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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Letitia H. Verdin, Circuit Court Judge

CASE No.: 2013-001562

State of South Carolina,Respondent,

v.

Antonio Emerson Tate,Appellant.

**RECORD ON APPEAL
VOLUME IV**

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1 that informant could deal with, uh, and once we do that, uh,
2 we would bring in some of those defendants and interview
3 'em, uh, and basically ask for their cooperation with the
4 government to further the investigation along to who they
5 were getting their methamphetamines from.

6 Q And as that went on, did you start with, uh, bottom
7 low-end users or just start at the top?

8 A I would start low.

9 Q Alright, how low?

10 A Uh, gram, a couple of grams, 3 grams, that ---

11 Q Now can ---

12 A --- of that level.

13 Q --- can you explain how you build up from there.

14 A Sure, I mean, uh, if you've got an individual who is
15 let's say buyin' a gram or 2 grams at a time, you take that
16 individual, uh, and you make some controlled purchases from
17 whoever that person's supplier is. Uh, at some point in
18 time, uh, the decision's made to approach that person that
19 you're buying from, basically, uh, let them know that, uh,
20 you've been purchasin' from 'em and they could either get on
21 board and cooperate or or not.

22 Q And do you gradually work your way up the ladder?

23 A That's correct, it's it's you're you're always lookin'
24 for the bigger bigger source.

25 Q And were you able to gain information from higher

1 higher sources in this conspiracy?

2 A Yes, we were.

3 Q Without going into any details in what anyone in
4 particular said, uh, what individuals, uh, do you recall
5 meeting with to eventually gather information to work your
6 way up the chain?

7 A We -- which individual?

8 Q And just a general overview of how you built that case.

9 A I'm sorry, I don't understand. What do you mean?

10 Q Oh, I'm sorry, I didn't ask it very well. Uh, you said
11 that you started working with users who were doin' buys on
12 bigger ---

13 A I ---

14 Q --- bigger fish ---

15 A Yes.

16 Q --- and then you would interview people ---

17 A That's correct.

18 Q --- how -- and that's the general practice.

19 A That's correct.

20 Q How did that go about in this case?

21 A This this case here started out with the informant that
22 Investigator Ayers had, uh, and it eventually led to, uh,
23 other individuals who were named as suppliers, uh, some
24 purchases were made, some purchase were not made, but
25 through interviews and some of those controlled purchases,

1 it was established that the the source of the
2 methamphetamines for this particular conspiracy had emanated
3 from Atlanta.

4 Q And some of the people that you eventually interviewed
5 and agreed to cooperate, have some of those individuals
6 testified here in this trial?

7 A Yes.

8 Q And at what point did they begin -- did most of them
9 begin their cooperation?

10 A Most of 'em begin just as soon as you talk to 'em, uh,
11 when ---

12 Q Where ---

13 A --- when you go for an interview, most of 'em, uh, will
14 cooperate more often than not.

15 Q And does the timing and level of cooperation of these
16 defendants have anything to do with how their cases are
17 eventually resolved?

18 A No, uh, that's -- all I'm doin' is gatherin' facts and
19 the evidence in the case.

20 Q Now, Agent Asbill, did you obtain or now since you were
21 with SLED, why was SLED specifically brought into this
22 investigation?

23 A Well -- and part of a state grand jury investigation is
24 once you've established that it involves, uh, different
25 counties, more counties, uh, to some sheriff's offices or

1 city police departments it becomes a jurisdictional problem.
2 Uh, SLED's usually there 'cause we have statewide
3 jurisdiction.

4 Q Now so we're -- who was the team of investigators that
5 focused on this case?

6 A On this case it was Investigator Ayers with the, uh,
7 Greenville County, uh, Sheriff's Office and Investigator,
8 uh, Brett Barwick with the Pickens County Sheriff's Office.

9 Q Now and and were you the lead case agent from the
10 statewide agency?

11 A That's correct, yes.

12 Q During the course of the investigation, uh, did you
13 attempt to obtain any kind of, uh, phone or financial
14 records?

15 A We did not.

16 Q Can you explain why not?

17 A Quite often times, more times than not, the, uh, the
18 dealers, they're dealing in cash, they are dealing with, uh,
19 prepaid phone services. Uh, their records are not generally
20 kept, uh, if you do happen to find a record, uh, let's say
21 on a car or whatever, unless that person's willing to ci --
22 to decipher it, lots of times you don't know what you're
23 lookin' at unless that person cooperates and tells you this
24 is how it's spelled out and this is what somebody owes me.

25 Q Now when you're looking at at phone records, are there

1 ever problems with identifying particular phones to
2 particular people?

3 A Yes.

4 Q Can you explain what those problems are?

5 A Uh, they may loan somebody a phone, uh, the phone may
6 be in a a a family member's name who doesn't have anything
7 to do with, uh, narcotics dealing. Uh, if it's a prepaid
8 service, most of those don't have subscriber information.
9 Uh, so you're not gonna know whose phone it is.

10 Q So if if the records wouldn't identify who owned the
11 phone, would they have much evidentiary value?

12 A It would not.

13 Q Uh, throughout this trial we've, uh, had a chance to
14 look at a number of photographic lineups. How are the photo
15 lineups in this case created?

16 A The photo lineup for this case was created when, uh,
17 the investigators went to Georgia, there was a tag number
18 that was obtained from, uh, uh, suspect's vehicle. Uh, our
19 fusion center which is the the analyst that process
20 information or look at information were able to obtain the
21 tag information was also be able obtain -- obtained a
22 Georgia DA -- DMV photograph of the subject off the tag
23 which was, uh, uh, Antonio Tate.

24 Q So and, in summary, how was the photograph that
25 everyone had circled on these photo lineups, where did that

1 photograph come from?

2 A That photograph came from the fusion center which is
3 our combination intelligence center down there. They made
4 it up, uh, ---

5 Q And whose photograph is that?

6 A On that particular lineup is Antonio Tate.

7 Q Did you participate in the operations of the South
8 Carolina agents going to Atlanta?

9 A I did not.

10 Q Were you aware that those operations were going on?

11 A I was.

12 Q Following those operations, did you receive any files
13 or indication that there were files from Gwinnett County in
14 Georgia?

15 A I did not.

16 Q Have you made inquiries to them in Georgia to find out
17 if there were any files?

18 A I have not.

19 Q Okay. To your knowledge, was anyone else involved with
20 this investigation given any files from Georgia?

21 A Not to my knowledge.

22 Q How closely did you work with the other investigators
23 in the case?

24 A We were probly in contact with each other every day or
25 every other day at some point, at different points in time.

1 Q Now this particular conspiracy, can you describe and
2 explain to the jury the ---

3 MR. FARNHAM: Objection, Your Hon -- Your Honor, uh,
4 believing conspir -- conspiracy, that's for the jury to
5 decide. He can't make a conclusory statement like that.

6 THE COURT: If you'll rephrase, please.

7 BY MR. UNDERWOOD:

8 Q The group of individuals that was indicted for a
9 conspiracy, can you explain to the jury their organizational
10 makeup and how does that compare to a standard
11 methamphetamine conspiracy?

12 A The organizational makeup of a conspiracy generally,
13 uh, starts at the bottom and leads up to the top with the
14 top person being the, I'm not gonna say the ultimate source,
15 but even in the run of an investigation is the end source.
16 It be the top, top level.

17 Q Alright, and the individuals that were indicted for,
18 uh, this conspiracy, this indictment dealing with the
19 Atlanta group, how is that group organized?

20 A Most everyone here were traveling to Atlanta to pick up
21 their methamphetamines from the defendant.

22 Q And were there other individuals that were eventually
23 receiving this methamphetamine that were not indicted?

24 A Yes, there were.

25 Q Were they higher or lower than the people that were

1 indicted?

