

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Abbeville County
R. Lawton McIntosh, Circuit Court Judge
2009-CP-01-00105

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OCT 21 2014

S.C. Supreme Court

MARSHALL MILLER, #249557,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2013-001076

APPENDIX

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RONNIE McALLISTER - CROSS

- 1 A No one else besides myself and Lieutenant
2 Gunter or Bobby Grogan.
- 3 Q Do you know who took this picture of the fire
4 burn?
- 5 A No, sir. That was outside, probably one of
6 the SLED agents.
- 7 Q So, we don't have a picture of where you
8 found these, items 21 and 23?
- 9 A I can tell you where they were found. They
10 were found in the office area of Billy Moore's
11 shop.
- 12 Q Where in the office area?
- 13 A As you enter the office area you go down and
14 then there was a corner back to the right in the
15 back of the office area, those two packages were up
16 on a shelf back in the right corner of the office
17 area.
- 18 Q All right.
- 19 A The deepest part of the office.
- 20 Q Now, did you send any of these items to SLED
21 for analysis?
- 22 A No, sir.
- 23 Q And this, looking at Exhibit 23, it appears
24 to be some residue on that spoon?
- 25 A Yes, sir.

RONNIE McALLISTER - CROSS

1 Q And SLED is capable of determining whether or
2 not that is residue of any illegal drug?

3 A Sometimes we can, sometimes we can't.

4 Q You didn't try in this case?

5 A No, sir.

6 Q All right. And there is no burn marks on the
7 back either, does it?

8 A No, sir.

9 Q Is that correct?

10 A Yes, sir.

11 Q And this other spoon in there has no
12 indication of any burn marks on the back?

13 A I believe that does have some burn marks on
14 the back of it, yes, sir.

15 Q You think that does have a little burn mark
16 on the back?

17 A Yes, sir.

18 Q What indicates a little burn mark?

19 A If you hold them both up you can see that one
20 is blacker in the crevices than the other one is.

21 Q Okay. So, the one that's bent is blacker in
22 the crevices than the other?

23 A Yes, sir. You can tell that one had a heat
24 source to it.

25 Q Did you send this to SLED or anywhere for

RONNIE McALLISTER - CROSS

- 1 fingerprint analysis?
- 2 A No, sir.
- 3 Q You didn't send that for any analysis, did
4 you?
- 5 A No, sir.
- 6 Q And that also appears not to have any burn
7 marks on the back?
- 8 A On the back of it, no, sir, but you can tell
9 on the front where it has been heated.
- 10 Q So, this was heated on this side?
- 11 A No, sir. It will turn colors, if it's heated
12 on the back it will turn that brown color where you
13 see the remnants of powder.
- 14 Q But you didn't send that for any analysis?
- 15 A No, sir.
- 16 Q You found several syringes?
- 17 A Yes, sir.
- 18 Q And I believe you found in one of the trucks,
19 I'm not sure exactly where it was found, there was
20 a Chevrolet truck found there, right?
- 21 A Yes, sir.
- 22 Q It was a Z71 Chevrolet truck?
- 23 A I believe you're correct.
- 24 Q Okay. Were you aware of what was found in
25 it?

RONNIE McALLISTER - CROSS

1 A I know there was an anhydrous ammonia tank
2 found in the tool box in the back of it.

3 Q Were you aware of any, a package of BD ultra
4 fine needles found in that truck?

5 A No, sir.

6 Q Okay.

7 Q Now, when Mr. Moore got there you asked him
8 to sign a permission to search his garage?

9 A Yes, sir.

10 Q Which he granted with no problem?

11 A Yes, sir.

12 Q In fact I believe he told you he had already
13 signed a permission for SLED to search the garage?

14 A No, he did not.

15 Q He did not? Do you know if one had been
16 signed earlier?

17 A Not to my knowledge.

18 Q Do you know if SLED had looked through the
19 garage earlier, before you got there?

20 A Not to my knowledge.

21 Q All right.

22 A I think if they looked they were looking for
23 Marshall Miller, not for controlled substances.

24 Q Now, who was with you when you found those
25 items?

RONNIE McALLISTER - CROSS

1 A Sir?

2 Q Who was with you when you found those items?

3 A Either Bobby Grogan or Lieutenant Gunter.

4 Q You don't remember which one?

5 A Both.

6 Q Both? Both were there for all the items?

7 A Yes, sir.

8 Q So, it wasn't either, it was both?

9 A My answer is that Lieutenant Gunter and Bobby
10 Grogan was with me when the items were found.

11 Q Okay. Now, we have a report here, I believe
12 filled out by Doug Gunter and Bobby Grogan,
13 indicating they found the items, didn't they?

14 A No, sir, this is my handwriting.

15 Q This is your handwriting?

16 A Yes, sir.

17 Q It says found by Doug Gunter, doesn't it?

18 A That's correct.

19 Q And found by Bobby Grogan, doesn't it?

20 A That's correct.

21 Q It doesn't say found by Ronnie McAllister or
22 found by me?

23 A That is my report and they were found in my
24 presence when they were found.

25 Q But you didn't put in there found by you,

RONNIE McALLISTER - CROSS

1 correct?

2 A That report doesn't indicate they were found
3 by me, yes, sir, you're right, Mr. Wise.

4 Q So, how long were you there at the garage
5 before you left?

6 A Several hours.

7 Q Several hours, and in the little office area
8 where many of these items that you didn't get
9 pictures of were found you also found some
10 identification items?

11 A Yes, sir.

12 Q All right. And those identification items
13 were not belonging to Billy Moore?

14 A Some of them were, yes, sir.

15 Q Well, what items did you find belonging to
16 Billy Moore?

17 A There was a business card belonging to Billy
18 Moore.

19 Q Okay. Let me rephrase it. You found some
20 identification items also belonged to a third
21 person?

22 A Yes, sir.

23 Q Okay. In that area where these items were
24 found?

25 A No, sir.

RONNIE McALLISTER - CROSS

- 1 Q They weren't in the area?
- 2 A Not in the general area, no, sir.
- 3 Q They were in the same room?
- 4 A No, sir.
- 5 Q They weren't? Did you take one of Billy
- 6 Moore's business cards?
- 7 A Sir?
- 8 Q Did you take one of Billy Moore's business
- 9 cards?
- 10 A Did I take one?
- 11 Q Yes, did you take one for evidentiary
- 12 purposes?
- 13 A I seized one, yes.
- 14 Q Do you have it with you?
- 15 A Yes, sir.
- 16 Q Where is it?
- 17 A He had it over there, he has it in evidence.
- 18 Q Could you get it for me?
- 19 A Yes, sir.
- 20 Q And that was found in something that
- 21 obviously did not belong to Billy Moore, though, is
- 22 that correct?
- 23 A That's correct.
- 24 Q Is that correct?
- 25 A Yes, sir.

RONNIE McALLISTER - CROSS

1 MR. WISE: Okay, thank you.
2 THE COURT: Redirect, Mr. Hood?
3 MR. HOOD: I'll be brief.
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RONNIE McALLISTER - REDIRECT

1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. HOOD:

3 Q Major McAllister, do you remember a line of
4 questioning from Mr. Varner that you don't know
5 when that fire occurred, it could have occurred
6 last week or last year, do you remember that line
7 of questioning?

8 A Yes, sir.

9 Q Could that fire have occurred after the day
10 that you seized the ashes out of it?

11 A No, sir.

12 Q Do you remember the line of questioning from
13 Mr. Varner that concerned whether or not a
14 gentleman by the name of Ernest Covan was present?

15 A Yes, sir.

16 Q Is it possible, Major McAllister, if Mr.
17 Covan was present, for you not to see him?

18 A It's possible.

19 Q Is it possible he was already transported at
20 the time you arrived?

21 A It's possible.

22 Q Is it possible that he was there?

23 A It's possible.

24 Q Did you see him?

25 A No, I did not.

RONNIE McALLISTER - REDIRECT

1 Q Does that mean he was not there that day?

2 A No, it does not.

3 MR. HOOD: No further questions, Your Honor.

4 THE COURT: Mr. Varner?

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QUESTIONS BY MR. VARNER:

THE COURT: You're limited on redirect, excuse me, on recross to what was brought up on redirect.

A Yes, sir.

A As long as it takes to drive from my office or close to my office, to up there, about ten minutes.

A No, I do not.

MR. VARNER: That's all the questions I have.

THE COURT: Mr. Wise?

MR. WISE: Nothing further.

RONNIE McALLISTER - RECROSS

1 THE COURT: Anything further?

2 MR. HOOD: No, sir, Your Honor.

3 THE COURT: Thank you very. Come down, sir.
4 (Witness excused).

5 THE COURT: Now, that was marked for
6 identification, was not entered into evidence.

7 MR. HOOD: That's correct, Your Honor.

8 THE COURT: All right. Ladies and gentlemen
9 of the jury, we will take a luncheon recess at this
10 time. Please do not discuss the matter of the case
11 by, between and among yourselves nor with any other
12 person. If anyone does mention this case to you
13 please identify yourself as a juror and tell them
14 that you are not permitted to discuss it with them.
15 If any person or persons persist in trying to
16 discuss the case with you after you alert them that
17 you are a juror it's your responsibility to use
18 every means and measure at your disposal to
19 identify such people or person, because that would
20 be highly irregular, wrong and illegal. So, that
21 would be reported to one of the bailiffs or to the
22 court clerk were it to happen.

23 If there were to be any media coverage such
24 as newspaper, radio or television of this trial, as
25 soon as you realize what you are seeing, hearing or

1 reading has to do with this trial please
2 immediately disregard it, completely disabuse
3 yourselves of it, do not consider it at all because
4 the evidence upon which you will decide this case
5 will be presented during the course of the trial in
6 this courtroom.

7 Do not discuss the case or permit anyone to
8 discuss the case with you and have a pleasant
9 luncheon and be back in the jury room at 2:30.

10 Thank you very much. Everyone else remain
11 seated.

12 (The jury was excused from the courtroom).

13 BAILIFF: That's all of them.

14 THE COURT: Anything from the State before we
15 close the record?

16 MR. HOOD: Very briefly, Your Honor. We
17 would ask that Major McAllister be excused as a
18 witness.

19 THE COURT: Any objection?

20 MR. VARNER: No objection.

21 MR. WISE: No objection.

22 THE COURT: And were he to be needed, then
23 Mr. McAllister, Major McAllister, are you going to
24 be in and about the area were you to be needed?

25 RONNIE McALLISTER: Yes, sir, I can be back

1 in about twenty minutes.

2 THE COURT: All right, sir, you may be
3 excused.

4 Yes, sir?

5 MR. HOOD: The second thing, Your Honor, I
6 have two fingerprint analysts here from SLED. I
7 believe that we can enter into a stipulation and,
8 you know, not have to call them, that we can all
9 agree on, possibly if we can come back a little bit
10 before lunch and arrive at a stipulation that we
11 all agree on to that effect.

12 MR. WISE: We have agreed to one in
13 principle.

14 THE COURT: How about 2:15? Will fifteen
15 minutes be enough?

16 MR. VARNER: That will be fine.

17 MR. WISE: That's fine, probably don't need
18 but ten.

19 MR. HOOD: I think we can agree, I know the
20 time issues that are involved and the length that
21 an expert witness --

22 (A juror exited the courtroom from the
23 jury room).

24 THE COURT: Did the juror hear anything?

25 MR. WISE: I don't think so.

1 THE COURT: All right. Anyway, 2:15 will be
2 sufficient for a conference on the possible
3 stipulation?

4 MR. HOOD: Yes, sir.

5 THE COURT: Anything else.

6 MR. HOOD: And Mr. Crout has something, Your
7 Honor.

8 MR. CROUT: Your Honor, this matter is one I
9 foresee coming up and it relates unfortunately back
10 to the infamous B.J.'s Wholesale Club card. The
11 State is intending to introduce through a witness
12 the fact that Mr. Miller had an account at B.J.'s
13 Wholesale, the number of that account and the
14 purchases that were made on the account. The State
15 also intends to introduce a witness that will
16 identify why the particular items purchased are
17 relevant in this particular case. The State
18 intends to inquire of that witness what B.J.
19 Wholesale is, what kind of business it is, do you
20 have to have a card, things of that nature.

21 The State is not intending to refer to the
22 B.J.'s Wholesale Club card itself in this
23 particular case but there would be a line of
24 questioning coming up relating to having a card to
25 make purchases there, and what I was concerned

1 about is any inferences or any possibility that
2 since that item has, since that issue has been
3 discussed with the jury, I want to maintain the
4 substance of the objection that Mr. Varner raised
5 but not be disqualified from asking those questions
6 as it relates to not necessarily Mr. Miller's
7 relationship to the items that were found, as that
8 issue is raised via the B.J.'s Wholesale Club card,
9 but talk about the fact you have to have a card in
10 reference to the fact he was a member at this place
11 and shopped there.

12 I hope that's not too confusing.

13 MR. VARNER: I don't have an objection if
14 they have a person here from B.J.'s talking about
15 the purchases he made, his account that he had or
16 the number of the account or what his purchases
17 were, but it's totally irrelevant and immaterial to
18 mention you have to have a card, because that is
19 going to draw a direct inference to something that
20 the Court has already ruled is not in evidence.
21 There is no need to say you have to have a card to
22 do this. They can say you can be a member, but
23 that's fine, stop at that stage, and I would object
24 to going to the card.

25 THE COURT: The Court appreciates your

1 position but the witness, if it is a rule that a
2 card is required, then the witness can testify that
3 a card is required.

4 MR. CROUT: Yes, sir.

5 THE COURT: The curative instruction was
6 given to the jury that that card would be
7 disregarded completely and absolutely and it will
8 not be shown to the jury at all, but your witness
9 can testify that cards are required of any
10 purchaser if that's the case, if that is the matter
11 for any purchaser.

12 MR. CROUT: Yes, sir, and as the issue arose
13 related to the actual presentation of the card, I
14 did not anticipate this even coming in, and so what
15 I wanted to do was make sure that not only the
16 Court was aware there would be that line of
17 questioning pursued, but also make sure that the
18 instruction to disregard that particular card is
19 not somehow utilized or inferred on the part of the
20 jury to mean disregard the questioning or the
21 answers of the particular person who will be
22 testifying from B.J.'s Wholesale.

23 THE COURT: It seems a better part of
24 discretion not to mention the card at all.

25 MR. CROUT: Yes, sir.

1 THE COURT: Anything further?

2 MR. CROUT: Yes, sir. Just so I'm clear, I
3 have no intention of mentioning that card, the card
4 or anything about the card, but I would like to at
5 least establish this is a wholesale business
6 similar to Sam's Wholesale or other wholesales
7 where you have an account, the reason you have an
8 account number and a card and make purchases on
9 that card and on that account, and that is why it's
10 significant, because this record of transactions
11 this person is going to be talking about is, I
12 mean, the transaction occurs as a result of the
13 card, it's not put on a Visa card, it's not put on
14 any other type of charge card, it's a purchase on a
15 particular account from that card.

16 THE COURT: Just so we don't mention the
17 card. That has been ruled out of evidence.

18 MR. CROUT: Yes, sir.

19 MR. VARNER: Your Honor --

20 THE COURT: And don't even talk about it,
21 it's though best, as aforesaid, better that we not
22 even mention that card.

23 MR. CROUT: Yes, sir.

24 THE COURT: Since you say that the witness is
25 anticipated to testify that is the method and mode

1 of business.

2 MR. CROUT: Yes, sir, and that's it.

3 THE COURT: So be it.

4 MR. VARNER: Your Honor, just so the record
5 is clear, I'm not arguing with the ruling, just so
6 the record is clear, my objection as to the card
7 related to its relevancy, and number two, by
8 bringing it in, it draws in impermissible
9 inference. I just want that for the record.

10 THE COURT: Now, the position you take is
11 clear and the record will of course preserve your
12 position, but the Court sees no problem with the
13 anticipated witness testifying about purchases and
14 the mode and method of doing business at that place
15 and that a card is required.

16 MR. VARNER: Your Honor --

17 THE COURT: But to draw the jurors' attention
18 by the Court or by anybody to that piece of
19 document is not going to be permitted.

20 MR. VARNER: I understand. Your Honor, I
21 wasn't arguing, I just wanted to protect the
22 record.

23 THE COURT: Thank you, Mr. Varner. Anything,
24 Mr. Wise?

25 MR. WISE: Nothing.

1 THE COURT: Anything from any quarter?

2 MR. HOOD: Nothing.

3 THE COURT: We are in recess, please.

4 (Recessed at 1:06 p.m.).

5 (Reconvened at 2:38 p.m.).

6 THE COURT: Thank you, ladies and gentlemen.

7 Be seated. The record is open, we're in session in
8 the matter of the State of South Carolina versus
9 Marshall Miller and others as defendants. This
10 case, Marshall Miller and Billy Moore are being
11 tried in indictment number 2002-GS-47-32.

12 Is there anything from the State before the
13 jurors come in, or from any quarter?

14 MR. HOOD: Yes, sir. I believe we have a
15 stipulation between all parties.

16 THE COURT: All right, would you say it?

17 MR. HOOD: Yes, sir. And I'm not sure, I
18 will give you the general frame of it and then I
19 will let the Court with the defense attorneys'
20 permission phrase it. There were fingerprints
21 taken from the items that were located in Georgia
22 which have already been testified to, which are not
23 in evidence yet but we intend on moving them into
24 evidence very shortly. And there were fingerprints
25 taken from the items in the green bag which has

1 been referenced, which was on top of the trailer at
2 Mr. Moore's shop. There were prints lifted off
3 items from Georgia and off items from the bag on
4 the top of the trailer but neither, none of the
5 prints match either Billy Moore or Marshall Miller.

6 MR. VARNER: So stipulated, Your Honor, on
7 behalf of Mr. Miller.

8 MR. WISE: And so stipulated on behalf of Mr.
9 Moore.

10 MR. HOOD: And, Your Honor, the only reason
11 I'm adding this is to forego us having to call an
12 extra witness. The forensic experts that we would
13 be calling from SLED would be testifying that just
14 because an individual touches a surface does not
15 mean that a fingerprint will be left.

16 MR. WISE: That's correct.

17 THE COURT: Is the stipulation to include the
18 implication to the jury that there were
19 fingerprints actually lifted, or that an attempt
20 was made and no prints were lifted?

21 MR. WISE: They were lifted.

22 MR. VARNER: Fingerprints were in fact
23 lifted.

24 MR. HOOD: Both, there was an attempt to take
25 fingerprints on some items. There were

1 fingerprints lifted, however no fingerprints that
2 were lifted match either defendant on trial, and in
3 fact came back to no one.

4 THE COURT: At any rate, not related to
5 either one of these defendants?

6 MR. HOOD: That's exactly right, Your Honor.

7 MR. VARNER: In regard to the second
8 stipulation, I can agree to it with this one word
9 put in, and I'm not going to quote it verbatim, but
10 what his stipulation was is basically this. Just
11 because an article has been touched does not, and
12 here the the word I want, does not necessarily mean
13 that a fingerprint will be left on that article.

14 MR. HOOD: The State has no problem with
15 that, Your Honor.

16 MR. VARNER: Sometimes it happens, sometimes
17 it doesn't.

18 MR. HOOD: That is what the experts would be
19 testifying to.

20 THE COURT: Well, how many prints are we
21 actually talking about, if you know? Was it one
22 print actually obtained from the items in Georgia
23 and one print actually obtained from the items in
24 the green bag on top of the trailer next to the
25 shop, or more than one?

1 MR. HOOD: If you will give me just one
2 minute, Your Honor, I have their reports here.

3 MR. VARNER: Your Honor, when you ask that
4 question, are you referring to one print, or prints
5 belonging to more than one individual?

6 THE COURT: Well, both.

7 MR. HOOD: On the items taken from Georgia,
8 Your Honor, there was one latent impression found.

9 THE COURT: How about the green bag?

10 MR. HOOD: On the items, from the green bag
11 items on top of the trailer, there was one, two,
12 three four, five, five prints lifted, Your Honor.

13 THE COURT: The proposed stipulation is as
14 follows. The jury will be informed that
15 fingerprints were taken from the items found in
16 Georgia and fingerprints were taken from the items,
17 items found in the green bag on top of the trailer
18 next to Mr. Moore's shop. Prints were lifted but
19 they were not related to either of these defendants
20 Mr. Miller or Mr. Moore. An effort to identify
21 other fingerprints was not successful.

22 That's stipulation number one, if you will.
23 Any objection?

24 MR. WISE: I think actually one print was
25 taken from the items in Georgia and five prints

1 were taken from the items on top of the trailer,
2 and none of them were identified as being from Mr.
3 Moore or Mr. Miller.

4 THE COURT: Yes, sir, that's correct.

5 MR. VARNER: On behalf of Mr. Miller so
6 stipulated, with the additions made by Attorney
7 Wise.

8 THE COURT: Say that again, Mr. Varner.

9 MR. VARNER: On behalf of Mr. Miller, so
10 stipulated as the Court read it, with the addition
11 of Attorney Wise's numerical changes.

12 THE COURT: All right. It will be repeated.
13 The jury will be informed that one fingerprint was
14 taken from the items found in Georgia and five
15 fingerprints were taken from the items found in the
16 green bag on top of the trailer next to Billy
17 Moore's shop. Prints were taken, that will be
18 prints taken, that the prints taken were not
19 related to either Marshall Miller or Billy Moore.
20 An effort to identify other fingerprints was not
21 successful.

22 Any objection to that?

23 MR. WISE: No objection.

24 MR. VARNER: No objection.

25 THE COURT: Number two. One latent or

1 identifiable print was found on the items in
2 Georgia and five found on the items in the green
3 bag. That's already been covered, I tried to --

4 MR. WISE: Actually it may sound better the
5 way you worded it because the sentence is shorter.

6 THE COURT: I don't want to go back. I think
7 I already covered it in another sentence.

8 MR. WISE: I think yours is better, Judge,
9 because the sentence is shorter.

10 MR. WISE: I've convoluted the thing. The
11 same point.

12 THE COURT: All right, we'll combine both one
13 and two. The jury will be told that a fingerprint
14 was taken from the items found in Georgia and
15 fingerprints were taken from the items found in the
16 green bag on top of the trailer next to Billy
17 Moore's shop. The prints taken were not related to
18 either Marshall Miller or Billy Moore. An effort
19 to identify other fingerprints was not successful.
20 One latent or identifiable print was found on the
21 items located in Georgia and five latent or
22 identifiable prints were found in or on the items
23 found in the green bag on top of the trailer next
24 to Billy Moore's shop. The jury will further be
25 instructed that items may be touched by fingers but

1 no prints or smudges or any indication of
2 fingerprints left.

3 MR. VARNER: The stipulation I wanted was it
4 will not necessarily leave fingerprints because
5 sometimes it will, sometimes it won't, so my
6 stipulation would include the word necessarily,
7 because as I understand what his expert would say
8 is sometimes it will, sometimes it won't.

9 THE COURT: The Court is trying to say the
10 same thing in a different way. I think the experts
11 use the term a smudge, it was a smudge.

12 MR. WISE: Right.

13 THE COURT: But they can't identify a smudge,
14 but it will shorten it to use it your way. This is
15 not exactly what you said, Mr. Varner, but I
16 believe it is what the expert would say, I believe,
17 having heard experts testify on this matter, items
18 may be touched by fingers but not necessarily leave
19 identifiable prints or any prints.

20 MR. WISE: That's correct.

21 MR. VARNER: I'll stipulate to that.

22 THE COURT: That takes in the smudge marks
23 that they sometimes talk about.

24 MR. WISE: That's correct.

25 THE COURT: Or the prints they couldn't

1 identify because they were not clear.

2 Any objection to any of those stipulations?

3 MR. HOOD: None from the State, Your Honor.

4 MR. VARNER: None from Miller, Your Honor.

5 MR. WISE: None for Mr. Moore.

6 THE COURT: Anything further from the State
7 for the record?

8 MR. HOOD: I just want to ensure that we're
9 stipulating that but I don't want to be prevented
10 from using the items outside the business cards
11 that we have discussed. I mean, these items, we
12 still plan on admitting these items through proper
13 foundation and what not.

14 MR. WISE: Sure.

15 MR. HOOD: We just don't want to have to get
16 into the fingerprint stuff that's not necessary.

17 MR. WISE: That's correct.

18 MR. HOOD: No misunderstanding.

19 THE COURT: You are saying that you don't, by
20 stipulating to this information as factual, you do
21 not wish to be foreclosed from introducing the
22 evidence that's been identified.

23 MR. HOOD: That's right, yes, sir, Your
24 Honor, not introducing it from a fingerprint
25 standpoint, just from a what it is.

1 THE COURT: As evidence in the case.

2 MR. HOOD: Yes, sir.

3 THE COURT: If it's properly identified by a
4 witness and moved into evidence, then you don't
5 want to be prejudiced in any way by this
6 stipulation.

7 MR. HOOD: Yes, sir, that's the only thing we
8 wanted to ensure.

9 THE COURT: We're clear on that.

10 MR. VARNER: That's our understanding.

11 MR. WISE: That's our understanding.

12 THE COURT: Anything further?

13 MR. HOOD: No, sir.

14 THE COURT: Anything from the defendant
15 Miller?

16 MR. VARNER: Nothing further.

17 THE COURT: The Defendant Moore?

18 MR. WISE: Nothing further.

19 THE COURT: Send the jury in, please.

20 (The jury returned to the courtroom).

21 THE COURT: All the jurors are present, with
22 the foreman and the alternates properly seated.

23 Ladies and gentlemen, the matter still lies
24 with the State and we have a stipulation for you.
25 You will recall that a stipulation is evidence. It

1 is something that the parties have agreed is true,
2 and sometimes stipulations are used to avoid
3 calling witnesses and taking the time to call
4 witnesses because the parties agree upon the
5 truthfulness of certain things. When a stipulation
6 comes into the trial of a case it is evidence.
7 Remember evidence is testimony of witnesses sworn
8 to tell the truth on this witness stand, items of
9 evidence which are by way of exhibits that are
10 introduced during the course of the trial, and
11 stipulations. We have a stipulation.

12 You are instructed that a fingerprint taken,
13 a fingerprint was taken from the items found in
14 Georgia and five fingerprints were taken from the
15 items found in the green bag on top of the trailer
16 next to Billy Moore's shop. The prints taken were
17 not related to either Marshall Miller or Billy
18 Moore. There was an effort to identify other
19 fingerprints but the effort was not successful.
20 The one latent or identifiable print found on the
21 items in Georgia and the five latent or
22 identifiable prints found on the items in the green
23 bag on the trailer next to Billy Moore's shop were
24 not related to either Marshall Miller or Billy
25 Moore. Items may be touched by fingers but not

1 necessarily leave identifiable prints or any
2 fingerprints at all.

3 The matter lies with the State, call your
4 next witness.

5 MR. CROUT: Your Honor, at this time the
6 State would call Mr. Gene Saylors.

7 THE COURT: Mr. Saylors, please. Any
8 objection to the stipulation?

9 MR. HOOD: No, sir, Your Honor.

10 MR. VARNER: None, Your Honor.

11 THE COURT: Mr. Wise?

12 MR. WISE: No objection.

13 THE CLERK: Place your left hand on the Bible
14 and raise your right.

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GENE SAYLORS - DIRECT

1 GENE D. SAYLORS,
2 after being first duly sworn testified as follows:

3 THE CLERK: Have a seat and state your full
4 name for the record.

5 THE WITNESS: Gene D. Saylor.

6 THE COURT: Say it again, please.

7 THE WITNESS: Gene D. Saylor.

8 THE COURT: All right, this witness is with
9 you, Mr. Crout.

10 MR. CROUT: Yes, Your Honor.

11 DIRECT EXAMINATION

12 QUESTIONS BY MR. CROUT:

13 Q Mr. Saylor, how old are you?

14 A Forty years old.

15 Q How far did you go in school?

16 A I graduated twelfth grade.

17 Q What year was that, do you recall?

18 A '81.

19 Q Are you married?

20 A Yes, sir.

21 Q And your wife's name?

22 A Bonnie.

23 Q Are you separated from her, are you living
24 separate and apart from her?

25 A Yes, sir.

GENE SAYLORS - DIRECT

1 Q But you just haven't gotten divorced?

2 A Right.

3 Q When did you all start living separate and
4 apart?

5 A '94, I believe it was.

6 Q What is your occupation now?

7 A I'm an erector on steel buildings.

8 Q Has that always been your occupation?

9 A No, sir.

10 Q What are some of the other jobs you have
11 done?

12 A I framed houses for right at ten years, I
13 guess, yes.

14 Q Have you lived here all your life, lived
15 locally all your life?

16 A Yes, sir.

17 Q Where exactly have you lived?

18 A Well, I was in Tennessee for about five
19 years.

20 Q Do you have any children?

21 A Yes, sir.

22 Q Where do they live?

23 A In Anderson.

24 Q Do they live with you?

25 A Yes, sir.

GENE SAYLORS - DIRECT

- 1 Q And how many children do you have?
- 2 A Two girls.
- 3 Q How old are they?
- 4 A Seventeen and fifteen.
- 5 Q And when did they start living with you?
- 6 A About the same time, '94 or '95, somewhere
- 7 around there.
- 8 Q Have you ever used methamphetamine or crank?
- 9 A Yes, sir.
- 10 Q Have you ever been arrested for using crank?
- 11 A Yes, sir.
- 12 Q What kind of criminal record do you have?
- 13 A I have a DUI, assault and battery, receiving
- 14 stolen goods and a possession charge.
- 15 Q When was the last time you had a run-in with
- 16 the law?
- 17 A I don't know. As far as arrested?
- 18 Q Well, let's say not speeding ticket but the
- 19 last time you had a serious offense?
- 20 A Okay, it's been a year or two years, yes.
- 21 Q What happened then?
- 22 A It was a violation of probation, they come to
- 23 my house with a probation warrant, which there
- 24 wasn't one, but it shot up on the computer there
- 25 was, and we had a run-in that day.

GENE SAYLORS - DIRECT

1 Q Well, what were you on probation for?

2 A Receiving stolen goods then.

3 Q That was actually your last serious run-in?

4 A Yes.

5 Q When was that?

6 A Let's see. I was on probation for, it's been
7 over four years ago, I think, yes, because I had
8 done four years of the probation.

9 Q Do you know an individual by the name of
10 Marshall Miller?

11 A Yes, sir.

12 Q How do you know him, how did you meet him?

13 A Through other people, through Bonnie mainly,
14 I guess.

15 Q Do you recall when she introduced you to him?

16 A Years, you mean?

17 Q Just when she introduced you?

18 A I guess it's been two years, close to two
19 years.

20 Q Did you ever do any methamphetamine with him?

21 A Yes, sir.

22 Q Did you ever buy some from him?

23 A Yes, sir.

24 Q After meeting Mr. Miller, did you move to
25 Georgia at some point?

GENE SAYLORS - DIRECT

- 1 A No, sir, I was already in Georgia.
- 2 Q You were in Georgia when you met him?
- 3 A Uh-huh (affirmative).
- 4 Q What were you doing there?
- 5 A That's where I framed houses, in Georgia.
- 6 That's where I had been since I left my wife, as a
- 7 matter of fact.
- 8 Q Since '94?
- 9 A Uh-huh (affirmative).
- 10 Q How much drugs would you say that you and
- 11 Marshall Miller did together?
- 12 A That would be hard to answer.
- 13 Q More than a gram?
- 14 A Oh, yes.
- 15 Q More than two grams?
- 16 A Oh, yes.
- 17 Q More than ten grams?
- 18 A I'm sure we did.
- 19 Q Well, stop me when I say a number.
- 20 A Over a period of, you know, yes, six months
- 21 or so, I'm sure.
- 22 Q Twenty grams?
- 23 A Yes, that would be fair.
- 24 Q Somewhere around twenty grams?
- 25 A That would be fair.

GENE SAYLORS - DIRECT

1 Q All right. Did you ever try to get out of
2 the meth?

3 A I did indeed.

4 Q When did that happen?

5 A I guess it was in August, September.

6 Q August or September of when?

7 A Last year, it's been over a year, yes.

8 Q About August or September of 2003?

9 A No.

10 Q 2002?

11 A Right.

12 Q Okay. Have you used any meth since then?

13 A No, sir.

14 Q Have you been hanging out with any of your
15 meth friends since then?

16 A No, sir.

17 Q At some point during your relationship with
18 Marshall Miller, when you were in Georgia did he
19 come by and see you, come to your residence?

20 A Sir?

21 Q At some time during the time period that you
22 were living in Georgia did Marshall Miller come to
23 your residence?

24 A Yes, sir.

25 Q What kind of car was he driving?

GENE SAYLORS - DIRECT

- 1 A It was a black Z71 and a red Pontiac.
- 2 Q Now, he wasn't driving both of those cars?
- 3 A No.
- 4 Q Can you explain?
- 5 A He was there different times.
- 6 Q He came to your residence in Georgia several
7 times?
- 8 A Yes, sir.
- 9 Q Sometimes he would be in the black Z71 and
10 sometimes he would be in the red Pontiac?
- 11 A Right.
- 12 Q A Pontiac four-door, two-door?
- 13 A Four-door.
- 14 Q What type of Pontiac?
- 15 A A Grand Am, I guess, yes, I guess it was.
- 16 Q Did he ever ask you during that time period
17 to store some items for him or hide some items for
18 him? You describe what he asked you to do with
19 those items.
- 20 A He said more or less, "I need to hide them, I
21 need to leave them here for a few days and I'll
22 call you when I need them."
- 23 Q And do you recall when that was?
- 24 A The end of August or -- I think the end of
25 August, September.

GENE SAYLORS - DIRECT

1 Q And --

2 A I'm not sure.

3 Q But when you say August you're talking about
4 August or September of 2003, correct?

5 A Right.

6 Q And on that date that he came to your
7 residence what kind of vehicle was he driving?

8 A I believe he was in the truck then, yes.

9 Q Did he have a trailer with him?

10 A Yes, sir.

11 Q Was the trailer attached to the truck?

12 A Yes, sir.

13 Q What kind of trailer was it?

14 A It's a, I guess it's a racing trailer, yes.

15 Q Could you just, you don't have to give us the
16 name, just describe it for us?

17 A It's black and silver, it's dual wheels, it's
18 got four wheels, yes, air-conditioner on top. I
19 mean, there's a bunch of them, everybody has one,
20 but twenty-two foot, as a matter of fact, I believe
21 it was, yes.

22 Q All right. Could you describe the items that
23 he left with you?

24 A It was a yellow and black bag, a zip, you
25 know, duffle bag, I guess, and a red five-gallon

GENE SAYLORS - DIRECT

1 jug, and I don't know what you call the plastic
2 containers, whatever, storage cases, I guess you
3 call them, I don't know.

4 Q What was in the plastic container?

5 A In the black container?

6 Q Yes, sir.

7 A It was full of jars.

8 Q What kind of jars?

9 A Mason jars, yes, sir.

10 Q What about the trailer, did he leave that
11 with you?

12 A Yes, sir. He was having problems in
13 Carolina, I guess, and he just said he needed to
14 leave it there for a few days, which was out of the
15 question as far as I was concerned, but it was
16 there I think maybe two days.

17 Q When you say leave it there, you mean leave
18 it at your house?

19 A Right, in my yard.

20 Q Now, just so everybody is clear, Mr. Saylors,
21 when is the first time you and I met?

22 A Yesterday.

23 Q Are you sure it was yesterday, or was it
24 Monday?

25 A Monday, excuse me.

GENE SAYLORS - DIRECT

1 Q That's all right, I understand.

2 A Monday.

3 Q And I basically asked you these same
4 questions I'm asking you right now, right?

5 A Yes, sir.

6 Q And then prior to your testifying I showed
7 you some photographs to see if you could identify
8 those photographs, too?

9 A Right.

10 Q I just want to be open about that.

11 A Right.

12 Q After he left those items with you what did
13 you do with them?

14 A Well, when he left I immediately left with
15 them.

16 Q Where did you take them?

17 A It might have been maybe a mile, two miles
18 from my house, which is right off the road maybe
19 thirty yards.

20 Q What about the trailer, where did you take
21 the trailer?

22 A I didn't move the trailer.

23 Q Where was the trailer?

24 A It was in my yard.

25 Q Did anybody move the trailer?

GENE SAYLORS - DIRECT

- 1 A He come and got it two days later, yes.
- 2 Q Do you know what he did with it?
- 3 A No, sir.
- 4 Q The property where you took the other items
- 5 that you described, who owns that property?
- 6 A I have no idea. I just, they wasn't going to
- 7 be in my possession, I have no idea who owned them.
- 8 There is no houses around, I mean, it's just like a
- 9 mile or two of woods from my house, that's just
- 10 all, field or whatever.
- 11 Q Well, these items that he left, why didn't
- 12 you want them in your possession?
- 13 A That, I can't answer, I don't know.
- 14 Q You don't know why you didn't want them in
- 15 your possession?
- 16 A I know why I didn't want them.
- 17 Q You just tell us why you didn't want them,
- 18 that's fine.
- 19 A I mean, I basically knowed what those items
- 20 was and I felt like I knowed what was in that jug
- 21 and I knowed it didn't need to be in my yard, no
- 22 longer than it took for him to leave, that's as
- 23 long as I wanted it in my yard.
- 24 Q I realize you didn't test what was in that
- 25 jug.

GENE SAYLORS - DIRECT

1 A No, sir.

2 Q You didn't sniff anything out of that jug?

3 A No, sir.

4 Q You might not have even held it up or shaken
5 it or anything, I understand that, but just from
6 your experience and your experience alone, what did
7 you think was in that jug?

8 A Well, it wasn't water, so, you know, it
9 wasn't gas, so --

10 MR. VARNER: Your Honor, I'm going to object
11 to his speculating what might be in the jug.

12 THE COURT: Sustained.

13 MR. VARNER: It's guesswork.

14 THE WITNESS: Well, from what, you know, I
15 have been around --

16 BY MR. CROUT:

17 Q That's all right, we're going to pursue
18 another line of questioning, the objection was
19 sustained.

20 A All right.

21 Q Where exactly did you take these items you
22 just described? I think you described the yellow
23 bag, a jug and a plastic container of Mason jars,
24 correct?

25 A Yes, sir.

GENE SAYLORS - DIRECT

1 Q Where exactly did you take those items?

2 A Exactly?

3 Q Well, describe where you placed them.

4 A It was no more than thirty foot off the road,
5 about a mile from my house.

6 Q Was there any object near where you placed
7 them?

8 A A tree.

9 Q All right. Did you look inside the yellow
10 bag?

11 A No, sir.

12 Q Eventually did you contact somebody in law
13 enforcement regarding those items?

14 A Yes, sir.

15 Q And who did you contact?

16 A I can't even think of his name now.

17 Q Do you know what police department, could you
18 just tell us what police department?

19 A Abbeville, yes.

20 Q That's all right.

21 A I hadn't seen him for a good while.

22 Q After you indicated to the Abbeville Police
23 Department that you had those items did you have
24 the opportunity to meet Agent Sonnefeld?

25 A Yes, sir.

GENE SAYLORS - DIRECT

1 Q And did she meet you shortly after you made
2 that report to the Abbeville Police Department?

3 A I think it was, yes, sir, the next day, I
4 believe it was.

5 Q And did you take Agent Sonnefeld and another
6 individual to that site?

7 A Yes, sir.

8 Q And you showed them where those items were
9 located?

10 A Yes, sir.

11 Q Did you ever take them to the location of the
12 trailer?

13 A We passed it, yes.

14 Q And when you say you passed it, where was it
15 at when you passed it?

16 A It was at an RV storage place on 77 in
17 Franklin County, I believe it was.

18 Q Now, you remember those photographs that I
19 showed you, correct?

20 A Yes, sir.

21 Q Now, without stating what these photographs
22 show, can you tell me if you identify them, if you
23 can identify them?

24 A Yes, sir, all three of them, the bag was
25 never opened, I mean.

GENE SAYLORS - DIRECT

1 Q I understand. We all agree you never saw
2 inside that bag.

3 A No, sir.

4 Q And what is this item here?

5 A That's the five-gallon jug.

6 Q And what is this item here?

7 A That's the plastic storage, I guess what they
8 call them, you know.

9 Q Excuse me, one more question. This item, or
10 this picture here, what does it show?

11 A That's the trailer, yes.

12 Q Stored in that shed?

13 A Yes, sir.

14 MR. VARNER: I object. He has testified he
15 doesn't know what Mr. Miller did, supposedly, with
16 the trailer or where he took it. He has already
17 said that. He's impeaching his own witness now by
18 saying that's where it was.

19 THE WITNESS: Let me make this statement.
20 The trailer --

21 MR. CROUT: Wait just a second. Your Honor,
22 if I may respond to that. I think that --

23 THE COURT: Well, I sustain the objection,
24 and you lay a better foundation.

25 MR. CROUT: Yes.

GENE SAYLORS - DIRECT

1 THE COURT: All right.

2 BY MR. CROUT:

3 Q Mr. Saylors, when you say you don't know what
4 he did with the trailer, what do you mean by that?

5 A The trailer left my yard and went to the
6 storage place. Now, when it left the storage place
7 I have no, I have no idea where it went.

8 MR. VARNER: Your Honor, the same objection.

9 THE COURT: It's overruled.

10 MR. VARNER: He hasn't testified how he would
11 have known how it left or who took it or anything,
12 or did he see it leave.

13 MR. CROUT: He's subject to examination and
14 cross-examination on that subject, Your Honor.

15 THE COURT: You will have him on
16 cross-examination.

17 BY MR. CROUT:

18 Q Now, you indicated that the trailer left your
19 house and was taken to the storage shed?

20 A Because I didn't want it in my yard, yes.

21 Q Correct. Now, how do you know that it was
22 taken to the storage shed?

23 A I was with him.

24 Q You took it to the shed?

25 A Right.

GENE SAYLORS - DIRECT

1 Q And you left it there?

2 A Yes, because he had no clue about Georgia or
3 who to call or whatever, and I just, I named off
4 some storage places and I called one and the man
5 met us down there with the key.

6 Q Do you remember the name of that storage
7 place?

8 A It's Highway 77 Boat and RV Storage, I
9 believe, yes.

10 Q And you indicated that you had pointed that
11 out to Agent Sonnefeld and the other agent with you
12 when you drove past it, correct?

13 A Correct.

14 Q And that place where it was when you pointed
15 it out was where you had taken it?

16 A Right.

17 Q Now if you would step down, please. Now, the
18 item here, the red canister, or red drum, is that
19 in fact, from your visual observation, the one that
20 Marshall Miller gave you?

21 A Yes, sir.

22 Q And then this plastic container here?

23 A Because it has a brass top and a wooden plug.

24 Q All right.

25 A Yes.

GENE SAYLORS - DIRECT

1 Q Then this next container here, this black
2 container --

3 THE CLERK: Judge, they can't see.

4 MR. CROUT: Oh, I'm sorry.

5 THE COURT: Thank you, Mr. Juror. Mr. Crout,
6 you're going to have to stand back a little bit and
7 the witness can use the pointer or you can use the
8 pointer.

9 MR. CROUT: I'll do it.

10 BY MR. CROUT:

11 Q Can you see the picture?

12 A Yes.

13 Q This red jug here, can you identify it as the
14 one Marshall Miller gave you?

15 A Yes.

16 Q Is that the same jug in all these pictures?

17 A Yes, sir.

18 Q Now, this black box, is that where the Mason
19 jars were?

20 A Yes, sir.

21 Q And is that the Mason jars there in the box?

22 A Yes, sir.

23 Q And then I believe you testified you never
24 looked in that yellow bag, correct?

25 A Right.

GENE SAYLORS - DIRECT

1 Q But the bag itself, can you identify that as
2 the bag that Marshall Miller gave you?

3 A Yes, sir.

4 Q Or at least --

5 A It was yellow and black, yes.

6 Q Now, the storage facility here, is that the
7 storage facility that you were referring to
8 earlier?

9 A Yes, sir.

10 Q All right. And then the white trailer here,
11 that's not Marshall Miller's, is it?

12 A No, sir.

13 Q Is his the one next to it, that black one?

14 A Yes.

15 Q Thank you very much.

16 A Yes, sir.

17 MR. CROUT: Your Honor, at this time I would
18 move this exhibit in evidence as State's Exhibit, I
19 believe it was Number 8. It has been -- State's
20 Exhibit Number 3.

21 Mr. Saylor, if you would take the stand
22 again.

23 It has been identified by Agent Sonnefeld as
24 the photographs she took on the day she went to the
25 location of the items. It has been further

GENE SAYLORS - DIRECT

1 identified by Mr. Saylor as the items that he took
2 into his possession. It has been made relevant to
3 the case by his connecting it to Mr. Marshall
4 Miller and then, of course --

5 MR. VARNER: Your Honor, I object. If he
6 wants to introduce it, introduce it. This is like
7 closing argument. I object to that.

8 THE COURT: He can give the basis for his
9 motion. Anything further, Mr. Crout?

10 MR. CROUT: Yes, sir. What I was going to
11 say is, not to go through that process again, but
12 it has been substantiated to the degree necessary
13 for it to be moved in evidence..

14 THE COURT: All right. How says the
15 defendant Miller?

16 MR. VARNER: Your Honor, I object to it on
17 several different grounds. Number one, there is no
18 relationship to anything within the jurisdiction of
19 the charges before this Court. At best these are
20 articles found in the State of Georgia, with no
21 connection to any, quote, quote, alleged or
22 purported criminal activity under the jurisdiction
23 of the Attorney General's office or under the State
24 of South Carolina. These are articles in Georgia.
25 It has nothing, number one, they haven't been tied

GENE SAYLORS - DIRECT

1 to any crime whatsoever. Number two, even if they
2 were, they have no relevance to what we're here
3 today for, and I would object on the relevancy
4 ground. Something found in another state, if there
5 is no connection here, has no bearing, no
6 relevancy. It's kind of like trying him for
7 something he may have done in another state at
8 another time at another place. If anything, that's
9 almost akin to a prior bad act, and that's
10 improper, it's not before the Court.

11 THE COURT: Any other grounds?

12 MR. VARNER: No other grounds.

13 THE COURT: The objection is overruled. That
14 exhibit is Number 3, or 5?

15 MR. CROUT: Number 3, Your Honor.

16 THE COURT: Number 3 will be become part of
17 the evidence in the case. Mr. Court Reporter, you
18 can mark your records accordingly.

19 (State's Exhibit Number 3 was
20 received in evidence).

21 BY MR. CROUT:

22 Q Mr. Miller, I'm showing you an item --

23 A Saylors.

24 Q Excuse me, I'm sorry, Mr. Saylors, I
25 apologize, we have been here for awhile.

GENE SAYLORS - DIRECT

1 I'm showing you what has been marked as
2 State's Exhibit Number 14 and ask if you can
3 identify that object?

4 A It's yellow and black, yes, I can't say
5 that's the exact bag, yes, but the bag I had at my
6 house was yellow and black just like it.

7 Q All right. Without going into all of them,
8 can you identify that?

9 A Yes, sir.

10 Q What is that?

11 A That is a Mason jar.

12 Q Is it similar to the ones that were left with
13 you?

14 A Yes, sir.

15 Q Looking again at State's Exhibit Number 14,
16 what identifying characteristics does this bag have
17 that would help you identify it?

18 A Because the yellow was just on top there,
19 yes.

20 Q That's how you recall the bag Marshall Miller
21 gave you?

22 A Yes, sir.

23 MR. CROUT: Your Honor, at this time I would
24 move that the bag, the contents in the bag that was
25 found by Agent Sonnefeld, and the other items that

GENE SAYLORS - DIRECT

1 were taken at that time in Georgia be moved in
2 evidence as State's next exhibit, moved from
3 exhibit for identification to actual exhibit in
4 evidence.

5 THE COURT: How says defendant Miller?

6 MR. VARNER: Your Honor, is he referring to
7 the bag?

8 THE COURT: The yellow and black bag.

9 MR. VARNER: The Mason jars inside?

10 MR. CROUT: What I'm referring to, Your
11 Honor --

12 THE COURT: What is the exhibit number?

13 MR. WISE: I believe it's eight through
14 fourteen.

15 MR. CROUT: Yes, Your Honor eight through
16 fourteen, I apologize. When I say the contents of
17 the bag, what I am referring to is the contents of
18 the bag that has been identified as being the
19 contents of the bag by Agent Sonnefeld when the bag
20 was found, not necessarily the contents of the bag
21 now which is holding the Mason jars just for
22 purposes of presentation.

23 THE COURT: All right. How says the
24 defendant Miller?

25 MR. VARNER: Your Honor, I just want to make

GENE SAYLORS - DIRECT

1 sure I'm clear on what he's referring to. There is
2 a jug in there, and whatever this stuff, that's
3 what you're talking about? Is that correct?

4 MR. CROUT: Yes, and if you want me to I will
5 show you. It is, Your Honor, Exhibits 8 through
6 12, the bag full, the bag, the Mason jars, the box
7 of salt, the coffee filter with the heavy duty
8 cleaning rags, the Hefty ziplock bags, the coffee
9 bean grinder, the wrench, and latex gloves, and
10 those, as I indicated, those items that were in the
11 bag when Agent Sonnefeld recovered the bag.

12 MR. VARNER: No objection.

13 THE COURT: Without objection those things
14 will be part of the evidence in the case, and will
15 you name the numbers again? Mr. Court Reporter,
16 did you get them?

17 MR. WISE: Okay.

18 THE COURT: All right.

19 (State's Exhibits 8, 9, 10, 11, 12, 13
20 and 14 were received in evidence).

21 THE COURT: Continue direct examination.

22 MR. CROUT: Yes, Your Honor.

23 BY MR. COURT:

24 Q After you turned those items over, or
25 notified law enforcement about those items, did you

GENE SAYLORS - DIRECT

1 do anything relative to this case after that?

2 A As far as evidence, or as far as talking to
3 them?

4 Q Let me ask you this. After you turned these
5 items over to Agent Sonnefeld when is the next time
6 you spoke with her?

7 A I guess it was a few days later, I'm not sure
8 exactly how many days it was.

9 Q Did you talk to any other law enforcement
10 officials about this?

11 A Yes, sir.

12 Q Who did you speak to?

13 A I can't get his name. He was here earlier.

14 Q Heavy set fellow?

15 A Yes.

16 Q Do you see him?

17 A Chris is one of them. I can't think of his
18 other name.

19 MR. CROUT: Any objection to me giving him
20 the name?

21 MR. VARNER: No.

22 Q Was it Brandon Scott?

23 A Brandon Scott.

24 Q All right, that's fine. Have you had any
25 contact with Marshall Miller since you turned these

GENE SAYLORS - DIRECT

1 items over?

2 A Oh, we spoke once or twice after that, yes.
3 He called my house from the jail.

4 Q Have you had any conversation with Bonnie
5 Saylor since this incident?

6 A No, sir.

7 Q Do you and she speak on a regular basis?

8 A No, sir.

9 Q Do you speak at all?

10 A No, sir.

11 MR. CROUT: Your Honor, I have no further
12 questions of Mr. Saylor.

13 THE COURT: Cross-examination.

14 MR. CROUT: One moment, please, let me
15 consult with Mr. Hood.

16 THE COURT: Take your time.

17 BY MR. CROUT:

18 Q Mr. Saylor, I apologize for not covering
19 this with you. In one of your conversations with
20 Mr. Miller did he ever ask you to sign a statement
21 for him?

22 A Yes, sir.

23 Q Do you recall the contents of that statement?

24 A Not word for word but, you know --

25 Q Just as best you recall could you tell us?

GENE SAYLORS - DIRECT

1 A It was basically how long I knowed him, has
2 he ever had any dealings with drugs. I mean, it
3 wasn't much, it was just a short paragraph.

4 Q Did he tell you why he wanted you to do that?

5 A Not really but he had a stack of them, and I
6 guess to show his credibility or how he knows me.
7 I wasn't exactly sure what they was for but at the
8 time, you know --

9 Q When you say he had a stack of them what do
10 you mean?

11 A He had copies made, you know, like forty,
12 fifty of them.

13 Q Did he tell you where they came from?

14 A No, sir.

15 Q Without telling us what it is, I want you to
16 take a look at this document, and ask you if you
17 can identify it?

18 A I said a paragraph. That's two paragraphs.
19 Yes, and that's my signature.

20 Q What is that statement called, what is that
21 document? Does it have a title at the top?

22 A But --

23 Q Let me ask you, does it have a title at the
24 top?

25 A Yes, sir.

GENE SAYLORS - DIRECT

- 1 Q What's the title, sir?
- 2 A I do know who he said wrote these up now.
- 3 Q Who did he tell you wrote them up?
- 4 A But, I mean, that's just his word saying.
- 5 Q I understand.
- 6 A Who knows.
- 7 Q Well, I tell you what, don't worry about
- 8 that.
- 9 A Yes.
- 10 Q Having looked at it, are you recalling some
- 11 incidents relative to the document? Does it help
- 12 with your recollection?
- 13 A That's definitely it, that's my handwriting,
- 14 printed and signed, yes.
- 15 Q All right. Once again, is there a title at
- 16 the top of it, is it called anything?
- 17 A Uh-huh (affirmative).
- 18 Q What's it called.
- 19 THE COURT: Is that yes?
- 20 A Yes, sir.
- 21 Q What is the title called?
- 22 A Which wouldn't have anything to do with --
- 23 Q Let me move on, then. Can you identify that
- 24 as a statement he gave you to sign?
- 25 A Yes, sir.

GENE SAYLORS - DIRECT

1 Q And how can you identify it?

2 A My signature.

3 Q Now, is that the original or is that a copy?

4 A I wouldn't have no idea.

5 Q Well, take a look.

6 A It looks like the original because of the ink
7 and my handwriting but, I mean, I'm not an expert,
8 I don't know.

9 Q All right. Could you read what it says to
10 us?

11 A I would rather not.

12 Q Well, could you?

13 A I would rather not.

14 Q Well, start out and let's see.

15 A "Gene Saylor," let's see, "writing this
16 statement for Marshall Miller on my own free will
17 under no influence of drugs or alcohol, I am sound
18 mind and doing this freely. I have known Marshall
19 Miller for three years. He is a good friend of
20 mine, and at the time I have never seen him with
21 dope, large or small amounts, either way. To the
22 best of my knowledge he doesn't, he doesn't, he
23 does not miss, mess with dope. And also I have
24 never seen him with no large sums of money either."
25 Let's see. "Going around about him being a cook is

GENE SAYLORS - DIRECT

1 a lie. At far as I know he has never been a cook
2 or have ever bought or seen to have any supplies to
3 cook with and also I have never gave any law
4 enforcement agent any statement about this or
5 anything else concerning Marshall Miller. I swear
6 to be, swear this to be the truth to the best of my
7 knowledge."

8 Q And did you sign that?

9 A It's got my handwriting on it.

10 Q That's okay if you signed it. Did you sign
11 it? Do you recall signing it?

12 A You know, as far as --

13 Q But just answer my question, that's fine.

14 A As far as I remember it, mine didn't read
15 this way.

16 Q All right.

17 A So, this may --

18 Q Let me ask you this.

19 A All right.

20 Q At the bottom of that paper does your
21 signature appear there, and that's okay, just tell
22 us if it does?

23 A Yes, sir, my signature appears.

24 Q What's the date of that?

25 A 8/23/2000.

GENE SAYLORS - DIRECT

1 Q All right.

2 MR. CROUT: Your Honor, at this time I would
3 move this in as State's next exhibit.

4 MR. VARNER: No objection.

5 MR. WISE: No objection.

6 THE COURT: Without objection it will be
7 marked as part of the evidence in this case.

8 MR. CROUT: I would also like the record to
9 reflect that item is a copy for evidentiary
10 purposes, it's not the original.

