's Exhibit for Identification Number 57. Did you go  
13 inside that residence?

14 A. Yes, sir. Yes, sir.

15 Q. Does that drawing accurately depict the floor plan of  
16 that residence as it was on December 11th, 2008?

17 A. It sure does.

18 Q. Now, when you went inside that residence, tell us  
19 about from the time you got there, kind of what happened,  
20 when you went in, who you saw?

21 A. Well, I come around the side here. There's a driveway  
22 on the ---

23 MR. CLEVELAND: May I approach the witness?

24 THE COURT: Yes, sir.

25 A. There's a driveway on the, on the back side of the

1 trailer here. So I entered around the back on the back  
2 porch, went into the kitchen area.

3 Q. Yeah.

4 A. Into the first bedroom right here on the right.

5 Q. Is that the bedroom that says back bedroom.

6 A. Back room, yes, sir.

7 Q. Who was -- when you first came in, who did you see?

8 A. As I entered into the back porch area, I ran into  
9 Michael Swafford.

10 Q. Okay. Was anybody in the kitchen when you went in the  
11 kitchen?

12 A. No, sir.

13 Q. Was there anybody in the living room?

14 A. Yes.

15 Q. Who was in the living room?

16 A. It was a Neal, a guy named Neal, and I think his wife.

17 Q. Were they awake or asleep?

18 A. Awake.

19 Q. Both of them?

20 A. Yes.

21 Q. Okay. When you went around into the bedroom, who was  
22 inside the bedroom?

23 A. Willie, Michael Swafford and a guy named John, John --  
24 Johnny B, I think.

25 Q. Yeah. Are any of the people that were in that bedroom

1 in this courtroom today?

2 A. Yes.

3 Q. Who is in this courtroom today?

4 A. Willie.

5 Q. Could you please point out the person you know as  
6 Willie to the jury? Tell us what he's wearing?

7 A. Orange button-up shirt.

8 Q. What did you do in that bedroom?

9 A. I purchased -- that's where I made the purchase at.

10 Q. Who did you make the purchase from?

11 A. Willie.

12 Q. Is that the same person you talked to on the phone  
13 earlier that day?

14 A. Yes.

15 Q. Is that the same person you gave the money to?

16 A. Yes.

17 Q. Did you walk in and walk out or did you stay for a  
18 little while before ---

19 A. I kind of sat around a little bit.

20 Q. Were they anxious to sell you these drugs?

21 A. Yes.

22 Q. Were they hesitant at all to sell you these drugs?

23 A. No.

24 Q. Did you get any feeling that they suspected you were  
25 working for the police? Or did they make any indication

1 that they thought you might be working for the police?

2 A. Yes.

3 Q. What, in particular? You don't have to say what  
4 anybody said. You can just say what they did to -- in  
5 that, in that respect?

6 A. He kind of made a statement about maybe I might have  
7 been wearing something. And that's -- being presented by  
8 a hand gun, so I started to walk out the room before I  
9 made the purchase.

10 Q. Can you describe -- you said he showed you a handgun.  
11 Well, first off, let's go back. You said he -- you might  
12 have stuff on you. What did he mean by that?

13 A. Cables. I guess, a hidden, a hidden device, I mean.

14 Q. Like the one that you actually were provided that  
15 night?

16 A. Yes, sir.

17 Q. Did he discover that you had one of those on?

18 A. No.

19 Q. What was the purpose of him -- what -- he showed you  
20 the handgun. Did he say anything in relation to him  
21 showing you the handgun?

22 A. No.

23 Q. Could you describe that handgun for the jury?

24 A. It was black and chrome.

25 Q. And just for clarifications, who had in their

1 possession that handgun?

2 A. Willie.

3 Q. Can you describe how he was holding that handgun? Was  
4 he pointing it at you or was he just showing it to you?

5 What was he ---

6 A. He was kind of showing it to me in the palm of his  
7 hand.

8 Q. I'm going to show you what's in evidence as State's  
9 Exhibit Number 9. Do you recognize the item that I have  
10 in my hand?

11 A. Yeah.

12 Q. What is that item?

13 A. That looks similar to the handgun that he was carrying  
14 that night.

15 Q. With relative certainty, could you say whether or not  
16 this was the handgun?

17 A. Yes.

18 Q. To the best of your recollection?

19 A. Yes, sir.

20 Q. After he gave you the drugs -- how much -- well, how  
21 much did you tell him you wanted to buy?

22 A. A half ounce.

23 Q. Was that your exact words or what did you tell him?

24 A. I told him half piece. It's kind of slang terms for a  
25 half ounce.

1 Q. Did he have the half ounce ready for you when you got  
2 there?

3 A. No, sir.

4 Q. How -- did you end up getting a half ounce?

5 A. Yes.

6 Q. What, what did he do -- how did he give you that half  
7 ounce if it wasn't ready for you when you got there?

8 A. He pulled it out of a bigger bag.

9 Q. A bigger bag of what? Was it -- the bag was bigger or  
10 what? Describe that for the jury.

11 A. No. He had a larger bag of methamphetamine.

12 Q. What did that methamphetamine look like in that larger  
13 bag, just for the jury?

14 A. It was a plastic -- looked like a plastic zip-lock  
15 bag.

16 MR. CLEVELAND: I beg the Court's indulgence for  
17 one moment, Your Honor. May I approach the witness?

18 THE COURT: You may, sir.

19 Q. I'm going to show you what I have marked as State's  
20 Exhibit Number 19, a photograph. Does that -- what's  
21 sitting on top of that dresser? I mean, does that look  
22 similar to the big bag you were shown?

23 A. Yes.

24 Q. Could that -- as far as you know and as far as your  
25 memory goes, could that have been the big bag that you

1 saw?

2 A. Yes, sir.

3 Q. So he had that big bag. How did he -- you say he had  
4 this big bag. What did he do with the big bag when you  
5 asked him for the half ounce?

6 A. Well, he had opened it and proceeded to take pieces  
7 out and put it in a smaller bag for my purchase.

8 Q. You said earlier that you asked for a half an ounce.  
9 How did you know that you were going to get a half an  
10 ounce?

11 A. Judging by the bag he pulled out, I'm fairly sure that  
12 he -- it wasn't ---

13 Q. I mean did he do anything to make sure? Did he weight  
14 it or anything like that?

15 A. Yes. Yes, he weighed it.

16 Q. What did he weigh it on?

17 A. A set of black scales.

18 Q. I'm going to show you what I have marked as State's  
19 Exhibit Number 10. To the best of your recollection,  
20 could that have been the scales?

21 A. Yes, sir. That's them.

22 Q. Does that look similar to the scales?

23 A. Yes.

24 Q. After he presented you with what he purported to be a  
25 half ounce of methamphetamine, did you give him the money?

1 A. Yes, sir.

2 Q. What denomination were the bills in?

3 A. Twenties and hundreds.

4 Q. After you'd given him the money and you took  
5 possession, what -- did you leave immediately or did you  
6 stay for a little while?

7 A. Yeah. I kind of sat around, you know, to see what  
8 they was going to be doing later on.

9 Q. Okay. You talked earlier that you were shown a gun.  
10 Was the gun out during this whole process or was it put  
11 away?

12 A. It was put away after I was -- after being shown to  
13 me.

14 Q. Yeah. Where was it put away to?

15 A. I wasn't real sure. I thought he kind of put it in  
16 his sweatshirt pocket.

17 Q. Who is he?

18 A. Willie.

19 Q. I'm going to show you one more ...

20 MR. CLEVELAND: I beg the Court's indulgence.

21 Q. You mentioned Willie was wearing a sweatshirt. Would  
22 you look at this photograph marked as State's Exhibit  
23 Number 33. Who's in that photograph?

24 A. Willie.

25 Q. What's he wearing?

1 A. A grey sweatshirt.

2 Q. What -- was that the same sweatshirt that he had on  
3 the night of the incident?

4 A. Yes, sir.

5 Q. And once you left the residence you -- I guess you  
6 said you hung out for a little while. Did you leave the  
7 residence after that?

8 A. Yes.

9 Q. What did you do once you left the residence?

10 A. I met back up with Agent Henry and Chad.

11 Q. Did you hand anything over to them?

12 A. Yes.

13 Q. What did you hand over to them?

14 A. The methamphetamine I had purchased.

15 Q. What about the equipment that was on you?

16 A. Yes.

17 Q. Did they take it off of you?

18 A. Yes, sir.

19 Q. And after this were you released to go on your way?

20 A. Well, they searched me and searched my car, you know.

21 Q. Did they find anything when they searched your car?

22 A. No, sir.

23 Q. Anything other than the evidence that you collected at  
24 Lane?

25 A. Right.

1 Q. Did they ever tell you you were strapped to the video  
2 at that point in time?

3 A. Yes. No, no, no, not a video.

4 Q. When did you become aware that you were wearing a  
5 video at that point in time?

6 A. When I seen the actual disk that ---

7 Q. When did you see the disk?

8 A. The 23rd of this month.

9 Q. I'm going to show you what's marked for identification  
10 -- well, it's marked as State's Exhibit Number 13. It's a  
11 disk and I'm going to remove it from the pack. Without  
12 just touching it, do you recognize that disk?

13 A. Yes, sir.

14 Q. How do you -- what do you recognize that disk as?

15 A. It's the disk that I saw on the 23rd, because I  
16 initialed the date that I ---

17 Q. Yeah. I was going to say, how do you know that's the  
18 actual disk? It's just a regular disk.

19 A. My initials.

20 Q. When did you -- you say you put your initials on that  
21 disk. Did you watch the contents of that video on the day  
22 you put your initials on it?

23 A. Yes.

24 Q. Does the contents of that video accurately and clearly  
25 depict the events that went on inside Lane?

1 A. Yes, sir.

2 Q. Has there been any additions, anything omitted from  
3 the video? Has it been edited in any way that you can  
4 tell from your experience in that residence that night?

5 A. No, sir.

6 Q. It's an exact depiction of what went on both in audio  
7 and in video is what you're testifying to?

8 A. Yes, sir.

9 Q. Thank you. Now, Leon, you are not a police officer;  
10 correct?

11 A. Yes.

12 Q. But you helped the police in this investigation?

13 A. Yes, sir.

14 Q. The first thing I want you to tell the jury is, on  
15 this night had you had any drugs or alcohol in your system  
16 that would impair your judgment before meeting up with the  
17 police and going into Lane?

18 A. No, sir.

19 Q. As a part of this investigation on December 11, 2008,  
20 did Chad Brooks or anybody from the Pickens County  
21 Sheriff's Office, Easley PD, or the South Carolina Law  
22 Enforcement Division make you any promises or any kind of  
23 exchanging or were they bargaining anything for you? Were  
24 you pressured into working for them in any way?

25 A. No, sir.

1 Q. If you'd said no to them, could they have brought any  
2 action against you on that particular day?

3 A. No.

4 Q. Now, you have been in trouble before regarding drugs;  
5 correct?

6 A. Yes.

7 Q. As a matter of fact, is that the first time -- is that  
8 how you ended up actually meeting the Special Operative  
9 Agents with the Pickens Sheriff's Office?

10 A. Yes, sir.

11 Q. I've got here what our office calls a NCIC. This is  
12 actually on you. Is it true that on December -- on June 6  
13 of 2002, that you were convicted of possessing -- simple  
14 possession of marijuana?

15 A. Yes.

16 Q. Did you serve any time or any probation for that  
17 charge?

18 A. I had probation.

19 Q. Did -- you weren't offered any sweet deals for that  
20 charge to work for the Sheriff's Office to get out of the  
21 punishment for it?

22 A. No.

23 Q. On -- in 2008, on May 20th -- actually in 2007 you  
24 were convicted basically of a crack, of a crack offense;  
25 is that correct?

1 A. Yes.

2 Q. I believe it is distributing crack near a school?

3 A. Yes.

4 Q. Were you guilty of that charge?

5 A. Yes.

6 Q. Did you serve any time for that charge?

7 A. No.

8 Q. You did serve, according to this, one year in the home  
9 incarceration program?

10 A. Yes.

11 Q. Was that punishment based on any kind of deal you cut  
12 with the Sheriff's Office to work for them or anything?

13 A. No, sir.

14 Q. And later on, even in 2009 of this year, it looks like  
15 you were convicted of having a little bit of drug  
16 paraphernalia on you. Is that true?

17 A. Yes.

18 Q. You got fined for it?

19 A. Yes.

20 Q. Was that charge, the punishment on that charge,  
21 mitigated in any way by any kind of deal you worked with  
22 anybody in the Sheriff's Office or anything?

23 A. No.

24 Q. Is your involvement in these organizations completely  
25 voluntary?

1 A. Yes.

2 Q. Were you even paid for some of your involvement in  
3 these -- with these organizations and these type of  
4 operations?

5 A. Yes, sir.

6 Q. Did anybody outside of the Pickens office, with the  
7 Solicitor's Office, regarding your testimony today, offer  
8 you any kind of -- make you any promises or offer you any  
9 kind of deals regarding any kind of charges against you?

10 A. No.

11 Q. Do you have any pending charges against you right now?

12 A. No, sir.

13 Q. Just to reiterate, who did you call on December 11th  
14 to buy drugs from?

15 A. Willie.

16 Q. Who did you buy drugs from on December 11, 2008?

17 A. Willie.

18 Q. Who did you give money to for drugs?

19 A. Willie.

20 Q. And you got the drugs from?

21 A. Willie.

22 MR. CLEVELAND: Nothing further for this  
23 witness, Your Honor. Actually, I apologize. I'm so  
24 sorry. Real briefly, Your Honor. I actually am -- do  
25 wish to publish the video with this witness on the stand

1 if that's okay with ---

2 THE COURT: It's not been admitted into  
3 evidence.

4 MR. CLEVELAND: The video's been admitted into  
5 evidence over the objection of the defense of some CI  
6 testimony as to the validity of the video.

7 MR. GODFREY: Without objection.

8 THE COURT: Without objection. At this time,  
9 the exhibit may be admitted into evidence and may be  
10 published to the jury.

11 MR. CLEVELAND: Thank you, Your Honor. Briefly,  
12 Your Honor, before I start.

13 Q. You testified you walked into the trailer. You had  
14 set up the deal already. Basically, you were brandished  
15 the firearm. They questioned you about having cables.  
16 You bought the drugs. You stayed for a little while, and  
17 then you left. Is that a fair synopsis of your testimony?

18 A. Yes, sir.

19 Q. You said you watched this video. Can you see where he  
20 brandished you the gun on this video?

21 A. No, sir.

22 Q. If you would, while the video is playing, you can make  
23 a -- just say -- tell the jury, that's when. You can just  
24 say that into the microphone. That's when.

25 A. Okay.

1 Q. And if anything else, I'll stop the video and ask you  
2 if there's any other questions.

3 (WHEREUPON, State Exhibit Number 13 was admitted  
4 into evidence and published to the jury.)

5 Q. Now, just briefly, Leon, when you said, -- when we  
6 heard the term fourteen on that video, could you clarify  
7 to the jury what that was referring to?

8 A. Fourteen grams.

9 Q. And when we heard eight on that video, what was that  
10 being referred to?

11 A. Eight hundred dollars.

12 Q. And just to reiterate, that accurately depicted what  
13 went on in the house that night?

14 A. Yes.

15 Q. Thank you.

16 MR. CLEVELAND: No further questions from this  
17 witness.

18 THE COURT: You may cross examine the witness,  
19 Mr. Godfrey.

20 MR. GODFREY: May it please the court.

21 **CROSS EXAMINATION**

22 **BY MR. GODFREY:**

23 Q. Mr. Davis, had you ever been to that single-wide  
24 trailer before?

25 A. Yes, sir.

1 Q. Under what circumstances?

2 A. Just stopping by.

3 Q. So you knew Neal Powell and Kathryn Powell?

4 A. No.

5 Q. So were they the ones that were living in the trailer  
6 when you stopped by before?

7 A. Well, they stayed there, but they -- they ain't who I  
8 went to see, though. I went to hang out with Michael  
9 Swafford at the time.

10 Q. Okay. What were you doing with Michael Swafford?

11 A. Buying a speaker phone, sir.

12 Q. Okay. So on the night that you went over there for  
13 the agent, you went through the back door. Your testimony  
14 is, is that you saw Kathryn and Neal Powell in the living  
15 room?

16 A. Yes.

17 Q. And they were awake?

18 A. Yes.

19 Q. And on the video, I believe you said at one point  
20 somebody's sleeping. Were you talking about a child or  
21 something?

22 A. I don't remember that.

23 Q. Okay. You don't remember that. There's no question  
24 in your mind that Kathryn and Neal Powell were awake?

25 A. Well, if you notice in the video, Neal kind of walked

1 in front of me towards the living room, coming out of the  
2 back bedroom.

3 Q. Okay. Now, when you went back towards -- they're  
4 calling it the children's room, the room on the far left  
5 of that chart, who else was in that room?

6 A. The back bedroom?

7 Q. Yeah.

8 A. Willie, John B, and Michael.

9 Q. Okay. So this John B, is that Jonathan Edward Smith?

10 A. I'm not real sure.

11 Q. You just know him as John B.?

12 A. Johnny B. Yes, sir.

13 Q. And Michael Swafford?

14 A. Yes, sir.

15 Q. What were they doing there?

16 A. Sir?

17 Q. What were they doing back there?

18 A. Oh, I have no idea. They was in there when I was --  
19 when I went in the room.

20 Q. But they were in the room -- that back bedroom?

21 A. Yes.

22 Q. The whole time you were there?

23 A. Yeah.

24 Q. When you first got to the back door, who opened the  
25 back door?

1 A. Neal.

2 Q. Neal did? And when you went inside ---

3 A. No, I'll rephrase that. I'm sorry. I'll rephrase  
4 that. It was Michael Swafford. I went in the door behind  
5 Michael Swafford into the ---

6 Q. Okay. Was Michael Swafford in the yard when you got  
7 there?

8 A. Yes, sir. I'm sorry. Yes, sir, you're right.

9 Q. Okay. So when you walked in, Michael Swafford was in  
10 front of you and you saw Neal and Kathryn?

11 A. Yes. Well, I seen Kathryn in the living room, but  
12 Neal was coming out of the back bedroom. He kind of  
13 walked past me..