2 A Lower.

3 Q So is it, is it fair to say that those who were
4 indicted were the higher level dealers?

5 A They were dealing the substantial amounts.

6 Q And to the extent of this investigation, who was the
7 highest source in this particular group?

8 A Antonio Tate.

9 (Whereupon, a discussion was held off the record.)

10 Q Thank you, Agent Asbill. Please answer any questions
11 the defense may have.

12 THE COURT: Okay.

13 MR. FARNHAM: Thank you. Your Honor, thank you.

14 CROSS-EXAMINATION BY MR. FARNHAM:

15 Q Agent Asbill, you just made a conclusory statement that
16 Antonio Tate is the high source in this conspiracy, correct?

17 A The investigation at the end of the investigation, yes,
18 he was the highest we got.

19 Q Okay, I don't mean to insult you but could you tell me,
20 other than these people that have said that they did this,
21 what evidence do you have that Mr. Tate is involved in this
22 conspiracy?

23 A That's what we have.

24 Q Just the word of these people, correct?

25 A That's correct, the sworn statements of some of

1 indicted and not indicted, uh, co-conspirators.

2 Q So we've gotta believe their testimony in order to find
3 that he's, beyond a reasonable doubt, part of this
4 conspiracy, is that your statement?

5 A Could you repeat question?

6 Q We have to believe them, beyond a reasonable doubt, in
7 order to have him part of this conspiracy?

8 A That's correct.

9 Q There's no other piece of evidence that corroborates
10 anything they've told you?

11 A That's correct.

12 Q Now I know you've tried to show that cell phones and
13 photo lineups and, uh, any other document evidence is not
14 important, but in every case that's involved in this
15 conspiracy, every other person that's come into this court
16 and testified you have solid documentary evidence their
17 involvement, don't you? You've got buys?

18 A On some, yes, we do.

19 Q You've got records of them selling, having documented
20 money in their hands?

21 A On some of the individuals, yes, we do.

22 Q You've got cell phone conversations between parties,
23 you've listened to them on the jail, uh, conversations when
24 they've talked back and forth?

25 A Yes, sir, I haven't listened to any but ---

1 Q But, uh, Mr. Ayers has, correct, Agent Ayers?
2 A I believe he has.
3 Q Okay, and you just told, uh, the prosecutor in your
4 direct testimony that more often than not you're not able to
5 get cell phone records, but in this case you actually had
6 three Verizon numbers that you could have gone and
7 subpoenaed records for ---
8 A Yes, sir, could have.
9 Q --- but you didn't?
10 A Yes.
11 Q You could have actually given us some hard evidence
12 that Mr. Tate had one a those phones, but you didn't do it,
13 correct?
14 A Uh, no, we did not.
15 Q Okay, and other than them telling you they drove to
16 Atlanta, you you said in direct testimony that Mr. Tate was
17 supplying these people and that they were driving down to
18 Atlanta to purchase drugs, but you don't know that for a
19 fact, do you?
20 A I I know what they sworn and told me, yes.
21 Q Okay. Are these the same people that sworn, that have
22 have actually told this jury I'm lying to you, that's what
23 you're relying on?
24 A That's correct.
25 Q Okay. Wouldn't you really like to have some more solid

1 evidence in this case, sir?

2 A I wish I had some better witnesses, but we have to work
3 with what we have to work with.

4 Q Okay, and that's what you're expecting us to work with
5 as well, correct?

6 A That's correct. That's what we did.

7 Q Alright, thank you, sir.

8 THE COURT: Any redirect?

9 MR. UNDERWOOD: Very briefly, Your Honor,

10 REDIRECT EXAMINATION BY MR. UNDERWOOD:

11 Q The limited amount of phone information that the
12 investigation was able to turn up, were any of those phones
13 attached to the name Antonio Tate?

14 A None that I'm aware of.

15 Q Do you have any reason, based on the investigation, any
16 reason to not believe the individuals who provided
17 information that they got their methamphetamine from Antonio
18 Tate?

19 A I don't have any reason not to believe it.

20 MR. UNDERWOOD: Nothing further, Your Honor.

21 THE COURT: Mr. Farnham, anything else?

22 RECROSS EXAMINATION BY MR. FARNHAM:

23 Q If a witness in this courtroom tells a jury they're
24 lying to them, you still wanna believe them?

25 A I believe that when they testify that that is who they

1 purchased their methamphetamines from, I do believe 'em.
2 Q How do you know they're not tryin' to protect the real
3 source because he may be in more danger than a man who's
4 never had a criminal history?
5 A I believe they would have told it.
6 Q You do?
7 A I do.
8 Q And were you a part of the North Carolina conspiracy
9 investigation?
10 A Yes.
11 Q There was a man shot and killed in that, in in
12 conspiracy, wasn't there?
13 A I'm not aware of that.
14 Q You sure?
15 A Yes.
16 Q You don't remember that?
17 A No, sir.
18 MR. FARNHAM: That's all I have, Judge.
19 THE COURT: Anything else?
20 MR. UNDERWOOD: Nothing further, Your Honor.
21 THE COURT: Sir, you can step down.
22 (Whereupon, the witness left the stand.)
23 THE COURT: Anything else, Mr. Underwood?
24 MR. UNDERWOOD: Your Honor, the State rests.
25 THE COURT: Alright. Ladies and gentlemen, I'm gonna

1 need you step to your, uh, jury deliberation room for just a
2 moment while I take up a matter of law with the attorneys.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: Mr. Ariail and Mr. Farnham, any matters we
6 need to take up?

7 MR. ARIAIL: Uh, uh, yes, Your Honor, I'd move for a
8 directed verdict in this matter based upon I think there's a
9 substantial issue in regards to the identification of mi --
10 I think most of the witnesses do not and cannot give
11 definitive, uh, I guess ID of Mr. Tate due to his identical
12 brother which they did not know of at the time, uh, a lot of
13 'em said that, ya know, clarifica -- they really can't make
14 a decision, could be him or could be the other. I think
15 that, along with the numerous witnesses that have testified
16 on the stand, that they have provided false information,
17 that they have not been accurate in their report, um, I
18 don't think there's enough there to, uh, uh, to proceed with
19 this, uh, and therefore we make a motion for a directed
20 verdict.

21 THE COURT: Alright, uh, well I think, based on the
22 evidence and testimony that's been presented, uh, without
23 commenting on the strength of that evidence or testimony in
24 any way, uh, there is at least, uh, there is at least a
25 scintilla of evidence on which the, uh, jury could base a

1 verdict against Mr. Tate and, therefore, I'm gonna
2 respectfully deny your motion. But it is preserved for the
3 record.

4 Any other matters we need to take up, I'm gonna speak
5 to Mr. Tate shortly, any other matters we need to take up
6 before we do that? Uh, my idea is this: Depending on what
7 Mr. Tate says if the defense is resting, I'll bring the jury
8 back in, allow you to rest on the record in front of 'em and
9 excuse 'em for the day.

10 MR. ARIAIL: Okay.

11 THE COURT: Alright. Mr. Tate, will you stand please
12 and raise your right hand for me.

13 ANTONIO TATE, having been first duly
14 sworn, testified as follows:

15 EXAMINATION BY THE COURT:

16 Q Okay, you can put your hand down but remain standin' if
17 you don't mind, I want the court reporter to be able to see
18 you. Uh, you and I have talked a couple of times about that
19 this decision was coming about whether or not you would
20 testify in this trial. Uh, have you had an opportunity to
21 discuss your decision with your attorneys?