11 THE COURT: Very well.

12 State's Exhibit Number 27 was marked
13 and received in evidence).

14 BY MR. CROUT:

15 Q Mr. Saylors, did Mr. Miller tell you why he
16 needed that document?

17 A I don't really remember.

18 Q Have you ever signed a document like that for
19 anybody else?

20 A No, sir.

21 Q Is the contents of this document true?

22 A Not altogether.

23 Q What about it is not true? If you need to
24 see it. Tell me what about it is not true.

25 A Three years is not true, I don't think.

GENE SAYLORS - DIRECT

1 Q How long had you known him?

2 A Maybe six months, a year. No, about six
3 months, I guess.

4 Q Why did you put a three in there, or who put
5 a three in there?

6 A That's what I was asked to put in there.

7 Q You were asked to put it there by who?

8 A By Marshall.

9 Q Did you get to pick what was in that letter
10 or in that document?

11 A Did I get to pick?

12 Q Yes, did you type that, did you make it, or
13 did he give it to you already preprinted?

14 A It was already printed.

15 Q And he had a stack of them, you said?

16 A Yes, sir.

17 Q Now, have you ever seen Marshall Miller with
18 drugs?

19 A Have I ever seen him with drugs?

20 Q Yes.

21 A Yes, sir.

22 Q Have you ever seen him with large sums of
23 money?

24 A Large sums like what, three or four thousand,
25 or ten thousand, or what?

GENE SAYLORS - DIRECT

1 Q Well --

2 A What's a large sum?

3 Q Let's say over a thousand. To me, over a
4 thousand is a large sum.

5 A Okay, yes, sir.

6 Q Probably everybody in this room, okay? Have
7 you seen him with that amount of money?

8 A Yes, sir.

9 Q Okay. Have you seen him with more than two
10 thousand?

11 A No. He didn't flash money much, I can't say
12 I have seen him with no more than that.

13 Q Did he tell you why he needed a statement to
14 say, did he say, "I've got to have a statement that
15 says I don't have a lot of money"? Did he say why
16 he needed that?

17 A I'm sure he did but I don't recall what he
18 said, though, so I can't really say.

19 Q All right. What about did he tell you, "I
20 need a statement that says I have never done
21 drugs"?

22 A Well, yes, yes.

23 Q Did he tell you why he needed that?

24 A He felt like his time was running out, he
25 said.

GENE SAYLORS - DIRECT

1 Q Is that what he told you?

2 A And that was when he was at my house, yes. I
3 must have been the last on the totem pole, because
4 when he came to my house he had already had a stack
5 of these already signed by people in this area.

6 Q Did you look at the stack or did you just,
7 did you look through each one or did you just look
8 at the stack?

9 A Well, I just seen, you know, a few names, I
10 mean, which I don't know too many people over here
11 but I recognized Sammy Mullinax, I remember that
12 name was already signed, and Julie Prince was
13 signed, and my ex-wife, hers was on there, but that
14 was it, I mean, I didn't see but two or three
15 names.

16 Q When he said his time was running out, was he
17 fixing to die? What did he mean by that?

18 A Huh? Whatever he was doing at the time,
19 that's what he meant, I guess, his time was running
20 out, and I guess that's why I ended up with that
21 stuff in my yard, because he had just come back
22 from the beach, as a matter of fact, yes.

23 Q The beach in South Carolina, beach in North
24 Carolina?

25 A Myrtle Beach.

GENE SAYLORS - DIRECT

1 Q Myrtle Beach?

2 A And he stopped at Days Inn up there in
3 Lavonia, which is about two miles from my house,
4 and called me, he said he had got in touch with his
5 lawyer and they told him not to come back to South
6 Carolina. That is when the stuff ended up in my
7 yard, you know, like I told him, I said, "I don't
8 care where it goes or how but it can't stay here,"
9 and it was there about two days, I guess.

10 MR. CROUT: Mr. Saylor, I have no further
11 questions but if you would please answer any
12 questions Mr. Varner or Mr. Wise have for you.

13 THE COURT: Mr. Varner, the witness is with
14 you on cross-examination, sir.

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GENE SAYLORS - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. VARNER:

Q Mr. Saylors, just so I understand you correctly, this is what you think or you guess about what Mr. Miller was thinking or meant by these things, correct?

A Yes, sir.

Q Okay. Let's back up just a little bit. You were working, as part of this investigation, as what is called a confidential informant, is that correct?

A I volunteered the information I gave them.

Q Okay. Well, did they ask you to try to make an undercover buy from Marshall?

A No, sir.

Q They didn't do that? Anybody else?

A No, sir.

Q Excuse me. What other involvement did you have other than telling them about this and giving them a statement?

A They didn't ask me to do anything else. That was pretty much it.

Q I want to ask you what else you did besides giving a statement and showing them where this stuff was?

GENE SAYLORS - CROSS

- 1 A What I did for them?
- 2 Q Yes.
- 3 A Nothing.
- 4 Q Okay. But you admitted to this SLED agent
- 5 here that you were part of the buying and using
- 6 drugs with Marshall Miller, correct?
- 7 A No, sir.
- 8 Q Well, you just did a few minutes ago.
- 9 A I said I have seen it, done it with him, but
- 10 I didn't have a part, I never said that. I was in
- 11 a different state. I met him in Carolina through
- 12 my ex.
- 13 Q But you admitted -- did you buy drugs from
- 14 Marshall?
- 15 A I have before, yes, sir.
- 16 Q Okay. You bought drugs from him, you did the
- 17 drugs with him, up to twenty grams or so?
- 18 A Over a period of a year or two, yes, I'm sure
- 19 it was.
- 20 Q Well, I thought you only knew him six months
- 21 to a year, so now it's up to a year or two?
- 22 A No, at that time I knowed him six months, at
- 23 the time.
- 24 Q At what time?
- 25 A At the time he asked me.

GENE SAYLORS - CROSS

1 Q Well, when was that, then?

2 A I probably know Marshall two years at the
3 most, yes.

4 Q Now we have grown from six months to a year,
5 now we're at two years?

6 A No, I told him I knowed him probably about
7 that long.

8 Q So, for six months you were doing drugs with
9 him?

10 A That would be fair to say.

11 Q Up to twenty grams?

12 A Well, that's an estimate, I couldn't say.

13 Q Well, you were able to say for him. How come
14 you can't say for me?

15 A I said approximately. It could be less, it
16 could be more.

17 Q Okay. I believe your exact words were, you
18 correct me if I'm wrong, "Yes, twenty grams, that
19 would be about fair"?

20 A That would be about fair.

21 Q What does fair mean? That means that's
22 pretty close, doesn't it?

23 A Yes.

24 Q So, you admitted you did up to twenty grams
25 of crystal meth with him?

GENE SAYLORS - CROSS

1 A If that's what you call it, yes.

2 Q What do you call it?

3 A I don't know. Meth, I didn't call it crystal
4 meth.

5 Q Meth, you call it meth?

6 A Yes, sir.

7 Q All these people's names here, you weren't
8 arrested in regard to this, were you?

9 A Yes, conspiracy, I could have been arrested,
10 yes.

11 Q So, you're saying now you were arrested on
12 this conspiracy charge here?

13 A I could have been.

14 Q Oh, okay, you could have been, you're right.

15 A On conspiracy.

16 Q I agree with you, you could have been.

17 Anybody ever tell you why they chose to pick and
18 choose certain people and somehow or another they
19 decided not to pick you, why you get to come in
20 here in your clothes free as a bird and other
21 people may go to jail for the rest of their lives,
22 for twenty-five years, anybody ever tell you why
23 you were the special one?

24 A I told myself why. I was through with meth.

25 Maybe I was a little smarter than the rest of them.

GENE SAYLORS - CROSS

1 Q Okay. So, if you profess the fact you're
2 through, you quit, you shouldn't go to jail, then,
3 shouldn't ever be charged?

4 A I didn't say that.

5 Q Well, you were talking about your prior
6 record. You said you had received stolen goods.
7 You didn't have one receiving stolen goods, did
8 you?

9 A I had several, probably.

10 Q What?

11 A I probably had one, two. Two I know of.

12 Q How about three, four?

13 A Okay.

14 Q How about five receiving stolen goods?

15 A Not five different counts, no. I haven't
16 been in jail five times for receiving stolen goods.
17 Twice I know of. Might have been five items.

18 Q Five charges of receiving stolen goods for
19 which you were convicted in court?

20 A At one time?

21 Q Yes.

22 A Okay, yes.

23 Q And your drug conviction, that was meth, as
24 you call it, is that what the drugs were you got
25 caught with?

GENE SAYLORS - CROSS

1 A I got stopped in a road check one time.

2 Q I didn't ask you that. I said did you get
3 caught with meth, is that what you were convicted
4 of?

5 A Oh, yes, sir.

6 Q When was that?

7 A I'm not sure.

8 Q Was it October 24th of 2003?

9 MR. VARNER: Your Honor, apparently it's off
10 what is called your rap sheet.

11 Q Can you give me your best estimate when was
12 that crystal meth charge?

13 A The warrant incident was in October, I
14 believe, 2003.

15 Q 2003? And when was it you decided to call
16 law enforcement about this stuff?

17 A That was before, a year before.

18 Q A year before?

19 A Or six months, I don't know. I know it was
20 before. It was before that incident.

21 Q Well, now, everybody was arrested on
22 September the 24th of 2003, correct, or do you
23 know?

24 A No.

25 Q You don't know, do you?

GENE SAYLORS - CROSS

1 A Huh-uh (negative).

2 Q About when was it you called them, and by
3 them, I mean law enforcement, about this stuff you
4 threw on the side of the road?

5 MR. CROUT: I object to the
6 mischaracterization.

7 THE COURT: The objection is sustained to the
8 characterization as to how anything was done. Will
9 you restate that question?

10 Q The stuff you, I don't know, how did you get
11 it on the side of the road?

12 A I placed it there.

13 Q Okay. The stuff you placed on the side of
14 the road. In that regard, how long -- let me back
15 up, let me just start again.

16 You say Marshall brought this stuff down to
17 your house?

18 A Yes, sir.

19 Q And sometime later you called law
20 enforcement?

21 A No, it wasn't sometime later. It was, he
22 left and it left my yard and I called them the next
23 day.

24 Q You called the next day, and you called
25 Abbeville?

GENE SAYLORS - CROSS

- 1 A Yes, sir. Brandon Scott, I talked to him.
- 2 Q Okay.
- 3 A And Chris.
- 4 Q Okay. And Marshall didn't even live in
- 5 Abbeville, did he?
- 6 A I don't know where he lived, sir.
- 7 Q Well, how would you have known to call
- 8 Abbeville, if you didn't know?
- 9 A Because Marshall had mentioned Brandon
- 10 Scott's name to me several times.
- 11 Q What was the connection between Marshall and
- 12 your ex-wife?
- 13 A I guess dope. I didn't, I mean, I hadn't
- 14 talked to her, I don't know.
- 15 Q When was the last time you have talked to
- 16 her?
- 17 A Maybe a month or two before she was arrested.
- 18 I don't even know that. My kids write her, they
- 19 talk to her but I don't.
- 20 Q How would you describe your relationship with
- 21 her?
- 22 A I don't have a relationship with her.
- 23 Q The last time you had a relationship with her
- 24 was it good, or bad?
- 25 A Nine years ago.

GENE SAYLORS - CROSS

1 Q Was that the last time?

2 A It got bad because -- yes.

3 Q Okay. You say Marshall came to you with what
4 is called a voluntary statement and it says, "I,"
5 and you wrote in the name, Gene, the name Gene
6 Saylor, "am writing this statement for Marshall
7 Miller of my own free will and under no influence
8 of drugs or alcohol. I am of sound mind and doing
9 this freely and voluntarily. I have known Marshall
10 for three years. He is a good friend of mine. At
11 no time have I ever seen him with any dope, large
12 or small amounts either one. To the best of my
13 knowledge he does not mess with dope. And also I
14 have never seen him with no large sums of money
15 either. And the rumor going around about him being
16 a cook, it's a lie as far as I know. I have never
17 seen him cook nor have I ever bought or seen him
18 with any supplies to cook with. And also I have
19 never gave any law enforcement agency any
20 statements about this or anything else concerning
21 Marshall. I swear this to be true to the best of
22 my knowledge, I am writing this freely and
23 voluntarily of my own free will." You signed it
24 and you printed your name, and that was dated
25 August 23rd of '02.

GENE SAYLORS - CROSS

1 You do remember that, correct?

2 A I remember a statement. I don't remember it
3 being worded like that, no, sir.

4 Q Okay. And you swore that at that time to be
5 true?

6 A But that's all a lie.

7 Q I didn't ask you that.

8 A Yes, sir, I swore that.

9 Q You swore it to be true, just like you swore
10 that what you're saying here today is true?

11 A Yes, sir.

12 Q So, you will take an oath or you will swear
13 and not tell the truth?

14 A You mean when I signed that? I wasn't under
15 oath.

16 Q Sir, my question was, will you swear and take
17 an oath and still not tell the truth?

18 A No, sir. I took an oath and I'm telling the
19 truth.

20 Q Okay. Well, you swore at this point in time
21 and you weren't telling the truth then, were you?

22 A I wasn't under oath then, I was under
23 Marshall Miller wanting me to say something for him
24 and I did. That is basically all that was.

25 Q So, you tell people what they want?

GENE SAYLORS - CROSS

1 A There was fifty people signed those things.

2 Q Excuse me. So, you will tell people what
3 they want to hear?

4 A I told Marshall what he wanted to hear at the
5 time, yes, sir.

6 Q And you know full and well what the State
7 wants you to say and what they want to hear from
8 you today, too, don't you?

9 A Oh, I'm saying exactly what happened as far
10 as that.

11 Q That wasn't my question.

12 A I voluntarily called them.

13 Q My question was, you know what the State
14 wants you to say here today?

15 A No, sir.

16 Q You don't know?

17 A No.

18 Q Nobody has talked to you about Marshall
19 Miller, what your testimony is going to be here
20 today?

21 A I haven't talked to that lady there since,
22 it's been a year and a half probably, then I got a
23 subpoena, sure haven't.

24 Q Well, how long have you sat down and talked
25 to them, any law enforcement, ten minutes, two

GENE SAYLORS - CROSS

- 1 hours, five hours?
- 2 A No, sir.
- 3 Q Well, how long, then?
- 4 A We might have talked thirty or forty minutes
- 5 a year and a half ago and I got a subpoena the
- 6 other day.
- 7 Q Okay. And you do know that Marshall has what
- 8 is called a black Harley truck, is that right?
- 9 A A racing truck, I don't know what you call
- 10 it.
- 11 Q Well, let me ask you something. Have you
- 12 seen the like Harley Davidson emblems on it?
- 13 A Yes, sir, if it has them on it, I don't
- 14 recall. I just know it's black and silver.
- 15 Q That is what I was going to ask you. You
- 16 said it was a 271, that's a Chevy, isn't it?
- 17 A The truck, yes, sir.
- 18 Q Okay. Ford makes the Harley truck, don't
- 19 they?
- 20 A Yes, sir. His daddy owns one of those.
- 21 Q Okay.
- 22 A Yes.
- 23 Q So, his dad has got a black pickup truck?
- 24 A Ford.
- 25 Q Okay. A fair statement, hard to tell the

GENE SAYLORS - CROSS

1 difference between one and the other, isn't it?

2 A No, sir, it's not hard. One is an extended
3 cab, one is not.

4 Q All right. Now, when the Attorney General's
5 office was talking to you, you made the statement
6 you didn't know what happened to the trailer. A
7 little while later you said he took it with him to
8 put it in storage?

9 A Right.

10 Q Well, how come the first time you answered
11 that question you didn't know what happened to it
12 and then five minutes later you were in the vehicle
13 helping him hide or secret this thing in another
14 state?

15 A Maybe I misunderstood what he said because
16 when it left the storage building I never seen it
17 again. That's what I thought he was asking. When
18 it left my yard we went straight to the storage
19 building.

20 Q Okay. So, you not only bought drugs from him
21 and did drugs with him, you helped him, quote,
22 quote, hide stuff in another state?

23 A If that's what he was doing, hiding. I mean,
24 it belonged to him. He was storing it as far as I
25 know.

GENE SAYLORS - CROSS

1 Q Well, he came down there and told you, told
2 you he had problems, he had to get this stuff out
3 of state, he was running out of time, to use your
4 words. Yes?

5 A Yes, sir.

6 Q And this bag, you smelled a rat, you got rid
7 of it quick, didn't you?

8 A Oh, it left my house immediately.

9 Q Okay. And you didn't want that trailer in
10 your yard either?

11 A I sure didn't.

12 Q So you helped him tuck it away there in
13 Georgia?

14 A And a Z28 was sitting there in my yard, too,
15 I didn't want it in my yard either.

16 Q So, the answer to my question is, yes, you
17 helped him hide it away in some storage place in
18 Georgia?

19 A If that's what he was doing, hiding it, I
20 helped him hide it, yes, that one item, I helped
21 him hide the trailer. As far as those items right
22 there, he left them at my house, he wasn't hiding
23 them, he was putting them in my possession, and
24 that wasn't going to happen. Why he would leave
25 them in my yard, I don't know, but it didn't feel

GENE SAYLORS - CROSS

1 good to me, that is why they left my yard.

2 Q If he is bringing it down to Georgia and
3 telling you time is running out and he has to get
4 it out of South Carolina, you don't think he was
5 hiding it by taking it to your house, that's not
6 what he was doing?

7 A Sure, he was.

8 Q That is exactly what he was doing.

9 MR. CROUT: Objection, Your Honor, that calls
10 for him to make a conclusion he cannot make.

11 A I don't know if he was hiding it.

12 THE COURT: Wait a minute, Mr. Witness. The
13 objection is sustained. Rephrase the question, if
14 you wish.

15 Q I'll ask of your knowledge. He comes down
16 and tells you his time's running out, he's got to
17 get it out of South Carolina, he wants to leave it
18 in your front yard. What did you think he was
19 doing, what was going through your mind?

20 A He told me he was not going back to South
21 Carolina, he was advised not to go back to South
22 Carolina, so therefore everything that he had at
23 that time he was going to leave in Georgia. So,
24 yes, if he was hiding it, yes, he hid it in my yard
25 for two days.

GENE SAYLORS - CROSS

1 Q Okay. You helped him take it to a storage
2 building?

3 A I sure did, yes, sir.

4 Q Hiding it, to use your terms, but you're not
5 part of any conspiracy, are you?

6 (No response)

7 MR. VARNER: No further questions.

8 THE COURT: Mr. Wise.

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GENE SAYLORS - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. WISE:

Q Mr. Saylor, you haven't met Billy Moore,
have you?

A No, sir.

Q You don't know him from Adam's housecat?

A Uh-huh (affirmative).

Q Now, you met Mr. Miller through your ex-wife?

A Yes, sir.

Q And that was, she's known him four or five or
six years?

A I don't know, sir.

Q And did you come up here with her the first
time you met him?

A Come up where?

Q Did you come up to South Carolina?

A No. My mother lives in South Carolina.

Q Where does your mother live?

A Anderson.

Q Okay. So, you came up. Who introduced you
to Marshall Miller?

A Bonnie.

Q Bonnie, all right. Did you go with her or
did you all meet there?

A He was at her house, I believe.

GENE SAYLORS - CROSS

1 Q He was at her house, and did you go there for
2 the purpose of meeting him, or did you go by and he
3 happened to be there?

4 A Right.

5 Q You just went by and he happened to be there?

6 A Uh-huh (affirmative).

7 Q How long was it before you realized that he
8 sold some meth?

9 A I don't know, sir.

10 Q Months, weeks?

11 A I don't know.

12 Q It wasn't the first time you met him?

13 A No, I didn't know anything the first time I
14 met him.

15 Q The first time you met Marshall Miller he
16 didn't come out and say, "Hey, if you need meth I
17 got it"?

18 A No.

19 Q Was it through Bonnie you learned that he may
20 be able to supply you with some meth?

21 A Right. She was doing it, yes, I'm sure it
22 was.

23 Q The question is, how did you get in with him,
24 so to speak?

25 A I --

GENE SAYLORS - CROSS

1 Q Would she give it to you that she got it from
2 him at first, or how would it work?

3 A I believe it was a ride, she needed a ride
4 and she called ahead and asked if, you know, if she
5 could bring someone, I believe, yes, and we went
6 all the way from Anderson to Greenwood.

7 Q To Marshall Miller's place?

8 A I had no idea where we were at or who it was
9 but later I found out that is who lived there.

10 Q How long was that after you met him the first
11 time?

12 A I don't know.

13 Q Weeks, months?

14 A I guess weeks, months, I'm not sure.

15 Q So, it was several months before you started
16 dealing any methamphetamine with Marshall after the
17 first time you met him?

18 A Yes.

19 Q Is that correct?

20 A Yes.

21 Q And you mistakenly went the second time with
22 your ex-wife, she was going?

23 A Basically I didn't want to start dealing meth
24 with Marshall Miller but, you know, but I took her
25 there probably once or twice, I don't know.

GENE SAYLORS - CROSS

- 1 Q Then over a period of time you and Marshall
2 became pretty good friends?
- 3 A Friends, or --
- 4 Q Well, let me rephrase that.
- 5 A I don't have no friends.
- 6 Q You got to know him better?
- 7 A Got to know him better.
- 8 Q Then he would come down to Georgia and see
9 you on occasion?
- 10 A When he was over that way, I guess.
- 11 Q And then you all started doing some meth
12 together?
- 13 A Yes, sir.
- 14 Q So, it was well over a year before he brought
15 these, that you had known him, you had known him
16 for well over a year before he brought these items
17 by your house?
- 18 A It was over a year, yes, sir.
- 19 Q And it was well over a year before you knew
20 anything about whether or not he knew anything
21 about --
- 22 A Those items happened about the time he said
23 he couldn't go back to Carolina.
- 24 Q Right. And you had known him about a year at
25 that time, or more, correct?

GENE SAYLORS - CROSS

1 A Yes, sir.

2 Q All right. And you had been doing meth with
3 him probably eight or nine months at that time?

4 A I don't know. I'm sure, if I had been
5 knowing him that long, I mean, it might have been
6 six months, because it was a while before I done
7 anything with him.

8 Q That's what I mean.

9 A Yes. If I had known him for a year, it
10 couldn't have been no eight or nine months because,
11 you know --

12 Q You knew him for a few months, then you
13 started doing meth with him, right?

14 A I don't know if a few months would be safe or
15 not, I don't know. Two, three, four, could have
16 been longer, I don't know.

17 Q Three or four or more months, somewhere in
18 that range, it wasn't instantaneous?

19 A No, sir.

20 Q And then when he felt it was getting hot he
21 brought all these items down and dumped them in
22 your yard, right?

23 A He said he wasn't going back to Carolina, so
24 I guess so.

25 Q And basically at that point you just feel

GENE SAYLORS - CROSS

1 like he was taking advantage of you, taking
2 advantage of your friendship?

3 A Yes.

4 Q No question in your mind about that?

5 A No question in my mind.

6 Q And Marshall is just not a guy that when he
7 brings this stuff down and dumps them in your yard
8 you look Marshall in the eye and say take it back,
9 is he?

10 A Well, the only reason I didn't say that, he
11 said, "I'll call you in a day or two and you can
12 bring them or I will come pick it up." He just
13 said, "I need to leave them here a day or two."

14 Q When Marshall brought these things down and
15 dumped them in your yard with his trailer and who
16 knows what was in his trailer, you didn't want his
17 trailer in your yard either?

18 A No.

19 Q You were scared of what might be in it?

20 A Plus it stuck out. I lived on the lake.

21 Q You were scared of what might be in it?

22 A Yes.

23 Q The day Marshall brought these things by and
24 left them in your yard, if the police had come by
25 ten minutes later you would be in a world of hurt?

GENE SAYLORS - CROSS

1 A They wouldn't be coming by knowing what was
2 there.

3 Q If they had followed Marshall down there
4 thinking he had something?

5 A Of course I would be.

6 Q But fortunately that didn't happen to you,
7 correct?

8 A Correct.

9 Q You got this out of your yard a couple days
10 later?

11 A No, that left my yard the same day Marshall
12 left.

13 Q The trailer left a couple days later?

14 A Right.

15 Q Okay. But before Marshall had gotten back to
16 South Carolina this was out of your yard?

17 A That was out of my yard.

18 Q Okay.

19 MR. WISE: Thank you very much.

20 THE COURT: Anything on redirect, Mr. Crout?

21 MR. CROUT: Very briefly, Your Honor.

22 MR. WISE: Could I ask him one more question?

23 THE COURT: Yes.

24 MR. WISE: I forgot.

25 BY MR. WISE:

GENE SAYLORS - CROSS

1 Q The little statement you signed for Marshall,
2 did he tell you he was getting this for some sort
3 of purpose? Did he tell you any purpose for this?

4 A Like I told him, you know, I don't remember
5 exactly what he said, he just, you know, he needed
6 it, he said.

7 Q You didn't read this in detail before you
8 signed it?

9 A The one I read did not read like that.

10 Q Or the one that was presented to you by him,
11 did he represent to you what it said and you just
12 kind of glanced at it, or did you read it in
13 detail?

14 A The one I read did not read like that. It
15 just said how long I knowed him and if I had had
16 any dealings with him or if he had been around any
17 drugs. It didn't say nothing about law enforcement
18 or none of that at the bottom.

19 Q So --

20 A But that is my handwriting.

21 Q So, he may have had this under the one that
22 you were signing, or something, who knows?

23 A We're talking about a few years ago, I really
24 don't, you know --

25 Q Also this was another example it was easier

GENE SAYLORS - CROSS

1 to sign this than argue with Marshall?

2 A At the time, yes, sir.

3 Q I understand.

4 A If I hadn't signed it, it would have been,
5 you know --

6 Q It was just easier to sign it than deal with
7 him?

8 A Right.

9 MR. WISE: Thank you very much.

10 THE COURT: Redirect?

11 MR. CROUT: Very briefly.

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GENE SAYLORS - REDIRECT

REDIRECT EXAMINATION

QUESTIONS BY MR. CROUT:

Q I believe on cross-examination Mr. Varner was questioning you on the vehicles that you knew Marshall Miller to drive. What vehicles at different times did you know him to drive?

A The truck, which was a '95 anniversary 271, and the red Pontiac.

Q And I would like you to, if you could, just step down and direct your attention to this photograph right here. Does that red vehicle there appear to be the one that you described that he drives?

A Yes, sir. That's the lake house, yes, sir.

Q When you say that's the lake house --

A I've been there.

Q You have been to that lake house?

A Yes, sir.

Q Did you ever do drugs in that house?

A No, sir.

Q Did you ever buy drugs at that house?

A No, sir. We took a boat trailer down there and dropped it off. That was it.

Q When you say we, who was that?

A Marshall.

GENE SAYLORS - REDIRECT

1 Q Whose house did he say that was?

2 A His girlfriend, she lived there, she was the
3 only one there.

4 MR. CROUT: No further questions -- excuse
5 me, I do have a few more.

6 Q You didn't draft the language in this
7 statement, did you?

8 A No, sir.

9 Q It was already preprinted when you got it?

10 A Right.

11 Q Did Marshall say where he had gotten it from?

12 A I don't recall. I mean, he just, he got
13 together with somebody and that's what they come up
14 with, I guess.

15 Q And you say they had a stack of them?

16 A Yes, sir.

17 Q Were all of them signed?

18 A I seen several of them signed, I can't say
19 all of them were signed.

20 Q Were some of them still blank?

21 A Yes, sir.

22 MR. CROUT: No further questions.
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GENE SAYLORS - RECROSS

RECROSS EXAMINATION

QUESTIONS BY MR. VARNER:

Q The red car, we will do this hopefully where everybody can see it, sir, you have never been to Billy Moore's shop, you don't know what it looks like, do you?

A No, sir, I don't.

Q And the red car you just identified a few moments ago, the same red car that's there, correct?

A Well, that's the back end of a car. I couldn't tell you.

Q Does that look like the same car?

A If that's a four-door.

Q Does that look like the pickup truck?

A Yes, sir.

Q Okay.

MR. VARNER: Your Honor just for clarification, I'm referring to State's Exhibit 17, the two vehicles parked out front of what is called Billy Moore's shop.

That's all the questions I have, sir.

THE COURT: Anything further, Mr. Wise?

MR. WISE: Nothing further.

THE COURT: Anything further on redirect?

1 MR. CROUT: Nothing from the State, Your
2 Honor.

3 THE COURT: Thank you, sir. You may come
4 down.

5 (Witness excused).

6 THE COURT: Any objection to this witness
7 being excused, or does the State wish for him to
8 stay?

9 MR. CROUT: Your Honor, we have no objection
10 to him being excused.

11 THE COURT: The defendant Miller?

12 MR. VARNER: Your Honor, I would like for him
13 to stay. I will make a decision before today is
14 over, though.

15 THE COURT: All right.

16 MR. VARNER: I'm not going to keep him here
17 for days.

18 THE COURT: All right.

19 MR. WISE: I have no objection.

20 THE COURT: All right. Just have a seat and
21 make yourself comfortable.

22 Call your next witness, please.

23 MR. CROUT: At this time, Your Honor, the
24 states calls Quincy Ford.

25 MR. VARNER: Your Honor, I withdraw that.

1 I'm not going to use him at this stage, he can go.

2 THE COURT: Do you need any way to contact
3 this witness?

4 MR. VARNER: Yes, sir, that would be helpful.

5 MR. CROUT: Your Honor, we have a means to
6 get in contact with Mr. Saylor if necessary.

7 THE COURT: Mr. Saylor, you understand you
8 are subject to recall?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. If you wish to leave
11 you may, or you can stay awhile, whatever you want
12 to do.

13 THE WITNESS: Thank you, sir.

14 THE COURT: Come around and be sworn, please.

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QUINCY FORD - DIRECT

1 QUINCY FORD,
2 after being first duly sworn testified as follows:

3 THE CLERK: Have a seat and state your full
4 name for the record.

5 THE WITNESS: Quincy Ford.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. HOOD:

8 Q Mr. Ford, where are you currently employed?

9 A I'm currently employed at the South Carolina
10 Law Enforcement Division, also known as SLED.

11 Q What is your title?

12 A My title there is forensic chemist.

13 Q And what do you do there?

14 A My main objective is analyze drug evidence
15 that is submitted by police agencies throughout the
16 State of South Carolina.

17 Q How long have you been employed in that
18 capacity?

19 A I've been employed in that capacity for two
20 years and ten months.

21 Q What is your educational background and
22 training, background in forensics, particularly in
23 the area of drug analysis?

24 A Yes, sir. I began my educational background
25 at South Carolina State University, where I

QUINCY FORD - DIRECT

1 obtained a Bachelor of Science Degree in chemistry,
2 my formal education, then I obtained a Master of
3 Science Degree in analytical chemistry at the
4 University of South Carolina. I have also
5 completed the South Carolina Criminal Justice
6 Academy, I have completed in-house training at
7 SLED, I have completed competency testing at SLED,
8 I have also completed marijuana analysis and I have
9 also completed clandestine safety and investigation
10 at Quantico, Virginia that was given by the Drug
11 Enforcement Administration.

12 Q Mr. Ford, have you ever testified before as
13 an expert witness in court?

14 A Yes, sir.

15 Q What courts have you testified in across the
16 State?

17 A Pickens County, Cherokee County, Orangeburg
18 County, Anderson.

19 Q Approximately how many times have you
20 testified in courts in this state?

21 A Approximately twenty times.

22 MR. HOOD: Your Honor, at this time the State
23 would move to have Mr. Ford qualified as an expert
24 in the area of, and to make sure I state this
25 appropriately, Mr. Ford, forensic drug analysis?

QUINCY FORD - DIRECT

1 THE WITNESS: Yes, sir.

2 MR. VARNER: No objection.

3 THE COURT: Any questions on his voir dire?

4 MR. VARNER: No objection, no further
5 questions.

6 THE COURT: Questions on his voir dire?

7 MR. WISE: Nothing from Mr. Moore.

8 THE COURT: Ladies and gentlemen, this is an
9 expert, this witness is an expert in the field of
10 forensic drug analysis.

11 Continue direct examination.

12 MR. HOOD: Thank you very much, Your Honor.

13 BY MR. HOOD:

14 Q Agent Ford, did you have an opportunity to
15 receive evidence pertaining to this case?

16 A Yes, sir, I have.

17 Q Was the evidence sealed when you received it?

18 A Yes, sir, it was.

19 Q How can you tell if someone, if evidence has
20 been tampered with?

21 A Typically the evidence is sealed in some type
22 of tamper indicative envelope or you will put
23 surveillance tape or you will put a seal tape that
24 will let you know if it has been tampered with in
25 any way.

QUINCY FORD - DIRECT

1 Q Let me show you this item, Mr. Ford. What do
2 you recognize this item to be?

3 A This item right here is actually a substance
4 that I took out of another container.

5 Q And what container did that come out of?

6 A It came out of a coffee grinder, a brown
7 coffee grinder.

8 Q Let's stick with the substance right now,
9 then we will get into the coffee grinder. Is that
10 substance in the same condition as the last time
11 you saw it?

12 A Yes, it is.

13 Q Is the substance inside of a little baggie in
14 that package?

15 A Yes, sir, it is.

16 Q And who put it in that baggie?

17 A I placed that in that baggie. And I can tell
18 because I put the laboratory number here, along
19 with my initials.

20 Q Okay. And where did you get that substance?

21 A I got this substance, like I said, out of the
22 brown container which I got directly from Miss
23 Constance Sonnefeld.

24 Q Okay. Let me show you, Mr. Ford, what has
25 been identified as State's Exhibit Number 11. Do

QUINCY FORD - DIRECT

1 you recognize this item? I'm just going to set it
2 here because it's messy. Do you recognize this
3 item?

4 A Yes, I do.

5 Q What do you recognize this item to be?

6 A I recognize that item to be the coffee
7 grinder that I scraped out the evidence that I'm
8 holding here.

9 Q Explain us the process, how something comes
10 into SLED and how it gets to you and how you
11 determine what you're going to do with it.

12 A Yes, sir. Once something is brought to SLED
13 it is brought to our evidence room, our evidence
14 room, we actually take the evidence and log it into
15 a system. Once it's logged into that system, if it
16 does not fit into our drug box an agent or the
17 analyst has to actually come down and has to sign
18 for the evidence to take it back upstairs. Once we
19 take it back upstairs we place it into our drug
20 vault and it is there in a secure location until
21 that analyst actually has a chance to analyze the
22 evidence.

23 Q Did you have an opportunity, Agent Ford, to
24 analyze that substance?

25 A Yes, sir, I did.

QUINCY FORD - DIRECT

1 Q And did you tamper with it in any way?

2 A No, sir,.

3 Q Did you change it in any way?

4 A No, sir, I did not.

5 Q Did you alter it?

6 A No, sir.

7 Q Did you attempt to do anything to it besides
8 test it?

9 A No, sir, I did not.

10 Q And did you test that substance?

11 A Yes, sir, I did.

12 Q And explain to us the tests that you use as a
13 forensic drug analyst to determine what the
14 material contained in that substance is?

15 A Yes, sir. I performed two tests. I perform
16 a chemical test, which is a presumptive test, and
17 then I perform an instrumental test, which is a
18 confirmatory test.

19 Q Agent Ford, did you render a result as to
20 what the item was that you had tested that came out
21 of that coffee grinder?

22 A Yes, sir, I did. I come to the conclusion on
23 the result.

24 Q Did you put that result in, for lack of a
25 better term, a report?

QUINCY FORD - DIRECT

1 A Yes, sir, I did.

2 Q Okay. And do you have that report with you?

3 A Yes, sir, I do.

4 Q Okay, let me show you. Do you recognize this
5 item?

6 A Yes, sir. That's a copy of the report.

7 Q Is that a report that you generated?

8 A Yes, sir, it's a copy of the report I
9 generated.

10 Q Does it have your signature on it?

11 A Yes, it does.

12 Q What are the results of the items that were
13 found in that coffee grinder, Agent Ford?

14 A The conclusion was Sudafed was found,
15 ephedrine, 1.85 grams, and you can get this over
16 the counter.

17 Q What does that mean in English?

18 A Meaning you can get it over the counter.

19 Q What is ephedrine, what is that?

20 A Basically it is just something that you can
21 get out of cold tablets or cold pills.

22 Q Okay. Is it really just that simple, just
23 ephedrine?

24 A Yes, sir.

25 Q Okay.

QUINCY FORD - DIRECT

1 MR. HOOD: At this time, Your Honor, we would
2 move to have the drugs, excuse my representation,
3 the ephedrine contained in this package into
4 evidence, and I want to confirm this State's
5 Exhibit Number 11, the coffee maker, is already in
6 evidence.

7 Yes, we would move the ephedrine into
8 evidence, Your Honor.

9 THE COURT: Any objection?

10 MR. VARNER: I would like to see it, Your
11 Honor.

12 MR. HOOD: I apologize.

13 MR. VARNER: Without objection, Your Honor,
14 as redacted.

15 THE COURT: Mr. Wise?

16 MR. WISE: No objection.

17 (State's Exhibit 28 was marked
18 and received in evidence).

19 MR. HOOD: No further questions, Your Honor.

20 THE COURT: Cross-examination.

21 MR. VARNER: No questions.

22 THE COURT: Mr. Wise?

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QUINCY FORD - CROSS

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CROSS EXAMINATION

QUESTIONS BY MR. WISE:

Q Mr. Ford, did anyone ever bring to you in connection with this case anhydrous ammonia of any type to analyze?

A In this particular case I did come and analyze an anhydrous ammonia tank.

Q Where was it?

A Where is that tank?

Q Where did you do the analysis?

A If I'm not mistaken, the analysis was done in Greenwood County.

MR. WISE: All right, thank you.

THE WITNESS: Yes, sir.

THE COURT: Anything further?

QUINCY FORD - REDIRECT

REDIRECT EXAMINATION

QUESTIONS BY MR. HOOD:

Q Do you remember what the results of that test were?

A Yes. Presumably there was a positive result for that anhydrous ammonia tank.

MR. HOOD: Nothing further.

THE COURT: Mr. Varner?

QUINCY FORD - RECROSS

RECROSS EXAMINATION

1
2 QUESTIONS BY MR. VARNER:

3 Q There is no way to confirm that analysis, is
4 that correct, without keeping it or taking it to
5 SLED?

6 A Generally we do not bring anhydrous ammonia
7 tanks and analyze them at SLED. We can only do a
8 presumptive test.

9 Q There is no way to confirm that?

10 A No, not at that particular time, no.

11 Q But subsequent testing could have been done
12 to confirm it?

13 A Well, we're not allowed to bring the
14 anhydrous ammonia tank to SLED, therefore we will
15 not even perform an analysis on that tank.

16 Q My question is, are there other tests other
17 people can do to confirm whether or not it is
18 anhydrous ammonia?

19 A Yes, there are people can actually confirm
20 whether it is anhydrous or not.

21 MR. VARNER: That's all.

22 THE COURT: Mr. Wise?

23 MR. WISE: Nothing further.

24

25

QUINCY FORD - REDIRECT

REDIRECT EXAMINATION

1

2 QUESTIONS BY MR. HOOD:

3 Q Can you explain what a presumptive test is?

4 A Well, basically in the case of anhydrous
5 ammonia tanks the presumptive test is I just
6 basically open up a tube, the tube has chemicals in
7 there that is very sensitive to anhydrous ammonia,
8 and it will give you a specific color change. Upon
9 that color change, if it turns the color indicated,
10 then therefore it's a presumptive test for
11 anhydrous ammonia, and to be even more specific,
12 that color test and those chemicals, they are
13 generally highly specific for anhydrous ammonia.

14 MR. HOOD: Thank you.

15 MR. VARNER: In response to that, one
16 question.

17 THE COURT: Anything further?

18 MR. HOOD: No, sir, Your Honor.

19 THE COURT: All right.

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QUINCY FORD - RECROSS

RECROSS EXAMINATION

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QUESTIONS BY MR. VARNER:

Q Would freon react the same way?

A I'm not sure about freon, I never tested freon with it. But according to the procedure and according to the literature, anhydrous ammonia reacts specific to those chemicals.

Q I understand, but freon and anhydrous ammonia basically have the same use, freezing elements for freezers?

A That's so, but like I said, I never tested specifically freon with the equipment, so I'm not totally sure.

Q You wouldn't know?

A I wouldn't know.

MR. VARNER: Okay, that's fair enough. Thank you.

THE COURT: Mr. Wise?

MR. WISE: No.

THE COURT: Anything further?

MR. HOOD: No, sir, Your Honor.

THE COURT: Thank you, sir, come down. Watch your step.

THE WITNESS: Yes, sir.

(Witness excused).

1 THE COURT: Any objection to this witness
2 being excused, by the State?

3 MR. HOOD: Sir?

4 THE COURT: Any objection to this witness
5 being excused?

6 MR. HOOD: No, sir.

7 THE COURT: Mr. Miller?

8 MR. VARNER: No, Your Honor.

9 THE COURT: Mr. Moore?

10 MR. WISE: None, Your Honor.

11 THE COURT: Thank you, Mr. Witness. You may
12 stay with us or leave the building.

13 THE WITNESS: Thank you.

14 THE COURT: We've been in session an hour and
15 a half. At this time we will take a short recess.
16 Madam Forelady and ladies and gentlemen, do not
17 discuss the case by, between or among yourselves.
18 Take a short recess, retire to the jury room.

19 (The jury was excused from the courtroom).

20 THE COURT: Anything for the record from the
21 State?

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

23 THE COURT: From Mr. Miller?

24 MR. VARNER: None, Your Honor.

25 THE COURT: Mr. Moore?

1 MR. WISE: None, Your Honor.

2 THE COURT: We'll be in recess.

3 (Recessed at 4:20 p.m.).

4 (Reconvened at 4:40 p.m.).

5 THE COURT: The record is open in the matter
6 of State of South Carolina versus Marshall Miller
7 and others, the defendants in this trial being
8 Marshall Miller and Billy Moore. The indictment
9 number is 2002-GS-47-32.

10 Is there anything from the State before we
11 show the jury in, please?

12 MR. CROUT: Nothing from the State, Your
13 Honor.

14 THE COURT: Thank you. Anything from Mr.
15 Miller?

16 MR. VARNER: No, Your Honor.

17 THE COURT: Mr. Moore?

18 MR. WISE: No, Your Honor.

19 THE COURT: Thank you. Show the jury in, Mr.
20 Busby, please.

21 (The jury returned to the courtroom).

22 THE COURT: All right, the jurors are
23 present, with the forelady and the alternates
24 properly seated. The matter lies with the State.
25 Call your next witness, please.

1 MR. CROUT: Your Honor, at this time the
2 State calls Mr. Michael Miller.
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MICHAEL MILLER - DIRECT

1 MICHAEL ALLEN MILLER,
2 after being first duly sworn testified as follows:

3 THE CLERK: Have a seat and state your full
4 name for the record.

5 THE WITNESS: Michael Allen Miller.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. CROUT:

8 Q Mr. Miller, where are you employed?

9 A I'm currently the Director of the
10 Anderson/Oconee Regional Forensic Laboratory that
11 is located in Anderson, South Carolina.

12 Q What do you do there?

13 A As part of my duties I oversee the management
14 of the laboratory, the implementation of scientific
15 policies and I receive in drug analysis case work,
16 I analyze that case work for its content, I also
17 perform investigations as they relate to
18 clandestine or illegal methamphetamine
19 laboratories.

20 Q What special training have you had for that
21 particular job?

22 A I have a Bachelor of Science Degree in
23 chemistry from the College of Charleston, I also
24 have about 40 hours of research and course work
25 toward my Ph.D. in medicinal chemistry from

MICHAEL MILLER - DIRECT

1 Clemson, I have been trained by the State Law
2 Enforcement Division and also the United States
3 Department of Justice Drug Enforcement
4 Administration. In addition to that, I have also
5 been trained as a clandestine laboratory
6 investigator and certified by the Department of
7 Justice Drug Enforcement Administration. Also as a
8 site safety officer for clandestine laboratories,
9 and a clandestine laboratory first responder
10 instructor. That means I actually instruct safety
11 and recognition classes to all of the law
12 enforcement agencies in the State of South
13 Carolina.

14 Q And when you refer to a clandestine
15 laboratory, what is it that you are actually
16 talking about?

17 A I'm talking about the sufficient combination
18 of chemicals, apparatus and knowledge put together
19 in the same place for the single purpose of
20 manufacturing an illegal drug or an illegal
21 substance.

22 Q And have you been qualified to testify as an
23 expert in that area?

24 A Yes, I have.

25 Q And have you also been qualified to testify

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1 as an expert in the area of forensic analysis?

2 A Yes, I have. In state General Sessions and
3 Magistrate Court as well as military courts of law.

4 Q Is that for both of those qualification?

5 A Yes, it is.

6 Q And how many times have you testified in
7 court?

8 A I believe thirty-one.

9 MR. CROUT: Your Honor, at this time I would
10 move to have Mr. Miller qualified as an expert in
11 the area of clandestine labs and also in the area
12 of forensic analysis.

13 THE COURT: Questions on his voir dire?

14 MR. VARNER: None, Your Honor.

15 MR. WISE: None from Mr. Moore, Your Honor.

16 THE COURT: Ladies and gentlemen, this
17 witness is an expert in the area of forensic drug
18 analysis and in the area of clandestine
19 laboratories.

20 Continue direct examination.

21 MR. CROUT: Yes, Your Honor.

22 BY MR. CROUT:

23 Q Mr. Miller, as part of your training do you
24 understand the process of how methamphetamines are
25 made?

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1 A That's correct.

2 Q And is there a particular method called the
3 anhydrous ammonia method?

4 A Yes, there is.

5 Q And how, using the anhydrous ammonia method,
6 how would an individual produce methamphetamine?

7 A The method with which he is describing is the
8 combination of basically three key ingredients,
9 that being a chemical known as anhydrous ammonia, a
10 precursor chemical called Sudefed or ephedrine,
11 which is commonly found in over-the-counter cold
12 tablets, and also the combination of lithium metal.
13 Lithium metal is most commonly obtained from the
14 double A or smaller size lithium camera batteries
15 that you would buy at any Walmart or grocery store.
16 The combination of those chemicals together would
17 produce methamphetamine.

18 Q What is the process that you utilize to
19 combine those chemicals so that the end result will
20 be methamphetamine?

21 A There are several different ways that
22 clandestine cooks will put these ingredients
23 together. The most common involves taking a
24 quantity of Sudefed tablets that they have
25 obtained, grinding those tablets up and then

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1 combining them in some type of cook vessel with the
2 lithium strips out of the batteries and the liquid
3 anhydrous ammonia.

4 Q And does that just turn into methamphetamine?

5 A Actually that chemical process is almost
6 instantaneous for production of methamphetamine,
7 and what is produced is an oily mixture that they
8 then have to extract their finished product from.
9 And the way that they do that is through the
10 combination of two other key ingredients, one being
11 rock salt or table salt, and the other being
12 sulfuric acid, and the combination of those two
13 chemicals will produce a gas known as hydrogen
14 chloride. That gas is bubbled into the mixture and
15 then they produce the salt form or methamphetamine
16 hydrochloride which is the nice white powder that
17 is commonly seen on the street.

18 Q When you are investigating one of these
19 classic type labs, I believe as you refer to them,
20 what are some of the items that you are looking
21 for?

22 A The biggest items we are looking for are
23 indications of those three main ingredients, the
24 first being the anhydrous ammonia. Anhydrous
25 ammonia is used in common everyday work as an

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1 industrial refrigerant, some people have large
2 heating and air systems at companies and businesses
3 that employ anhydrous ammonia as refrigerant. It
4 is also used as a commercial grade fertilizer on
5 larger farms. It is routinely stolen from these
6 places and placed into other rudimentary containers
7 for transportation to where the lab would be set
8 up. So, we're looking for compressed gas
9 cylinders. The common one we see is a twenty pound
10 propane cylinder that they have filled or
11 backfilled with anhydrous ammonia. That is one of
12 our key ingredients.

13 The next one would be lithium, and we're
14 looking for the battery holes or the actual outside
15 of the lithium camera battery, because to obtain
16 that strip of lithium inside they are going to have
17 to cut the battery open, unwrap the plastic wrap
18 that's inside to gain access to that strip of
19 lithium.

20 Then the final thing that we would be looking
21 for would be the ground up Sudefed tablets. We see
22 things like blister packs, the actual boxes,
23 sometimes there are bottles, they come in bottles
24 instead of the blister pack form.

25 Q Now, you discussed the term clandestine

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1 laboratories. Why is it referred to as a
2 clandestine laboratory as opposed to just a
3 laboratory?

4 A Because they are performing an illegal action
5 and they are doing so to avoid law enforcement, and
6 the term clandestine comes under the guise it's
7 secret. A lot of times the cook site will be far
8 away from where the people live. It can be right
9 next to it but a lot of times we'll find these set
10 up in rural areas that have been abandoned,
11 oftentimes they will attempt to hide their actions
12 by burning material that is present, you know, as
13 you would burn common trash, or they will package
14 it up in trash bags and throw it away in a dumpster
15 at, you know, a gas station or some place like
16 that. So, they are actually trying to hide the
17 fact they are doing something illegal.

18 Q Now, this process for making methamphetamine,
19 the chemicals that are used in this process, is it
20 dangerous, flammable? How would you describe it?

21 A It's extremely flammable and extremely toxic.
22 The scary thing about it is the fact that they are
23 using common household chemicals that you would be
24 able to buy at any hardware store, any convenience
25 store. They all have a legitimate legal use in

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1 your normal everyday life. Those chemicals, while
2 they are packaged properly, are removed from their
3 proper packaging and are used in conjunction with
4 other chemicals that oftentimes they should not be
5 mixed with, so they create a very hazardous,
6 flammable and explosive environment.

7 Q And what kind of odor does it produce?

8 A The first thing that's noticed particularly
9 with this method is the overwhelming smell of
10 ammonia. If you are familiar with the cleaning
11 solution that you would use as ammonia in your
12 household, that is about a three percent solution
13 of ammonia in water. You can judge how strong that
14 smells when you open the top of that bottle. What
15 we're dealing with here is 100 percent ammonia
16 minus any water. When it comes out of that
17 container that it's in it causes immediate tissue
18 damage, it burns eyes, nose and lungs, it's a very
19 hazardous toxic chemical to use.

20 Q Do the individuals, in your experience, do
21 individuals sometimes try to wear a mask or
22 something to protect themselves from the gas?

23 A Certainly. I would say at a third of the
24 scenes that we have processed we find what is known
25 as air purifying respirators or some form of

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1 breathing mask in an attempt to protect themselves
2 from the hazardous vapors, and when we process
3 these laboratories we are also wearing chemical
4 protective clothing and these same protective
5 masks.

6 Q Now, away from the smell that occurs, what
7 about any actual visible gases or smoke, is there
8 anything like that occurs sometimes?

9 A The anhydrous ammonia, at room temperature
10 anhydrous ammonia is a gas. It is placed under
11 pressure into a compressed gas cylinder like liquid
12 propane because that is easy for businesses to work
13 with, it is easy for them to handle, transport,
14 they can get a volume that they can sell and priced
15 by the volume or by the pound. When that anhydrous
16 ammonia comes out of that tank it is immediately
17 vaporized so it turns into basically a white cloud
18 of smoke.

19 Q Now, the final product, what does the final
20 product look like?

21 A The final product can actually have several
22 distinct color variations. It can be anything from
23 a brownish peanut butter color, to a pure white
24 crystalline substance. One of the other things we
25 have noticed, depending on the color of the tablets

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1 that are used, the Sudafed tablets that are used as
2 the precursor, a lot of times that colorization
3 will make its way through the synthetic process so
4 if you are starting with material that has red
5 tablets, then the end product ends up in color pink
6 or red.

7 Q This final product, what are the effects it
8 has on the people that use it?

9 A Methamphetamine is a central nervous system
10 stimulant. It is a drug that increases your heart
11 rate, your breathing rate, it ups your metabolism,
12 causes severe dilation of the pupils. In addition
13 to that, it also destroys some of the brain
14 chemistry that is operating in your body.
15 Specifically it attacks the senses of your brain
16 that regulates your mood and pleasure, so that in
17 order to maintain a healthy or what you would
18 consider a sane state of mind the person must
19 continue to abuse these drugs because as that brain
20 damage occurs it is permanent.

21 Q And what are the methods that the drug is
22 ingested, how do they get it into their system?

23 A Methamphetamine can be abused basically any
24 way you can get it into your body. We see it
25 snorted, smoked, we also see it injected

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1 intravenously using syringes, we also see it taken
2 orally in the form of just eating the powder, and
3 the newer form we're seeing is suppositories.

4 Q The injection process, describe how that
5 process takes place.

6 A Basically the starting material, the drug
7 itself is going to be in a powder substance that is
8 dissolved in a small amount of water. It is then
9 taken up into a small syringe sort of like the
10 small insulin syringes you would see that someone
11 that has diabetes uses to inject their insulin.
12 That liquid mixture of the powder and water is
13 taken up into that syringe and then injected into a
14 vein.

15 Q And what about the method for smoking it, how
16 do you smoke it?

17 A We see it smoked in any of many various
18 smoking implements, whether it be a pipe that is
19 manufactured from a company, whether it's a true
20 pipe that someone would smoke tobacco out of. We
21 also see rudimentary devices like antennas that
22 have been snapped off and hollowed out, the portable
23 or the small disposal Bic pens that people cut the
24 ends off of, or just a common straw. What they
25 will do is heat up the drug over an open flame and

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1 inhale the vapors that is produced.

2 Q And as far as the -- I think you indicated
3 that it can be snorted as well, is that correct?

4 A That's correct.

5 Q And how do you snort it, how does that
6 process work?

7 A Basically the drug is snorted through a straw
8 or some implement that will allow it to be injected
9 into the nose just with the breathing in of air.

10 Q Now, based on your training and expertise,
11 are you familiar with how, the different
12 measurements that are somehow directed from perhaps
13 the maker to the dealer, to the individual on the
14 street?

15 A Certainly. The common quantity we see for
16 drugs being distributed, yes, I am.

17 Q The term eightball, what does that mean?

18 A An eightball is a descriptive term that
19 describes an eighth of an ounce, which is a little
20 over three grams.

21 Q Mr. Miller, if you could, step down here very
22 briefly and for purposes of kind of educating me
23 and the jury and everybody else in the courtroom
24 describe for us the different measurements that
25 appear here on this chart and the way those

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1 measurements relate to possible distribution.

2 A I'm a little unsure of your question.

3 Q As far as the different quantities that are
4 distributed and bought, for example, we have the
5 slang term eightball that translates to 3.54 grams?

6 A Yes, sir.

7 Q Is it also common, maybe, to purchase quarter
8 ounce?

9 A Yes, it is. In fact, the Drug Enforcement
10 Administration I would say three years ago did a
11 study of dosage units, and basically what you can
12 assume from this is that one pound is equivalent to
13 454 grams. That translates to about 91,000 dosage
14 units of methamphetamine. A single dose of
15 methamphetamine is considered about five
16 milligrams. So, five milligrams is one dosage
17 unit, you can see the number of doses that you are
18 going to get out of an eightball, and the price is
19 reflected accordingly with each of the weights you
20 see here.

21 Q Thank you.

22 MR. CROUT: Your Honor, at this time I move
23 that this chart be marked as State's next exhibit
24 for identification purposes only.

25 THE COURT: How says the defendant Miller?

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1 MR. VARNER: No objection as to
2 identification, Your Honor.

3 MR. WISE: No objection.

4 THE COURT: That's offered for ID only?

5 MR. CROUT: Yes, Your Honor.

6 THE COURT: Very well, let it be marked for
7 identification.

8 (State's Exhibit Number 29 was marked for
9 identification).