14 Q. Okay. What's the back bedroom? Is that the room ...

15 A. Yes, the room where Michael went, Michael went  
16 towards.

17 Q. Okay. So Neal came out of that room?

18 A. Yes.

19 Q. Okay. And he came on up to the living room and sat  
20 down?

21 A. Yeah. He walked -- kind of walked past me.

22 Q. And then you were sort of escorted back to that back  
23 bedroom by Swafford and Johnny B.?

24 A. Well, no. Just Swafford.

25 Q. Just Swafford? Where was Johnny B.?

- 1 A. He was already in the room.
- 2 Q. He was already in the room? Where was Willie?
- 3 A. In the room, also.
- 4 Q. Okay. And so then you purchased drugs?
- 5 A. Yes.
- 6 Q. And then you left and met the agents?
- 7 A. Yes.
- 8 Q. Now, you've worked for the agents before?
- 9 A. Yes.
- 10 Q. And in times past you've been paid for working for the
- 11 agents?
- 12 A. Yes.
- 13 Q. How many times have you been paid for working for the
- 14 agents?
- 15 A. Just a few times.
- 16 Q. Is a few more than five?
- 17 A. No.
- 18 Q. Less than five?
- 19 A. Yes.
- 20 Q. And at this time, you don't have any pending charges?
- 21 A. No.
- 22 Q. Do they have information that they could file charges
- 23 on you? Is that why you're working for them?
- 24 A. Probably, sir.
- 25 Q. Okay. So your hope is that your work will lead to

1     them not filing a warrant against you?

2     A.  No, that's not ...

3     Q.  Okay.  They have information that they right now  
4     potentially could file a warrant against you?

5     A.  No.

6     Q.  Well, when I asked you -- you're just working right  
7     now for the narcotics agents out of the goodness of your  
8     heart?

9     A.  Yes.

10           MR. GODFREY:  Nothing further.

11           THE COURT:  Any redirect?

12           MR. CLEVELAND:  Your Honor, I don't believe I  
13     have any more for this witness.

14           THE COURT:  All right.  Thank you, sir.  You may  
15     step down.

16           Mr. Foreman, ladies and gentlemen, I think you've  
17     worked mighty hard today.  Thank you for it.  We're going  
18     to break for the evening.  We'll have other testimony  
19     tomorrow.  This case is not over.  You haven't heard all  
20     of the evidence.  You haven't heard my instruction on the  
21     law.  Let me remind you again tonight that you shouldn't  
22     be discussing the case with anyone.  You'll have an  
23     opportunity to share with your loved ones your experience  
24     in serving as a juror, but while the case is going on is  
25     not the time to do that.  Refrain from talking with

1 anyone, talking with each other when you come back in the  
2 morning.

3 Let me remind you again, it would be against your  
4 oath for you to do any kind of independent research  
5 whatsoever. I don't know if there'll be any news coverage  
6 of this case on television tonight or in the newspaper  
7 tomorrow. If there is, refrain from listening to that or  
8 reading anything. Your family can make clippings of  
9 whatever that might need to be -- that you might be  
10 interested in or tape any kind of a newscast on the radio  
11 or television. Remember the importance of the purity of  
12 the process that we're in, the commitment that you've made  
13 to these parties to be fair and impartial to both.

14 I have some early morning matters I need to take care  
15 of. I think nine-fifteen will -- hopefully we'll be  
16 through with those and be ready to start at nine-fifteen.  
17 If you'll be back in your jury room at nine-fifteen in the  
18 morning, we'll be ready to proceed at that time.

19 Have a good evening ladies and gentlemen. Thank you  
20 very much.

21 (WHEREUPON, the jury exited the open court at  
22 approximately 6:15 p.m.)

23 THE COURT: For the record, let me just put down  
24 for the purposes of the sequestration or the closing of  
25 the courtroom, when we took the break for the video

1 materials, there have been various visitors in the  
2 courtroom today. It's -- I guess I would estimate from  
3 the bench maybe eight to ten in and out. Some came for a  
4 while, some -- I don't know of anybody that's been here  
5 for the entire duration. At the time of the closure,  
6 there were two females who were here. I gave them an  
7 opportunity to address the Court if they wanted to stay.  
8 They had not been here for the entire trial. I think they  
9 came in some time this afternoon, and they've departed.

10 When we start back tomorrow, of course, the  
11 courthouse will be -- or the courtroom will be open for  
12 any members of the public who wish to be here or the  
13 press. See you back at nine-fifteen in the morning.

14 (WHEREUPON, the court stood at recess for the day.)

15 APRIL 27, 2010

16 (WHEREUPON, court convened with all parties present  
17 and the following proceedings were had.)

18 (WHEREUPON, State Exhibit Number 58 was marked for  
19 identification.)

20 THE COURT: Anything we need to take care of  
21 before the jury comes in?

22 MR. CLEVELAND: Nothing from the State, Your  
23 Honor.

24 MR. GODFREY: Nothing from the Defense, Your  
25 Honor.

1 MR. CLEVELAND: Your Honor, -- I apologize.

2 THE COURT: That's okay. Let me make sure we're  
3 going -- we've got one more witness and then ---

4 MR. CLEVELAND: The State's going to call a  
5 chemist and then the State's going to rest, Your Honor.

6 THE COURT: Okay. We'll ---

7 MR. GODFREY: And then Defense will rest, but I  
8 ask you to Voir Dire, the -- my client.

9 THE COURT: Yeah. I'll talk to your client. I  
10 want to make sure the indictments -- this is a  
11 trafficking, ten to twenty-eight, and another trafficking,  
12 twenty-eight to one hundred?

13 MR. GODFREY: Right.

14 THE COURT: Is that right?

15 MR. CLEVELAND: That's correct, Your Honor.

16 THE COURT: We'll have verdict forms ready to  
17 show you. All right. Are you ready to proceed,  
18 gentlemen?

19 MR. CLEVELAND: The State's ready, Your Honor.

20 MR. GODFREY: Yes, Your Honor.

21 THE COURT: All right. If the jury is ready you  
22 can have them come in, Mr. Duncan.

23 (WHEREUPON, the jury entered the open court at  
24 approximately 9:28 a.m.)

25 THE COURT: Good morning, Mr. Foreman, ladies

1 and gentlemen. Thank you for your patience with us.  
2 You're not seeing double. I'd like to introduce you to  
3 Judge Frank Addy. He's a recently elected Judge from  
4 Greenwood, the Eighth Circuit, that covers Greenwood and  
5 Laurens and Newberry and Abbeville Counties. And he was  
6 just elected recently. And for all of us Judges who get  
7 elected, we sit with a somewhat more experienced Judge for  
8 a week or two and make sure we know the procedures. So  
9 he's going to be here with me, and perhaps he could give  
10 me some assistance as well. I did want to introduce you  
11 to him. He'll be with me the rest of this week.

12 Solicitor, you may call your next witness.

13 MR. CLEVELAND: Thank you, Your Honor. The  
14 State calls Angil Landrum to the stand.

15 THE CLERK: Place your left hand on the bible  
16 and raise your right hand. Do you solemnly swear or  
17 affirm the testimony you're about to give in this case to  
18 be the truth, the whole truth and nothing but the truth,  
19 so help you God?

20 MS. LANDRUM: Yes, sir, I do.

21 THE CLERK: If you would have a seat and state  
22 your name for the record.

23 MS. LANDRUM: Angil Landrum.

24 **ANGIL LANDRUM,**

25 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

1

**DIRECT EXAMINATION**2 **BY MR. CLEVELAND:**

3 Q. Thank you, Ms. Landrum. Now, who do you work for?

4 A. South Carolina Law Enforcement Division, also known as  
5 SLED.6 Q. Now, what do you do at SLED? Do you have an official  
7 title there?

8 A. I'm a forensic chemist.

9 Q. And how long have you worked there?

10 A. A little over seven years.

11 Q. What's your educational background that prepared you  
12 for your job in your current capacity?13 A. I have my Bachelor's Degree in Chemistry, as well as  
14 my Master's Degree in Chemistry.15 Q. Do you have any special training in forensics,  
16 particularly in the field of drug analysis?17 A. I'm a graduate of the Drug Chemistry Academy at the  
18 National Forensic Science Technology Center, and I've also  
19 received on-the-job-training as well.20 Q. How many samples of drug evidence have you tested  
21 before in your career at SLED?

22 A. Thousands.

23 Q. Have you ever been qualified and testified as an  
24 expert in the field of drug analysis in the Courts of  
25 South Carolina?

1 A. Yes, sir, I have.

2 Q. How many times have you testified as such?

3 A. Seventy.

4 Q. Seventy times. Thank you.

5 MR. CLEVELAND: Your Honor, at this time, the  
6 State would like to present Ms. Landrum as an expert in  
7 the field of drug analysis.

8 THE COURT: Any Voir Dire or any objection?

9 MR. GODFREY: Without objection.

10 THE COURT: Without objection this witness will  
11 be considered an expert in the field of drug analysis.  
12 You may proceed.

13 MR. CLEVELAND: Thank you, Your Honor.

14 Q. Ms. Landrum, could you briefly describe to the jury  
15 exactly how you test and identify drug evidence?

16 A. What we normally do is a preliminary test and a  
17 confirmatory test. And a preliminary test is just a  
18 screening test used to give you an idea as to what the  
19 unknown substance may be. And a confirmatory test  
20 identifies the substance to the exclusion of all others.

21 Q. Thank you, Ms. Landrum. I'm just going to show you  
22 two items, which are two bags the State has marked for  
23 identification. Item number one, in that bag, and in the  
24 second bag, State's marked for identification Numbers 2,  
25 3, 4, and 58. Did you ever receive evidence gathered in

1 this particular case we're here for today, specifically  
2 the evidence in best kits number B198030 and B198027?

3 A. Yes, sir. I did.

4 Q. Was the evidence sealed when you received it?

5 A. Yes, sir. It was.

6 Q. Could you tell if it had been tampered with?

7 A. Yes, sir. This -- when I received the evidence, it  
8 was inside this inner packaging with the green seal. It's  
9 a tamper evidence seal. If it had been tampered with,  
10 this seal would have been distorted. And upon receiving  
11 the bag, I indicated that that seal was intact, placed the  
12 date, as well as my initials.

13 Q. And Ms. Landrum, I'm going to ask you to -- draw your  
14 attention to what I have marked as Exhibit 1. I believe  
15 it was the bag that was just in your hand. Is the  
16 evidence in that bag the same as when you last saw it?

17 A. Yes, sir.

18 Q. All right. Did you test the evidence contained in  
19 that bag?

20 A. Yes, sir. I did.

21 Q. Were any illegal narcotics found, and, if so, please  
22 describe the type and weight?

23 A. May I refer to my notes?

24 Q. Yes.

25 A. It was methamphetamine found, thirteen point sixteen

1 grams, two hundred and three point zero eight grams, C-2.

2 Q. Thank you.

3 MR. CLEVELAND: Your Honor, at this time the  
4 State would move Exhibit Number 1 into evidence, request  
5 to move Exhibit 1 into evidence.

6 MR. GODFREY: Without objection.

7 THE COURT: Without objection Exhibit 1 is  
8 admitted into evidence.

9 (WHEREUPON, State Exhibit Number 1 was admitted  
10 into evidence.)

11 Q. Now, Ms. Landrum, did you memorialize those findings  
12 in a report?

13 A. Yes, sir, I did.

14 Q. We've got here -- let me show you what I had pre-  
15 marked for identification as State's Exhibit Number 8. Is  
16 that your signature at the bottom of that piece of paper?

17 A. Yes, sir, it is.

18 Q. Is that the report that you prepared in reference to  
19 this evidence we just admitted?

20 A. Yes, sir, it is.

21 Q. Does that report precisely reflect your findings based  
22 on your testing of this evidence?

23 A. Yes, sir.

24 Q. And how can you tie that report to this physical  
25 evidence?

1 A. When the evidence is submitted inside that inner-  
2 packaging, it's called a best evidence sample that we get,  
3 and it has a number on it, a unique number. And when it  
4 comes into -- when the evidence comes into SLED, it gets a  
5 unique lab number. So the container number that's written  
6 on that bag -- well, it's pre-printed on that bag -- has a  
7 unique case number. And that case number is also written  
8 on the report as well as the container.

9 Q. Thank you.

10 MR. CLEVELAND: At this time, Your Honor, the  
11 State would move -- would like to move what's pre-marked  
12 as Exhibit Number 8 into evidence, a forensic analysis  
13 report.

14 MR. GODFREY: Without objection.

15 THE COURT: Without objection.

16 (WHEREUPON, State Exhibit Number 8 was admitted  
17 into evidence.)

18 Q. Now if you would, draw your attention to the bag that  
19 has State's Exhibits Number 2, 3, 4, and 58 on it, please.  
20 Is that evidence the same as when you last saw it?

21 A. Yes, sir, it is.

22 Q. Did you test any evidence contained in that bag?

23 A. Yes, sir, I did.

24 Q. And I know there's individual items in that bag, but  
25 could you please go through and tell me if -- in each of

1 those individual items, was narcotics found, and, if so,  
2 the type and weight of illegal narcotics. You may refer  
3 to your notes.

4 A. I have one point one methamphetamine found, ninety-  
5 four point five zero grams, one thousand four hundred  
6 fifty-eight point thirty-two grains in C-2. Item 1.2,  
7 methamphetamine found, three point one eight grams, forty-  
8 nine point zero seven grains C-2. Item 1.3, marijuana  
9 found, zero point two three grams, zero point zero zero  
10 ounces C-1. Item 1.4, methamphetamine found, zero point  
11 zero eight grams, one point two three grains C-2.

12 Q. Thank you, Ms. Landrum.

13 MR. CLEVELAND: At this time, Your Honor, the  
14 State would like to move Exhibits 2, 3, 4, and 58 into  
15 evidence.

16 MR. GODFREY: Without objection.

17 THE COURT: Exhibits 2, 3, 4, and 58 are  
18 admitted into evidence without objection.

19 (WHEREUPON, State Exhibit Numbers 2, 3, 4, and 58  
20 were admitted into evidence.)

21 MR. CLEVELAND: Thank you, Your Honor.

22 Q. Did you memorialize those findings in a report, Ms.  
23 Landrum?

24 A. Yes, sir, I did.

25 Q. I'm going to show you what I have pre-number as

1 State's Exhibit Number 6. This is two pages. Would you  
2 review that document, please? Is that your signature at  
3 the bottom of that document?

4 A. Yes, sir, it is.

5 Q. And is that the report that you prepared based on your  
6 tests of this evidence?

7 A. Yes, sir. It is.

8 Q. Does that report precisely reflect the results of your  
9 tests of this evidence?

10 A. Yes, sir. It does.

11 Q. And, again, in the same manner, can you tie that  
12 report to this physical evidence with a unique number?

13 A. Yes, sir, I can.

14 Q. Thank you.

15 MR. CLEVELAND: At this time, Your honor, the  
16 State would like to move what we have pre-marked as  
17 Exhibit Number 6, a forensic analysis report, into  
18 evidence.

19 MR. GODFREY: Without objection.

20 THE COURT: Without objection, Exhibit 6 is into  
21 evidence.

22 (WHEREUPON, State Exhibit Number 6 was admitted  
23 into evidence.)

24 MR. CLEVELAND: Your Honor, the State has no  
25 more questions for this witness.

1 THE COURT: You may cross examine.

2 MR. GODFREY: No questions, Your Honor.

3 THE COURT: Thank you, ma'am. You may step  
4 down.

5 You may call your next witness, Solicitor.

6 MR. CLEVELAND: Your Honor, at this time that  
7 concludes the State's evidence. The State would rest at  
8 this time.

9 THE COURT: Mr. Foreman, ladies and gentlemen,  
10 there's a brief matter of law I need to take care of with  
11 the attorneys. I'm going to ask you, if you would, to go  
12 back to your jury room. Don't discuss the case. We'll  
13 call you back in just a few moments.

14 (WHEREUPON, the jury exited the open court at  
15 approximately 9:37 a.m.)

16 THE COURT: Yes, sir, Mr. Godfrey.

17 MR. GODFREY: May it please the Court. At this  
18 time, Your Honor, the defense would respectfully move for  
19 a directed verdict of acquittal, taking the evidence in  
20 the light most favorable to the State. And the Defense  
21 would take the position that they have failed to make a  
22 prima facie case.

23 THE COURT: Obviously, as you've stated, I must  
24 view all of the evidence in the light most favorable to  
25 the non-moving party. I believe that there is sufficient

1 direct evidence and substantial circumstantial evidence  
2 that would at least let the jury make a decision as the  
3 facts of this case. I respectfully deny your Motion. Any  
4 other Motions?

5 MR. GODFREY: No, Your Honor.

6 MR. CLEVELAND: Nothing from the State, Your  
7 Honor.

8 THE COURT: At this time, Mr. Godfrey, let me  
9 talk with your client, if y'all would come forward,  
10 please? I want to make sure he understands his rights to  
11 testify and otherwise.

12 (WHEREUPON, the Defendant, Mr. Godfrey, and the  
13 interpreter approached the bar.)

14 (WHEREUPON, the Defendant was duly sworn.)

15 THE COURT: Mr. Colecio, we've reached the stage  
16 in the trial that I need to explain to you certain rights  
17 that you enjoy. As I go through these rights, if there's  
18 any questions you have please let me know, so that I can  
19 better explain it to you.

20 The State has now rested and you have a right to  
21 present a defense in your own behalf. The Constitution of  
22 the United States, the Constitution of South Carolina both  
23 give rights to individuals not to incriminate themselves.  
24 The Fifth Amendment to our Constitution says that no  
25 person shall be compelled in any criminal case to be a

1 witness against himself. This means you cannot be  
2 required to testify in this case. You have a right to  
3 testify, but no one can make you testify. It's a personal  
4 right that you have, and nobody can waive it except you.