22 A Uh, yes, ma'am, I have.

23 Q You feel like you've had enough time to discuss this
24 question with them?

25 A Yes, ma'am, I have. I do.

1 Q Have you listened to their advice?
2 A Yes, ma'am.
3 Q Uh, did you have any que -- did they answer all your
4 questions with regards to it?
5 A Actually, uh, they didn't have to ask me too much.
6 Q Okay. Okay.
7 A I told 'em there was, uh, not a need to.
8 Q Okay, alright. Well let's talk about that a little
9 bit. Uh, in this case you understand you have an absolute
10 right to remain silent, you don't have to say a word in this
11 trial, you understand that, right?
12 A Yes, ma'am.
13 Q You understand that I'm gonna instruct the jury, if you
14 do not take the stand, that they cannot even talk about that
15 in the jury deliberation room, they cannot consider it in
16 any way whatsoever, it cannot enter into their deliberation
17 and you have an absolute right to remain silent, you
18 understand I'm gonna instruct the jury in that?
19 A Yes, ma'am.
20 Q The flip side of that coin is that this is your
21 opportunity to tell your side of the story if you feel it's
22 necessary. Uh, in other words, so to speak it's your day in
23 court, uh, and if you don't testify today there's a great
24 likelihood that you would not tell your side of the story in
25 this case, do you understand that?

1 A Yes, ma'am.

2 Q Uh, has anybody forced you or pressured you in any way,
3 uh, to make this decision here today?

4 A No, ma'am.

5 Q Has anyone promised you anything to get you to make
6 this decision here today?

7 A No.

8 Q Uh, are you under the influence of drugs or alcohol?

9 A I've never taken a drug in my entire life.

10 Q Okay, alright, uh, so I'll take that to mean you are
11 not here today?

12 A No.

13 Q Alright, uh, and ---

14 A Not even cigarettes.

15 Q --- and, uh, well and so I'll ask you what is your
16 decision? Are you going to testify in the trial of this
17 case?

18 A Like I told 'em, I'm gonna, I'm gonna tell you same
19 thing I just told my attorney.

20 Q Yes, sir.

21 A I don't know anything about the case to testify ---

22 Q Okay, ---

23 A --- so ---

24 Q --- alright ---

25 A --- so I can't speak things. I'm not gonna lie like pe

1 -- other other people do in this room.

2 Q Okay, alright. Alright, then, uh, well, uh, thank you
3 very much, sir. And -- well let me ask you a little -- I'll
4 I'll ask you just one or two other questions. I know your
5 attorneys, you've got excellent attorneys, I know they've
6 given you good advice in this regard, this is your decision,
7 is that correct?

8 A Yes, ma'am.

9 Q Not your attorneys decision?

10 A My decision.

11 Q It is your decision, alright, thank you so much.

12 THE COURT: Mr. Ariail, Mr. Farnham, after your
13 discussions with your client, do you feel like he fully
14 understands ---

15 MR. ARIAIL: I ---

16 THE COURT: --- uh, his rights in this regard and that
17 he's waivin' 'em freely, Mr. Ariail?

18 MR. ARIAIL: I do, Your Honor.

19 THE COURT: Mr. Farnham?

20 MR. FARNHAM: I do, Your Honor, thank you.

21 THE COURT: Alright, then very well. Uh, does the
22 defense intend to present any other evidence?

23 MR. ARIAIL: No, Your Honor.

24 THE COURT: Alright. Alright, and just so we're
25 absolutely sure we don't come up on any speed bumps, it's

1 not the State's contention that the defense has entered
2 anything, right, they've not presented any evidence in this
3 case?

4 MR. UNDERWOOD: They have not, Your Honor.

5 THE COURT: Alright, and thus, ---

6 MR. ARIAIL: No.

7 THE COURT: --- it's their right to have li -- last
8 closing would be preserved.

9 MR. ARIAIL: Right.

10 THE COURT: Alright, very well. Okay. Bring the jury
11 back, please.

12 (Whereupon, a discussion was held off the record.)

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: Mr. Ariail.

16 MR. ARIAIL: Your Honor, we have discussed among us and
17 we do not feel it is necessary to present a case. Therefore
18 we rest.

19 THE COURT: Alright, thank you.

20 MR. ARIAIL: Thank you.

21 THE COURT: Alright, ladies and gentlemen, uh, here's
22 what we're gonna do: I'm gonna let you go for the remainder
23 of the day, we're gonna come back in the mornin' but we're
24 gonna come in a little bit later. Uh, we're gonna begin
25 tomorrow morning at 10:30. So if you'll be in your jury

1 room about 10:20, uh, then we will have final arguments from
2 the attorneys, you'll have my charge on the law, and I would
3 anticipate you'll get this case in your hands, uh, maybe
4 about noon or so. Uh, I ha -- we have already made
5 arrangements to order you lunch. Uh, so you you can take,
6 you can take the time that you feel is necessary to
7 deliberate. We'll have lunch already here for you. So
8 don't worry about having to plan to go out for lunch
9 tomorrow. Uh, again, if you would be in your jury
10 deliberation room about 10:30, we will begin promptly at 10
11 -- excuse me, 10:20, we'll begin promptly at 10:30 and I
12 want to tell you our starting later is not due to any of
13 these attorneys, they are ready to go, uh, it's too late in
14 the day for us to argue and submit the case to you, but our
15 later schedule tomorrow is entirely my fault and that rests
16 entirely on my shoulders, and I am, I am sorry and I hope
17 that does not inconvenience anyone. Thank you so much for
18 your attention in this case and I will see you tomorrow
19 morning for closing arguments and final charge on the law.
20 Have a good evenin'.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: Yes, sir, anything ---

24 MR. ARIAIL: No, no ---

25 THE COURT: --- else?

1 MR. FARNHAM: No, we were ju ---

2 MR. ARIAIL: --- no, I'm just stretchin'.

3 MR. FARNHAM: I'm just so used to standin' when the
4 jury gets up. That's just that's what we do in Georgia. If
5 I sat down, the judges would be all over me so...

6 (Laughter.)

7 THE COURT: I have, I have seen that and some people do
8 it here, some people do it here, uh, not everybody does it.
9 No, I -- it -- any motions you'd like to make? You wanna
10 renew?

11 MR. ARIAIL: I'm gonna renew all the motions we made,
12 Your Honor.

13 THE COURT: Alright.

14 MR. ARIAIL: That's it.

15 THE COURT: Then Alright, very well and again, your
16 motions are respectfully denied. Uh, alright, let's revisit
17 this issue about the written charge goin' to the jury.

18 (Whereupon, a discussion was held off the record.)

19 THE COURT: Mr. Ariail, if you can wait one extra
20 minute, I'm gonna print a copy ---

21 MR. ARIAIL: That's fine.

22 THE COURT: --- so you can take a hard copy with ya.

23 MR. ARIAIL: That's fine. I I tell you what, I don't
24 even have to wait, they're gonna take it.

25 THE COURT: Perfect.

1 begin the closing arguments in this case. Just to tell you
2 what's gonna happen, uh, you're gonna hear from Mr.
3 Underwood, then you're gonna hear from Mr. Farnham, and then
4 you gonna hear from me. Uh, we make take a break dependin'
5 on how long, uh, you've you've been sitting, uh, at the end
6 of their closing arguments before I give you my charge but,
7 uh, if our timing works out, your lunch is gonna be
8 delivered about the time that you all go back to deliberate,
9 alright? Mr. Underwood, you may begin.

10 MR. UNDERWOOD: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. UNDERWOOD: This case is about one thing and one
13 thing only: Who sent this poison to South Carolina, this Ice
14 methamphetamine, who sent it here? These drugs
15 (indicating), who sent them here. These drugs (indicating),
16 who sent them here, and these drugs (indicating) and plenty
17 more drugs where these came from. That's what this whole
18 trial has been about.