10 BY MR. COURT:

11 Q Mr. Miller, what are some of the effects of
12 long term methamphetamine use?

13 A In addition to the brain damage that is
14 occurring, which is permanent, you also have an
15 inducement of paranoia and anxiety. This drug
16 causes hallucinations both of visual and auditory
17 nature. We have arrested numerous suspects before
18 that seemed to be fighting with someone else when
19 we went to arrest them. The only problem was that
20 person was not there, and it's just because there
21 was an auditory or visual hallucination taking
22 place.

23 This drug causes violent tendencies and it is
24 also a very addictive drug, meaning it takes a
25 short time of abuse to become chemically dependent

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1 on.

2 Q Now, as far as one of these clandestine labs
3 are concerned, once the individuals have left that
4 location is that location still dangerous?

5 A It is extremely dangerous.

6 Q Why is that?

7 A On average for every pound of this illegal
8 substance that's being produced they leave behind
9 five to ten pounds of hazardous chemical waste.
10 That is going to to be all the by-products of the
11 chemicals they have mingled together, the
12 contaminated glassware and the trash that is
13 generally left behind. That is all a hazard to not
14 only the general public, but also the environment.

15 Q And what is the common clean-up process that
16 takes place with regard to one of these labs?

17 A What happens after one is discovered, we
18 initiate a response from fire, EMS and also our
19 clandestine laboratory enforcement team. That
20 clandestine laboratory enforcement team comes in to
21 handle processing of the evidence and sending small
22 samples back for analysis. But then the remainder
23 of that has to be cleaned you up as hazardous
24 waste. Fortunately the federal government has
25 provided a Super Fund clean-up dollar amount each

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1 year in the federal budget that is used
2 specifically for clean-up of methamphetamine labs.
3 The Drug Enforcement Administration has sole
4 discretion over how that money gets spent, so we
5 call in a federal contracted hazards disposal unit,
6 they clean up the material present. Unfortunately
7 they will not do things like soil remediation,
8 things that have been dumped on the ground, and
9 they won't do any type of water testing. If a
10 building has become contaminated, such as a house
11 or family dwelling or hotel or apartment complex,
12 that's left up to testing by the Department of
13 Health and Environmental Control and then
14 subsequent costs back to the property owner.

15 Q And then referring back to the chart that I
16 had asked you about before, I hope everyone can
17 still see this, is it your, based upon your
18 experience, is the amount of a quarter ounce, a
19 half ounce, an ounce, at least, or excuse me, let
20 me refer to that again, the eightball, the half
21 ounce, a quarter ounce, the half ounce and the one
22 ounce, are those common amounts bought by end users
23 for methamphetamine?

24 A Yes, they are, and they all usually carry a
25 distinct price on the street.

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1 Q Do you at this time know what the going price
2 is for these?

3 A We're looking in Anderson, South Carolina
4 right now, methamphetamine is selling about a
5 hundred dollars a gram, and at the pound level
6 we're seeing it anywhere from \$16,000 to \$22,000 a
7 pound.

8 MR. CROUT: Your Honor, I have no further
9 questions. Mr. Miller, if you will, answer any
10 questions Mr. Varner and Mr. Wise have.

11 THE COURT: Mr. Varner?

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CROSS EXAMINATION

1
2 QUESTIONS BY MR. VARNER:

3 Q All right. Mr. Miller, when you go to these
4 clandestine labs, other than anhydrous ammonia,
5 ephedrine, lithium, rock salt and sulfuric acid,
6 what other things would you expect to find there,
7 what else do they use in the process?

8 A We're going to be finding what we would term
9 cooking implement or implements that they would use
10 throughout the process of manufacturing the drug.
11 Common things that we see are things like plastic
12 tea pitchers, Mason jars, any type of vessel that
13 they can combine the liquids and solid chemicals
14 in.

15 Oftentimes they generate, they mix their rock
16 salt and sulfuric acid together to make the
17 hydrogen chloride gas in a gas can, we will
18 commonly see a one to five gallon gas can with
19 several hoses sticking out of it. We will see
20 things like coffee filters or cheese cloth they are
21 using for filtration of different types of
22 chemicals.

23 Q Okay. Would you also usually find some kind
24 of grinding device such as a coffee grinder?

25 A Yes, we would.

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1 Q Okay.

2 A Oftentimes a coffee grinder or blender are
3 used to grind the tablets with.

4 Q Normally you will find baggies as part of
5 bagging it up for selling it?

6 A Not necessarily because, again, at a
7 clandestine lab site you are looking at
8 manufacturing of the drug and not necessarily
9 distribution.

10 Q Would you normally find scales?

11 A Not necessarily, no, sir.

12 Q Okay. How about a garden sprayer?

13 A Yes, sir. In lieu of using a gas can to mix
14 those two chemicals, the rock salt and sulfuric
15 acid, they may use a common garden sprayer because
16 it allows an easier application of the gas to their
17 cooking process.

18 Q Without giving me the whole process, what are
19 the Mason jars used for?

20 A Basically they are just a vessel to cook in,
21 to combine the chemicals in.

22 Q Okay. So, there is nothing actually sprayed
23 like from the garden sprayer into these Mason jars
24 that they ultimately spray off or clean off or
25 whatever?

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1 A Yes, they certainly can. Depending on the
2 recipe they have learned to cook by and what
3 materials they have at their disposal, each person
4 will finish out their product or each cook will
5 finish out their product in a little different
6 manner, and the method you just described is
7 accurate in one type of recipe. They will spray
8 that hydrochloric acid gas with a garden sprayer
9 into the Mason jar, and what happens is that solid
10 form of methamphetamine is not soluble or will not
11 dissolve in that liquid present so it crashes down
12 into the bottom or plates out on the side and they
13 can filter it through the coffee filter and collect
14 their solid.

15 Q So, heat is not part of the process, so to
16 speak?

17 A Not necessarily. With this method the
18 predominant mechanism of cooking does not require
19 any heat. But if they are going to try and extract
20 the Sudefed from their tablets initially they may
21 boil off that extraction liquid just to obtain
22 their pure Sudafed. That would be the only time
23 that I have seen heat used in this method.

24 Q Okay. Explain to me, what is the difference
25 between a cold cook and hot cook?

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1 A A cold cook is what you would term this
2 method, the anhydrous method is sometimes referred
3 to on the street as a Natzi method, because this
4 method was developed during Natzi Germany back in
5 the 1940's. The hot cook method is something
6 usually termed or gives reference to being the red
7 phosphorous method of cooking which employs a
8 different set of ingredients.

9 Q So, if you had the anhydrous ammonia, those
10 are the cold cooks?

11 A Yes.

12 Q They are not going to be using heat?

13 A That's correct.

14 Q Alkaline batteries have no use in this
15 particular process, is that correct?

16 A Other than to place in a flashlight or some
17 type of lighting source so that they can see.

18 Q So, they have no more use than these lights
19 up here?

20 A That's correct.

21 Q They are not really part of the process?

22 A That's correct.

23 Q If you are cooking out in a barn or whatever,
24 if you don't need lights you don't even use any
25 kind of light, do you? Strike the question. You

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1 don't need to answer.

2 All right, sir. Do you know anything about
3 the carbon dating?

4 A Yes, I do.

5 Q Is there a way to check ashes from a fire to
6 see how old it is or how long ago it has been
7 cooked? Is there a way to do that?

8 A Unless it is going to be several hundred
9 years old it is usually not very useful.

10 Q Okay. And you are also familiar with, as
11 part of your training, different types of
12 batteries?

13 A Yes.

14 Q Okay. And just by looking, without doing
15 testing or anything, can you tell the difference
16 between a nickel metal hydroid battery and a
17 lithium battery, just by looking at them, without
18 the cover on them? In other words, if they were
19 cut open?

20 A Yes, you can.

21 Q Okay.

22 A Because of the way they're designed.

23 Q Okay. And just briefly is part of the
24 difference the diodes are switched in the
25 batteries?

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1 A No. What you're commonly looking for in the
2 lithium batteries is, with a lithium battery you
3 have several layers of wax wrappings around one
4 layer of plastic that's coated on both sides with
5 lithium powder. Nickel metal hydroid batteries are
6 put together slightly differently and it varies
7 from vendor to vendor but you can tell a distinct
8 difference between what the innards look like.

9 Q Okay. But also a nicad battery, all three of
10 those batteries use what would appear to me in
11 laymen's terms, looks like kind of a tin foil would
12 be wrapped around partly to hold the heat source in
13 and, from a layman, not that much difference, is
14 that a fair statement?

15 A No, because if you saw all three of them laid
16 open you would be able to tell a distinct
17 difference.

18 Q Okay. If you could compare?

19 A Yes.

20 Q Okay. The common street amount you listed as
21 an eightball, is the first one, the most common
22 amount what is called a gram, a hundred dollars?

23 A You know, I can't honestly say what the most
24 common amount would be because at our laboratory we
25 receive everything from a pound, down to several

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1 milligrams.

2 Q Okay.

3 A And most of what comes into our laboratory,
4 some of it has been used and we don't have a full
5 understanding of what was purchased at the time.

6 Q I know you don't have time to count all the
7 pills. Would you count the batteries? If that
8 was, what I'm referring to, if you could read the
9 name, I mean the number on the outside, State's
10 Exhibit 22?

11 A Yes.

12 Q Those Sudafeds or whatever name brand they
13 have, and the batteries, how much end product, how
14 much methamphetamine or crystal meth or crank or
15 whatever name you want to use, roughly how much
16 would that produce?

17 A There is actually no way I can tell you
18 because the only thing in the tablet that is
19 converted into methamphetamine is the ephedrine or
20 pseudophedrine, so without knowing not only how
21 many tablets are here, but the strength of each one
22 of these tablets, I would not be able to calculate
23 the end amount of product that is here. I can tell
24 you that on average in this particular method you
25 can assume to expect a 75 to 80 percent yield of

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1 product, because this method is extremely efficient
2 for a rudimentary chemist or someone who doesn't
3 have any chemical background.

4 Q What do you mean, a 75 to 80 percent yield?

5 A Based on the amount of starting
6 pseudephedrine or ephedrine you would begin with,
7 70 to 85 percent of that will be converted into
8 methamphetamine.

9 Q Let me ask you to check the weight of those
10 pills on this scale. I know you have no way of
11 verifying the calibration but I'll let you as a
12 chemist --

13 MR. CROUT: Your Honor, at this time I would
14 object to this line of questioning. Mr. Miller was
15 called to testify as an expert as to his field of
16 expertise. The environment that the defense
17 counsel is setting up to examine evidence which Mr.
18 Miller has no knowledge of and in which he asks him
19 to make an expert opinion is outside the scope of
20 what he was called here to testify to today as an
21 expert. He has no personal knowledge of this
22 particular case, he's just talking about his
23 training as it relates to these types of cases, and
24 I think to make him go through this exercise is
25 beyond the proper scope of cross-examination.

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1 MR. VARNER: This gentleman is an expert, he
2 has already testified it would give a 75 to 80
3 percent yield. What I'm going to ask him to do is
4 let him weigh it out, he can basically agree that
5 feels like the right weight. The man, he's a
6 chemist, this is what he does for a living, he's
7 going to know if those scales are grossly in error,
8 that way we get a ballpark idea. I mean, these
9 people are charged with conspiracy to traffic more
10 than a hundred grams. If that yields two grams or
11 2,000 grams, that's a relevant issue for the jury.

12 THE COURT: The objection is sustained, and
13 the Court distinctly recalls the witness saying
14 that he does not have any way of knowing how much
15 ephedrine or pseudophedrine is in those tablets,
16 therefore we would be having a misleading bit of
17 testimony here. The objection is sustained.

18 BY MR. VARNER:

19 Q So, we're not talking, so I understand, we're
20 not talking 70 to 80 percent of the weight of
21 these, we're talking 70 to 80 percent of whatever
22 active ingredient might be in here?

23 A That's correct.

24 Q Okay. And what does that vary from?

25 A It depends on the manufacturer.

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1 Q What's the variance, one percent to five
2 percent?

3 A Oh, no. You've got tablets that have five
4 milligrams of ephedrine or pseudophedrine in it.
5 You have prescription strength tablets that have
6 500 milligrams of ephedrine or pseudophedrine in
7 it. It depends on the specific tablet and the
8 specific manufacturer, as to how much active
9 ingredient there is in their particular brand of
10 tablet.

11 Q Do you know percentage wise what the variance
12 is of a pill that size? Is two percent of it
13 active ingredient, ten percent?

14 A No, and that is a proprietary published
15 statistic that would be available from the
16 pharmaceutical company, but there are so many
17 tablets, both generic and name brand out there, I
18 have no idea.

19 Q So, a fair statement, to know how much, if
20 this were processed in a lab, a clandestine lab, to
21 know how much or to speculate how much it would
22 yield, there is no way to do that?

23 A No, that's actually incorrect. A common
24 technique used scientifically is called
25 quantitation. Quantitation would involve

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1 calculating a known sample of those specific
2 tablets and that would give you an indication of
3 exactly how much Sudefed were present per tablet,
4 and by analyzing a sample of those tablets you
5 would be able to determine the variance of that
6 specific sample. In South Carolina we do not
7 perform quantitation because our drug laws do not
8 necessitate it.

9 Q So, you weren't asked to do anything on this,
10 so there is no way the jury would know nor you
11 would know how much this will or will not yield?

12 A Not without further information.

13 MR. VARNER: That's all the questions I have.

14 THE COURT: Mr. Wise?

15 MR. WISE: Just a few questions.
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1 CROSS EXAMINATION

2 QUESTIONS BY MR. WISE:

3 Q You never went out to a garage owned by Billy
4 Moore on Morgan Road, did you?

5 A Not that I'm familiar with.

6 Q You never went out there to check the ground
7 to see if there were any contaminants on the ground
8 out there?

9 A No, sir.

10 Q Or check to see if there was any contaminants
11 in the building?

12 A No, sir.

13 Q You say one of the problems with this is it's
14 highly flammable?

15 A Yes, sir.

16 Q Okay. Of course that's not something you
17 would use around welding equipment?

18 A No, sir.

19 Q All right.

20 A If you were to use it around welding
21 equipment you could expect to start a very major
22 fire or cause a very massive explosion.

23 Q Certainly not something you use around a
24 painting shop, then, either?

25 A There are several solvents that are commonly

MICHAEL MILLER - CROSS

1 used in the painting industry. Like most of the
2 chemicals that are used, they have legal legitimate
3 purposes, but when combined in such a way or being
4 used for an illegal purposes, and there are certain
5 solvents that are used in the painting industry
6 that can be used in the manufacturing process of
7 methamphetamine.

8 Q So, the three key ingredients or the three
9 main ingredients are anhydrous ammonia, Sudafed and
10 lithium metal?

11 A Yes, sir.

12 Q You can have those three and you still can't
13 do it because you have to have the sulfuric acid,
14 right, or some sort of acid?

15 A The three key ingredients are all that is
16 necessary to manufacture methamphetamine.

17 Q So, how would I manufacture it with just
18 anhydrous ammonia, Sudafed and the lithium?

19 A Combine those three ingredients and put it in
20 a Mason jar and you instantly have methamphetamine.

21 Q Why do you add in the sulfuric acid?

22 A It is not in a form you can inject, snort it
23 or smoke it. It is in a liquid form but still
24 methamphetamine.

25 Q If you put those three together you end up

MICHAEL MILLER - CROSS

1 with this liquid solution in some sort of
2 container?

3 A That's correct.

4 Q These containers range in anything from what
5 size to what size?

6 A It can be anything from a small pint sized
7 Mason jar to a gallon size pickle jar, to a four
8 gallon bucket, it depends on what they have at
9 their disposal to use.

10 Q Okay. Now, you say part of the problems with
11 it -- let me ask one other question about Exhibit
12 22, all right? These look like typical Sudafed
13 tablets, I don't know what strength, but they look
14 like Sudafed tablets, correct?

15 A They look like, without further information
16 or being able to look up the logo, I can't tell you
17 specifically what brand, but it looks like a common
18 dosage form of Sudafed.

19 Q You're familiar with Sudafed?

20 A Yes.

21 Q Thank you. How many Sudafed tablets would it
22 take to produce an ounce of methamphetamine in a
23 lab?

24 A It depends on the tablet that you're using.

25 Q All right. What strength does Sudafed come

MICHAEL MILLER - CROSS

1 in? If it comes in more than one, I didn't know
2 it.

3 A It comes in many strengths.

4 Q Okay. Well, the most powerful strength,
5 then, what is that, what is the most powerful?

6 A About thirty milligram tablets.

7 Q Thirty milligram? If we have a thirty
8 milligram Sudafed tablet, how many of those will it
9 take to get an ounce of methamphetamine?

10 A To do the math it would require a calculator
11 and pen and paper. It requires several
12 conversions.

13 Q It's not something you have done almost on a
14 routine basis over your career?

15 A Sure, it is, but it involves mathematical
16 calculations that are not simple common ordinary
17 mathematical calculations. You have to take into
18 consideration the molecular weights of all the
19 compounds involved, the amount of chemicals
20 produced, and you have to do some figuring based on
21 the amounts of materials you have available.

22 Q All right. So, if I have a hundred Sudafed
23 tablets or a thousand Sudafed tablets, I don't
24 always get the same weight --

25 A No.

MICHAEL MILLER - CROSS

1 Q -- of end product?

2 A No.

3 Q And that would depend upon what?

4 A It would depend upon the amount and purity of
5 your other two main key ingredients.

6 Q Uh-huh.

7 A It would depend upon your ability to properly
8 carry out the procedure and your efficiency in
9 isolating your end product through the various
10 filtration and salting methods.

11 Q Can you give me a worst case and best case
12 scenario?

13 A Worst case scenario is none, best case
14 scenario is a lot.

15 Q All right. A lot being how much?

16 A More than, more material than you started
17 with.

18 Q So, you can end up with more --

19 A Certainly.

20 Q -- then you start out with?

21 A You can't end up with more methamphetamine,
22 you can end up with more material by weight.

23 Q All right. But the amount of methamphetamine
24 you get from a thousand Sudefed tablets, you can't
25 tell me?

MICHAEL MILLER - CROSS

1 A I have no way of telling you because it's a
2 chemical reaction that takes place. Without doing
3 the chemical reaction myself, I cannot tell you.

4 Q Okay. And if this process is done inside,
5 generally there is a ventilation system?

6 A Some people do. The anhydrous ammonia is
7 very noxious, produces very painful fumes to
8 breathe in, causes, you know, damage to your tissue
9 and eyes, so it does make it very tough to breathe.

10 The other problem is the anhydrous ammonia
11 will displace oxygen in close spaces, so if you are
12 doing it in a closet or shed or something like that
13 it is going to chase you out of there. Oftentimes
14 we do see rudimentary ventilation type systems that
15 have been created or we see fans that have been
16 placed in windows so they can take the fumes out of
17 the area.

18 Q And one of the reasons people don't do this
19 next to their homes is due to the fact that the
20 odor of the ammonia attracts attention?

21 A That, and if they have other people living in
22 their home they are going to be subjecting them to
23 poisonous and flammable gases, and it's just not a
24 general healthy, safe thing to do.

25 Q I'm talking about near the home, like across

MICHAEL MILLER - CROSS

1 the street or nextdoor or something like that?

2 A Well --

3 Q You said generally you find these out some
4 distance from civilization?

5 A Sure, some of them, but we do find people
6 living in the middle of their meth lab as well.

7 Q Correct. For whatever reason they decide to
8 do that, correct?

9 A Certainly.

10 Q But generally you will find them out, one of
11 the reasons is because the odor does attract
12 attention if you are doing it in a populated
13 neighborhood, and then it creates the probability
14 of being noticed?

15 A Yes.

16 Q That would be a correct statement?

17 A Yes, it would.

18 Q That is why you tend to go out some distance
19 from where anybody is?

20 A Some people do.

21 Q Okay.

22 MR. WISE: Thank you.

23 THE COURT: Redirect?

24 MR. CROUT: Briefly, Your Honor.

25

MICHAEL MILLER - REDIRECT

REDIRECT EXAMINATION

QUESTIONS BY MR. CROUT:

Q Mr. Miller, I believe you said you didn't need special training in chemistry in order to make methamphetamine, is that correct?

A That's correct. These recipes are passed by word of mouth, they are also passed throughout the internet. Basically if you can combine several solid and liquid ingredients by following handwritten or verbal instructions in a pot, basically like making soup or cooking, you have the ability to manufacture methamphetamine.

Q So, if you have the mentality to make a cake you can make some methamphetamine?

A Certainly.

Q So, if you are smart enough to make a cake you can be smart enough to make methamphetamine?

A Certainly.

Q You can be smart enough to make methamphetamine but dumb enough to do it in a dangerous place, correct?

A Certainly.

MR. CROUT: Thank you.

MR. VARNER: Nothing further.

MR. WISE: Nothing further.

MICHAEL MILLER - REDIRECT

1 **THE COURT:** Thank you very much, Mr. Miller,
2 come down.

3 **THE WITNESS:** Thank you, Your Honor.
4 (Witness excused).

5 **THE COURT:** Call your next witness.

6 **MR. CROUT:** Thank you, Your Honor. Your
7 Honor, at this time the State calls Daniel
8 Rustshack.

9 **THE COURT:** Any objection to Mr. Miller being
10 excused?

11 **MR. CROUT:** Nothing from the State, Your
12 Honor.

13 **MR. WISE:** No objection, Your Honor.

14 **MR. VARNER:** None, Your Honor.

15 **THE COURT:** Thank you. you may stay with us
16 if you wish, sir, or leave the building.

17
18
19
20
21
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23
24
25

DANIEL RUSTSHACK - DIRECT

1 **DANIEL FRANKLIN RUSTSHACK,**
2 **after being first duly sworn testified as follows:**

3 **THE CLERK: Have a seat and state your full**
4 **name for the record.**

5 **THE WITNESS: My name is Daniel Franklin**
6 **Rustshack, II.**

7 **DIRECT EXAMINATION**

8 **QUESTIONS BY MR. CROUT:**

9 **Q Mr. Rustshack, where are you employed?**

10 **A I'm employed with B.J.'s Wholesale Club in**
11 **Greenville.**

12 **Q What is your job duties with B.J.'s**
13 **Wholesale?**

14 **A I am the general manager at that store, so I**
15 **pretty much handle the whole store.**

16 **Q And how long have you been working there?**

17 **A I have been in Greenville since the end of**
18 **January of last year, so just short of a year at**
19 **this point.**

20 **Q And do you, did you appear here in response**
21 **to a subpoena?**

22 **A Yes, I did.**

23 **Q And did you look at the items that were**
24 **provided as a result of that subpoena?**

25 **A Yes. There was a sales history report that I**

DANIEL RUSTSHACK - DIRECT

1 received a copy from my home office, the corporate
2 office, which I believe is a copy of what they,
3 what they sent to you also.

4 Q Could you tell us what a sales history report
5 is?

6 A Yes. With B.J.'s Wholesale Club, to shop
7 though there you have to be a member, so when you
8 start a transaction you have to scan the membership
9 card so the home office then at that point can
10 track your sales history, and so a sales report
11 history will show specific dates with specific
12 items that that specific member would purchase.

13 Q And does the member have a particular number?
14 How do you designate, do they have a bar code, what
15 do they have that lets you know that member is
16 associated with that number?

17 A Well, when someone comes in to join the club
18 they have to show a picture ID to become a member,
19 they pay a membership fee, you get a membership
20 card which has a bar code on there that matches up
21 with your membership number, and it has a picture
22 of the member on that card also.

23 Q I would like to hand you a set of papers
24 totaling eight pages and ask, without telling us
25 what it contains, I would like to ask you if you

DANIEL RUSTSHACK - DIRECT

1 can identify that for us?

2 A Yes. It's a sales history report for a
3 member number 12140492926.

4 Q And did you make -- one moment, please, while
5 I confer with counsel.

6 MR. CROUT: Your Honor, begging the Court's
7 indulgence.

8 THE COURT: Take your time.

9 MR. CROUT: Your Honor, there was a previous
10 question about whether this was located in the
11 defense discovery package, and I just wanted to
12 clarify that with counsel for the defense, Your
13 Honor.

14 THE COURT: Yes, sir.

15 MR. CROUT: I wanted to make sure this
16 document had been provided to them.

17 THE COURT: Yes, sir, thank you.

18 BY MR. CROUT:

19 Q Now, you had indicated, I believe, as you
20 were testifying, that the sales purchase history on
21 the documentation that you are reviewing relates to
22 an account number. Could you read that account
23 number for us?

24 A It's 12140492926.

25 Q All right. And were you able to determine

DANIEL RUSTSHACK - DIRECT

1 who actually was the holder of that particular
2 account?

3 A Yes, I can.

4 Q And who was that individual?

5 A Marshall Miller.

6 Q I would like for you to, it may take us a
7 little bit of time to work through this but I would
8 like to ask you about some of the entries on that
9 document and have you identify them for us.

10 MR. VARNER: Before you go further, I think
11 we have to establish and lay a foundation whether
12 or not he's the keeper of the records. His
13 testimony was he has only been there since January
14 of last year and as I understand somewhere in there
15 this came from some corporate office.

16 THE COURT: Lay a foundation. The objection
17 is sustained until foundation is laid, his
18 knowledge and ability to accumulate it.

19 MR. CROUT: Yes.

20 BY MR. CROUT:

21 Q This sales purchase history document that you
22 have before you, how is that document compiled?

23 A This is compiled through our home office and
24 it's compiled by the membership number of the
25 person that belongs, that corresponds to that

DANIEL RUSTSHACK - DIRECT

1 membership number.

2 Q Have you ever seen one of these before?

3 A I have seen sales purchase histories before,
4 yes, from our home office.

5 Q And how long have you been working for B.J.'s
6 Wholesale?

7 A I have been with B.J.'s about eleven and a
8 half years.

9 Q And you started out --

10 A I started out at the service desk department,
11 worked membership, and just worked my way up. And
12 being that I worked everywhere in the club, you
13 know, if I have a membership number I can just go
14 on the computer, punch up the, find out who that
15 membership number belongs to, and also when I was
16 first informed about this I asked my loss
17 prevention manager, she's been with the store since
18 it opened, I asked her if she knew anything about
19 this, and as soon as I mentioned this was, the home
20 office had told me it was a drug case, she could
21 guess at that point what it was, and I was able to,
22 it helped me, you know, with information concerning
23 this.

24 Q And you could, based upon your testimony,
25 then, you could pull a sales purchase history

DANIEL RUSTSHACK - DIRECT

1 today, is that correct?

2 A I could contact the home office. I cannot
3 pull a sales purchase history at my club except for
4 the last ninety days. At my club, at my store, I
5 would not be able to go back more than ninety days,
6 my ninety days is the cut-off point.

7 Q All right. But you're familiar with the
8 process of how these are compiled, is that correct?

9 A Yes, sir.

10 Q And this particular sales purchase history,
11 can you see on what date this particular history
12 was produced?

13 A This history was produced at my home office
14 on August 14th of 2002.

15 Q And what time period does it cover?

16 A It covers everywhere from July 10th of 2001,
17 all the way up to July 1st of 2002.

18 Q And are these sales purchase histories
19 documents that are regularly kept in the ordinary
20 course of business of B.J. Wholesale?

21 A Yes.

22 MR. CROUT: Your Honor, at this time I would
23 like to question the witness about the contents of
24 the document.

25 MR. VARNER: The same objection, he is not

DANIEL RUSTSHACK - DIRECT

1 the keeper of the record and I can't effectively
2 cross-examine him. He's not the one that generates
3 them, he didn't even work at the store at that time
4 and he doesn't have the ability to access them more
5 than ninety days. These were done before he went
6 to work at this store. He's not the keeper of the
7 records, he's not the appropriate person.

8 THE COURT: The objection is overruled. In
9 the ordinary course of business the business
10 records rule controls. Continue.

11 BY MR. CROUT:

12 Q Mr. Rustshack, if you would, I would like you
13 to address your attention to the date of July 10th
14 of 2001, and if you will go down, look at what I
15 believe is one, two, three, four, five entries,
16 could you tell us what that next entry is?

17 A Yes. It's an entry for purchase of Sudafed
18 tablets, 96 count.

19 Q And how many units are sold?

20 A A total of -- well, Sudafeds is written three
21 times.

22 Q Just that one entry?

23 A Just that one entry, the first entry, one.

24 Q Okay. And then the next entry, what is that
25 next entry?

DANIEL RUSTSHACK - DIRECT

1 A Actually it looks like it was a void at the
2 register because it shows a negative one.

3 Q All right. Then the next entry after that,
4 could you read that entry for us?

5 A Yes, it's an entry of Sudafed tablets, 96
6 count, for 36 units.

7 Q And how much was paid for that?

8 A \$359.64.

9 Q And then going down, the next entry, what is
10 that entry?

11 A The next entry is Berkley & Jenson
12 pseudophedrine, 280 count.

13 Q And how many units of that were sold?

14 A Nine.

15 Q And what was the purchase price for that?

16 A \$46.71.

17 Q All right. Skipping the next entry and going
18 to the one beginning with number 48, what is that
19 entry?

20 A Begin with 48, it's 48 count Terry towels,
21 executive choice, one unit sold for \$14.99.

22 Q And then the next entry?

23 A It's Aleve Cold and Sinus, 24 count, 45 units
24 sold, for a purchase price of \$328.05.

25 Q All right. Then going all the way down,

DANIEL RUSTSHACK - DIRECT

1 let's see, one, two, three, four, what is the next
2 entry?

3 A Duracel D size ten-pack batteries, one unit
4 sold for \$8.49.

5 Q And then the next entry?

6 A Duracel C batteries, ten-pack, one unit, sold
7 for \$8.49.

8 Q And then the next entry?

9 A Duracel double A batteries, twenty-pack, one
10 unit sold for \$10.49.

11 Q All right. Now, directing your attention to
12 the date of August 5th, 2001, which I believe is
13 the next section there, going down one, two, three,
14 four, five, six entries, what is listed as the item
15 purchased there?

16 A It's a two channel walkie-talkie, one unit
17 sold for \$9.99.

18 Q And that's correct, I'm sorry, I miscounted.
19 Could you go to the entry right after that, I'm
20 sorry?

21 A Duracel double A Ultra batteries,
22 sixteen-pack, one unit sold for \$11.29.

23 Q And then the next item purchased?

24 A It's 100 count shop towels, one unit sold for
25 \$14.99.

DANIEL RUSTSHACK - DIRECT

1 Q Going then to the date of August 16th of
2 2001, and going down one, two, three, four, five,
3 six, seven entries, what is the next entry?

4 A The seventh, or the one after the seventh?

5 Q The one after after the seventh.

6 A Febreeze, two-pack, 27 ounce.

7 Q Let me, excuse me, I'm not on the 16th, I'm
8 on the, excuse me, I'm on the second page of the
9 16th, I'm sorry.

10 A Okay.

11 Q Starting on that page, if you will go down
12 seven entries, what is the next item purchased?

13 A Berkley & Jenson pseudophedrine 288 count, 15
14 units, for \$77.85.

15 Q And then the next entry?

16 A Berkley & Jenson pseudophedrine, 288 count,
17 15 units, for \$77.85.

18 Q Then the next entry?

19 A Berkley & Jenson pseudophedrine, 288 count,
20 15 units for \$77.85.

21 Q And then the next entry?

22 A Berkley & Jenson pseudophedrine, 288 count,
23 15 units for \$77.85.

24 Q The next one?

25 A Berkley & Jenson pseudophedrine, 288 count,

DANIEL RUSTSHACK - DIRECT

1 15 units, \$77.85.

2 Q The next one?

3 A Berkley & Jenson pseudephedrine, 288 count,
4 15 units, \$77.85.

5 Q The next one?

6 A Berkley & Jenson pseudephedrine, 288 count,
7 15 units for \$77.85.

8 Q And the next one?

9 A Berkley & Jenson pseudephedrine, 288 count,
10 15 units for \$77.85.

11 Q And the next one?

12 A Berkley & Jenson pseudephedrine, 288 count,
13 15 units for \$77.85.

14 Q And the next one?

15 A Berkley & Jenson pseudephedrine, 288 count,
16 15 units for \$77.85.

17 Q And the next one?

18 A Berkley & Jenson pseudephedrine, 288 count,
19 seven units for \$36.33.

20 Q And the next entry after that?

21 A Forty-eight count Terry towels, Executive
22 Choice, one unit for \$14.99.

23 Q All right. Now directing your attention to
24 page three, and I believe the date is September the
25 5th, 2001, at the bottom of the page, and starting

DANIEL RUSTSHACK - DIRECT

1 with the September 5th date, if you will work your
2 way down one, two, three, four, five, six, seven,
3 eight, nine, ten entries, what is the eleventh
4 entry on that page?

5 A Duracel D batteries, ten-pack, one unit for
6 \$8.49.

7 Q And the next entry?

8 A Duracel C batteries, ten-pack, one unit for
9 \$8.49.

10 Q And the next entry?

11 A The Duracel double A batteries, twenty-pack,
12 one unit for \$10.49.

13 Q Now, going on to page four, directing your
14 attention to the date of September 25th, 2001, what
15 is the second entry on that page?

16 A Berkley & Jenson pseudophedrine, 288 count,
17 25 units for \$129.75.

18 Q All right.

19 A And working our way down to the date of March
20 25th, 2002, and I'm looking at the bottom of the
21 entries, let's see, one, two, three, four, five,
22 six, seven, eight, nine, ten, eleven, twelve,
23 thirteen, fourteen, fifteen, sixteen, seventeen,
24 eighteen, nineteen, twenty, twenty-one, entry
25 number twenty-two, what is that entry?

DANIEL RUSTSHACK - DIRECT

- 1 A You said from the bottom?
- 2 Q No, I'm sorry, from the top.
- 3 A Okay.
- 4 Q Take your time.
- 5 A The twenty-second item is Berkeley & Jenson
- 6 pseudephedrine, 288 count, two units for \$10.38.
- 7 Q And the next entry?
- 8 A Berkley & Jenson pseudephedrine, 288 count,
- 9 one unit for \$5.19.
- 10 Q And then skipping the next entry, what is the
- 11 entry after that?
- 12 A One-hundred count shop towels, cotton shop
- 13 towels, one unit for \$14.99.
- 14 Q All right. Then going on to page five, the
- 15 date is March 3rd, 2002, I would like to work your
- 16 way down, one, two, three, four, five, six, seven,
- 17 to the eighth entry.
- 18 A The eighth entry is Berkley & Jenson
- 19 pseudephedrine, 288 count, 29 units for \$150.51.
- 20 Q And then the next entry?
- 21 A Berkley & Jenson pseudephedrine, 288 count,
- 22 30 units for \$155.70.
- 23 Q All right. And then working your way down
- 24 one, two, three, four more entries, what is the
- 25 next entry?

DANIEL RUSTSHACK - DIRECT

1 A Duracel double A Ultra sixteen-pack battery,
2 one unit for \$11.29.

3 Q And then the next entry?

4 A Duracel triple A Ultra batteries,
5 sixteen-pack, one unit for \$11.29.

6 Q And I had skipped one, if you actually go
7 above those two, what is that entry?

8 A Forty-eight count Terry towels, Executive
9 Choice, one unit for \$14.99.

10 Q Now, this report, it has other items
11 purchased on it as well, doesn't it?

12 A Yes, it does.

13 Q And it has household items purchased?

14 A Yes.

15 Q It has cleaning products purchased and it has
16 food items purchased, is that correct?

17 A Yes, it is.

18 Q All right.

19 Q And in fact everything that was purchased
20 from B.J.'s would be on here, is that correct, or
21 at least that's the idea, is that correct?

22 A That is correct.

23 Q Now, the B.J.'s card, you can't charge
24 anything on that card, can you?

25 A No.

DANIEL RUSTSHACK - DIRECT

1 Q That's just your ID card?

2 A Just basically your ID card.

3 Q To get in?

4 A To start your transactions at the register,
5 yes.

6 Q Then you have to purchase it with cash, check
7 or charge when you check out?

8 A Yes.

9 MR. CROUT: I have no further questions --
10 excuse me, Your Honor. At this time I would move
11 the eight pages that were testified to by Mr.
12 Rustshack as being the items produced in response
13 to the State's subpoena in as State's next exhibit,
14 Your Honor.

15 THE COURT: Mr. Varner?

16 MR. VARNER: Same objection, Your Honor. He
17 testified that it was kept in the ordinary course
18 of business but unless there is some way of
19 verifying he works at the home office, how would he
20 know during the ordinary course of business at the
21 home office, he has never worked there, doesn't
22 work there.

23 THE COURT: The objection is overruled. This
24 man said he had worked there eleven and a half
25 years for this company. He testified that these

DANIEL RUSTSHACK - DIRECT

1 records were kept in the ordinary course of
2 business by his company.

3 MR. VARNER: Yes, sir.

4 THE COURT: That's what he said. Any
5 objection to the introduction of the item of
6 evidence?

7 MR. VARNER: That was my objection, Your
8 Honor.

9 THE COURT: The objection is overruled.

10 MR. WISE: Nothing from Mr. Moore.

11 THE COURT: All right. If you will, count
12 the number of pages.

13 MR. CROUT: Let the record reflect I'm
14 handing the reporter eight pages titled sales
15 purchase history.

16 (State's Exhibit Number 30 was marked
17 and received in evidence).

18 MR. CROUT: Your Honor, no further questions
19 from the State for Mr. Rustshack. If you will,
20 answer any questions from Mr. Varner or Mr. Wise.

21 THE COURT: Mr. Varner.
22
23
24
25

DANIEL RUSTSHACK - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. VARNER:

Q Mr. Rustshack, you said you had been with this company. Where did you say you started out?

A I started out Virginia Beach, Virginia, club number 36.

Q Doing what?

A Part-time service desk.

Q Okay. Have you ever worked at the home office?

A I have never worked in the home office.

Q Have you ever worked in bookkeeping for the home office?

A No, I have not.

Q Ever worked in the records keeping department of the home office?

A No, I have not.

Q Okay. Over what period of time are we talking these purchases were made?

A July of 2001 to July of 2002.

Q Okay. And these Duracel batteries, what are lithium batteries, do you know.

MR. CROUT: Objection, Your Honor.

MR. VARNER: What, I'm sorry?

MR. CROUT: This goes beyond the scope of the

DANIEL RUSTSHACK - CROSS

1 questioning. First it goes beyond beyond the scope
2 of the direct examination. Number two, it goes
3 beyond the scope of this individual's knowledge as
4 it relates to this particular case.

5 THE COURT: We have objection on two points.
6 The first is overruled because this is
7 cross-examination and counsel has wide latitude on
8 cross-examination.

9 Now, the question can be asked and if he
10 knows he can answer, but if he doesn't know, then
11 move on.

12 BY MR. VARNER:

13 Q I'll rephrase it maybe in more clear terms.
14 You say you know about keeping of records. How do
15 they, how can you tell the difference between
16 lithium batteries and alkaline batteries or nickel
17 CAD batteries or whatever?

18 A As far as recordkeeping?

19 Q Yes.

20 A Each item you purchase from any store has a
21 UPC bar code on there, and along with that B.J.'s
22 assigns each different item a skew number, a skew
23 number, it's a number set forth by the company.

24 Q Okay. And you're the manager of the store?

25 A Yes, I am.

DANIEL RUSTSHACK - CROSS

1 Q And can you tell by looking at those, since
2 you're the manager, what kind of batteries those
3 are? Are they alkaline, or are they lithium
4 batteries, are they NICAD batteries?

5 A By looking at that report I could not.
6 However, the skew number, which is the, what the
7 club number, what the club assigns for the
8 batteries, could I look it up but from here, no, I
9 could not.

10 Q So, there is a way you would know whether
11 those are lithium batteries or just alkaline or
12 Duracel?

13 A By looking at this report, by looking at this
14 report I could not tell. However, if I do further
15 research by what they list on here as your sales
16 number I can go into my computer at my club and
17 give you a full description.

18 Q How long would that take you to do? Could
19 you have that tomorrow?

20 A Could I have it tomorrow, sure.

21 MR. VARNER: Your Honor, I would ask, I have
22 no further questions now but subject to recall and
23 I would ask the Court to ask him to check that,
24 because I think I'm entitled to cross-examine what
25 those records mean and what those numbers mean.

DANIEL RUSTSHACK - CROSS

THE COURT: Very well. Mr. Wise?

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DANIEL RUSTSHACK - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. WISE:

Q You didn't find an account for Billy Moore there at B.J.'s Wholesale, did you?

A I did not look for an account for Billy Moore.

Q You weren't asked to do that?

A No, sir.

MR. WISE: Thank you.

THE COURT: Anything further on redirect?

MR. CROUT: Briefly, Your Honor.

THE COURT: The Court is going to grant Mr. Varner's motion to have the witness research this issue and return.

MR. CROUT: Yes, sir. I want to ask him, just from the face of this document, some questions, Your Honor.

DANIEL RUSTSHACK - REDIRECT

1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. CROUT:

3 Q I see here, and I tell you what, I will look
4 at mine and you look at yours. I'm only talking
5 about on the face of this particular document, you
6 were able to research and you were able to tell
7 this was Marshall Miller's account, is that
8 correct?

9 A Yes, I was.

10 Q All right.

11 MR. VARNER: I would object. He is going
12 beyond the scope of redirect. That wasn't brought
13 out by me or by opposing counsel in any way I know
14 of.

15 THE COURT: How is this proper redirect?

16 MR. CROUT: Your Honor, I believe what was
17 brought up by Mr. Varner's cross-examination, that
18 he could not tell from this document alone, and I'm
19 going to ask him about things that you can and
20 cannot tell from this document alone. In fact, Mr.
21 Varner has asked to get more information.

22 THE COURT: The door is open. The objection
23 is overruled.

24 BY MR. CROUT:

25 Q Let's see, if we go down to the very final

DANIEL RUSTSHACK - REDIRECT

1 entry on the first page, do you see that entry?

2 A Yes, I do.

3 Q What is that for?

4 A It's a case of Dr. Pepper twelve ounce cans.

5 Q You know that that was purchased under
6 Marshall Miller's account, right?

7 A Yes, I do.

8 Q Do you know what he did with them?

9 A Excuse me?

10 Q Do you know what he did with them?

11 A No, I don't.

12 Q You can't tell that from here, can you?

13 A No, I can't.

14 Q As a matter of fact, from looking at all
15 these entries of Sudafed, you don't know if he just
16 had a real bad cold in 2002, do you?

17 MR. VARNER: Your Honor, objection, he is
18 leading, this is his witness, and he's also
19 testifying. It's an improper question, I object.

20 THE COURT: The objection is sustained.
21 Don't lead the witness.

22 Q The point is, from the face of this document
23 that you have already testified to Mr. Varner, it
24 only has limited information, is that correct?

25 MR. VARNER: Objection, it's not a proper

DANIEL RUSTSHACK - REDIRECT

1 question. It's a leading question again.

2 THE COURT: Overruled. You may answer.

3 A Correct, this is a limited document, I can't
4 tell everything from this document.

5 MR. CROUT: Thank you very much.

6 THE COURT: Mr. Varner?

7 MR. VARNER: In response to that.

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DANIEL RUSTSHACK - RECROSS**RECROSS EXAMINATION****QUESTIONS BY MR. VARNER:**

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3 Q About what you can tell from that, there are
4 other ways of telling actually who made the
5 purchase other than the name. Do you have cameras
6 there?

7 A Yes, we do.

8 Q Okay.

9 A There is also another way. When you come up
10 to the register with your card you have to show the
11 card to the cashier and there is your picture on
12 there and the cashier, as part of our policies and
13 procedures, verifies the picture to the person
14 making the purchase.

15 Q But you also have a camera?

16 A Yes, we do.

17 MR. VARNER: Okay, thank you.

18 THE COURT: Mr. Wise?

19 MR. WISE: Nothing further.

20 THE COURT: Anything further?

21 MR. CROUT: Nothing further, Your Honor.

22 THE COURT: Thank you, sir. If you will
23 please remain here, you may have a seat right over
24 here, we will talk about when it will be convenient
25 for you to return.

DANIEL RUSTSHACK - RECROSS

1 THE WITNESS: Sure.

2 (Witness excused).

3 THE COURT: Ladies and gentlemen, we have a
4 number of additional witnesses and the Court is
5 alert that the hour is late, we have now been in
6 session about an hour and ten minutes. So that we
7 may have an opportunity to finish this case this
8 week, we will call another witness.

9 MR. CROUT: Yes, Your Honor.

10 THE COURT: Let's just take about five
11 minutes. In the event somebody is uncomfortable
12 and wants to make a comfort stop, we will do that.
13 Do not talk about the case by, between and among
14 yourselves. We're going to run a little bit later
15 this evening in hoping that we won't have this jury
16 here this weekend or next week.

17 MR. CROUT: Yes, sir.

18 THE COURT: All right. You cannot talk about
19 the case by, between or among yourselves. Just
20 retire to the jury room, just a short break.

21 THE COURT: This will be on the record.
22 While this break is going on, talk with the last
23 witness about when it would be convenient for him
24 to come here tomorrow.

25 MR. CROUT: Yes, sir.

1 THE COURT: The record will show this
2 statement is being made while the jurors are
3 leaving but they were aware that this would be done
4 and we will do that now so this witness can leave
5 as soon as possible. At his convenience.

6 (The jury was excused from the courtroom).

7 THE COURT: Anything for the record from the
8 State?

9 MR. CROUT: Nothing from the State, Your
10 Honor.

11 THE COURT: Mr. Miller?

12 MR. VARNER: Nothing, Your Honor.

13 THE COURT: From Moore?

14 MR. WISE: Nothing from Mr. Moore.

15 THE COURT: We're going to be in recess for a
16 few minutes.

17 (Recessed at 5:50 p.m.).

18 (Reconvened at 5:57 p.m.).

19 THE COURT: The record is open. This is
20 indictment 2002-GS-47-32, State of South Carolina
21 versus Marshall Miller and others. The persons in
22 this trial are Marshall Miller and Billy Moore.

23 Is there anything from any quarter before the
24 jurors come in? If so, please speak now.

25 MR. HOOD: No, sir, Your Honor.

1 MR. VARNER: None, Your Honor.

2 MR. WISE: No, sir.

3 THE COURT: Hearing nothing, show the jury
4 in.

5 (The jury returned to the courtroom).

6 THE COURT: All jurors are present, with the
7 forelady and the alternates properly seated. Call
8 the next witness, please.

9 MR. CROUT: Your Honor, at this time the
10 State calls Mr. Troy Cain.

11 THE COURT: The clerk will administer the
12 oath, sir.

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

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TROY CAIN - DIRECT

1 TROY CAIN,
2 after being first duly sworn testified as follows:
3 THE CLERK: Have a seat and state your full
4 name for the record.

5 THE WITNESS: My name is Troy Cain.

6 THE COURT: You may examine.

7 DIRECT EXAMINATION

8 QUESTIONS BY MR. CROUT:

9 Q Mr. Cain, where are you employed?

10 A C. C. Dickson Company in Anderson, South
11 Carolina.

12 Q And how long have you worked there?

13 A At that particular branch, three years.

14 Q Have you ever testified in court before?

15 A No, sir.

16 Q In the regular and ordinary course of its
17 business does C. C. Dickson keep or make receipts
18 for people who make purchases at C. C. Dickson?

19 A Yes, sir.

20 Q And have you ever been involved in that
21 process of giving a client, a customer receipts?

22 A Yes, sir.

23 Q What's your current position with C. C.
24 Dickson?

25 A Branch manager.

TROY CAIN - DIRECT

1 Q Branch manager?

2 A Yes, sir.

3 Q What did you do before that?

4 A I have been employed with the company for
5 twenty-two years, that's what I have done.

6 Q But I mean did you start as branch manager,
7 did you work your way up?

8 A No, started as counter sales and got promoted
9 to branch manager.

10 Q I would like to hand you now five documents.
11 Without telling us what they are, I would just ask
12 if you could identify those five documents?

13 A Yes, sir. This is a cash sales invoice.

14 Q And is that consistent with the cash sales
15 invoice that your business generates?

16 A At the present time it was.

17 Q And when you say at the present time, has it
18 since change?

19 A Yes, it since has changed.

20 Q Let me ask you this. What does C. C. Dickson
21 do, what do you all do?

22 A We're a wholesaler of heating and
23 air-conditioning and refrigeration parts and
24 supplies.

25 Q Do you sell freon?

TROY CAIN - DIRECT

1 A We sell freon and any other type parts and
2 supplies that deals with heating and
3 air-conditioning.

4 Q And do you sell anhydrous ammonia?

5 A Yes, sir, we do. That's used as a
6 refrigerant.

7 Q And the five documents that you have there in
8 front of you, do they have your business name on
9 those documents?

10 A Yes, sir, they do.

11 Q Now, looking at those documents, and I direct
12 your attention to the first document, what is the
13 date on that document?

14 A September 13th, 2000.

15 Q And can you, from looking at that document,
16 tell what was purchased?

17 A Yes, sir. It was a 150 pound cylinder of
18 ammonia.

19 Q Could you describe that for us, what would it
20 look like?

21 A It comes in, it's a cylinder about
22 approximately five feet high and twelve inches in
23 diameter, it's got a cap on it and it's got a valve
24 on top of it.

25 Q Is it any particular color?

TROY CAIN - DIRECT

1 A It's a gray color.

2 Q And the valve on the top, is it a handle
3 or --

4 A It's just a little knob that opens and it has
5 a three-quarter inch pipe fitting on it that you
6 can attach a hose to or fitting and then hook a
7 hose to it and they use the hose to put the ammonia
8 in a refrigeration system.

9 Q And being in the business of dealing with
10 anhydrous ammonia, are you aware that sometimes
11 it's used for illegal purposes?

12 A Not until about two years ago.

13 Q What happened two years ago?

14 A When we had gotten a call from South Carolina
15 Law Enforcement Division.

16 Q Have you since, outside of your dealings with
17 South Carolina Law Enforcement Division, have you
18 since learned about illegal uses of anhydrous
19 ammonia from other sources?

20 A Yes, sir.

21 Q Is it a topic in the industry now?

22 A Not really. Every now and then it will come
23 up.

24 Q Are there any safeguards in your business to
25 make sure that the ammonia is being used for good

TROY CAIN - DIRECT

1 purposes?

2 A No. It's actually nonregulated.

3 Q So, there is really no way to tell what
4 somebody is going to do with it?

5 A No, sir.

6 Q That first document that you have, I believe,
7 what was that date on it again?

8 A September 13th, 2000.

9 Q And is there a place for the person who
10 purchases the ammonia to sign?

11 A There is a place to sign but on cash sales we
12 would not have a customer sign an invoice.

13 Q Would they write their name in?

14 A That would be what our employees would do, we
15 would write who it was sold to.

16 Q Can you read the name off of that first
17 invoice?

18 A Yes, sir. It's Ernest Covan.

19 Q All right. I would like to direct your
20 attention, then, to the next page, if you would.

21 A Yes, sir.

22 Q Is that the same type of invoice?

23 A Yes, sir, it certainly is.

24 Q Can you identify it as one used by C. C.

25 Dickson?

TROY CAIN - DIRECT

1 A Yes, sir.

2 Q In the regular and ordinary course of
3 business?

4 A Yes, sir.

5 Q All right. What does that invoice show as
6 being purchased?

7 A One-hundred fifty pound cylinder of ammonia.

8 Q Can you read the name on that one?

9 A Yes, sir. It is also Ernest Covan.

10 Q What is the date on that one?

11 A This one is dated 9/13/2000 also.

12 Q All right. Then going on to the next one?

13 A We've got one that is dated for November
14 13th, 2000, for the purchase of three 150 pound
15 cylinders. And then we have one dated May 17th,
16 2001, for the purchase of three 150 pound cylinders
17 of ammonia. And also on July 20th, 2001.

18 Q And as far as the name of the purchaser of
19 that ammonia on those last three that you referred
20 to, what is that person's name?

21 A Ernest Covan. That's consistent with all the
22 invoices.

23 Q So, all five of those have his name on there?

24 A That is correct.

25 Q They are all five cash purchases?

TROY CAIN - DIRECT

1 A Yes, sir.

2 MR. CROUT: Your Honor, at this time I would
3 move for these copies of invoices to be identified,
4 or marked as State's next exhibit for
5 identification purposes only.

6 THE COURT: Counsel?

7 MR. VARNER: No objection, Your Honor.

8 THE COURT: Without objection?

9 MR. WISE: No objection.

10 THE COURT: Without objection, to be marked
11 for identification.

12 (State's Exhibit 31 was marked
13 for identification).

14 THE COURT: It's identification purposes
15 only.

16 MR. CROUT: Yes, sir. Your Honor, I have no
17 further questions of this witness. If you will,
18 answer any questions Mr. Varner or Mr. Wise has,
19 sir.

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TROY CAIN - CROSS

CROSS EXAMINATION

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2 QUESTIONS BY MR. VARNER:

3 Q All right, I didn't get your name when we
4 first started?

5 A Troy Cain.

6 Q Mr. Cain, since this is a nonregulated
7 product, you don't check ID or verify ID or
8 anything like that?

9 A We didn't at the time. We do now.

10 Q Okay. Back then if somebody came in and just
11 gave you a name that would be the name that was
12 written down?

13 A That's correct.

14 MR. VARNER: That's all the questions I have.

15 MR. WISE: I have no questions.

16 THE COURT: Anything further?

17 MR. CROUT: Nothing further from the State,
18 Your Honor.19 THE COURT: Thank you. Come down, please,
20 sir.

21 (Witness excused).

22 THE COURT: Do you have another short
23 witness?24 MR. CROUT: Your Honor, no, sir, our next
25 witness will be quite lengthy.

1 THE COURT: Madam Forelady, ladies and
2 gentlemen, thank you for your patience. We'll
3 recess at this time. We have gotten all the short
4 witnesses, or another short witness out of the way
5 who would have had to return tomorrow had we not
6 gone ahead and allowed him to testify. Please do
7 not discuss the case by, between and among
8 yourselves or with any other person. If anyone
9 attempts to discuss the case with you please
10 identify yourself as a juror and advise that person
11 that you are not permitted to talk with them about
12 the case. If anyone persists in trying to talk
13 with you about the case after you identify yourself
14 as a juror use every reasonable means and measure
15 at your disposal to identify that person or persons
16 and report that incident to the Clerk of Court or
17 one of the bailiffs as soon as you return and that
18 will be investigated.

19 The Court is not unaware, again, that people
20 are very, very curious about the kind of case you
21 are trying at the courthouse and what you are
22 doing. There may be something late in the case
23 that may be more important than anything in the
24 first part of the case, so the Court again reminds
25 you that some innocent remark that someone may say

1 to you, however innocent and innocuous it may
2 appear at the time, may affect your thinking and
3 your mental balance that you must keep on your oath
4 throughout the course of the trial until the end of
5 the trial, so do not allow anyone to speak to you
6 about the case. That's not fair play. And don't
7 speak to anybody about it.

8 Do what you would do if you were in the
9 situation of a defendant. You would not want a
10 juror talking with anyone. That's the same position
11 that the State takes. The State doesn't want a
12 juror talking with anyone, and conversely neither
13 side wants anyone talking to any juror. It's not
14 fair play.

15 And please remember your oath. If there were
16 to be any media coverage such as newspaper,
17 television or radio please disregard it if you
18 realize that, once you realize what you are seeing,
19 hearing or reading has to do with this trial. You
20 must decide this case only and exclusively upon the
21 evidence presented during the course of this trial
22 and upon nothing else whatsoever at all.

23 Thank you very much. We will be in recess at
24 this time. Start again at 9:30 in the morning. We
25 hope to -- what is your estimate of resting the

1 State's case tomorrow? Is it possible?

2 MR. CROUT: Your Honor, it's possible but I
3 would not say it's likely, sir.

4 THE COURT: We'll do everything we can.

5 MR. CROUT: Yes, sir.

6 THE COURT: Madam Forelady, ladies and
7 gentlemen, be prepared to go to work at 9:30. We
8 will get out of the box on time. Everybody else
9 remain seated. The jurors are excused.