5 Now, Mr. Colecio, if you choose to testify you'll be  
6 subject to the same rules that govern other witnesses.  
7 You can be examined and cross examined on any relevant  
8 issue in this case. In addition, if you have prior  
9 convictions involving dishonesty or false statements or  
10 crimes punishable by imprisonment for more than one year,  
11 and if the Court determines that the probative value of  
12 admitting this evidence outweighs its prejudicial effect  
13 to you, the Solicitor will be allowed to introduce your  
14 prior record to attack your credibility. If you decide to  
15 testify, sir, the decision must be made by you freely and  
16 voluntarily and intelligently. This decision must be made  
17 with the knowledge of the protections given you under the  
18 Fifth Amendment of our Constitution. And by the decision,  
19 you must be aware of the consequences of your decision to  
20 testify.

21 And you may decide not to testify, sir, and if you  
22 do, I'll instruct the jury certain things concerning that.  
23 I'll tell the jury they can't give the fact that you chose  
24 not to testify any consideration in their decision-making.  
25 I'll tell them that there's to be absolutely no prejudice

1 to you because you chose not to testify. It's left  
2 entirely up to you, sir, as to whether you want to testify  
3 or not. You may consult your attorney or anyone else you  
4 desire, but the final decision will have to be yours.

5 Mr. Colecio, do you understand what I've explained to  
6 you?

7 DEFENDANT: Yes.

8 THE COURT: Do you have any questions of me?

9 DEFENDANT: No.

10 THE COURT: Do you need any additional time to  
11 talk with your attorney about this?

12 DEFENDANT: No.

13 THE COURT: Mr. Godfrey, has the Solicitor  
14 informed you of any prior record?

15 MR. GODFREY: Your Honor, my client has no prior  
16 record.

17 THE COURT: Do you choose to testify or not  
18 testify, sir?

19 DEFENDANT: No.

20 THE COURT: All right. You may return to your  
21 seats then. Any other evidence or witnesses the defense  
22 intends to call, Mr. Godfrey?

23 MR. GODFREY: Judge, the defense will rest.

24 THE COURT: All right. When the jury comes  
25 back, I'll give you an opportunity to rest. Any

1 particular request for charge that either of you have?

2 MR. GODFREY: Judge, just your usual charge is  
3 fine.

4 MR. CLEVELAND: Nothing special from the State  
5 regarding charges, Your Honor. Before Closing Statements,  
6 I would request a moment just to prepare some of the  
7 evidence, but that's all from the State.

8 THE COURT: All right. On the trafficking  
9 charge, I'll explain to them there's two separate charges,  
10 one for ten to twenty-eight grams; one for twenty-eight to  
11 one hundred. I want to explain to them the possession of  
12 the weapon. I don't intend to charge conspiracy unless --  
13 there's not really any conspiracy here. Really, the  
14 delivery and the transfer are the primary elements of the  
15 facts as I see them; is that correct?

16 MR. CLEVELAND: Yes, Your Honor. The only thing  
17 -- because conspiracy is a part of the actual law with  
18 trafficking, conspiring, aiding and abetting, I'm going to  
19 touch on it in closing, specifically the phone call made  
20 from my informant to the defendant. I'm just going to  
21 offer the jury as an alternative that is ---

22 THE COURT: I think, you know, I'll say that  
23 conspiracy is a part of it, but I don't believe ---

24 MR. CLEVELAND: And that's fine. Your charge is  
25 fine, Judge.

1 THE COURT: -- we need to get into the charge on  
2 that.

3 MR. GODFREY: Once you read the law to them,  
4 it's covered anyway, without having a separate charge on  
5 conspiracy.

6 THE COURT: Right.

7 MR. CLEVELAND: Yeah.

8 THE COURT: And the same with possession. I  
9 think I will define what delivery is. Let me let you look  
10 over these verdict forms to make sure they are in proper  
11 order.

12 MR. GODFREY: Judge, may I request -- we had two  
13 experts testify this time. We had Tony Robinson as well  
14 as Angil Landrum, and I would like to have the charge on  
15 experts.

16 THE COURT: Yeah. I'll do that. I didn't last  
17 week, Mr. Godfrey, because the expert never gave any  
18 opinion. I gave the preliminary, but there's certainly  
19 been opinions this time.

20 MR. GODFREY: I'm fine with the Verdict Form.

21 MR. CLEVELAND: The State's fine with the  
22 Verdict Form as well, Your Honor.

23 THE COURT: All right. Let's take about a five  
24 minute break and let you get yourselves set up and then  
25 we'll be ready.

1           When the jury comes back, I'll call upon you. You  
2   can rest. And then we'll be ready for the Closing  
3   Statements.

4           MR. CLEVELAND: Thank you, Your Honor.

5           THE COURT: Okay.

6           (WHEREUPON, the court stood at recess for a short  
7   break.)

8           THE COURT: We're ready for the jury.

9           (WHEREUPON, the jury entered the open court at  
10   approximately 10:00 a.m.)

11          THE COURT: Thank you very much, ladies and  
12   gentlemen.

13          Mr. Godfrey, you may call your first witness.

14          MR. GODFREY: May it please the Court. The  
15   defense rest.

16          THE COURT: Mr. Foreman, ladies and gentlemen,  
17   you've heard all of the testimony in the case. As I told  
18   you earlier the case is not concluded, however, until I've  
19   instructed you on the law. I'll give you the instructions  
20   on the law in just a few moments, but first the attorneys  
21   are going to have an opportunity to address you in  
22   closing.

23          I've told you all along that what the attorneys say  
24   to you is not evidence. Nevertheless, I urge you to  
25   listen carefully as each of these attorneys address you.

1 They'll perhaps give you some insights that help in your  
2 deliberations. After they've had a chance to address you,  
3 I'll instruct you on the law, and the case will be yours  
4 to decide.

5 Mr. Cleveland, you may ---

6 MR. GODFREY: Excuse me, just a second.

7 THE COURT: Yes, sir.

8 MR. GODFREY: Judge, please note the usual  
9 Motion for the record?

10 THE COURT: Yes, sir. So noted. Solicitor, you  
11 may address the jury.

12 MR. CLEVELAND: Thank you, Your Honor. May it  
13 please the Court.

14 **CLOSING STATEMENT**

15 **BY MR. CLEVELAND:**

16 Questions, ladies and gentlemen, this trial might  
17 have left you with a few questions. Evidence doesn't  
18 reveal what all the folks at Lane were doing that  
19 night. It doesn't explain everybody's involvement in this  
20 drug deal. It might even leave you wondering as to their  
21 criminal culpability or their responsibility, what type of  
22 charges they may have against them. Not to mention the  
23 evidence doesn't support the origin of some of the  
24 evidence, like the film cannister found in the living room  
25 behind the love seat, or the shards found in the chair in

1 the back bedroom at Lane.

2 Ladies and gentlemen, I assure you that each of these  
3 individuals that were here that night will get their day  
4 in court, and they'll have to answer in front of a jury  
5 just like you, but today is not that day. Today is Israel  
6 Colecio's day in court. Him and only him has to answer to  
7 the charges brought against him, and that's the only thing  
8 -- the only person you're to consider in this matter. The  
9 evidence is against Israel Colecio.

10 Now, I'm sure you all picked out a couple of  
11 inconsistencies in the testimony of this event that  
12 happened a little over -- around a year and a half ago,  
13 but I submit to you that despite those inconsistencies,  
14 the concrete credible evidence that's uncontraverted and  
15 consistent are and drastically out weights those  
16 inconsistencies in the testimony. I ask that you don't  
17 focus on the inconsistent when the truth lies in the  
18 uniform. Don't dwell on speculation when there's so much  
19 concrete that's in front of you today.

20 Ladies and gentlemen, I could stand here and talk to  
21 you until I'm blue in the face about how I think Israel  
22 Colecio is guilty. But in this case, a picture is truly  
23 worth a thousand words.

24 Ladies and gentlemen, Israel Colecio. Israel Colecio  
25 and seated right here, Israel Colecio. Mr. Colecio, or as

1 he's know to his peers as Willie, and Willie is a drug  
2 dealer. There he is at Lane in Pickens County in  
3 that room dealing drugs, putting this poison on the  
4 streets in Pickens County. Right there is the drugs that  
5 he sold, thirteen point one-six grams of methamphetamine.  
6 Trafficking methamphetamine. Right here contained in this  
7 large bag, the drugs that he sold that quantity from,  
8 ninety-four point five grams of methamphetamine.  
9 Trafficking methamphetamine over twenty-eight grams.  
10 There's the bag he scooped it into. There's his big bag  
11 that he's getting it out of. It's seated right in front  
12 of.

13 Ladies and gentlemen, you'll have this video back in  
14 your jury room. You can watch it all that you want, but  
15 it's crystal clear, right here. Not to mention there's  
16 the gun he had in his pocket the whole time while he was  
17 doing it, black and chrome, just like the informant  
18 testified to.

19 Now, I submit to you when the police arrived, he did  
20 what any normal person would have done who is scared of  
21 getting caught. He ditched this evidence from one end of  
22 this home to the other. And in a single-wide trailer,  
23 that doesn't take very long. This is where the drug deal  
24 went down. There's where the gun and the scales were  
25 found. Nothing was found in the kitchen. A couple of

1 shards in the chair there, but we don't know where it came  
2 from. I don't particularly care where it came from.  
3 Money, cell phone in the living room. He threw it off on  
4 the homeowner who was asleep on the couch, and the drugs  
5 in the back bedroom. That was the thump that she heard  
6 was when he pulled the dresser back enough to throw the  
7 drugs back there, hoping to evade the cops from finding  
8 his giant bag of methamphetamine.

9 Now, ladies and gentlemen, I spoke a little bit about  
10 the law of trafficking in my opening statement, if you  
11 recall my analogy about apples. Mr. Colecio drives a  
12 truck full of apples in this case. Both of these pieces  
13 of evidence indicate trafficking methamphetamine. Over  
14 ten grams, over twenty-eight grams but less than a  
15 hundred, if only so slightly.

16 Now, I told you there's lots of different things you  
17 can do, involvement with drugs to be guilty of  
18 trafficking, some of which knowing selling, manufacturing,  
19 delivering, purchasing, providing financial assistance,  
20 aiding, abetting, or conspiring. Ladies and gentlemen, it  
21 doesn't get much more clear than this. Taking eight  
22 hundred dollars for fourteen grams of methamphetamine is  
23 knowingly selling. This bag that he's got, that's seated  
24 right in front, he's in actual possession of that bag at  
25 this time. Not to mention, even if you wanted to stretch

1 it so far, when he made the phone call with the informant,  
2 with -- when Leon, who took the stand, spoke directly with  
3 Israel Colecio or Willie, as he was known, they agreed.  
4 They came together to make that drug deal. That, ladies  
5 and gentlemen, is a conspiracy. They were conspiring to  
6 sell or deliver methamphetamine. The drugs tested to be  
7 actual drugs. You heard the way -- you heard the  
8 testimony it occurred in Pickens County and now you see  
9 Israel Colecio knowingly selling and possessing these  
10 drugs.

11 Now, ladies and gentlemen my burden again to you is  
12 to prove to you these elements of this crime. Oh, in  
13 addition, the possession of the firearm, which was  
14 brandished. Willie was the only one that could have had  
15 that firearm, really, he was brandishing. He was the one  
16 that had something to prove. He was the one that had to  
17 safeguard his stash of drugs, worth an amount of money  
18 that I can't even begin to imagine. Like I said, my  
19 burden is to prove guilt beyond a reasonable doubt.  
20 Ladies and gentlemen, that's all you need right there.  
21 This video alone satisfies my burden of reasonable doubt.  
22 That individual right there, wearing the white sweatshirt,  
23 that you see in the photograph in front of you, is the  
24 individual sitting at the defendant's table. A picture  
25 is, indeed, worth a thousand words, ladies and gentlemen.

1 But the only word you're going to need to draw from it  
2 today is guilty. Thank you again for your time and  
3 attention.

4 BY MR. GODFREY: You can leave it there,  
5 Solicitor.

6 MR. CLEVELAND: Thank you, Mr. Godfrey.

7 THE COURT: Mr. Godfrey, you may address the  
8 jury.

9 MR. GODFREY: May it please the Court.  
10 Solicitor.

11 **CLOSING STATEMENT**

12 **BY MR. GODFREY:**

13 Ladies and gentlemen, you have heard all of the  
14 evidence in this case and I want to bring into clarity  
15 what we're actually doing here. There are three  
16 indictments. Here's one of them, trafficking more than  
17 ten grams of methamphetamine. The trafficking more than  
18 ten grams of methamphetamine was not the charges that Mr.  
19 Colecio was concerned with. He's more concerned about the  
20 other two charges.

21 Here is the almost fourteen grams that was sold to  
22 the informant, Leon Davis. You've watched the video.  
23 This indictment, ten to twenty-eight grams, it's real  
24 clear what happened. I don't think there's any doubt.  
25 Okay. When it comes to the other two indictments, the

1 indictment regarding the gun, it's more of a problem.  
2 Now, when you get to the indictment for the drugs more  
3 than twenty-eight grams, it's an even greater problem.  
4 This is the point of the trial.

5 Now, let's review a little bit. In this single-wide  
6 trailer you had Neal Powell, you had Kathryn Powell, you  
7 had their two children, you had Israel Colecio, you had  
8 Octavia Avista, you had a Michael Swafford and you had an  
9 Edward Smith. All of these people in this single-wide  
10 trailer. Do you remember when Kathryn Powell testified?  
11 She said I didn't know those people were here. I didn't  
12 know they were in my trailer. I was asleep on the sofa.  
13 I go to sleep every night about eight o'clock, between six  
14 o'clock and eight o'clock, I go to sleep. She told  
15 Special Agent Sonnefeld the same thing. Leon Davis was up  
16 here yesterday and he testified that when he went in the  
17 trailer, that Kathryn Powell was up and she was awake and  
18 saw that he was there. So obviously, if Kathryn Powell  
19 was awake when Leon was there, she certainly knew all  
20 those other people were there. So the question becomes,  
21 what's going on here? This is Kathryn Powell's trailer.  
22 And officers verified that. She signed the consent to  
23 search. It's her trailer. She lives there. Neal Powell  
24 lives there.

25 Now, when Leon Davis got to the trailer, he testified

1 yesterday that Neal Powell was coming out of that back  
2 bedroom, that he had been back there. Leon also said that  
3 Avista, Swafford and Smith were back in that area. And he  
4 testified Swafford met him in the yard. Apparently, Mike  
5 Swafford likes the yard because when the officers got  
6 there after the deal, Mike Swafford was in the yard. But  
7 think about what's going on here. The video for the most  
8 part is really clear. There comes a problem with the gun  
9 because you have Leon saying that Colecio, my client, had  
10 the gun. But you had Swafford, you had Smith, you had  
11 Avista, all of them were back there. And I've looked at  
12 that video, and I have tried to listen to that video and I  
13 can't see any picture of who has the gun, and it's  
14 difficult. I've always had a hard time trying to hear the  
15 words on some of these videos. You all might be able to  
16 do it better than I can, but I don't hear anything about a  
17 gun. If you all do, that's great. My hearing is not that  
18 good. Right now, I can't even hardly walk. But at any  
19 rate, think about who all was there.

20 Now, shortly after the buy/bust, we know that Leon  
21 left. He went up the road, turned left on Crest and then  
22 the officers went down to go in. You had an officer at  
23 the front door, I think it was Brett Barwick. And you had  
24 officers at the back door. They testified that it took  
25 them about a minute to get inside the house. All right?

1 Now, obviously, the folks knew there was somebody at the  
2 door and at some point real soon, I'm sure they knew it  
3 was the police at the door.

4 Now, you've got a good number of pictures. One of  
5 the pictures that is in evidence is of that bathroom,  
6 which is at the back bedroom. And there's a picture of  
7 that bathroom and there's a gun there lying beside the  
8 toilet. This gun. And there's scales lying beside the  
9 toilet. The problem that I have with that, if somebody  
10 has drugs back here in this back bedroom, why are they  
11 going to go to the front bedroom and put them behind the  
12 dresser? Everybody in the world knows that the cops are  
13 going to come in, they're going to search. And if you  
14 look at TV and you look at movies, and if you use plain  
15 old common sense, most of the time if somebody has  
16 something that is contraband and they want to get rid of  
17 it, they'll flush it. The toilet was right there. You  
18 can't flush a gun. You can't flush scales. You flush  
19 drugs. If you've got officers coming in after you've just  
20 sold drugs to somebody, and you've got your drugs close to  
21 a toilet, what's anybody going to do? They're going to  
22 flush them.

23 Now, I asked Lieutenant Robinson yesterday about  
24 fingerprints. And actually, if you remember, it was the  
25 State who requested that fingerprints be attempted to be

1 retrieved from this gun. And Lieutenant Robinson told you  
2 that there were no prints on the gun that he could use.  
3 And I talked to him a little bit about prints on a gun and  
4 how difficult it is. You know, it raises a question in my  
5 mind if the State really believed that Colecio had that  
6 gun, why are they asking to check for prints?

7 Then, I talked to Tony Robinson about prints and  
8 whether or not any prints were attempted to be lifted off  
9 these bags. Now, obviously, not the bag that the drugs  
10 are in now, but the plastic bag that contained them. And  
11 Lieutenant Robinson told me, I didn't receive a request to  
12 check for fingerprints on the plastic. When I talked to  
13 Lieutenant Robinson yesterday, we discussed the fact that  
14 sometimes prints are hard to lift. If you have ridges,  
15 you can't get a good print. If you have curved stuff like  
16 this or ridges in a handle, you can't get a print. But  
17 you can get a print off smooth items, like plastic, like  
18 glass. And have you noticed how people hold this stuff  
19 when they carry it? Everybody does it the same way. It's  
20 just a natural thing to do, you pick up a plastic bag and  
21 your prints are there.