19 You've heard testimony from eleven different people who
20 went to Atlanta, Georgia to deal with this man, the
21 defendant, Antonio Tate, by getting Ice, methamphetamine,
22 for the sole purpose of bringing it back to South Carolina
23 to sell it, to make money, to use drugs themselves, to get
24 other people hooked on drugs. You heard how they had to go
25 back more and more times. This is a continuing business.

1 This isn't a one time thing to get a fix. This is a group
2 of people working together over an extended period of time
3 funneling more and more drugs from Georgia into the Upstate
4 of South Carolina.

5 Now you heard testimony how Antonio Tate worked through
6 Wendy Lollis. Wendy Lollis, along with her boyfriend, along
7 with Anthony Gambrell, they would make trips to Atlanta,
8 Georgia picking up no less than an ounce every time. Now an
9 ounce is 28 grams. Twenty-eight grams, every single time
10 they went to Georgia or more came back to South Carolina.
11 Wendy Lollis introduced Jason Griffin to Antonio Tate. You
12 heard from Jason Griffin he was goin', at one point, three
13 times a week, sometimes every other day. He started off
14 buying an ounce but then he went to a quarter pound, which
15 is 4 ounces. He's doin' that multiple times a week. That
16 means he's getting almost a pound every week. You heard him
17 testify how eventually it got to the point where he was
18 buying half a pound at a time, at least twice, if not three
19 times, he bought half a pound. One pound is about 454
20 grams. That means that Jason Griffin, by himself, in a week
21 worked with Antonio Tate to bring in more than 400 grams of
22 methamphetamine into South Carolina to be sold to other
23 people and eventually end up with users.

24 You heard through Wendy Lollis and Jason Griffin and
25 Chad Moore. He gets introduced to Amp. They're all

1 connected here, these individuals. Chad Moore makes some
2 trips down there. He's buyin' dope. He's buying at least
3 an ounce every time. This is adding up more and more.
4 Antonio Tate gets introduced separately to Nate' Bashaw and
5 Javin Adams. He first meets Nate' Bashaw sometime earlier,
6 he meets Javin Adams through Mr. Moore. Eventually Javin
7 Adams and Nate' Bashaw started dating and makin' multiple
8 trips down to Atlanta a week. They're buyin' up to a
9 quarter pound every time by themselves. Each of them gets
10 more than 400 grams of methamphetamine and brings it to
11 South Carolina to Antonio Tate.

12 He gets introduced to Norman Bergholm. He goes down
13 there four times, gets 2 ounces every time. That's another
14 8 ounces of methamphetamine and Mr. Tate, as you heard from
15 all these people, he knew they're all in South Carolina. He
16 even came to South Carolina and on one occasion bought some
17 dope to Javin Adams in South Carolina. He knows that meth
18 is coming here. It's not staying in Georgia where he is.
19 He knows it's coming here to our state and it's getting sold
20 to to our citizens getting them on methamphetamine. Now all
21 these people here, they were all users, you saw all them
22 come in here testify. You saw what that drug did to them.
23 He sent that drug, that poison, this here (indicating)
24 through these different people over a 2-year period of time.

25 Now the State has proven this case on it's own just the

1 testimony of these people that came here and spoke to you
2 under oath. Eleven different non-police people came here,
3 swore to tell the truth, and told you they went to Atlanta,
4 Georgia to buy meth from that man (indicating). Consider
5 that, eleven different people and we aren't talkin' about
6 eleven people that live together. We're talkin' about
7 eleven people that loosely know each other 'cause they're
8 all drug dealers. But they weren't all working directly
9 together. The common link is Antonio Tate.

10 You picture this group here kind of like a wheel cause
11 conspiracy's a wheel. Antonio Tate, he's the hub, the
12 center. For Antonio Tate that's where all this meth comes
13 out to the rest of this (indicating) circle but it all
14 starts here (indicating), the narrow end of the funnel.
15 That's how it comes into South Carolina and it spreads
16 throughout Pickens, Anderson, and Greenville Counties.
17 Something to bear in mind.

18 These eleven different people got on that (indicating)
19 witness stand individually when the other ten weren't in
20 here, they were not in the courtroom, and they all testified
21 generally to the same situation of events. Not exactly the
22 same, every person had some slightly different dealings with
23 Mr. Tate, but you could see a pattern of how he would deal
24 his drugs.

25 They'd call ahead, they'd take the 2-hour drive down to

1 Atlanta, some of 'em would call right before they got there,
2 others called at different places but they always had a
3 place that they were going to meet him and it was the same
4 group of places generally. They would meet him sometimes
5 there, go to another place, but all these people mention the
6 same places: a Waffle House, McDonald's, a hotel and a
7 couple different apartments. That's very consistent.

8 Now at times it became an issue that the defense was
9 questioning that well you don't know the address of this
10 place in Georgia where you don't live and no, those people
11 didn't know the address but they consistently gave the same
12 turn by turn by turn directions on exactly where these
13 places were. They told you what business off of what exit.
14 To get to the apartments, they said exactly what turns to
15 take and what side of the street it was on. If these people
16 weren't really goin' down there, how they gonna get that
17 right? If this is some conspiracy where these people got
18 together to blame Antonio Tate, wouldn't it have been a lot
19 easier to just get together and agree on one address where
20 everybody went the same place every time instead of tryin'
21 to remember all these different directions at all these
22 different places: the Waffle House, Shell station,
23 McDonald's.

24 They told how the deals generally went down pretty much
25 the same way. More than one person talked about goin' to

1 this Shell Station, more than one person talked about goin'
2 into the back of that Shell Station, and how the people
3 runnin' that Shell Station seemed to be in on it. That was
4 a safe drug dealing haven apparently for Mr. Tate. He had
5 several difference places. He didn't keep the dope on him.
6 Multiple people testified that he would call ahead to have
7 someone else bring him the dope so he wouldn't be stuck
8 holding onto a large amount at any particular time.

9 That's consistent. That's why you should believe it
10 'cause these people who didn't hear the other's testify are
11 sayin' basically the same thing. It's not word-for-word the
12 same thing. If it was word-for-word the same thing they'd
13 probly be readin' from a script. They're testifyin' from
14 their memories of two to three years after the fact when
15 they've been smokin' meth and they're still pretty
16 consistent, all of these different people.

17 Now why should you believe these witnesses? I
18 understand they didn't live the most respectable lives.
19 They aren't teachers and doctors and preachers. They're
20 drug dealers but ask yourself when we're talking about a
21 drug dealing conspiracy who's gonna know more about dealin'
22 drugs than drug dealers? Those are the people that we're
23 forced to get information from because they're the people
24 involved. These are the people who saw the drugs, who
25 bought the drugs, who sold the drugs.

1 Now don't get any misconceptions about possible bias of
2 these people. All the people that were charged in this case
3 who came in here and testified, they're all goin' to prison,
4 that's already been established, they are going to prison,
5 nobody charged in this case is getting a free ride.

6 Did some of 'em get recommendations for lesser time
7 than they could of faced? Yes, they agreed to plead guilty
8 and cooperate, do undercover buys on each other. That kinda
9 shoots this whole conspiracy theory outta the water when you
10 realize that these people are ratting on each other.
11 They're not talkin' to each other about it. They're doin'
12 drug deals on each other, gettin' each other caught.
13 They're not workin' together. They're working against each
14 other the whole time and all that so that they could get
15 some better recommendations and these aren't easy
16 recommendations of time either. Yeah, some people were
17 looking at shorter periods of time, 3 to 6 years. Three to
18 6 years might be shorter than what they were lookin' at but
19 6 years in prison is a long time. A lot happens in 6 years:
20 A child can be born, learn to roll over, learn to walk,
21 learn to talk, go to kindergarten, go to first grade all in
22 the amount of time that somebody's in prison. An adult
23 could graduate from high school, go to college, graduate
24 from college, get a master's degree in the amount of time
25 these people are gonna be in prison. This is not a cake

1 walk, it's not a cozy deal, and that's a small number of
2 people who got somethin' like that. A lotta these people
3 are lookin' at more like 18 to 20 years. That's a long time
4 in prison, and all they were asked for was to cooperate and
5 give information, and if they testified, to testify
6 truthfully.

