STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2013-001562

THE STATE,

Respondent,

vs.

Antonio Emerson Tate,

Appellant.

INITIAL BRIEF OF RESPONDENT

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I. Did the trial court err in submitting the case to the jury and denying the Motion for Directed Verdict where the State presented evidence of Trafficking in Methamphetamine 400 grams or more?

II. Did the trial court commit reversible error by limiting cross examination of cooperating witnesses pleading to lesser charges, and no longer facing mandatory minimum on their initial charges, which were the same as Appellant was facing, and where cross was allowed as to receiving a substantial reduction in sentence and the possible sentence of the initial charge was ultimately communicated to the jury?

II. Did the trial court err in permitting testimony by a witness with experience investigating methamphetamine cases about the organizational sale and distribution of methamphetamine?

STATEMENT OF THE CASE

The State Grand Jury of South Carolina indicted Antonio Emerson Tate ("Appellant") by superseding indictment on December 13, 2011 for Trafficking Methamphetamine 400 grams or more (by conspiracy) between November 1, 2009 through November 8, 2011.

On May 28, 2013 the State called the case for trial in front of the Honorable Letitia H. Verdin and a jury trial was held from May 28 through May 31, 2013. The State was represented by Joshua R. Underwood and Curtis A. Pauling, III of the Attorney General's Office. Appellant was represented by R. Mills Arial, Jr., Esquire and David J. Farnham, Esquire of Georgia (*pro hac vice*).

On May 31, 2013, Appellant was convicted by a Greenville County Jury of Trafficking in Methamphetamine 400 grams or more in violation of SC Code Section 44-53-375. Judge Verdin sentenced Appellant to 25 years incarceration. A timely appeal followed.

STATEMENT OF FACTS

The State presented evidence of Appellant' s guilt of trafficking Methamphetamine 400 grams or more. Such evidence included testimony of witnesses about purchasing methamphetamine from Appellant in Georgia for distribution and sale in South Carolina. Some of the testifying witnesses were charged as Co-Conspirators and were initially charged with the same crime as Appellant, but had accepted plea agreements to plead guilty to lesser charges. The trial court permitted defense counsel to inquire as to the possible sentence on the lesser charges and testimony was given that the charges exposed the witnesses to substantially less time for incarceration than their original charges.

The State presented the testimony of 11 witnesses involved in the purchase of methamphetamine from Appellant in Atlanta, Georgia for sale in South Carolina. Witnesses testified about traveling to Georgia to retrieve narcotics from Appellant and how these transactions were initiated and conducted. Appellant seems to emphasize that witnesses could not provide an address or phone number for Appellant. However, the witnesses described in detail how to arrive at designated meet locations repeatedly used by Appellant, and that Appellant used different phone numbers. Witnesses also testified calling Appellant to arrange deals for methamphetamine and recalled particular meet locations and some specific occurrences.

Witnesses independently testified to the same locations used for the sale of the narcotics such as a Waffle House, and Appellants residence. The witnesses knew which exit to take and how to get there.

Witnesses recalled details of specific instances such as the purchase at the Shell gas station. Witnesses testified to numerous and repeated purchases of methamphetamine in amounts greater than one would purchase for personal use, of tactics used in the sale of narcotics for future distribution involving large amounts of money such as "fronting", and the use of green dot cards. Witnesses also testified as to Appellant's knowledge of witnesses residing in South Carolina and to seeing him on a least one occasion in South Carolina.

Witnesses independently identified Appellant in a photo line-up prior to or at the on-set of cooperating with law enforcement, at different times. Witnesses also identified Appellant in court as the individual from whom large amounts of methamphetamine were purchased.

The State's case, primarily in the form of testimonial evidence set forth below, consistently shows that Appellant sold dealer weights of methamphetamine while in Georgia to individuals known to reside in South Carolina who were bringing that methamphetamine back to South Carolina over the period of time alleged in the indictment for an amount greater than 400 grams. He also traveled to South Carolina on two occasions and provided methamphetamine to Jason Griffin and Javin Adams. Appellant's pattern of dealing methamphetamine that entered South Carolina was shown by the State.

Wendy Christine Lollis

Ms. Lollis testified that she began using methamphetamine when she was 18 or 19. (R. p. 54, line 2). She admitted that she was a meth addict at this time. (R. p. 55, line 6). She also admitted that she dealt methamphetamine for 5 or 6 years prior to the

trial. (R. p. 54, line 22). She also admitted that she pleaded guilty to charges related to the conspiracy alleged in this case after reaching a plea deal with the State and that if convicted of the original charges she would be facing a considerably higher amount of time. (R. p. 55, lines 19-23, p. 56, lines 3-16).

Ms. Lollis testified that David Moore purchased an ounce or more of meth at a time from a source in Atlanta. (R.p. 56, lines 22-25, p. 57, lines 1-25). She identified the Appellant in court as Mr. Moore' s source and further testified to traveling to Georgia to purchase meth from Appellant and taking others to meet him. (R. p. 58, lines 1-17). Ms Lollis testified that she introduced a number of other individuals to Appellant, including Jason Griffin, and that they purchased meth from him as well beginning in early 2009. (R. p. 56, line 10, p. 64, line 9). Ms. Lollis testified Appellant knew she and the others were from South Carolina. (R. p. 52, lines 1-7).

She testified that Appellant did not sell less than an ounce at a time. (R. p. 74, lines 9-100). She testified that she purchased meth from Appellant with Amy Cagle on one occasion (R. p 69, lines -14) and that Paul Simon and Anthony Gambrell also purchased meth from Appellant an ounce at a time. (R. p. 70, lines 1-24). She also testified that she knew Javin and Nate were in a drug relationship with Appellant. (R. p. 73, lines 24-25, p. 74, lines 1-4).

Upon her arrest, Ms. Lollis began to cooperate with law enforcement. (R. p. 75, lines 19-23). She picked Appellant from a photo line-up in September of 2011. (R. p. 76, lines 2-11, 18-25, p. 77, lines 1-18, p. 80, lines 15).

Lollis says she went to Georgia between ten and fifteen times. (R. p. 89, lines 1-4). While she did not provide an address, she stated Appellant provided directions to her

and she recalled going to two or three apartment buildings in Indian Trial and the exit number 101. (R. p. 89, lines 9-12, p. 90, lines 14-25. Ms. Lollis acknowledged that she did not know Appellant' s phone number, but stated that she could probably get it. (R. p. 88, lines 17-19).

Ms. Lollis admitted receiving a "substantial reduction" in her sentence in exchange for her cooperation. (R. p. 101, lines 7-9). She acknowledged she was initially charged with trafficking 400 grams or more of methamphetamine and that she pled to the reduced charge of Trafficking 28-100 grams with a recommended sentence of 12 to 15 years. (R. p. 99, lines 20-25, p.100, lines 11-17, p. 101 lines 7-9).