22 This trailer, single-wide trailer was rented, leased  
23 by Kathryn Powell and by Neal Powell. It's their trailer.  
24 It's their house. They weren't charged with anything.  
25 The officers said they weren't part of this. They were

1 not charged. It's their house. This big bag of drugs,  
2 it's found in the master bedroom, behind the chest. If  
3 you've just done something wrong and you want to get rid  
4 of something, you flush it. These drugs, an indictment  
5 for drugs greater than twenty-eight grams. This is the  
6 point of the trial. This is not Israel Colecio's. The  
7 picture of the bathroom, it's there. You know the gun was  
8 by the toilet. You know the scales were by the toilet.  
9 If you're going to sell drugs and the cops are coming in,  
10 you've got to get rid of them, you flush them.

11 You had all of these other people in there, and we're  
12 not sure for what purpose. You had this Jonathan Edward  
13 Smith, Michael Swafford, Octavia Avista, they were all  
14 back there. We know when Leon first got there that Neal  
15 was in the back bedroom, Neal Powell. It's their trailer.  
16 These drugs were found in the master bedroom. It defies  
17 common sense if you know that police are coming in, that  
18 you just move drugs from one part of the trailer to  
19 another when you can get rid of them altogether. Crystal  
20 substance, it flushes. Guns don't. That's why Israel  
21 Colecio wanted to have a trial.

22 The first indictment, the indictment for trafficking  
23 ten to twenty-eight, that's clear I think. You saw it on  
24 the video. I think that's clear. But when it comes to  
25 this gun, when it comes to these other drugs, that's not

1 clear. The Solicitor asked Leon Davis yesterday, is that  
2 the same bag the drugs came out of? He said, well, I  
3 think so. Drugs in a zip lock bag look like other drugs  
4 in a zip lock bag. They're fungible. The question for  
5 you -- I told you in the opening statement -- there are  
6 drugs involved in this case, but whose drugs are they?  
7 One indictment is clear. The other two indictments really  
8 aren't, especially the indictment on this ninety-four  
9 grams of drugs.

10 And Leon, I didn't understand completely all of his  
11 testimony. You know, he's got a record, and he's worked  
12 for the police before and they've paid him to work for  
13 them before. But in this case, he says he's not working  
14 down a charge, he doesn't have anything over his head that  
15 they can bring on him, and he's not being paid. And I  
16 said, you're doing this out of the goodness of your heart?  
17 He said, yes. Well, that's odd on its face as well.

18 The government has to prove each and every element of  
19 the offense for each of the three indictments beyond a  
20 reasonable doubt. You know, indictment number one, the  
21 ten to twenty-eight grams, that's clear. The indictment  
22 on the gun is more questionable. There were too many  
23 people back there and there's no prints off the gun. You  
24 don't really know for sure. And if you listen and look at  
25 the video, you can't tell for sure. But when it comes to

1 this, this has got to be the biggest lie I've ever seen.  
2 They didn't attempt to get prints off the plastic bag.  
3 It's in the house of Kathryn and Neal Powell. It's found  
4 behind the chest in the master bedroom. And look at what  
5 else was found according to testimony. Behind the love  
6 seat and at the time that Special Agent Sonnefeld wrote  
7 this, the -- one of the children was sleeping on the love  
8 seat, there was a white film canister containing a clear  
9 plastic bag that contained a crystal substance. In the  
10 child's room, there was loose shards of crystal substance.  
11 And Kathryn Powell had marijuana in her pocket.

12 Now, do you really think that Israel Colecio stopped  
13 by the living room and dropped some crystal meth behind  
14 the love seat and then bee-bops on up to the front bedroom  
15 and puts it behind the chest? He knows the cops are  
16 there. What are you going to do? You're going to get rid  
17 of the drugs. There is no bathroom in the front bedroom.  
18 He was by the only bathroom, according to Leon Davis.  
19 That's where the deal took place. If he had it, if he'd  
20 had this, he would have flushed it. That's what this case  
21 is about.

22 Just because somebody's charged doesn't mean they're  
23 guilty. Sometimes people are guilty of one charge and not  
24 another. And in this case, what you all need to do as  
25 jurors is use your good common sense and determine what

1 would somebody do in that circumstance. And, also, why  
2 are all of those people there and what are they doing?  
3 And we've got drugs throughout the house.

4 The government has to prove Israel Colecio guilty on  
5 each of the three indictments beyond a reasonable doubt.  
6 The indictment for ten to twenty-eight is pretty clear.  
7 The indictment for the gun is not so clear. And this one  
8 is just plain beyond common sense and belief.

9 As I told you in the opening statement, Israel  
10 Colecio only wants one thing. He wants you all to go back  
11 and deliberate and come out with a verdict that speaks the  
12 truth in this matter. Thank you very much.

13 **CHARGE**

14 **BY THE COURT:**

15 Mr. Foreman, ladies and gentlemen, it's now my  
16 responsibility to instruct you on the law of the case.  
17 Let me remind you, the fact that in this case the  
18 defendant has been arrested and charged and indicted is  
19 not evidence in the case, and can't be considered by you  
20 as evidence of guilt in the case. It doesn't create any  
21 presumption or inference of guilt. The indictments are  
22 merely the formal written instruments by which the charges  
23 are made against the defendant, formal documents by which  
24 the case is brought to this court for disposition.

25 Now, as I stated to you at the beginning of the

1 trial, the defendant in this case is charged with three  
2 separate offenses. There's an indictment that charges him  
3 with trafficking more than ten grams, less than twenty-  
4 eight grams of methamphetamine. There's a separate  
5 indictment charging him with trafficking more than twenty-  
6 eight grams, less than one hundred. There's also an  
7 indictment that charges him with possession of a weapon  
8 during the commission of a violent crime.

9 Now, each of these charges are separate and distinct  
10 and you must decide each indictment separately on the  
11 evidence and the law applicable, uninfluenced by your  
12 decision on the other indictments. In other words, the  
13 defendant could be convicted or acquitted or any or all of  
14 the offenses charged. You'll be asked to write separate  
15 verdict forms of guilty or not guilty on each of the  
16 charges.

17 Now, the defendant has entered a plea of not guilty  
18 and by doing so that places the burden on the State to  
19 prove his guilt. A person charged with committing a  
20 criminal offense in South Carolina is never required to  
21 prove himself innocent. That's an important rule of law,  
22 ladies and gentlemen, that in a criminal trial, no matter  
23 how serious the charge may be, the defendant will always  
24 be presumed innocent of the crime for which that  
25 indictment was issued unless guilt has been proven by

1 evidence satisfying you of that guilt beyond a reasonable  
2 doubt. Presumption of innocence doesn't end when you  
3 begin your deliberation, but it continues with the  
4 defendant, accompanies him throughout the trial until  
5 you've reached a verdict of guilt based on evidence  
6 satisfying you of that guilt beyond a reasonable doubt.  
7 presumption of innocence has always been described as a  
8 robe of righteousness placed about the shoulders of the  
9 defendant and remains with that defendant until it's been  
10 stripped from him by evidence satisfying you of his guilt  
11 beyond a reasonable doubt. The presumption of innocence  
12 isn't a mere legal theory. It's not just a legal phrase  
13 that's used. It's a substantial right to which every  
14 defendant is entitled unless you the jury are satisfied  
15 from the evidence of the defendant's guilt beyond a  
16 reasonable doubt.

17 I've used the phrase reasonable doubt several times.  
18 You may ask yourself what is a reasonable doubt in the  
19 law? A reasonable doubt is the kind of doubt that would  
20 cause a reasonable person to hesitate to act. You may  
21 have had an opportunity, some of you, to serve as jurors  
22 in other cases. You were told by a judge that it was only  
23 necessary to prove a fact was more likely true than not  
24 true. That's the standard in the civil side of the court,  
25 by what's called preponderance or the greater weight of

1 the evidence. In criminal cases, however, the State's  
2 proof is more powerful than that. It must be beyond a  
3 reasonable doubt. Proof beyond a reasonable doubt is  
4 proof that leaves you firmly convinced of the defendant's  
5 guilt.

6 Now, there are very few things in this world that we  
7 know with absolute certainty, and in criminal cases, the  
8 law doesn't require proof that overcomes every possible  
9 doubt. If, based upon your consideration of the evidence,  
10 you're firmly convinced that the defendant is guilty of  
11 the crimes charged, then you must find him guilty. If, on  
12 the other hand, you think there's a real possibility that  
13 the defendant is not guilty, you must find the defendant  
14 not guilty, giving him the benefit of that doubt.

15 Now, I remind you that during the course of the  
16 trial, you and I have had certain duties to perform. As  
17 the Trial Judge, it's been my responsibility to preside  
18 over the trial of the case, rule on the admissibility of  
19 evidence that's been offered during the course of the  
20 trial. You're to consider, ladies and gentlemen, only the  
21 competent evidence that is before you, the testimony which  
22 was presented from the witness stand, exhibits that have  
23 been made a part of the record, and stipulation of legal  
24 counsel.

25 My job also is to charge you the law applicable to

1 the case. As the presiding Judge, I'm the sole judge of  
2 the law and it's your duty as jurors to accept the law and  
3 apply the law exactly as I state it to you. Some of you  
4 may have an idea of what the law is a case like this or  
5 even a notion of what the law ought to be in a case like  
6 this. If you have such an idea and it's in conflict with  
7 what I now tell you the law is, you must abandon that idea  
8 because under your oath, you've sworn to accept the law  
9 and apply the law exactly as I stated to you.

10 Every case that's tried in this courtroom before a  
11 jury, the jury becomes the sole, exclusive judge of the  
12 facts of the case. A trial judge cannot state or intimate  
13 in any way or comment on or make any statement whatsoever  
14 to a trial jury about the facts in the case. Since you  
15 the jury are the sole judges of the facts, you're not to  
16 infer from what I've said during the course of the trial,  
17 any rulings I've made upon the admissibility of evidence  
18 or otherwise, anything I say to you now during the course  
19 of this instruction to you that I have an opinion about  
20 the facts in the case. I don't have an opinion. Our  
21 constitution in South Carolina prohibits a trial judge  
22 from having an opinion about the facts. That's  
23 exclusively your decision, ladies and gentlemen, and yours  
24 alone to determine the facts. It's your duty to determine  
25 the effect and the value, the weight and the truth of the

1 evidence that's been presented.

2 Normally, in a trial, there's two types of evidence.  
3 There's what's called direct evidence and circumstantial  
4 evidence. Direct evidence in the testimony of a person  
5 who claims to have actual knowledge of the facts, such as  
6 an eye witness. It's evidence which immediately  
7 establishes the main facts to be proved. Circumstantial  
8 evidence is proof of a chain of facts and circumstances  
9 that indicate the existence of a fact. It would be  
10 evidence which immediately establishes collateral facts  
11 from which a main fact may be inferred. Circumstantial  
12 evidence is based on inference and not on direct knowledge  
13 and observation.

14 The law makes absolutely no distinction between the  
15 weight or value to be given either direct evidence or  
16 circumstantial evidence nor is a greater degree of  
17 certainty required of circumstantial evidence than direct  
18 evidence. You should weigh all of the evidence, ladies  
19 and gentlemen, in the case, and after weighing that  
20 evidence, if you're not convinced of the guilt of the  
21 defendant beyond a reasonable doubt, then you must find  
22 the defendant not guilty.

23 Necessarily, in making that determination, you will  
24 have to decide the credibility of witnesses who've  
25 testified in the case. Credibility simply means

1 believability. It's your duty as jurors to analyze and  
2 evaluate the evidence and determine which evidence  
3 convinces you of its truths. In determining the  
4 believability of witnesses who testified in the case, you  
5 can believe one witness over several witnesses. You can  
6 believe several witnesses over one witness. In your  
7 discretion you can believe part of the testimony of a  
8 witness and reject the remaining part of the testimony of  
9 that very same witness. You can believe the testimony of  
10 a witness in its entirety or you can reject the testimony  
11 of a witness in its entirety. You can consider whether  
12 the witness has exhibited to you any interest or bias or  
13 prejudice or other motive in the case. You can consider  
14 the appearance of the witness while on the witness stand.  
15 Was the witness straightforward or hesitant in answering?  
16 Was the testimony that witness gave consistent or  
17 inconsistent? How did that witness's testimony stack up  
18 with other testimony or other evidence that you've heard  
19 during the course of the trial or demeanor of the witness  
20 while on the witness stand. You judge the credibility of  
21 the witnesses, ladies and gentlemen. That's totally your  
22 discretion to decide the weigh and the credibility to be  
23 given each witness who testified.

24 Now, the rules of evidence ordinarily do not permit  
25 witnesses to testify to opinion or conclusion, but there

1 is an exception to this rule. That exists for what we  
2 call expert witnesses, and a witness who by education and  
3 experience has become an expert in some art or science or  
4 profession or calling may state an opinion as to relevant  
5 and material matter in which the witness claims to be an  
6 expert, and may also state their reasons for that opinion.  
7 And you should consider the opinions received into  
8 evidence in this case by the expert and like other  
9 evidence give the weight that you think it deserves. If  
10 you decide the opinion of an expert is not based on  
11 sufficient education and experience, or if you conclude  
12 the reasons given in support of that opinion are not  
13 sound, or that the opinion is outweighed by other  
14 evidence, you can disregard the opinion entirely. An  
15 expert witness's testimony is to be given no greater  
16 weight than that of any other witness simply because the  
17 witness is an expert. Further, you are not required to  
18 accept an expert's opinion, even though it may be  
19 uncontradicted.

20 In order to establish criminal liability, criminal  
21 intent is required and it must be proven by the State  
22 beyond a reasonable doubt. Criminal intent is always a  
23 matter that must be determined by a jury from the  
24 circumstances surrounding the situation. There's no way  
25 to prove intent to a mathematical certainty. The law says

1 that criminal intent may be inferred from the  
2 circumstances shown to have existed. It's not necessary  
3 to establish intent by direct and positive evidence, but  
4 may be inferred in the same way as any other fact, taking  
5 into consideration the acts of the parties and all the  
6 facts and circumstances of the case. Criminal intent is a  
7 mental state, it's a conscious wrong-doing. It's up to  
8 you to determine what the defendant intended to do based  
9 upon the circumstances shown to have existed.

10 Now, Mr. Foreman, ladies and gentlemen, I instruct  
11 you and I emphasize to you the fact that the defendant did  
12 not testify is not a factor to be considered by you in any  
13 way in your deliberation and in your consideration of the  
14 question of the guilt or the innocence of the defendant.  
15 It must not be considered by you in any manner whatsoever.  
16 A defendant has a constitutional right to remain silent,  
17 and the assertion of this right must not be considered by  
18 you in your deliberations. I repeat, under your oath, you  
19 are to draw no conclusions whatsoever from the fact that  
20 the defendant in this case did not testify. The fact that  
21 he did not testify should not even be discussed by you in  
22 the jury room. The burden of proof, as I have stated, is  
23 on the State of South Carolina. The Defendant is not  
24 required to prove his innocence. That burden of proof  
25 remains on the State until it has met its burden of proof

1 beyond a reasonable doubt.

2 Now, in this case the defendant is charged with  
3 trafficking methamphetamine. In order to prove this  
4 offense, the State must prove beyond a reasonable doubt  
5 that the defendant knowingly sold, or manufactured, or  
6 cultivated, or delivered, or purchased or brought into the  
7 State, or that the defendant provided financial assistance  
8 or otherwise aided and abetted or attempted or conspired  
9 to sell, manufacture, cultivate, deliver, purchase, or  
10 bring into the State, or that the defendant was knowingly  
11 in actual or constructive possession, or knowingly  
12 attempted to become in actual or constructive possession  
13 of the illegal drug.

14 The State must also prove, beyond a reasonable doubt,  
15 that the amount of the methamphetamine, as to one of the  
16 indictments, that it was more than ten grams, but less  
17 than twenty-eight grams. As to the other indictment, the  
18 State must prove beyond a reasonable doubt that the amount  
19 of the drugs was twenty-eight grams or more but less than  
20 one hundred grams.

21 Now, to deliver means to actually or constructively  
22 or attempt to transfer a drug. To prove possession, the  
23 State must prove beyond a reasonable doubt that the  
24 defendant had both the power and intent to control the  
25 disposition or the use of the drugs.

1           The defendant is also charged with possession of a  
2           weapon during the commission of or attempt to commit a  
3           violent crime. The State must prove beyond a reasonable  
4           doubt that the defendant was in possession of a firearm,  
5           or visibly displayed what appeared to be a firearm during  
6           the commission of a violent crime. A firearm means that  
7           it could be an automatic rifle or revolver, pistol. Any  
8           weapon which will or is designed to or may be readily  
9           converted to expel a projectile. In order to find the  
10          defendant guilty of possession of a weapon during the  
11          commission of a violent crime, of course, you must first  
12          find the defendant guilty of either committing a violent  
13          crime or attempting to commit a violent crime. Under the  
14          law of South Carolina drug trafficking is considered a  
15          violent crime.

16          Now, Mr. Foreman, I have verdict forms for you.  
17          There's two possible verdicts on each of these. These are  
18          separate and distinct charges. The verdict is either  
19          guilty or not guilty. There's no significance whatsoever  
20          in the order in which they're listed on the verdict form.  
21          One has to be listed before the other. Your verdict must  
22          be a unanimous verdict. All twelve of you must agree.  
23          Your verdict cannot be based upon sympathy or compassion  
24          or prejudice, emotion or any other consideration not in  
25          evidence of the case.

1           Mr. Foreman, I'll ask that once you -- the jury has  
2 reached a unanimous verdict on each of the charges that  
3 you simply check the appropriate block, sign your name on  
4 behalf of your fellow jurors, date it on each of the  
5 charges. Let the bailiffs know that you have reached a  
6 unanimous verdict and we will receive it back here in the  
7 courtroom..