10 (The jury was excused from the courtroom).

11 THE COURT: Anything from the State?

12 MR. HOOD: No, sir.

13 MR. CROUT: Your Honor, there is one matter.
14 The gentleman who testified, Mr. Rustshack, is
15 going to return at 9:30 tomorrow morning. I'm
16 assuming the Court would prefer us to go ahead and
17 resume his testimony and get that taken care of?

18 THE COURT: Let him go on back to Greenville.

19 MR. CROUT: Yes, sir, that's correct. I just
20 want to make sure.

21 THE COURT: Be prepared for that first thing
22 in the morning, Mr. Varner.

23 MR. VARNER: Nothing further, Your Honor.

24 THE COURT: Anything from the defendant
25 Moore?

1 MR. WISE: Nothing further for Moore.

2 THE COURT: Thank you very much. We're in
3 recess until 9:30 a.m.

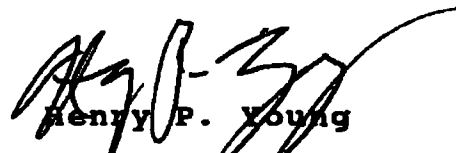
4 (Recessed at 6:16 p.m.).
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Abbeville County, South Carolina, on the 22nd day of January, 2004.

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

January 8, 2005


Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
CASE NO. 2002-GS-47-32

COUNTY OF ABBEVILLE

STATE OF SOUTH CAROLINA,)

-vs-)

MARSHALL MILLER and)
BILLY MOORE,)

Defendants.)

B E F O R E:

HONORABLE WYATT T. SAUNDERS, JR.

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

JOHN K. CROUT, Esquire
ROBERT E. HOOD, Esquire
Attorneys for the State

KIM R. VARNER, Esquire
Attorney for the Defendant Marshall Miller

C. RAUCH WISE, Esquire
Attorney for the Defendant Billy Moore

Henry P. Young
Court Reporter

VOLUME IV of VIII

JANUARY 23, 2004

P-R-O-C-E-E-D-I-N-G-S

(Reconvened at 9:35 a.m., January 23, 2004).

THE COURT: Is the State ready?

MR. CROUT: The State is ready, Your Honor.

THE COURT: Is the defendant Miller ready?

MR. VARNER: Ready, Your Honor.

THE COURT: Is the Defendant Moore ready?

MR. WISE: Ready, Your Honor.

THE COURT: The record will open. This the State of South Carolina versus Marshall Miller and others in indictment 2002-GS-47-32. In this case Marshall Miller and Billy Moore are the defendants.

Is there anything for the record from the State before we proceed?

MR. CROUT: Yes, Your Honor, there are two matters, one which I think we have resolved but I just want to go on the record with the matter, and that is the individuals who are going to be testifying today are subject to cross-examination on their criminal records, and what I would request is that the dictates of Rule 609 that allow cross-examination to go back ten years in this particular instance be adhered to for purposes of cross-examination. I just want to go on the record with that matter since we do have individuals who

1 do have records, who will be testifying.

2 THE COURT: Very well.

3 MR. WISE: Your Honor, just a little
4 precaution, too. I originally had the impression
5 that a witness named Tommy Stewart was not going to
6 be called, and now they gave me a rap sheet that
7 indicates he will probably be called. Before he
8 testifies I do have a matter before the Court
9 concerning his testimony I think we need to discuss
10 but we don't have to do it now, just before he's
11 called.

12 THE COURT: All right.

13 MR. CROUT: The other matter, Your Honor --
14 I'm sorry.

15 THE COURT: Yes, sir.

16 MR. CROUT: The other matter is yesterday in
17 his examination of a witness Mr. Varner had
18 referred to a twenty-five year sentence. I did not
19 object at that time. He had referred to it before
20 in his opening statement and it's not really my
21 habit to object during other attorneys' opening
22 statements but what I would like, based upon that,
23 is an agreement by all parties that the reference
24 to the particular sentence that Mr. Miller could
25 receive not be made any more with respect to

1 examination of witnesses.

2 Now, they can of course talk about their own
3 sentences that they may receive but the idea that
4 the jury somehow has to know the sentence that Mr.
5 Miller could receive, to me, doesn't seem relevant
6 in this particular case, so if there could be an
7 instruction to the jury that you are the sole
8 determiner of the sentence and they are the
9 determiner of the facts, and then of course ensure
10 that the time or the sentence that Mr. Miller is
11 exposed to or could potentially receive in this
12 case not be referred to again, Your Honor.

13 THE COURT: Mr. Varner?

14 MR. VARNER: As I understand that, Mr. Wise
15 is looking for it at this point in time, there is a
16 case just about on point. We are allowed to
17 discuss what his sentence is, it can be mentioned.
18 That is not inappropriate argument or statements to
19 bring up, and part and parcel of these people who
20 are testifying is they are getting three year
21 sentences, eight year sentences or whatever, what
22 they got out of it, they were looking at
23 twenty-five years, and I think Mr. Wise has the
24 case, Your Honor.

25 MR. WISE: State versus Mizell, 563 Southeast

1 2d 315, 2002, and I will be happy to hand a copy
2 up.

3 THE COURT: Doesn't that go to the defendant
4 himself?

5 MR. WISE: That goes -- what do you mean?

6 THE COURT: The questioning of him about his
7 potential sentence?

8 MR. WISE: That goes to the questioning of
9 witnesses. Those defendants were charged with the
10 same thing the defendant was charged with in
11 Mizell, and the Court ordered it was error not to
12 be allowed to cross-examine the witnesses, the
13 co-defendant witnesses as to their potential
14 sentence even though he happened to inform the jury
15 of what the defendant was looking at.

16 MR. CROUT: Your Honor, if I may respond to
17 that, that is exactly my point.

18 THE COURT: Yes, sir.

19 MR. CROUT: Asking a witness who is
20 testifying, "What were you looking at?"
21 "Twenty-five years." "And what did you get?"
22 "Three years," but what I'm saying is in statements
23 in open court about, "And he's looking at
24 twenty-five years, isn't he," those types of
25 comments are not appropriate, but yes, you can

1 examine a witness as to the sentence they received
2 and if the jury infers that Mr. Miller is looking
3 at the same sentence there is absolutely nothing
4 incorrect about that.

5 MR. WISE: Then, I don't understand the
6 issue.

7 THE COURT: Well, the issue is this, that
8 neither you nor Mr. Varner can argue that your
9 clients are subject to a twenty-five year sentence
10 if convicted. You can cross-examine any witness
11 other than them and if you want to ask them, if
12 they testify, what they could get, that's fine.

13 MR. WISE: Right, Uh-huh (affirmative).

14 THE COURT: But the point that Mr. Crout is
15 making is that you can't in argument or offhand
16 comment or anything else say that your clients are
17 looking at twenty-five year sentences. The Court
18 will give a curative instruction as moved by Mr.
19 Crout that what sentence is imposed is up to the
20 Court, it is of no concern to the jury.

21 MR. WISE: Except in this case this is not
22 true.

23 THE COURT: Well, it may or may not be true.
24 If your client testifies, you can talk to your
25 client about minimum mandatory sentence.

1 MR. WISE: Except in this case it's a minimum
2 mandatory twenty-five.

3 THE COURT: And you can question any witness
4 as to what they may have received and what they
5 could have received.

6 MR. WISE: Right.

7 THE COURT: That's what this case stands for.

8 MR. WISE: Correct, that's correct.

9 THE COURT: But, Mr. Crout, if I don't
10 misunderstand you, his point is to argue either
11 directly or indirectly by innuendo or suggestion or
12 otherwise if convicted the client receive
13 twenty-five years, that's not fair play. They are
14 fact finders, they are not sentencers. That's not
15 a question of evidence.

16 MR. WISE: Let me, I understand what you're
17 saying, let me peruse Mizell a little closer.

18 THE COURT: Look at it.

19 MR. WISE: I agree with that premise, that's
20 going to get us past all the witnesses and we won't
21 have to address the other issue for quite some
22 time.

23 THE COURT: Right.

24 MR. WISE: Okay. That gets us past the
25 cross-examination of witnesses, that gets us

1 probably through the day.

2 THE COURT: All right. Anything further, Mr.
3 Crout?

4 MR. CROUT: Nothing further for the State,
5 Your Honor.

6 THE COURT: Now, the Court will make a brief
7 mention that any suggestion as to sentencing or
8 penalty will be disregarded, that the Court is the
9 sole and only person that decides, or authority
10 that decides the sentence. The mission of the jury
11 is to find the facts, the sentencing is not
12 evidence.

13 MR. CROUT: Yes, Your Honor.

14 THE COURT: It will be very brief, as little
15 attention will be paid to it as necessary but
16 sufficient to cover your position.

17 MR. CROUT: Yes, sir.

18 THE COURT: Anything from defendant Miller,
19 Mr. Varner?

20 MR. VARNER: Your Honor, I have a question as
21 to when you're going to make that statement to the
22 jury?

23 THE COURT: As soon as they come out, just a
24 little brief comment.

25 MR. WISE: Well, you see, I think that

1 statement is misleading, and the reason I think
2 it's misleading is this. This Court has no
3 discretion over the sentence once the jury
4 convicts. So, to tell this jury that the sentence
5 is up to the Court is misleading, there is no
6 discretion, you have no choice.

7 THE COURT: That's very well taken but the
8 fact that there is a minimum mandatory penalty
9 imposed by the General Assembly if a person is
10 convicted of a crime for which they are indicted in
11 this case is not evidence.

12 MR. WISE: Well, if you want to tell them
13 that the minimum mandatory sentence is not
14 evidence, that's fine.

15 THE COURT: No, sir, that won't be done.

16 MR. WISE: I know.

17 THE COURT: Whatever sentence they received
18 is not to be considered by them and you are not to
19 mention it unless they take the stand, and then you
20 can ask them.

21 MR. WISE: Okay.

22 MR. VARNER: Your Honor, what my objection to
23 that is, I understand what the Court is attempting
24 to do and I don't disagree with that, but the
25 timing of it right before you start to put all

1 these defendants up, but in your closing charge to
2 them, in your closing charge to them, in your
3 reading of the law, I think it is very appropriate,
4 and I think the appropriate wording would be that
5 the jury is not to consider the sentence and that
6 is not to weigh on their decision, but right before
7 we get up and start cross-examining these people on
8 what sentence they face, minimum mandatory
9 sentence, and to tell them that before we start
10 with these people, and that is not evidence, that
11 is akin to saying, "If these lawyers bring this up
12 you are not even to listen to that, that is not
13 evidence, you are not to pay attention to that."
14 That is a factor that goes to the motivation of a
15 person's testimony and that is almost like telling
16 them, "If the lawyers bring this up you're not to
17 consider that, that's not evidence."

18 I think it is appropriate to tell the jury at
19 the time they are making a decision as to guilt or
20 innocence that they are not to consider this
21 sentence or what potential sentence, that is up to
22 the Court, that should not weigh in their
23 determination of guilt, findings of guilty or not
24 guilty, but to tell them at this stage, that's
25 going to have the impact of letting them judge and

1 weigh credibility of witnesses after the Court has
2 already told them it doesn't matter, I mean, what
3 Mr. Wise and I are doing is of no value, and I have
4 a problem with the fact and do object to the fact
5 you would do it at this stage. I think the
6 appropriate stage is when you've giving them the
7 closing charge and I think the appropriate way to
8 handle it would be to tell them that the sentence
9 is not to factor into their ultimate decision, but
10 it certainly is something they consider in weighing
11 the credibility of witnesses, what a person had to
12 gain or lose, and that is why we're bringing it up
13 and will be bringing it up when these people are
14 going to testify.

15 THE COURT: Do you commit yourself to the
16 principle of not mentioning potential sentence that
17 your client faces if convicted anymore?

18 MR. VARNER: Yes, sir, I don't intend to
19 argue that in closing argument. What he's
20 referring to, as I made the statement, they wanted
21 to put the hammer down, they wanted to do this.
22 No, I'm not going to argue about the sentence of my
23 particular client in my closing whatsoever, I won't
24 go there.

25 THE COURT: Do you commit yourself likewise,

1 Mr. Wise?

2 MR. WISE: Yes, sir. We just intend on
3 cross-examining, we're going to cross-examine the
4 witnesses about what they were looking at and what
5 deal they got and what benefit they got from the
6 deal. Now, if my client testifies, we may go
7 through it with him but that's down the road, if he
8 testifies.

9 MR. CROUT: Your Honor if I may respond?

10 THE COURT: Yes, sir, Mr. Crout.

11 MR. CROUT: The instruction that Mr. Varner
12 is referring to would be an instruction that you
13 would give anyway as a result of this case being
14 tried in front of this jury. My understanding is
15 the instruction that the jury is to only make a
16 determination of facts would be given in just about
17 any criminal case that's ever tried.

18 In this case inappropriate comments are what
19 have created this problem. And going back to the
20 fair play argument, I don't think it's fair play to
21 make inappropriate comments and then argue that the
22 curative instruction should be given at the time
23 that you want it given because of the inappropriate
24 comments that you made in court. I'm sorry that
25 this is, you know, when the jury comes back would

1 be the appropriate time to give that curative
2 instruction. Perhaps if I had objected at the time
3 the inappropriate comment was made that would have
4 been the appropriate time to give the curative
5 instruction, but the fact of the matter is the
6 State did not create this problem, the defense
7 created this problem and now the defense wants to
8 fashion its own remedy for the problem because they
9 now want the jury to be instructed in a way that
10 diminishes or takes away from the inappropriateness
11 of their own comments, and I don't think that would
12 be fair to the State in this particular instance to
13 go ahead and say, "Well, we're going to give, we're
14 going to give a regular instruction at the end of
15 the case for the jury that would take care of this
16 issue that came up during the trial of the case."

17 MR. VARNER: Your Honor, may I briefly
18 respond to that?

19 THE COURT: Yes, sir, Mr. Varner.

20 MR. VARNER: I agree with him on one
21 principle. If he felt the statement I made three
22 days ago was inappropriate he should have objected
23 at that point in time. To wait three days later
24 and to now make an objection right at a critical
25 point of when this is going to become an issue with

1 witnesses coming up is just the opposite of what
2 he's saying we're getting. He's wanting to time
3 when this is told to the jury. It is very much a
4 tactical advantage to the State. You don't make
5 objections three days later. I can't tell you
6 exactly what I said three days ago but I did note
7 and was very much aware I was close but I didn't
8 specifically refer to, in my recollection, Mr.
9 Miller in particular.

10 THE COURT: You referred to your client
11 facing a twenty-five year sentence on two
12 occasions.

13 MR. VARNER: Okay. If I did, they should
14 have objected.

15 THE COURT: Here is what we're going to do.
16 There are twelve people can certainly figure out
17 simply that what sentence to which these two
18 defendants may be exposed is of no consideration
19 for them but it's fair play for any witness who has
20 been sentenced to be cross-examined about their
21 sentence and any possible sentence that they may
22 have received.

23 MR. VARNER: Correct.

24 THE COURT: They can, they can differentiate
25 between those two things. So, that will be done.

1 Anything further?

2 MR. CROUT: Nothing from the State, Your
3 Honor.

4 THE COURT: Mr. Varner?

5 MR. VARNER: Nothing further.

6 THE COURT: Mr. Wise?

7 MR. WISE: Nothing further.

8 THE COURT: Show the jury in, please.

9 MR. WISE: Excuse me, hold it one second.

10 Could I speak to Miss Dunbar?

11 THE COURT: Madam Clerk?

12 MR. WISE: Never mind.

13 THE COURT: Don't worry, Madam Clerk.

14 (The jury returned to the courtroom).

15 THE COURT: Good morning, ladies and
16 gentlemen. The record will show that the forelady
17 and the alternates and the balance of the jurors
18 are properly seated.

19 Ladies and gentlemen, you are instructed that
20 any comment or information that you have heard
21 about the potential sentence or punishment to which
22 either of these defendants may be exposed is of no
23 interest to you and you should not consider it, as
24 you are finders of the facts. The Court is the
25 determiner of the sentence. You find facts, the

1 Court determines the sentence. Anything that you
2 may have heard about the exposure of sentence or
3 punishment for these two defendants, you are to
4 completely disregard.

5 Now, you may have testimony or hear testimony
6 from witnesses who have been sentenced for criminal
7 activities, and it is fair play for them to be
8 questioned about what criminal activities they were
9 punished for and what they could have been punished
10 for, but you may not consider anything concerning
11 what these two defendants may be exposed to
12 according to law.

13 Call your next witness.

14 MR. CROUT: Your Honor, I believe at this
15 time the defense had requested that the individual
16 who testified, Mr. Daniel Rustshack from B.J.'s
17 Wholesale return with some information that they
18 requested, so we would like to recall him to the
19 stand based upon defense's request.

20 THE COURT: Yes.

21 MR. CROUT: The State calls Mr. Daniel
22 Rustshack. I believe the case is with the defense
23 at this time, Your Honor.

24

25

DANIEL RUSTSHACK - CROSS

1 **DANIEL FRANKLIN RUSTSHACK, II.,**
2 **after being duly sworn testified as follows:**

3 **THE CLERK:** Have a seat and state your full
4 **name for the record.**

5 **THE WITNESS:** My name is Daniel Franklin
6 **Rustshack, II.**

7 **THE COURT:** The record will show that this
8 **witness is being recalled pursuant to a motion by**
9 **the defense for him to expand on testimony which he**
10 **gave on yesterday, and he is with you on**
11 **cross-examination, Mr. Varner.**

12 **MR. VARNER:** Thank you, sir.

13 **FURTHER CROSS EXAMINATION**

14 **QUESTIONS BY MR. VARNER:**

15 **Q** **Mr. Rustshack, since you testified here**
16 **yesterday have you spoken with anyone about your**
17 **findings or your testimony?**

18 **A** **No, I have not.**

19 **Q** **Anything like that?**

20 **A** **No.**

21 **Q** **All right, sir. Were you able to go back,**
22 **after we talked yesterday, to do some further**
23 **research?**

24 **A** **Yes, I was.**

25 **Q** **Okay. Can you tell this jury and me what you**

DANIEL RUSTSHACK - CROSS

1 did to ascertain this information?

2 A Well, on the sales report history, as I
3 stated yesterday, it lists what we call our skew
4 number, which is basically a store number for that
5 particular item. I was able to go into my computer
6 system and make a printout and give a little
7 further description than what the sales history
8 has.

9 Q All right, sir.

10 A On specific items you were asking about.

11 Q All right, sir. If you could look at your
12 documents now and I ask you go through the battery
13 purchases and tell us as best you can what type
14 batteries those are?

15 A There are Double A, Triple A Duracels, Double
16 A Duracels, C Duracels, and D Duracels, all five of
17 those are alkaline batteries.

18 Q All of them?

19 A All five are alkaline type batteries.

20 Q There is no purchase of lithium batteries in
21 there?

22 A Not from what I could tell.

23 Q So, all that testimony you had yesterday
24 about all those batteries that had been purchased
25 where about alkaline batteries?

DANIEL RUSTSHACK - CROSS

1 A Correct.

2 Q The kind of batteries that people would use
3 in flashlights, radios, dictaphones, whatever, just
4 common ordinary batteries?

5 A Yes.

6 Q Let me ask you further, when you talk about
7 the B.J.'s, is this kind of like a buying club like
8 Sam's?

9 A Yes, just like a Sam's Club.

10 Q Generally speaking, when you purchase from
11 there you do purchase in bulk, that's one of the
12 advantages of buying there?

13 A Correct.

14 MR. VARNER: That's all the questions I have.

15 THE COURT: Mr. Wise?

16 MR. WISE: No questions.

17 THE COURT: Anything, Mr. Crout?

18

19

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DANIEL RUSTSHACK - REDIRECT**REDIRECT EXAMINATION**

QUESTIONS BY MR. CROUT:

Q As far as the Sudafed is concerned, that information is as stated, is that correct?

A That's correct.

Q And that was bought in bulk, correct?

A Yes, it was.

Q And from your records, it was bought in bulk a lot, right?

A Yes, it was.

MR. VARNER: Objection to the characterization, Your Honor.

MR. CROUT: I'll strike it.

THE COURT: The question has been withdrawn. Disregard the question and the answer that was posed by counsel for the State.

MR. CROUT: No further questions.

THE COURT: Anything further?

MR. VARNER: Nothing further.

MR. CROUT: Nothing further from the State.

THE COURT: Thank you very much, sir. You are excused. You may leave the building or stay with us all day if you wish.

THE WITNESS: Thank you, sir.

(Witness excused).

DANIEL RUSTSHACK - REDIRECT

1 THE COURT: Call your next witness, please.

2 MR. CROUT: Your Honor, at this time the
3 State calls Ernest Covan.

4 MR. HOOD: Your Honor, I believe the
5 Department of Corrections people need a court order
6 to undo Mr. Covan's handcuffs and we would ask for
7 that at this time.

8 THE COURT: All right. Officer, who has the
9 keys to the cuffs?

10 CORRECTIONS OFFICER: I do.

11 THE COURT: You will free his hands, please.

12 MR. HOOD: And the waist chains. Is he on
13 waist chains?

14 THE COURT: The record will show he has on
15 what is generally referred to as a belly chain.
16 However you can make him comfortable so far as
17 that, his hands, so he can be expressive, that will
18 be done.

19 THE CLERK: Place your left hand on the
20 Bible, raise your right.

21

22

23

24

25

ERNEST COVAN - DIRECT

1 **ERNEST COVAN,**
2 **after being first duly sworn testified as follows:**

3 **THE CLERK: Have a seat and state your full**
4 **name for the record.**

5 **THE WITNESS: Ernest Covan.**

6 **DIRECT EXAMINATION**

7 **QUESTIONS BY MR. HOOD:**

8 **Q Good morning, Mr. Covan.**

9 **A Good morning.**

10 **Q How are you, sir?**

11 **A Fine.**

12 **Q If you could, pull the microphone close to**
13 **you, you are soft spoken, so everyone in the**
14 **courtroom can hear you.**

15 **Mr. Covan, were you transported here today**
16 **from a correctional facility?**

17 **A Yes, sir.**

18 **Q Which facility did you come from?**

19 **A Kershaw.**

20 **Q And is that Kershaw Correctional Institute?**

21 **A Yes, sir.**

22 **Q Where is that located?**

23 **A Kershaw.**

24 **Q Kershaw, South Carolina?**

25 **A Yes.**

ERNEST COVAN - DIRECT

1 Q Were you indicted in this case?

2 A Yes, sir.

3 Q And did you decide, did you make a decision
4 to plead guilty?

5 A Yes, sir.

6 Q What was your sentence, Mr. Covan?

7 A Seven years.

8 Q Do you know how much time you were looking at
9 for the charge you were indicted for?

10 A Twenty-five years.

11 Q Who gave you the sentence of seven years,
12 what person sentenced you?

13 A Judge Saunders.

14 Q Did you enter into a plea agreement with the
15 State?

16 A Yes, sir.

17 Q Did you affix your signature to that plea
18 agreement?

19 A Yes, sir.

20 Q As part of that plea agreement did you agree
21 to testify in all subsequent trials that may be a
22 result of this case?

23 A Yes, sir.

24 Q Mr. Covan do, you have a prior record?

25 A Yes, sir. Not drug record, though, not a

ERNEST COVAN - DIRECT

1 drug record.

2 Q In 2003 were you essentially convicted by
3 pleading guilty to this trafficking charge?

4 A Uh-huh (affirmative).

5 Q Mr. Covan, tell us a little bit about
6 yourself. Where did you grow up?

7 A Ware Shoals.

8 Q How old are you, Mr. Covan?

9 A Forty-nine.

10 Q Are you married, do you have any children?

11 A Yes, I've got one, a daughter.

12 Q How old is your daughter?

13 A Twenty-six.

14 Q Were you married to her mother?

15 A Yes, sir.

16 Q How long were you married?

17 A About three years.

18 Q Are you still with her?

19 A No, sir, been divorced thirty-one years.

20 Q Been divorced thirty-one years?

21 A Uh-huh (affirmative).

22 Q Did you go to high school, Mr. Covan?

23 A Ware Shoals.

24 Q Did you graduate?

25 A No, sir.

ERNEST COVAN - DIRECT

1 Q What grade did you complete?

2 A Eleventh.

3 Q Tell us, tell the jury what kind of work you
4 have done over your life.

5 A I owned a construction company, my mom did, I
6 worked with my mama building roads and stuff.

7 Q How long did you do that?

8 A All my life.

9 Q What kind of company was it, again?

10 A Build roads and stuff, highways.

11 Q Build roads?

12 A Uh-huh (affirmative).

13 Q When did you first meet, or do you know an
14 individual by the name of Marshall Miller?

15 A Yes.

16 Q When did you first meet Mr. Miller?

17 A '95, '96.

18 Q Okay. Who introduced you to Marshall Miller?

19 A A girl named Sherry Lollis.

20 Q Who?

21 A Sherry Lollis.

22 Q What I want to do is take you to the time
23 frame of late November, late 1999. In late 1999
24 did you know Mr. Marshall Miller?

25 A Yes.

ERNEST COVAN - DIRECT

- 1 Q Had you become friends with Marshall Miller?
- 2 A Yes.
- 3 Q Okay. Did you start purchasing
- 4 methamphetamines from Mr. Miller?
- 5 A Yes.
- 6 Q How much would you normally purchase from Mr.
- 7 Miller?
- 8 A A gram, a half eight.
- 9 Q How much did a gram cost?
- 10 A A hundred dollars.
- 11 Q And?
- 12 A A half eight.
- 13 Q Did you say half eight?
- 14 A Yes.
- 15 Q What exactly is a half eight?
- 16 A Half an eightball.
- 17 Q What's an eightball?
- 18 A I don't know how much it is. It usually cost
- 19 \$140.
- 20 Q Is that a common term used for --
- 21 A Yes.
- 22 Q -- how much methamphetamine you want?
- 23 A Yes.
- 24 Q How much did an eightball cost?
- 25 A \$280.

ERNEST COVAN - DIRECT

1 Q What was the most methamphetamine you
2 purchased from Mr. Miller?

3 A Half an eight at a time.

4 Q How much time were you spending with Marshall
5 Miller, how often did you see him?

6 A Ever other day.

7 Q And what would you all do when you were
8 together?

9 A Work on cars.

10 Q Okay. How often were you purchasing
11 methamphetamine from him?

12 A I didn't have to buy it, he gave it to me
13 because I went to get the ammonia for him.

14 Q Did you ever purchase from him where you paid
15 for it with money?

16 A I give him \$10 or \$15, something like that.

17 Q And what were you doing so that he would give
18 you methamphetamine?

19 A Purchasing, I was going to get the anhydrous
20 ammonia for him.

21 Q Okay. I will get to that in just one second.
22 Where did Mr. Miller live in late 1999?

23 A Down on the lake, Greenwood Lake.

24 Q Lake Greenwood?

25 A Uh-huh (affirmative).

ERNEST COVAN - DIRECT

- 1 Q And that is late November, 1999?
- 2 A Yes. He had a shop in Cokesbury.
- 3 Q Okay. Did he ever live at an apartment
- 4 complex in Honea Path?
- 5 A Yes.
- 6 Q Did you ever go to the --
- 7 A Shamrock Apartments.
- 8 Q Did you ever go to the Shamrock Apartments?
- 9 A Yes.
- 10 Q How many times would you say you have been to
- 11 the Shamrock Apartments?
- 12 A Quite a few, I don't know, quite a few times.
- 13 Q More than ten?
- 14 A Yes.
- 15 Q More than twenty?
- 16 A About fifty times.
- 17 Q About fifty times, okay. Each time you went
- 18 to the Shamrock Apartments would Mr. Miller either
- 19 give you meth or sell you meth?
- 20 A Yes.
- 21 Q How often, explain to the jury how much time
- 22 you were spending with Mr. Miller?
- 23 A Sometimes stay with him all day, sometimes I
- 24 stay with him twenty minutes, something like that.
- 25 Q Okay.

ERNEST COVAN - DIRECT

- 1 A Was methamphetamine usually always present?
- 2 A Yes, sir.
- 3 Q Okay. When Mr. Miller would give you meth or
- 4 sell you meth where would that drug deal take
- 5 place?
- 6 A In his bedroom.
- 7 Q Okay. And tell us what would happen when he
- 8 went into the bedroom.
- 9 A He would weigh it out and I would get it, I
- 10 would leave. Sometimes I would leave, sometimes I
- 11 would do some there.
- 12 Q Where did he keep it in his bedroom?
- 13 A In a little pouch like thing or laying out on
- 14 the table.
- 15 Q Did you ever see a housefull of money?
- 16 A No, I never did see Marshall with no money,
- 17 not much.
- 18 Q From late 1999 forward did you ever purchase
- 19 or receive meth from anyone but Marshall Miller?
- 20 A No.
- 21 Q Okay. Do you know who Tracy Davis is?
- 22 A Yes.
- 23 Q Where did Tracy Davis live?
- 24 A She lived with Marshall.
- 25 Q What was the relationship between --

ERNEST COVAN - DIRECT

- 1 A Boyfriend, girlfriend.
- 2 Q Were they married?
- 3 A No.
- 4 Q Did they live together?
- 5 A Uh-huh (affirmative).
- 6 Q And whose bedroom was it that you would buy
- 7 or purchase or --
- 8 A His bedroom.
- 9 Q Whose?
- 10 A Tracy and Marshall's bedroom.
- 11 Q Would Miss Davis ever be in there?
- 12 A Yes.
- 13 Q You say you purchased from a gram to a half
- 14 an eight. How often would you purchase or receive
- 15 these from Marshall?
- 16 A Two or three times a week.
- 17 Q How long did that continue?
- 18 A For three or four years.
- 19 Q Did Mr. Miller eventually move from the
- 20 Shamrock Apartments?
- 21 A Yes.
- 22 Q Where did he move to?
- 23 A 252, a trailer.
- 24 Q What is 252?
- 25 A Highway 252 coming from Honea Path to Ware

ERNEST COVAN - DIRECT

1 Shoals.

2 Q Okay. Who did he move there with?

3 A Tracy.

4 Q Okay. Did you purchase methamphetamine or
5 did Mr. Miller give you methamphetamine at the
6 trailer on Highway 252?

7 A Yes, sir.

8 Q How many times would you say you have been
9 there?

10 A A hundred times.

11 Q How often were you going to see Mr. Miller at
12 the trailer on Highway 252?

13 A Every other day.

14 Q What was the most amount you ever purchased
15 from him on Highway 252?

16 A Half an eight.

17 Q Did you ever purchase more than half an
18 eight?

19 A No.

20 Q Again, how often were you going to the
21 trailer on 252 and purchasing or him supplying you
22 meth?

23 A Every other day, something like that.

24 Q When you went to the trailer on Highway 252,
25 where would the drug deal go down between you and

ERNEST COVAN - DIRECT

1 Mr. Miller?

2 A In his bedroom.

3 Q Did it always happen in his bedroom?

4 A It always happened in the bedroom.

5 Q Would Miss Davis ever be present when it
6 would happen?

7 A Sure would.

8 Q Would other people be present in the bedroom?

9 A Sometimes.

10 Q Who else would be in there?

11 A Craig Wells, Jeff Horne, people like that,
12 David Cumming.

13 Q Did Mr. Miller move again?

14 A Yes, sir.

15 Q Where did he move to then?

16 A He moved down to the lake, Greenwood Lake.

17 Q What is that commonly referred to as?

18 A Greenwood Lake.

19 Q Okay. Do you remember what street he lived
20 on?

21 A No, I don't know.

22 Q Okay. Who did he move there with?

23 A Him and Tracy.

24 Q Did you go to that residence on the lake?

25 A Yes, sir.

ERNEST COVAN - DIRECT

1 Q Okay. Did you purchase or did he give you
2 methamphetamine on the lake?

3 A Yes, sir.

4 Q How many times would you say you have been to
5 the lake house?

6 A Fifty, seventy-five times.

7 Q And were you going there with the same
8 frequency as you were going to these other places?

9 A Yes, sir.

10 Q Were you receiving methamphetamine from him?

11 A Yes, sir.

12 Q Were you purchasing it from him sometimes?

13 A Sometimes I would buy it, sometimes he would
14 give it to me.

15 Q Did Mr. Miller have any shops?

16 A Cokesbury.

17 Q Okay. And where is Cokesbury?

18 A Right there below Hodges, off 25.

19 Q Explain this, for lack of a better term,
20 shop. What is it?

21 A Where he worked on his cars and stuff.

22 Q Okay. Was it a business?

23 A No, sir.

24 Q Was it a heating and air-conditioning
25 business?

ERNEST COVAN - DIRECT

- 1 A No, sir.
- 2 Q Was it a car business?
- 3 A Just where he had a shop, where he worked on
- 4 his personal stuff.
- 5 Q Was it almost like a garage?
- 6 A No. It was an old cabinet shop. He just
- 7 worked on his cars and had tools and stuff in there
- 8 and worked on his motorcycle and stuff.
- 9 Q Would you go over there and help him?
- 10 A Yes.
- 11 Q Do you know how to work on cars and
- 12 motorcycles and things?
- 13 A Yes, sir.
- 14 Q Do you know how to work on go-carts?
- 15 A Yes, sir.
- 16 Q Okay. How many times would you say you have
- 17 been to the shop at Cokesbury?
- 18 A Two-hundred times.
- 19 Q How often were you going to see Mr. Miller?
- 20 A Every other day.
- 21 Q And were you purchasing methamphetamine from
- 22 him there?
- 23 A Yes.
- 24 Q Was he giving you methamphetamine there?
- 25 A Yes, sir.

ERNEST COVAN - DIRECT

1 Q Was it the same amount as before?

2 A The same amount.

3 Q Did the price ever change?

4 A No.

5 Q Where would the transaction take place in
6 Cokesbury?

7 A There is just one big area in there.

8 Q Okay. Did he ever sell you methamphetamine
9 in front of other people?

10 A Yes.

11 Q Did the other people that were around, did
12 they know who you were?

13 A Yes, sir.

14 Q Were you all friendly with each other?

15 A I've been friends with them all my life,
16 before I ever met Marshall Miller.

17 Q Okay. Have you ever seen Mr. Miller make or
18 cook or manufacture methamphetamine?

19 A Yes, sir.

20 Q Where is the first place you ever saw Mr.
21 Miller manufacture methamphetamine?

22 A 252.

23 Q You're referring to the trailer that you
24 talked about earlier?

25 A Yes.

ERNEST COVAN - DIRECT

1 Q And describe in as much detail as you can the
2 process that you saw take place at the trailer on
3 252.

4 A I just seen him pour the batteries and stuff
5 in the tea pitchers, stuff like that, and the
6 ammonia, start fluid in it.

7 Q Where would he pour it?

8 A In the tea pitchers, he had them lined up.

9 Q What would he do after that?

10 A I don't know. They was in a shed and I was
11 outside, I just looked in one time.

12 Q Describe the smell for us.

13 A It's horrible.

14 Q Is there any way to put it into words?

15 A No, sir.

16 Q How far would you have to be away from the
17 area where he cooked to not smell it in the air?

18 A A good ways.

19 Q Two-hundred yards?

20 A A half a mile, a half a mile away if you
21 knowed what you were smelling for.

22 Q Is there any way to describe the smell you
23 would smell when Mr. Miller was manufacturing meth?

24 A No.

25 Q How many times did you see him manufacture

ERNEST COVAN - DIRECT

1 methamphetamines at the trailer on 252?

2 A About five times.

3 Q Did you see him manufacture methamphetamine
4 anywhere else?

5 A Yes.

6 Q Where?

7 A Every one you mentioned, the trailer, the
8 shop, Ray Powell's house.

9 Q Okay. Have you ever been to Ray Powell's
10 house?

11 A Yes.

12 Q How many times have you been to Ray Powell's
13 house?

14 A About four or five times.

15 Q How many times did you see Mr. Miller
16 manufacturing methamphetamine at Ray Powell's
17 house?

18 A Every time.

19 Q The house on the lake, did you ever see Mr.
20 Miller manufacture methamphetamine there?

21 A Yes.

22 Q How many times?

23 A About fifteen.

24 Q Do you know how much he was making each time?

25 A No, sir.

ERNEST COVAN - DIRECT

1 Q And why don't you know?

2 A Because I didn't, I just don't know that, I
3 just saw him pour the diesel fuel, I mean start
4 fluid and stuff like that.

5 Q The shop at Cokesbury, did you ever see him
6 manufacture methamphetamine there?

7 A Yes.

8 Q How many times?

9 A Maybe twenty-five, thirty.

10 Q How often would he be manufacturing
11 methamphetamine?

12 A Sometimes every two or three days.

13 Q Would he go through dry spells?

14 A No. He would be going cooking somewhere
15 else.

16 Q Did you ever know Mr. Miller to have a job?

17 A He worked at East Teak up there at Ware
18 Shoals one time.

19 Q Do you remember when that was?

20 A No, sir.

21 Q Did Mr. Miller ever talk about manufacturing
22 methamphetamine to you?

23 A Huh-uh (negative)

24 Q How do you know he was manufacturing
25 methamphetamine?

ERNEST COVAN - DIRECT

1 A That's what he was doing.

2 Q Well, how do you know?

3 A Well, he would tell me that's what he was
4 doing.

5 Q What would he tell you?

6 A "Let's go cook."

7 Q Can you say that again?

8 A "Let's go cook."

9 Q "Let's go cook"?

10 A Uh-huh (affirmative).

11 Q Did you ever help him manufacture
12 methamphetamine?

13 A I was there. I didn't help him, I just
14 poured the batteries up and stuff like that.

15 Q You did what?

16 A Poured starting fluid in them and ammonia in
17 tea pitchers and stuff.

18 Q What did you do with the batteries?

19 A Drop them over in it.

20 Q Would you drop the whole battery in there?

21 A You had to peel them.

22 Q And what does that mean?

23 A Get the titanium out of them.

24 Q Get the titanium out of them?

25 A Strips.

ERNEST COVAN - DIRECT

1 Q And how would you get those out?

2 A I ain't never seen him do that.

3 Q Okay. And where would you put the substance
4 you just talked about?

5 A In the tea pitchers.

6 Q When you say tea pitchers what are you
7 describing?

8 A Sir?

9 Q When you say tea pitchers what are you
10 describing?

11 A Tea pitchers, regular tea pitchers.

12 Q Plastic ones?

13 A Yes.

14 Q Maybe a gallon, two gallons?

15 A A gallon.

16 Q What did Mr. Miller give you for helping him
17 in this manufacturing process?

18 A Half an eight, a gram.

19 Q Would he always give you methamphetamine for
20 helping him in the process?

21 A Yes.

22 Q Do you know what ingredients he would use to
23 manufacture methamphetamine?

24 A Pills, starting fluid, anhydrous ammonia.

25 Q What are pills? I mean --

ERNEST COVAN - DIRECT

1 A Sudafed pills.

2 Q What kind of pills?

3 A Sudafed.

4 Q What would he use the Sudafed for?

5 A Dump them over into the tea pitcher.

6 Q Did you ever go out and purchase things for
7 Mr. Miller?

8 A Yes, once or twice.

9 Q What would you go and purchase for Mr.
10 Miller?

11 A The pills.

12 Q Where would you go to purchase pills?

13 A Walmart.

14 Q What kind of pills would you purchase?

15 A Sudafeds.

16 Q Would you purchase any other kind of pills?

17 A Batteries.

18 Q What kind of batteries would you purchase?

19 A Titanium.

20 Q How many times have you been to purchase
21 pills for Mr. Miller?

22 A I didn't go much. I might have been fifteen
23 times.

24 Q How much would you purchase each time?

25 A Three packs, three packs of batteries.

ERNEST COVAN - DIRECT

1 Q Let me show you what has been marked as
2 State's Exhibit Number 31 for identification
3 purposes. Do you recognize these, Mr. Covan?

4 A Yes.

5 Q Let me show you, there are one, two, three,
6 four, five receipts here. Whose name is at the top
7 of that?

8 A That's mine.

9 Q It says sold to who?

10 A Ernest Covan.

11 Q Okay. And the date on this document, do you
12 see what that is?

13 A Yes, sir.

14 Q What is the date on that document?

15 A I can't hardly see it. I can't see that. I
16 ain't got my glasses.

17 Q Okay. Can you see that your name is at the
18 top of it?

19 A Yes, I can see that.

20 Q Do you remember purchasing three 150 pound
21 ammonia cylinders?

22 A Yes.

23 Q And do you remember approximately how much it
24 was?

25 A About twelve-hundred bucks.

ERNEST COVAN - DIRECT

1 Q Okay. Do you remember seeing this receipt?

2 A Yes.

3 Q What would you do with this receipt?

4 A That's what they give me.

5 Q Okay. What would you do with it?

6 A Give it to Marshall.

7 Q Okay. And this second sheet, whose name is
8 at the top of that?

9 A Mine, Ernest Covan.

10 Q Do you remember purchasing one 150 pound
11 cylinder of ammonia on September 13th, 2000?

12 A Yes.

13 Q Who did you purchase that for?

14 A Marshall Miller.

15 Q Do you remember how much one of them would
16 cost?

17 A \$530.

18 Q This third sheet, another 150 pound ammonia
19 cylinder, did you purchase that for Mr. Miller?

20 A Yes, sir.

21 Q Where did you purchase that from?

22 A C. C. Dickson.

23 Q Would they give you a receipt?

24 A Yes, sir.

25 Q Would you put it on your credit card?

ERNEST COVAN - DIRECT

- 1 A No, sir.
- 2 Q How would you pay for it?
- 3 A Cash.
- 4 Q And this fourth sheet, that has your name on
- 5 the top of it?
- 6 A Yes, sir.
- 7 Q And this is for three 150 pound cylinders of
- 8 ammonia. Do you remember purchasing that for Mr.
- 9 Miller?
- 10 A Yes, sir.
- 11 Q Did they give you this receipt?
- 12 A Yes, sir.
- 13 Q And this fifth sheet, I think that one says
- 14 Ernest Cobin. Do you think that could be you?
- 15 A I don't think that's mine.
- 16 Q You don't think that's you?
- 17 A Huh-uh (negative)
- 18 Q How many times do you remember purchasing
- 19 anhydrous ammonia for Mr. Miller?
- 20 A Four.
- 21 Q Just four?
- 22 A Uh-huh (affirmative).
- 23 Q You don't remember going up there five times?
- 24 A No, sir.
- 25 MR. HOOD: Your Honor, at this time the State

ERNEST COVAN - DIRECT

1 would move State's Exhibit Number 31 into evidence.

2 MR. VARNER: No objection.

3 MR. WISE: No objection from Mr. Moore.

4 THE COURT: Number 31 will become part of the
5 evidence in the case.

6 (State's Exhibit Number 31 was received
7 in evidence).

8 MR. HOOD: Beg the Court's indulgence just
9 one moment.

10 BY MR. HOOD:

11 Q What was the purpose of the ammonia, Mr.
12 Covan?

13 A I couldn't tell you that.

14 Q Did you ever see Mr. Miller manufacture
15 methamphetamine with it?

16 A Yes, sir.

17 Q What did he do with it?

18 A He poured it in the pitchers, in the tea
19 pitchers.

20 Q Would he just hold the tank up and turn it
21 over?

22 A No, he would have to drain it out slow.

23 Q How would he let it out?

24 A With a hose.

25 Q Mr. Covan, all this methamphetamine that you

ERNEST COVAN - DIRECT

1 received from Mr. Miller, did you ever sell any of
2 it?

3 A No, sir.

4 Q Approximately how many times have you been in
5 Mr. Miller's presence when he was manufacturing
6 methamphetamine?

7 A Probably thirty times.

8 Q Did you ever see Mason jars?

9 A Oh, yes.

10 Q Did you ever see a garden sprayer?

11 A Yes, sir.

12 Q What would he do with the Mason jars?

13 A Put the hose down in there and draw it back.

14 Q Put which hose down in there?

15 A The garden hose, just a garden sprayer.

16 Q Did you ever see him use coffee filters?

17 A Yes.

18 Q What would he do with the coffee filters?

19 A Strain the dope with it, strain it, get the
20 dope out of it.

21 Q What would he pour on the top of that coffee
22 filter?

23 A Anhydrous ammonia.

24 Q Do you remember the day of your arrest, Mr.
25 Miller, I mean, excuse me, do you remember the day

ERNEST COVAN - DIRECT

1 of your arrest, Mr. Covan?

2 A Yes.

3 Q Where were you on the day of your arrest?

4 A Behind Billy Moore's shop on Morgan Road.

5 Q When was the first time you ever went to Mr.
6 Moore's shop?

7 A With Marshall?

8 Q Yes.

9 A On Monday morning -- no, it was on Sunday.
10 Sunday.

11 Q Was that close to the time when you were
12 arrested?

13 A Uh-huh (affirmative).

14 Q What did you all do when you got to Mr.
15 Moore's shop?

16 A I was working on my nephew's weedeater and
17 stuff. They was working on go-carts there and
18 everything.

19 Q Okay. Had you been to Billy Moore's shop
20 before that?

21 A I had been there before. I never knowed
22 Marshall. I knowed Billy since Billy was a kid.

23 Q Okay. Is Mr. Moore in the courtroom today?

24 A Yes, sir.

25 Q Do you recognize him?

ERNEST COVAN - DIRECT

1 A Yes, sir.

2 Q Could you point him out for the jury?

3 A Right there.

4 Q You essentially have known Mr. Moore all your
5 life?

6 A Yes, sir, since he was a baby.

7 Q How did you get -- you said earlier you don't
8 have transportation?

9 A No, sir.

10 Q How many times did you go to Billy Moore's
11 shop with Marshall Miller?

12 A Twice.

13 Q Okay. The first time you went there how did
14 you get there?

15 A Marshall.

16 Q What kind of vehicle was he driving?

17 A A Chevrolet truck, pickup, 271.

18 Q What color was it?

19 A Black.

20 Q What did you all do the first time you went
21 there?

22 A Worked on weed eaters and go-carts.

23 Q Was methamphetamine used?

24 A No. They didn't cook there.

25 Q Okay. The second time you went to Mr.

ERNEST COVAN - DIRECT

1 Moore's shop how did you get there?

2 A Chip, a boy named Chip.

3 Q Okay. And when you got there who was there?

4 A Marshall Miller.

5 Q Okay. And is this the day of your arrest?

6 A Yes, sir.

7 Q Okay. What time did you get there on the day
8 you were arrested?

9 A I was there all night.

10 Q You got there the night before?

11 A Yes.

12 Q Do you remember approximately what time it
13 was all the SLED agents showed up?

14 A About 10:30 that morning.

15 Q What were you all doing all night long?

16 A Working on go-carts and weed eaters and stuff
17 like that.

18 Q Was Marshall Miller there?

19 A Yes.

20 Q Was Billy Moore there?

21 A Yes, sir.

22 Q Did you all have an opportunity to use any
23 methamphetamine?

24 A Yes, sir.

25 Q Who all used methamphetamine that day?

ERNEST COVAN - DIRECT

1 A Marshall, I, Billy, Chip.

2 Q Who supplied the methamphetamine?

3 A Bill -- Marshall.

4 Q Let me ask you this, Mr. Covan. Describe
5 the, and I'm not sure exactly how to phrase it but
6 describe the taste of Mr. Miller's methamphetamine.

7 A You can't describe that.

8 Q Have you tried methamphetamine besides Mr.
9 Miller's before?

10 A Yes.

11 Q Did Mr. Miller's have a distinctive taste?

12 A Yes.

13 Q What was that distinctive taste?

14 A You still can't describe it.

15 Q Could you tell when you were using Mr.
16 Miller's methamphetamine as opposed to somebody
17 else's?

18 A Yes.

19 Q Do you know the location of Mr. Moore's shop,
20 what road it's on?

21 A Morgan Road.

22 Q When SLED showed up that day did you know
23 they had an ongoing investigation into you?

24 A Into me?

25 Q Right.

ERNEST COVAN - DIRECT

1 A No, sir.

2 Q Did you know they had an ongoing
3 investigation into Mr. Miller?

4 A I had heard something about it.

5 Q Who did you hear something about it from?

6 A Just the people that come around Marshall.

7 Q Where would Mr. Miller keep his anhydrous
8 ammonia tanks?

9 A In the truck, I mean in the back of his
10 truck, in the tool box.

11 Q Which truck?

12 A The black 271.

13 Q Why would he keep it in there?

14 A I guess he needed it when he cooked, wherever
15 he cooked at.

16 Q Do you know of any other locations Mr. Miller
17 cooked methamphetamine, Mr. Covan?

18 A No, sir.

19 MR. HOOD: Beg the Court's indulgence, Your
20 Honor.

21 THE COURT: Take your time, counsel.

22 Q Mr. Covan, let me show you this board. Do
23 you recognize the places on this board?

24 A Shamrock Apartments, 252, 252, 252 --
25 Cokesbury, Cokesbury, Cokesbury, Marshall's house

ERNEST COVAN - DIRECT

1 down on the lake, Where Ray Powell lives.

2 Q Did you go to any of those places?

3 A Yes.

4 Q Did you get methamphetamine at each place?

5 A Yes.

6 Q Did he cook at Shamrock Apartments?

7 A Yes.

8 Q Did you purchase methamphetamine at Shamrock
9 Apartments?

10 A Yes, sir.

11 MR. HOOD: Your Honor, at this time the State
12 would move this exhibit into evidence, I believe
13 it's without objection.

14 THE COURT: How says --

15 MR. VARNER: No objection.

16 MR. WISE: No objection.

17 THE COURT: Without objection, marked as
18 State's next exhibit.

19 (State's Exhibit Number 32 was marked
20 and received in evidence).

21 BY MR. HOOD:

22 Q Mr. Covan, if you would step down from here.
23 All right, Mr. Covan, stand over here next to Mr.
24 Court Reporter. If you will, stand right here in
25 the corner. All the jurors have to be able to see.

ERNEST COVAN - DIRECT

1 THE COURT: You have to stand all the way
2 around so the jurors on the extreme left can see as
3 well. Stand behind the exhibit the best you can.
4 Thank you.

5 Q Okay, let's start in this corner. For the
6 record, we're referring to State's Exhibit Number
7 32 in evidence, and this first picture I'm pointing
8 to, what is that a picture of?

9 A Shamrock Apartments.

10 Q Okay. The picture right below it, what is
11 that a picture of?

12 A 252.

13 Q And this picture?

14 A 252.

15 Q Okay. The picture right here on the top?

16 A Where Ray Powell lives.

17 Q These two pictures?

18 A Cokesbury.

19 Q This picture here?

20 A Down on the lake, Greenwood Lake.

21 Q Did Mr. Miller live in the Shamrock
22 Apartments?

23 A Yes.

24 Q Did he live in the trailer on 252?

25 A Yes, sir.

ERNEST COVAN - DIRECT

- 1 Q Did he live at the house on the lake?
- 2 A Yes, sir.
- 3 Q Is that commonly known as Waterloo?
- 4 A Waterloo.
- 5 Q Did he ever live at Ray Powell's house?
- 6 A No.
- 7 Q Okay.
- 8 A Not I know, he didn't.
- 9 Q Did you ever purchase methamphetamine from
- 10 him at the Shamrock Apartments?
- 11 A Yes.
- 12 Q Did you ever purchase methamphetamine from
- 13 him at the Highway 252 trailer?
- 14 A Yes.
- 15 Q Did you ever purchase methamphetamine from
- 16 him at Ray Powell's house?
- 17 A Yes.
- 18 Q Did you ever purchase methamphetamine from
- 19 him at the shop in Cokesbury?
- 20 A Yes.
- 21 Q Did you ever purchase methamphetamine from
- 22 him at the shop in Waterloo, the house at Waterloo?
- 23 A Yes, sir.
- 24 Q Did you ever see him manufacture meth at the
- 25 Highway 252?

ERNEST COVAN - DIRECT

1 A At all of them.

2 Q Everywhere? Did you see him manufacture
3 methamphetamine everywhere on this board?

4 A Except for Shamrock Apartments.

5 Q Except for Shamrock Apartments?

6 A Yes.

7 Q Have you ever seen Mr. Miller make meth
8 indoors?

9 A No, sir.

10 Q Okay. Where --

11 A At the apartments, no.

12 Q Okay. This red car right here, whose red car
13 is that?

14 A Marshall's.

15 Q Have you ever seen Mr. Miller drive that
16 vehicle?

17 A Yes.

18 Q Have you ever ridden with Mr. Miller in that
19 vehicle?

20 A Yes, sir.

21 Q The black truck, what kind of truck was it?

22 A A Chevrolet 371.

23 Q Okay. Did it have a tool box in the back of
24 it?

25 A Yes, sir.

ERNEST COVAN - DIRECT

1 Q If you would, Mr. Covan, you can retake your
2 seat.

3 Mr. Covan, is it fair to say you knew Mr.
4 Miller from late November, 1999, until the day of
5 your and his arrest?

6 A Yes, sir.

7 Q Did there ever come a time in that time frame
8 where you stopped purchasing methamphetamine from
9 Mr. Miller?

10 A No, sir.

11 Q Did there ever come a time during that time
12 frame where you and Mr. Miller had a falling out?

13 A No, sir.

14 Q Were you and Mr. Miller friends?

15 A Yes.

16 Q Did you help Mr. Miller?

17 A Yes.

18 MR. VARNER: No objection.

19 MR. WISE: No objection.

20 THE COURT: Without objection you can proceed
21 to enter that document. Have him identify it.

22 BY MR. HOOD:

23 Q Mr. Covan, do you recognize this document?

24 A Yes, sir.

25 Q What do you recognize this documents to be?

ERNEST COVAN - DIRECT

- 1 A It's what I signed for Marshall.
- 2 Q Okay. Who asked you to sign this document?
- 3 A Who else signed it?
- 4 Q Who asked you to sign it?
- 5 A Marshall.
- 6 Q Why did he ask you to sign it?
- 7 A Showing, saying I never saw him with a large
- 8 amount of money or anything like that.
- 9 Q Have you ever seen Mr. Miller with a large
- 10 amount of money?
- 11 A Not a large amount of money.
- 12 Q What did you consider large?
- 13 A I seen him with \$5,000, something like that.
- 14 Q That's not a large amount of money?
- 15 A No.
- 16 Q Have you ever seen him with more than \$5,000?
- 17 A No.
- 18 Q Can you read this statement, Mr. Covan?
- 19 A Not really.
- 20 Q Do you need your glasses?
- 21 A I didn't write it.
- 22 Q Who wrote it?
- 23 A I don't know who wrote that.
- 24 Q What did you do concerning this document?
- 25 A I signed it right there.

ERNEST COVAN - DIRECT

1 THE COURT: Mr. Varner?

2 MR. VARNER: I have no objection to Mr. Hood
3 publishing it.

4 MR. WISE: No objection.

5 MR. HOOD: At this time, Your Honor, I would
6 move this document into evidence, I believe without
7 objection.

8 THE COURT: There has been no objection. It
9 will become part of the evidence in the case, let
10 it be marked.

11 (State's Exhibit Number 33 was
12 marked and received in evidence).

13 MR. HOOD: I'm reading from State's Exhibit
14 Number 33 in evidence. "To whom it may concern. I
15 Ernest Covan being of sound mind and under the
16 influence of absolutely no drugs or alcohol
17 whatsoever do hereby make the following statements.
18 Number one, I state that I know Marshall Miller to
19 be true and honest. Number two, I also state that
20 I have never seen Marshall with large quantities of
21 money or drugs. Number three, finally I state that
22 Marshall is a hard worker and has paid the price
23 for everything he owns honestly. I make these
24 statements in front of this witness, I swear it to
25 be true."