Gary Jason Griffin

Gary Jason Griffin ("Griffin") testified he was currently incarcerated. (R. p. 113, lines 3-5). In 2008 he became associated with Chris Simmons and re-entered the drug trade . (R. p. 115, lines 14-19). Griffin also met Lollis and he started dealing methamphetamine with her. (R. p. 119, lines 110-13). Griffin testified that about a month after he met Lollis he went with her and his ex-wife, Rachel Eades ("Eades"), to Atlanta to meet Appellant. (R. p. 120, lines 18-21; p. 121, lines 10-11). Griffin testified that they met the Appellant at a house where Griffin purchased 28 grams of methamphetamine for $1400. (R. I, p. 124, lines 13-19). After the transaction, Eades drove Lollis and Griffin back to South Carolina. (R. p. 126, lines 22-25).

Griffin testified he later returned from South Carolina to get an ounce of methamphetamine from Appellant but received cocaine instead and Lollis and Eades accompanied him on this trip as well. (R. p. 127, lines 1-11, 16-18). Griffin, like Lollis, recalls a transaction for methamphetamine at a Shell Gas Station. (R. p. 136, line 25. He

testified Appellant became more comfortable and started letting him come to an apartment, which was off the same exit as the Shell Station. R. (p. 137, lines 3-20). Griffin stated he returned to Georgia to deal with Appellant on 15-20 additional occasions and that he eventually began to make quarter-pound purchases from Appellant, having initially purchased by the ounce. (R. I, p. 132, lines 1-13; p. 133, lines 1-6.; (R. p. 138, lines 1-25). These transactions with Appellant took place during a three-month time frame and on two occasions he purchased a half pound at Appellant' s apartment. ((R. p. 147, lines 2-11).

Griffin testified to seeing Appellant in South Carolina at his house when he resided there with Rachel. (R. p. 147, lines 16-25, p. 148, lines 1-4, 21-25). On this occasion, Griffin testified that Appellant brought a quarter ounce of methamphetamine for Griffin and, though he "can't say for a fact," Griffin believed Tate gave Lollis a quarter ounce, too. (R. p. 149, lines 9-20). Griffin testified that the meth recovered from his vehicle when he was arrested with Eades and Simmons came directly from Appellant.

Griffin identified Appellant in court as the individual from whom he purchased methamphetamine. (R. p. 155, lines 21-24, p. 156, lines 1-24). Griffin cooperated with law enforcement after his arrest and identified Appellant in a photo line-up. (R. p. 158, lines1-21, p. 159, lines 1-7). He also noted he met Appellant at a Waffle house and that he was told by Appellant that Appellant' s brother worked there. (R. p. 157, lines 17-24). He further stated the individual with whom he dealt did not wear glasses. (R. p. 176, lines 16-18). He also testified that after his arrest he spoke with Appellant in person and was sure Appellant was the individual from whom he received methamphetamine. R. (p. 177 lines 24-25, p. 178, lines 1-17).

Griffin admitting to pleading guilty for his involvement in this matter. (R. I, p. 171, lines 23-25). He was initially charged with conspiracy for trafficking 400 grams or more of methamphetamine and acknowledged pleading to trafficking 28-100 grams with a recommended sentence of 15 to 20 years. (R. p. 113, lines 9-20, p. 114, lines 8-19, p. 172, lines 1-9). When asked if he knew the sentencing range on the original charge, Griffin replied (without objection) 25-30 years. (R. p. 172, lines 10-16).

Rachel Elizabeth Eades

Rachel Elizabeth Eades ("Eades") testified Griffin introduced her to methamphetamine. (R. p. 182, lines 9-10). Eades met Lollis in 2009 through Griffin. (R. p. 183, lines 13-15). Ms. Eades stated she overheard Lollis tell Griffin that she had a friend in Atlanta who could sell him inexpensive methamphetamine. (R. p. 184, lines 3-9). Eades testified that she went with Griffin to Georgia to buy methamphetamine at a Waffle House in January 2010. (R. p. 185, lines 6-10). She said that Griffin purchased methamphetamine from Appellant outside in the parking lot while she ate. (R. p. 186, lines 11-12). Eades stated she went with Griffin to Georgia on eight to ten other occasions to purchase methamphetamine. (R. p. 188, lines 1-19).

Eades testified that the first transaction occurred at a Waffle House, while others occurred at the Shell Station and at an apartment. (R. p. 189, lines 2-11). Eades provided directions to the apartment. (R. p. 189, lines 12-24, p. 190, lines 1-13). Other She recalled a particular transaction at the Shell Station when Wendy, Jason, and Paul were there and provided details. (R. p. 195, lines 5-25, p. 196, lunes 1-25, p. 197, lines 1-25, p. 198, lines 1-25). Transactions were for an ounce or more of methamphetamine. (R. p. 193, lines 1-4). One meeting took place at a strip bar and at that time they were

purchasing 2 to 3 ounces. (R. p. 200, lines 7-16). Eades identified Appellant in court as the supplier of methamphetamine. (R. p. 206, lines 206, p. 207, lines 1-19).

Eades acknowledged that as a result of this investigation, the State charged her with conspiracy to traffic 400 grams or more of methamphetamine. (R. p. 222, lines 19-21). She entered a plea with a recommendation of 7 to 10 years and admitted that she was initially exposed to a substantially higher sentence. (R. p. 223, lines 1-15). Eades also admitted that she committed felony child neglect and fraud. (R. p. 222, lines 19-21).

Christopher Noah Bishop

Mr. Bishop was a Confidential Informant (" CI") for Greenville County (R. p. 275, lines 16-25, p. 276, lines 1-2). He admitted to being a former user of marijuana and hallucinogenic mushrooms with felony convictions for bank robbery and making a bomb threat. (R. p. 274, lines 4-25; p. 275, lines 1-2).

After completing six buys on other individuals, Bishop was to purchase meth from Appellant in Atlanta. (R. p. 293, lines 16-17; p. 294, lines 8-12). According to Bishop, he contacted Chad Ayers of the Greenville County Police Department Vice Squad, who "wired [him] up," and gave him a thousand dollars to make the controlled purchase with another co-conspirator, Albrie Nate Bashaw. (R. p. 281, lines 4-20). Bishop had previously conducted 2 undercover buys on Bashaw. (R. p. 277, lines 21-2). Bashaw and Javin Adams had contacted Bishop to go to Georgia with her to get a transmission from Appellant. (R. p. 294, lines 13-15). Bishop testified that they never consummated the transaction; instead, they drove around for an hour and a half because Appellant came to suspect that an unmarked police car was following him. (R. p. 284, lines 1-6). Bishop testified that Appellant eventually called off the transaction. (R. p. 287,

lines 6-8). The agreement for a drug transaction did not occur, according to Bishop, because of police surveillance. (R. p. 305, lines 5-10)

Sometime after this incident, Bishop identified Tate in a photographic lineup. (R. p. 287, lines 21-25). Bishop was unable to record any of the conversations because the wire recorder provided to him had technical problems. (R. p. 281, lines 22-25; p. 282, lines 1-7).

Charles Javin Adams

Adams testified that Chad Moore asked him to accompany him to Atlanta to help him get drugs from Appellant. (R., p. 390, lines 6-25). Adams subsequently traveled to Atlanta between eight and thirteen times to purchase meth from Appellant, sometimes with Bashaw and sometimes with Moore. (R. p. 394, lines 23-25; p. 395, lines 1-20). He testified that during the time he was dealing with Appellant he tried to go every other day and the smallest amount he would purchase was an ounce. (R. p. 398, lines 15-20, p. 399, lines 16-17.