8           I'll remind you that you are free to ask me any  
9 questions concerning the law. Remember, however, it's  
10 impermissible for me to answer any question to you  
11 regarding the facts of the case. That's your sole  
12 responsibility as the fact finders.

13           There's one final matter of law that I need to take  
14 care of with the attorneys. I'll ask, if you would, go  
15 back to your jury room. Don't start discussing the case  
16 just yet. In just a few moments we'll have the evidence  
17 sent back to you with the verdict forms. You may retire  
18 to your jury room at this time.

19           (WHEREUPON, the jury exited the open court at  
20 approximately 10:42 a.m.)

21           THE COURT: Any exceptions to the charge from  
22 the State?

23           MR. CLEVELAND: None from the State, Your Honor.

24           THE COURT: From the defense?

25           MR. GODFREY: None from the defense, Your Honor.

1           THE COURT: All right, if you would, gentlemen,  
2 make sure all the Exhibits are in order, those that were  
3 admitted into evidence. And here's the verdict forms to  
4 go with the evidence. As soon as it goes back, Mr.  
5 Duncan, you can tell the jury they can begin their  
6 deliberations. Take it all back and have the alternate  
7 come back in here.

8           MR. CLEVELAND: Your Honor, I haven't tested  
9 this DVD in the television that could be put in the jury  
10 room. But as far as I know ---

11          THE COURT: I think he said it's only by  
12 computer; right?

13          MR. CLEVELAND: I've seen it play on one DVD  
14 player and it didn't work on ours in our office. So I  
15 don't know. I assume we'll probably have to play it out  
16 here using a laptop if the jury requests to see the video.

17          THE COURT: Is that interrupting you with your  
18 laptop?

19          MR. CLEVELAND: I don't have any objection to  
20 it, but this is a Solicitor's Office laptop, and I haven't  
21 been through it with a fine toothed comb and I don't know  
22 what other ---

23          THE COURT: We'll figure that out if they ask  
24 for it. There's no ammunition in this weapon; right?

25          MR. GODFREY: No.

1 (WHEREUPON, the verdict form and exhibits were  
2 delivered to the jury and deliberations began at  
3 approximately 10:50 a.m.)

4 (WHEREUPON, the alternate juror entered the open  
5 court was dismissed.)

6 (WHEREUPON, the Court stood at recess awaiting the  
7 verdict of the jury.)

8 THE COURT: For the record, Mr. Cleveland just left.  
9 The jury has made an inquiry as far as wanting to watch  
10 the video. We'll put this on the record. The defendant's  
11 not in the courtroom. We'll put it back on the record so  
12 we'll know what we're doing now. We're going to see if a  
13 the video will play on a screen without a computer.  
14 That's with the written consent of the defense attorney.  
15 We'll see what the -- whether it will play so that they  
16 can see it in their room. With consent, they could do  
17 that. If not, we'll let them re-watch it out here and  
18 that's going to take just a few minutes. Mr. Cleveland,  
19 what did you find?

20 MR. CLEVELAND: Your Honor, the TV is basically  
21 in use in courtroom one and they're not going to take a  
22 break anytime soon. I'm not going to interrupt court to  
23 fool with all of that.

24 THE COURT: Okay.

25 MR. CLEVELAND: If I can show the bailiff -- in

1 the amount of time it would take to get the TV up here --  
2 how to play it on that laptop, if he wants to just carry  
3 that laptop back there, and Mr. Godfrey doesn't object, I  
4 would be fine with just letting the bailiff hit the play  
5 button and watch it on it, in the jury room and then  
6 bringing the laptop back out. And if they wanted to watch  
7 it again rewind it or fast forward. It's very simple to  
8 operate.

9 THE COURT: I think it might be more -- I mean  
10 there's so many inconveniences I believe -- obviously, the  
11 bailiff is not going to stay in there with them, and they  
12 might want to back it up. With that being a Solicitor's  
13 -- I don't know, Mr. Godfrey, I'd be glad for you to weigh  
14 in on that.

15 MR. GODFREY: I'm totally against it.

16 THE COURT: Okay.

17 MR. GODFREY: You've got a laptop computer that  
18 belongs to the Solicitor's Office and you think that -- I  
19 would never allow that to go back to a jury room for any  
20 reason.

21 THE COURT: We'll just let them see it out here.  
22 That'll be fine. If y'all can step down for a minute.  
23 We'll rearrange here now and we're going to play it out  
24 here for them. We'll call them back in.

25 (WHEREUPON, the court stood at recess for a short

1 break.)

2 THE COURT: All right. We have received an  
3 inquiry from the jury, said they'd like to view the video  
4 footage. Mr. Turcios, if you could come forward just a  
5 moment, and I'll let you translate for your -- if you'd  
6 just come in front of the Clerk's -- I understand from the  
7 Clerk that when I did the inquiry of Mr. Colecio earlier,  
8 you had not been sworn to be an interpreter. At this  
9 time, I'm going to ask the Clerk to swear you in, and then  
10 I assume that you had been sworn in yesterday. And then I  
11 need to ask you some questions.

12 THE INTERPRETER: Okay.

13 THE CLERK: Raise your right hand. Do you  
14 solemnly swear or affirm that the translation you make in  
15 this proceeding will be true and accurate to the best of  
16 your ability, that you will omit no part of the testimony  
17 or statement or add any testimony or statements?

18 MR. TURCIOS: I do.

19 (WHEREUPON, the interpreter was duly sworn.)

20 THE COURT: Mr. Turcios, I just want to verify  
21 with you, you've taken this oath now and I'm confident  
22 that you're a certified interpreter for the State. You do  
23 this work frequently. I just want to verify for the  
24 record that all the dialogue I had with Mr. Colecio about  
25 his constitutional rights to testify or not to testify,

1 you've accurately translated that for him?

2 MR. TURCIOS: Yes, sir.

3 THE COURT: And he had no questions of you as  
4 you went through the translations for him?

5 MR. TURCIOS: No.

6 THE COURT: And you believe that everything that  
7 I said to him, every question I had of him, was accurately  
8 conveyed to him through your translation?

9 MR. TURCIOS: I do.

10 THE COURT: And you believe he understood?

11 MR. TURCIOS: Yes, I do.

12 THE COURT: All right. Thank you, sir. You may  
13 be seated. I'll give you a moment, if you'd like, to  
14 confer with Mr. Colecio as to what I just put on the  
15 record.

16 And, as an afterthought, Mr. Turcios, everything  
17 you've been translating to Mr. Colecio during the course  
18 of the trial has been an accurate translation?

19 MR. TURCIOS: Yes, sir.

20 THE COURT: All right. Thank you, sir. All  
21 right. At this time if the jury's ready we'll have them  
22 come in.

23 (WHEREUPON, the jury entered the open court at  
24 approximately 11:38 a.m.)

25 THE COURT: Mr. Foreman, we did have an inquiry

1 about viewing the video footage. I apologize for the  
2 delay. We thought that it would -- we'd have some  
3 equipment to let you play it back in the jury room.  
4 Unfortunately, the equipment's being used in the courtroom  
5 downstairs so we don't have that opportunity. We will  
6 have an opportunity to play it to you out here again.

7 Your inquiry, Mr. Foreman, was that you'd like to  
8 view the video footage. As I recall, there was audio  
9 first. I didn't know if you wanted to see -- have the  
10 entire CD played or just where it starts on the video. If  
11 you could maybe poll your jurors so you'll know ---

12 THE FOREMAN: We want to see the part where the  
13 -- like the picture -- the still picture that they had.

14 THE COURT: Where is the picture -- the video,  
15 not the audio?

16 MR. CLEVELAND: The still pictures?

17 THE FOREMAN: Right.

18 THE COURT: If you could then -- if you want to  
19 see it all, we'll be glad to show you it all to you, but I  
20 think it started out audio, so when it starts in the video  
21 ---

22 THE FOREMAN: Yeah. The stuff that's going on  
23 in the room. That's what we want to look at.

24 THE COURT: If you could get it to that point,  
25 sir, we'll show them.

1 MR. CLEVELAND: Okay.

2 THE COURT: If at any time, Mr. Foreman, you  
3 want it stopped or replayed or backed up, you let us know.  
4 We'll show whatever your jurors needs to see.

5 MR. CLEVELAND: I'm having a little problem  
6 here. May I have a second just to ---

7 THE COURT: Yes, sir. If you'll just get it  
8 where -- it's dark -- you know you can see a little more.

9 MR. CLEVELAND: The problem is that it's showing  
10 up on the laptop screen, but it's not showing up on the  
11 projector screen. If I could just have a minute.

12 Your Honor, I can't explain for the life of me why  
13 it's not showing up on the projector but it is on the  
14 laptop. I'll be happy to set the laptop over in front of  
15 the jury or -- if you'll give me another minute. I don't  
16 -- it worked this morning fine. I don't have any -- I  
17 have no idea why that's the case.

18 THE COURT: All right. We'll get this working  
19 for you in a moment, Ladies and Gentlemen. I will just  
20 ask you to go back to your jury room and continue your  
21 deliberations. Once we get it so it's either there or on  
22 the screen, we'll call you back in.

23 Let me remind you, too, if you have any inclinations  
24 that you might want lunch ordered, we'll be glad to order  
25 lunch for you. It will probably take about an hour to get

1 it here. If you feel like you want that, please let the  
2 bailiff know, and we'll certainly accommodate you on that.

3 I'll ask you to just go back, continue your  
4 deliberations. We'll have this equipment situated in just  
5 a moment for you.

6 (WHEREUPON, the jury exited the open court room at  
7 approximately 11:46 a.m.)

8 THE COURT: I'll mark this as Court Exhibit 1, I  
9 believe.

10 (WHEREUPON, Court Exhibit Number 2 was marked for  
11 identification.)

12 THE COURT: All right. We've got another  
13 inquiry from the jury. I've shared the note with the  
14 attorneys. It says, please note we need to discuss the  
15 video, as well as view. We're concerned with all parties  
16 in courtroom while discussing it. A legitimate concerns  
17 any jurors would have concerning their deliberations being  
18 open, I can appreciate that. I briefly talked with the  
19 attorneys about a -- I fully understand Mr. Godfrey's  
20 position with a computer from the Solicitor's office going  
21 back. Graciously, Judge Addy has volunteered his  
22 computer, which is brand new, hasn't even been hooked up  
23 for email yet. Both attorneys have had a chance with him  
24 to make sure the CD works in his computer. I understand  
25 that there's no objection to his laptop computer, with the

1 video, going back to the jury so they can watch it. Is  
2 that correct, from the State?

3 MR. CLEVELAND: That is correct. I would ask  
4 that the jury just be instructed to not use the computer  
5 for any other purposes other than view the DVD.

6 THE COURT: Yeah. And I'll certainly tell them  
7 that.

8 MR. GODFREY: No objection.

9 THE COURT: All right. Let's have our jury come  
10 out if they're ready.

11 (WHEREUPON, the jury entered the open court at  
12 approximately 12:02 p.m.)

13 THE COURT: Mr. Foreman, and ladies and  
14 gentlemen, thank you very much for your patience with us.  
15 We now have put on the record your second inquiry, and we  
16 now have a laptop computer with the CD in it, ready for  
17 you to view in your room, your deliberation room, with the  
18 consent of both attorneys. I'm confident that of the  
19 twelve of you, there's someone who's knowledgeable on how  
20 to work a laptop. I understand if you hit the mouse, the  
21 legend for moving it forward will come up and that it will  
22 fade away when the video begins. Other than that, of  
23 course, you should not use the computer for any other  
24 purpose. You realize that. It's there for you to view  
25 the video. When you have viewed the video sufficiently,

1 just let the bailiff know that you're finished with that  
2 and we'll get the laptop back.

3 I'll ask you to continue your deliberations at this  
4 time. If you need any other questions legally or if you  
5 have any other questions, let the bailiff know. Thank you  
6 very much. You may continue your deliberations.

7 (WHEREUPON, the jury exited the open court at  
8 approximately 12:05 p.m. to resume deliberations.)

9 THE COURT: I guess that would be marked as  
10 Court's Exhibit Number 3.

11 (WHEREUPON, Court Exhibit Number 3 was marked for  
12 identification.)

13 THE COURT: All right. We'll be at ease until  
14 we hear from our jury in this case.

15 (WHEREUPON, the court stood at recess awaiting the  
16 verdict of the jury.)

17 THE COURT: All right. I understand the jury  
18 has reached a verdict. Is there anything we need to take  
19 care of before the jury is called in?

20 MR. CLEVELAND: There's nothing from the State,  
21 Your Honor.

22 MR. GODFREY: Nothing, Your Honor.

23 THE COURT: If the jury is ready, you can have  
24 them come in.

25 (WHEREUPON, the jury entered the open court at

1 approximately 1:03 p.m.)

2 THE COURT: Mr. Foreman, I understand the jury  
3 has reached a verdict. Is that correct?

4 THE FOREMAN: Yes, sir.

5 THE COURT: Is it a unanimous verdict?

6 THE FOREMAN: Yes, sir.

7 THE COURT: If you would, please hand the  
8 verdict form to the bailiff.

9 (WHEREUPON, the verdict form was handed up to the  
10 Court.)

11 THE COURT: Ms. Clerk, you may post the verdict.

12 THE CLERK: It says Case Number 2009-GS-39-1750,  
13 The State versus Israel Colecio. As to the charge of  
14 trafficking methamphetamine ten to twenty-eight grams, we  
15 the jury unanimously find the defendant, Israel Colecio,  
16 guilty.

17 This is Case Number 2009-GS-39-1751, The State versus  
18 Israel Colecio. As to the charge of trafficking  
19 methamphetamine twenty-eight to one hundred grams, we the  
20 jury unanimously find the defendant guilty.

21 Case Number 2009-GS-39-1752, The State versus Israel  
22 Colecio. As to the charge of possession of a weapon  
23 during the commission of a crime, we the jury unanimously  
24 find the defendant guilty.

25 Is this your verdict and still your verdict so say

1 you all by raising your right hand?

2 (WHEREUPON, all jurors' right hands were raised.)

3 THE CLERK: Thank you very much.

4 THE COURT: Anything we need to take care of  
5 with the jury before they're discharged in this case?

6 MR. CLEVELAND: Nothing from the State, Your  
7 Honor.

8 THE COURT: From the defense?

9 MR. GODFREY: Nothing, Your Honor.

10 THE COURT: Mr. Foreman, ladies and gentlemen,  
11 thank you very much for your conscientious work in this  
12 case. It's been a pleasure for me to work with you. We  
13 have other work to do this week. You might have thought  
14 that you would be free for the day, but I need you back at  
15 two o'clock. You might realize the clerk has ordered  
16 pizza for you, and you're certainly welcome to eat on your  
17 own if you want to. If you want to go back to your jury  
18 room and pizza should be here by now, I think. If you  
19 want to eat that, that's fine.

20 But we have other jurors coming in later to start  
21 another trial, and we're going to need your services as  
22 well to be part of that pool. So I'll ask you to be back  
23 in this courtroom at two o'clock for that selection  
24 process. Again, if you'd like to stay and have the pizza,  
25 that's fine. If you want to stretch your legs and do

1 something else, you're free to go wherever you'd like,  
2 just be back at two o'clock if you would. We'll have  
3 further questions of you about the next trial we're about  
4 to start.

5 Thank you very much for your participation in this  
6 case, and I look forward to working with you again during  
7 the week. You're dismissed at this time, ladies and  
8 gentlemen.

9 Mr. Foreman, I do need you to wait just for a moment.  
10 The clerk has one more paper he needs to have you sign.

11 (WHEREUPON, the jury exited the open court at  
12 approximately 1:07 p.m.)

13 THE COURT: Any matters we need to take care of  
14 before sentence is imposed in this case?

15 MR. CLEVELAND: Nothing from the State, Your  
16 Honor. I'd just like to speak briefly on sentencing when  
17 the time is appropriate.

18 THE COURT: Mr. Godfrey?

19 MR. GODFREY: May it please the Court. I would  
20 move to set the verdict aside and make a motion for a new  
21 trial, in that the evidence -- the verdict was not  
22 supported, the verdict was not supported by the evidence,  
23 Your Honor.

24 THE COURT: I believe the evidence is  
25 sufficient, Mr. Godfrey. I think you've represented your

1 client well. You certainly gave the jury pause in their  
2 deliberations. But I believe the evidence is sufficient.  
3 I respectfully deny your motion.

4 Does the State have the sentencing sheets ready?

5 MR. CLEVELAND: Yes, Your Honor.

6 THE COURT: Okay. If you would, have your  
7 client come forward, please, with the interpreter.

8 (WHEREUPON, the Defendant, Mr. Godfrey and Mr.  
9 Turcios approached the bar.)

10 THE COURT: Mr. Godfrey, I'll be glad to hear  
11 from you. I'll be glad to hear from your client if  
12 there's anything he'd like to tell me.

13 MR. GODFREY: Judge, prior to arrest, Israel  
14 Colecio was living at Circle in Hendersonville,  
15 North Carolina. He has a wife, Amanda. He's been married  
16 for eight years. He has one child seven years old, and  
17 another child two years old. Judge, he has an eleventh  
18 grade education. He came to the United States in 1998.  
19 He has been employed in construction and drywall and he  
20 basically worked anywhere anybody would hire him for  
21 drywall. He does not have a prior record. Obviously he  
22 got caught up in some stuff he should never have been  
23 caught up in. He respectfully apologizes to the Court,  
24 and we would ask for the Court's mercy.

25 THE COURT: Thank you, Mr. Godfrey. Mr.

1 Colecio, anything you would like to tell me, sir?

2 MR. TURCIOS: He just wants to apologize for  
3 everything he did.

4 THE COURT: Mr. Cleveland, be glad to hear from  
5 you, sir.

6 MR. CLEVELAND: Your Honor, in considering a  
7 sentence for this case, I just want to, I guess,  
8 illustrate for the court the fact that Mr. Colecio isn't a  
9 resident of Pickens County nor of South Carolina, but he's  
10 availed our County and our State as a ground for which to  
11 commit this crime.