7 Now there was some insinuations throughout this trial
8 that these people met with me and that I told them what to
9 say but then when they were asked, Well what were you told,
10 remember what they said? They said to be honest, tell the
11 truth 'cause that's what their agreement was for, to tell
12 the truth whatever it may be.

13 Now I've gotta give the defense credit, they did a good
14 job of tryin' to make Albrie Nate' Bashaw look like a liar.
15 You remember when Mr. Ariail used the word "lie" and
16 suckered Ms. Bashaw into agreeing with him, but remember
17 what they were talkin' about. They were talking about a
18 statement that she gave to law enforcement before she got
19 involved with Javin Adams, before she started goin down to
20 Atlanta and knew who Ant was. When she gave that statement,
21 she said she didn't know his name. Well at the time the
22 statement was given that was the truth because she didn't
23 know his name yet. It was later when she found out that
24 name and that got explained. She never lied. She just got
25 tricked into agreeing with someone else's assertion that she

1 lied but what she said was the truth.

2 Now ask yourselves this question when it comes to why
3 should you believe these witnesses: If they're lying about
4 getting this (indicating) dope and this (indicating) dope
5 from Antonio Tate when they got busted sellin' these drugs
6 or these drugs in their possession, you heard them testify
7 that these witnesses got busted for a lot more distributions
8 of drugs than just those incidents, if they were lying, why
9 didn't they put all those drugs on Antonio Tate too? Why
10 didn't they lie and say that all of their drugs came from
11 him so I coulda filled this (indicating) table up with
12 nothin' but meth?

13 Because they're tellin' the truth, they had more than
14 one source. They only told the drugs that they got caught
15 with that were Antonio Tate's 'cause that was the truth. If
16 you're gonna lie, you go all the way with it. The fact that
17 they didn't shows you that they are telling the truth and,
18 remember, just because someone's a drug dealer, that does
19 not automatically mean they are a liar. A drug dealer can
20 be very honest and say yes, I'm a drug dealer, that's the
21 truth, just because someone sells drugs doesn't mean that
22 they're lying about selling drugs. They got caught. They
23 admitted it.

24 Now throughout this case, on cross-examination of the
25 State's witnesses, you saw several different theories of a

1 defense kind of creeping up. It's kind of like a, like a
2 bird shot shotgun defense where once you take a shotgun with
3 a bunch a little pellets and shoot it at the State's case
4 and see if we can poke a lotta tiny little holes and see if
5 anything will will damage the case or kinda like takin', you
6 know, a bunch of evidence, bunch of strange theories,
7 sprinklin' some glue on it, throwin' it up against the wall
8 and seein' what sticks. You heard so many different
9 theories. You heard about law enforcement not doing their
10 job 'cause they didn't get phone records.

11 Well think about it. How useful would phone records be
12 if you can't prove who the records belong to? People that
13 are always changin' their phone number, buyin' prepaid
14 phones, using phones that are admittedly in someone else's
15 name, if those records were pulled, that's not gonna connect
16 that phone number to anybody, not anybody that's necessarily
17 sellin' the drugs 'cause there's no record of that. The
18 person on the other end of that phone's name isn't gonna
19 appear on any of those documents.

20 So what did law enforcement do? They found the people
21 that called him and said, Hey, who did you call, who did you
22 talk to, where did you go and who did you get these drugs
23 from, did you see the person. That's a lot more useful than
24 phone records, a lot more useful than phone records 'cause
25 you have someone that actually sees a person face-to-face.

1 A piece a paper with no name attached to it doesn't have any
2 value compared to that.

3 You hear a lotta talk about when these drug dealers
4 would go to Atlanta, where's your receipts, where's your
5 video, where's you're audio? Think about that for a second.
6 Is someone that's dealin' drugs really gonna ask for a
7 receipt for the illegal drugs that they're buying and keep
8 that when they don't plan on gettin' caught? Are they gonna
9 take video of it that's gonna incriminate themselves when
10 they don't wanna get caught? Are they gonna keep the
11 receipts that show they went down to see their drug dealer?
12 No, that doesn't make any sense, that makes no sense. It's
13 only being talked about in this trial to try to throw you
14 off track.

15 And again there's there's this conspiracy theory that
16 eleven different people in South Carolina all independently
17 picked out the same random black male in Georgia to pin on
18 as their source for drugs. Now that's beyond a stretch that
19 these people would randomly pick the same person that they
20 otherwise shouldn't know in another state as a scapegoat.
21 You can also look at it on the other side of that coin:
22 These eleven admitted drug dealers all know the same person
23 in another state. What does that tell you? The only thing
24 these eleven people had in common is the fact that they're
25 drug dealers. Their common link is drugs. If they all know

1 this same person in another area, it's because he's their
2 drug dealer, he's their supplier.

3 Now think about all these different photo lineups.
4 Chris Bishop, March 28th, 2011, he's by himself, he circles
5 the picture of Antonio Tate as the guy that he went and
6 tried to buy drugs from but when Antonio Tate saw the police
7 car run a light, his cover was blown. So no deal. March
8 30th, Charles Javin Adams, Albrie Nate' Bashaw separately,
9 not together, separately both shown these lineups at the
10 same time and they both pick the same person, Antonio Tate,
11 as the guy they were goin' to Georgia to buy their
12 methamphetamine from. Remember, they were separate, they
13 weren't together, they're not talkin' to each other about
14 who to pick.

15 Jason Griffin, March 9th, 2011. Jason Griffin's in
16 jail. He's not talkin' to anybody on the outside about who
17 he needs to be pickin' in a lineup. He doesn't even know
18 he's gonna have a lineup. He's in jail. Cops come to him
19 at the jail and say, Hey, do you know anybody in this and he
20 picks somebody, who is that, and that's, that's the guy I go
21 down to Atlanta buy drugs from. It's Antonio Tate.

22 Norman Bergholm, June 20th, 2011, similar situation.
23 He's also incarcerated. He's not talkin' to anybody on the
24 outside 'bout any photo lineups, 'bout who he needs to frame
25 for anything, picks Antonio Tate as the guy he went down to

1 Georgia and bought drugs from. Anthony Gambrell, in August
2 2011, he picks Antonio Tate as the guy that he went down
3 through Wendy Lollis to buy meth from. Chad Moore, in
4 September, same thing. Law enforcement approaches him
5 without warning, shown a photo lineup, and he picks
6 somebody. He doesn't know in advance they're comin' to show
7 him any lineup. He doesn't know to go and ask anybody, Hey,
8 who should I pick, but on his own he picks the same person.

9 Wendy Lollis, September 20th, same thing. I know this
10 is repetitive but that's why you should believe this people.
11 Norman Trebuchon, December of 2011. All these people
12 independently of each other are picking out the same person
13 that they're buyin' their meth from. They're not provided
14 with a name. They give the name Ant or Amp, Antonio.
15 Independently they're picking the same person out of a photo
16 lineup.