Adams stated he would call Appellant's cellular phone when he wanted to make a deal, and, like Lollis, he testified that Appellant changed his telephone number several times. (R. p. 404, lines 22-25; p. 405, line 1, 14-18). Adams testified that Appellant came to Adam's apartment in South Carolina on several occasions. (R. p. 405, lines 19-25). Adams also testified about the unsuccessful controlled purchase with Bishop and that Appellant told him to never send Bishop again, because Bishop had been "tailed." (R. p. 411, lines 1-11).

Adams testified that he usually went to Appellant' s house for the purchases. (R p. 402, lines 10-11). He also testified to the use of a green dot card for making purchases.

(R p. 404, lines 7-23). He also testified that on one occasion Appellant " fronted" him an ounce and on another occasion brought an ounce to him at his residence in South Carolina. (R. p. 399, line 18). After he was sentenced to house arrest, he began sending Bashaw along with a "driver" named Norman Trebuchon to purchase the meth from Tate. (R. p. 396, lines 1-2).

Sometime after this incident, Adams began working with law enforcement and became a confidential informant. (R. p. 412, lines 5-15). Adams identified Appellant in a photo lineup and was certain that he bought methamphetamine from Appellant and not his brother. (R. p. 414, lines 4-20, 21-25; p. 450, lines 1-9).

Mr. Adams acknowledged to initially being charged in this case with Trafficking 400 grams or more and to a pleading guilty to the lesser charge of Trafficking 10 to 28 grams with a recommendation of 3 to 6 years. (R. p. 388, lines 9-25, p. 389, line 1; 429, lines 3-19; p. 431, lines 5-7). He also stated he would have been facing a significant amount of time (R. p. 389, lines 1-4, 16-20).

Albrie Nate Bashaw

In July 2010, Ms. Bashaw moved in with Javin Adams and they both sold methamphetamine at this time. ((R. p. 457, lines 1-9). Ms. Bashaw testified that she took trips to Atlanta without Adams from July 2010 to January 2011 to secure meth. (R. p. 469, lines 13-18). The amount of methamphetamine varied between two ounces to four ounces. (R. p. 471, lines 21-25). She testified that she travelled to Atlanta an average of three times a week during this period. (R. p. 472, lines 6-10). In total, Ms. Bashaw claimed she had dealt with Appellant on twenty occasions over a period of about nine

months. (R. p. 489, lines 8-10). She also stated that Appellant know she lived in South Carolina. (R. p. 407, lines 13-15).

Ms. Bashaw began cooperating with law enforcement in March 2011. (R. p. 479, lines 8-15; p. 480, lines 7-9). As part of her cooperation she provided information on her drug dealings and participated in undercover deals. (R. p. 480, lines 13-25). In one such deal, she testified that she, Adams, Officer Chad Ayers and Officer Brett Barwick attempted to arrange a controlled deal with Appellant. (R. p. 481, lines 15-25). However, the deal was unsuccessful and Appellant told her he was no longer interested but would contact them in the future if he felt he could make some money off of them. (R. p. 481, lines 23-25; p. 482, lines 1-5).

On cross-examination, Bashaw admitted that she gave a statement to law enforcement concerning the identity of Appellant at one point that conflicted with her testimony. (R. p. 516, lines 1-8). On re-direct it was clarified that at the time she provided the statement to law enforcement she did not know Appellant and it was actually not untrue (R. p. 515, lines 4-21).

Bashaw acknowledged that she was originally charged with conspiracy to traffic 400 grams or more of methamphetamine. (R. p. 496, lines 1-3). She testified, however, that the State reduced her sentence down to 3 to 6 years in exchange for her cooperation. (R. p. 496, lines 6-8).

Charles Norman Trebuchon

Charles Norman Trebuchon testified he has known Adams since he was a "kid" and admitted using methamphetamine with him. (R. p. 528, lines 19-25; p. 529, lines 1-16). For a period of time, he lived with Adams and Bashaw. (R., p. 529, lines 1 1-16).

Trebuchon testified that he would drive Ms. Bashaw to Atlanta for her to obtain methamphetamine from Appellant and that he would wait in the living room of Appellant' s apartment while she made the purchase in the kitchen. He recalled specific instances and that he took Bashaw approximately a dozen times. (R. p. 533, lines 3-6, 12-25). He also testified that he went by himself twice on behalf of Mr. Adams at Mr. Adam' s direction to purchase methamphetamine from Appellant. (R. p. 534, lines 3-6and Ms. Bashaw). Each of these trips ended in a purchase of " usually 4 ounces." (R. p. 534, line 14). Trebuchon was never charged in this case and did not receive the benefit of a plea deal to a reduced sentence.

Warren Brent Chastain

Warren Brent Chastain testified he began purchasing methamphetamine to support his habit, but then purchased a sufficient quantity to sell to others as well. (R. p. 558, lines 2-6).

Chastain testified that he drove from South Carolina to Atlanta with Brian Stegall ("Stegall") to purchase methamphetamine. (R. p. 561, lines 15-24). Upon arriving at a hotel room in Atlanta, he stated he met Appellant at a Waffle House, and then went with Stegall to a local motel room where Stegall purchased methamphetamine from Appellant and a "Hispanic guy" in the motel room's bathroom using Chastain's money, and Stegall then gave Chastain the two ounces of methamphetamine he had purchased. (R. p. 562, lines 1-20; p. 563, lines 2-16). (R. p. 563, lines 17-23).

After this transaction, Chastain returned to South Carolina to sell these two ounces. (R. p. 564, lines 1-2). He testified that he saw Appellant once more at Griffin's

home in South Carolina, but does not know if Appellant brought any methamphetamine to Griffin's home. (R. II, p. 564, lines 15-24.

Chastian acknowledged that he pled guilty to a lesser charge for this crime, and that by doing so he avoided a much larger sentence. (R. p. 560, lines 14-17). Specifically, he pled guilty to a second offence of the trafficking of twenty-eight to a hundred grams of methamphetamine with a State recommendation of twelve to fifteen years. (R. p. 560, lines 2-5).

Larry Anthony Gambrell

Larry Anthony Gambrell testified that he met Tate through Lollis, who took him to an apartment in Atlanta to purchase methamphetamine. (R. p. 579, lines 16-20; p. 580, lines 5-1 1). He testified that he went to Atlanta on five or six more occasions. (R. p. 584, lines 19-21). According to Gambrell, they purchased two to four ounces of methamphetamine on each trip. (R. II, p. 585, lines 1-4).

Gambrell agreed to work for law enforcement and identified Appellant in a photo lineup. (R. p. 591, lines 5-19). Gambrell was serving time for Distribution of Methamphetamine unrelated to this case and was not indicted in this case nor did receive any deal related to this case.