12 On top of that, not only did he traffic these drugs  
13 here, he had a firearm with him, and his child was present  
14 in the trailer where it was being sold. Other children  
15 were present. In addition to the crime that was tried in  
16 this case and he was convicted of, we have the  
17 circumstances surrounding the events yesterday why we had  
18 to close the courtroom. While that's not State's evidence  
19 in this, I think it's important to be considered as a part  
20 of the motivation of why Mr. Colecio actually came to  
21 trial today. I think he thought there was a pretty good  
22 chance that this trial wouldn't happen because there  
23 wouldn't be anybody to testify. I just wish you'd  
24 consider that in giving him a sentence, and let him know  
25 that this behavior, the drugs, the threats will not be

1 tolerated in this State or this County and to confine him  
2 for an appropriate amount of time.

3 I understand that he does have an immigration hold on  
4 him, and that he will be deported, but like anybody could  
5 how fast -- how long will it take once he's deported for  
6 him to come back. He has family here. From what I  
7 understand, one of his children is actually -- the mother  
8 actually lives in Easley. That's his connection with the  
9 area. Him having family here, if he's given any mercy  
10 based on the fact that he will be deported, I have strong  
11 belief -- and his wife in Hendersonville, that he'll come  
12 back, possibly under a different name, under, you know,  
13 under completely different circumstances. So I ask that  
14 the Court not consider that and effectually punish him for  
15 the crimes that he's committed that he's found guilty of  
16 today.

17 THE COURT: Thank you, Solicitor.

18 How long has he been in jail?

19 MR. CLEVELAND: He's been in jail for  
20 approximately eighteen months, since December 11th, the  
21 date of the -- or December 12th, the date of the incident.  
22 I don't have the exact number with me, although I believe  
23 it's -- I would agree about eighteen months. Four hundred  
24 and some odd days.

25 THE COURT: Since December 11, '08?

1 MR. CLEVELAND: Since December 11, yes, sir.

2 THE COURT: This is case 2009-GS-39-1751, the  
3 sentence of the Court is the defendant be committed to the  
4 State Department of Corrections for a period of nineteen  
5 years. Case 2009-39-1750, the sentence is ten years to be  
6 concurrent. Case 1752, the sentence is five years to be  
7 concurrent.

8 Mr. Colecio, I wish you the very best.

9 THE COURT: All right. We'll be at ease until  
10 two o'clock.

11 MR. CLEVELAND: Thank you, Your honor.

12

13 (END OF REQUESTED TRANSCRIPT OF RECORD)

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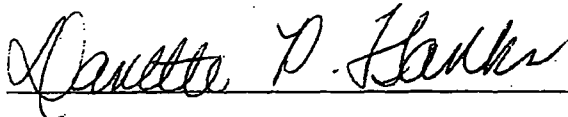
CERTIFICATE OF REPORTER

I, the undersigned Danette P. Hanks, 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/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 26th day of April, 2010.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

December 17, 2010



Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA CLERK OF COURT  
PICKENS COUNTY  
County of Greenville )  
SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

2012 FEB -9 A 10: 54

Israel Colejo, 340535 )  
Full name and prison number (if any) of Applicant )

2012-CP-39-180

State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

**INSTRUCTIONS B READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River C.I., 4460 Broadriver Rd.,  
Columbia, S.C. 29210
2. Name and location of Court which imposed sentence Greenville County  
General Sessions Courthouse
3. Name(s) of co-defendant(s) (if any) Johnathan Edward Smith, Thomas Michael  
Swafford, and Octavio Lara Avista
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2009-GS-39-1750, 2009-GS-39-1751 and 2009-GS-39-1752

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) April 26, 2010
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
  - i. S.C. Court of Appeals
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (b) the result in each such Court to which you appealed:
  - i. Unknown after Anders Brief Filed
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (c) the date of each such result:
  - i. unknown
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) \_\_\_\_\_

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) insufficient evidence to convict
- (b) ~~the ineffective assistance denied Brady Material~~
- (c) Not in possession of any drugs

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Reserve The Right To Amend / upon each ground
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? None
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? None
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? None
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

None

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. E. P. "Bill" Godfrey  
10 East Avenue
  - ii. Greenville, S.C. 29601
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Trial and sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

To have my sentence and conviction to be reversed  
and to reserve the right to Amend further issues.

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA )

County of \_\_\_\_\_ )

VERIFICATION

I, \_\_\_\_\_, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_, (L.S.)

*Notary Public*

My Commission Expires: \_\_\_\_\_

APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Israel Colecio #340535, hereby apply for leave to  
proceed in this action without prepayment of fees or costs or security therefor. In support of my  
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Israel Colecio  
Applicant

SWORN or affirmed to and subscribed before me this  
10 day of February, 2012.

Susan N. Fife  
Notary Public My Commission Expires  
March 5, 2018

My Commission Expires: \_\_\_\_\_

2012 FEB - 9 A 10: 54  
CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-39-0186
COUNTY OF PICKENS	)	
	)	
Israel Colecio,	)	
S.C.D.C. No. 340535,	)	
	)	
Applicant,	)	
	)	<b>RETURN</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed February 9, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Applicant was indicted at the November 2009 term of the Pickens County Grand Jury for two (2) counts of trafficking methamphetamine (2009-GS-39-1750, -1751) and possession of a weapon during the commission of a violent crime (2009-GS-39-1752). E.P. "Bill" Godfrey, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On April 27, 2010 the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of ten (10) years for trafficking methamphetamine (10-28 grams) (2009-GS-39-1750), nineteen (19) years for trafficking methamphetamine (28-100 grams) (2009-GS-39-1751), and five (5) years for possession of a weapon during the commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. LaNelle C. DuRant,

Esquire of the South Carolina Commission on Indigent Defense perfected the appeal in the form of an Anders<sup>1</sup> brief. The Court of Appeals dismissed the appeal. State v. Colecio, Op. No. 2012-UP-101 (S.C. Ct. App. filed Feb. 22, 2010).

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

## II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of trial counsel:
  - a. "Insufficient evidence to convict."
  - b. Denial of Brady material.
  - c. "Not in possession of any drugs."

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

---

<sup>1</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON  
Attorney General

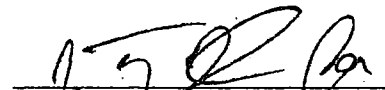
JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

KAREN C. RATIGAN  
Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

July 31, 2012

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF PICKENS )  
 )  
 )  
 )  
 ISRAEL COLECIO, 340535 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

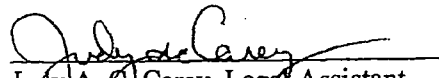
2012-CP-39-0186

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Israel Colecio, 340535  
 Broad River Correctional Institution  
 4460 Broad River Road  
 Columbia SC 29212**

DATED this 31st day of July, 2012.

  
 Judy A. Carey, Legal Assistant  
 For Respondent

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STATE OF SOUTH CAROLINA	)	
COUNTY OF PICKENS	)	IN THE COMMON PLEAS COURT
Israel Colecio,	)	
Applicant,	)	TRANSCRIPT OF RECORD
	)	2012-CP-39-0186
-vs-	)	
The State.	)	August 26, 2013
	)	Pickens, South Carolina

B E F O R E :

HONORABLE ROBIN B. STILWELL, JUDGE

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

KAREN C. RATIGAN, ESQUIRE  
Attorney for the State

R. MILLS ARIAIL, JR., ESQUIRE  
Attorney for the Defendant

Linda D. Moffitt  
Circuit Court Reporter

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WITNESSES

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EVERETT P. GODFREY, JR. (SW)

Direct examination by Mr. Ariail

15

Cross-examination by Ms. Ratigan

22

Israel Colecio  
Direct examination by Mr. Ariail

1 MS. RATIGAN: May it please the Court.

2 This is the case of Israel Colecio vs. the State of  
3 South Carolina. Docket number is 2012-CP-39-1086.

4 The applicant was indicted for two counts of  
5 trafficking methamphetamine and one count of possession of  
6 a weapon during the commission of a violent crime.

7 He was represented on these charges by Mr. Godfrey.

8 The case was brought to trial, and applicant was found  
9 guilty on April 27th of 2010. Judge Welmaker sentenced him  
10 to concurrent terms of ten years for trafficking meth, ten  
11 to 28 grams; 19 years for trafficking meth, 28 to  
12 100 grams; and five years for the weapons charge.

13 The case was appealed. It was perfected in the  
14 natural of an Anders brief. The Court of Appeals dismissed  
15 the matter February 22nd of 2010. And the state's ready to  
16 proceed.

17 THE COURT: All right. Good enough.

18 Mr. Aerial.

19 MR. ARIAIL: Yes, Your Honor, we're ready to proceed.  
20 I would call my client to the stand.

21 THE COURT: All right.

22

23

24

25



Israel Colecio  
Direct examination by Mr. Ariail

1 A Yeah.

2 Q And this was a drug trafficking case involving  
3 methamphetamines, correct?

4 A Yeah.

5 Q Okay. And I guess there were three different charges  
6 against you. One was for ten to 28 grams; another was 28  
7 to a hundred; and then there was a pistol charge, correct?

8 A Yeah.

9 Q You were convicted of those and sentenced to 25 years,  
10 correct?

11 A Twenty years -- 19 years.

12 Q Nineteen. Excuse me.

13 Okay. Now, your trial -- there was an -- I guess a  
14 confidential informant, correct?

15 A Yeah.

16 Q Okay. And who had made a, I guess a, controlled buy  
17 off you, is that correct?

18 A Yeah.

19 Q Okay. Now, when you began this whole process I guess  
20 you discussed -- did you retain Mr. Godfrey?

21 A Uh-huh.

22 Q Okay. And did you discuss -- he come to talk with you  
23 about the evidence, about the discovery?

24 A No.

25 Q Did you -- were you held? were you incarcerated

Israel Colecio  
Direct examination by Mr. Ariail

1 during this whole time?

2 A I don't understand.

3 Q Were you in jail after you got arrested until your  
4 trial date?

5 A Yeah, I was.

6 Q Where were you? Were you in Pickens over here?

7 A Yeah, in Pickens.

8 Q Okay. Did he come and see you in the Pickens Law  
9 Enforcement Center?

10 A One, two times.

11 Q Two times. And how long were you in jail?

12 A Sixteen months.

13 Q Sixteen?

14 A Yeah.

15 Q Okay. Now, during that time did y'all discuss, go  
16 over, the discovery?

17 A Uh-uh.

18 Q Okay. You didn't discuss any of the statements or  
19 what the state was going to produce against you?

20 A No.

21 Q Okay. Did you know that there was a confidential  
22 informant that was going to testify?

23 A No.

24 Q Did you go over what the confidential informant was  
25 going to say?

Israel Colecio  
Direct examination by Mr. Ariail

1 A Just when I know they say they got audio and video.

2 That's all I know in my case.

3 Q So you knew that they had audio and video.

4 A Yeah. That's all I know.

5 Q Okay. Now, I know you -- you went to trial. Before  
6 that did you get any plea offers or --

7 A Yeah, 17 years.

8 Q Seventeen years?

9 A Yeah.

10 Q Okay. And I guess you declined to take that.

11 A Nah.

12 Q You didn't want that?

13 A Nah.

14 Q Okay. Now, did you discuss, I guess, what you could  
15 be looking at, or what the maximum amount of time that you  
16 could have?

17 A No. They offered me 17 years, you know, I know on the  
18 record.

19 Q Okay. But did you understand you could serve more  
20 than that if you were convicted?

21 A Not really.

22 Q In this case I think that 28 to a hundred was seven to  
23 25 years. Did you know that?

24 A Yeah, but I never got --

25 Q You never got what?

Israel Colecio  
Direct examination by Mr. Ariail

1 A I never done no drugs. That's what I...

2 Q Okay. So I guess what you're saying is the whole  
3 theory of the case was you were not in possession of the  
4 drugs that were in the house, correct?

5 A Yeah.

6 Q Okay. So you acknowledged that you made a transaction  
7 or I guess Mr. Godfrey acknowledged during the trial you  
8 made a transaction of I think it was 14 grams, is that  
9 correct?

10 A Yeah.

11 Q So you were -- you -- he admitted that that  
12 transaction occurred, correct?

13 A Yeah.

14 Q The issue was there was other drugs that were found in  
15 the house, and you were saying those were not yours,  
16 correct?

17 A Yeah, that was --

18 Q Okay. And this was not your residence, right?

19 A No.

20 Q Okay. Did you go over with Mr. Godfrey what the  
21 confidential informant was going to testify to in regards  
22 to the other drugs?

23 A No.

24 Q Did you talk to him in regards to what the Powells,  
25 the owners of the residence, were going to testify to?

Israel Colecio  
Direct examination by Mr. Ariail

1 A No.

2 Q Okay. Now, did he tell you during this time that you  
3 could testify or present evidence on your behalf at trial?

4 A No.

5 Q Did y'all have a discussion in regards to you  
6 testifying that the drugs were not yours?

7 A No.

8 Q Okay. Now, I know you've amended your post conviction  
9 relief application, and I want to make sure. We've talked  
10 about a lot of different things in regards to it. But are  
11 there other items, major items, that you have that  
12 Mr. Godfrey didn't do that you asked him to do like  
13 investigate or find other witnesses or do any additional  
14 things?

15 A No. Because I didn't call him too times. You know, he  
16 never come and see me.

17 Q Okay. So I guess the basis of your claim, what I'm  
18 understanding today, is that you just had no idea and  
19 weren't provided any information about what was going on.

20 A Yeah. I didn't really know what was going on.

21 Q Okay. Now, if you knew or had information with  
22 regards to Mr. Davis testifying or information about that  
23 would you have taken the plea that you were given?

24 A Yeah, might have taken plea to something.

25 Q You might have or you would have?

Israel Colecio  
Direct examination by Mr. Ariail

1 A I'd take a plea.

2 Q So you would have taken the 17 years instead of the  
3 19, is that right?

4 A Yeah, because he told me I'm facing 30 years.

5 Q said you were facing 30?

6 A Yeah, 30 years is what he said.

7 Q He did tell you you were facing potentially 30 years.

8 A Before. Before coming here to trial. The day we come  
9 in here to trial he told me in case they find me guilty they  
10 going to give me 30 years.

11 Q Okay. Did he offer you at that time and say, look,  
12 you can plead straight up to these charges?

13 A No. He just told me before we go in jury trial. He  
14 like you want to plead guilty by 15 years. That was before  
15 we go in jury trial.

16 Q That same day as the jury trial?

17 A That same day.

18 Q So he said you probably could get 15 years?

19 A No. He asked me did I want to plead guilty.

20 Q Okay. And you said?

21 A I say no.

22 Q Say no. But you understood you could look at -- you  
23 were looking at potentially 30 years.

24 A Yeah. But, you know, like I say, all of the drugs  
25 that's not mine, is what I'm saying.

Israel Colecio  
Direct examination by Mr. Ariail

1 Q Did you feel like you had enough information at that  
2 time to make a decision whether or not to plead guilty?

3 A Yeah, because, you know, it's a bunch of drugs. It's  
4 not mine, is what I'm saying, you know.

5 Q I'm trying to make sure I understand it. So you're  
6 saying you didn't have the information and didn't feel like  
7 you could make an informed decision at that time.

8 A Yeah.

9 Q I'm not putting words in your mouth. I'm just trying  
10 to understand.

11 A Yeah.

12 Q Okay. Were there any other -- oh, I know we discussed  
13 this. Did you discuss any motions to suppress or any, I  
14 guess, issues with the drugs or trying to keep the drugs  
15 out?

16 A I don't understand.

17 Q Basically, did you and Mr. Godfrey have a discussion  
18 about any motions that could be made to keep the jury from  
19 hearing about the drugs?

20 A No.

21 Q Okay. Did he tell you any -- give you any information  
22 about how he could do that or why he was not doing it?

23 A No.

24 Q Okay.

25 MR. ARIAIL: Your Honor, I have no further questions.

Israel Colecio  
Cross-examination by Ms. Ratigan

1 CROSS-EXAMINATION

2 BY MS. RATIGAN

3 Q So you only met with Mr. Godfrey two times at the jail  
4 and then again at the courthouse, is that right?

5 A Yeah.

6 Q All right. And you never reviewed any of the state's  
7 evidence.

8 A No.

9 Q You didn't listen to the video or the audio tapes.

10 A No.

11 Q You didn't talk about the confidential informant's  
12 statement?

13 A No.

14 Q Well, what were you talking about during these  
15 meetings?

16 A When he come and see me?

17 Q Yes, sir.

18 A He -- the first thing he come and see me, he told me  
19 that he be law -- he be my lawyer. And I asked him can I  
20 get a bond, and he told me two weeks, three weeks. So I  
21 never seen him until probably 12, 13 months later when he  
22 come and see me when he offered me the plea.

23 Q Okay. So the first meeting he just introduced  
24 himself, and then you asked about bond.

25 A Yeah.

Israel Colecio  
Cross-examination by Ms. Ratigan

1 Q And the second meeting was several months later when  
2 he brought you that 17-year agreement?

3 A Yeah.

4 Q Okay. And then you didn't see him again until the day  
5 of the trial?

6 A Yeah. Friday before the day of the trial.

7 Q Okay. So the Friday before the trial what did you  
8 talk about?

9 A When he asked me what I'm going to do, I'm going to  
10 plead guilty, and I tell him no. And he said, okay, be  
11 ready for -- for Monday.