17 You've also heard these insinuations of Mr. Tate, Mr.
18 Antonio Tate having a look alike, a twin. Now you saw both
19 a these men. You saw the defendant, Mr. Tate, saw the other
20 man sittin' in the gallery. Yes, they look similar, but you
21 can tell there's differences between 'em. They have
22 different mannerisms, different complexion, different body
23 weight. Heard testimony that Antonio Tate never wore
24 glasses when people went down to buy their drugs but the man
25 that was asked to step forward to be compared to Mr. Tate

1 took off his glasses and was holding them. That can't be
2 the same person 'cause the person in Atlanta wasn't wearing
3 glasses ever according to the testimony that you heard.
4 People were asked, Did you ever see him wear glasses, they
5 said no, they never remember seeing him wear glass.

6 Now, admittedly, Jason Griffin, doin' everything he can
7 to be honest, gives out this information that, Hey, I see
8 this guy in the back of the courtroom that kinda looks like
9 Ant. It's hard to tell 'em apart. He admits that. What
10 else did he say? While he's in jail with Antonio Tate, the
11 man arrested, the man here on trial, he had interactions
12 with him, wasn't just a blind look at someone, he had
13 interaction with him, he talked to him, and he knew, without
14 a doubt, that the guy he was talkin to, the guy that was
15 arrested is the guy he was buyin' his drugs from because he
16 talked with him and then there are other witnesses: Javin
17 Adams, Nate' Bashaw, Chad Moore, they unequivocally say from
18 that (indicating) witness stand they could tell the
19 difference and that that man is who they bought their drugs
20 from. They were very stern about that. They had no doubts
21 that that's the man they bought their drugs from.

22 Now something you should consider: These defenses that
23 were thrown out, this twin theory and this conspiracy theory
24 that there never was any drug transactions in Atlanta with
25 either of these individuals, that they're making the story

1 up versus oh, maybe it was the twin that did it, those don't
2 mix. Either it didn't happen or it happened with somebody
3 else, you can't have both, that's called testing the waters
4 to see what sticks 'cause those defenses can't work
5 together.

6 Now I'm not gonna have the last word in this case. I
7 don't know what defense they're gonna argue to you. It
8 could be any of those. It could be some all new defense. I
9 don't know but that's part of the reason why you should
10 ignore it 'cause obviously it can't be the truth because if
11 the defense were the truth it would just be one. It
12 wouldn't be a mix of all these different things. Truth is
13 what the evidence has shown you, what all of that testimony
14 showed you. Eleven people went to Atlanta and talked to
15 this (indicating) man about buyin' drugs, ten of 'em did buy
16 drugs and they bought drugs more than once, lots of drugs,
17 lots of meth, and the State has proven that that's what
18 happened.

19 Now I wanna tell you a little bit about what, just very
20 briefly, what the State has proven and has to prove to ya.
21 Mr. Tate, ya'll can see that, Mr. Tate's charged with
22 trafficking 400 grams or more of methamphetamine, he's doin'
23 that through a conspiracy, but what is trafficking? It's a
24 word you've heard it thrown out a few times here in the
25 courtroom but it's kind of a strange word. It's kinda hard

1 to understand what exactly makes trafficking different from
2 just givin' somebody some drugs.

3 Well, this is the difference: Trafficking is when
4 someone sells, manufactures, cultivates or grows, delivers,
5 purchases or brings into South Carolina or someone who aids
6 or conspires to do any of those things. Methamphetamine,
7 what makes it trafficking is the amount. A distribution of
8 methamphetamine means it was less than 10 grams.
9 Trafficking means it was more than 10 grams or, in this
10 case, more than 400 grams. That's why this is a trafficking
11 case and it is a conspiracy case. We aren't alleging that,
12 on one particular occasion, Antonio Tate came to South
13 Carolina with 400 grams of meth in his pocket and was
14 handing it out to people. What we have proven to you is
15 that he, along with other individuals, conspired together,
16 over a period of time, to bring in an amount much greater
17 than 400 grams.

18 Now a conspiracy is essentially an agreement between
19 two or more people to do a criminal, unlawful objective or
20 some objective that, while it itself could be lawful,
21 they're doing it in an illegal way. Now the crime here is
22 the agreement to do it, not the actual bringing of the dope.
23 Simply agreeing to come together to bring the dope is a
24 conspiracy.

25 Now at the beginning of the trial I talked to you a

1 little bit about building a car, ya know, BMW they've got,
2 you know, people that put different parts on the car: the
3 wheel guy, the steering guy, the seat guy, the axle guy, the
4 window guy, all those people have a part to play. At BMW,
5 they've got contracts, they've got invoices, they've got
6 orders that show exactly what they're supposed to do,
7 everyone understands, they're all on the same page.

8 Criminal conspiracy doesn't work like that. It doesn't
9 have to be a formal agreement, doesn't have to be in
10 writing. People won't have to explicitly say, We are going
11 to come together and conspire to do this. Conspiracy can
12 exist by people's actions. In this case conspiracy exists
13 because these individuals came together, Antonio Tate at the
14 center, each person bringing their share of methamphetamine
15 into South Carolina to resell it.

16 Now for Mr. Tate to keep making money, those people
17 have to come back to buy more, which means they have to sell
18 what they buy to have money to come back and buy more. It's
19 a continuous cycle that builds and builds and builds, the
20 more money they make, the more they come back to buy even
21 more meth for Antonio Tate to make even more money, that's a
22 conspiracy, that is what the State has proven. It doesn't
23 matter if Antonio Tate ever, at one time, had that much
24 dope. It's the total amount of all that he funneled through
25 these different people over a 2-year a time.

1. Another thing that you need to consider, as we've
2. already talked a little bit about, is the credibility of the
3. witnesses that you saw here. You were able to witness them
4. and what their physical condition was, able to view their
5. demeanor, able to see how consistent their statements were
6. with what other people said. You can believe every single
7. thing you heard. You can believe parts of what you heard
8. and disbelieve other parts. You're the jury. You determine
9. the facts as you see them. You can choose how much and what
10. to believe from the witnesses who testified.

11. Now I submit to you that their statements are generally
12. consistent, they were all under oath, and when some of them
13. were challenged about lying, they were actually getting kind
14. of upset. If they were people that just struck a deal and
15. all they had to do was come and talk and didn't care, well
16. they wouldn't get upset, they'd just sit there and whatever,
17. they've already got their deal. People that get upset when
18. they're called liars are people who are tellin' the truth.

19. Now, again, as I say, this is a conspiracy to traffic
20. 400 grams or more of methamphetamine. Just as a little
21. reminder got this (indicating) board here to show some of
22. the different weight breakdowns. Wendy Lollis testified
23. that Ant told her he never sells less than an ounce. So if
24. you're going to Atlanta to buy meth from Antonio Tate,
25. you're buying at least an ounce, it's about 28 grams.

1 You heard from Jason Griffin that he was goin' three
2 times a week to buy 4 ounces each time. Well, that right
3 there is 336 grams per week and he was doing this over a
4 period of a couple months. That right there is a lot more
5 than 400 grams. He also talked about how he eventually got
6 up to where he could buy half a pound at a time. Well half
7 a pound -- well, 1 pound is 454 grams. If he bought half a
8 pound twice, that's already more than 400 grams and he
9 testified that he might've done it three times, and that
10 again is another 400 grams or more.

11 Javin Adams says he went down with Chad Moore and he
12 got introduced to Antonio Tate, and he got 4 ounces, it's a
13 hundred and twelve grams. Then he was goin' on his own
14 before he was on house arrest, three to four times a week,
15 where the smallest amount he would get would be 1 or 2
16 ounces, sometimes he'd get up to 4 ounces. That's three to
17 four times a week. He went on to clarify that five to ten
18 times he got at least 3 ounces.