Norman Bergholm

Norman Bergholm testified he started purchasing methamphetamine from Adams once a week. (R. p. 605, lines 4-13). Bergholm testified to meeting Appellant at Mr. Adam' s home during a birthday party and that he purchased methamphetamine from Appellant on numerous occasions. (R. p. 606, lines 9 -11). (R. p. 608, lines 6-9; p. 606, lines 4-13). Bergholm stopped purchasing from Appellant because the product was "no

good." (R. p. 61 1, lines 14-25; p. 61 1, lines 1-2). Bergholm met with law enforcement in June of 2011 at which time he identified Appellant in a photo lineup. (R. p. 614, lines 6-11; p. 615, lines 1-9).

Bergholm testified he is currently serving prison time in Iowa for felony eluding and has other felony convictions (R. p. 601, lines 23-25, lines 5-8; p. 627, lines 2-17). Bergholm was originally charged with trafficking methamphetamine 400 grams or more and pled guilty to trafficking twenty-eight to a hundred grams of methamphetamine with a recommended a sentence of 15 to 18 years. (R. p. 601, lines 18-22, p. 602, line 307).

Chad Dewavne Moore

Chad Dewayne Moore testified that he bought methamphetamine from Griffin, whom he met through Lollis. (R. p. 633, lines 1-15). Moore eventually met Griffin and Lollis' supplier at an apartment in Atlanta. (R. p. 634, lines 9-24). Chad Moore identified this individual as Appellant. (R., p. 635, lines 1-5). Chad Moore had went with Lollis to meet Appellant and bought an ounce of methamphetamine from him on this occasion. (R., p. 635, lines 9-24). He stated he drove back to Atlanta on two or three other occasions to purchase about an ounce of methamphetamine from Appellant, who eventually stopped selling meth to him. (R. p. 636, lines 8-17; p. 642, lines 1-8).

Mr. Moore testified that he was introduced to selling methamphetamine by Wendy Lollis and that she introduced him to Jason Griffin. From that point, he met their supplier, Appellant. He testified to going to Atlanta to conduct drug deals with Appellant on the initial meeting when he was introduced and then 2 or 3 other times. (R. p. 636, lines 8-10). He recalled certain details of meet locations such as taking exit 101. (R. p. 637, lines 4-12). He stated he took Javin Adams to meet Appellant. (R. p. 639, lines 9-

11). Mr. Moore identified Appellant in a photo line-up. (R. p. 643, lines 9-11; lines 21-25).

On cross examination Mr. Moore acknowledged he was initially facing the same charge as Appellant of Trafficking Methamphetamine 400 grams and the possible penalty was 30 years. (R. p. 651, lines 14-25, p 652, lines 1-5). He also acknowledged that the State agreed to recommend a sentence of 18 years. (R. p. 652, lines 1-13).

Law Enforcement

Law Enforcement testifying for the State included Lt. Henry Dale Campbell, Agent Brett Barwick, and Agent Ashley Asbill. Mr. Campbell testified that he is employed by the Pickens County Sheriff' s Office in the Narcotics unit and that he has been with the Sheriff' s Office for 15 to 16 years. (R. p. 232, lines 2-5). He explained how he conducts investigations and that he uses Confidential Informants (" CI"). (R. p. 233, lines 5-25).

Mr. Campbell used a CI for a controlled purchase from Christopher Simmons on March 2010, for the investigation underlying this case. (R. p. 234, lines 14-25). Ms. Eades and Simmons were present at this time. (R. p. 239, lines 4-11). Methamphetamine was recovered as a result and Mr. Campbell, testified that subsequent to the arrest of Chris Simmons he learned that the methamphetamine came from Apppellant. (R p. 241, lines 1-11.

Agent Brett Barwick testified he works as a narcotics officer for the Pickens Coutny Sheriff's Office. (R. p. 316, lines 8-9). He became involved in this investigation when another officer, Chris Marquis, developed a CI that was aware of

several persons trafficking methamphetamine throughout Pickens and Greenville County. (R. I, p. 316, lines 19-25; p. 317, lines 1-5). During this investigation, he said the "conspiracy" widened as he spoke to more CIs and others who would cooperate with him. (R. I, p. 3 1 8, lines 14-25). Eventually, this process led to the source of the methamphetamine for this case, the Appellant. (R. p. 319, lines 2-7).

Barwick was involved with the attempted controlled purchase from Appellant by Bishop. He testified that although no purchase was made, law enforcement was able to identify Appellant as a source for methamphetamine.

Agent Ashley Asbill testified he works for the State Law Enforcement Division. (R. p. 655, lines 1-7). Asbill explained the general concept of the organizational makeup of a conspiracy. (R. p. 664, lines 12-16). Asbill further testified that the individuals indicted in this conspiracy were organized in the sense they all went to Atlanta to purchase methamphetamine from Tate. (R. p. 664, lines 17-21). Those that were indicted were dealing "substantial amounts" according to Asbill. (R. p. 665, lines 1-5). Asbill testified that Appellant was the highest source in this group. (R. p. 665, lines 6-8).

ARGUMENT

I. SUFFICIENT EVIDENCE WAS PRESENTED BY THE STATE FOR THE GREENVILLE COUNTY JURY TO CONVICT ANTONIO TATE OF TRAFFICKING IN METHAMPHETAMINE 400 GRAMS OR MORE.

A. Standard of Review; the issue of whether there was a lack of evidence of conspiracy is not properly presented to this court as error by the trial court.

This court sits to review errors of law by the trial court. See, e.g., State v. Wilson, 345 S.C. 1 (2001); see also Townes Associates, Ltd. V. City of Greenville, 266 S.C. 81 (1976) (the jurisdiction of the Appellate Court for an appeal from a jury verdict extends only to errors of law).

Appellant has not articulated legal error by the trial court, but rather presents argument about the weight of the States case. As such, this issue is not properly presented to this court for review of legal error.

To the extent Appellant is challenging the denial of the Direct Verdict, the trial court's findings of fact will be upheld unless clearly erroneous. See, e.g., State v. Quattlebaum, 338 S.C. 441.

B. The trial court did not err in denying the motion for directed verdict; the State presented sufficient evidence of trafficking methamphetamine.

Should this Honorable Court deem it appropriate to address the issue as presented by Appellant, the State' s case at trial presented sufficient evidence of Appellants guilt of Trafficking Methamphetamine 400 grams or more to submit the case to the Greenville County jury. The trial court did not err in denying the Motion for Directed Verdict.

Defense counsel moved for directed verdict at the close of the State's case, arguing that the State presented insufficient evidence of guilt. Defense Counsel referred to supposed " false information" provided by witnesses and that witnesses could not differentiate him from his twin brother. (R. II, p. 670, lines7-20). The trial court denied the motion finding there was evidence on which a jury could base a verdict. (p. 670, lines 21-25, p. 671, lines 1-30. The trial court instructed the jury on credibility of witnesses and the law of trafficking prior to deliberations. (R p. 720-737).