12 Q So Mr. Godfrey asked if you wanted to plead guilty.  
13 You said no, and he said so the trial's on Monday?

14 A Yeah.

15 Q Okay. When you were at the detention center did you  
16 ever try and write Mr. Godfrey, or call him?

17 A I called him too many times. I wasn't secrea --  
18 secretary.

19 Q Okay.

20 A She always -- that's no way he call --

21 THE COURT REPORTER: I don't know what he's saying.

22 Q Slow down a little bit. Okay. Say it again.

23 A I called him. He said Gratally [sic].

24 Q Yes.

25 A She answered.

Israel Colecio  
Cross-examination by Ms. Ratigan

1 THE COURT REPORTER: I'm sorry?

2 Q Secretary. His secretary answered and told you what?

3 A He's not here, he busy. So I had to call, what's name,  
4 for collect, so I can call --

5 Q call collect?

6 A Yeah. I can't call no more.

7 Q Okay. Did you ever tell Mr. Godfrey what had happened  
8 at the Powells' house that night, like your version of what  
9 had happened?

10 A He come and see me the first time.

11 Q Okay. So you told him at that first meeting, you  
12 know, these drugs weren't mine, I don't know whose drugs  
13 these were?

14 A Yeah.

15 Q Okay. Did you give him the names of anyone you wanted  
16 to contact like some witnesses who would -- who would help  
17 your case?

18 A No.

19 Q So basically what you're saying today is that  
20 Mr. Godfrey didn't spend enough time talking with your  
21 case -- talking with you about your case and discussing  
22 what was going on?

23 A Yeah.

24 MS. RATIGAN: That's all I have, Your Honor.

25 THE COURT: Any redirect?

Everett P. Godfrey, Jr.  
Direct examination by Ms. Ratigan

1 MR. ARIAIL: Nothing further, Your Honor.

2 THE COURT: Step down. Thank you.

3 Anything further from the applicant?

4 MR. ARIAIL: Nothing further, Your Honor.

5 MS. RATIGAN: Your Honor, the state would call

6 Mr. Godfrey.

7 EVERETT P. GODFREY, JR.,

8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. RATIGAN

10 THE CLERK: State your full name for the record.

11 THE WITNESS: Everett P. Godfrey. Everyone calls me  
12 Bill.

13 Q Mr. Godfrey, do you recall representing the applicant  
14 on these charges?

15 A Yes.

16 Q And were you retained in this case?

17 A Yes.

18 Q Did you file the usual discovery motions?

19 A Yes.

20 Q Did you receive those materials from the state?

21 A Yes.

22 Q Did that include a statement, audio and video, related  
23 to the confidential informant?

24 A Yes.

25 Q Okay.

Everett P. Godfrey, Jr.  
Direct examination by Ms. Ratigan

1 A I knew that there was an audio-video of the  
2 transaction.

3 They refused to give that to me until right before the  
4 trial. I did hear what was going on, and I did see it in  
5 the solicitor's office. But I could not show it to my  
6 client because they would not release the C.D.

7 Q Mr. Colecio stated he was at the jail the entire time.  
8 Does that sound accurate?

9 A Yes. He has an ICE hold on him.

10 Q Okay. How many times would you say that you went to  
11 visit Mr. Colecio at the jail?

12 A Three or four.

13 Q Did you review with him his version of what had  
14 happened that night?

15 A Yes.

16 Q Did you review with him the state's evidence that you  
17 had received at that point?

18 A Yes.

19 Q Did you review with him the elements of the charges he  
20 was facing?

21 A Yes.

22 Q And the possible penalties?

23 A Yes.

24 Q Once you were able to listen to and watch the tapes  
25 were you able to talk to your client about what you had

Everett P. Godfrey, Jr.  
Direct examination by Ms. Ratigan

1 seen and heard on the tapes?

2 A I told him what I saw. And the C.I. was wearing a  
3 button camera, and he had a jacket on over his shirt. But  
4 the button camera -- sometimes you could see the teeth of  
5 the zipper.

6 But with the button camera what you saw first, you saw  
7 him going into the trailer. And he goes back to the  
8 bathroom. And you see a profile of a man sitting there  
9 basically on the floor with scales and a bag of drugs, has  
10 on a cap. And you see the profile only. And you see the  
11 person scooping up drugs out of a big bag of drugs onto the  
12 scale. And then you see him package it, and hands it to the  
13 C.I.

14 The C.I. is a talkative fellow. He starts talking.  
15 And Israel got up and walked out of the bathroom and walked  
16 straight towards the C.I. And so you had a full facial  
17 front. Absolutely no question that it was Israel.

18 The officers were not too far away. And within a few  
19 minutes -- like five to seven at the most -- they were there  
20 at the trailer going in. It wasn't exactly a buy-bust, but  
21 it was real close to a buy-bust.

22 Q In your opinion was there any basis for a suppression  
23 motion?

24 A No. The whole thing was -- I didn't like the way the  
25 whole -- the way the state set it up. It was the Powells'

Everett P. Godfrey, Jr.  
Direct examination by Ms. Ratigan

1 trailer. Obviously, the Powells knew what was going on when  
2 they were allowing Israel to go in there and sell drugs. It  
3 was their trailer.

4 And then you had like three other people in this  
5 single-wide trailer at the same time with children. And of  
6 course the only person charged out of it was Israel.

7 And I was trying to get the solicitor to back off and  
8 give something reasonable, because they're giving a ham and  
9 a blue ribbon to the Powells, to Octavia whatever her name  
10 was, and a couple of other people that were there in the  
11 trailer. And they would not back off.

12 Q And the offer that was made was 17 years, is that  
13 correct?

14 A The offer was made, was 17 years, that is correct. And  
15 I kept talking to the solicitor. And the last time I talked  
16 to him he told me that they had more evidence on another  
17 case on -- on Israel.

18 And I said what are you talking about. And he claims,  
19 the solicitor claims, to have an audio tape that came from a  
20 wire that was worn by an inmate at the Pickens County  
21 Detention Center.

22 And I did not hear this audio tape, but the solicitor  
23 tells me that on the audio tape Israel is talking to this  
24 inmate about the fact he knows he's going to get out on  
25 bond, Israel knows who the confidential informant is. He

Everett P. Godfrey, Jr.  
Direct examination by Ms. Ratigan

1 knows what road he goes down. And he wanted this inmate to  
2 go to a stop sign, lift his hood up, wait for the informant  
3 to come by and that when the informant got there to kill  
4 him. And I believe the price he offered to pay for it was  
5 \$5,000.

6 They never charged him with solicitation for murder.  
7 But after that audio tape became known -- at least to me --  
8 there was absolutely nothing the solicitor would do. He was  
9 just frozen in that initial offer that he made. And Israel  
10 would not accept that offer because his complaint is he did  
11 not have any drugs on him, these other people had the drugs.  
12 And, in fact, the big bag of drugs was found in the master  
13 bedroom behind the dresser, not in the bathroom.

14 Q Did you -- did you talk to your client after you found  
15 out about this Pickens Detention Center wire? Did you talk  
16 to your client about what you had learned?

17 A Yes. I told him about it.

18 Q Did you explain to him obviously the impact that it  
19 had on your ability to get any kind of a deal, a better  
20 deal?

21 A Yes. And I told him I was hoping they would not charge  
22 him with solicitation.

23 Q Mr. Felecio testified that you talked to him right  
24 before the trial about pleading guilty, either the Friday  
25 before or right before. Do you recall having such a

Everett P. Godfrey, Jr.  
Direct examination by Ms. Ratigan

1 conversation?

2 A I am sure that I did talk to him the Friday before the  
3 trial or maybe the day of the trial about the possibility of  
4 entering a plea.

5 The thing that concerned me is that the state's  
6 evidence was quite good. And we had Judge Welmaker as the  
7 judge. And Judge Welmaker sometimes does consecutive  
8 sentences, which really would have pumped it up. So I'm  
9 sure I did talk to him about are you sure you want to go to  
10 trial or do you want to plead.

11 Now, clearly, I can tell you that I did not see Israel  
12 from the first of March until the Friday before that Monday  
13 of the trial.

14 And I can tell you because I know that real well. That  
15 was when I had the first back problem. And the first back  
16 surgery was March 15 of 2010. And the only thing that I did  
17 from the first of March until right before his trial, I had  
18 a murder case in Greenville the first of March. I had that  
19 surgery on March 15. And this thing went to trial on, what,  
20 April 27?

21 And, you know, at that point in time I could -- I was  
22 okay. I just couldn't hardly walk. So I did not see him  
23 clearly the month before his trial until that Friday before  
24 the Monday.

25 Q Oh, had you discussed with him his right to testify at

Everett P. Godfrey, Jr.  
Direct examination by Ms. Ratigan

1 the trial and explain his version of events?

2 A Yes.

3 Q Did he make the decision, or is that something you  
4 recommended, that he not testify?

5 A I don't remember if I made any recommendation to him at  
6 all.

7 I know that he was questioned by Judge -- or actually  
8 it wasn't Judge Welmaker. He was sitting. There was  
9 another judge sitting, and I don't remember who it was that  
10 was on with him. But he was questioned. And there was an  
11 interpreter. And he ended up saying that, no, he was not  
12 going to testify.

13 Q Let's see. One last question.

14 Mr. Felecio stated that you never discussed with him  
15 either what the C.I. would testify to or what the Powells  
16 would testify to. Does that sound accurate?

17 A I talked to him about what the C.I. would testify to.  
18 And if what the assistant solicitor told me about the  
19 solicitation to kill the C.I. is correct, I'm assuming  
20 Israel understood it real well.

21 The Powells -- I went over what was in the discovery  
22 about the Powells. Those were -- they should have been  
23 charged.

24 Q But he kind of knew what he was walking into at trial,  
25 is that correct?

Everett P. Godfrey, Jr.  
Cross-examination by Mr. Ariail

1 A Yes.

2 Q Okay.

3 MS. RATIGAN: That's all I have, Your Honor.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. ARIAIL

7 Q Bill, just quick points in regards to this.

8 In this -- I've reviewed the transcript, but you know  
9 better than I do. Were there any motions you could have  
10 made in regards to suppressing these drugs or statements or  
11 anything from that C.I.?

12 A No. What they tried to do with the trial, they tried  
13 to put the drugs into evidence and actually put the D.V.D.  
14 in without having the C.I. testify. And I objected to that.

15 I didn't know if that C.I. was going to come or not. I  
16 knew from talking to law enforcement that he was real upset.  
17 In fact, he was real scared. And when he did testify the  
18 courtroom was sealed and everybody that was not related to  
19 the case was asked to leave to make the C.I. feel better.

20 I was hoping the C.I. wouldn't come. And that would  
21 have eliminated the D.V.D., and it would have left us with  
22 the Powells who their demeanor and the way they act was  
23 about as seedy as you can get.

24 Q Okay. And the strategy in this case -- it appears  
25 from my review of the transcript -- was basically to

Everett P. Godfrey, Jr.  
Cross-examination by Mr. Ariail

1 accept -- accept the 14 grams that he sold the C.I.

2 A Uh-huh.

3 Q And to say the other drugs were the Powells or other  
4 individuals in the house pretty much, and the gun.

5 A Yeah.

6 Q Okay.

7 A Well, the gun was iffy. You never could see it, you  
8 know. It was -- what really burned me is that the big bag  
9 of drugs ended up in the master bedroom. And there were  
10 drugs found in other places in that trailer. And I talked  
11 about it. Underneath a child that was asleep on the -- on  
12 the loveseat you had a flipping camera container with drugs  
13 in it.

14 Obviously, Israel didn't run by there when the cops  
15 came to the door and put it, you know, underneath the child.

16 There were shards found in the child's bedroom. And I  
17 didn't think it was that big of a leap for a jury to  
18 understand, hey, everybody in this thing is a druggie.

19 And they found drugs in the master bedroom. Powells  
20 say, oh, he runs in there and he puts them there. Well,  
21 what my argument to the jury was, you know, he was dividing  
22 these drugs up in the bathroom basically on the toilet.

23 Cops come to the door. If you're a druggie what you  
24 going to do? You're going to flush it. It wasn't his  
25 drugs.

Everett P. Godfrey, Jr.  
Cross-examination by Mr. Ariail

1           He's responsible for what he sold to the C.I., but he's  
2 not responsible for this 28 to a hundred. That was the  
3 Powells. I was trying to draw the distinction to save him  
4 some time.

5 Q     Now, and you say you've discussed all of this  
6 information, potential issues that you are having with this  
7 case, with Israel, is that correct?

8 A     That's correct.

9 Q     Okay. And he -- did he appear to understand this, or  
10 was there a communication issue?

11 A     I don't believe there is a communication issue. I have  
12 received letters from him. I gave him -- he wanted a copy  
13 of the file. I sent him my copy of the file, to him in  
14 prison, absent the D.V.D. because I know he can't have it.

15           He filed a grievance with the South Carolina Supreme  
16 Court. I answered that. It was unfounded.

17           I get another letter from him about the same stuff. I  
18 believe Israel knows very well what's going on. I don't  
19 think there's anything that he did not understand when I was  
20 talking with him.

21 Q     Okay.

22           MR. ARIAIL: Your Honor, I have no further questions.

23           THE COURT: Okay.

24           MS. RATIGAN: I have no further questions, and the  
25 state would rest, Your Honor.

1 THE COURT: Thank you, Mr. Godfrey. I appreciate you  
2 coming.

3 All right. Anything further from the applicant?

4 MR. ARIAIL: Nothing further, Your Honor.

5 THE COURT: All right. I'll take it under advisement.

6 END OF REQUESTED TRANSCRIPT OF RECORD  
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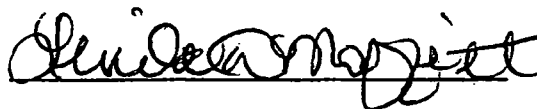
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Pickens County, South Carolina, on the 26th day of August 2013.

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

March 27, 2014



Linda D. Moffitt  
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Israel Colecio,  
S.C.D.C. No. 340535,

Applicant,

v.

State of South Carolina,

Respondent.

COURT REPORT  
PICKENS COUNTY  
SOUTH CAROLINA  
IN THE COURT OF COMMON PLEAS  
C.A. No. 2012-CP-39-0186  
2013 NOV -5 P 2: 16

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 9, 2011. The Respondent made its return on July 31, 2012. An evidentiary hearing into the matter was convened on August 26, 2013 at the Pickens County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, E.P. "Bill" Godfrey, Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the November 2009 term of the Pickens County Grand Jury for two (2) counts of trafficking methamphetamine (2009-GS-39-1750, -1751) and possession of a weapon during the

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commission of a violent crime (2009-GS-39-1752). He was represented by E.P. "Bill" Godfrey, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On April 27, 2010 the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of ten (10) years for trafficking methamphetamine (10-28 grams) (2009-GS-39-1750), nineteen (19) years for trafficking methamphetamine (28-100 grams) (2009-GS-39-1751), and five (5) years for possession of a weapon during the commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. LaNelle C. DuRant, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal in the form of an Anders<sup>1</sup> brief. The Court of Appeals dismissed the appeal. State v. Colecio, Op. No. 2012-UP-101 (S.C. Ct. App. filed Feb. 22, 2010).

### ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
  - a. "Insufficient evidence to convict."
  - b. Denial of Brady material.
  - c. "Not in possession of any drugs."

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

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<sup>1</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

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Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

**Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had three meetings with trial counsel before trial. The Applicant stated they discussed his version of events but did not review the discovery materials. The Applicant stated he knew the State had audio and video but that he never reviewed it. The Applicant stated trial counsel did not review what the State witnesses would testify to and also did not tell him that he could testify at trial. The Applicant stated trial counsel conveyed a seventeen year plea offer at their second meeting but that he rejected it. The Applicant stated they never discussed a motion to suppress. The Applicant stated trial counsel admitted to one of

the drug transactions at trial.

Trial counsel testified he filed discovery motions and reviewed the State's evidence. Trial counsel testified he reviewed the audio and video recordings in the solicitor's office and described their contents to the Applicant. Trial counsel testified there was no question the Applicant was on the videotape. Trial counsel testified he had three or four meetings with the Applicant before trial. Trial counsel testified they reviewed the State's evidence, the Applicant's version of events, and the elements and sentence ranges for the charges. Trial counsel testified the State made a seventeen year plea offer and the Applicant rejected it. Trial counsel explained it was difficult to negotiate a plea offer because the State had a recording of the Applicant attempting to solicit the murder of the confidential informant. Trial counsel testified there were no motions to be made in this case. Trial counsel testified he and the Applicant reviewed his right to testify, the confidential informant's potential testimony, and the discovery related to the witnesses. Trial counsel testified his strategy at trial was to accept the fourteen grams of methamphetamine sold to the confidential informant but dispute the gun and other drugs.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately meet with him to review the case. Trial counsel testified they had several meetings and discussed the State's evidence, the Applicant's version of events, the elements and sentencing ranges for the charges, and the potential witnesses' testimony. This Court finds trial counsel's testimony is credible. This Court further finds the Applicant failed to articulate how he

was prejudiced by the number and content of his meetings with trial counsel. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly engage in plea negotiations. This Court notes both the Applicant and trial counsel confirmed the State made a plea offer for a seventeen year sentence and the Applicant rejected it. Trial counsel fulfilled his responsibilities in conveying that plea offer. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). Trial counsel testified, however, that it was difficult to engage in plea negotiations in this case because of the Applicant's recorded conversation in which he attempted to solicit the murder of the confidential informant. This Court notes a criminal defendant does not have a constitutional right to plead guilty. See State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), aff'd as modified, 327 S.C. 121, 489 S.E.2d 617 (1997). The Applicant has failed to meet his burden of proving trial counsel was deficient.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have filed a motion to suppress. The Applicant failed to articulate the grounds upon which a suppression motion should have been argued. Trial counsel testified there were no motions to be made in this case. This Court finds that, given the facts in this case, the Applicant cannot prove he was prejudiced by the lack of a suppression motion because such a motion would have been unsuccessful. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective

assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.”) (citation omitted).