ERNEST COVAN - DIRECT

1 BY MR. HOOD:

2 Q Who's the witness on here, Mr. Covan?

3 A Where?

4 Q Right there on the bottom of the document.

5 A I don't know who it is.

6 Q Who was present when you signed this
7 document?

8 A I ain't signed no document.

9 Q You didn't sign this?

10 A Tracy brought it by the house and I signed
11 it.

12 Q Okay.

13 A Yes, sir.

14 Q You say Tracy, who are you referring to?

15 A Tracy Davis.

16 Q Did she tell you why she brought it by there?

17 A No. I just signed it.

18 Q Did she explain to you what it was?

19 A No, sir.

20 Q Why did you sign it?

21 A On dope, I reckon.

22 Q Mr. Covan, is there any way to guess how much
23 methamphetamine you received from Mr. Miller?

24 A Huh-uh (negative).

25 Q Can you put any number on the amount you

ERNEST COVAN - DIRECT

1 received in an approximately three year period?

2 A Three year period, maybe a pound in three
3 years.

4 MR. HOOD: No further questions -- excuse me,
5 beg the Court's indulgence.

6 THE COURT: Take your time.

7 MR. HOOD: Nothing further, Your Honor. Mr.
8 Covan, if you would, please answer the questions of
9 Mr. Varner and Mr. Wise.

10 THE COURT: Mr. Varner, this witness is with
11 you on cross-examination.

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ERNEST COVAN - CROSS

CROSS EXAMINATION

1

2 QUESTIONS BY MR. VARNER:

3 Q All right, Mr. Covan, you had known Marshall
4 since the end of '99, in other words, 2000, 2001
5 and part of 2002, right, is that correct?

6 A Yes, sir.

7 Q And it's a fair statement you and Marshall
8 were friends?

9 A Yes, sir.

10 Q And you liked to do mechanical stuff, work on
11 cars?

12 A Yes.

13 Q Go-carts, fix up stuff, weed eaters and things
14 of that nature, right?

15 A Yes, sir.

16 Q And you made a statement a little while ago
17 that when you signed that statement you don't know
18 you signed it, you were probably on dope?

19 A That's what I said.

20 Q Okay. And that's what this stuff will do to
21 you?

22 A Yes, sir.

23 Q It will mess your head up?

24 A Yes, sir.

25 Q And isn't it a further fair statement that

ERNEST COVAN - CROSS

1 what was going on between you and Marshall, you
2 were buddies and you guys were both doing drugs
3 together?

4 A That's right.

5 Q You were partying together?

6 A Yes, sir.

7 Q And Marshall, is it a fair statement Marshall
8 didn't just party with you, Marshall partied harder
9 than you?

10 A Oh, yes.

11 Q Okay. Did you shoot that stuff up with a
12 needle?

13 A Yes, sir.

14 Q And when you shoot it up with a needle it
15 gets you messed up even more?

16 A Well --

17 Q Or does it?

18 A Yes, sir.

19 Q Okay. And it's quick?

20 A Oh, yes.

21 Q And is it a fair statement that by and large
22 if you had it you were doing it all the time?

23 A Yes.

24 Q You get to the point you don't know your left
25 foot from your right foot, just about?

ERNEST COVAN - CROSS

1 A Some people don't.

2 Q Okay. And did you ever hallucinate?

3 A No, sir. It don't bother me like that.

4 Q What?

5 A It didn't do me like that. I went to bed
6 every now and then.

7 Q But you did know in this group of people,
8 with some people they would hallucinate on the
9 stuff?

10 A Yes.

11 Q And this is a whole bunch of people that, for
12 lack of a better term, they call crankheads, a
13 bunch of people partied together and did crank
14 together?

15 A Uh-huh (affirmative).

16 Q All right. And you and Marshall were
17 friends, you would have done whatever you could to
18 help him, right?

19 A Yes.

20 Q But at a point in time you get arrested, a
21 fair statement, it's every man for himself then,
22 isn't it?

23 A I reckon.

24 Q Well, I don't want you to reckon. Is that
25 what you are saying?

ERNEST COVAN - CROSS

1 A Yes.

2 Q You were in a situation where you were
3 charged in this conspiracy, right?

4 A Yes, sir.

5 Q And you were looking at a mandatory minimum
6 twenty-five years in jail. Is that correct?

7 A Yes, sir.

8 Q And you understood that twenty-five years was
9 the least sentence you would get in this case?

10 A Yes, sir.

11 Q And at that point in time you decided you
12 would tell the State what they wanted to hear?

13 A I didn't tell the State nothing. I ain't
14 talked to nobody.

15 Q On January the 9th, 2004, did you meet with
16 Mr. Hood here?

17 A Oh, I thought you were talking about before.
18 Yes, sir.

19 Q You thought I was talking about who?

20 A I thought you were talking about before the
21 trial. Yes, sir, I talked to them.

22 Q Okay. Wait a minute, I didn't understand
23 what you were saying. You thought I was talking
24 about what?

25 A I thought you were talking about when we was

ERNEST COVAN - CROSS

1 due in court the last time when I got tried.

2 Q Okay. Well, you didn't go to trial, did you?

3 A No, sir.

4 Q Okay. You gave them a statement?

5 A Yes, sir.

6 Q And it was clear to you they wanted to hear
7 about Marshall Miller?

8 A Yes, sir.

9 Q And you knew from talking to Marshall and him
10 bringing papers around, to hear Marshall tell it,
11 he knew Brandon Scott wanted him?

12 A Yes, sir.

13 Q And he talked about Brandon Scott, didn't he?

14 A Yes, sir.

15 Q And he would tell you that Brandon Scott was
16 after him, Brandon Scott didn't like him, he had
17 made Brandon Scott mad, whatever?

18 A Yes, sir.

19 Q And when you talked to the police here, what
20 they wanted you to do was tell them stuff about
21 Marshall Miller?

22 A Uh-huh (affirmative).

23 Q And because of that you ultimately, you did
24 plead guilty, didn't you?

25 A Yes, sir.

ERNEST COVAN - CROSS

1 Q And you escaped that twenty-five years,
2 didn't you?

3 A Yes, sir.

4 Q You got seven years, is that correct?

5 A Yes, sir.

6 Q And you got up here today and you're getting
7 eighteen years of your life for this testimony
8 today?

9 A Yes, sir.

10 Q And as part of that agreement it provides
11 that if you fail to be truthful or to cooperate or
12 if you breach the agreement even after you are
13 already in jail and been sentenced, you know that
14 the State can come back against you?

15 A Yes, sir.

16 Q And that they can come back and ask that you
17 get the twenty-five years then. Do you understand
18 that?

19 A Yes, sir.

20 Q So, you fully understand if you don't tell
21 the truth, as they understand or purport the truth
22 to be --

23 MR. HOOD: Objection, Your Honor.

24 THE COURT: Sustained.

25 Q I'll rephrase it. You understand, you know

ERNEST COVAN - CROSS

1 what they want you to say?

2 MR. HOOD: Objection.

3 THE COURT: Sustained.

4 MR. HOOD: I ask that be stricken from the
5 record, Your Honor.

6 THE COURT: Ladies and gentlemen, you will
7 disregard both of the prior questions completely.
8 The witness must testify for himself.

9 Next question.

10 BY MR. VARNER:

11 Q You have an understanding, not what anybody
12 told you to say, you know what you're expected to
13 do?

14 A Yes.

15 Q And you know further that if for any reason
16 the State determines that you have breached your
17 agreement with them you can be back in court
18 looking at twenty-five years?

19 A Yes, sir.

20 Q All right. Let me ask you a couple other
21 questions. You were talking about the people who
22 were at Marshall's different locations. You're
23 talking 252, Cokesbury, the apartments. Tell me as
24 best you can remember who all was there when dope
25 was being used or sold or bought. Give me names.

ERNEST COVAN - CROSS

- 1 A Which place?
- 2 Q Let's start with the apartments first. You
- 3 have already testified Tracy was there.
- 4 A Tracy was there, Craig Wells.
- 5 Q Who?
- 6 A Craig Wells.
- 7 Q Who is Craig Wells?
- 8 A Just another individual who bought dope.
- 9 Q How often would he be there?
- 10 A Different occasions.
- 11 Q Ten times, twenty times, thirty times?
- 12 A I don't know, I didn't keep up with them.
- 13 Q Give me your best estimate.
- 14 A Four or five.
- 15 Q Was he there a lot?
- 16 A Four or five times.
- 17 Q Okay. And if he got dope, how much dope
- 18 would he be getting?
- 19 A I don't know, I didn't stick around.
- 20 Q Okay. All right, and was this Craig Wells at
- 21 any of the other locations?
- 22 A Yes.
- 23 Q How long was this guy around?
- 24 A As long as the rest of them was around, two
- 25 years.

ERNEST COVAN - CROSS

1 Q Okay. How do you know this Craig Wells? Am
2 I saying his name right?

3 A Craig Wells.

4 Q Okay. How do you know him?

5 A I just know him from the street.

6 Q How long have you known him?

7 A I've known Craig all his life, too. My
8 nephew went to school with him.

9 Q He was at all the different locations, he was
10 there doing the dope the same as you were?

11 A Uh-huh (affirmative).

12 Q All right. Who else?

13 A Ray Powell. That's about all.

14 Q Okay. You had previously mentioned --

15 A Jeff Horne.

16 Q What?

17 A Jeff Horne. Paul.

18 Q Who?

19 A A dude named Paul.

20 Q Paul who?

21 A I don't know what Paul's last name is.

22 Q You had also mentioned David Cumming?

23 A David Cumming.

24 Q Okay. Let me ask you to stop and think for
25 a minute. At that apartment, anybody else you can

ERNEST COVAN - CROSS

1 think of at the apartment?

2 A Huh-uh (negative).

3 Q All right. Let's go to 252. Who all did you
4 see there participating in this dope using, so to
5 speak?

6 A Jeff Horne, David Cumming, Paul, a boy named
7 Jason.

8 Q Jason, Jason who?

9 A I don't know what Jason's last name is.

10 Q Okay. Who else?

11 A I didn't know half of them's name.

12 Q Okay. Take you to Cokesbury. Who all at
13 Cokesbury?

14 A The same ones.

15 Q Okay. Anybody else that you can think of?

16 A Huh-uh (affirmative). Sandra, Sandra Hughes.

17 Q Okay. Well, you have read the names in this
18 conspiracy charge. Did you know all those people?

19 A Yes.

20 Q And most of those people you have known for
21 years and years?

22 A Uh-huh (affirmative).

23 Q Except Marshall, you didn't know him or he
24 didn't move in this area until late '99, right, I
25 believe you had been introduced to him a long time

ERNEST COVAN - CROSS

1 ago?

2 A Yes.

3 MR. VARNER: Okay, that's all the questions I
4 have.

5 THE COURT: Mr. Wise.

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ERNEST COVAN - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. WISE:

Q And at none of these locations did you see Billy Moore, did you?

A Sir?

Q At none of these locations did you see Billy Moore?

A No, sir.

Q Okay. Now, you have known Mr. Miller since early 1992?

A No, sir.

Q When did you first meet him?

A When my mama passed away in '95.

Q '95?

A '95, '96.

Q You met him in '95, '96, somewhere in that range?

A '96.

Q Did you start using methamphetamine with him then?

A Yes, sir.

Q About how long after you met him?

A Two days after I met him.

Q Two days after you met him? So, you have been using with him since '95, '96?

ERNEST COVAN - CROSS

1 A '96.

2 Q You said that he kept his stuff in a zipper
3 pouch?

4 A Yes.

5 Q A pouch like thing. This was a little canvas
6 zipper pouch?

7 A Yes.

8 Q Did he have a lot of those canvas zipper
9 pouches?

10 A What he kept stuff in.

11 Q He had different, three or four or five
12 different ones?

13 A Yes.

14 Q All right. Would he keep his pills in there?

15 A Yes, sir.

16 Q And his batteries?

17 A Yes, sir.

18 Q All right, and he carried those around with
19 him?

20 A Yes.

21 Q I'm going to show you something like this.
22 Is this kind of like you're talking about?

23 A Yes, that's it. That's one of them right
24 there.

25 Q Excuse me?

ERNEST COVAN - CROSS

1 A That's one of them right there.

2 Q You recognize this as being one he had, all
3 right, and you have seen this pouch for how many
4 years?

5 A A year or so.

6 Q Okay. And that's referring to State's
7 Exhibit 22.

8 And did you help him take some of the pills
9 out like he had inside?

10 A Yes.

11 Q And a pouch kind of like State's 21, is that
12 right?

13 A That's it.

14 Q Okay. Now, you said that you shot, you used
15 a needle to do the methamphetamine?

16 A Yes.

17 Q Is that correct?

18 A Yes, sir.

19 Q How about Marshall Miller?

20 A Yes.

21 Q Now, when you made, when he made this stuff
22 he would need coffee filters?

23 A Yes.

24 Q He would need a tea pitcher or something to
25 put it in?

ERNEST COVAN - CROSS

- 1 A Yes.
- 2 Q A garden hose of some type?
- 3 A Yes, sir.
- 4 Q Is that correct?
- 5 A Yes, sir.
- 6 Q And he would need, he used some salt?
- 7 A Rock salt.
- 8 Q Rock salt, kind of like State's Exhibit 13?
- 9 A Yes, sir.
- 10 Q Okay. Those were the type things he would
- 11 need to make it with?
- 12 A Yes, sir.
- 13 Q Did you know how to make it?
- 14 A No, sir.
- 15 Q You just watched him, you never learned, all
- 16 the times you watched him?
- 17 A No, sir. Didn't want to.
- 18 Q Okay. You would rather participate in the
- 19 end result, right?
- 20 A Yes, sir.
- 21 Q And every time you saw him make some he made
- 22 it with anhydrous ammonia?
- 23 A Yes, sir.
- 24 Q Okay. You said SLED got there about 10:30
- 25 that morning?

ERNEST COVAN - CROSS

1 A Yes, sir.

2 Q How long was it after they got there -- let's
3 back up a second. When they got there you were at
4 Billy Moore's garage?

5 A Yes, sir.

6 Q You were there, and a fellow named Chip?

7 A Yes, sir.

8 Q James Heatherly?

9 A Yes, sir.

10 Q You know him as James Heatherly or Chip?

11 A I just know him as Chip.

12 Q And Marshall Miller was there?

13 A Yes, sir.

14 Q At that time Billy Moore had already left?

15 A He had stepped across the street.

16 Q And I believe Marshall saw a commotion across
17 the street?

18 A I don't know, I was out back, I don't know
19 what he seen, I was out back using the bathroom.

20 Q All right.

21 A When they come up.

22 Q And the police came up?

23 A Yes, sir.

24 Q How long were you there before they carried
25 you away from the scene?

ERNEST COVAN - CROSS

1 A About an hour.

2 Q About an hour, and while you were there did
3 SLED search the building?

4 A Yes.

5 Q Excuse me?

6 A Yes, sir.

7 Q Okay. I believe they went and got Billy at
8 some point and brought him over?

9 A Yes, sir.

10 Q And he gave them permission to search the
11 building?

12 A I don't know. I was in the car locked up.

13 Q Were you in the front of the building locked
14 up?

15 A Across the road, over there in the field.

16 Q You could see the building?

17 A Yes, sir.

18 Q You could see SLED going in and out?

19 A Yes, sir.

20 Q All right. Now, you got there with Marshall
21 the previous day?

22 A Uh-huh (affirmative).

23 Q The 24th was on Tuesday, all right?

24 A I didn't get there on Tuesday. It was on
25 Monday.

ERNEST COVAN - CROSS

1 Q You got there on Monday, Monday evening? Was
2 it dark when you got there on Monday?

3 A Yes.

4 Q All right. And when you got there on Monday
5 you came with --

6 A Marshall.

7 Q -- Marshall Miller, and when you got to Billy
8 Moore's garage, at that point Billy was there?

9 A Uh-huh (affirmative), and Chip.

10 Q Chip was there, I believe Jeff Horne was
11 there?

12 A Jeff Horne was there.

13 Q Jeff Horne was there?

14 A Uh-huh (affirmative).

15 Q And all of you all stayed there most of the
16 night?

17 A Yes, sir.

18 Q All right. And about 4:00 o'clock in the
19 morning, that is when Billy left to go back home?

20 A No, sir.

21 Q You don't remember him leaving at 4:00
22 o'clock?

23 A No, sir.

24 Q What time do you think he left?

25 A It was daybreak when he went back across the

ERNEST COVAN - CROSS

1 road over there, his wife come back and forth
2 arguing with him.

3 Q So, sometime early in the morning, about
4 daybreak?

5 A Yes.

6 Q So, that's about 6:00 o'clock?

7 A Something like that.

8 Q So, 6:00 or so you say he left and went back
9 across the street?

10 A Uh-huh (affirmative).

11 Q You didn't see him again --

12 A No, sir.

13 Q -- until later?

14 A Later on.

15 Q So, he was gone from 6:00 o'clock until after
16 the police got there at 10:30?

17 A Yes, sir.

18 Q Right?

19 A Yes, sir.

20 Q But Chip was there?

21 A Yes, sir.

22 Q And Jeff was there?

23 A Jeff left and came back with another dude.

24 Q But Jeff left with Chip sometime in the
25 morning?

ERNEST COVAN - CROSS

1 A I left with Chip. I don't know if Jeff left
2 with him.

3 Q You left with Chip?

4 A I left with Chip and went to Ware Shoals and
5 got something to eat and come back.

6 Q What time was that?

7 A That was about 2:00 o'clock in the morning.

8 Q Let me ask you this. About 8:00 o'clock in
9 the morning did Jeff leave with Chip for Chip to
10 carry him home?

11 A I don't know who took Jeff home.

12 Q You don't know who took him home?

13 A No.

14 Q But he went home at some point?

15 A I don't know.

16 Q He doesn't drive, does he?

17 A I don't know that either.

18 Q Okay. So, what time do you say this meth was
19 used?

20 A About 4:30, 5:00 o'clock that morning.

21 Q 4:30, 5:00 o'clock, all right. And did
22 anybody snort it, anybody --

23 A All of us shot it up.

24 Q All of you shot it up, all right.

25 A Marshall, Billy Moore, Chip.

ERNEST COVAN - CROSS

1 Q All right. And that was, you say, between
2 4:30 and 5:00?

3 A Somewhere along there.

4 Q All right. And Marshall Miller was basically
5 over there to put a radio in his truck?

6 A I don't know why he was there.

7 Q You were working on a weedeater?

8 A Yes.

9 Q Using Billy's shop for that because he had
10 the tools?

11 A Yes.

12 Q When was the time previous to that you had
13 been there?

14 A I ain't been to Billy's shop in I don't know
15 how long.

16 Q Let me rephrase that. Had you been there
17 before that Monday with Marshall Miller?

18 A No, sir.

19 Q So, the only time you have been to Billy
20 Moore's shop with Marshall Miller was that Monday,
21 correct?

22 A Yes.

23 Q When you picked, when Marshall picked you up
24 on Monday did he tell you he was going to Billy
25 Moore's shop?

ERNEST COVAN - CROSS

1 A Yes, and work on go-carts.

2 Q Did you know Marshall even knew Billy at that
3 point?

4 A No, sir.

5 Q You have known Billy, you say?

6 A Billy didn't know Marshall, really.

7 Q Billy didn't know him until --

8 A Jeff was the one introduced him, I think.

9 Q A week or so before this?

10 A Yes.

11 Q I believe Marshall had called Billy about
12 coming out to work on his car, or do you know?

13 A I don't know about that.

14 Q So, you know that Billy Moore hadn't known
15 Marshall Miller more than a week or so, and if he
16 had known him you would have known it?

17 A Yes.

18 Q You have known Billy a long time?

19 A I have known Billy all my life.

20 Q Billy Moore was basically working on go-carts
21 out there?

22 A Yes.

23 Q And was Marshall interested in getting into
24 go-carts?

25 A I don't know.

ERNEST COVAN - CROSS

1 Q Did you hear any conversation among them
2 about going to the go-cart races on the previous
3 Saturday?

4 A They had went.

5 Q And carried Marshall's trailer?

6 A Yes.

7 Q Did Marshall make some comment about they
8 went in style, carrying his trailer?

9 A Yes.

10 Q And Chip, Chip had a brain injury years ago,
11 didn't he?

12 A I have no idea, I don't know nothing about
13 him.

14 Q Was that the first time you had met him?

15 A The first time I had met him.

16 Q How many SLED agents did you see going in and
17 out of Billy's garage?

18 A Maybe ten or twelve.

19 Q Ten or twelve? And were they also searching
20 Marshall's truck?

21 A Yes.

22 Q And trailer?

23 A (No response).

24 Q You say the only drugs -- let me back up.

25 You have been using methamphetamine for how many,

ERNEST COVAN - CROSS

1 eight years?

2 A Since '95.

3 Q Since '95, so '92, that was about seven
4 years?

5 A I didn't start in '92.

6 Q You started using it in '92?

7 A You said that, I didn't.

8 Q When did you start, is my question?

9 A About '96.

10 Q When you met Marshall?

11 A Yes.

12 Q So, you had been using it about six years at
13 the time you were arrested, correct?

14 A Yes, sir.

15 Q And it does affect your mind?

16 A Uh-huh (affirmative).

17 Q How does it affect your mind?

18 A Different ways.

19 Q Well, tell me how it affects yours.

20 A I can't tell you that, because I don't know.

21 Q Excuse me?

22 A I can't tell you that.

23 Q You can't tell me how it affected you?

24 A It don't affect me.

25 Q It doesn't affect you?

ERNEST COVAN - CROSS

1 A No, sir.

2 Q So, it never bothered you at all about your
3 memory or anything like that?

4 A Huh-uh (negative).

5 Q Virtually every time you were with Marshall
6 you would use some methamphetamine?

7 A Yes.

8 Q Did you complain to Jeff earlier in the
9 evening on the 23rd, into the morning of the 24th,
10 about the fact Marshall wasn't giving you any meth
11 that day?

12 A No, sir. That was Jeff Horne he wouldn't
13 give no meth to.

14 Q He wouldn't give any to Jeff?

15 A Yes, sir.

16 Q You signed that statement for Marshall, I
17 believe you said Tracy brought it by?

18 A Uh-huh (affirmative).

19 Q And you really didn't pay any attention to
20 it?

21 A No, sir.

22 Q He asked you to sign something, you signed
23 it?

24 A Yes, I just signed it.

25 Q It was just easier to do that than argue with

ERNEST COVAN - CROSS

1 Marshall, wasn't it?

2 A He didn't argue with me.

3 Q You just were going ahead to sign it?

4 A Yes.

5 Q Easy thing to do?

6 A I reckon.

7 MR. WISE: All right, thank you.

8 THE COURT: Redirect?

9 MR. HOOD: Just one moment, Your Honor.

10 THE COURT: Take your time, Mr. Hood.

11 MR. HOOD: Just a few questions, Your Honor.

12 THE COURT: Yes, sir.

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ERNEST COVAN - REDIRECT

1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. HOOD:

3 Q Mr. Covan, do you remember questioning from
4 Mr. Wise about signing a statement for Mr. Miller?
5 Who was your sole source of methamphetamine?

6 A Marshall Miller.

7 Q And what would have happened if you didn't
8 sign that statement?

9 A He would cut you off, I reckon.

10 Q What do you mean by cut you off?

11 A Cut you off and wouldn't sell you no dope.

12 Q Do you remember the line of questioning from
13 Mr. Varner about sitting down and talking to the
14 law enforcement?

15 A Uh-huh (affirmative).

16 Q After you were indicted, when was the first
17 time you ever sat down with anybody from the
18 Attorney General's office or law enforcement and
19 gave a statement?

20 A When you all came to Kershaw.

21 Q Did you give a statement pre pleading guilty?

22 A No, sir.

23 Q Did you ever sit down with SLED and be
24 debriefed?

25 A No, sir.

ERNEST COVAN - REDIRECT

- 1 Q And is it part of your agreement, do you
2 remember the line of questioning about your plea
3 agreement, that you testify truthfully in all
4 subsequent trials?
- 5 A Yes, sir.
- 6 Q Do you remember the line of questioning from
7 Mr. Varner about knowing people and knowing their
8 names and who all was there?
- 9 A Yes, sir.
- 10 Q Set up for us the scene. Is this a type of
11 situation where you know every single person
12 present?
- 13 A Well, I know them because I lived around Ware
14 Shoals all my life.
- 15 Q Were you all conversing with each other,
16 hanging out?
- 17 A No, sir. I got my dope and went back to my
18 house all the time, most of the time.
- 19 Q Do you remember the line of questioning from
20 Mr. Wise about Jeff Horne?
- 21 A Yes, sir.
- 22 Q And did you say something about Jeff Horne
23 introducing Mr. Miller to Mr. Moore?
- 24 A Yes, sir.
- 25 Q How do you know that?

ERNEST COVAN - REDIRECT

1 A That's just what, that's just what he said.

2 MR. HOOD: Thank you very much. No further
3 questions, Your Honor.

4 THE COURT: Mr. Varner?

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ERNEST COVAN - REDIRECT

1 RE CROSS EXAMINATION

2 QUESTIONS BY MR. VARNER:

3 Q One quick question. Just for the mere sake
4 of getting free dope you will sign an oath that's
5 not true?

6 A I didn't sign that to get dope.

7 Q Well, the question was, if you hadn't signed
8 this you reckon he was going to cut you off from
9 the dope?10 A He wouldn't cut me off because I would get
11 ammonia for him.12 Q All right. And you will, then, to make
13 somebody happen, so to speak, you will sign a false
14 affidavit?

15 A Yes.

16 MR. HOOD: Your Honor, I object to the
17 reference or characterization by defense counsel
18 it's an affidavit or an oath.19 THE COURT: That it's an affidavit, the
20 objection is sustained. It does say, I think you
21 read, that he swore that was the truth.

22 MR. HOOD: Thank you, Your Honor.

23 MR. VARNER: And it has what appears to be a
24 notary, Your Honor. I will let the Court look.

25 THE COURT: The Court does find that to be

ERNEST COVAN - REDIRECT

1 properly notarized, the signature of the individual
2 is illegible and the signature and date of
3 expiration of commission is illegible, the notation
4 thereof.

5 MR. VARNER: Thank you, sir. No further
6 questions.

7 THE COURT: Mr. Wise?

8 MR. WISE: Nothing further.

9 THE COURT: Anything further?

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

11 THE COURT: Thank you very much. Come down,
12 Mr. Covan. Watch your step.

13 (Witness excused).

14 THE COURT: Madam Forelady, ladies and
15 gentlemen, we will take just a few minute recess at
16 this time. Do not discuss the case by, between and
17 among yourselves, and retire to the jury room.

18 (Jury excused from the courtroom).

19 THE COURT: Anything from the State before we
20 take a short recess?

21 MR. HOOD: Nothing, Your Honor.

22 THE COURT: From Mr. Miller, Mr. Varner?

23 MR. VARNER: Nothing, Your Honor.

24 THE COURT: Mr. Moore?

25 MR. WISE: No, sir, Your Honor.

ERNEST COVAN - REDIRECT

1 MR. CROUT: There is one matter, the
2 individual who testified is, of course, under the
3 care of the South Carolina Department of
4 Corrections, I just want to put on the record
5 whether he's excused or not. We would like him to
6 be excused.

7 THE COURT: Any objection to his being
8 excused?

9 MR. WISE: We have no objection.

10 MR. VARNER: No, Your Honor.

11 THE COURT: Mr. Wise?

12 MR. WISE: No objection.

13 THE COURT: Very well. We're in recess.

14 (Recessed at 11:03 a.m.).

15 (Reconvened at 11:27 a.m.).

16 THE COURT: The record is open, the State of
17 South Carolina versus Marshall Miller and others,
18 indictment 2002-GS-47-32. In this matter Marshall
19 Miller and Billy Moore are the defendants.

20 Is there anything from the State before the
21 jurors come back in, please?

22 MR. CROUT: Nothing from the State, Your
23 Honor.

24 THE COURT: From the defendant Miller?

25 MR. VARNER: No, sir, Your Honor.

ERNEST COVAN - REDIRECT

1 THE COURT: From the defendant Moore?

2 MR. WISE: No, sir, Your Honor.

3 THE COURT: Thank you. Show the jury in, Mr.
4 Busby, please.

5 (The jury returned to the courtroom).

6 THE COURT: All the jurors are present, with
7 the forelady and the alternates properly seated.
8 The matter lies with the State. Call your next
9 witness, please.

10 MR. CROUT: Your Honor, at this time the
11 State calls Miss Julie Prince.

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JULIE PRINCE - DIRECT

1 JULIE MICHELLE PRINCE,
2 after being first duly sworn testified as follows:

3 THE CLERK: Have a seat and state your full
4 name for the record.

5 THE WITNESS: Julie Michelle Prince.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. CROUT:

8 Q Miss Prince, how old are you?

9 A Thirty-four.

10 Q Where are you currently residing?

11 A Leath Correctional Institute.

12 Q Were you charged as one of the
13 co-conspirators in the case that's being tried here
14 today?

15 A Yes, sir.

16 Q Did you plead guilty?

17 A Yes, sir.

18 Q What kind of prior criminal record do you
19 have? I've got it right here but if you will just
20 tell us?

21 A Distribution of methamphetamines and simple
22 assault.

23 Q Did you ever get arrested for shoplifting?

24 A Yes. I forgot about that.

25 Q Did you get charged and convicted?

JULIE PRINCE - DIRECT

1 A Uh-huh (affirmative).

2 Q All right. Outside of that, have you had any
3 other run-ins with the law?

4 A No, sir.

5 Q Prior to testifying here today have you ever
6 met me?

7 A Yes, sir.

8 Q When was that?

9 A In Leath Correctional Institute.

10 Q How long ago was it?

11 A A few weeks ago.

12 Q Prior to that did you ever give a statement
13 to anybody from the South Carolina Law Enforcement
14 Division about your involvement.

15 A Yes, I did.

16 Q And who did you give that statement to?

17 A Connie and Chester.

18 Q Do you see them in the courtroom today?

19 A Yes, sir.

20 Q Do you remember the date you gave them that
21 statement?

22 A No, sir.

23 Q Do you remember about when it was?

24 A No, sir.

25 Q Was it before you got arrested?

JULIE PRINCE - DIRECT

1 A Yes, sir.

2 Q At the time you gave that statement did you
3 think you would be arrested?

4 A No, sir.

5 Q At the time you gave that statement were you
6 made any promises about your treatment and what
7 might or might not happen to you?

8 A No, sir.

9 Q How long have you been doing methamphetamine?

10 A Since I was fifteen.

11 Q When was the first time you did it?

12 A When?

13 Q Yes. Tell us about the first time you did
14 methamphetamine.

15 A My boyfriend turned me onto it when I was
16 fifteen.

17 Q Who was your boyfriend?

18 A Jeff Horne.

19 Q Would he provide you with methamphetamine?

20 A Yes, sir.

21 Q On how many occasions would you say he
22 provided you with methamphetamine?

23 A Too many to name.

24 Q Over a hundred times?

25 A Yes, sir.

JULIE PRINCE - DIRECT

1 Q How much would he give you?

2 A Just a little bit, a quarter or half.

3 Q When you say a quarter or a half, what are
4 you referring to?

5 A Well, a quarter is just a little bit of dope
6 in a bag.

7 Q Is it a quarter of a pound, a quarter of --

8 A A quarter of a gram.

9 Q A quarter of a gram?

10 A Uh-huh (affirmative).

11 Q Or half a gram?

12 A Uh-huh (affirmative).

13 Q What is an eightball?

14 A I don't know the measurement. I mean --

15 Q Let me ask this. Would you sometimes use an
16 eightball, would that term be used?

17 A Yes.

18 Q When did you meet Marshall Miller?

19 A I met him when I was living in Honea Path.

20 Q How did you meet him?

21 A Through a friend of mine Douglas Williamson.

22 Q And how long ago was that?

23 A About seven or eight years ago.

24 Q Do you remember specifically what year?

25 A No, sir.

JULIE PRINCE - DIRECT

1 Q Did you ever -- were you still using
2 methamphetamine at that time?

3 A Yes, sir.

4 Q And were you getting them from your boyfriend
5 still?

6 A Different people. Me and Jeff wasn't
7 together anymore then.

8 Q All right. I would like for you to advance a
9 little bit to the date, the year would be 1999.
10 What was your first contact that you can recall
11 with Marshall Miller during the year 1999?

12 A He come to my house and wanted some dope and
13 I went and got him some.

14 Q How did he know you could get dope for him?

15 A I told him he could.

16 Q And when you use the term dope, are you
17 referring to methamphetamine?

18 A Yes, sir.

19 Q Do you sometimes call it crank?

20 A Yes.

21 Q And did you supply him with methamphetamine?

22 A Yes, sir.

23 Q Did you ever supply methamphetamine for an
24 individual who went by the name of Wild Bill?

25 A Yes.

JULIE PRINCE - DIRECT

- 1 Q How many times did you supply Wild Bill with
2 methamphetamine?
- 3 A Four or five times.
- 4 Q And are you aware that on one of those
5 occasions, one of those occasions you were actually
6 videotaped providing him with methamphetamine?
- 7 A I do now, I didn't then.
- 8 Q Did you find out who Wild Bill was?
- 9 A Yes.
- 10 Q Who was he?
- 11 A A SLED agent.
- 12 Q What was his name?
- 13 A Bill Kimble.
- 14 Q You don't deny you sold methamphetamine to
15 him?
- 16 A No, sir.
- 17 Q Did you sell it to him one time when Tracy
18 Davis was present?
- 19 A Yes, I did.
- 20 Q And was a little child present?
- 21 A Yes.
- 22 Q Whose child was that?
- 23 A Mine.
- 24 Q Were you all in a white New Yorker?
- 25 A Yes.

JULIE PRINCE - DIRECT

1 Q At a BP Station?

2 A In Honea Path, yes, sir.

3 Q And then did you sell it to him again one
4 time when Jason Davis was present?

5 A Yes, sir.

6 Q And then I believe you said you sold it to
7 him on other occasions as well?

8 A Yes, sir.

9 Q What is your mother's name?

10 A Sandra Hughes.

11 Q Did you ever get meth from her?

12 A Yes, sir.

13 Q And did you sell any of that meth to Agent
14 Kimble?

15 A Yes, sir.

16 Q Was your mother charged in this case as well?

17 A Yes, sir.

18 Q Did you ever go to any of Marshall Miller's
19 residences?

20 A Yes, sir.

21 Q Which ones did you go to?

22 A Went to Shamrock Apartments, a trailer on
23 Honea Path Highway, a house in Waterloo. That
24 might be all.

25 Q That might be all of them?

JULIE PRINCE - DIRECT

1 A Uh-huh (affirmative).

2 Q If you could, I would like you to take a look
3 at what has been marked as State's Exhibit Number
4 32. I will try to hold it so you don't have to
5 step down, so you and the jury can see it as well.

6 Can you describe this picture?

7 A Yes. That's Shamrock Apartments.

8 Q And this one?

9 A That's on Honea Path Highway.

10 Q You mean Highway 252?

11 A Yes.

12 Q All right. What about this?

13 A No.

14 Q You can't identify that one?

15 A No.

16 Q How about this one?

17 A That's in Waterloo.

18 Q The house in Waterloo? What about these
19 pictures, can you identify them?

20 A Yes, that's in Hodges.

21 Q And what did you do at that location?

22 A Bought dope.

23 Q You bought dope there?

24 A Yes. I hung out at his shop.

25 Q You hung out at that shop?

JULIE PRINCE - DIRECT

1 A Yes.

2 Q Who did you buy the dope from?

3 A Marshall.

4 Q Did there ever come a point in time when you
5 started selling methamphetamine for Marshall
6 Miller?

7 A Yes. Well, I would buy it from him and then
8 I would sell it, too. I would buy enough for me,
9 to be able to sell it, for myself.

10 Q When did the process take place that Marshall
11 stopped buying meth from you and you started buying
12 it from him?

13 A Right after the time that I told you I got
14 him some.

15 Q During that time you were selling it to other
16 people as well, right?

17 A Yes, sir.

18 Q And if I categorized you as a meth dealer,
19 you wouldn't say I was wrong, would you?

20 A No, sir.

21 Q Who approached whom about selling Marshall
22 Miller's meth? Did you approach him or did he
23 approach you?

24 A He come to my house and I had some and he
25 asked me could I get him some, I told him yes.

JULIE PRINCE - DIRECT

1 Q But then who initiated the conversation about
2 you selling his meth?

3 A He did.

4 Q And did you ever know him to make meth?

5 A Yes, sir.

6 Q Did you ever see him making meth?

7 A No, sir.

8 Q Did you ever participate in anything
9 involving the making of meth?

10 A Yes. I bought stuff that he used to make it
11 with.

12 Q Did you ever help him clean up anything?

13 A Yes.

14 Q All right. Let's talk about the stuff you
15 bought to help him make the meth. Tell me what you
16 bought.

17 A Batteries, salt, pills.

18 Q What kind of pills?

19 A Sudafed. Coffee filters.

20 Q What kind of batteries would you buy?

21 A Lithium batteries.

22 Q What would happen if you bought the wrong
23 kind of battery?

24 A You would take them back and get the right
25 ones.

JULIE PRINCE - DIRECT

- 1 Q Did you ever accidentally buy the wrong kind?
- 2 A Uh-huh (affirmative).
- 3 Q Were you around Marshall Miller when he
- 4 started making meth?
- 5 A Uh-huh (affirmative).
- 6 Q Did he tell you who he learned to make it
- 7 from?
- 8 A No.
- 9 Q Did he tell you that he was experimenting or
- 10 developing a way of making meth?
- 11 A Yes.
- 12 Q So, he was just learning?
- 13 A Yes.
- 14 Q He didn't know the entire process?
- 15 A I don't guess.
- 16 Q And do you know if sometimes he purchased the
- 17 incorrect items?
- 18 A I don't know.
- 19 Q All right. What would you do with the items
- 20 that you purchased for him?
- 21 A Take them to him.
- 22 Q And how often did you purchase these items
- 23 that you're referring to?
- 24 A He asked us to go to Walmart for him all the
- 25 time.

JULIE PRINCE - DIRECT

1 Q When you say all the time, what would be the
2 starting time period to the last time period that
3 you went and purchased --

4 A I would probably go, out of the week, five
5 nights a week to get him stuff.

6 Q And did that go on for one year, two years?

7 A About a year.

8 Q About a year?

9 A Uh-huh (affirmative).

10 Q And on these occasions when you would go to
11 Walmart would those be the three primary items that
12 you would get?

13 A Yes, sir.

14 Q Did you ever help pop those Sudafed pills out
15 of the container?

16 A Yes, sir.

17 Q How often did you do that?

18 A A bunch.

19 Q And where would you do that at?

20 A My house, his house.

21 Q When you say his house, which one are you
22 referring to?

23 A The one on Honea Path Highway.

24 Q Would you do it at any of his other houses?

25 A I have done it at Waterloo.

JULIE PRINCE - DIRECT

- 1 Q Waterloo?
- 2 A Uh-huh (affirmative).
- 3 Q What about that shop you referred to?
- 4 A Huh-uh (negative).
- 5 Q You never did it there?
- 6 A No.
- 7 Q You did it at 252, the trailer on 252 and at
- 8 the house in Waterloo?
- 9 A Yes.
- 10 Q How many would you pop out at any given time?
- 11 A I don't know. It come four to a pack and we
- 12 just popped.
- 13 Q Would there be other folks there while you
- 14 were doing that?
- 15 A Sometimes.
- 16 Q Who would they be?
- 17 A My boyfriend, Ernest.
- 18 Q Who was Ernest?
- 19 A Ernest Covan.
- 20 Q Who else?
- 21 A Tracy.
- 22 Q And who was Tracy?
- 23 A His girlfriend.
- 24 Q And do you know her whole name?
- 25 A Tracy Davis.

JULIE PRINCE - DIRECT

- 1 Q When you popped these out what did you do,
2 put them in a bucket or bowl?
- 3 A Just a bowl.
- 4 Q Do you know what he did with them after that?
- 5 A No.
- 6 Q Did you ever help him grind them up?
- 7 A No.
- 8 Q Do you remember exactly when you started
9 selling meth for Marshall Miller?
- 10 A No, sir.
- 11 Q Was it a year ago?
- 12 A Longer than that.
- 13 Q Two years ago?
- 14 A Longer than that.
- 15 Q Three years ago?
- 16 A '99, yes.
- 17 Q You probably started selling for him in '99?
- 18 A Yes.
- 19 Q Who were the primary people you sold to?
- 20 A My boyfriend.
- 21 Q When you say your boyfriend?
- 22 A Casey Davis. Jeff Horne, Ernest, Tina.
- 23 Q If you could, the whole name, could you give
24 the whole name of those folks?
- 25 A Tina Stevenson.

JULIE PRINCE - DIRECT

- 1 Q Okay.
- 2 A Ernest Covan, Jason Davis, Jeff Horne.
- 3 Q Now, what was your -- and you basically sold
- 4 to them for about a two year period?
- 5 A Yes, sir.
- 6 Q Three year period?
- 7 A Yes, sir.
- 8 Q For argument's sake let's say from '99, until
- 9 you got arrested?
- 10 A Yes sir.
- 11 Q What was your arrangement with Marshall
- 12 Miller for selling his meth?
- 13 A Just get whatever, however much money I had
- 14 and get the dope and sell it.
- 15 Q Did you ever return any of the money to him?
- 16 A Yes.
- 17 Q Did he ever give you meth for free so -- not
- 18 for free, excuse me, did he ever do what is called
- 19 fronting you meth?
- 20 A Yes.
- 21 Q Explain that process. The jury and I don't
- 22 understand all of this terminology. I understand
- 23 it from working on this case but they might not
- 24 understand it, so could you explain for them what
- 25 fronting means?

JULIE PRINCE - DIRECT

1 A He gives me the dope up front and I sell it
2 and then when I sell it I take him the money.

3 Q Since 1999 how much, just as your best
4 estimate, how much meth did you agree to sell for
5 Marshall Miller?

6 A I don't know. Ounces.

7 Q Would that be the usual amount that you would
8 sell it in, an ounce at a time?

9 A No.

10 Q Would you sell it in a gram at a time?

11 A Yes, most of the time.

12 Q So, over that, or since 1999 you sold, just
13 give us an estimate of what you think you sold?

14 A I don't know. Four or five ounces.

15 Q Well, let me ask you this. How many times
16 were you meeting with him to pick up meth for sale?

17 A About five times a week.

18 Q And you would say five times a week since
19 1999?

20 A Uh-huh (affirmative).

21 Q Until the date of your arrest?

22 A Yes, sir.

23 Q And you were selling it to those people that
24 you mentioned?

25 A Yes, sir.

JULIE PRINCE - DIRECT

1 Q And you were getting about an ounce at a
2 time?

3 A No, not every time.

4 Q Were you getting more than an ounce at a
5 time?

6 A Sometimes it would be more, sometimes it
7 would be less.

8 Q Now, where would you meet these folks to sell
9 them their meth?

10 A They would come to my house or I will go to
11 theirs.

12 Q Where were you living?

13 A In Ware Shoals.

14 Q And were you living in your own house or were
15 you living with somebody else?

16 A I was living with my father.

17 Q And would your father be there when you would
18 sell it to them?

19 A No, sir. He would go to work around 7:30 and
20 wouldn't get home until 7:30 at night.

21 Q So, you sold it when he wasn't in the house?

22 A Yes.

23 Q He wasn't aware you were doing this, was he?

24 A No.

25 Q Outside of Marshall Miller's meth, were you

JULIE PRINCE - DIRECT

1 selling anybody else's?

2 A No, sir.

3 Q Well, let me ask you this. Were you getting
4 meth from anybody else to sell?

5 A Sometimes.

6 Q And who was that?

7 A Jeff Horne.

8 Q And who else?

9 A Sandra Hughes.

10 Q Where was your mother getting her meth from,
11 did she tell you?

12 A From Marshall.

13 Q Why wouldn't you just go directly to Marshall
14 to get it?

15 A He would get mad at me sometimes and cut me
16 off.

17 Q When you say cut you off, what do you mean by
18 that?

19 A He wouldn't sell he me any more dope.

20 Q What types of things would he get mad at you
21 for?

22 A Petty stuff. Just if I was arguing with my
23 boyfriend or if I done something to one of his
24 customers they didn't like, he would cut me off.

25 Q Well, how would he know, why would arguing

JULIE PRINCE - DIRECT

1 with your boyfriend be relevant?

2 A He was scared the law would get involved.

3 Q So, he thought you would be in an argument
4 with your boyfriend and call the police on him?

5 A Yes, Uh-huh (affirmative).

6 Q Now, were you the only person, as far as you
7 are aware, who was doing this for Marshall Miller?

8 A No.

9 Q Who were some of the other people?

10 A Tina Stevenson.

11 MR. VARNER: I object to the
12 characterization, for Marshall Miller. She has
13 already said she was doing it for herself.

14 THE COURT: The objection is overruled. If
15 she knows. Now, you might rephrase the question.
16 The objection is sustained as far as the phrasing
17 of the question, so rephrase the question.

18 MR. CROUT: Yes, Your Honor.

19 BY MR. CROUT:

20 Q You had indicated that you would purchase
21 methamphetamine from Marshall Miller and sell it?

22 A Yes, sir.

23 Q And I believe you also indicated sometimes he
24 would front you methamphetamine --

25 A Yes, sir.

JULIE PRINCE - DIRECT

1 Q -- for you to sell. Were there any other
2 individuals who were doing the same thing that you
3 were doing with Marshall Miller, that you are aware
4 of?

5 MR. VARNER: Your Honor --

6 THE COURT: Wait a minute, Madam Witness.
7 State the objection.

8 MR. VARNER: I would object as to form. It
9 will elicit hearsay. If he would lay a foundation
10 as to how she would know.

11 THE COURT: The objection is sustained.

12 BY MR. CROUT:

13 Q When you would go buy or go get
14 methamphetamine from Marshall Miller would
15 sometimes other people be there?

16 A Yes, sir.

17 Q Who would they be?

18 A Usually Tracy.

19 Q What about Tina Stevenson, did you ever see
20 her there?

21 A Sometimes.

22 Q Name some of the other people you might see.

23 A Jeff Horne, Ernest Covan.

24 Q Do you know if any of these other individuals
25 that you named -- let me ask you this. Were you

JULIE PRINCE - DIRECT

1 friends with those individuals?

2 A Yes, sir.

3 Q Did you hang out in the same circle?

4 A Yes, sir.

5 Q And did you use methamphetamines with those
6 people?

7 A Yes, sir.

8 Q Now, as far as you know, did any of those
9 individuals have the similar arrangement with
10 Marshall Miller?

11 A Yes, sir.

12 MR. VARNER: Objection.

13 THE COURT: All right, the objection is
14 sustained. Lay a foundation.

15 MR. CROUT: Yes, Your Honor. I'll just
16 pursue another line of questioning at this point.

17 THE COURT: All right.

18 BY MR. CROUT:

19 Q Now, when you went to Marshall Miller's
20 residence -- I'm referring now to the apartment at
21 Shamrock, did you go there?

22 A Yes, sir.

23 Q How many times did you go there?

24 A Just about every day as long as he lived
25 there.

JULIE PRINCE - DIRECT

1 Q And would you take your child with you
2 sometimes?

3 A Yes, sir.

4 Q And would there be other children there?

5 A Yes, sir.

6 Q Would Tracy Davis be there?

7 A Yes, sir.

8 Q What would you all do with the kids?

9 A They just played. There was a playground out
10 there, they played or watched TV.

11 Q How would you let Marshall know you were
12 interested in buying some methamphetamine?

13 A Just tell him I want some and we would go in
14 the other room.

15 Q When you say go in the other room, what room
16 are you referring to?

17 A The bedroom.

18 Q And where would the kids be?

19 A In the living room or in Ashley's room.

20 Q And who was watching them?

21 A Tracy.

22 Q And where would Marshall retrieve the
23 methamphetamine from?

24 A Out of a little bag, like a briefcase, or he
25 would have it in one of his desk drawers, different

JULIE PRINCE - DIRECT

1 places.

2 Q And how would you figure out what amount it
3 was that you were getting at that time?

4 A I would tell him. If I had \$500 he would put
5 it on the scales or whatever and weigh it out and
6 bag it up and hand it to me.

7 Q And he had scales in that room?

8 A Yes, sir.

9 Q And then what would you do with the money?

10 A Give him the money.

11 Q And what would he do with it?

12 A Put it in his pocket.

13 Q When he moved to the residence on Highway 252
14 would you buy, I think you indicated you would buy
15 methamphetamines from him there as well?

16 A Yes, sir.

17 Q Explain that process.

18 A The same process, we would go in his room,
19 tell him what I wanted and that is what he would
20 give me.

21 Q Where would Tracy be?

22 A In the living room.

23 Q And did Tracy, did you tell Tracy why you
24 were there?

25 A Sometimes, sometimes I didn't.

JULIE PRINCE - DIRECT

1 Q And when you went to the Shamrock Apartments
2 would you tell her why you were there?

3 A Sometimes. She usually knew anyway, she
4 knew.

5 Q Now, the back room at the residence on 252,
6 what room was that?

7 A His bedroom.

8 Q And where would he retrieve the
9 methamphetamine from there?

10 A Out of one of his little bags, briefcase or
11 suitcase type things. He had all kind of different
12 things he kept it in.

13 Q And did he have scales there as well?

14 A Yes, sir.

15 Q And did you pay for it in the bedroom?

16 A Yes, sir.

17 Q All right. And sometimes he would front it
18 to you in the bedroom?

19 A Yes, sir.

20 Q Now, the house I think you have indicated as
21 Waterloo or the gray house that you referred to,
22 would you go there to buy meth?

23 A Yes, sir.

24 Q And what would be the process that you would
25 engage in when you bought meth there?

JULIE PRINCE - DIRECT

- 1 A The same process.
- 2 Q Where would Tracy be?
- 3 A In the living room.
- 4 Q And where would you go?
- 5 A In the bedroom.
- 6 Q Where would he retrieve the meth from when he
- 7 was at that house?
- 8 A Different little bags.
- 9 Q And he had scales there?
- 10 A Yes, sir.
- 11 Q He would weigh it out?
- 12 A Yes, sir.
- 13 Q You would pay for it or he would front it to
- 14 you?
- 15 A Yes, sir.
- 16 Q All right. And how often did you go to the
- 17 house on 252?
- 18 A A bunch. Every day.
- 19 Q And what about the house at Ware Shoals,
- 20 excuse me, not Ware Shoals, the house in Waterloo?
- 21 A Just about every day.
- 22 Q And you had your kids with you then?
- 23 A Sometimes.
- 24 Q And would Tracy watch them for you?
- 25 A Yes, sir.

JULIE PRINCE - DIRECT

1 Q You said he had these different residences
2 that you went to to buy meth, you said he had the
3 meth in containers. Do you have any idea how much
4 meth there was at one time?

5 A No, sir.

6 Q Was it a handfull?

7 A More than that. Bagfulls.

8 Q Bagfulls of meth?

9 A Yes, sir.

10 Q He told you he made all that meth?

11 A Yes.

12 Q And you used some of that meth, right?

13 A Yes, sir.

14 Q Was there anything -- and you used other
15 meth, too, is that correct?

16 A Yes, sir.

17 Q Was there anything distinctive about that
18 methamphetamine?

19 A Yes.

20 Q What was distinctive about it?

21 A The smell. It was the best meth I ever done.

22 Q When you say, "The best meth I had ever
23 done," what does that mean?

24 A You didn't have to do much, you would feel
25 it, it was clean.

JULIE PRINCE - DIRECT

- 1 Q And how would you use it?
- 2 A I snorted it or shot it.
- 3 Q When you say shot it, what do you mean by
- 4 that?
- 5 A Inject it into my veins.
- 6 Q Explain that process for us.
- 7 A Put the dope in a spoon, add water to it,
- 8 take cotton and draw it up in a syringe.
- 9 Q What was the cotton for?
- 10 A To take all the impurities out of it.
- 11 Q If you will direct your attention again to
- 12 the Shamrock Apartments, do you recall any
- 13 surveillance equipment or anything being set up at
- 14 those apartents to determine who was in what room
- 15 of the house or anything of that nature?
- 16 A Not at Shamrock.
- 17 Q What about Highway 252?
- 18 A Yes, sir.
- 19 Q What kind of surveillance equipment was
- 20 there?
- 21 A He had a TV camera in his room that had four
- 22 different pictures outside of his house where you
- 23 could see who pulled up or who was in the back yard
- 24 or on the side of the trailer.
- 25 Q And was that, were any of those cameras

JULIE PRINCE - DIRECT

1 inside the house, did they show any rooms in the
2 house?

3 A No.

4 Q And then what about the house at Waterloo?

5 A It was the same one.

6 Q And describe that security system.

7 A He had it in his bedroom, a camera, I mean
8 little TV screen, it showed, I guess all angles of
9 his house on the outside.

10 Q I would like to show you what has previously
11 been entered in evidence as State's Exhibit Number
12 4. I'm going to ask you if you could identify that
13 security -- can everybody see this all right? I
14 ask if you can identify that security system as the
15 one you remember being at the house in Waterloo, a
16 camera here? Just say yes or no.

17 A Yes, sir.

18 Q Then the third one?

19 A Yes, sir.

20 Q The fourth one?

21 A Where is the fourth one?

22 Q Right there.

23 A Yes.

24 Q And how about this one under the no
25 trespassing sign?

JULIE PRINCE - DIRECT

1 A Yes.

2 Q And then this white object here, was that on
3 the wall?

4 A I ain't sure about that.

5 Q When you said a TV screen, are you referring
6 to a TV or computer screen?

7 A Yes.

8 Q Is that what it looked like as you recall it?

9 A Yes, sir.

10 Q Did he ever tell you what the purpose of that
11 was?

12 A No, but if he would see a car or something go
13 by he would want us to run out and see who that was
14 on his monitor.

15 Q Explain that again.

16 A If we would be in there and he would be
17 giving any dope and would see a car he would say,
18 "Run out there and see where they are going or who
19 they were."

20 Q Did Tracy ever tell what that was for?

21 A Huh-uh (negative).

22 THE COURT: Is that no?

23 A No, sir.

24 Q From 1999, until the time you were arrested,
25 how many times, and I know you can't answer

JULIE PRINCE - DIRECT

1 specifically but if you could just estimate, how
2 many times did you buy methamphetamine from
3 Marshall Miller?

4 A Over a hundred.

5 Q Over a hundred times?

6 A Yes, sir.

7 Q And I know you can't answer specifically but
8 estimate the amounts that you would get on those
9 occasions. Could you estimate that for us?

10 A More than \$200 worth at a time.

11 Q More than \$200 worth at a time?

12 A Yes, sir.

13 Q And what, if you just, if you just spent
14 \$200, how much would that get you?

15 A About an eightball.

16 Q About an eightball?

17 A Yes.

18 Q Did you ever buy \$1,000 worth?

19 A Yes, sir.

20 Q Did you ever buy \$1,200 worth?

21 A Yes, sir.

22 Q Did you ever buy \$1,500 worth?

23 A No.

24 Q So, right around \$1,200 was the most you ever
25 bought?

JULIE PRINCE - DIRECT

1 A Yes.

2 Q And then \$200 was the least?

3 A No. Sometimes I would just buy \$50 worth.
4 Most of the times I bought an eightball or more.

5 Q All right. Now, did you tell Marshall what
6 you were going to do with that, with those drugs?

7 A He knew I was either going to do it or sell
8 it.

9 Q But did he ever specifically tell you, "Take
10 this and sell it"?

11 A Yes, sir.

12 Q Did he tell you specifically who to sell them
13 to?

14 A Sometimes.

15 Q And who were the people he told you to sell
16 them to?

17 A Jeff Horne or Bonnie Saylor, Jason Davis.

18 Q Did he ever tell you not to sell it to
19 anybody?

20 A Yes, sir.

21 Q Who did he tell you not to sell it to?

22 A All those. Different periods of time he
23 would get mad at them.

24 Q Now I want to, you talked about that a little
25 bit, I want to, and I'm a little confused about

JULIE PRINCE - DIRECT

1 this, explain to me what you mean he would get mad
2 at them?