19 Now we'll just go on the low end of the spectrum here
20 like Mr. Adams was talkin' about, don't wanna try to look
21 like exaggerating anything. We'll go on the low end. He
22 said five to ten times getting more than 3 ounces. Well
23 just five times, not ten, but five, five occasions of 3
24 ounces, 28 grams a piece is 420 grams. That means Javin
25 Adams, by himself, bought more than 400 grams from Antonio

1 Tate, brought it back to South Carolina and sold it, then he
2 went on house arrest and he started sending Nate' Bashaw,
3 his girlfriend at the time. She's goin' down two to three
4 times a week for several months gettin' 2 to 4 ounces every
5 time and you figure, excuse me, you know, now if she's
6 getting 3 ounces, you know, twice a week, that's a hundred
7 and sixty-eight grams. In one month that's 672 grams. She
8 did this for several months. That's a lot more than 400
9 grams.

10 Norman Trebuchon, who was driving Nate' until she
11 stopped going, he went twice by himself. Each time he was
12 gettin' 4 ounces. That right there is half a pound, 224
13 grams. Warren Chastain, through another individual, Brian
14 Stegall, he went down and he bought another 2 ounces for
15 himself. He doesn't know how much Brian Stegall got but
16 Brian Stegall got more for himself but Warren Chastain got 2
17 ounces. Norman Bergholm went down four times. Each time he
18 got 2 ounces. That's 224 grams. Larry Anthony Gambrell,
19 six or seven times, got 2 to 4 ounces each time. Say it's
20 just two ounces, okay, that's six times of 336 grams.

21 Now I'm tryin' not to bore you with math. I'm just
22 tryin' to show you we got a lot more than 400 grams here and
23 if he got, if if Gambrell got 3 ounces each of those times,
24 that's 4, excuse me, 500 grams, more than 500 grams. So he,
25 by himself also, got more than 400 grams and Chad Moore, he

1 bought 4 or 5 ounces himself. Now why am I telling you all
2 this and breaking it down by people and that's the minimum
3 amounts that they testified. They might have gotten a lot
4 more than that. That's the minimum.

5 Talked about credibility of witnesses. If you choose
6 to believe some of the witnesses and not others, you still
7 got a lotta dope from each of the witnesses. So if you
8 believe some and not others, you still got a ton of meth
9 that Antonio Tate funneled into South Carolina through these
10 different people.

11 Now, the State has the burden of proof. You've heard
12 that a little bit already. You're gonna hear about it some
13 more. That means that myself and Mr. Pauling, it's our duty
14 to prove to you, beyond a reasonable doubt, that Antonio
15 Tate is guilty of trafficking methamphetamine 400 grams or
16 more. Now what is a reasonable doubt? Well it's a doubt
17 that makes you hesitate to act. Now by hesitate to act,
18 that does not mean, when you go in your jury room, you can't
19 sit around and think about all the evidence and properly
20 deliberate. It doesn't mean you can't take your time, take
21 your time and consider all of the evidence in the case.
22 What it means is that there has to be evidence that leaves
23 you firmly convinced, firmly convinced, that Antonio Tate is
24 guilty of trafficking methamphetamine by conspiracy, working
25 with all these other individuals who testified under oath

1 that they bought their drugs from him or bought a portion of
2 their drugs, some of them also had other sources, but it's
3 evidence that leaves you firmly convinced.

4 Now, ladies and gentlemen, I submit to you that we have
5 proven this case beyond a reasonable doubt, that you have
6 more than enough evidence from that (indicating) witness
7 stand, from these drugs here (indicating) and here
8 (indicating), here (indicating), you have more than enough
9 evidence to be firmly convinced that Antonio Tate is guilty.
10 I ask that when you deliberate and when you are firmly
11 convinced of his guilt, at that time that you're firmly
12 convinced he's guilty, you'll have no choice but to find him
13 guilty and return a verdict of guilty. Thank you.

14 THE COURT: Thank you, Mr. Underwood. Mr. Farnham, you
15 ready to proceed?

16 MR. FARNHAM: Yes, I am, Judge, thank you.

17 THE COURT: Everybody okay?

18 (No response.)

19 MR. FARNHAM: Morning, ladies and gentlemen. I haven't
20 had an opportunity to address you durin' this trial, you've
21 only seen me cross-examine some of the witnesses, my name is
22 David Farnham, I'm co-counsel with Mr. Mills Ariail. And so
23 you -- you're devoid of any belief that Mr. Tate has a big
24 team of lawyers with a lotta money to spend. We've donated
25 most of our time in this case to defend him in this case.

1 He has a strong family back there (indicating) that's
2 very supportive of him and I wanna thank you for mostly
3 being very attentive durin' this trial. I was very
4 impressed with the fact that you all -- some were takin'
5 notes, were payin' close attention to every witness in this
6 case for a week long because for my client, you know,
7 there's an old saying from way back about today's the first
8 day of the rest of your life. Today is the first day of the
9 rest of his life and his family and he and I, as an officer
10 of the court, and our defense team with Mr. Ariail, uh,
11 Mills, uh, thank you for that, and I'm sure the judge does
12 as well.

13 Uh, let's talk about the law in this case and how
14 you're gonna evaluate the evidence that's been presented to
15 you. Uh, what's important in this case, uh, and what I
16 found, uh, when you go back to the jury room that's that's
17 important, and I thank the Founding Fathers every day when I
18 see that we have a jury system in this country because right
19 now, Mr. Tate, who you do know has a family, a legitimate
20 business, uh, has never been in serious trouble with the law
21 in his entire life, has never had any accusation of being
22 involved in drugs in his entire life, uh, is depending on
23 you to evaluate this evidence. He has the whole state of,
24 uh, South Carolina and the SLED team that's investigating
25 drugs across the State accusing him of being involved in

1 this conspiracy.

2 Now one of the things I I think is important is that
3 when you're evaluating evidence and and what our Founding
4 Fathers did, uh, that I thought was an incredible system is
5 that we have so many different people on this jury from
6 different backgrounds. Uh, you all come from different
7 walks of life, you have different life experiences, you're
8 different ages. Uh, this jury, I think, is one of the most
9 diverse I've ever seen. You've got white male people over
10 50, you've got younger people, some students, we've got
11 people that are self-employed. I know there's an electrical
12 engineer on the jury. Everybody has a different life
13 experience and what I'm gonna ask you to do, when you go
14 back there today, is to use your common life experiences in
15 evaluating this evidence of what is true and what is not
16 true because what's incredible about this case, first of
17 all, is that a group of white drug dealers in South Carolina
18 all pick out a man that they say is their kingpin, a man of
19 the African-American race who lives in another state and
20 puts all the focus on on him.

21 Now, ladies and gentlemen, I don't know what you know
22 about the meth industry. In my experience, as a lawyer over
23 the years, meth is not an African-American ---

24 MR. UNDERWOOD: Objection, Your Honor.

25 THE COURT: Sustained.

1 MR. FARNHAM: Uh, the fact that they're accusing this
2 (indicating) man, uh, with no evidence other than their own
3 testimony, uh, I submit to you shows the weakness in their
4 case.

5 Now let's talk about some of the evidence. Mr.
6 Underwood, uh, is showing you two s -- what he considers to
7 be the strengths of his case to show that Mr. Tate is
8 guilty. Now I submit to you that the two pieces of evidence
9 that he's presented here are nothing more than red herrings
10 that are gonna distract you from the fact that they don't
11 really have any evidence and they're using the bias of your
12 concerns about drugs being presented in your statement in
13 these packages and what I mean by a red herring is, and I
14 don't know if you're familiar with that term, but that is --
15 that came about from what occurred in the Soviet Union when
16 the Communist use to rule in S -- in Russia. They had
17 concentration camps, I think if you've read about, uh, the
18 Gulag that Solzhenitsyn wrote back in the seventies, it
19 talked about people being in prison camps and how they were
20 treated.