This Court finds the Applicant failed to meet his burden of proving trial counsel erred in admitting he was guilty of one of the charges. In closing argument, trial counsel concedes the evidence is clear with regard to the trafficking methamphetamine (10-28 grams) charge. (Trial transcript, pp.226-34). Trial counsel testified at the PCR hearing that his strategy was to accept guilt for the 14 grams of methamphetamine sold to the confidential informant but dispute the Applicant’s connection to the other drugs and the gun. This Court finds that, given the videotape evidence against the Applicant for the trafficking methamphetamine (10-28 grams) charge – and that the remaining drugs and gun were found scattered throughout a home not belonging to the Applicant – this was a valid trial strategy. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel); see also Huggler v. State, 360 S.C. 627, 633, 602 S.E.2d 753, 756 (2004) (“Counsel’s strategy will be reviewed under an objective standard of reasonableness.”).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

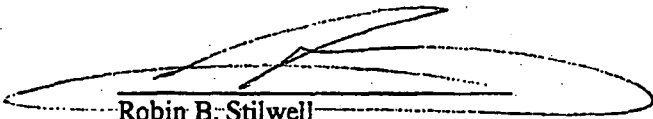
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4 day of NOV, 2013.

  
 Robin B. Stilwell  
 Presiding Judge  
 Thirteenth Judicial Circuit

GREEN South Carolina.

WITNESSES

Henry Campbell

Pickens County Sheriff's Office

12/12/2008

DOCKET NO. 2009-GS-39- 1750

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

VS.

ISRAEL COLECIO

ARREST WARRANT NUMBER

J488463

ACTION OF GRAND JURY

TRUE BILL  
DATE NOV 10 2009

*Wesley R. Baird*  
For Sperson of Grand Jury

VERDICT

0450

Indictment for

TRAFFICKING METHAMPHETAMINE

VIOLATION § 44-53-0375(C)(1)(X)

*Wesley R. Baird*  
Foreperson of Petit Jury  
Date: 4-22-09

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

INDICTMENT FOR  
TRAFFICKING METHAMPHETAMINE

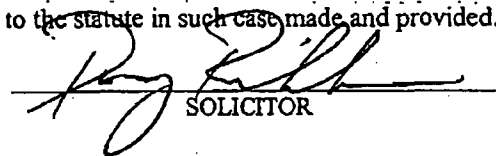
At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That ISRAEL COLECIO did in Pickens County, on or about the 11th day of December, 2008, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 10 grams of Methamphetamine. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
SOLICITOR

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Pickens )

STATE VS. )

Israel Colecio )

AKA: )

Race: H Sex: M Age: 33 )

DOB: SS#: )

Address: )

City, State, Zip: FT WORTH, TX 76106 )

DL#: SID#: )

\*CDL Ycs  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was

TO: Trafficking in Methamphetamine - 10 g or more, but less than 28 g - 1st offense

INDICTMENT/CASE#: 2009GS3901750

A/W#: J488463

Date of Offense: 12/11/2008

S.C. Code § : 44-53-0375(C)(1)

CDR Code #: 0450

SENTENCE SHEET

3-10 yrs & \$25,000

CONVICTED OF or  PLEADS

in violation of § 44-53-0375(C)(1) of the S.C. Code of Laws, bearing CDR Code # 0450

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45

w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: 78794 Israel Colecio B. N. Godfrey 13043

Cleveland, Baker

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 4/27/10

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPS \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_ pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_ \$ \_\_\_\_\_ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_ Other: \_\_\_\_\_

§ 47.12 (Public Def/Prob) \$500 \$ 75.00 \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 100.00 \_\_\_\_\_

§ 14-1-213 (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.00 \_\_\_\_\_

3% to County (if paid in installments) \$ 6.90 \_\_\_\_\_

TOTAL \$ 236.90 \_\_\_\_\_

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Harold P. Williams Presiding Judge [Signature]

Court Reporter [Signature] Judge Code: 2137

SCCA/217 (11/2009) Sentence Date: 4-27-10

ARREST WARRANT  
J-488463

STATE OF SOUTH CAROLINA  
 County/  Municipality of

Pickens  
THE STATE  
against  
08-28-17A

Address: HENDERSONVILLE, NC -

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_  
Sex: M Race: H Height: 5 Weight: 140  
DL State: TX DL #: \_\_\_\_\_ Agency ORI #: SC0390000

DOB: \_\_\_\_\_  
Prosecuting Agency: Pickens County Sheriff's Office  
Prosecuting Officer: Henry Dale Campbell - 378

Offense: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 1st offense

Offense Code: 0450  
Code/Ordinance Sec: 44-53-0375(C)(1)

This warrant is CERTIFIED FOR SERVICE in the \_\_\_\_\_ County/  Municipality of \_\_\_\_\_

is to be arrested and brought before me to be dealt with according to the law. The accused (L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant Israel Coleco on 12-12-08

RETURN WARRANT TO:  
Liberty - Pickens County Summary Court  
147 B Kay Holcombe Rd  
Liberty, SC 29657

ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA  
 County/  Municipality of

Pickens

AFFIDAVIT

ORIGINAL

S.C. Code Annotated  
April 21, 2003  
Sec. 14-15

Personally appeared before me the affiant Henry Dale Campbell being duly sworn deposes and says that defendant Israel Coleco did within this county and state on or about 12/11/2008 violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Pickens) in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

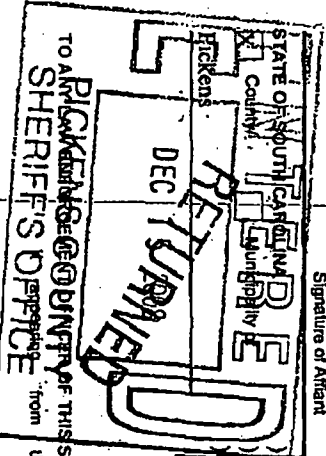
ON 12/11/08 THE DEFENDANT DID SELL A QUANTITY OF METHAMPHETAMINE IN EXCESS OF TEN (10) GRAMS, TO AN UNDERCOVER OPERATIVE WORKING UNDER THE SUPERVISION OF THE SPECIAL OPERATIONS DIVISION OF THE PICKENS COUNTY SHERIFFS OFFICE. THE PURCHASE WAS MADE UNDER AUDIO AND/OR VISUAL SURVEILLANCE. THIS OFFENSE OCCURRED WITHIN PICKENS COUNTY.  
1. INCIDENT REPORT #08-29749.

Signature of Affiant

Affiant's Address: 216 Lec Road  
Pickens 29671

Affiant's Telephone: (864)898-5500

ARREST WARRANT



TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: SHERIFFS OFFICE

on or about 12/11/2008 defendant Israel Coleco did violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Pickens) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 12/12/2008

Signature of Issuing Judge: Bruce E Anders

Judge Code: 7064

Judge's Address: 147 B Kay Holcombe Road  
Liberty, SC 29657-1543

Judge's Telephone: (864)843-5821

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

DEC 29 2008

BAIL set by

Judge

on

Type and Amount

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, nol. proa., etc.)

Disposition:

Sentence:

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

WITNESSES

Henry Campbell

Pickens County Sheriff's Office

12/12/2008

ARREST WARRANT NUMBER

J488464

ACTION OF GRAND JURY

TRUE BILL

DATE NOV 10 2009

*[Signature]*  
Foreperson of Grand Jury

VERDICT

*[Signature]*  
Foreperson of Petit Jury

4-27-10  
Date:

DOCKET NO. 2009-GS-39- M.F.J.

1751

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

vs.

ISRAEL COLECIO

0392

Indictment for

TRAFFICKING METHAMPHETAMINE

VIOLATION § 44-53-0375(C)(2)(

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

INDICTMENT FOR  
TRAFFICKING METHAMPHETAMINE

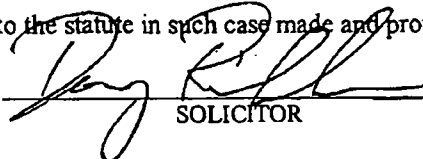
At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That ISRAEL COLECIO did in Pickens County, on or about the 11th day of December, 2008, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 28 grams of Methamphetamine. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Pickens VS. STATE

INDICTMENT/CASE#: 2009GS3901751

Israel Colecio

A/W#: J488464

AKA:

Date of Offense: 12/11/2008

Race: H Sex: M Age: 33

S.C. Code §: 44-53-0375(C)(2)

DOB: SS#:

CDR Code #: 0392

Address:

City, State, Zip: FT WORTH, TX 76106

DL#: SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

7-25 yrs & \$50,000

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Trafficking in Methamphetamine - 28 g or more, but less than 100 g - 1st offense

in violation of § 44-53-0375(C)(2) of the S.C. Code of Laws, bearing CDR Code # 0392

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Cleveland, Baker SC Bar# 79744 Defendant Israel Colecio Attorney for Defendant Bill Godfrey SC Bar# 13043

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 19 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP Total: \$ plus 20% fee: \$ Payment Terms: Set by SCDPPPS

Table with columns for Recipient, \*Fine, and various assessment codes (e.g., § 14-1-206, § 14-1-211(A)(1), etc.) with corresponding dollar amounts.

Clerk of Court/ Deputy Clerk: Harold P. Wellborn Jr. Court Reporter: Donette Hanko SCCA217 (11/2009)

days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: [Signature] Judge Code: 2137 Sentence Date: 4-27-10

ARREST WARRANT

J-488464

STATE OF SOUTH CAROLINA  
 County  
 Municipality of

Pickens

THE STATE  
08-28174

Israel Colecio

against

Address:

HENDERSONVILLE, NC -

Phone:

Sex: M Race: H Height: 5' 5" Weight: 140

DL State:

TX DL #: Agency ORI #: SC03900000

DOB:

Prosecuting Agency: Pickens County Sheriff's Office

Prosecuting Officer: Henry Dale Campbell - 328

Offense: Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 1st offense

Offense Code: 0392

Code/Ordinance Sec: 44-53-0375(C)(2)

This warrant is  CERTIFIED FOR SERVICE in the  County/  Municipality of

is to be arrested and brought before me to be dealt with according to the law. The accused (L.S.)

Date: Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant Israel Colecio on 12-17-08

RETURN WARRANT TO:

Liberty - Pickens County Summary Court  
147 B Kay Holcombe Rd  
Eiberty, SC 29657

ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA

County/  Municipality of

Pickens

Henry Dale Campbell

AFFIDAVIT

Personally appeared before me the affiant Israel Colecio being duly sworn deposes and says that defendant Israel Colecio did within this county and state on or about 12/11/2008 violate the criminal laws of the State of South Carolina (or ordinance or  County/  Municipality of Pickens) in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON 12/11/08 THE DEFENDANT DID HAVE IN POSSESSION OR CONTROL A QUANTITY OF METHAMPHETAMINE IN EXCESS OF TWENTY-EIGHT (28) GRAMS. SAID METHAMPHETAMINE WAS LOCATED DURING A CONSENT SEARCH. THIS OFFENSE OCCURRED WITHIN PICKENS COUNTY.  
1. INCIDENT REPORT #08-29749.

Signature of Affiant

STATE OF SOUTH CAROLINA  
 County/  Municipality of

Pickens

Address

216 Lec Road  
Pickens 29671-  
Affiant's Telephone (864)898-5500

ARREST WARRANT

PICKENS COUNTY SHERIFF'S OFFICE  
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: I appear to believe that the above affiant that there are reasonable grounds to believe that

on or about 12/11/2008 defendant Israel Colecio did violate the criminal laws of the State of South Carolina (or ordinance of Pickens) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 28 g or more, but less than 100 g - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me on 12/12/2008 (L.S.)

Signature of Issuing Judge  
Bruce E. Anders

Judge Code: 7064

Judge's Address

147 B Kay Holcombe Road  
Liberty, SC 29657-1543  
Judge's Telephone (864)843-5821

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL ORIGINAL

ORIGINAL ORIGINAL

BAIL set by

Judge

*Adler*

on

*12/2/68*

Type and Amount

*Dep'n ad*

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

WITNESSES

Henry Campbell

Pickens County Sheriff's Office

12/12/2008

DOCKET NO. 2009-GS-39-  
M/FJ

1752

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

VS.

ISRAEL COLECIO

ARREST WARRANT NUMBER

J488465

ACTION OF GRAND JURY

ROE 885

14th NOV 10 2009

*[Signature]*  
Foreperson of Grand Jury

VERDICT

0549

Indictment for

POSSESSION OF A WEAPON DURING THE  
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

*[Signature]*  
Foreperson of Petit Jury

4-27-0  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

INDICTMENT FOR  
POSSESSION OF A WEAPON DURING THE COMMISSION OF A  
CRIME

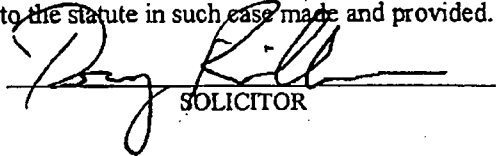
At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That ISRAEL COLECIO did in Pickens County, on or about the 11th day of December, 2008, possess or visibly display a Lorcin .32 cal. handgun during the commission or attempted commission of a violent crime, to wit: drug trafficking. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Pickens  
STATE VS.

INDICTMENT/CASE#: 2009GS3901752

Israel Colecio

A/W#: J488465

AKA:

Date of Offense: 12/11/2008

Race: H Sex: M Age: 33

S.C. Code § : 16-23-0490

DOB: SS#:

CDR Code #: 0549

Address:

City, State, Zip: FT WORTH, TX 76106

DL#: SID#:

SENTENCE SHEET

5 years

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Weapons / Poss. weapon during violent crime

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] Cleveland, Baker SC Bar# 78744 Defendant [Signature] Bill Godfrey Attorney for Defendant SC Bar# 13043

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 5 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 4/27/10  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence.) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient:	_____
*Fine:	\$ _____
§ 14-1-206 (Assessments 107.5 %)	\$ _____
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§ 56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 56-1-286 (DUI Breath Test)	\$25 \$ _____
§ 47.12 (Public Def/Prob)	\$500 \$ _____
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ 75.00
§ 14-1-213 (Drug Court Surcharge)	\$100 \$ _____
§ 50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
§ 90.7 (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$ 133.90

Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning: \_\_\_\_\_  
Substance Abuse Counseling   
Random Drug/Alcohol testing   
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_  
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk [Signature]  
Court Reporter: [Signature]  
SCC 017 (11/2009)

Presiding Judge [Signature]  
Judge Code: 2/87  
Sentence Date: 4-27-10

ARREST WARRANT

J-488465

STATE OF SOUTH CAROLINA  
 County/  Municipality of

Pickens

THE STATE  
age/naht 08-28174

Israel Colecio

Address: Dr.

HENDERSONVILLE, NC.

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_

Sex: M Race: H Height: 5 Weight: 140

DL State: TX DL #: \_\_\_\_\_

DOB: \_\_\_\_\_ Agency ORI #: SC0390000

Prosecuting Agency: Pickens County Sheriff's Office

Prosecuting Officer: Henry Dale Campbell - 328

Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the \_\_\_\_\_  
 County/  Municipality of

is to be arrested and brought before me to be dealt with according to the law. The accused (L.S.)

Date: \_\_\_\_\_ Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant Israel Colecio on 12-12-08

Signature of Court Clerk/Enforcement Officer  
Polina Finkelstein  
Signature of Court Clerk/Enforcement Officer

RETURN WARRANT TO:  
Liberty - Pickens County Summary Court  
147 B Kay Holcombe Rd  
Liberty, SC 29657

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STATE OF SOUTH CAROLINA  
 County/  Municipality of

Pickens

Personally appeared before me the affiant Henry Dale Campbell being duly sworn deposes and says that defendant Israel Colecio did within this county and state on or about 12/11/2008 violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Pickens) in the following particulars:

DESCRIPTION OF OFFENSE Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

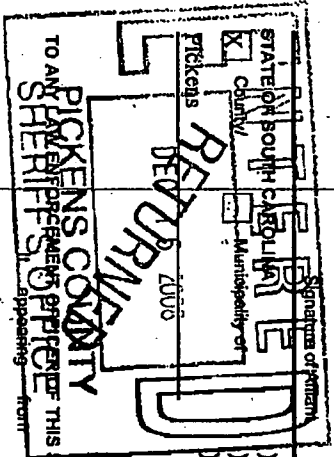
I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON 12/11/08 THE DEFENDANT DID HAVE IN HIS POSSESSION OR CONTROL, A LORCIN 32 CAL HANDGUN DURING THE COMMISSION OF A VIOLENT CRIME (DRUG TRAFFICKING). THE HANDGUN WAS LOCATED DURING A CONSENT TO SEARCH. THIS OFFENSE OCCURED WITHIN PICKENS COUNTY.  
1. INCIDENT REPORT #08-29749.

AFFIDAVIT

ORIGINAL

12/29/2008  
S.C. Academy  
Rec'd 12/29/08  
Rec'd 12/29/08



Amant's Address 216 Lec Road  
Pickens 29671-  
Amant's Telephone (864)898-5500

ARREST WARRANT

TO ANY OFFICER APPEARING FROM THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: PICKENS COUNTY SHERIFF'S OFFICE

on or about 12/11/2008 defendant Israel Colecio did violate the criminal laws of the State of South Carolina (or ordinance of  County/  Municipality of Pickens) as set forth below.

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 12/12/2008 (L.S.)

Signature of Issuing Judge Bruce E Anders Judge Code: 7064 Judge's Address 147 B Kay Holcombe Road  
Liberty, SC 29657-1543 (864)843-5821

Issuing Court:  Magistrate  Municipal  Circuit

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DEC 29 2008

BAIL set by

Judge: Rebo

on 12/21/01

Type and Amount: Debits

Name of Surety: \_\_\_\_\_

PRELIMINARY HEARING held by

Judge \_\_\_\_\_

on \_\_\_\_\_

Defendant Attorney: \_\_\_\_\_

Decision: \_\_\_\_\_

DISPOSITION before

Judge \_\_\_\_\_

on \_\_\_\_\_

by \_\_\_\_\_

(Indicate jury trial, bench trial, plea, nol. prosc, etc.)

Disposition: \_\_\_\_\_

Sentence: \_\_\_\_\_

JURORS

WITNESSES

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

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Address: \_\_\_\_\_

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Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

CODEFENDANTS