3 A Stupid stuff.

4 Q And when he got mad at them what did he do?

5 A Cut them off, he wouldn't sell them any dope.

6 Q All right. And then do you know what those
7 people would do to get dope?

8 A Whoever he was selling to, they would go to
9 them.

10 Q And was it a big thing to not be cut off?

11 A Yes.

12 Q I mean, you wanted to be in with Marshall,
13 right?

14 A Yes.

15 Q You didn't want to be cut off by Marshall?

16 A Yes.

17 MR. CROUT: Your Honor, I have no further
18 questions at this time. If you would, answer any
19 questions that Mr. Varner or Mr. Wise have.

20 THE COURT: The witness is with you on
21 cross-examination, Mr. Varner.

22

23

24

25

JULIE PRINCE - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. VARNER:

Q Miss Prince, how old did you say you were?

A Thirty-four.

Q So, for nineteen years you have been using crystal meth?

A Yes, sir.

Q And are you one of the people -- do you believe that's affected your brain?

A It probably has a little bit.

Q Okay. How long have you been shooting up or putting it in your veins with a needle?

A Probably ten years.

Q Okay. So the jury understands, generally speaking, if you start shooting it up you're called a junkie, is that what it's called?

A Yes, sir.

Q And you have been a junkie ten years, you said?

A Yes, sir.

Q Okay. I believe you also brought up you have stolen stuff?

A Yes, sir.

Q Okay. And when you talked to the SLED agents you told them a story about Carrisa. Who is

JULIE PRINCE - CROSS

1 Carrisa?

2 A Carrisa Gant.

3 Q Who is she?

4 A Somebody that lives in my town.

5 Q Somebody that what?

6 A That lives in my town that I live in.

7 Q How well do you know her?

8 A I know her pretty well.

9 Q How long have you known her?

10 A About fifteen years.

11 Q Did you tell them the story about you one
12 time sold Carrisa Goody Powder?

13 A Yes.

14 Q You ripped her off, so to speak?

15 A Yes.

16 Q Using the lingo of people we're talking
17 about, you would rip people off, too?

18 A Yes.

19 Q And does that kind of go with, unfortunately,
20 being a junkie?

21 A Not necessarily a junkie, no.

22 Q Does it go with getting addicted to crystal
23 meth to the point you're shooting it up and using
24 it all the time?

25 A That's basically what a junkie is.

JULIE PRINCE - CROSS

1 Q And is it characteristic you will say
2 whatever you need to say?

3 A No.

4 Q Okay. You are very truthful and
5 forthrightous?

6 A Yes, sir.

7 Q Okay. You're a typical, to use your term,
8 you're a typical junkie?

9 A I have been.

10 Q And you know what's called controlled buys,
11 where you sold to police officers or confidential
12 informants, undercover agents or whatever?

13 A Did I know that?

14 Q Yes.

15 A No, not --

16 Q Not talking about at the time, but you knew
17 you had been caught?

18 A Yes, sir.

19 Q How many times did they catch you doing
20 these, quote, quote, undercover buys?

21 A I don't know.

22 Q Well, you know of at least two, right?

23 A Yes, sir.

24 Q How many others?

25 A I don't know.

JULIE PRINCE - CROSS

1 Q How many do you think?

2 A Well, I sold to the undercover cop five or
3 six times.

4 Q Okay. And you do know that that carried jail
5 time for doing that?

6 A Yes, sir.

7 Q How many years were you looking at for
8 getting caught five or six times selling crystal
9 meth?

10 A I don't know.

11 Q You don't know?

12 A I thought maybe my first time I wouldn't get
13 no jail time but I did.

14 Q Okay. Well, you didn't get, quote, quote,
15 prosecuted for those, did you?

16 A No, sir.

17 Q What you got charged with was this
18 conspiracy?

19 A Yes, sir.

20 Q And you were aware, as part of this
21 conspiracy, you were looking at a minimum sentence
22 of twenty-five years on this conspiracy?

23 A Yes, sir.

24 Q Plus you had other actual distribution
25 charges that you had, I think you're the one we saw

JULIE PRINCE - CROSS

1 on the tape, were you aware we played a tape of you
2 selling drugs to, I believe it's Agent Kimble?

3 A No, I didn't know it.

4 Q Okay. When was it you were actually
5 arrested?

6 A September 24th, I think is when it was.

7 Q 2002?

8 A Yes, sir.

9 Q And ultimately you pled and you got seven
10 years?

11 A Yes, sir.

12 Q And you are also aware, as per your agreement
13 with the State, that you have to cooperate, you
14 have to testify, if you fail to cooperate that the
15 State can come back and re-sentence you and
16 sentence you to the full --

17 MR. CROUT: Your Honor, I object. If he is
18 going to pick and choose I would ask he read the
19 language in the document.

20 MR. VARNER: I will read the language.

21 THE COURT: Sustained.

22 MR. VARNER: "It is expressly agreed that if
23 the obligations of the State under this agreement
24 become null and void due to a lack of truthfulness
25 or cooperation on the part of the defendant the

JULIE PRINCE - CROSS

1 defendant understands that, number one, the
2 defendant will not be permitted to withdraw her
3 plea of guilty to the offense described above,
4 semicolon.

5 Two. If the breach occurs after the
6 defendant has been sentenced," and I will stop
7 there for a minute.

8 You have already been sentenced, correct?

9 A Yes, sir.

10 Q "If the breach occurs after the sentence has
11 commenced the State may request that the Court
12 which retains continuing jurisdiction over this
13 matter re-sentence the defendant to a greater term
14 of incarceration, semicolon.

15 Three. The State may argue for a maximum
16 sentence for the offenses to which the defendant
17 has pled guilty, semicolon.

18 Four. The State may use any and all
19 information and testimony provided by the defendant
20 in the prosecution of the defendant for all
21 charges.

22 And the State may," number five, "the State
23 may advise the Department of Corrections of the
24 defendant's status as an uncooperative defendant
25 and may accordingly recommend redesignation of the

JULIE PRINCE - CROSS

1 defendant to a higher custodial level."

2 Do you understand what that means generally
3 speaking?

4 A Yes, sir.

5 Q And you were the one who ultimately, you were
6 initially, you were Marshall's dealer at the
7 beginning?

8 A Yes, sir.

9 Q You also signed what is called a voluntary
10 statement, didn't you?

11 A Yes, I did.

12 Q I'm going to ask if you recall this document.
13 "I Julie Prince," and I will let you look along, "I
14 Julie Prince am writing this statement for Marshall
15 Miller of my own free will and under no influence
16 of drugs or alcohol, sound mind and doing this
17 freely and voluntarily. I have known Marshall for
18 twelve years. He's a good friend of mine and at no
19 time I have ever seen him with any dope, large or
20 small amounts, either one. The best of my
21 knowledge, he does not mess with dope and also I
22 have not seen him with no large sums of money
23 either, and the rumor going around about him being
24 a cook is a lie as far as I know. I have never
25 seen him cook nor have I ever bought or seen him

JULIE PRINCE - CROSS

1 with any supplies to cook with. And also I have
2 never gave any law enforcement agency any
3 statements about this or anything else concerning
4 Marshall. I swear this to be true to the best of
5 my knowledge. I am writing this freely and
6 voluntarily of my own free will."

7 Did you sign that?

8 A Yes, sir.

9 Q And I believe a notary also notarized that.
10 Is that correct?

11 A Yes, sir.

12 MR. CROUT: Your Honor, at this point I would
13 object to continuing questioning on that document
14 and let us move in evidence, I believe it was
15 already published to the jury, so that being the
16 case, I would now ask it to be moved into evidence
17 as a document in this case.

18 MR. VARNER: I'll give it to the State if the
19 State wants to introduce it as evidence.

20 THE COURT: The Court does not recall this
21 document being published.

22 MR. CROUT: He read the entire document.

23 THE COURT: Well, at any prior time.

24 MR. CROUT: No, sir.

25 THE COURT: Other than just right then.

JULIE PRINCE - CROSS

1 MR. CROUT: Yes, sir.

2 THE COURT: What's your pleasure, do you want
3 to introduce it as a State's exhibit?

4 MR. CROUT: Yes, Your Honor, that's fine,
5 just as long as it goes in evidence.

6 THE COURT: Continue cross-examination.

7 BY MR. VARNER:

8 Q You signed what you call a voluntary
9 statement under oath, you swore that to be the
10 truth, correct?

11 A I wrote it for him.

12 Q Okay. And it wasn't true, was it?

13 A No, sir.

14 Q And nobody made you do that?

15 A No, sir.

16 Q Nobody forced you to do that?

17 A No, sir.

18 Q Nobody promised you you were going to get
19 anything for doing that?

20 A No, sir.

21 Q And that statement sure didn't save eighteen
22 years, sure didn't save eighteen years of your
23 life, did it?

24 A No, sir.

25 Q What you're telling this jury today is the

JULIE PRINCE - CROSS

1 truth, isn't it?

2 A Yes, it is.

3 MR. VARNER: No further questions.

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JULIE PRINCE - CROSS

CROSS EXAMINATION

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QUESTIONS BY MR. WISE:

Q Just a few questions. You never saw Billy Moore over at Marshall Miller's?

A No, sir.

Q You have known Billy for a number of years, I think you all were in grammar school together?

A Yes, sir.

Q After you got out of school you didn't see as much of each other?

A No, sir.

Q I think he worked on your car one time?

A Yes, sir.

Q And outside of that, you have had no dealings with Billy Moore?

A No, sir.

Q Thank you. Now, Jeff Horne is your ex-husband?

A Yes, sir.

Q And you all were divorced when?

A Probably '91, '92.

Q Okay, a number of years ago?

A Yes, sir.

Q So, you started being involved with Marshall Miller in 1999?

JULIE PRINCE - CROSS

1 A Yes, sir.

2 Q And prior to that you had another source for
3 your methamphetamine?

4 A Yes, sir.

5 Q That is when you say you got some from Jeff
6 Horne, prior to '99?

7 A Excuse me?

8 Q You say you got some from Jeff Horne prior,
9 your ex-husband, prior to '99?

10 A Yes, sir.

11 Q And the statement that you signed that they
12 referred to, Marshall asked you to sign that?

13 A Yes, sir.

14 Q And it was just easier to sign it than to
15 argue with him?

16 A Yes.

17 Q He would kind of push you at times?

18 A Yes.

19 MR. WISE: Okay, thank you.

20 THE WITNESS: You're welcome.

21 THE COURT: Redirect?

22 MR. CROUT: Yes, Your Honor, very briefly.

23 And begging the Court's indulgence, I'm actually
24 getting the original of this document that we
25 referred to as the voluntary statement.

JULIE PRINCE - REDIRECT

REDIRECT EXAMINATION

1
2 QUESTIONS BY MR. CROUT:

3 Q You can go ahead and testify from this one,
4 Miss Prince, if you will.

5 MR. VARNER: To save time, I have no
6 objection to him using a copy, if it's at the
7 State's pleasure.

8 THE COURT: It's the State's examination. If
9 he want to hand her the original that's fine.

10 MR. CROUT: Yes, Your Honor. Let me just,
11 for matters of making the case flow a little more
12 efficiently, Your Honor, we had intended to
13 introduce the original at a later date as well, so
14 as far as introducing this copy, we will also
15 introduce the original at a later date.

16 THE COURT: This is an original, or copy?

17 MR. CROUT: This is a copy, sir.

18 THE COURT: I'm sorry, Mr. Varner, this is a
19 copy. This is apparently the same one you just
20 handed him.

21 MR. CROUT: Exactly. I'm just in the process
22 of producing the original.

23 MR. VARNER: That was produced to me by the
24 State and what I had said was I have no objection
25 to introducing a copy to save time and I have no

JULIE PRINCE - REDIRECT

1 objection to him going ahead and introducing and
2 substituting the original when they obtain it, just
3 to get it moving.

4 THE COURT: Very well.

5 MR. CROUT: Exactly.

6 THE COURT: The Court misunderstood, thought
7 you were handing her something different from that
8 which Mr. Varner just handed you, that was a copy.

9 MR. CROUT: No, sir.

10 THE COURT: It's the same thing, a copy. All
11 right.

12 BY MR. CROUT:

13 Q Did Marshall Miller tell you why he needed
14 that?

15 A No, sir.

16 Q When you signed that did you have your left
17 hand on the Bible and your right hand in the air?

18 A No.

19 Q Did anybody swear you?

20 A No.

21 Q Now, you had mentioned earlier about Marshall
22 cutting you off. If you didn't sign that were you
23 afraid he would cut you off?

24 A Probably, yes.

25 Q Did he tell you where he got that from?

JULIE PRINCE - REDIRECT

1 A No.

2 Q Now, you gave a voluntary statement to
3 members of SLED in this case, correct?

4 A Yes, sir.

5 Q And that statement that you gave, you weren't
6 under arrest at that time, correct?

7 A No, sir.

8 Q You weren't made any promises, were you?

9 A No, sir.

10 Q And the information that you have testified
11 here to today was contained in that statement?

12 A Yes, sir.

13 Q Now, of course you have had more time to talk
14 and you added some details to the statement, but
15 the thing is, you came forward and gave all that
16 information without a promise or anything?

17 A Yes, sir.

18 Q And when you pled guilty you signed a plea
19 agreement?

20 A Yes, sir.

21 Q And you agreed to tell the truth when you
22 testified?

23 A Yes, sir.

24 Q Did anybody ask you to tell a lie?

25 A No, sir.

JULIE PRINCE - REDIRECT

1 Q Have I ever asked you to tell a lie?

2 A No, sir.

3 Q Has Mr. Hood ever asked you to tell a lie?

4 A No, sir.

5 Q Special Agent Bragg, did he ever say go up
6 there and lie?

7 A No, sir.

8 Q Did anybody tell you to go up here and lie?

9 A No, sir.

10 Q You used to be a junkie, didn't you?

11 A Yes, sir.

12 Q You have a prior criminal record?

13 A Yes, sir.

14 Q But you are not that anymore, are you?

15 A No, sir.

16 Q You are not that when you are sitting here
17 testifying today, are you?

18 A No, sir.

19 MR. CROUT: Your Honor, at this time I would
20 move the document that is referred to as the
21 voluntary statement which Miss Prince indicated
22 that she had signed and was offered to her by
23 Marshall Miller in evidence as a copy of the
24 original.

25 THE COURT: How says the defendant Miller?

JULIE PRINCE - REDIRECT

1 MR. VARNER: No objection.

2 THE COURT: Defendant Moore?

3 MR. WISE: No objection.

4 THE COURT: Without objection it will be
5 marked as a State's Exhibit number next.

6 (State's Exhibit Number 34 was marked
7 and received in evidence).

8 BY MR. CROUT:

9 Q When Marshall Miller came and asked you to
10 sign that did he have any other voluntary
11 statements with him?

12 A Yes, sir.

13 Q Do you recall how many he had?

14 A He had a bunch of them. He was giving them
15 out to everybody.

16 Q When you say he was giving them out to
17 everybody, who do you think he gave them to?

18 A Me, my mother, my boyfriend, Jeff Horne.

19 Q Now, these people that you have referred to
20 in this group, did you all discuss these forms or
21 talk about them with each other?

22 A Yes. Some of them got lost and he got mad.

23 Q Did he tell you that?

24 A Yes. He wanted to know where his statements
25 was, and they lost them.

JULIE PRINCE - REDIRECT

1 Q Did he ever find out?

2 A I don't know.

3 Q Have you ever seen him, Marshall Miller, with
4 large amounts of methamphetamine?

5 A Yes, sir.

6 MR. VARNER: Objection, Your Honor. This has
7 not been brought up in what we covered. He is just
8 redoing what he has done on direct.

9 THE COURT: How is this proper redirect?

10 MR. CROUT: Sir?

11 THE COURT: How is this proper redirect?

12 MR. CROUT: Well, because it goes directly to
13 on cross-examination Mr. Varner placed in this
14 document that has these affirmative statements and
15 I'm just asking her to respond to them based upon
16 this document.

17 THE COURT: The door is opened. The
18 objection is overruled.

19 BY MR. CROUT:

20 Q So, have you ever seen Marshall Miller with
21 large amounts of methamphetamine?

22 A Yes, sir.

23 Q Have you ever seen him with large amounts of
24 money?

25 A Yes, sir.

JULIE PRINCE - REDIRECT

1 Q Have you known him to cook methamphetamine?

2 A Yes, sir.

3 MR. CROUT: No further questions.

4 THE COURT: Mr. Varner.

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JULIE PRINCE - RECROSS

RECROSS EXAMINATION

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QUESTIONS BY MR. VARNER:

Q Now, on direct a little while ago you said you had never seen Marshall cook?

A I hadn't seen him cook but --

Q Okay, all right. You have never seen him cook, correct?

A Correct.

Q All right. I ask you this question because no promises were made to you or anything about your statements to SLED. How did you get in touch with SLED or how did they get in touch with you?

A They were at my lawyer's office.

Q Well, now, if you weren't in any trouble or anything, what were you doing at a lawyer's office?

A I was talking to them about what I was getting for distribution, for my distribution case.

Q Oh, those are the distribution charges that disappeared?

A I was supposed to get PTI but before my PTI went into effect I got busted for conspiracy.

Q Okay. So, then, were you promised something or was it your understanding you were promised something if you gave a statement?

A No, I wasn't.

JULIE PRINCE - RECROSS

1 Q Okay. Well, why did you give those
2 statements, then?

3 A Because it was SLED agents and I didn't know,
4 I had never been through nothing like that before.

5 Q Well, what was your motivation to give those
6 statements? Were you doing it out of the goodness
7 of your heart because you were no longer a junkie?

8 A No, I was still a junkie then.

9 Q Okay. Were you doing it because there was
10 something in it for you?

11 A No, sir.

12 Q Okay. So, why did you do it, then?

13 A Because they asked me.

14 Q Okay. This was at your lawyer's office?

15 A Yes.

16 Q How long had have you been in jail?

17 A Seven months.

18 Q Okay. So, is it a fair statement you have
19 not been using drugs, you have been clean for seven
20 months?

21 A Yes, sir.

22 MR. VARNER: Okay, thank you, ma'am.

23 MR. WISE: Just one or two questions.

24

25

JULIE PRINCE - RECROSS

RECROSS EXAMINATION

1
2 QUESTIONS BY MR. WISE:

3 Q You say you have known Marshall thirteen
4 years in that statement?

5 A Yes, sir.

6 Q That wasn't true, was it?

7 A I have been knowing him -- I can't remember
8 the year.

9 Q Well, he put thirteen in there?

10 A Uh-huh (affirmative).

11 Q He put the number in there, didn't he, the
12 number of years you had known him?

13 A Did he?

14 Q Yes.

15 A I don't know.

16 Q My question is, you put in the statement you
17 had known him thirteen years. You hadn't known him
18 quite that long, you hadn't known him but about six
19 years?

20 A I had known him six years.

21 Q He put the figure thirteen. Do you know why
22 he used a figure that wasn't right?

23 A No, sir.

24 MR. WISE: Okay, thank you.

25 THE COURT: Mr. Crout?

JULIE PRINCE - RECROSS

1 MR. HOOD: Nothing further from the State,
2 Your Honor.

3 THE COURT: Thank you, madam. Come down.
4 Watch your step.

5 (Witness excused).

6 THE COURT: Call your next witness.

7 MR. CROUT: Your Honor, at this time the
8 State calls Mr. Jason Davis.

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JASON DAVIS - DIRECT

1 **JASON ANDREW DAVIS,**
2 **after being first duly sworn testified as follows:**

3 **THE CLERK: Have a seat and state your full**
4 **name for the record.**

5 **THE WITNESS: My name is Jason Andrew Davis.**

6 **DIRECT EXAMINATION**

7 **QUESTIONS BY MR. CROUT:**

8 **Q Mr. Davis, how old are you?**

9 **A I'm 29.**

10 **Q How far have you gone in school?**

11 **A Sir? I'm sorry.**

12 **Q How far have you gone in school?**

13 **A I graduated high school.**

14 **Q Are you married or single?**

15 **A I'm single.**

16 **Q Do you have any children?**

17 **A Yes, sir, I've got two.**

18 **Q And who is the mother of those children?**

19 **A Angela Gillstrap, she's from my hometown**
20 **where I'm from.**

21 **Q Where do those children live now?**

22 **A They live with her.**

23 **Q Where do you live now?**

24 **A Allendale Correctional Institution.**

25 **Q How long are you going to be living there, do**

JASON DAVIS - DIRECT

1 you think?

2 A I know until October of this year.

3 Q Until October of this year?

4 A Yes.

5 Q Then what might happen?

6 A I'm hoping I will get out and go back to work
7 and carry on.

8 Q Is that a guarantee?

9 A No guarantee.

10 Q All right.

11 A But --

12 Q On October 7th of 2002 you had given a
13 statement to members of the South Carolina Law
14 Enforcement Division about this case. Do you
15 recall that statement?

16 A Yes, I do.

17 Q Who did you give that statement to?

18 A Officer Bragg, I believe.

19 Q And did you give it to anybody else?

20 A No.

21 Q All right. Is Officer Bragg in the courtroom
22 today?

23 A Yes, sir, he is.

24 Q Can you point him out to us?

25 A Right there.

JASON DAVIS - DIRECT

1 Q All right. And had you already been arrested
2 for these charges?

3 A Yes, sir.

4 Q When were you arrested?

5 A September the 22nd, somewhere along in there,
6 I think, I'm not exactly sure of the exact date but
7 it was in the latter part of September.

8 Q Where were you when you got arrested?

9 A At Greenwood County Detention Center.

10 Q What were you doing in the Greenwood County
11 Detention Center?

12 A It was for a fine I hadn't paid for open
13 container.

14 Q So, they just served you with the arrest
15 warrant while you were in jail?

16 A Right.

17 Q What kind of prior record do you have?

18 A I've got a possession of marijuana.

19 Q When was that?

20 A Simple possession of marijuana. It's been
21 about five or six years ago.

22 Q Okay.

23 A For that.

24 Q What about any kind of a charge for obtaining
25 money by false pretenses?

JASON DAVIS - DIRECT

1 A I got a charge for obtaining money by false
2 pretenses.

3 Q What happened with that?

4 A I didn't get any time out of it. It was a
5 bunch of misdemeanors, I think they ran them all
6 concurrent, I paid a fine.

7 Q And then what about a receiving stolen goods
8 charge, did you get arrested for that?

9 A That was dropped.

10 Q That was dropped?

11 A Yes.

12 Q Nol prossed?

13 A Huh.

14 Q Was it nol prossed, were you found not
15 guilty, what happened?

16 A Found not guilty.

17 Q All right. Do you know an individual by the
18 name of Marshall Miller?

19 A Yes, sir.

20 Q How about Julie Prince?

21 A Yes, sir.

22 Q How about Tracy Davis?

23 A Yes, sir.

24 Q Do you know an individual by the name of
25 Sandra Jo Hughes?

JASON DAVIS - DIRECT

1 A Yes, sir.

2 Q Who is she?

3 A That's my girlfriend's mother.

4 Q Who is your girlfriend?

5 A Julie Prince.

6 Q All right. How did you meet Marshall Miller?

7 A Through Julie.

8 Q When did you meet him?

9 A About, say, the early part of 2000.

10 Q Where was he living when you met him?

11 A I believe Shamrock Apartments.

12 Q The first time you met him did you go to his
13 apartment or did he come over to Julie's house?

14 Where were you all at?

15 A He came to Julie's house when I was over
16 there and I met him then.

17 Q Were you living there?

18 A Yes, I was staying with Julie at the time.

19 Q Did he tell you why he came over there?

20 A He came over there looking for some
21 methamphetamine.

22 Q To buy from her?

23 A Yes.

24 Q And at that time was she dealing in
25 methamphetamine?

JASON DAVIS - DIRECT

1 A Kind of but not, not like, not steadily or
2 anything, she just knew where she could get it, she
3 might would go get it for somebody at a time.

4 Q Up until the time you were arrested were you
5 living with Julie Prince?

6 A Yes, sir.

7 Q Were you all living in the same residence?

8 A Yes, sir.

9 Q When was the first time you went to the
10 Shamrock Apartments?

11 A I can't really recall the first time but it
12 wasn't long thereafter, after I first met Marshall.

13 Q Did he call before he came over and said,
14 "I'm coming over," or did he just show up at your
15 house?

16 A He would just show up there.

17 Q And would Julie sell him meth?

18 A Or maybe, you know, she wouldn't have any on
19 her, she might go get some, he would give her money
20 and she would go get it.

21 Q How often did that happen?

22 A I think only two or three times.

23 Q Do you know when she started getting it from
24 Marshall?

25 A Like I said, it wasn't long thereafter. I

JASON DAVIS - DIRECT

1 guess he had found it somewhere else. He had it
2 then, we would go to him and get it.

3 Q Would you use any of that meth, too?

4 A Yes.

5 Q Would you sell any of it?

6 A Maybe a little bit but not really. Basically
7 just got it for personal use.

8 Q And Julie just got it for her personal use,
9 too, or would she sell hers?

10 A She might would sell a little bit but mostly
11 just for personal use also.

12 Q But you only knew her back to 2000, right?

13 A Right.

14 Q All right. When you went over to Shamrock
15 Apartments for the first time did you know you were
16 going over there to buy meth?

17 A Yes.

18 Q Did you go inside or did you wait in the car?

19 A I went inside.

20 Q Did you go back in the bedroom?

21 A Yes.

22 Q Did Julie go with you?

23 A No.

24 Q Were you with her that time?

25 A Yes, she was with me, she was with me, or I

JASON DAVIS - DIRECT

1 was with her.

2 Q Where did she stay?

3 A She sat in the living room with Tracy.

4 Q Where would you go?

5 A I went back to the bedroom where Marshall
6 was.

7 Q Now, just at the Shamrock residence, how
8 often did you go over there and go back in that
9 bedroom to buy meth, would you estimate?

10 A I don't know. Probably two or three times a
11 week, maybe something like that.

12 Q For how many weeks?

13 A Eight, a couple months.

14 Q How much would you buy?

15 A From half a gram to a gram, something like
16 that, \$50 to \$100 worth.

17 Q Would Julie go back there with you or would
18 you go back yourself?

19 A It would be different on different occasions
20 but there was times I would go back there by
21 myself. It would be one or the other, it wouldn't
22 be both.

23 Q So, only one person would go back there at a
24 time?

25 A Right.

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1 Q And when you bought the methamphetamines
2 where would Marshall get them from? In the room,
3 where in the room would he get them?

4 A He would have a desk, he had a desk set up in
5 the corner there, he might would have it in the
6 drawer in his desk or maybe like in a little lock
7 box, something like that in a drawer.

8 Q And how would you determine the amount that
9 you were getting?

10 A On a digital scale, probably.

11 Q He had that in the room as well?

12 A Yes.

13 Q Now, did you ever go there and buy
14 methamphetamine without Tracy, excuse me, without
15 Julie?

16 A Yes, maybe on one occasion I did.

17 Q Did she ever go there without you?

18 A I'm sure she did.

19 Q All right. The money that you paid Marshall
20 for the methamphetamines, what would he do with
21 that money?

22 A I can't recall. I guess he would fold it up
23 and stick it in his pocket.

24 Q All right. Now, did you also, or did you
25 know Marshall Miller when he moved to the trailer

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1 on Highway 252?

2 A Yes.

3 Q Did you go there and buy meth?

4 A Yes, once.

5 Q One time?

6 A Yes.

7 Q Did you go back in the back bedroom?

8 A Yes, the same, pretty much the same little
9 setup, you know, a desk and little scales.

10 Q How much meth did you buy from him then?

11 A The same, small amounts, half a gram, I
12 think, yes, half a gram is what I got.

13 Q Would Tracy Davis be there?

14 A Yes.

15 Q Do you recall if he had any kind of security
16 set up around there, surveillance system or
17 anything?

18 A I didn't know if he did. If he did, I didn't
19 know about it.

20 Q All right. Now, when you would use your
21 methamphetamine how would you use it?

22 A Intravenous.

23 Q What process would that be?

24 A With like an insulin, hypodermic needle and
25 water, break it down, shoot up.

JASON DAVIS - DIRECT

1 Q And is that the way you have always used it?

2 A No, not when I first started using. I used
3 to snort it, eat it, like that, then eventually it
4 progressed to shooting it up.

5 Q And you had been using meth before you met
6 Marshall Miller, right?

7 A Right.

8 Q You used meth from different sources, right?

9 A Yes.

10 Q Was there anything distinctive or unique
11 about Marshall Miller's meth?

12 A Yes. It had a taste, you could do it, when
13 you do the shot you could taste it, it would be
14 like an after taste come up in your mouth and a
15 heat, you could feel heat, like a heat rush, what
16 they call it, pretty distinctive, you know, you
17 could always tell it was ether.

18 Q If you weren't getting meth from Marshall
19 Miller where would you get it from?

20 A Probably from Sandra, Sandra Joe, yes, or
21 Jeff Horne.

22 Q Did Marshall ever cut you off and say he
23 wouldn't sell to you anymore?

24 A Yes, at one point he did, yes.

25 Q Why did he do that?

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1 A Basically because he didn't want to deal
2 small amounts like that anymore, you know, I didn't
3 have enough money to really buy what he was out to
4 sell.

5 Q Did he ever ever ask you to try to sell it to
6 anybody else?

7 A No, not really.

8 Q He just said you're not buying enough?

9 A Yes, you know.

10 Q Did he ever indicate to you that he
11 manufactured methamphetamine?

12 A Yes, at one point he did.

13 Q What did he tell you?

14 A I had went to Shamrock Apartments and I went
15 back there to the bedroom, like I said, and I think
16 I bought a half a gram and I worked it up right
17 there, work it up meaning into a syringe, I was
18 looking at it and it looked different, I held it up
19 to the light and it looked different than it had
20 been looking, I said, "Why does it look different?"
21 He said just try it, you know. I tried it. He
22 said, "What do you think about that?" I said,
23 "It's pretty good." He said, "I made it." I said,
24 "Really?" He said, "Yes."

25 So, that's the first time, that's when I,

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1 well, I guess that's the only time he ever said
2 anything like that, as far as he making it.

3 Q What's the largest amount of methamphetamine
4 you ever saw there?

5 A I seen him with a pretty good size, it was a
6 jug about this big, he reached down in there with a
7 spoon, I don't know how full it was, it was like a
8 gallon size jug, he reached in there with a spoon
9 and dipped it out like that.

10 Q And that was when you were just purchasing a
11 small quantity for yourself?

12 A Yes.

13 Q And he put that, what he dipped out, on a
14 scale and weighed it out to you?

15 A Yes.

16 Q Was that at Shamrock Apartments or was that
17 at 252?

18 A That was on 252.

19 Q All right. Did you ever go to a shop at
20 Cokesbury to buy any methamphetamine?

21 A No. By that time I had, I didn't no longer
22 deal with Marshall.

23 Q Why did you quit dealing with him?

24 A Basically because, I don't know, I don't
25 know, he had got big, I think he didn't really want

JASON DAVIS - DIRECT

1 to, I mean, we would still speak but as far as
2 dealing or anything like that, I never dealt. Like
3 I said, anything I would want would be too small an
4 amount for him.

5 Q Did Julie keep dealing with him?

6 A I think during a period that we were split up
7 I think she did for awhile.

8 Q Did he ever approach you or ask you to sign
9 any kind of document that said that he didn't do
10 all of these things that you're saying he did now?

11 A No, sir, not me personally but he approached
12 Julie while I was there and asked her to do that.

13 Q And do you know if she signed one or not?

14 A I think maybe she did, yes.

15 Q Do you remember what the document contained?

16 A Something to the effect of her never seeing
17 him with any large amount of dope or large amount
18 of money, stuff like that.

19 Q Did he say why he needed her to sign that?

20 A No. I guess to offset any kind of statement
21 she may have made otherwise.

22 Q If you could just estimate for us, based upon
23 the times you said you have been to the apartment
24 at Shamrock from the time you, from the time you
25 said you have been at the trailer at 252, how much

JASON DAVIS - DIRECT

1 meth do you think you have bought from Marshall
2 Miller?

3 A I don't know. Probably a half an ounce, an
4 ounce or so total.

5 Q That whole time period?

6 A Yes.

7 Q And how would you, and I just want to digress
8 a little bit, how would you arrange to meet with
9 Marshall to buy this meth? Would you call him and
10 let him know you were coming? What would you do?

11 A Well, yes, I would call and let him know we
12 was coming or, too, you see, we was working
13 together on second shift, I pretty much knew his
14 schedule at the time. Yes, basically just call and
15 let him know I would be up there around 2:00 or
16 2:30, 3:00 o'clock, something like that.

17 Q I believe you indicated that you knew Tina
18 Stevenson?

19 A Yes.

20 Q All right. And you knew Tracy Davis?

21 A Right.

22 Q Of course you know Julie?

23 A Yes.

24 Q You know Sandra Jo Hughes?

25 A Right.

JASON DAVIS - DIRECT

1 Q At this time were you using meth with anybody
2 else? Let me rephrase the question. Do you know
3 all of the people that were arrested at the time
4 you were arrested?

5 A I think so, yes.

6 Q Do you know Ernest Covan?

7 A Right.

8 Q Did he hang around some?

9 A Yes.

10 Q And you know the individuals, of course, you
11 named. Who else do you know that was kind of in
12 this circle of meth users?

13 A Michelle Madden, Bonnie Saylor. You mean of
14 the original fifteen, or the nineteen?

15 Q Of the original fifteen, who do you know?

16 A I know pretty much all of them.

17 Q All fifteen of them?

18 A Tony Howard. There is one, Ashley Bannister
19 and Scottie Prince, I didn't know them. I never
20 knew them, or the guy that was back there now, what
21 is his name, Cumming, I had just made his
22 acquaintance, I didn't really know him.

23 Q But it's safe to say the people you did know,
24 you knew that they did meth, right?

25 A Yes.

JASON DAVIS - DIRECT

1 Q They knew you did meth, right?

2 A Yes.

3 Q And was Marshall Miller generally the source
4 of that meth?

5 A Yes.

6 Q Now, you signed a plea agreement when you
7 pled uilty, correct?

8 A Correct.

9 Q And you agreed to testify at any upcoming
10 trial?

11 A Uh-huh (affirmative).

12 Q Did anybody ask you as a result of that plea
13 agreement to come in here and lie?

14 A No.

15 Q What did they ask you to do?

16 A Just come in here and tell the truth the best
17 I knew it.

18 Q Is that what you're doing?

19 A Yes.

20 MR. CROUT: Thank you. Your Honor, I have no
21 further questions.

22 THE COURT: Cross-examination, Mr. Varner.

23

24

25

JASON DAVIS - CROSS

CROSS EXAMINATION

1
2 QUESTIONS BY MR. VARNER:

3 Q All right, sir. You were talking about this
4 was, you could tell it was Marshall's because it
5 was ether meth, right?

6 A Uh-huh (affirmative).

7 Q What do you mean, what is ether meth? Is
8 that a way of cooking the meth or making the meth?

9 A I guess that is just a slang way of, yes, a
10 way of describing the way it's made and the way it
11 tasted.

12 Q All right.

13 A It tastes when you do it.

14 Q Okay. And you and Julie Prince, when did you
15 two first start living together?

16 A Right at the first of 2000.

17 Q Okay. And you two were still living together
18 up until the time you got arrested back September
19 of last year?

20 A Right.

21 Q Okay. And you guys got out on bond, were
22 still living together for awhile?

23 A Yes.

24 Q Okay. How long have you been in jail?

25 A Right now?

JASON DAVIS - CROSS

1 Q Uh-huh (affirmative).

2 A Since June 2nd.

3 Q Okay. And during those roughly three and a
4 half years or so were you and Julie together the
5 whole time?

6 A No. It was times when we split up.

7 Q How long, how many times did you split up and
8 how long would it be?

9 A Maybe twice for a month at a time or so,
10 something like that.

11 Q Okay. And is it a fair statement during that
12 period of time you were using crystal meth and
13 Julie was using it, too?

14 A Yes.

15 Q And Julie was selling a little bit here and
16 there but Julie wasn't selling much?

17 A Right.

18 Q Correct?

19 A Yes.

20 Q And Julie was certainly, she was not out
21 there getting large amounts or getting a bunch of
22 crystal meth from Marshall and selling it, she
23 wasn't working like a mule for him in any way,
24 shape or form, was she?

25 A Not that I know of.

JASON DAVIS - CROSS

1 Q Okay. Well, you were with her all the time,
2 weren't you, you guys lived together?

3 A Yes, when we lived together.

4 Q And you do know that Julie doesn't always
5 tell the truth, now, does she?

6 A True.

7 Q Why do you laugh at that? Is that just,
8 that's just plain old obvious?

9 A Well, that's a fair enough statement.

10 Q Is that part of what goes with the problems
11 of being a junkie, of being addicted to a drug, you
12 will say whatever you need to say, correct?

13 A Yes, at times, yes, I guess so.

14 Q And I believe when this all started you were
15 looking at a mandatory minimum sentence of
16 twenty-five years. Correct?

17 A Correct.

18 Q And you went to jail in I believe June, you
19 said?

20 A June.

21 Q And you're planning on getting out when?

22 A In October.

23 MR. VARNER: That's all the questions I have.

24 THE COURT: Mr. Wise?

25

JASON DAVIS - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. WISE:

Q What sentence did you get?

A Sir?

Q You got a three year sentence?

A Three year sentence, yes.

Q You kind of know Billy Moore?

A Yes, I just basically just made his acquaintance, I remember him from working with him, it's been years ago I worked with him at Clendenin Lumber Company.

Q When you worked out at Clendenin Lumber?

A Right.

Q You didn't have any dealings with him in this?

A Yes.

Q You basically were just using meth?

A Right.

Q Marshall was more upset with you because you weren't buying enough from him?

A Right.

Q Now, this was an ether taste as opposed to ammonia?

A Well, I get them confused, I guess, I don't really know.

JASON DAVIS - CROSS

1 Q Well, when you tried this one time with
2 Marshall did you say, "That tastes like ether"?

3 A Yes.

4 Q But ammonia is a different smell?

5 A Yes.

6 Q So, it was ether as opposed to ammonia?

7 A Yes.

8 MR. WISE: Okay, thank you.

9 THE COURT: Redirect?

10 MR. CROUT: Nothing further from this
11 witness, Your Honor.

12 THE COURT: Thank you. Come down.

13 MR. CROUT: Your Honor, in light of the
14 witness' incarceration, would it be okay for him to
15 be excused?

16 THE COURT: Any objection from defendant
17 Miller?

18 MR. VARNER: No objection, Your Honor.

19 THE COURT: No objection from anyone?

20 MR. WISE: No objection.

21 THE COURT: You may be excused.

22 (Witness excused).

23 THE COURT: Do you want to call another
24 witness?

25 MR. HOOD: Your Honor, I think it would be

1 appropriate -- just one second. I think the next
2 witness may be a little bit more than thirty
3 minutes, Your Honor, I think for the sake of
4 everybody's convenience, if it is okay with the
5 Court, to go ahead and break for lunch at this time
6 due to the length of the next witness.

7 THE COURT: All right. Madam Forelady,
8 ladies and gentlemen of the jury, we will take a
9 luncheon break at this time. Please do not discuss
10 the case by, between and among yourselves nor with
11 any other person. If anyone attempts to discuss
12 the case with you please tell that person or
13 persons that you are a juror. If after you tell
14 them that you are a juror they were to persist in
15 trying to discuss the case with you that would be
16 wrong, improper and illegal and you should use
17 every measure and means at your disposal to
18 identify any such person and report it to one of
19 the bailiffs or to the court clerk who sits
20 directly in front of the Court as soon as you
21 return to the courthouse.

22 If there were to be any media coverage such
23 as newspaper, radio or television of this trial, as
24 soon as you realize what you're reading, seeing or
25 hearing has to do with this trial please

1 immediately disabuse yourself of it, as you are on
2 your oath to decide this case only and exclusively
3 upon the evidence that you hear and is presented
4 during the course of this trial.

5 Please do not allow anyone to speak with you
6 or speak with anyone about this case or see, read
7 or hear anything about this case at all while we
8 take a lunch period. Let's take it until 2:00
9 o'clock. 2:00 o'clock. Everyone remain seated
10 except the jurors, who are excused until 2:00
11 o'clock.

12 (The jury was excused from the courtroom).

13 THE COURT: Anything from the State before we
14 close the record?

15 MR. HOOD: Nothing, Your Honor.

16 THE COURT: From the defendant Miller, Mr.
17 Varner?

18 MR. VARNER: Nothing, Your Honor.

19 THE COURT: From the defendant Moore?

20 MR. WISE: Nothing, Your Honor.

21 THE COURT: We are in recess until 2:00
22 o'clock.

23 (Recessed at 12:39 p.m.).

24 (Reconvened at 2:04 p.m.).

25 THE COURT: The record is open. State of

1 South Carolina versus Marshall Miller and others,
2 indictment 2002-GS-47-32. The defendants on trial
3 are Marshall Miller and Billy Moore. We are
4 returning from the luncheon recess.

5 Is there anything from the State before the
6 jurors come in, please?

7 MR. HOOD: No, sir, Your Honor.

8 THE COURT: Anything from the defendant
9 Miller?

10 MR. VARNER: Nothing, Your Honor.

11 THE COURT: From the defendant Moore?

12 MR. WISE: There is one matter. I understand
13 the next witness for the government is going to be
14 Tommy Stewart. We would move at this time to
15 exclude his testimony on the ground he will be
16 testifying, as I understand it from the note the
17 the government has given me, that Mr. Moore
18 allegedly made several methamphetamine sales to
19 Tommy Stewart. He will testify briefly that he had
20 seen Marshall Miller at Mr. Moore's garage several
21 times, four or five times from sometime in August
22 to sometime in September.

23 My problem with it is he is not going to --
24 and he is going to testify that the methamphetamine
25 he got from Billy Moore was similar to the ether

1 methamphetamine he got from Marshall Miller.

2 There has been no showing at this point in
3 this trial that Billy Moore is involved in this
4 conspiracy, and until there is a showing of
5 connection between Mr. Moore and Mr. Miller to make
6 him part of the conspiracy, this alleged sale I
7 think is simply going to be another bad act, which
8 is not admissible. To simply say that, well, first
9 of all it's obvious from the testimony that the
10 ether method is not the method for manufacturing
11 methamphetamine used by Marshall Miller, it was
12 anhydrous ammonia, that is all there has been
13 testimony on. Where this ether comes from, I don't
14 know. But to allow Mr. Stewart to testify to an
15 alleged drug sale when there is really no
16 connection with Mr. Moore as being part of the
17 conspiracy at this point I think is simply
18 introducing another bad act, which is not
19 admissible under State versus Lyle and 404(b).

20 THE COURT: Mr. Hood?

21 MR. HOOD: Let me start, I think with the end
22 first, Your Honor. Mr. Horne, I mean, excuse me,
23 Mr. Stewart is going to testify that he met an
24 individual by the name of Jeff Horne, who he has
25 known for awhile. Jeff Horne is a named

1 co-conspirator in this case who is awaiting trial.
2 After meeting Jeff Horne he begins purchasing
3 methamphetamine from him and he learns that
4 methamphetamine is coming from Marshall Miller. In
5 fact he goes to Marshall Miller's shop in Cokesbury
6 and purchases meth, along with Jeff Horne, from
7 Marshall Miller and from Marshall Miller directly.
8 He also helps Marshall Miller pop out pills, you
9 know, for the manufacturing process of this
10 conspiracy. I mean, for the manufacturing part of
11 it.

12 Along the way he gets introduced to Billy
13 Moore, and I'm paraphrasing his testimony, Your
14 Honor, I'm not saying, this is the gist of what
15 he's going to say. He met Billy Moore through Jeff
16 Horne, who is, who are both co-conspirators named
17 in this case, Your Honor, and he purchased meth
18 from Billy Moore that was the same methamphetamine
19 he was receiving from Marshall Miller and from Jeff
20 Horne.

21 Now, Mr. Stewart also purchased
22 methamphetamine, according to his testimony, from
23 Mr. Moore that was not Marshall Miller's
24 methamphetamine, and I don't plan on entering into
25 that.

1 Further, Mr. Stewart made an undercover
2 controlled purchase from Mr. Moore and upon
3 interviewing Mr. Stewart he informed us and the
4 State Law Enforcement Division that methamphetamine
5 was not Marshall Miller's methamphetamine, it was
6 methamphetamine from a different person. We're not
7 going into that. Furthermore, he puts Billy Moore
8 and Marshall Miller in the shop together, he makes
9 a purchase from Billy Moore, that is Billy Moore's
10 shop on Morgan Road.

11 As far as Billy Moore being in the
12 conspiracy, the testimony was at this time Billy
13 Moore was with Mr. Miller on the day they were
14 arrested, along with evidence burned in the back
15 yard, pills inside the shop, batteries inside the
16 shop and an anhydrous tank in a truck backed up to
17 the inside of Billy Moore's shop.

18 I'm not sure what the point is, what he's
19 saying we haven't proved yet is evidence that's
20 going to come in through Mr. Stewart. We already
21 have a witness who has put Mr. Miller with Mr.
22 Moore on the day of arrest using methamphetamine in
23 Mr. Moore's shop.

24 MR. WISE: Using is not evidence of a
25 conspiracy, that's obvious. My problem is if Mr.

1 Stewart wants to testify that he had seen Marshall
2 Miller at Billy Moore's shop, I think that's
3 probably admissible. But my problem is that he's
4 going to be talking about a drug sale, and this is
5 not scientific evidence, this is, to say it's
6 Marshall Miller's meth is just stretching the
7 evidence a little bit, to say the least. It's
8 evidence it's methamphetamine that had an ether
9 smell, which is not what Marshall Miller was
10 making, is what gets me.

11 THE COURT: Didn't the witness Jason Davis
12 testify it was an ether smell and upon your
13 cross-examination he said, "Well, whatever it was."

14 MR. WISE: Right.

15 THE COURT: Something to that effect.

16 MR. WISE: Well, then I asked him if it was
17 ammonia, he said no, it wasn't ammonia. It was
18 Jason Davis, right, I asked him if it was ammonia
19 and he said no, it wasn't ammonia, because he knew
20 what ammonia smells like.

21 MR. HOOD: Your Honor, I'm not a car expert,
22 and if you saw my car and how little it works you
23 would understand that, but I think ether is in
24 starter fluid, and there is testimony, evidence
25 that Marshall Miller would use starter fluid to

1 create his methamphetamine.

2 MR. WISE: I missed that. I thought that was
3 another method of making.

4 MR. HOOD: That was Ernest Covan's testimony.

5 THE COURT: Well, at any rate, the Court will
6 permit the testimony of Mr. Stewart and where you
7 feel that we need to take up matters, then you let
8 it be known.

9 MR. WISE: Well, the matter will come when he
10 says he made a purchase from Billy Moore. That's
11 when the matter will come in.

12 THE COURT: If the Court understands the
13 State's position correctly, that purchase was made
14 at Billy Moore's shop in the presence of Marshall
15 Miller.

16 MR. HOOD: Marshall Miller was there, yes,
17 sir, Your Honor.

18 THE COURT: Well, you can make the objection
19 at that time. If he were to ask the question and
20 if the witness were to indicate he's about to
21 respond, then you object.

22 MR. WISE: I was just trying to get the
23 objection in now so we don't have to do it later,
24 but I will make a timely objection.

25 THE COURT: It seems admissible at this time.

1 MR. HOOD: And the only other thing I have,
2 since we're on this issue, essentially, and just
3 for background information, Tommy Stewart was
4 arrested for narcotics, he made an undercover
5 purchase for the Greenwood County Sheriff's
6 Department from Billy Moore and subsequently, and I
7 don't know the details of it, but that charge was
8 not pressed, and I don't, since we're not getting
9 into the fact he made a controlled purchase from
10 Billy Moore, I don't think they should be able to
11 argue that he got something, some benefit from
12 that.

13 MR. WISE: If he went to work for the
14 narcotics unit we're entitled, and he had his
15 charges dropped, we're entitled to know that. I
16 think the jury is entitled to know that. We don't
17 have to say he made a buy from Billy Moore, but
18 what the heck.

19 MR. HOOD: You can't have your cake and eat
20 it, too.

21 MR. WISE: Then, we'll talk about it then, if
22 that's necessary, we will talk about it.

23 MR. HOOD: I don't want to get into that
24 because he will, he's told us and the State Law
25 Enforcement Division that was methamphetamine Billy

1 Moore was getting from some other source.

2 MR. WISE: Your Honor, we'll get into it,
3 then, okay. If we have to open the door on that,
4 we'll open it.

5 THE COURT: Let the record show another
6 factor that the Court considers in making its
7 ruling about the witness who's about to be called,
8 Mr. Stewart, that there is prior testimony that Mr.
9 Moore was present at the, at the shop over in
10 Hodges and was either using, I don't remember, but
11 he was involved with Marshall Miller at Marshall
12 Miller's shop, according to one witness' statement.

13 MR. WISE: Do what? No, Mr. Moore has never
14 been to Marshall Miller's shop, no witness has
15 testified to that.

16 THE COURT: The record will speak for itself.
17 That's what the Court remembers.

18 MR. WISE: I think the government will agree
19 no witness has ever put Billy Moore at Marshall
20 Miller's shop.

21 MR. HOOD: I agree, I think the witnesses
22 testified that Mr. Miller was at Mr. Moore's shop.

23 MR. WISE: That's correct.

24 THE COURT: Well, the Court stands corrected,
25 but at any rate we'll let you get into it and then,

1 Mr. Wise, you can protect your record accordingly.

2 MR. WISE: Thank you. Just one second.

3 THE COURT: Anything further?

4 MR. WISE: Nothing further.

5 MR. HOOD: No, sir, Your Honor.

6 THE COURT: Show the jury in, please, Mr.

7 Busby.

8 (The jury returned to the courtroom).

9 THE COURT: All the jurors are present, with
10 the forelady and the alternates properly seated.
11 The matter lies with the State. Call your next
12 witness.

13 MR. HOOD: Thank you, Your Honor. May it
14 please the Court, at this time the State calls
15 Tommy Stewart.

16 THE CLERK: Place your left hand on the
17 Bible, raise your right.

18

19

20

21

22

23

24

25

TOMMY STEWART - DIRECT

1 **THOMAS J. STEWART,**
2 **after being first duly sworn, testified as follows:**
3 **THE CLERK: Have a seat and state your full**
4 **name for the record.**

5 **THE WITNESS: Thomas J. Stewart.**

6 **MR. HOOD: Good afternoon, Mr. Stewart.**

7 **THE COURT: How do you spell Stewart?**

8 **THE WITNESS: S-t-e-w-a-r-t.**

9 **THE COURT: Thank you, sir. You may examine.**

10 **DIRECT EXAMINATION**

11 **QUESTIONS BY MR. HOOD:**

12 **Q Good afternoon, Mr. Stewart.**

13 **A Good afternoon.**

14 **Q How are you?**

15 **A Fine.**

16 **Q Were you transported today from a local**
17 **detention center?**

18 **A Yes, sir.**

19 **Q Which one were you transported here today**
20 **from?**

21 **A Greenwood.**

22 **Q Is that the Greenwood County Jail?**

23 **A Yes, sir.**

24 **Q Are you currently incarcerated at the**
25 **Greenwood County Jail?**

TOMMY STEWART - DIRECT

1 A Yes, sir.

2 Q How long have you been incarcerated there?

3 A Twenty-three days.

4 Q What are you currently incarcerated in the
5 Greenwood County Jail for?

6 A Criminal domestic violence.

7 Q Are you incarcerated for any other charges at
8 this time?

9 A Illegal use of a phone.

10 Q Is that also known as misuse of a telephone?

11 A Right.

12 Q Are you also incarcerated for failing to
13 abide by a restraining order?

14 A Yes, sir.

15 Q And were you sentenced by a judge on that
16 charge?

17 A Yes, sir.

18 Q And what was your sentence?

19 A It was one year.

20 Q Mr. Stewart, were you subpoenaed to come here
21 to court today?

22 A Yes, sir.

23 Q Do you know who subpoenaed you?

24 A SLED, I think.

25 Q Have you been convicted of domestic violence

TOMMY STEWART - DIRECT

1 prior to this current act you're serving time for?

2 A About a year and a half ago.

3 Q Mr. Stewart, where are you from?

4 A Greenwood.

5 Q Where did you live in Greenwood?

6 A I live at 515 Davis Street.

7 Q Are you married?

8 A Yes, sir.

9 Q Do you have any children?

10 A Yes, sir.

11 Q How many do you have?

12 A I have two sons and two daughters.

13 Q How old are your four children?

14 A Twenty, nineteen, fourteen and sixteen.

15 Q What type work do you do, Mr. Stewart?

16 A That's -- I work for Solution Technologies

17 just out of Hodges.

18 Q What is that?

19 A I drive a truck for them.

20 Q How long have you been doing that?

21 A Since I was twenty-one.

22 Q And how old did you say you were?

23 A I'm 40.

24 Q Do you know an individual by the name of Jeff

25 Horne, Mr. Stewart?

TOMMY STEWART - DIRECT

1 A Yes, sir.

2 Q How do you know Jeff Horne?

3 A I have known him probably, I would say eight
4 years ago at Teak Trading Company.

5 Q What is that?

6 A A lumber place, a mill.

7 Q How did you meet Jeff Horne?

8 A Through buying drugs.

9 Q Did you start purchasing methamphetamine from
10 Jeff Horne?

11 A Yes.

12 Q For how long did you purchase methamphetamine
13 from Jeff Horne?

14 A Probably a couple years.

15 Q In the year 2002 did you purchase
16 methamphetamine from Jeff Horne?

17 A Yes, sir.

18 Q How often were you purchasing methamphetamine
19 from him?

20 A Probably twice a month, three times a month.

21 Q How much would you purchase at a time?

22 A Anywhere from a half eight to an eight.

23 Q Explain to us what a half eight to an eight
24 means.

25 A Half eight is like 1.75 grams, and an eight

TOMMY STEWART - DIRECT

1 is 3.5 grams.

2 Q How much is a half eight?

3 A Anywhere from \$100 to \$125.

4 Q How much is an eightball?

5 A Two and a half to three.

6 Q Is an eight also commonly referred to as an
7 eightball?

8 A Yes.

9 Q Do you know why it's called an eightball?

10 A No, sir. It's an eighth of an ounce.

11 Q Okay. Did Jeff Horne tell you where he was
12 getting his methamphetamine?

13 A Yes.

14 Q Did you ever go with Jeff Horne to his source
15 for methamphetamine?

16 A Yes, sir.

17 Q And where was that?

18 A Marshall Miller.

19 Q Okay. Did you meet Marshall Miller?

20 A Yes.

21 Q When did you meet Mr. Miller?

22 A I met him in his shop.

23 Q When did you meet him?

24 A Oh, around about probably August of 2000,
25 September or August.

TOMMY STEWART - DIRECT

1 Q And of what year?

2 A Of 2002, excuse me.

3 Q And where did you meet Mr. Miller?

4 A At his shop in Cokesbury.

5 Q Okay, describe this shop for us in your own
6 words.

7 A It's a mobile home with a garage beside it.

8 Q Okay. And when you say shop, what do you
9 mean by that? It's not like a store, is it?

10 A No, it's like an automotive shop.

11 Q Was there a business there?

12 A No. He just done his personal work.

13 Q Okay. Personal work on what?

14 A Cars and stuff.

15 Q How many times did you go to this shop in
16 Cokesbury?

17 A Probably fifteen, twenty times.

18 Q Who took you to this shop in Cokesbury.

19 A Mostly me and Jeff Horne.

20 Q What would happen when you would go with Jeff
21 Horne to Marshall Miller's shop in Cokesbury?

22 A We would go in and buy meth.

23 Q How much would you buy?

24 A It varied from anywhere from probably a half
25 eight to maybe an eight or more.

TOMMY STEWART - DIRECT

- 1 Q Would you buy methamphetamine?
- 2 A Sometimes, yes.
- 3 Q Would Mr. Horne buy methamphetamine?
- 4 A Yes.
- 5 Q Sometimes would Mr. Horne buy methamphetamine
- 6 and then sell it to you?
- 7 A Yes.
- 8 Q And what -- how did that change?
- 9 A I started going by myself then and I could
- 10 buy on my own without Jeff being with me.
- 11 Q Why did you have to take somebody in the very
- 12 beginning?
- 13 A Because I didn't know Marshall.
- 14 Q Okay. Explain to us what that means in the
- 15 narcotics world.
- 16 A You just don't sell anybody meth, you know,
- 17 that is, you kind of like to have a person going
- 18 and buying and then once you get to know them, then
- 19 you can go buy yourself.
- 20 Q That was my next question. Did you have to
- 21 get to know Mr. Miller?
- 22 A Yes, sir.
- 23 Q Did you become friends with him?
- 24 A Yes, sir.
- 25 Q How long did this go on?