Denial of directed verdict must be viewed in the light most favorable to the State. See, e.g, State v. McHoney, 344 S.C. 85 (2001); see also Welch v. Epstein, 342 S.C. 279 (Ct. App. 2000) (the denial of a directed verdict motion (or JNOV) must be viewed under the same standard as the trial court, in the light most favorable to the non-moving party). The trial court is concerned with the existence or nonexistence of evidence and not its weight. See State v. Pinckney, 399 S.C. 346 (2000). See also Creech v. South Carolina Wildlife & Marine Resources Dep't, 328 S.C. 24 (1997) (The trial court will be reversed only where there is no evidence to support the ruling of the trial court.) Where there is any direct or circumstantial evidence presented by the State which reasonably tends to prove guilt of the criminal defendant or from which guilt could reasonably be deduced, the case must be given to the jury. See e.g., State v. Pinckney, 399 S.C. 346; State v. Kelsey, 331 S.C. 50 (1998).

The trial court's findings of fact will be upheld unless clearly erroneous. See, e.g., State v. Quattlebaum, 338 S.C. 441 (2000); see also State v. Peer, 320 S.C. 546 (Ct. App. 1996). (A jury verdict must be upheld if there is any evidence to sustain it and review must be in the light most favorable to the State). The veracity of witnesses or the weight

of the evidence is not to be considered, only whether there was sufficient evidence to submit the case to the jury may be reviewed. See id; see, e.g., Townes Associates, Ltd. V. City of Greenville, 266 S.C. 81 (1976) (factual findings by the jury shall not be disturbed unless the record below shows no evidence to reasonably support the jury' s findings).

Appellants argument is concerned with the weight and veracity of the States evidence against him, which is not to be considered. The trial court was correct in finding the State presented evidence of the crime alleged. Under SC Code 44-53-375, a person commits the crime of trafficking in methamphetamine (400 grams or more) where the person

> manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or **conspires** to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370.

Id *(emphasis added)*.

The State is allowed to prove a conspiracy from commencement to conclusion and overt acts done in furtherance of it. See State v. Wilson, 315 S.C. 289, 294 (1993). The State is allowed great latitude in introducing circumstantial evidence of conspiracy and the amounts of drugs involved in various transactions as proof of the conspiracy may be presented to a jury. See id.

The state presented numerous witnesses who testifed about the Defendants sale of methamphetamine to individuals bringing the methamphetamine back for sale in South Carolina. The witnesses testified to an aggregate weight over 400 grams of

methamphetamine sold by Appellant, which included the following testimony. Adams testified to purchasing more than user amounts from Appellant. (R. p. 407, lines 7-12). Trebuchon testified to taking Ms. Bashaw to Atlanta for her to obtain methamphetamine from Appellant and to doing this around a dozen times. (R p. 533, lines 3-6). He also testified that he went by himself twice on behalf of Mr. Adams to purchase methamphetamine from Appellant. (R. p. 534, lines 3-6and Ms. Bashaw). Each of these trips was a purchase for " usually 4 ounces." (R. p. 534, line 14). Gambrell testified that he would purchase 2 ounces on one occasion and another 2 to 4 ounces 5 or 6 more times. (R. p. 583, lines 21, p. 584, lines 17-25). Moore testified that he bought an ounce at a time for 4 to 5 times. (R. p. 636, line 15-24). Lollis testified that Appellant usually did not sell less than an ounce at a time. (R. p. 74, lines 11-12); Griffin testified that he was buying ounces and moved up to buying pounds. (R. p. 146-147); Eades stated she purchased 2-3 ounces on one occasion. (R. p. 200, line 16); Bashaw testified to buying between 2 to 4 ounces on average of 2 to 3 times a week for a period of about 9 months. (R. p. 471, lines 21-25, 472, lines 6-10).

In the light most favorable to the State, sufficient evidence was presented to submit the case to the jury that Appellant committed the crime of Trafficking Methamphetamine and the trial court did not commit error. The jury was presented sufficient evidence that Appellant was repeatedly selling methamphetamine in large amounts, at the same locations in the Atlanta, Georgia area to individuals known to him to reside in South Carolina. Accordingly, the trial court's findings were not clearly erroneous and the denial of the directed verdict motion must be affirmed.

II. THE EXTENT OF CROSS EXAMINATION PERMITTED BY THE TRIAL COURT WAS NOT REVERSIBLE ERROR.

A. **Standard of Review.**

Absent a manifest abuse of discretion, the trial court's ruling as to the proper scope of cross examination allowed should be upheld. See State v. Whatley 407 S.C. 460, 466 (Ct. App. 2014) (citing State v. Quattlebaum, 338 S.C. 441, 450, 527 S.E.2d 105, 109 (2000)); see also State v. Johnson, 338 S.C. 114, 124-25 (2000).

B. The Confrontation Clause has not been violated because even if the trial court erred in limiting cross examination, Appellant was not prejudiced and the error was harmless.

The State sought a manner of questioning witnesses that would not reveal the possible sentence the court could impose upon the Defendant should the jury reach a guilty verdict. Upon the State raising the issue, the trial court expressed concern that the jury may learn the possible sentence or mandatory minimum sentence the defendant was facing. (R p. 48, lines 4-15). Counsel for the State attempted to clarify the request in light of State v. Gracely (below-cited) and articulated the concern only that defense counsel somehow phrase questions in a manner that would not indicate that Appellant was facing a mandatory minimum. (R. p. 47, lines 1-5).

Thus, the trial court structured examination of witnesses so that counsel was not allowed to specifically inquire as to the possible sentence of trafficking Methamphetamine 400 grams or more, but allowed to counsel to inquire of the witnesses as to originally being charged with the greater offense (that being the same as Appellant), and plead to a lesser offense, as well as the possible sentencing range of the lesser

offense. The understanding appeared to be that the jury could "put two and two together" that the witness "could have gotten more" for the greater offense. (R p. 49, lines 5-25).

Even given this ruling by the trial court, the jury was presented information about the possible sentence of Trafficking 400 grams or more without objection by the State. During cross examination of Chad Moore, he acknowledged he was initially facing the same charge as Appellant of Trafficking Methamphetamine 400 grams and the possible penalty was 30 years. (R. p. 651, lines 14-25, p 652, lines 1-5). During cross examination of Jason Griffin he acknowledged he could have received 25-30 years as a possible sentence on the initial charges of Trafficking 400 grams. (R. p. 172, lines 10-16).

While not as clear as may be preferred, the information was made known to the jury. To that end, as below-articulated and cited, witnesses pleading to lesser charges with recommendations for reduced sentences admitted to receiving significant reductions for incarceration.

The Sixth Amendment provides for the right to confront ones' accusers and the right to meaningful cross examination of an adverse witness. See U.S. Const. Amend VI. See also Whatley 407 S.C. at 467. "This does not mean, however, that the trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination." Whatley 407 S.C. at 467 (quoting State v. Aleksey, 343 S.C. 20, 33-4 (2000). " 'Trial courts retain wide latitude... to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant.'" Id. (quoting Aleksey, 343 S.C. at 33-4).

It is recognized that due to competing concerns with some witnesses, generally, the jury is " ' not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence. However, other constitutional concerns, such as the Confrontation Clause, limit the applicability of this rule in circumstances where the defendant's right to effectively cross-examine a co-conspirator witness of possible bias outweighs the need to exclude the evidence.' " Whatley at 396-7, quoting State v. Mizzell, 349 S.C. 326, 331.