TOMMY STEWART - DIRECT

1 **A** For probably eight months.

2 **Q** Did Mr. Miller's methamphetamine have a
3 distinctive taste?

4 **A** Ether, it was made from ether.

5 **Q** How do you know it was made from ether?

6 **A** I watched him make it, watched him get the
7 stuff ready to make.

8 **Q** Where did this take place?

9 **A** In his shop.

10 **Q** And where?

11 **A** In Cokesbury.

12 **Q** And describe to the jury what you saw.

13 **A** When we punched pills out and once we punched
14 the pills out we would take starting fluid and pour
15 it in Mason jars and then we would take the coffee
16 filters and put it in the, put it on top of the
17 Mason jars and that would get the stuff ready to
18 cook.

19 **Q** Did you ever see any anhydrous ammonia?

20 **A** Yes, in a tank, yes.

21 **Q** Describe the tank for us?

22 **A** It's probably a four foot tank like you would
23 use like propane gas.

24 **Q** Do you know what color it was?

25 **A** Gray and black, I think, gray, yes.

TOMMY STEWART - DIRECT

1 Q Was the anhydrous ammonia ever used in that
2 process?

3 A They had to use the anhydrous to separate the
4 methamphetamine from the pill as they cooked.

5 Q You told us about these pills you were
6 popping. What kind of pills were they?

7 A I can't think of the name of it.

8 Q How were they packaged?

9 A In little packages, like you buy at Walmart.

10 Q Okay. Did you ever pop these pills for Mr.
11 Miller?

12 A Yes.

13 Q Who would you pop pills with?

14 A Me and him and his girlfriend and Jeff Horne.

15 Q Do you know his girlfriend's name?

16 A Tracy.

17 Q Okay. Where would you pop pills at?

18 A In his garage and shop.

19 Q Is this the place in Cokesbury?

20 A In Cokesbury, yes.

21 Q How many times did you pop pills for Mr.
22 Miller?

23 A Probably four or five or six times.

24 Q How many times did you go to that shop in
25 Cokesbury when he was manufacturing

TOMMY STEWART - DIRECT

1 methamphetamine?

2 A Fifteen, twenty times or more.

3 Q Is there a smell when someone is
4 manufacturing methamphetamine?

5 A When you're cooking it?

6 Q Yes.

7 A Yes.

8 Q Describe it for us.

9 A It's strong, an ether smell.

10 Q Was Mr. Horne ever with you when you were at
11 Mr. Miller's shop and he was manufacturing meth?

12 A Yes.

13 Q Did you eventually build up enough confidence
14 with Mr. Miller where you could go and purchase on
15 your own?

16 A Yes, sir.

17 Q How many times did that happen?

18 A Probably twenty, twenty-five times or more.

19 Q How much were you purchasing at a time?

20 A Anywhere from, most of the time it was like
21 an eight, half eight.

22 Q And again are you referring to an eightball?

23 A Yes, sir.

24 Q What time frame was all this happening?

25 A Mostly in the evening time --

TOMMY STEWART - DIRECT

1 Q What part of the year?

2 A Around about 2002.

3 Q Okay.

4 A Around August, September, yes.

5 Q Let me ask you this. Did the methamphetamine
6 that you received from Mr. Horne have the same
7 taste or sensation that you received from Mr.
8 Miller?

9 A Yes, sir.

10 Q Can you describe that for us?

11 A It was an ether base and once you, you know,
12 once you used the ether base it was just like, you
13 just know it after you did it. It was, it was a
14 special, you always, you always wanted to go back
15 and buy more ether.

16 Q You have tried other methamphetamine?

17 A Yes, sir.

18 Q How long have you been using meth?

19 A Probably six or seven years.

20 Q And have you tried other methamphetamines?

21 A Yes.

22 Q Did they taste like Mr. Miller's
23 methamphetamine?

24 A No, sir.

25 Q Do you know a gentleman by the name of Billy

TOMMY STEWART - DIRECT

1 Moore?

2 A Yes, sir.

3 Q How do know Billy Moore?

4 A When we go by his shop, me and Jeff would.

5 Q When you say Jeff, who are you referring to?

6 A Jeff Horne.

7 Q Where did you first meet Billy Moore?

8 A At Jeff Horne's house.

9 Q Okay. Where does Jeff Horne live?

10 A He lived on 25.

11 Q Okay. What town is that near?

12 A Hodges.

13 Q Who did Jeff Horne live there with?

14 A Sandra Jo.

15 Q Do you know Sandra Jo's last name?

16 A No, I don't think I do.

17 Q Is Mr. Moore in the courtroom today?

18 A Yes, sir.

19 Q Could you point him out for the jury?

20 A Right here.

21 Q How long before September of 2002 did you
22 meet Mr. Moore?

23 A Probably a couple or three months, I guess,
24 four months.

25 Q What were you doing at Sandra Jo Hughes'

TOMMY STEWART - DIRECT

1 house?

2 A Buying meth.

3 Q And who were you buying meth from?

4 A Sandra Jo.

5 Q What was Mr. Moore doing at Sandra Jo Hughes'
6 house?

7 A The same thing I was, yes, probably the same
8 thing I was there for.

9 Q Did you ever start purchasing methamphetamine
10 from Billy Moore?

11 A A few times I did.

12 Q Did you ever see Mr. Miller with Mr. Billy
13 Moore?

14 A Probably around, probably around, probably
15 the end of August me and Jeff went by and Billy was
16 at his shop, yes.

17 Q Where was Mr. Moore's shop?

18 A They were out in the front, in the shop area.

19 Q Where is Mr. Moore's shop located?

20 A Oh, in Hodges.

21 Q Do you know the name of the road it's on?

22 A On, I believe it's Morgan Road.

23 Q Do you know what Mr. Moore would do in this
24 shop, I mean?

25 A Go-carts.

TOMMY STEWART - DIRECT

1 Q Did you ever see him working on go-carts?

2 A Yes, sir.

3 Q How many times did you see Mr. Miller in Mr.
4 Moore's shop?

5 A Probably three or four times.

6 Q Did you ever purchase methamphetamine from
7 Billy Moore at his shop?

8 A A few times.

9 Q Was Mr. Miller present when this happened?

10 A A couple of the times.

11 Q Did the methamphetamine that you purchased
12 from Mr. Moore have the same taste as the
13 methamphetamine you were purchasing from Mr.
14 Miller?

15 A No.

16 Q Did you ever purchase methamphetamine from
17 Mr. Moore that had the same taste as the
18 methamphetamine you got from Mr. Miller?

19 A Probably one time, I guess, yes, one time
20 probably toward the end of it.

21 Q When you purchased that methamphetamine that
22 had the same taste as it had for Mr. Miller from
23 Mr. Moore, how did you pay?

24 A Cash.

25 Q How much did you buy?

TOMMY STEWART - DIRECT

1 **A** It varied from a half eight to probably a
2 half a gram, something.

3 **Q** Do you have a set amount that you buy every
4 single time?

5 **A** No, sir. Just according to how much money
6 you have.

7 **Q** And explain that to us.

8 **A** Well, like if there is two or three going in
9 on it we can get like an eightball because, you
10 know, you can put like \$50, \$75 apiece, but if you
11 only got \$50, that's all you're going to get, a
12 half a gram.

13 **Q** Did you ever see Jeff Horne over at Billy
14 Moore's house?

15 **A** Yes, sir.

16 **Q** Did you ever ride to Billy Moore's shop with
17 Jeff Horne?

18 **A** Yes, sir.

19 **Q** How many times?

20 **A** Ten or more. A few, quite a few.

21 **Q** Did Mr. Horne ever make a statement to you
22 about what was going on down at Mr. Miller's shop?

23 **MR. WISE:** Objection, Your Honor, it would be
24 hearsay on behalf of Mr. Miller.

25 **MR. HOOD:** Your Honor, I believe that is an

TOMMY STEWART - DIRECT

1 exception under the co-conspirator statement rule.

2 MR. WISE: It is not made in furtherance of
3 anything.

4 THE COURT: The objection is overruled.

5 BY MR. HOOD:

6 Q What did Mr. Horne tell you as to what was
7 going on down at Mr. Moore's shop?

8 A That is why Jeff was upset, because Billy and
9 Marshall had became friends and they were cooking
10 at Billy Moore's house.

11 Q Earlier, do you remember your testimony about
12 seeing the manufacturing process taking place?

13 A Yes, sir.

14 Q How much of it did you actually see?

15 A Everything but the actual cook, I guess.

16 Q Okay.

17 A Everything getting ready to, going buying the
18 stuff at Big Lots, Walmart.

19 Q Would that be a fair word, you saw the
20 preparation process?

21 A Yes, sir.

22 Q Can you describe Marshall Miller for us?

23 A Probably about five-eight, 165 pounds, kind
24 of muscular build, black hair, mustache, goatee.

25 MR. HOOD: No further questions, Your Honor.

TOMMY STEWART - DIRECT

THE COURT: Mr. Varner, cross-examination.

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TOMMY STEWART - CROSS

CROSS EXAMINATION

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QUESTIONS BY MR. VARNER:

Q All right. Mr. Stewart, was I correct when I heard you say you had met Mr. Miller through Mr. Horne?

A Yes, sir.

Q And that was around August of 2002?

A Actually it was probably around, probably October, September, because I had met, I had known Jeff for quite awhile and Jeff wouldn't take me over there but when he didn't have a car or he didn't have a ride, then he would get me to take him to Marshall's house.

Q So, you're pretty confident, you have changed it a little bit, it was either around August --

A Or September, yes.

Q August, September, maybe October of 2002?

A Yes, sir.

Q So, about a year and a half ago?

A Yes.

Q Okay.

A Well, actually --

Q You worked with him, or bought from him and saw him cooking and stuff for eight or nine months after that?

TOMMY STEWART - CROSS

1 A Sir?

2 Q You bought stuff from him, stuff meaning
3 meth?

4 A Meth.

5 Q For about eight or nine months?

6 A No, probably actually it was probably about
7 four months.

8 Q About four months?

9 A Yes.

10 Q Could you explain to this jury, if Mr. Miller
11 was arrested on September 24th of 2002, were you
12 going down to the jail to get this dope from Mr.
13 Miller?

14 A No, sir. I was buying from him in Cokesbury
15 at his shop.

16 Q Even though Mr. Miller was in jail after
17 September 24th?

18 A It was before that.

19 Q Of 2002?

20 A Yes, sir.

21 Q But you continued to buy from him for four
22 months while he's in jail?

23 A That's who I bought from.

24 Q What jail was it you were going to that you
25 went in and bought the dope from Mr. Miller?

TOMMY STEWART - CROSS

1 A Cokesbury, at his shop.

2 Q Okay. Are you aware that on September 24th
3 Mr. Miller and a whole bunch of other people, of
4 2002, they were all arrested on that day, so that
5 would have been flat out impossible for you to do?

6 A It was before that, then.

7 Q Okay. Are you going to change that again?

8 A As far as the actual date, I'm not absolutely
9 certain of the date but I do know what I bought.

10 Q Okay. You said in your statement that you
11 saw Mr. Miller and Jeff Horne cooking together?

12 A No, sir, I did not.

13 Q You didn't?

14 A No, sir. I said they was preparing to cook.

15 Q Do you admit or deny this statement, "Stewart
16 also recalled seeing Miller and Horne cook at the
17 shop," meaning Cokesbury?

18 A No, sir, not cooking. Preparing to cook.

19 Q So, if anybody wrote it that way or heard it
20 that way, they didn't write it down the way you
21 said it?

22 A Exactly right.

23 Q Okay. And did you tell anyone, "Stewart also
24 stated that Horne had told him that he," being Jeff
25 Horne, "and Miller had cooked together"?

TOMMY STEWART - CROSS

1 A Oh, yes.

2 Q Which is it, had they cooked together or not
3 cooked together? One time you say they didn't cook
4 together, now on the next page you say they did
5 cook together.

6 A No, I said they was preparing to cook. They
7 was getting stuff ready at the shop to go cook.

8 Q This what you call ether meth that has a
9 particular taste, how many other people do you know
10 had the recipe besides Jeff Horne and you helping
11 out in it, how many other people are you aware of
12 knew the recipe?

13 A Only three.

14 Q Only three?

15 A As far as I know.

16 Q Okay. And when it was cooked it was all used
17 in the same method?

18 A It was what, now?

19 Q All used in the same method when it was being
20 cooked?

21 A It was prepared the same way.

22 Q Okay. Same recipe, for lack of a better
23 term?

24 A Yes.

25 Q Okay. I belief in August of 2003 you were

TOMMY STEWART - CROSS

1 caught with drugs, right?

2 A In August of 2003.

3 Q Uh-huh (affirmative).

4 A Yes, sir.

5 Q And, excuse me, 2002, I believe, I got my
6 years wrong now. August of 2002 you were caught
7 with drugs, right?

8 A No, huh-uh (negative). No, wait a minute.

9 Q Let me check my notes.

10 A Huh-uh (negative)

11 Q Excuse me, August the 11th, 2002.

12 A Right.

13 Q You were caught with drugs?

14 A No, sir.

15 Q Were you caught selling drugs?

16 A No, sir.

17 Q What was it you were charged with?

18 A They found a half a gram in my mailbox across
19 the road from my neighbor's house.

20 Q You were charged with possession of drugs?

21 A No, I wasn't charged with it. They threw it
22 out of court.

23 Q They threw it out of court after you started
24 working for Mr. McAllister?

25 A No, sir.

TOMMY STEWART - CROSS

1 Q Okay. Who was it you were working for when
2 you were out making these undercover buys, then?

3 A I wasn't making any undercover buys.

4 MR. HOOD: Your Honor, could we take
5 something up outside the presence of the jury?

6 THE COURT: Madam Forelady, ladies and
7 gentlemen of the jury, do not discuss the case by,
8 between or among yourselves, and retire to the jury
9 room, please.

10 (The jury was excused from the courtroom).

11 THE COURT: Do you wish the witness to stay
12 or be escorted out of the room during this?

13 MR. HOOD: Let's hold him outside for just a
14 minute, Your Honor.

15 THE COURT: All right. If you would, step
16 around, please, sir, and just make yourself
17 comfortable.

18 (Witness excused from the courtroom).

19 THE COURT: Mr. Hood.

20 MR. HOOD: Thank you, Your Honor. I
21 apologize for interrupting. I have instructed Mr.
22 Stewart not to go into the controlled buy for Mr.
23 Moore in front of the jury because I'm assuming
24 that was improper. If they want to go into it, I
25 mean, you know, he has been told, you know, that's

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1 inadmissible, don't go into that, I mean, if he
2 still answers the question, you see my dilemma,
3 Your Honor, I told him not to go into it because I
4 don't want to do anything to prejudice Mr. Moore?

5 MR. WISE: I would first like to state I did
6 not raise an objection, and secondly, the question
7 did not relate specifically to Mr. Moore.

8 MR. VARNER: I wasn't even going to go
9 further than where I went.

10 MR. HOOD: I just wanted to clear that up.

11 THE COURT: All right.

12 MR. HOOD: That's the only thing I needed to
13 clear up.

14 THE COURT: The Court appreciates the caution
15 shown and realizes now that there would be no more
16 probing in that area.

17 MR. WISE: Well, there may be probing in that
18 area when I get up there.

19 THE COURT: Well, that's up to you.

20 MR. WISE: That's correct.

21 THE COURT: And if counsel for Mr. Moore
22 asks, then this witness can respond.

23 MR. HOOD: Yes, sir. I just wanted to
24 protect the situation, the record, as much as
25 possible.

TOMMY STEWART - CROSS

1 MR. VARNER: Here is where I intend to go, to
2 make sure we understand. What I was going to do
3 was ask him was he making undercover buys the very
4 next day and his charges were dismissed, because he
5 was charged on the 11th, he makes an undercover buy
6 from whoever or whatever, and subsequently his
7 charges are dismissed and he gives a statement.

8 THE COURT: Well, now, does the dilemma rise
9 to the point that you have instructed the witness
10 to avoid testimony about this subject?

11 MR. HOOD: I have cautioned him, you know,
12 when we sat down and interviewed him, you know, we
13 went through the undercover purchase with Mr. Moore
14 and we have cautioned him, as I do with any
15 witness, just like the witnesses that know that Mr.
16 Miller was in prison, I have cautioned them and if
17 you can see through our line of questioning, they
18 may have known him before but we skipped until the
19 end of 1999 because Mr. Miller was in prison,
20 because we have cautioned them not to bring that up
21 in the presence of the jury, and just like with Mr.
22 Stewart, I have cautioned him not to bring that up
23 in the presence of the jury because it would be
24 improper and prejudicial to Mr. Moore. I did that
25 out of an abundance of precaution to protect the

TOMMY STEWART - CROSS

1 record.

2 **MR. WISE:** Tell the government I'll try to
3 watch out for Mr. Moore.

4 **THE COURT:** Well, the Court is concerned that
5 the witness may be under a misapprehension, well
6 intended, but that he may not entirely understand
7 that he has to answer truthfully and fully on
8 cross-examination. When you warned him not to go
9 into it in response to any question you may have
10 asked him, whether he understood or misunderstood,
11 not to go into any controlled buys, that he may
12 have not completely appreciated that he has to
13 respond to cross-examination fully and completely.

14 Now, how can we correct his potential
15 misapprehension?

16 **MR. VARNER:** I have no suggestion. He's not
17 my witness. I don't know what was said to him to
18 begin with. He's got to answer truthfully, he made
19 an undercover buy the day after he was arrested and
20 that's where I'm going, and his charges were
21 subsequently dismissed. And I think that is very
22 much fair game and that was the purpose for the
23 question, Your Honor, on cross. I'm open to
24 suggestions from the State. I didn't create this
25 mess. I can create my own messes.

TOMMY STEWART - CROSS

1 **MR. WISE:** If there is any prejudice to Mr.
2 Moore the Court can rest assured I will raise an
3 objection at the appropriate time.

4 **THE COURT:** Any suggestions, Mr. Hood?

5 **MR. HOOD:** Maybe an order from the Court
6 orally that he is to be, you know, reminded that he
7 is under oath and to respond truthfully to all
8 defense questions on cross-examination.

9 **THE COURT:** That will be done.

10 **MR. VARNER:** To be cautious, Your Honor, you
11 might want to caution him to listen to the question
12 and don't give extra information, because all I'm
13 going to ask him is did he make an undercover
14 purchase. That's a yes or no question. I know the
15 Court can't instruct him on how to answer a
16 question but if he was cautioned not to go, to
17 answer the question and not to go into extraneous
18 matters if it wasn't asked, maybe that will
19 preserve everybody, because literally my question
20 is going to be did you do an undercover buy, and if
21 he says yes, I move to the next question, I'm not
22 going to get into the details of who --

23 **THE COURT:** Well, depending on the response,
24 you can just tell him that's enough, we'll move on.

25 **MR. VARNER:** I'll do it.

TOMMY STEWART - CROSS

1 **THE COURT:** And the Court would prefer just
2 to remind him of his responsibilities as a witness
3 under oath in this court.

4 **MR. VARNER:** I'll try to stop him.

5 **THE COURT:** Anything further from any
6 quarter?

7 **MR. HOOD:** No, sir.

8 **THE COURT:** Show the witness back in, please.
9 (The witness returned to the courtroom).

10 **THE COURT:** The record is open. Mr. Stewart,
11 you have been sworn and you remain under oath to
12 tell the truth. Do you understand that?

13 **THE WITNESS:** Yes, sir.

14 **THE COURT:** Now, it is important that you
15 understand that any question that is asked you, as
16 you are under oath --

17 **THE WITNESS:** Yes, sir.

18 **THE COURT:** -- you must answer completely and
19 truthfully.

20 **THE WITNESS:** Okay.

21 **THE COURT:** Do you understand that?

22 **THE WITNESS:** Yes, sir.

23 **THE COURT:** All right. Anything further
24 before the jury comes in?

25 **MR. HOOD:** Nothing, Your Honor.

TOMMY STEWART - CROSS

1 **THE COURT:** Hearing nothing, ask the jury in,
2 **Mr. Busby, please.**

3 **(The jury returned to the courtroom).**

4 **THE COURT:** The jurors have returned, with
5 the foreman and alternates properly seated and all
6 others present.

7 **Cross-examination, Mr. Varner.**

8 **MR. VARNER:** All right, sir.

9 **BY MR. VARNER:**

10 **Q** **Mr. Stewart, what we were talking about, you**
11 **had been arrested for possession of drugs on August**
12 **11th?**

13 **A** **Yes, sir.**

14 **Q** **On August the 12th did you make an undercover**
15 **buy?**

16 **A** **Yes, sir.**

17 **Q** **And subsequently your charges were dismissed?**

18 **A** **Yes, sir.**

19 **Q** **And you were not charged in this conspiracy**
20 **charge, were you?**

21 **A** **No, sir.**

22 **Q** **But yet you used drugs with Mr. Miller,**
23 **according to your testimony?**

24 **A** **I bought drugs from Mr. Miller.**

25 **Q** **Okay. And used them?**

TOMMY STEWART - CROSS

1 A Yes, sir.

2 Q Along with Mr. Horne?

3 A Yes, sir.

4 Q You participated in the preparations for the
5 cook?

6 A No, I watched them do that.

7 Q You watched them?

8 A Uh-huh (affirmative).

9 Q Did you not do anything? You just stood
10 there and watched?

11 A Yes, sir.

12 Q Did you pop any of the pills out or anything?

13 A No, I didn't pop them. I usually bought and
14 left.

15 Q Okay. Let me ask you this. Were you one of
16 the i.v. users, did you shoot this stuff up?

17 A Yes, sir.

18 Q Let me ask you about that for just a minute.
19 When you shoot the stuff up do you heat it up, do
20 you put a match on it while it's in the spoon?

21 A No.

22 Q You don't even heat the spoon?

23 A No, sir.

24 Q You just put the meth in, put some water in
25 it and take like a cotton ball to filter out, draw

TOMMY STEWART - CROSS

1 it up and shoot it?

2 A Yes, sir.

3 Q There is no heat put to this spoon at anytime
4 in that process?

5 A No, sir.

6 MR. VARNER: If you will bear with me just a
7 moment.

8 That's all the questions I have, Your Honor.

9 THE COURT: Mr. Wise?

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TOMMY STEWART - CROSS

CROSS EXAMINATION

1
2 **QUESTIONS BY MR. WISE:**

3 **Q** Mr. Stewart, you first met Marshall Miller
4 sometime around the first part of August?

5 **A** It was August of 2000, it was before that.

6 **Q** July of 2002?

7 **A** As far as meeting him to buy drugs?

8 **Q** Meeting him, period.

9 **A** I had saw him a couple times probably four or
10 five months before that but I didn't know him.

11 **Q** When did you first meet him, then?

12 **A** I met him at his shop in Cokesbury, I would
13 say probably four months before they got busted.

14 **Q** That would be back in June -- July, August,
15 September -- back in June?

16 **A** Yes, I would say so.

17 **Q** Now you think it was back in June of 2002 you
18 met him?

19 **A** Yes.

20 **Q** Okay. When did you start buying from him?

21 **A** Probably, probably about a couple weeks after
22 I met him.

23 **Q** All right. That would be somewhere the end
24 of June?

25 **A** I would say as far as time frame.

TOMMY STEWART - CROSS

1 Q And you bought from him fifteen to twenty
2 times up until when? When did you stop buying from
3 him, when he was arrested?

4 A No. Probably about, probably three or four
5 weeks before he was arrested.

6 Q So, the end of August?

7 A Yes.

8 Q So, from the, from roughly July and August,
9 you were buying meth from Marshall Miller?

10 A Yes, me and Jeff was.

11 Q All right, fifteen, did you say fifteen to
12 twenty times?

13 A Yes, we probably went by there at least that
14 many times.

15 Q That's roughly twice a week?

16 A Yes.

17 Q You were by there on a pretty regular basis,
18 then?

19 A Yes.

20 Q You got to know him pretty good?

21 A Yes.

22 Q And you would sit there and pop pills for
23 him, helped him cook?

24 A No, I never popped pills.

25 Q You never popped pills?

TOMMY STEWART - CROSS

1 A No.

2 Q Did you ever go buy any pills for him?

3 A No.

4 Q Did he get you to sign an affidavit for him,
5 by the way?

6 A Yes, that's what, that's what, Jeff had wrote
7 up some kind of paper saying that Marshall didn't
8 have any kind of money or he hadn't seen him do
9 drugs, and Marshall wouldn't sell you anything
10 unless you signed a paper for him.

11 Q Did you sign one?

12 A I think I did.

13 Q Okay, all right. That was somewhere toward
14 the end of August?

15 A I'm not quite sure about the date.

16 Q Now, you say these, the methamphetamine,
17 Marshall Miller made it from ether?

18 A It was ether based.

19 Q When he made it you would smell the ether in
20 the room?

21 A I was never present at one of the cooks, so
22 I'm not absolutely sure what the smell was during
23 the absolute cook, but preparing the stuff for the
24 cook, yes, you did.

25 Q Do you know what kind of heat source they

TOMMY STEWART - CROSS

1 used in the cook?

2 A No, sir.

3 Q Did you see any preparations for a heat
4 source in the cook?

5 A There was a Coleman stove in the floor.

6 Q A Coleman stove?

7 A Yes.

8 Q Did he tell you he used that Coleman stove in
9 the cook?

10 A He didn't tell me he did. I just assumed he
11 did.

12 Q You assumed it based upon the fact he would
13 get it out when he got ready to cook?

14 A Well, actually they would take, if they
15 didn't do it in the shop, Jeff said they would go
16 like out in the woods and cook.

17 Q And Jeff would tell you they would take the
18 Coleman stove with them?

19 A No, he didn't say that.

20 Q But, then, what was your assumption that they
21 used the Coleman stove?

22 A Because they would, they would have it out.
23 It would be sitting there with the rest of the
24 stuff they were using.

25 Q It would be sitting there right next to the

TOMMY STEWART - CROSS

1 rest of the stuff they were getting ready to do, is
2 that correct?

3 A Yes.

4 Q Were there times in the shop that the Coleman
5 stove wasn't out?

6 A Yes.

7 Q You would go there when they weren't getting
8 ready to cook and you wouldn't see the Coleman
9 stove?

10 A Right.

11 Q When you came in and you would see the
12 Coleman stove you would say they are getting ready
13 to cook?

14 A It wasn't necessarily the Coleman stove.
15 Sometimes you walked in they were getting the stuff
16 ready to go do, you know.

17 Q My point is, whenever they had the stuff out
18 ready to go, the Coleman stove was with it, and
19 when they weren't getting ready to cook, the stuff
20 wasn't out and the Coleman stove wasn't out?

21 A It was according to what part they was doing,
22 you know, if they was popping pills they was
23 popping the pills and there was maybe some stuff
24 sitting around like the ether can, the coffee
25 filters.

TOMMY STEWART - CROSS

1 Q You have been by there while they were
2 popping pills?

3 A Yes, I have saw them do it, yes, sir.

4 Q And they would have a stack of these little
5 things, packages?

6 A Boxes of them.

7 Q Boxes of them? And you would just watch, and
8 how long would you stand there watching?

9 A I would walk in and tell him what I wanted
10 and he would give me what I wanted. Most of the
11 time I would leave, and if, and if I brought Jeff
12 with me Jeff would get, we would walk in and buy
13 and go.

14 Q All right. Who else did you notice went by,
15 hung around Marshall Miller when you were there?

16 A There was people coming in and out.

17 Q Well, who were they?

18 A I don't remember. Half of them I didn't
19 know.

20 Q I mean, you knew Tracy Davis?

21 A I only knew her, you know, as his girlfriend.

22 Q All right. And what house did you go to?

23 A The one at Cokesbury, the trailer.

24 Q Did you ever go out to the lake in Waterloo?

25 A Yes, one time. A couple times, actually.

TOMMY STEWART - CROSS

1 Q Did you go inside?

2 A No, in the yard.

3 Q In the yard? So, in August, in July and
4 August, all of July and all of August you were
5 buying, you say, some pills, some methamphetamine
6 from Jeff Horne, correct?

7 A Yes.

8 Q And Marshall Miller?

9 A Well, it was, I knew Jeff way before I,
10 before that I knew Marshall.

11 Q I understand that.

12 A Right. That's what, when I would buy from
13 Jeff I didn't know Marshall.

14 Q But you started buying it from Marshall the
15 first part of August?

16 A It was probably four months before that.

17 Q Four months before that?

18 A Before they got busted.

19 Q That's back in June?

20 A That's when I started going to his house.

21 Q You started buying from Marshall in June?

22 A Yes.

23 Q Okay. Excuse me, I thought you said several
24 months later. You started buying from Marshall in
25 June?

TOMMY STEWART - CROSS

- 1 A Yes.
- 2 Q Of 2002?
- 3 A Before they got busted, yes.
- 4 Q You bought it in all of June, all of July?
- 5 A No, I didn't buy all in June and July. I was
6 with Jeff over there and Jeff would go in and buy
7 and I would wait on him to come out.
- 8 Q I'm getting confused, then.
- 9 A I didn't know Marshall at the time.
- 10 Q Let me get a very specific question and see
11 if I can get a specific answer. When did you buy
12 from Marshall Miller the first time?
- 13 A The actual date?
- 14 Q Not the actual, approximately the time?
- 15 A Probably two months before they got arrested.
- 16 Q All right. That would be in July?
- 17 A Okay.
- 18 Q You started buying from Marshall Miller in
19 July?
- 20 A Yes, sir.
- 21 Q You went by and bought from Marshall Miller
22 fifteen to twenty times in July and August?
- 23 A Approximately.
- 24 Q Not exactly?
- 25 A Yes.

TOMMY STEWART - CROSS

- 1 Q And you knew Marshall was pretty big?
- 2 A What?
- 3 Q Pretty big?
- 4 A Big?
- 5 Q Dealer.
- 6 A Who was?
- 7 Q He was a pretty big methamphetamine dealer?
- 8 A Oh, yes.
- 9 Q No question in your mind about that?
- 10 A Yes.
- 11 Q You knew that from the beginning, correct?
- 12 A Oh, yes.
- 13 Q You knew in June, after meeting him for a
- 14 couple months, that, hey, this guy knows how to
- 15 cook it and he's a big dealer?
- 16 A Yes, sir.
- 17 Q Right?
- 18 A Yes, sir.
- 19 Q All right. Now, in July, excuse me, August
- 20 11th you got arrested on drug charges?
- 21 A Yes, sir.
- 22 Q Methamphetamine?
- 23 A Yes.
- 24 Q And where did that methamphetamine come from?
- 25 A It come from Billy Moore.

TOMMY STEWART - CROSS

- 1 Q It came from Billy Moore?
- 2 A Yes, sir.
- 3 Q In your mailbox?
- 4 A Yes, sir.
- 5 Q And how did it get in your mailbox?
- 6 A My brother put it in there.
- 7 Q Who is your brother?
- 8 A Steve Stewart.
- 9 Q Where does he live?
- 10 A Greenwood.
- 11 Q Where?
- 12 A Greenwood.
- 13 Q Whereabouts in Greenwood?
- 14 A I'm not quite sure of the actual house, his
- 15 address.
- 16 Q All right. You're not sure what street he
- 17 lives on?
- 18 A No.
- 19 Q All right. So, he put it in your mailbox,
- 20 right?
- 21 A Yes.
- 22 Q And the police came and found it?
- 23 A No, actually my wife found it.
- 24 Q Your wife found it, all right, and turned it
- 25 in to the police?

TOMMY STEWART - CROSS

- 1 A Yes, sir.
- 2 Q But that was your methamphetamine?
- 3 A Yes.
- 4 Q You were going to get it?
- 5 A Yes, sir.
- 6 Q So, you are guilty of possessing it?
- 7 A Yes.
- 8 Q So, then the police came to you on the 11th,
- 9 when they arrested you, and that was Major Ronnie
- 10 McAllister?
- 11 A No, sir.
- 12 Q Who was it?
- 13 A I'm not sure. It was a detective.
- 14 Q A detective?
- 15 A Yes.
- 16 Q What detective arrested you?
- 17 A I'm not sure.
- 18 Q Well, did you later meet Major Ronnie
- 19 McAllister?
- 20 A Yes, sir.
- 21 Q All right. You met him the next day?
- 22 A I'm not sure. Approximately, possibly.
- 23 Q Or that day?
- 24 A Uh-huh (affirmative).
- 25 Q If it wasn't that day, The next day?

TOMMY STEWART - CROSS

1 A Probably a couple days afterwards.

2 Q A couple days after that? You got arrested
3 on the 11th of August, correct?

4 A I think. I mean as far as the actual date,
5 I'm not sure.

6 Q Right. If we have a document here that says,
7 if we have a time here, if we have a document that
8 says arrest date August 11th, you don't dispute
9 that?

10 A As far as the actual date, I'm not sure but
11 yes, sir, I was arrested.

12 Q I hand you this and ask you to look at it.
13 Does this not reflect your name and an arrest date
14 of August the 11th, 2002?

15 A Yes, sir.

16 Q Okay. So, if this is your record, then
17 August 11th, 2002, is the date you were arrested?

18 A Evidently it is, yes, sir.

19 Q Then a couple days later you first meet
20 Ronnie McAllister for the first time?

21 A Yes, sir.

22 Q All right. And Ronnie McAllister basically
23 said to you, "Look, you go out and help us out,
24 we'll make this charge go away"?

25 A Yes, sir.

TOMMY STEWART - CROSS

- 1 Q Correct?
- 2 A Yes, sir.
- 3 Q And you would rather go out and help him out
4 than make, than face the charge?
- 5 A Yes, sir.
- 6 Q All right. And, so, did he believe you about
7 who you got your meth from?
- 8 A He asked me who I got it from.
- 9 Q You told him Marshall Miller?
- 10 A No, sir.
- 11 Q You didn't?
- 12 A No, sir.
- 13 Q That is where you got it from, wasn't it?
- 14 A No, sir.
- 15 Q In August you weren't getting it from
16 Marshall Miller?
- 17 A I also bought from Billy.
- 18 Q Correct. Did you till him you got any dope
19 from Marshall Miller?
- 20 A No, I told him I bought, I had been buying
21 from Billy and Marshall.
- 22 Q You told him both?
- 23 A Yes, sir.
- 24 Q All right. And you told him, I assume, that
25 Marshall is a big dealer?

TOMMY STEWART - CROSS

- 1 A Marshall was, Marshall had the ether dope.
- 2 Q You told him Marshall was a big dealer?
- 3 A No, I don't remember saying the big dealer.
- 4 Q Okay. And then what did -- and then you went
- 5 and worked undercover for Ronnie McAllister?
- 6 A One time.
- 7 Q One time, and how many days later did you go
- 8 make, did you do undercover work for Ronnie
- 9 McAllister?
- 10 A I'm not sure how many days it was afterwards.
- 11 Q Two to three days later?
- 12 A Four or five.
- 13 Q Four or five? Was it within a week?
- 14 A Possibly, or two weeks.
- 15 Q Within a week or two?
- 16 A Yes.
- 17 Q All right. Would that be correct?
- 18 A Yes, sir.
- 19 Q All right. And one of the people that you
- 20 say that you went and made undercover buys from was
- 21 Billy Moore, wasn't it?
- 22 A Yes.
- 23 Q That buy was on August the 12th of 2002,
- 24 wasn't it?
- 25 A I'm not sure what the actual date is.

TOMMY STEWART - CROSS

1 Q Well, I hand you this document signed by
2 Ronnie McAllister. Does that refer to Morgan Road
3 and Billy Moore?

4 A So, what are you saying?

5 Q What's the date on it of the alleged offense?

6 A 8/12/02?

7 Q That's August 12th?

8 A Yes.

9 Q All right. So, that wasn't you, then?

10 A Do what, now?

11 Q Was that you on August the 12th?

12 A Did I buy from Billy?

13 Q Yes.

14 A Yes, I bought from Billy.

15 Q On August 12th?

16 A I'm not sure about the date.

17 Q You said it was a week after you got
18 arrested, a week or two weeks?

19 A I said it was after I got arrested.

20 Q Well, you said you didn't meet Ronnie
21 McAllister until two days later after you got
22 arrested, on the 13th or 14th?

23 A I didn't meet Ronnie until after I got
24 arrested.

25 Q You met Ronnie after the 12th, correct?

TOMMY STEWART - CROSS

1 A Yes.

2 Q So, you did not make an undercover buy from
3 Billy Moore on August the 12th, 2002?

4 A I made a buy from Billy right after I got
5 busted. The actual date, I'm not sure.

6 Q Well, it was more than one day later?

7 A Okay.

8 Q Wasn't it?

9 A I'm not quite sure about dates.

10 Q Well, Mr. Stewart, did you or did you not?
11 This is a simple question.

12 A Okay.

13 Q This is not rocket science.

14 A Okay.

15 Q Did you or did you not meet Ronnie McAllister
16 after, two days after you were arrested?

17 A I met Ronnie McAllister right after I went to
18 jail, after I got arrested.

19 Q Was it two days later?

20 A I'm not sure.

21 Q Was it the next day?

22 A It might have been the same day.

23 Q May have been the same day now?

24 A Yes, sir.

25 Q You don't know?

TOMMY STEWART - CROSS

- 1 A No, I don't know the actual date.
- 2 Q All right. You didn't go make an undercover
3 buy from Marshall Miller?
- 4 A No.
- 5 Q Or Jeff Horne?
- 6 A No, sir.
- 7 Q And you said the stuff that you bought from
8 Billy Moore was not the same stuff you got from
9 Marshall Miller?
- 10 A No, sir, it wasn't.
- 11 Q It wasn't?
- 12 A No, sir.
- 13 Q But the stuff from Jeff Horne was?
- 14 A Yes.
- 15 Q Now --
- 16 A Sometimes Jeff's had the ether base,
17 sometimes he didn't have the ether base, it's all
18 according to where it came from.
- 19 Q None of it had an ammonia base, though, did
20 it?
- 21 A No.
- 22 Q You know what ammonia smells like?
- 23 A Anhydrous ammonia?
- 24 Q No, just plain ammonia, right?
- 25 A Yes.

TOMMY STEWART - CROSS

- 1 Q Anhydrous ammonia smells like regular
2 ammonia?
- 3 A Yes.
- 4 Q Pretty powerful?
- 5 A Yes.
- 6 Q None of this had that ammonia smell, though?
- 7 A I vaguely don't remember.
- 8 Q You know what ammonia smells like?
- 9 A Right.
- 10 Q It is not ether?
- 11 A Right.
- 12 Q They are two distinct things?
- 13 A Right.
- 14 Q Now, none of the methamphetamine you got from
15 Billy Moore ever had this ether smell?
- 16 A Probably once or twice, yes.
- 17 Q Probably once or twice? Which ones?
- 18 A Which ones?
- 19 Q Yes.
- 20 A I'm not quite sure.
- 21 Q What about the one that you said you made an
22 undercover buy?
- 23 A No, I don't think that was an ether base,
24 though.
- 25 Q Why not?

TOMMY STEWART - CROSS

1 A It didn't smell like it.

2 Q It didn't smell like it?

3 A No.

4 Q All right. And the others, you're not sure
5 if they were or weren't?

6 A I don't remember.

7 Q You don't remember? Now, you say you saw
8 Marshall Miller, you went with Jeff Horne to Billy
9 Moore's garage sometime in August and saw Marshall
10 Miller there?

11 A Right before they got arrested, yes, sir.

12 Q Who was driving?

13 A Driving what, our car?

14 Q Who drove over to Billy Moore's garage?

15 A I did.

16 Q You did?

17 A Yes.

18 Q All right. And what were you driving?

19 A A TransAm.

20 Q And where did you pick Jeff Horne up at?

21 A Probably at his house or either -- yes, at
22 his house.

23 Q And where is his house?

24 A In Hodges.

25 Q Where in Hodges?

TOMMY STEWART - CROSS

1 A At the triangle.

2 Q At the what?

3 A At the triangle.

4 Q Triangle? So, this was in August of --

5 A Well, that is, actually Jeff had moved out of
6 that house.

7 Q The house at the triangle?

8 A Yes.

9 Q Where had he moved to?

10 A I'm not quite sure. I think he moved back in
11 with his mom.

12 Q Where is that?

13 A In Ware Shoals.

14 Q Where in Ware Shoals?

15 A Like in an apartment complex.

16 Q All right. Which one?

17 A I'm not sure what the name of it is. It's
18 out on the outskirts of Ware Shoals.

19 Q How many times did you go by Jeff Horne's
20 house at the apartment complex?

21 A Three or four times, I guess.

22 Q Did you go inside?

23 A Yes, sir.

24 Q All right. You went to Ware Shoals to pick
25 Jeff Horne up?

TOMMY STEWART - CROSS

1 A Yes, sir.

2 Q To go to Billy Moore's garage?

3 A Yes.

4 Q And you all were going there to get meth?

5 A Yes.

6 Q This was about when?

7 A Probably about a month before they got
8 arrested.

9 Q This would have been the middle of August,
10 late August?

11 A Yes.

12 Q Before Labor Day?

13 A Yes, sometime during that time frame.

14 Q You say Marshall Miller was there, correct?

15 A Marshall was there probably three times. We
16 was going fishing one night.

17 Q Mr. Stewart, we will talk about all the times
18 Marshall was there in a minute. We're dealing with
19 one time right now.

20 A Whatever the day, date, I'm not sure, most
21 every time I was high when I got there anyway.

22 Q This was toward the end of all of it,
23 correct?

24 A Uh-huh (affirmative).

25 Q You went there with Jeff Horne, you say?

TOMMY STEWART - CROSS

- 1 A Yes.
- 2 Q You say Marshall Miller was there?
- 3 A Yes.
- 4 Q This was before Labor Day?
- 5 A I'm not sure if it was before Labor Day or
- 6 not.
- 7 Q How many times did you see Marshall Miller at
- 8 Billy Moore's garage?
- 9 A Approximately three times.
- 10 Q Three times?
- 11 A Three or four times, yes, sir.
- 12 Q Can you approximately tell me when those
- 13 were?
- 14 A No, sir, I can't tell you the actual dates of
- 15 it, no, I can't.
- 16 Q Over how long a period of time were they?
- 17 A Probably within a week, week and a half.
- 18 Q All right. When was the last time you saw
- 19 Marshall Miller at Billy Moore's garage?
- 20 A I'm not quite sure of the date.
- 21 Q Approximately?
- 22 A Probably, probably three weeks before they
- 23 got busted, I guess.
- 24 Q All right. That would be about the first
- 25 part of September?

TOMMY STEWART - CROSS

1 A Yes.

2 Q You say you saw Marshall Miller at Billy
3 Moore's garage somewhere between the middle of
4 August and the first of September, about three
5 times?

6 A Yes.

7 Q Okay. One of those times Jeff Horne, you
8 say, was with you?

9 A One of those times. Sometimes he didn't go,
10 sometimes I went.

11 Q We're only talking about three times, Mr.
12 Stewart.

13 A Yes.

14 Q Was he with you every time?

15 A No, not every time.

16 Q Two of the times?

17 A I would say two of them.

18 Q And you would drive, or he would drive?

19 A I would drive most of the time because he
20 didn't have any driver's license.

21 Q Okay. You say Jeff Horne said on one
22 occasion they had cooked over behind Billy's house?

23 A That is what Jeff told me, yes.

24 Q Billy's house was across the street --

25 A Yes.

TOMMY STEWART - CROSS

1 Q -- from the garage?

2 A Yes, sir.

3 Q And you met Jeff when you were working at
4 Teak, Teak Trading Company?

5 A Yes.

6 Q That's a wood company?

7 A Yes.

8 Q That was about eight years ago?

9 A Actually I started working, I was employed at
10 Teak for ten years.

11 Q Are you still married?

12 A Yes, sir.

13 Q Not separated?

14 A Yes, we're separated.

15 Q And who is your wife?

16 A Ginger Stewart.

17 Q And where does she live?

18 A 121 Pope Street.

19 Q Pope Street?

20 A Yes, sir.

21 Q That's in Greenwood?

22 A Yes, sir.

23 MR. WISE: Give me just one moment.

24 Q Did you ever go by Billy's garage with a
25 blonde headed lady?

TOMMY STEWART - CROSS

1 A No, sir.

2 Q Never did?

3 A No.

4 Q Okay. You say Billy was over at Sandra Jo
5 Hughes' house one time?

6 A Yes.

7 Q Is that correct?

8 A Yes, sir.

9 Q And Jeff was over there with you, you and
10 Jeff had gone by there?

11 A Jeff was living there at the time.

12 Q Jeff was living there? When was that?

13 A I'm not sure about the date.

14 Q Roughly?

15 A I have no idea what the date was.

16 Q What year was it?

17 A 2002.

18 Q Sometime in 2002, before September of 2002?

19 A Yes.

20 Q Sometime in 2002 you say Jeff was living with
21 Sandra Hughes. Where was that?

22 A In Hodges.

23 Q Hodges?

24 A Yes.

25 Q Is that the house in the triangle?

TOMMY STEWART - CROSS

1 **A** **Yes.**

2 **Q** **All right. And you would go by there to meet**
3 **Jeff and you said you saw Billy there one time?**

4 **A** **Yes.**

5 **MR. WISE: Give me one moment.**

6 **Q** **So, all you did was purchase some**
7 **methamphetamine from Marshall Miller?**

8 **A** **Do what?**

9 **Q** **All you did was purchase methamphetamine from**
10 **Marshall Miller?**

11 **A** **At Jeff's house?**

12 **Q** **Well, at Marshall Miller's house?**

13 **A** **Yes, sir.**

14 **MR. WISE: All right, thank you.**

15 **MR. HOOD: Very briefly, Your Honor.**

16 **THE COURT: Redirect, sir.**

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TOMMY STEWART - REDIRECT

1 **REDIRECT EXAMINATION.**

2 **QUESTIONS BY MR. HOOD:**

3 **Q Mr. Stewart, do you remember the line of**
4 **questioning by Mr. Varner where he got confused on**
5 **the date, where he said 2003 but then he changed it**
6 **to 2002?**

7 **A 2002, yes.**

8 **Q Are you confused on some of these dates?**

9 **MR. WISE: Objection, Your Honor, he's**
10 **leading the witness.**

11 **THE COURT: Sustained. He's your witness.**

12 **Q Are you sure of the dates in this case?**

13 **A No, sir, I'm not.**

14 **Q Why not?**

15 **A Most of the time, most of the time we was**
16 **high, you know, and that's what, I didn't pay any**
17 **attention to what day it was.**

18 **Q Explain that to the jury.**

19 **A That's what, whether it was 2000 or 2002,**
20 **September or October, you just didn't pay any**
21 **attention, you know, as far as what day I was going**
22 **by and buying drugs, you just went and bought it,**
23 **you know.**

24 **Q Do you remember the line of questioning about**
25 **the charges that were dismissed by Major**

TOMMY STEWART - REDIRECT

1 McAllister?

2 A Yes, sir.

3 Q When is the first time you met anyone from
4 the Attorney General's office or SLED?

5 A Approximately two days ago.

6 Q Has anyone from SLED ever made any promises
7 to you?

8 A No, sir.

9 Q Has anyone from the Attorney General's office
10 ever made any promises to you?

11 A No, sir.

12 Q Has Major McAllister made any promises to you
13 since those charges were dismissed?

14 A No, sir, not nothing.

15 MR. HOOD: No further questions, Your Honor.

16 THE COURT: Mr. Varner?

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TOMMY STEWART - RECROSS

RECROSS EXAMINATION

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QUESTIONS BY MR. VARNER:

Q Mr. Stewart, I want to make sure I heard you correctly. The anhydrous he asked you about --

A Yes, sir.

MR. HOOD: Your Honor, I didn't go into that on redirect.

THE COURT: How is that in response to redirect?

MR. VARNER: It's a new part Mr. Wise brought up.

THE COURT: It'll be allowed.

BY MR. VARNER:

Q In regard to the anhydrous, do you know the difference between a cold cook and hot cook?

A No, sir.

Q Do you know?

A No, sir, I never been involved in it.

Q Just so I understand, you are saying the way you observed Marshall cook, he was putting a flame, this Coleman stove, near this mixture?

A No, sir. What I said, they was popping pills and busting ether cans and pouring ether in glass jars getting ready to go cook.

Q Getting ready to go cook? What is this about

TOMMY STEWART - RECROSS

1 the Coleman stove? What did the Coleman stove have
2 to do with cooking?

3 A I don't know. I actually never saw the
4 actual cook.

5 Q But you are sure about the fact that when a
6 cook was going on the Coleman stove was somehow or
7 other used in that process?

8 A Well, if they cooked in the woods they would
9 have to have something to cook in, cook with, yes.

10 MR. VARNER: Okay, that's all the questions I
11 have.

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TOMMY STEWART - RECROSS

RECROSS EXAMINATION

QUESTIONS BY MR. WISE:

Q You said the first time you met anybody from the Attorney General's office was two days ago?

A Probably two days ago when they gave me a subpoena.

Q You met somebody from SLED a while back, didn't you?

A No, sir.

Q You never met anybody from SLED?

A No, huh-uh.

Q You never met Connie Sonnefeld?

A Two or three days ago.

Q Didn't Connie Sonnefeld talk to you on the 14th of January of 2004, which would be a while back?

A No.

Q She didn't?

A No.

Q So, you talked to Connie Sonnefeld when you talked to Mr. Hood here?

A Yes, sir.

Q She was with him?

A Yes, sir.

Q And the three of you all sat down for the

TOMMY STEWART - RECROSS

1 first time and discussed this sometime last week?

2 A That's exactly right.

3 Q And it was, well, actually sometime this
4 week, two or three days ago?

5 A That's right.

6 Q After Monday of this week?

7 A Actually it was Friday.

8 Q Martin Luther King Day?

9 A Friday of last week.

10 Q Martin Luther King Day?

11 A I'm not sure if any Martin Luther King Day.

12 Q That's the first time they talked to you
13 about this?

14 A Yes, ever.

15 Q Ever?

16 A Yes, ever.

17 MR. WISE: Thank you.

18 THE COURT: Anything further?

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TOMMY STEWART - REDIRECT

1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. HOOD:

3 Q Do you remember us coming to the jail?

4 A Yes, sir, that's what I'm talking about.

5 Q Did that happen this week?

6 A It was -- today is --

7 Q Today is Friday, January 23rd.

8 A Yes, the 23rd. It was Monday or Tuesday you
9 all came to the jail.

10 Q Of this week?

11 A No, of last week. I am so confused on these
12 dates you all are throwing at me. All I know, it
13 was like three or four days ago you all come to the
14 jail, was the first time I ever saw you guys.

15 MR. HOOD: Thank you.

16 THE COURT: All right, anything further?

17 (No response).

18 THE COURT: Come down, please.

19 (Witness excused).

20 THE COURT: Call your next witness.

21 MR. CROUT: Your Honor, at this time the
22 State would call Miss Bonnie Sue Saylor.

23 THE COURT: Anybody need a break?

24 (No response).

25 THE COURT: Okay.

1 MR. CROUT: Your Honor, the gentleman that
2 just testified, could we inquire whether or not he
3 could be released?

4 MR. WISE: I would like to at least keep him
5 under subpoena, he can go back to Greenwood, we can
6 get him back if we need him. He can be released.

7 THE COURT: Any objection to his going back
8 to Greenwood, Mr. Varner?

9 MR. VARNER: No objection, Your Honor.

10 MR. WISE: Just don't release him from the
11 subpoena.

12 THE COURT: All right. He can be transported
13 back to Greenwood but he remains under subpoena.

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

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BONNIE SAYLORS - DIRECT

1 **BONNIE SUE SAYLORS,**
2 **after being first duly sworn testified as follows:**

3 **THE CLERK: Have a seat and state your full**
4 **name for the record.**

5 **THE WITNESS: Bonnie Sue Saylor.**

6 **THE COURT: The witness is with you.**

7 **DIRECT EXAMINATION**

8 **QUESTIONS BY MR. CROUT:**

9 **Q Miss Saylor, how old are you?**

10 **A I'm 39.**

11 **Q How far did you go in school?**

12 **A I went to the tenth grade and then I went**
13 **back and got my GED later.**

14 **Q Do you prefer to go by Miss Saylor, or**
15 **Bonnie, which one do you usually go by?**

16 **A Whichever.**

17 **Q All right. Miss Saylor, when was the very**
18 **first time you did methamphetamine?**

19 **A I guess I was about 28.**

20 **Q Do you know who gave you that**
21 **methamphetamine?**

22 **A Sir?**

23 **Q Who gave you that methamphetamine?**

24 **A My husband had got it from somewhere.**

25 **Q Who was that?**

BONNIE SAYLORS - DIRECT

1 A I don't know at the time, that was a long
2 time ago.

3 Q Who was your husband?

4 A Gene Saylor.

5 Q Are you still married to him?

6 A Yes, sir.

7 Q Do you all live separate and apart now?

8 A We don't live together, no, we don't live
9 together in eight years.

10 Q Obviously you don't because you're in prison
11 now, correct?

12 A Yes.

13 Q But had you all been living separate and
14 apart before that?

15 A We don't live together.

16 Q But before you went to prison had you all
17 been living separate and apart?

18 A Separate, yes.

19 Q And what about children, do you all have any
20 children between you?

21 A Yes, sir, I've got two girls.

22 Q And are they living with him now?

23 A They're living with his mother.

24 Q With his mother?

25 A Yes.

BONNIE SAYLORS - DIRECT

1 Q How long have you been in prison?

2 A Since June 6th of this year -- of 2003.

3 Q And is that a result of a guilty plea that
4 you entered in this case?

5 A Yes, sir.

6 Q Who was your lawyer when you entered that
7 guilty plea, do you remember?

8 A Billy Garrett.

9 Q I want to talk to you a little bit, I've got
10 it right here if you need any information from it,
11 I want to talk to you a little bit about your prior
12 record. What have you been convicted of?

13 A A possession charge and a second degree
14 burglary.

15 Q Now, the possession charge, possession of
16 what?

17 A It was possession of meth.

18 Q When was that?

19 A It was almost three years ago.

20 Q What happened in that case?

21 A I got a year's probation.

22 Q I mean factually what happened in terms of
23 how did you get arrested?

24 A Well, it was a traffic stop and I had a small
25 amount in my pocket and they searched me and they

BONNIE SAYLORS - DIRECT

1 found it.

2 Q All right. That burglary third charge, what
3 happened then?

4 A I was with a friend Tina Stevenson and we run
5 out of gas, and we stopped, well, of course we
6 stopped, we run out of gas, and we walked to this
7 lady's house to see if she would sell us some gas
8 and she wouldn't do it, so Tina seen a gas can up
9 under the shed and she got it and we was going to
10 put it in the car because we was about three miles
11 from a store.

12 Q Uh-huh (affirmative).

13 A And she looked in it and it was mixed with
14 oil, we needed gas, we couldn't use it, so she went
15 to take it back and the lady come out and was
16 calling the law on us, so we got charged with
17 second degree burglary.

18 Q Second, or third?

19 A I got second degree.

20 Q Okay. She got a third?

21 A I think, maybe. I'm not sure.

22 Q All right. Have you continuously used meth
23 since the first time you used it?

24 A It got more later on. The more I used it,
25 the more, I mean the longer I used it, the more I

BONNIE SAYLORS - DIRECT

1 used it.

2 Q When you would use it how would you use it?
3 Would you snort it, inject it, what was your
4 method?

5 A I snorted or smoked it.

6 Q Did you ever inject it?

7 A No, sir.

8 Q Do you know people that do inject it?

9 A Yes, sir.

10 Q Have you seen people injecting meth?

11 A Yes, sir.

12 Q Is it safe to say that at one time you were
13 probably a meth junkie?

14 A I done a lot of it, if that is what a meth
15 junkie is.

16 Q All right, let's state that, that you have
17 done a lot of meth.

18 A Yes, I've done a lot.

19 Q Is it safe to say that it pretty much ruined
20 your life at this point?

21 A Pretty much.

22 Q When are you going to get out of prison, do
23 you know?

24 A I go up for parole in April but my max out
25 date is January of 2005.

BONNIE SAYLORS - DIRECT

1 Q You could potentially be in until 2005,
2 correct?

3 A Yes, sir.

4 Q Do you remember meeting with any individuals
5 from the South Carolina Law Enforcement Division?

6 A Do I remember meeting with them?

7 Q Yes.

8 A With my lawyer, yes.

9 Q Now, was that the same lawyer that
10 represented you in this case?

11 A Yes, sir.

12 Q And where were you at when you met with them?

13 A At Abbeville County Jail.

14 Q Do you remember specifically who the agent
15 you met with was?

16 A Chester and Ronnie, I don't know Chester's
17 last name or Ronnie's, I don't remember.

18 Q And when you met with them you had already
19 been arrested in this case, correct?

20 A Yes, sir.

21 Q And did your lawyer tell you anything during
22 that meeting, tell you what to do during that
23 meeting?

24 A We had, me and my lawyer had already
25 discussed it, that I was going to plead guilty.

BONNIE SAYLORS - DIRECT

1 Q And did he tell you as far as the information
2 that you were going to provide in your meeting with
3 SLED, did he tell you anything about that
4 information?

5 A No. He just said that, you know, it may help
6 me in the future. He didn't, you know, there was
7 no promises made.

8 Q He didn't tell you to go and lie in your
9 statement, anything like that?

10 A No, sir.

11 Q Did anybody from SLED tell you to lie?

12 A No, sir.

13 Q Do you remember when I came to the
14 institution you were at and I met with you?

15 A Yes, sir.

16 Q Was Mr. Hood there?

17 A Yes, sir.

18 Q Was Miss Sonnefeld there?

19 A Yes, sir.

20 Q Did anybody tell you to lie at that point?

21 A No, sir.

22 Q Now, when you pled guilty you signed a plea
23 agreement, too, didn't you? Do you recall that?

24 A Yes, sir.

25 Q And pursuant to that plea agreement you

BONNIE SAYLORS - DIRECT

1 agreed to sit here and tell the truth, correct?

2 A Yes, sir.

3 Q And if you didn't tell the truth you could
4 get in trouble, correct?

5 A Yes, sir.

6 Q So, it's not going to benefit anybody in this
7 courtroom, this jury, this judge, anybody, for you
8 to sit here and lie, correct?

9 MR. VARNER: Objection, Your Honor, he's
10 bolstering his witness, I object to that.

11 MR. CROUT: I understand.

12 THE COURT: All right. The objection is
13 sustained, move on.

14 MR. CROUT: Yes, sir.

15 BY MR. CROUT:

16 Q Now, Miss Saylor, when did you meet Marshall
17 Miller?

18 A About eight years ago, I guess, eight or nine
19 years ago.

20 Q And how did you meet him?

21 A Julie introduced me to him.

22 Q When you say Julie, who do you mean?

23 A Julie Prince.

24 Q What did she introduce you to him for?

25 A To buy dope.

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1 MR. VARNER: Objection. I have a matter to
2 take up outside the presence of the jury.

3 THE COURT: All right. Madam Forelady and
4 ladies and gentlemen of the jury, please do not
5 discuss the case. You may take a short recess,
6 retire to the jury room.

7 (The jury was excused from the courtroom).

8 THE COURT: Mr. Varner?

9 MR. VARNER: Your Honor, the testimony, as I
10 heard it just now, was she met him eight or nine
11 years ago for the purpose of buying dope from him.
12 That is a prior bad act, number one. Number two,
13 Mr. Marshall, Mr. Marshall Miller has already gone
14 to jail and served time for that. That's over and
15 done, finished, and that is highly inappropriate,
16 highly prejudicial for the State to bring up and to
17 try to say, "Oh, he's not just been doing this
18 since 1999, he's been selling dope for eight or
19 nine years." That is highly inappropriate, highly
20 prejudicial.

21 THE COURT: Mr. Crout?

22 MR. CROUT: Yes, sir.

23 THE COURT: How do you respond to that?

24 MR. CROUT: Your Honor, based upon the
25 substance of the motion and understanding what it

BONNIE SAYLORS - DIRECT

1 is that Mr. Varner is attempting to protect his
2 client from, notwithstanding the fact she is simply
3 testifying to what she testified in her statement
4 to SLED previously, I will limit my line of
5 questioning to her with respect to any incident or
6 acts that occurred after Mr. Miller got out of
7 prison in 1999.

8 MR. VARNER: That doesn't cure it, that
9 doesn't respond to what has just happened.

10 THE COURT: Well, the Court was trying to do
11 some scheduling discussions with the clerk but the
12 question was, it's not recalled whether there was a
13 time frame involved.

14 MR. VARNER: Well --

15 THE COURT: Excuse me. Was it, "Why did you,
16 why did she introduce you to Marshall Miller?"

17 MR. CROUT: Right. At this point, Your
18 Honor, we have not gone into anything that is
19 prejudicial to Mr. Miller. She has just testified
20 she has known him for eight years and that is how
21 she met him.

22 THE COURT: The question that you asked was,
23 "Why did she introduce you to Marshall Miller?"

24 MR. CROUT: Exactly.

25 MR. VARNER: What was the purpose.

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1 THE COURT: She said to buy dope but there
2 was no time frame attached with that.

3 MR. VARNER: "When did you meet him?" "Eight
4 or nine years ago." "Why were you introduced to
5 him?" "To buy dope." That's very logical. "Why
6 were you introduced," and, "Met him eight or nine
7 years ago," I mean, that's, it's in the same
8 sentence almost.

9 THE COURT: Well, the almost is the
10 controlling factor. It was not exactly, and it
11 wasn't together. She was introduced to him and
12 then the next question was why did another person
13 introduce you to him.

14 MR. VARNER: Could we have that played back
15 so we could hear exactly what it is?

16 THE COURT: Yes, sir.

17 (The referred to questions and answers
18 were read back).

19 MR. VARNER: Your Honor, that is exactly
20 referring to her introduction eight or nine years
21 ago, she was introduced to him eight or nine years
22 ago by Julie Prince. "Why were you introduced to
23 him?" "To buy dope." There is no other time frame
24 that could refer to, it is abundantly clear he is
25 talking about eight or nine years ago. "When were

BONNIE SAYLORS - DIRECT

1 you introduced to him by Julie Prince, why were you
2 introduced to him?" "To buy dope." It is
3 abundantly clear.

4 THE COURT: All right. The objection is
5 overruled. The Court will not strike the
6 testimony, as it is within the ten year window of
7 bad acts or crimes.

8 MR. CROUT: Yes, sir.

9 THE COURT: It will stand but don't touch it
10 any more.

11 MR. CROUT: Yes, sir.

12 MR. VARNER: If I can be heard on that
13 particular issue?

14 THE COURT: Yes, sir.

15 MR. VARNER: Your Honor, the closer a crime
16 is, a previous act, the more it is to be excluded
17 because its prejudicial value greatly outweighs the
18 probative value, and -- I think I have that case
19 with me, the theory of the case dead on point, I
20 forgot the judge's name, but he let in a prior
21 conviction of prior bad act when the guy was
22 charged with the same offense. What the trial
23 court said is, that is exactly the purpose for not
24 letting it in, because its prejudicial value, it
25 shows he is more likely to commit this same crime

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1 and that's exactly the reason to exclude it, not to
2 allow it, but to exclude it. It is highly
3 prejudicial and lacks very little, if any,
4 probative value, and it does, I submit to the
5 Court, require an instruction to the jury to
6 disregard that in all respects. I think it was
7 Judge Baggett's case, I may be wrong on that.

8 MR. CROUT: Your Honor, if I may, for
9 purposes of the line of questioning, I know that
10 Mr. Varner has already talked to the jury about the
11 fact of his client's conduct and nature. We would
12 not object to a curative instruction if we could
13 just continue with the line of questioning from
14 1999 on, if that would help resolve this issue for
15 the Court and for Mr. Varner.

16 THE COURT: What kind of curative instruction
17 would you request, Mr. Varner?

18 MR. VARNER: If the Court could just bear
19 with me just a moment, we may be able to resolve
20 that issue. The case I was referring to, I've got
21 the case, if the Court is going to do a curative
22 charge, something to the effect of there has been
23 purported testimony, ladies and gentlemen, this
24 case is about November of '99 until, I believe,
25 March, 2003, and you are to disregard any testimony

BONNIE SAYLORS - DIRECT

1 and not give it any weight whatsoever about any
2 acts that allegedly occurred prior to that.

3 THE COURT: Any objection to something
4 similar to that?

5 MR. CROUT: Nothing from the State, Your
6 Honor.

7 THE COURT: The Court will do it. Anything
8 further, Mr. Varner?

9 MR. VARNER: Nothing further, Your Honor.

10 THE COURT: Mr. Wise, anything?

11 MR. WISE: Nothing further. I have been
12 working on something else, Judge.

13 THE COURT: Show the jury in.

14 (The jury returned to the courtroom).

15 THE COURT: All the jurors are present, with
16 the foreman and the alternates properly seated.

17 Ladies and gentlemen, the Court instructs you
18 that were you to have heard any testimony about any
19 acts of an illegal nature outside of the period
20 involved in this indictment, which is from on or
21 about November, 1999, until March the 11th, 2003,
22 you will utterly and completely disregard it. It
23 has nothing to do with this case. This case
24 involves anything happening between November, 1999,
25 until March the 11th, 2003, and you are so

BONNIE SAYLORS - DIRECT

1 instructed and ordered.

2 Continue direct examination.

3 MR. CROUT: Yes, Your Honor.

4 BY MR. CROUT:

5 Q Mrs. Saylor, in 1999 were you acquainted
6 with an individual by the name of Marshall Miller?

7 A Yes, sir.

8 Q And I believe you testified you met him
9 through Julie Prince, is that correct?

10 A Yes, sir.

11 Q In 1999 did you begin purchasing
12 methamphetamine from Marshall Miller?

13 A Yes, sir.

14 Q Where was the first place that you went to
15 purchase that meth from?

16 A I believe it was at Julie's, at Julie
17 Prince's house, he come over there.

18 Q And how much did you purchase at that time?

19 A Probably about a gram.

20 Q And how much did you pay for that?

21 A I think I gave him \$90.

22 Q And when was that, do you recall?

23 A It was summertime.

24 Q All right. Did you ever go to his apartment
25 at Shamrock Apartments?

BONNIE SAYLORS - DIRECT

1 A A couple times.

2 Q Did you go there by yourself or were you with
3 somebody?

4 A Most of the time I went with Julie or either
5 Tina. Tina I think went over there one time, a
6 couple times I went with Julie.

7 Q When you say Tina, who are you referring?

8 A Tina Stevenson.

9 Q Now, when you went to his apartment, or went
10 to the Shamrock Apartments where he was living,
11 would anybody else be there?

12 A Most of the time just him and Tracy.

13 Q And when you say Tracy who are you referring?

14 A To Tracy Davis.

15 Q And who was she?

16 A The girl he lived with.

17 Q And what process, what would be the process
18 when you would purchase methamphetamine from
19 Marshall at that apartment?

20 A We would just go back to the bedroom, and
21 because I would usually call him ahead of time he
22 would have whatever I wanted ready.

23 Q And would Tracy go back there with you?

24 A No, she would stay in the living room.

25 Q And when you were in the bedroom where would

BONNIE SAYLORS - DIRECT

1 he get the meth from?

2 A He usually had mine ready because I already,
3 because I called ahead of time. He would usually
4 have it in his pocket.

5 Q And how would it be packaged?

6 A In a little baggie.

7 Q And how often did you say you would go there?

8 A I only went to his apartment a couple times.

9 Q How often do you think while he was living in
10 that apartment you bought from him, though?

11 A Maybe five times at the most.

12 Q And was it always the same amount?

13 A Sometimes a little more, about half an eight.

14 Q Would he ever front you any methamphetamine?

15 A He did one time.

16 Q And how did that process work?

17 A Well, we done the dope and I didn't pay him,
18 so he got mad at me for awhile and didn't sell me
19 any for awhile.

20 Q Is that what is referred to as cutting you
21 off?

22 A Yes.

23 Q Who did you get your meth from then?

24 A Julie would go get it from him, or my friend
25 Patty would go get me some, I don't know who she

BONNIE SAYLORS - DIRECT

1 would get it from.

2 Q How did you get back to the point you could
3 buy meth from him?

4 A Just after a time I went over there with
5 Julie and he started back talking, because I
6 started paying him a little bit, every time I
7 bought some I would pay him a little bit on what I
8 owed him so he would sell to me.

9 Q Now, at the time he was living at the
10 Shamrock Apartments did you ever take any of that
11 meth he sold you and give to anybody else, give
12 some of it to anybody else?

13 A No. Me and Julie would do it together but I
14 didn't give it to nobody.

15 Q Do you recall him moving to a trailer on
16 Highway 252?

17 A Yes.

18 Q Did you ever go there and buy meth from him?

19 A Yes, sir.

20 Q How many times did you go there?

21 A Quite a few times. Most of the time I bought
22 it from him he was living there or either in
23 Waterloo.

24 Q Well, I want you to just focus on the time he
25 was at the trailer on 252. Did you go once a week?

BONNIE SAYLORS - DIRECT

1 A Sometimes, sometimes twice a week. It
2 depended on how much money I had.

3 Q Would you go more than twice a week?

4 A No, I never went more than twice a week.

5 Q About how much would you buy each time you
6 went?

7 A About a half an eight to two grams.

8 Q And how often, when I say how often, I mean
9 how long did that go on, a month, two months, five
10 months?

11 A Quite awhile.

12 Q A year?

13 A Maybe about a year.

14 Q And then when he moved, I think you stated to
15 the house at Waterloo?

16 A Down there by the lake?

17 Q Yes, the house down there by the lake.

18 A Yes.

19 Q He moved there. Did you continue to go and
20 buy it from him there?

21 A Yes.

22 Q And how would that process work there?

23 A Well, the same as the others, I would call
24 him and tell him what I wanted and he would tell me
25 to come on and get it and I would go pick it up or

BONNIE SAYLORS - DIRECT

1 either he would meet me somewhere.

2 Q Would you take anybody else with you?

3 A Sometimes I went by myself but if I didn't go
4 by myself Julie went with me.

5 Q And was Tracy there as well when you were
6 buying?

7 A Most of the time, yes.

8 Q Do you recall any kind of, I want to take you
9 back to the trailer at 252, do you recall any kind
10 of security system in that trailer at 252?

11 A No.

12 Q Any kind of surveillance system?

13 A No.

14 Q How about the house at Waterloo?

15 A Yes, I seen, he had a little TV like that he
16 could watch the outside of his house with.

17 Q Did he have, while you were there did he ever
18 look at that little TV, that little monitor?

19 A It stayed on all the time when I was there.

20 Q Did he ever tell you what it was for?

21 A To see who come in and out of his yard.

22 Q Did he tell you why he needed to know who was
23 coming in and going out of his yard?

24 A Not specifically but, you know, I just
25 figured it.

BONNIE SAYLORS - DIRECT

1 MR. VARNER: Objection, if she's going to
2 speculate.

3 THE COURT: Sustained.

4 Q During the time you knew Marshall Miller what
5 kind of vehicles did he drive?

6 A He had a Grand Am and I think he had a Camaro
7 and a truck.

8 Q What did the truck look like?

9 A Well, he had a small truck, wrecked it, I
10 think, and then he got that truck he had, that big
11 black truck, that king cab, I think it was a
12 Chevrolet, maybe.

13 Q You just describe what you know about it,
14 that's fine. What about the Grand Am, what did it
15 look like?

16 A It was a red Grand Am.

17 Q And the Camaro, what did it look like?

18 A I think it was a dark color, sort of green,
19 maybe.

20 Q What did Marshall Miller look like?

21 A Short, gray hair, mustache.

22 Q About how old would you say he was?

23 A Maybe forties.

24 Q Did you ever go buy meth from his shop at
25 Cokesbury?

BONNIE SAYLORS - DIRECT

1 A Twice, and then I didn't fool with him no
2 more after that.

3 Q Why didn't you fool with him any more after
4 that?

5 A Because he gets in a spell where he don't
6 trust people. I had went to jail for the burglary
7 charge. When I got out of jail he wouldn't fool
8 with me no more. Well, a little bit before then, I
9 hadn't seen him or bought any from him, but after I
10 got out of jail for that burglary charge he
11 wouldn't fool with me.

12 Q Did he ever tell you that he made his own
13 methamphetamine?

14 A No, he didn't. I mean, I have heard
15 everybody say it but he never come out and said, "I
16 make it."

17 Q Do you know a fellow by the name of Sammy
18 McNeil?

19 A Yes, sir.

20 Q How do you know him?

21 A Through Tina, Tina Stevenson.

22 Q Did you ever do meth with Sammy McNeil?

23 A Yes, sir.

24 Q What about David Cumming, did you ever do
25 meth with David Cumming?

BONNIE SAYLORS - DIRECT

1 A No. I seen him one time before all this, and
2 it was a long time ago, and that's the only time I
3 ever was around David.

4 Q What about a fellow by the name of Tony
5 Howard?

6 A Yes.

7 Q Did you ever do meth with him?

8 A Yes.

9 Q Where would you get that meth?

10 A Usually Tina had it.

11 Q Do you know where she was getting hers from?

12 A Marshall.

13 Q What about Sandra Jo Hughes, did you ever do
14 any meth with her?

15 A Yes, sir.

16 Q Do you know where she got hers from?

17 MR. VARNER: I'm going to object unless they
18 are going to be a witness, what other people have
19 told her.

20 THE COURT: Lay a foundation, the objection
21 is sustained.

22 MR. CROUT: Your Honor, I'll move on, then.

23 BY MR. CROUT:

24 Q What about an individual by the name of
25 Michelle Madden, do you know her?

BONNIE SAYLORS - DIRECT

1 A I met her, I was around her one time and then
2 when I went to jail, when she got locked up, then I
3 was around her, but other than that, I don't know
4 her except from jail.

5 Q All right. You say Marshall cut you off when
6 you got arrested for the burglary charges?

7 A Yes, sir.

8 Q How did you get back in his good graces after
9 that?

10 A I didn't.

11 Q You never did after that?

12 A No, sir.

13 Q So, from the time you were arrested for those
14 burglary charges, you didn't do any more meth with
15 Marshall Miller?

16 A No.

17 MR. CROUT: Your Honor, I have no further
18 questions from this witness. Please answer any
19 questions that Mr. Varner or Mr. Wise may have.

20 THE COURT: Mr. Varner, the witness is with
21 you on cross-examination.

22

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BONNIE SAYLORS - CROSS**CROSS EXAMINATION**

1
2 **QUESTIONS BY MR. VARNER:**

3 **Q All right, Miss Saylor, your husband is Gene**
4 **Saylor, your former husband, is that correct?**

5 **A Yes, sir.**

6 **Q And you knew that he and Marshall were**
7 **friends at some stage?**

8 **A I was told that they were friends after I got**
9 **out of jail, but before --**

10 **Q Okay. If Marshall didn't tell you that, or**
11 **your ex-husband, you have already testified about**
12 **other people, we'll leave it at that.**

13 **Do you know anything about who your husband**
14 **was living with or dating around August of 2002?**

15 **A Yes, sir, Kathy, Kathy Hill.**

16 **Q Okay. And do you know anything about her**
17 **getting involved with Marshall Miller, and I'm not**
18 **talking about drug wise, but in a romantic**
19 **relationship?**

20 **A Just from what I have heard, I don't know.**

21 **Q Okay. Have you ever heard your ex-husband**
22 **say anything about the fact he didn't like**
23 **Marshall, or got mad at Marshall?**

24 **A I heard, you know, he said.**

25 **Q He said that, that's what I'm talking about,**

BONNIE SAYLORS - CROSS

1 what did your husband say?

2 MR. CROUT: Your Honor, I object to that at
3 this point. He is eliciting hearsay testimony from
4 this witness, it's an improper question.

5 THE COURT: How is it not hearsay?

6 MR. VARNER: Because Mr. Gene Saylor has
7 already testified about his, quote, quote,
8 relationship with Marshall Miller, he has testified
9 they were friends, this is a gentleman who has
10 testified and if this is his wife, former wife and
11 she heard him say something different, it's not
12 hearsay, Your Honor. It gives the state of mind.

13 THE COURT: The Court will permit the
14 question. Overrule the objection.

15 BY MR. VARNER:

16 Q You heard your former husband tell or say he
17 was mad at Marshall because Marshall was seeing his
18 woman he was living with?

19 MR. CROUT: Objection once again, that is not
20 what she said, she just said she heard it from
21 other people.

22 THE COURT: Sustained.

23 MR. VARNER: Your Honor, she said her husband
24 Mr. Saylor, that is who she was talking about.

25 BY MR. VARNER:

BONNIE SAYLORS - CROSS

1 Q Isn't that what you were saying, ma'am?

2 A I said that he said he was mad at him at one
3 time, yes, because he thought him and Kathy was
4 going together, but --

5 Q That's what I'm talking about. So, you know
6 from your husband's own mouth, your husband, former
7 husband's own mouth there was bad blood that had
8 developed between Marshall and him?

9 A Yes, sir.

10 Q Okay. Let me ask you about this. Were you
11 asked to do any undercover buys or anything?

12 A No, sir.

13 Q Okay. You were asked to give information,
14 correct?

15 A Yes, sir.

16 Q And have you ever done undercover buys?

17 A No, sir.

18 Q Okay. Have you ever given information before
19 on people, other than this particular case?

20 A No, sir.

21 Q And you knew at the time this case began you
22 were looking at a mandatory minimum sentence of
23 twenty-five years?

24 A Yes, sir.

25 Q And you have never had charges dismissed

BONNIE SAYLORS - CROSS

1 because you cooperated or have given information
2 before?

3 A No, sir.

4 Q And on this particular case you went to jail
5 when?

6 A On this one?

7 Q Yes, ma'am.

8 A August 16th of 2002.

9 Q Okay. So, you have been in jail now fourteen
10 months, fifteen months?

11 A Yes, sir.

12 Q Okay. You are also doing time on that
13 burglary case, too?

14 A No, sir. That's already took care of.

15 Q That's already taken care of? All right,
16 when is it you said you're getting out?

17 A January of 2005.

18 Q You basically got a three year sentence?

19 A Yes, sir.

20 MR. VARNER: That's all the questions I have.

21 THE COURT: Mr. Wise?

22 MR. WISE: Just a few questions.

23

24

25

BONNIE SAYLORS - CROSS**1 CROSS EXAMINATION****2 QUESTIONS BY MR. WISE:**

3 Q You live in Anderson now?

4 A Yes, sir.

5 Q Or lived in Anderson before you went to jail?

6 A Yes, sir.

7 Q Is that where you basically had lived?

8 A With my mother.

9 Q Had you ever lived down in Abbeville?

10 A Yes, for a short period.

11 Q And is that where you met some of the people
12 involved in this, Tina Stevenson and all this?

13 A No. I already knew them.

14 Q You have known them for years?

15 A No. I met them through Julie.

16 Q Through Julie?

17 A Yes.

18 Q All right. You knew Julie and then through
19 Julie you met these people?

20 A Yes.

21 Q You have never met Billy Moore involved in
22 this at all?

23 A No.

24 Q You never even heard his name?

25 A No.

BONNIE SAYLORS - CROSS

1 **MR. WISE: Thank you.**

2 **MR. CROUT: Very briefly, Your Honor.**

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BONNIE SAYLORS - REDIRECT**REDIRECT EXAMINATION**

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QUESTIONS BY MR. CROUT:

Q Mrs. Saylor, prior to going to jail for these, excuse me, prior to going to prison for these charges, have you ever been in prison for any time before?

A No, sir.

Q And does that burglary charge run concurrent with this charge?

A Yes, sir.

Q Have you ever testified in court before?

A No, sir.

Q And you never manufactured methamphetamine?

A No, sir.

Q You have never distributed methamphetamine?

A No, sir.

Q You just used it for yourself?

A Yes, sir.

Q And with other friends, correct?

A Yes, sir.

MR. CROUT: Your Honor, I have no further questions.

THE COURT: Anything further?

MR. VARNER: Nothing further.

THE COURT: Anything further, Mr. Wise?

BONNIE SAYLORS - REDIRECT

1 MR. WISE: Nothing further.

2 THE COURT: Thank you very much. Come down,
3 please ma'am. Watch your step.

4 (Witness excused).

5 THE COURT: Madam Forelady, ladies and
6 gentlemen, we will take a short recess at this
7 time. Please do not discuss the case by, between
8 or among yourselves. I know some of you may have
9 had a chance to make a comfort stop but not all of
10 you, not all the fourteen, and the court staff
11 would all need a little break, too, we won't take a
12 long break. We will come back into session and try
13 to get as much done this afternoon as we possibly
14 can.

15 Do not talk about the case by, between and
16 among yourselves. Retire to the jury room, please.

17 (The jury was excused from the courtroom).

18 MR. CROUT: Could Miss Saylor be excused?

19 THE COURT: Any objection?

20 MR. WISE: No objection.

21 MR. VARNER: No objection.

22 THE COURT: She may. Anything for the record
23 from the State?

24 MR. CROUT: Nothing, Your Honor.

25 MR. HOOD: No, sir, Your Honor.

1 THE COURT: Anything from Mr. Miller?

2 MR. VARNER: Yes. Previously I was looking
3 for a case with regard to the prior conviction for
4 prior bad acts. The case I was referring to was
5 Green versus State, at 527 Southeast 2d 98, 338
6 South Carolina 428, it's a 2000 case. What I was
7 referring to is, I will give a quote, "Admission of
8 evidence of a similar offense often does little to
9 impeach the credibility of a testifying defendant
10 while undoubtedly prejudicing him. The jury,
11 despite limiting instructions, can hardly avoid
12 drawing the inference that the past conviction
13 suggests some probability that defendant committed
14 the similar offense for which he is currently
15 charged." That's specifically what I was referring
16 to.

17 THE COURT: Well, the Court remembers that
18 particular case and that was when the State was
19 trying to get in prior convictions.

20 MR. VARNER: Correct, Your Honor.

21 THE COURT: She said it was to go buy dope.
22 There was nothing about a conviction.

23 THE COURT: At any rate, it's felt that we
24 have corrected it and we have narrowed the scope of
25 inquiry clearly in the mind of each of these jurors

1 and in the opinion of this judge for the period
2 involving this indictment.

3 MR. VARNER: I understand, Your Honor.

4 THE COURT: Do you agree, or do you want
5 something further said to them?

6 MR. VARNER: I don't need to say anything
7 further. I was looking for the case and wanted to
8 cite that.

9 THE COURT: All right.

10 MR. VARNER: Your Honor, the next matter, I
11 think without making a comment either, I think
12 everybody has been very polite and appropriate to
13 one another, but it is getting to the point we're
14 at critical stages and the State is getting up, I
15 mean that last line of questions, it got to the
16 point where the prosecutor is testifying and the
17 witnesses agree. It is clearly leading, you did
18 this, you did that, it's a quick summary. I'm
19 going to object to that. I wanted to let them
20 know, I don't really want to get to a point I have
21 to stand up a bunch of times but I would ask the
22 Court to caution the State to ask questions rather
23 than leading questions on their direct testimony.

24 THE COURT: All right. Try not to lead the
25 witness, and you object if you feel it's necessary,

1 Mr. Varner.

2 MR. VARNER: All right.

3 MR. WISE: Nothing further from Mr. Moore?

4 THE COURT: Anything further from any
5 quarter?

6 MR. HOOD: No, sir.

7 THE COURT: We are in recess.

8 (Recessed at 4:00 p.m.).

9 (Reconvened at 4:17 p.m.).

10 THE COURT: The record is open. This is
11 State of South Carolina versus Marshall Miller and
12 others, in indictment 2002-GS-47-32, in which
13 Marshall Miller and Billy Moore are the defendants.

14 Is there anything for the record from the
15 State?

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

17 THE COURT: From the defendant Miller?

18 MR. VARNER: None, Your Honor.

19 THE COURT: From the defendant Moore?

20 MR. WISE: No, Your Honor.

21 THE COURT: Show the jury in, please.

22 (The jury returned to the courtroom).

23 THE COURT: All the jurors are present, with
24 both the forelady and alternate properly seated.
25 The matter lies with the State. You may call your

1 next witness.

2 MR. HOOD: Thank you, Your Honor. The State
3 calls David Cumming.

4 THE COURT: All right.

5 THE CLERK: Place your left hand on the
6 Bible, raise your right.

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DAVID CUMMING - DIRECT

1 JAMES DAVID CUMMING,
2 after being first duly sworn testified as follows:

3 THE CLERK: Have a seat and state your full
4 name for the record.

5 THE WITNESS: James David Cumming.

6 THE COURT: You may examine, Mr. Hood.

7 MR. HOOD: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 QUESTIONS BY MR. HOOD:

10 Q Good afternoon, Mr. Cumming.

11 A Good afternoon.

12 Q How are you?

13 A Fine.

14 Q Have you ever testified before?

15 A No, sir.

16 Q Were you transported here today from a
17 correctional facility?

18 A Yes, sir.

19 Q Which one was that?

20 A Trenton Correctional Facility, Trenton, South
21 Carolina.

22 Q Which town is that close to?

23 A Edgefield, Aiken.

24 Q Were you indicted as part of this case that
25 we're here on today?

DAVID CUMMING - DIRECT

1 A Yes, sir.

2 Q Did you plead guilty in this case?

3 A Yes, sir.

4 Q What was your sentence?

5 A Seven years.

6 Q Do you remember who sentenced you to seven
7 years?

8 A Judge Saunders.

9 Q As part of your plea did you enter into an
10 agreement with the State of South Carolina?

11 A Yes, sir.

12 Q As part of that agreement did you agree to
13 testify in any subsequent trial that may come
14 about?

15 A Yes, sir.

16 Q Were you subpoenaed to be here today, Mr.
17 Cumming?

18 A Yes, sir.

19 Q Mr. Cumming, do you have a prior record?

20 A No, sir.

21 Q You have never been convicted of a crime
22 before?

23 A Not before this.

24 Q In 2002 were you convicted of possession of
25 methamphetamine?

DAVID CUMMING - DIRECT

1 A Yes, sir. That was after this charge.

2 Q Okay. And were you also convicted of
3 trafficking methamphetamine?

4 A Yes, sir.

5 Q Where are you from, Mr. Cumming?

6 A Calhoun Falls.

7 Q How old are you?

8 A Forty-nine.

9 Q Where did you grow up?

10 A I was born in Elberton, Georgia and raised in
11 Calhoun Falls.

12 Q Are you married?

13 A No, sir, divorced.

14 Q How long were you married?

15 A I was married the first time about nine years
16 and the second time I was married eleven months.

17 Q Do you have any children?

18 A Yes, sir, I have one daughter sixteen years
19 old.

20 Q Where does she live now?

21 A She lives with her mom.

22 Q Where did you go to high school?

23 A I went to Calhoun Falls High.

24 Q Tell the jury a little bit about some of your
25 job experience. Where have you worked for the

DAVID CUMMING - DIRECT

1 majority of your life?

2 A When I was sixteen years old I started
3 working on weekend clean-up crew at Burlington
4 Mills, then Flexible Technologies here in
5 Abbeville. I worked at the, I was supervisor the
6 last three years. I worked there about thirteen
7 years, I was terminated because of a layoff. I
8 went to Allied Signal in Elberton, Georgia, worked
9 there about nine years, and worked out at Pro Tile
10 out here in Abbeville for a year and a half, and
11 sold insurance for about a year and a half.

12 Q Where did you sell insurance?

13 A In Honea Path, South Carolina.

14 Q Are you familiar with an individual by the
15 name of Sandra Jo Hughes?

16 A Yes, sir.

17 Q How did you meet Sandra Jo Hughes?

18 A At Little General Convenience Store in Honea
19 Path.

20 Q Where is that in Honea Path?

21 A I'm not sure what the highway number is.
22 It's on the left going into Honea Path from Donalds
23 to Honea Path.

24 Q How did you meet Miss Hughes?

25 A Just going in and get a drink or a pack of

DAVID CUMMING - DIRECT

1 crackers or something while I was up there selling
2 insurance, it was a place I would go in, ask to use
3 the bathroom, just got to talking to her.

4 Q Did you eventually start purchasing
5 methamphetamine from her?

6 A Yes, sir, it was after a while, after I got
7 to know her.

8 Q Okay. How much methamphetamine would you
9 purchase from her?

10 A The first time I bought some I bought a \$25
11 bag, which is a quarter of a gram.

12 Q How many times did you buy a \$25 bag?

13 A Probably for a month, or I'm not exactly
14 sure, it's been a long time ago.

15 Q Do you remember approximately when this was?

16 A It was somewhere in the summer of '99.

17 Q Could it have been later in the year 1999?

18 A Yes, sir.

19 Q Are you exactly sure of the date you started
20 going in there?

21 A No, sir, I'm not sure.

22 Q How often were you purchasing meth from
23 Sandra Jo Hughes?

24 A Probably once a week, because I had been off,
25 I had done good, I got married the second time, and

DAVID CUMMING - DIRECT

1 we just got to talking, and I tried it again and I
2 wasn't buying much at a time.

3 Q What was the largest amount you ever
4 purchased from Miss Hughes?

5 A Probably a \$50 bag.

6 Q Where would these transactions take place?

7 A Inside the Little General Store.

8 Q What was Miss Hughes doing at the Little
9 General Store?

10 A She was working there as a clerk.

11 Q At some point did Miss Hughes introduce you
12 to a man by the name of Marshall Miller?

13 A Yes, sir.

14 Q Where did you meet Mr. Miller?

15 A At the Little General.

16 Q And specifically who introduced you to Mr.
17 Miller?

18 A Sandra Jo Hughes.

19 Q Did you become friends with Mr. Miller?

20 A Yes, sir.

21 Q Did you start purchasing methamphetamine from
22 him?

23 A Yes, sir.

24 Q How much did you start purchasing, how much
25 methamphetamine did you start purchasing from Mr.

DAVID CUMMING - DIRECT

1 Miller?

2 A I was buying like a \$50 bag and half an
3 eightball.

4 Q What's half an eightball?

5 A One and three-quarter grams.

6 Q What's an eightball?

7 A Three and a half grams.

8 Q Are those common terms used in the
9 distribution of methamphetamine?

10 A Yes, sir.

11 Q Tell us about how your relationship with
12 Marshall Miller developed.

13 A I was going in there playing the poker
14 machines some at the Little General and Sandra Jo
15 Hughes told me that she would introduce me to this
16 guy, and he come walking in, we sat there and
17 played the poker machines together and we just
18 talked.

19 Q Did you and Mr. Miller become friends or
20 acquaintances?

21 A Yes.

22 Q Where did Mr. Miller live at this time?

23 A In Shamrock Apartments.

24 Q Did you ever go to the Shamrock Apartments?

25 A Yes, I used to go there quite often. I had

DAVID CUMMING - DIRECT

1 an insurance debit down there, too.

2 Q Who told you that he lived in the Shamrock
3 Apartments?

4 A I think he did.

5 Q Did he tell you how to get there?

6 A Yes, sir.

7 Q Did he tell you what apartment he lived in?

8 A Yes, sir.

9 Q How often would you say you would go to the
10 Shamrock Apartments?

11 A I would go at least once a week, sometimes
12 more.

13 Q For approximately how long?

14 A Until he moved out of there and went to a
15 trailer, I'm not sure how long it was.

16 Q Who lived with him at the Shamrock
17 Apartments?

18 A Tracy.

19 Q Did you go to the Shamrock Apartments and
20 purchase methamphetamine?

21 A Yes, sir.

22 Q How much were you purchasing at a time?

23 A Probably half an eightball or eightball.

24 Well, \$50 bag to half an eightball.

25 Q Was there a set amount you would purchase,

DAVID CUMMING - DIRECT

1 did you have a set amount that you had to purchase
2 every single week?

3 A No.

4 Q Then, tell us how you would determine how
5 much you would purchase on any given day?

6 A By how much extra money I had.

7 Q Did Mr. Miller ever front you any
8 methamphetamine?

9 A Sometimes. Not too often at first.

10 Q What is fronting?

11 A Fronting is when he let you have it on
12 credit.

13 Q Is it essentially a form of credit?

14 A Yes.

15 Q Explain how it works. If you were to front
16 me drugs, how would it work?

17 A If I fronted you a \$50 bag I have to pay \$50
18 next time I seen you or --

19 Q I would have to pay you?

20 A Right, I'm sorry.

21 Q Okay. Where would the transactions take
22 place in the Shamrock Apartments?

23 A Usually in the bedroom.

24 Q And tell us how that would work, what would
25 happen when you went in there?

DAVID CUMMING - DIRECT

1 A I would just go in there and tell him what I
2 wanted and he would usually either have it bagged
3 up or weigh it up and give it to me.

4 Q How often were you going to the Shamrock
5 Apartments, once a week?

6 A Probably once, twice a week sometimes.

7 Q Did Mr. Miller eventually move?

8 A Yes, sir.

9 Q Before I get to that, each time that you were
10 going to the Shamrock Apartments were you
11 purchasing meth from Mr. Miller?

12 A Not each time, no, sir.

13 Q How often?

14 A Once, twice a week.

15 Q Where did Mr. Miller move to?

16 A On a highway going toward Ware Shoals, I'm
17 not sure what the number is.

18 Q What kind of house did he live in?

19 A In a trailer.

20 Q Did Mr. Miller tell you where he was moving
21 to?

22 A Yes, sir. I helped him move.

23 Q How often did you go to this trailer? What
24 did you call the highway?

25 A I'm not sure what highway number it is. I'm

DAVID CUMMING - DIRECT

1 not very good with highway numbers.

2 Q How often did you go to this trailer?

3 A Once a week to start with.

4 Q For how long?

5 A A month, a few months, I guess.

6 Q How much were you purchasing from him at this
7 time?

8 A Probably still half an eightball or
9 eightball, sometimes a quarter ounce.

10 Q Did you start moving up in your amount of
11 methamphetamine?

12 A Yes.

13 Q And why do you start moving up?

14 A So you won't lose, so you won't lose any
15 money. You will get rid of some, get your money
16 back. Actually you are losing all the time, but
17 you sell some, get your money back so you can go
18 back and make another purchase.

19 Q When you say get rid of some, what does that
20 mean?

21 A Sell.

22 Q So, you were selling to other people?

23 A Yes, sir.

24 Q How many people during this time frame that
25 you knew Marshall Miller do you estimate you sold

DAVID CUMMING - DIRECT

1 to?

2 A That I sold to?

3 Q Yes, sir.

4 A Six or eight, something like that. It wasn't
5 too many.

6 Q Did you have a set list of customers?

7 A No, sir, not really.

8 Q How would people come to you?

9 A They would just come to the house or I would
10 meet them on the road somewhere.

11 Q Did you eventually move up to purchasing an
12 ounce of methamphetamine from Mr. Miller?

13 A Yes, sir.

14 Q How many times would you say you purchased an
15 ounce of methamphetamine from Mr. Miller?

16 A Several. I'm not sure exactly how many but
17 several.

18 Q Give me a rough estimate.

19 A Six or seven. I really can't say for sure.

20 Q Did Mr. Miller move from the trailer on the
21 highway you were talking about?

22 A Yes, sir.

23 Q Where did he move to?

24 A At first I didn't know but I finally found
25 out later on Waterloo, Waterloo, on the lake.

DAVID CUMMING - DIRECT

1 Q How did you find out where he moved to?

2 A I'm not sure who told me but --

3 Q Did you ever go down to Waterloo?

4 A Yes, I went there once or twice.

5 Q Did you purchase methamphetamine from him at
6 Waterloo?

7 A No, sir, I don't think I ever purchased any
8 methamphetamine at Waterloo, not at his house. As
9 a matter of fact, I don't even think I went in his
10 house but maybe one time.

11 Q Let's go back to the trailer on that highway.
12 Did you ever see any surveillance equipment in that
13 trailer?

14 A Surveillance equipment?

15 Q Did you ever see any cameras, any monitors?

16 A No, sir. I heard talk of them, I might have
17 seen them in a box but I never seen any mounted or
18 anything, no.

19 Q Have you been to the Waterloo place?

20 A I have been inside, like I said, maybe once.

21 Q Did you see any surveillance equipment
22 outside there?

23 A No, sir. I heard talk of it but I don't
24 think I seen any, no, sir.

25 Q Are you familiar with a shop in Cokesbury?

DAVID CUMMING - DIRECT

- 1 A Yes, sir.
- 2 Q Did you ever go to a shop in Cokesbury?
- 3 A Yes, sir.
- 4 Q Whose shop was that?
- 5 A It was rented, a rented shop, I'm not sure
- 6 who owned it.
- 7 Q Who used it?
- 8 A Mr. Miller.
- 9 Q Did you go purchase methamphetamine from him
- 10 at a shop in Cokesbury?
- 11 A Yes.
- 12 Q What would you say the most at any time, one
- 13 specific time, the most you ever purchased from Mr.
- 14 Miller?
- 15 A An ounce, maybe an ounce and a half.
- 16 Q How long would it take you to get rid of an
- 17 ounce, on average?
- 18 A A week, a week or longer.
- 19 Q Explain how it works.
- 20 A I would go home, cut it up in eightballs, and
- 21 people come by the house and purchase it.
- 22 Q Do you keep a little for yourself?
- 23 A Oh, yes. That is what it's for, selling it
- 24 like that.
- 25 Q Did you ever go and purchase supplies for Mr.

DAVID CUMMING - DIRECT

1 Miller?

2 A A couple times I went to Walmart maybe and
3 picked up a pack of Contact, Sudefed, something
4 like that, but nothing more than just Sudafed.

5 Q Okay. And who would send you to purchase
6 something for him?

7 A He did.

8 Q Would he give you money to pay for it?

9 A No, sir. I usually bought it myself.

10 Q And what would you go and purchase?

11 A I would go get four packs of Sudefed.

12 Q What was that for?

13 A At first I didn't know but it was to go in
14 making the methamphetamine.

15 Q Did you ever see Mr. Miller manufacture
16 methamphetamine?

17 A No, sir.

18 Q Were you ever present when anything like that
19 was taking place?

20 A I had seen some forms of it but I never seen
21 the whole, I didn't see -- you know, I had seen him
22 punching out the pills and some of the other stages
23 but I never seen the whole process, no, sir.

24 Q Did you ever see the pills down at the
25 trailer at 252?

DAVID CUMMING - DIRECT

- 1 A Yes, sir.
- 2 Q Did you ever see the pills out at Waterloo?
- 3 A No, sir.
- 4 Q Did you ever see the pills out at the
- 5 Cokesbury shop?
- 6 A Not that I can recall, not just pills.
- 7 Q What would you see when you would show up?
- 8 A At Cokesbury?
- 9 Q Sure.
- 10 A I would just go in and ask him for something,
- 11 he would either have it ready for me or he would go
- 12 in the back room somewhere and weigh it up and
- 13 bring it to me.
- 14 Q Have you ever smelled methamphetamine being
- 15 manufactured?
- 16 A I have smelled a strong odor sometime, I
- 17 smelled a real strong odor before.
- 18 Q Do you know where you smelled that odor?
- 19 A Yes, Cokesbury.
- 20 Q At Cokesbury?
- 21 A Yes, sir.
- 22 Q Do you know a gentleman by the name of Ray
- 23 Powell?
- 24 A Yes, sir.
- 25 Q Who is Ray Powell?

DAVID CUMMING - DIRECT

1 A I went to school with Ray Powell and he lived
2 in Lowndesville.

3 Q He lives where?

4 A Lowndesville, South Carolina.

5 Q Let me go back to the very beginning, I
6 forgot to ask you something, I apologize. Do you
7 remember an individual named Sandra Jo Hughes?

8 A Yes, sir.

9 Q Do you know if Miss Hughes was indicted in
10 this case?

11 A Yes, sir, I think so.

12 Q Okay. Ray Powell, let me come back to that,
13 do you know if Mr. Ray Powell was indicted in this
14 case?

15 A Yes, sir.

16 Q Did you eventually start dealing with Ray
17 Powell and getting methamphetamine from him?

18 A A few times.

19 Q Okay. And how often would you get from Mr.
20 Powell?

21 A I didn't purchase from Mr. Powell but two or
22 three times, I guess, and it was only if I couldn't
23 get it anywhere else.

24 Q Were you purchasing from Mr. Miller at this
25 same time?

DAVID CUMMING - DIRECT

- 1 A No, sir.
- 2 Q Why not?
- 3 A He was out of town and left it with, left it
- 4 in, with Little Ray.
- 5 Q And is Ray Powell known as Little Ray?
- 6 A Yes.
- 7 Q I missed what you just said, could you repeat
- 8 it again?
- 9 A I think Mr. Miller went on vacation, I think
- 10 he left, he told me he was going to leave the
- 11 methamphetamines with Little Ray Powell and we
- 12 would go up there and purchase it from him or pick
- 13 it up from him.
- 14 Q Did you go to his place, Ray Powell's?
- 15 A Yes, sir.
- 16 Q What town was that in, again?
- 17 A In Lowndesville, South Carolina.
- 18 Q How much did you purchase from Ray Powell?
- 19 A A quarter ounce.
- 20 Q Approximately how many times?
- 21 A About twice, maybe three times.
- 22 Q Do you know a woman by the name of Martha
- 23 Ellis?
- 24 A Yes, sir.
- 25 Q Who is Martha Ellis?

DAVID CUMMING - DIRECT

1 A She lived in Abbeville.

2 Q How do you know Martha Ellis? What do you
3 know Martha Ellis as? Does she have a nickname?

4 A Mott.

5 Q How did you come in contact with Martha
6 Ellis, or Mott Ellis?

7 A Five or six or seven years ago I knew her
8 husband more than I did anything else, Vincent
9 Ellis, but I got to know Mott through him, but I
10 introduced Mott to Marshall -- well, I think they
11 already knew each other. She rode up there with me
12 one day.

13 Q Where did she ride with you to?

14 A Up to 252.

15 Q Did you ever sell methamphetamine to Mott
16 Ellis?

17 A Yes, sir, I think so, maybe once or twice.

18 Q Who had you gotten those methamphetamines
19 from?

20 A Mr. Miller.

21 Q Did you have a source besides Marshall Miller
22 for your methamphetamine during this time frame?

23 A No, sir.

24 Q Do you know who Jeff Frye is?

25 A Yes, sir.

DAVID CUMMING - DIRECT

1 Q Have you ever seen Jeff Frye around Ray
2 Powell's house?

3 A I can't recall seeing Jeff Frye there, no,
4 sir, not while I was there, but maybe once but I
5 can't recall. He just lived a short distance from
6 him. I can't recall seeing him while I was there.

7 Q What about an individual by the name of Jeff
8 Horne, do you know who he is?

9 A Yes, sir. Not at Ray Powell's.

10 Q Where would you see Mr. Horne?

11 A At Cokesbury.

12 Q What would he be doing at Cokesbury?

13 A He would be just hanging around, maybe
14 helping work on a car, or just mostly hanging
15 around.

16 Q Did you ever see Mr. Horne do any
17 methamphetamine?

18 A I can't actually say I seen him do any but he
19 was -- I don't think I can actually say I seen him
20 do any, no, sir.

21 Q Did someone attempt to get you to sign a
22 statement for Mr. Miller?

23 A Yes, sir.

24 Q Who was that?

25 A Martha Ellis and I don't know who the guy

DAVID CUMMING - DIRECT

1 was, I never found out who he was, he was a big
2 guy, came by my house one night at about 3:00
3 o'clock in the morning, woke me up off the couch
4 and tried to get me to sign a statement.

5 Q What did they tell you about that statement?

6 A I had get them to read it to me, it was a
7 paragraph about like this, real little writing, and
8 he read it to me, and what he read said that they
9 wanted me to sign a paper saying I never seen a
10 large amount of money, never seen a large amount of
11 dope, never seen a large amount of -- it was three
12 or four different things they wanted me to sign a
13 paper saying I didn't see, and I told them, I said,
14 "I don't know, that's perjury," that is what, the
15 first thing I told them. I said, "I don't know
16 what they call a large amount of money and I don't
17 know what they call a large amount of dope," and I
18 said, "I can't sign this."

19 Q Did you sign it?

20 A No, sir.

21 Q When was the last time you purchased from Mr.
22 Miller?

23 A Oh, I would be scared to say.

24 Q Do you have any time frame you may know?

25 A It was at Cokesbury but I don't know what,

DAVID CUMMING - DIRECT

1 I'm not sure of a date, no, sir.

2 Q Over the time frame of your knowing Mr.
3 Miller how much methamphetamine total, and I
4 realize you would be estimating, would you say that
5 you purchased from him?

6 A Eight to ten ounces. You know, it's hard to
7 say. I didn't really keep record of it.

8 Q Were you keeping detailed record of your
9 transactions with him?

10 A No, sir.

11 Q Can you describe Marshall Miller for us?

12 A Middle age, white male, salt and pepper hair
13 the last time I seen him, parted down the middle,
14 sometimes he had a beard, sometimes he didn't.

15 MR. HOOD: No further questions, Your Honor.
16 Thank you for your time.

17 THE COURT: Mr. Varner, this witness is with
18 you.

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DAVID CUMMING - CROSS

CROSS EXAMINATION

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QUESTIONS BY MR. VARNER:

Q I'm interested in something you just said. You made a statement, salt and pepper hair, like somebody said, are you talking about somebody who testified here earlier, describing him?

A Sir, I don't understand your question.

Q Well, when he asked you what did Marshall look like you said salt and pepper hair, like somebody else said. What are you talking about there?

A Well, he's got some gray mixed in with his black.

Q What I'm talking about is the statement like somebody else said. Are you aware of what other people have testified to?

A No, sir.

Q Okay. Then, who were you referring to when you made the statement like somebody else said, who was that you were referring to?

A I don't remember saying that, but I didn't say anything because I had heard something. He asked me to describe Mr. Miller, I answered most of the time salt and pepper hair, parted down the middle, middle age white male.

DAVID CUMMING - CROSS

1 Q I understand that part but what concerned me
2 was you said like somebody else said.

3 MR. HOOD: Your Honor, we have a court
4 reporter, we can have it read back.

5 THE COURT: The motion is to read the record.
6 (The referred to questions and answers
7 were read).

8 BY MR. VARNER:

9 Q Okay, I misheard you. My question, I will be
10 specific, sitting back in the room with the other
11 people, has anybody come back and talked about what
12 they talked about on the witness stand?

13 A No, sir.

14 Q Now, Martha Ellis, you know her as Mott. Was
15 it your understanding she was a friend of Little
16 Ray's, Ray Powell?

17 A I'm sure they knew each other.

18 Q Okay. And you say you thought it was you
19 that introduced Mott to Marshall?

20 A I took her up there one time but I didn't
21 introduce her, I think they had already knew each
22 other, they were already acquaintances but I don't
23 know, but she rode up there with me one time.

24 Q Okay. Little Ray, or Ray Powell, was he a
25 cook also?

DAVID CUMMING - CROSS

1 A Not that I know of.

2 Q How about Jeff Horne?

3 A No, I don't know much about Jeff Horne.

4 Q Okay. For your involvement you were also
5 looking for a mandatory twenty-five years, is that
6 correct?

7 A I'm not sure. I heard seven years.

8 Q You got a seven year sentence, correct?

9 A Yes.

10 Q You gave a full statement to law enforcement?

11 A Yes.

12 Q That is even with in September of 2002 you
13 got an additional, unrelated to this, another drug
14 charge. Did that go in with this?

15 A Yes, I got probation off it, after this.

16 MR. VARNER: That's all the questions I have.

17 THE COURT: Mr. Wise?

18 MR. WISE: Just a couple questions.

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DAVID CUMMING - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. WISE:

Q I might not have been listening closely, I apologize, did you say you purchased some Sudafed for Marshall Miller?

A Yes.

Q Did you go to Walmart and places like that?

A Yes.

Q And that is where he preferred you purchase the Sudafed?

A Yes, sir.

Q He would tell you to get Sudafed as opposed to some other --

A The Walmart brand amphetamine.

Q Little red tablets?

A Yes.

Q You don't know Billy Moore?

A No, sir.

Q And you knew Marshall Miller how long?

A Couple years.

Q Roughly 2000, 2002?

A I'm not sure. I'm not sure what year I went to selling insurance, '99 or 2000.

Q Okay.

A I'm not exactly sure.

DAVID CUMMING - CROSS

1 Q And through Marshall Miller you got to know,
2 you got to know the names of a lot of people
3 involved in this?

4 A Yes, sir.

5 Q Such as Mott Ellis?

6 A I knew Mott for a good many years.

7 Q You knew her before?

8 A But I never had any dealings with her, no,
9 sir.

10 Q You met Jeff Horne?

11 A Yes, sir.

12 Q And others?

13 A Yes, sir.

14 Q But you didn't meet Billy Moore?

15 A No, sir.

16 Q Have you ever seen him before today?

17 A I don't think so.

18 MR. WISE: Okay, thank you.

19 THE WITNESS: I don't believe.

20 MR. WISE: Thank you.

21 THE COURT: Anything further?

22 MR. HOOD: Very briefly, Your Honor.

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DAVID CUMMING - REDIRECT

REDIRECT EXAMINATION

QUESTIONS BY MR. HOOD:

Q When do you plan on getting out of the Department of Corrections, Mr. Cumming?

A July, 2009.

Q When you were originally arrested, or before, did you give a statement to the South Carolina Law Enforcement Division?

A Yes, sir.

Q Did they promise you anything?

A No, sir.

Q In fact did you testify in front of the Grand Jury?

A Yes, sir.

Q Did anyone promise you anything for that?

A No, sir.

MR. HOOD: No further questions, Your Honor.

THE COURT: Anything further, Mr. Varner?

MR. VARNER: Nothing further.

THE COURT: Mr. Wise?

MR. WISE: Nothing further.

THE COURT: Thank you, sir. Come down.

Watch your step, sir.

(Witness excused)

THE COURT: Any objection to this witness

DAVID CUMMING - REDIRECT

1 being excused?

2 MR. HOOD: None, Your Honor.

3 MR. VARNER: None, Your Honor.

4 MR. WISE: No, Your Honor.

5 THE COURT: Thank you very much. Thank you
6 all very much for bringing Mr. Cumming here. Thank
7 you, Mr. Cumming.

8 Call your next witness, please.

9 MR. HOOD: At this time, Your Honor, the
10 State calls Tina Stevenson.

11 THE CLERK: Place your left hand on the
12 Bible, raise your right.

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