For the limitation of cross-examination by the trial court to be reversible error, Appellant must show he was unfairly prejudiced by the limitation. See State v. Brown, 303 S.C. 169, 171 (1991). The Constitution entitles a criminal defendant to a fair trial, not a perfect one. See Delaware v.Van Arsdall. 475 U.S. 673, 680 (1986) (citing *E.g.,* United States v. Hasting, 461 U.S. 499, 508– 509, 103 S.Ct. 1974, 1980, 76 L.Ed.2d 96 (1983); Bruton v. United States, 391 U.S. 123, 135, 88 S.Ct. 1620, 1627, 20 L.Ed.2d 476 (1968).] [" the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." Delaware v. Fensterer, 474 U.S. 15, 20, 106 S.Ct. 292, 295, 88 L.Ed.2d 15 (1985) (*per curiam*) (emphasis in original).).

A violation of the Confrontation Clause exists when the criminal defendant was " prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors ... could appropriately draw inferences relating to the reliability of the witness." State v. Mizzell, 349 S.C. 326, 331 (2002)(quoting Delaware

v. Van Arsdall, 475 U.S. 673, 680 (1986) (internal quotation marks omitted); see also State v. Gracely, 399 S.C. 363, 372 (2012); Whatley at 467-8.

Our Supreme Court has addressed the limitation of cross-examination of a cooperating witness avoiding a mandatory minimum sentence. See gen., State v. Gracely, 399 S.C. 363. In Gracely, it was held that a cooperating witness avoiding a *mandatory minimum* sentence is " critical information that a defendant must be allowed to present to the jury." 399 S.C. at 374-5. However, a limitation of cross examination does not prejudice the defendant when it does not prevent a " full picture of possible bias." Gracely, 399 S.C. at 377; see also Whatley at 469 (quoting Gracely).

Limitation of cross examination is not per se reversible error; rather, the limit on cross examination by the trial court must be reviewed under a harmless error analysis. See Van Arsdall, 475 U.S. at 684 (holding the denial of a defendant's opportunity to impeach a witness for bias, like other Confrontation Clause errors, is subject to harmless-error analysis); Gracely at 375; see also Whatley at 469-70 (citing Gracely).

A conviction may be affirmed where there is trial error if the error was harmless. See, e.g, State v. McWee, 32 S.C. 387 (1996); State v. Benning, 338 S.C. 59 (Ct. App. 1999) (error must be prejudicial). Error is harmless if it could not have reasonably affected the result of the trial. See State v. Kelly, 319 S.C. 173 (1995); see also Thomasko v. Poole, 349 S.C. 7 (2002) (error is harmless if the appellate court finds beyond a reasonable doubt the error did not contribute to the verdict.); State v. Clute, 324 S.C. 584 (Ct. App. 1996)(Constitutional error may be harmless if considering the record

on appeal, the appellate court finds beyond a reasonable doubt the error did not contribute to the verdict.)

Whether an error concerning witness credibility is harmless depends on a number of factors, which include " the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." Van Arsdall at 684 (citations omitted); see also Whatley at 468-9 quoting Van Arsdall and citing Gracely); State v. Beckham, 334 S.C. 302 (1999).

In Whatley, a charge against a witness was reduced from an offense with a mandatory minimum sentence and the trial court erred in precluding Whatley from questioning about the sentences being faced for the reduced charges. However, this court found in Whatley there was no error by the trial court limiting cross examination. This court noted that " in view of the first three Van Arsdall factors, the importance of a witness's testimony to the prosecution's case and whether it was cumulative to or corroborated by other evidence, we find Whatley suffered no prejudice." See id. at 375, 731 S.E.2d at 886. This Court found the witnesses testimony was important to the State's case against Whatley, and it was cumulative to, and corroborated by, another' s testimony. See id. The court also found in Whatley, as to the fourth Van Arsdall factor, that the extent of cross-examination allowed, also does not support a finding of prejudice. Aside from sustaining the State's objection to Whatley's question concerning the sentences Ussery faced for her accessory charges, the trial court did not restrict Whatley's cross-examination of Ussery in any way. See id.

Similarly, an error in this case was also harmless error as above-argued. First, the information Appellant sought to explore was ultimately presented in some fashion to the jury. Second, when applying the Van Arsdall factors, the Appellant has not suffered prejudice.

While not addressed specifically with each witness having initially faced a greater charge and mandatory minimum, the jury was able to learn enough to conclude each witnesses facing the charge of Trafficking Methamphetamine 400 grams or more (as well as Appellant) was subject to a possible penalty of 25 to 30 years. As above-noted, notwithstanding the trial court's limiting ruling, the information Appellant was seeking to have revealed about possible sentencing of the greater offense of Trafficking Methamphetamines 400 grams, while perhaps, not in the most precise manner one may prefer, was in actuality presented to the jury without objection by the State. During cross examination of Chad Moore, he acknowledged he was initially facing the same charge as Appellant of Trafficking Methamphetamine 400 grams and the possible penalty was 30 years. (R. p. 651, lines 14-25, p 652, lines 1-5). During cross examination of Jason Griffin he acknowledged he could have received 25-30 years as a possible sentence on the initial charges of Trafficking 400 grams. (R. p. 172, lines 10-16).

Applying the Van Arsdall factors, Appellant was likewise not prejudiced by the limitation of cross examination. The testimony of the witnesses at issue was important to the State's case; these witnesses corroborated each other' s testimony and were cumulative. While these witnesses may not be the best members of society, the best source of information about drug dealing is from fellow drug dealers.

Multiple witnesses testified to the same or similar information about Appellant' s actions. Specific instances and details were presented independently from each other. For example, witnesses consistently testified to having phone numbers for Appellant and that they would call Appellant ahead of time before traveling to Georgia to arrange a deal for Methamphetamine. See testimony of Lollis (R. p. 87 lines 13-23); Griffin (R. p. 134, lines 23-25, p. 135, lines 1-3; p. 150, lines 10-12); Eades (R. p. 185, lines 9-10); Bashaw (R. p. 462, lines 13-21); Moore (R. p. 640, lines 20-22); Gambrell (R. p. 582, lines 15-19); Moore (R. p. 640, lines 20-22). Witnesses testified to being introduced to Appellant and introducing him to others. See testimony of Lollis, (R. p. 61, lines 9-15; p. 62, lines 8-9); Moore. (R. p. 640, lines 20-22); Bashaw, (R. p. 458, lines 8-25, p. 459, lines 1-16; Bergholm (R. p. 606, lines 1-15; Moore (R. p. 634, lines 13-24, p. 639, lines 9-11).

Witnesses mentioned the same locations to conduct the deals with Appellant such as the Waffle House, the Shell Station, apartments and a bar. See testimony of Lollis, (R p. 91, lines 7-10 (Shell Station)); Griffin, (R. p. 136, lines 15-25, p. 137, lines 3-23(Shell Station, exit 101 and Appellant' s apartment)); Eades (R. p. 185, lines 9-10, 22-23, p. 189, lines 2-11, p. 199, lines 13-17 (Waffle House, Appellant' s apartment, Shell Station and bar)); Adams, (R. p. 401, lines 2-16, p. 402, lines 10-12 (apartment and bar)); Bashaw, (R. p. 459, lines 1-2, p. 460, lines 19-23 (apartment and bar)); Chastain (R. p. 562, lines 1-19 (Waffle House)), Gambrell (R. p. 585, line 15-16 (Waffle House)); Bergholm, (R. p. 607, lines 6-13 (Waffle House)); Moore R. (p. 637, lines 2-5 (apartment)). While witnesses did not recall phone numbers and addresses they provided details on how to arrive at locations, such as exit number 101, the Shell Station and directions to Appellants apartment. See testimony of Lollis (R. p. 89, lines 9-24, p. 90,

lines 16-25); Griffin R. (p. 124, lines 10-22); Eades (R. p. 190 lines 1-15); Bashaw (R. p. 461, lines 2-9); Gambrell (R. p. 585, lines 17-25, p. 586, lines 1-8); Bergholm (R. p. 607, lines 4-22); Moore (R. p. 637, lines 2-12).

Witnesses also recounted specific encounters with Appellant such as the meet at a Shell Station. See testimony of Lollis (R. p. 91, lines 7-12); Eades (R. p. 195, lines 5-25, p. 196 lines 1-25, p. 197, lines 1-25, p.198, lines 1-25); the time Ms. Bashaw, and Mr. Bishop retrieved a transmission where Bishop was attempting a controlled buy from Appellant. See testimony of Bishop (R. p. 280, lines 19-25, p. 281, lines 1-25, p. 287, lines 3-8); Adams (R. p. 408, lines 17-25, p. 409, lines 1-22); Bashaw (R. p. 474 - 478); the time Ms. Bashaw and Mr. Adams re-engaged with Appellant. See Adams (R. p. 440, lines 11-25, p. 441 lines 1-25); Bashaw (R. p. 481, lines 10-25, p. 482, lines 1-5). Witnesses also recalled Appellant being in South Carolina at Mr. Griffin' s residence and Mr. Adam' s residence. See testimony of Griffin (R. p. 147, lines 16-25, p. 148, lines 1-4, 21-25); Adams (R. p. 405, lines 19-24); Trebuchon(R. p. 539, lines 5-25_; Chastain (R. p. 564, lines 11-18); Bergholm (R. p. 607, lines 15-16). Other details of dealing with Appellant were consistent as well, such as the use of green dot cards for payment. See testimony of Adams (R. p. 446, lines 21-25, p. 447, lines 12-19); Bashaw, (R. p. 468, lines 12-18).

Witnesses also independently during the course of investigation, and at different times, selected Appellant from a photo-line up and also identified him in court as their source for Methamphetamine. See testimony of Lollis (R p. 76, lines 1-25, p. 77, lines 5-25); Eades (R p. 207, lines 1-17); Griffin (R p. 155, lines 21-25, p. 156, lines 1-19); Bishop (Rp. 288, lines 1-13, p. 289, line 6); Adams (R p. 416, lines 4-18); Bashaw (R p.

482, lines 4-25, p. 483, lines 1-25, p. 484, lines 1-20, p. 485, lines 1-6); Trebuchon (R p. 542, lines 1-25, p. 543, lines 1-18); Gambrell (R p. 591, lines 7-25, p. 592, lines 1-20); Bergholm (R p. 614, lines 12-25, p. 615, lines 1-22); Moore (R p. 642, lines 11-25, p. 643, lines 1-25).

Witnesses testified that Appellant knew they were from South Carolina. See testimony of Lollis (R p. 62, lines 2-7); Adams (R p. 406, lines 22-24, p. 407, lines 12-15); Bashaw (R p. 467, lines 201-21). Large amounts were consistently purchased from Appellant. As above-addressed, individuals testified to large amounts and repeat buys from Appellant. See testimony of: Adams (R. p. 407, lines 7-12); Trebuchon (R p. 533, lines 3-6, p. 534, lines 3-6, 14); Gambrell (R. p. 583, lines 21, p. 584, lines 17-25); Moore (R. p. 636, line 15-24); Lollis (R. p. 74, lines 11-12); Griffin (R. p. 146-147); Eades (R. p. 200, line 16); Bashaw (R. p. 471, lines 21-25, p. 472, lines 6-10).

Moreover, the extent of cross examination otherwise permitted was significant. Witnesses repeatedly acknowledged a significant reduction in possible sentence and the need to be truthful for their cooperation as part of the plea deal. Witnesses admitted to other criminal convictions as well. See testimony of Lollis (R, p. 54, line 22, p. 55, lines 6-23, p. 101, p. 99, lines 20-25, p.100, lines 11-17, p. 101 lines 7-9); Griffin, R, p. 113, lines 9-20, p. 114, lines 8-19, p. 171, lines 23-25, p. 172 lines1-9); Eades (R p. 222, lines 19-21, p. 223, lines 1-24; Adams (R. p 430 -433); Bashaw (R. p 496, lines 1-8); Chastain (R. p. 560, lines 1-17); Moore (R. p. 651, lines 14-25, p. 652, lines 1-13). Counsel was effective in cross examination of witnesses in substance. For example, defense counsel had Ms. Bashaw admit she had lied to law enforcement (R. p. 516, lines 1-8). On re-

direct it was clarified that at the time she provided the statement to law enforcement she did not know Appellant and it was actually not untrue (R. II, p. 515, lines 4-21).

It is important that trial counsel was able to argue credibility to the jury. The judge's ruling in no way limited defense counsel from pointing out to the jury that the witnesses were drug dealers, and criminals and that each had something to gain from testifying and cooperating with law enforcement. In closing argument, trial counsel argued about the credibility of witnesses in general and, significantly, did not point out the varying deals witnesses had obtained. (R. p. 717, 19-25, p. 718, 1-25, p. 719, 1-25). Trial counsel merely pointed to the witnesses " who have not been law abiding." (R. p. 718, lines 20-25). Further, the jury was instructed by the trial court on the credibility of witnesses prior to deliberations. (R. p. 726, lines 17-25, p. 727, lines 1-10)

While the limit of cross examination is similar to that in Gracely, the extent of cross examination otherwise permitted allowed for the Defendant to explore possible bias and provide a full picture to the jury. This case differs from Gracely because here the State presented many more witnesses with details and consistency. Appellant was able to engage in appropriate cross-examination and was able to show potential bias so that the jury could draw inferences as to reliability of witnesses. See State v. Mizzell, 349 S.C. 326, 331 (2002)(quoting Van Arsdall, 475 U.S. 673 (internal quotation marks omitted).

Also of note, the State entered evidence of methamphetamine. Witnesses testified the source of that methamphetamine was Appellant. The buy bust at Simmons residence involving Simmons, Griffin, and Eades resulted in a seizure of a quantity of methamphetamine attributed to Appellant. (R., p 154, lines 1-13; p 205, lines 1-25, p.

206, lines 1-25). Additionally, the controlled purchase by Bishop on Bashaw resulted in methamphetamine attributed to Appellant. Ms. Bashaw testified as such. (R. p. 473, 15-21).

Even without the testimony of the witnesses in question the State presented evidence of Trafficking 400 grams or more. Witness Charles Norman Trebuchon provides enough evidence for a jury to convict Appellant. Trebuchon was never charged and did receive the benefit of a plea deal to a reduced sentence. Trebuchon testified to driving Ms. Bashaw to Atlanta for her to obtain methamphetamine from Appellant. He recalled specific instances and testified that he took her " half a dozen to a dozen" times. (R, p. 533, lines 3-6). He also testified that he went by himself twice on behalf of Mr. Adams to purchase methamphetamine from Appellant. (R p. 534, lines 3-6and Ms. Bashaw). Each of these trips ended in a purchase of " usually 4 ounces." (R p. 534, line 14).

Christopher Bishop was not charged in this case. He testified that he was a Confidential Informant (" CI") for Greenville County. (R p. 275, lines 16-25, p. 276, lines 1-2). He was wired by law enforcement and provided money to conduct a controlled buy from Appellant with Ms. Bashsaw. (R. p. 281, lines 4-20). Bashaw and Javin Adams had contacted Bishop to go to Georgia with her to get a transmission from Appellant. (R p. 294, lines 13-15). Bishop testified transaction was not completed because Appellant came to suspect that an unmarked police car was following him. (R. p. 284, lines 1-6).

Sometime after this incident, Bishop identified Appellant in a photographic lineup. (R. p. 287, lines 21-25). Bishop was unable to record any of the conversations

because the wire recorder provided to him had technical problems. (R. p. 281, lines 22-25; p. 282, lines 1-7).

Likewise, Larry Anthony Gambrell ("Gambrell") was not charged in this case and testified against Appellant. He testified that he met Appellant through Lollis, who would took him to an apartment in Atlanta to purchase methamphetamine and that went to Atlanta on five or six more occasions. (R., p. 579, lines 16-20; p. 580, lines 5-11, p. 584, lines 19-21). On each of these occasions, he purchased two to four ounces of methamphetamine. (R. p. 585, lines 1-4).

Any limitation of cross did not prejudice defendant and any error by the trial court was harmless. The jury was ultimately presented the information concerning sentencing of the greater charge that witnesses originally faced prior to their cooperation. Further, under the Van Arsdall factors, Appellant was not prejudiced. The State presented numerous witnesses, necessary to the State' s case, which provided corroborating evidence and the extent of cross examination otherwise allowed was meaningful. Appellant was able to present a full picture to the jury.

III TESTIMONY BY A STATE'S WITNESS AS TO THE ORGANIZATION FOR THE SALE AND DISTRIBUTION OF METHAMPHETAMINE WAS PROPER AND ASSISTED THE TRIER OF FACT.

A. Standard of Review

In order for an issue to properly be preserved for appellate review, the issue must be raised to and ruled upon by the trial court; raised by the appellant; raised in a timely manner; and raised to the trial court with sufficient specificity. See State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); " If a party fails to properly

object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005). see also State v. Pauling, 322 S.C. 95, 100, 470 S.E.2d 106, 109 (1996) (" Having denied the trial judge an opportunity to cure any alleged error by failing to contemporaneously object to the charge, Appellant is procedurally barred from raising these issues for the first time on appeal.").

Appellant is arguing testimony using the term "conspiracy" was improper. However, Appellant did not consistently raise this issue by objection at the trial level. Appellant references the testimony of Ashley Asbill, but trial counsel did not object when other witnesses used the term conspiracy. Nor, did trial counsel object when the State phrased a question using the term conspiracy.

As such, this issue is not properly preserve for review. If this court deems it appropriate to review the issue as raised by Appellant, the standard of review is abuse of discretion. See, e.g, State v. Mansfield, 343 S.C. 66, (Ct. App. 2000); see also Jean Hoefer Toal et al., Appellate Practice in South Carolina 202 (2nd ed. 2002)(explaining "the trial judge has considerable latitude in ruling on the admissibility of evidence" and the ruling will not be disturbed absent abuse of discretion or legal error resulting in prejudice).

B. The State's witness familiar with narcotics investigation educated the jury as to organizational distribution of methamphetamine and assisted the jury in understanding the evidence presented to it.

Appellant states "[e]xpert testimony on issues of law is usually inadmissible." and argues it was improper for Agent Ashley Asbill to comment on the conspiracy at

hand and that such testimony bolstered the State's argument that its case met the legal definition of conspiracy. (See Initial Brief of Appellant at p 34).

This argument lacks merit. To being, Agent Asbill was not treated as an expert witness. (R. p. 654-664). Any witness may testify about perception and if it will help present a clear understanding to the jury. Rule 701 SCRE provides:

> " If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training."

Id. (Opinion Testimony by Lay Witnesses).

Asbill testified that he was an experienced narcotics officer and of his involvement with this case. (R. p. 655-664). Based upon his training and experience, as well as his direct knowledge of the case on trial, his testimony relative to conspiracies for trafficking methamphetamine or the organizational structure of such was appropriate and would assist the trier of fact.

Furthermore, pursuant to Rule 704 SCRE, " [t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Id. (Opinion on Ultimate Issue).

Under SC Code Section 44-53-375, a person commits the crime of trafficking in methamphetamine (400 grams or more) where the person

> manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense,

> deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370.

Id.

The legal definition of conspiracy was not the ultimate question for the jury. A question of law is a question for the trial court and the trial court instructed the jury on the law of trafficking. Whether Appellant was guilty of Trafficking was the ultimate question for the jury and whether Appellant conspired is one of many considerations in determining guilt of Trafficking.

Appellant is again arguing against the weight of the evidence and not a legal error by the trial court. The jury was free to consider this evidence and determine the weight to give the testimony. There was no legal error by the trial court and Appellant has not demonstrated prejudice by the testimony of Ashley Asbill.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

December 10, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
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SC Court of Appeals

Appeal from Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2013-001562

THE STATE,

Respondent,

vs.

ANTONION EMERSON TATE,

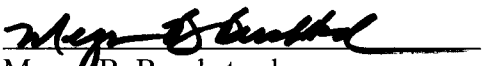
Appellant.

PROOF OF SERVICE

I, Megan B. Burchstead, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wendy J. Keefer, Esquire
Keefer 7 Keefer, LLC
1643B Savannah Hwy, Suite 226
Charleston, SC 29407

I further certify that all parties required by Rule to be served have been served. This 10th day of 2014.



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ATTORNEY GENERAL

December 10, 2014

Wendy J. Keefer, Esquire
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1643B Savannah Hwy, Suite 226
Charleston, SC 29407

RE: State v. Antonio Emerson Tate
Appellate Case No. 2013-001562

Dear Ms. Keefer:

Enclosed are two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Megan B. Burchstead
Assistant Attorney General

MBB/
Enclosures

cc: Honorable Jenny A. Kitchings

ALAN WILSON
ATTORNEY GENERAL

December 10, 2014

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, S. C. 29211

Re: State v. Antonio E. Tate
Appellate Case No. 2013-001562

Dear Ms. Kitchings:

Enclosed for filing is the original copy of the Initial Brief of Respondent and Designation of Matter along with Proof of Service in the above-referenced case.

Sincerely,

Megan B. Burchstead
Assistant Attorney General

MBB/
Enclosures

cc: Wendy J. Keefer, Esquire

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