21 Back in that part of the world, uh, herring was the
22 number one source of food, and when prisoners were out in
23 the, uh, ice in those camps, they never put up fences or
24 anything because they were so far out in the wilderness that
25 they never worried about them escaping and what prisoners

1 used to do is take a bag of this smelly fish and drag it
2 across the snow, so when the guards were released in the
3 morning, they would head in the opposite direction and the
4 dogs would follow the smelly fish. That's what Mr.
5 Underwood's attempting to have you do with these two pieces
6 of evidence because they do not and they cannot tie them to
7 Mr. Tate.

8 The, uh, photograph that show Mr. Tate in the upper
9 left hand corner on each picture, now if you, if you
10 remember when, uh, I was questioning Agent Barwick about
11 these photographs and how reliable they were, he assured us
12 that there is no way that these people could have contacted
13 each other and talked about who was in these lineups because
14 they weren't out in a situation where they could contact
15 each other but now we know that that's not the truth. The
16 truth is that over a year's time these lineups were out
17 there and month after month after month they were being
18 shown to a group of people that were all associated with
19 each other.

20 Now instead of making it more reliable, as an
21 identification process, by switching these pictures around
22 sometimes putting Mr. Tate here (indicating) or putting him
23 in position number 1, for the whole years period these
24 pictures were shown to these people, they weren't in jail.
25 You have evidence that Mr. Moore was released in March of

1 2011 and he was out in in the, uh, public. Mr. Trebuchon,
2 who testified yesterday, was at home on home arrest. We
3 also know that Mr. Ayers, who was the chief investigator in
4 the Greenville, South Carolina investigation, was listening
5 to them talking on the telephone. So all these people were
6 in communication with each other. The first person that saw
7 this back in the beginning of 2011 had an opportunity to see
8 this and knew that Mr. Tate was in the upper right hand
9 corner. None of those pictures ever changed over the course
10 of a year and all of those people were out talking to each
11 other.

12 Now there's nothing -- the one thing that we do know
13 for sure is that all these people were friends, they all
14 communicated with each other, they say that they went back
15 and forth but let me ask you this one question: As you
16 evaluate the evidence in this case, do you know for a fact
17 that any of these people actually drove to Atlanta? You
18 heard them tell you that they did but there's not one bit of
19 evidence in this case that shows that they actually did it.
20 In fact, I submit to you that, and the only times that the
21 police were involved in investigating this case and they
22 were attempting to get evidence on Mr. Tate he was doing a
23 legitimate activity. It's not a surprise that these people
24 knew this man because the first contact with him back in
25 2008 he was selling automobiles in Atlanta, which is what he

1 does for a living: He repairs cars, he sells cars on
2 Craigslist, and that's how he makes his money. When the
3 police tried to do a surveillance on him, if you remember
4 the two times that they have any evidence that they
5 presented that they were trying to monitor him in any way,
6 he was selling a transmission or selling an automobile, he
7 showed a car, I think it was a white Malibu to them at one
8 point he was tryin' to sell, and that's the evidence they
9 documented.

10 Now we we know that Mr. Mill, uh, Mills caught, uh, Ms.
11 Bashaw and Mr. Bishop in inconsistent statements when Mr.
12 Bishop said, Well, you know, we went down there but we
13 didn't intend to buy any drugs, we were just down there to
14 try to meet with them but they had a a recording line for
15 that whole period and that wa -- and Mr. Mills, uh, Ariail
16 was able to get Mr. Bishop to admit that he had this
17 recording for a period a time but he wasn't even aware that
18 it had been on for an hour and a half and that whole hour
19 and a half that they were recording, there was no evidence
20 on that tape that Mr., on that tape, that Mr. Tate was
21 involved in any drug conspiracy, any talking about selling
22 drugs, any indication that he was complicit in selling
23 drugs. They don't have one piece of evidence that he has
24 any knowledge about drugs, not a tape recording, not a
25 video, not marked money. You know, when Mr. Armstr -- uh,

1 Underwood said to you these people are all going to prison
2 that have testified in this court in the last week, do you
3 know why they're going to prison, because they're guilty and
4 they have evidence on each one of them.

5 You've seen -- I think when I had Lieutenant Campbell
6 on the stand, do you remember when I showed him one of his
7 police reports and I opened it up and I showed him the
8 marked money that he had taken into evidence when he had
9 done a buy with, uh, I think Ms. Bashaw, uh, or in the case
10 with Mr., uh, Griffin when he was busted at his home, he
11 jumped out of his car and dropped drugs on the ground, they
12 had evidence in each one of those cases. Each one of these
13 people were acting as confidential informants. They went to
14 do a drug buy, they took marked money, they were wired, they
15 got evidence on each of those people and why did they, were
16 they able to do that 'cause those people were guilty, they
17 were doing that activity. You've got a 3-year period of
18 them alleging Mr. Tate's involved because these people say
19 that he was and yet they don't have any documentation,
20 money, video, audio recordings or a phone record, just one
21 phone record to show that they made a call to him to buy
22 drugs. You don't have any of that in this case and the
23 reason you don't have that evidence and the only time that
24 you heard about him being talked about when they were doing
25 surveillance was that he was selling cars is because that's

1 what he does. They couldn't prove it because he's not doing
2 that activity. The only evidence that you have been
3 presented that says that he is doing that activity is those
4 people's words that he was.

5 Now how do we know that these people didn't just pick a
6 person that they knew that wasn't a threat to them that
7 they've done business legitimately with to just say Mr.
8 Tate's the guy we're gonna blame for this, they're looking
9 for our kingpin drug source. This is a statewide
10 investigate. They haven't found the source of where these
11 people are getting their drugs and so what's happened in
12 this case is they picked an innocent person who has no
13 criminal history, isn't a threat to them, he's not gonna be
14 coming after them to shut them up to stop hundreds of
15 thousands of dollars of the drug trade business. There's no
16 evidence this man has any of those kind of assets and do you
17 know what I think is the mo -- one of the most important
18 things you should think about when you go in the jury room
19 today when you're evaluating the truthfulness of these
20 eleven people that came in the court this week, what was the
21 one thing that changed as the week went on? If you remember
22 in the beginning I questioned the officers about what assets
23 they found that Mr. Tate had. There weren't any, nothing
24 significant. He drove a 2002 Mustang, he had a small, uh,
25 home, in Atlanta, nothing flamboyant, nothing that indicated

1 that he was receiving any of the proceeds of a person who
2 was doing 4 to \$5,000 a week in methamphetamine trade and
3 none of the witnesses in the beginning of the week said
4 anything about well, he's got a lotta stuff, but what did
5 you hear yesterday after they had a chance to listen to the
6 questions we were asking in the beginning of the week?

7 All the witnesses yesterday got on the stand would say,
8 and I asked you to pay particular attention if you listened
9 to this, it was interesting because I did what I did in the
10 beginning of the week to see if they were talking to each
11 other and obviously they are because three of the witnesses
12 yesterday made a very strong point of saying to you, Oh,
13 yeah, he has a really nice house or he drove a nice car and
14 as as the week went on you also notice that they couldn't
15 identify whether or not he was his brother or it was Mr.
16 Tate, they weren't sure who it was that was in the
17 photograph, but yesterday after the whole week had gone by
18 the last few witnesses, I'm a hundred percent sure now,
19 because why? Because Norman who was in the jail cell with
20 Mr., uh, Ayers had talked to him, they got their story
21 together. All through the week they've been changing their
22 story to better help themselves because they've heard what
23 we've been accusing them of being weak in their story.
24 That's proof positive that they're all communicating with
25 each and they have been since the beginning of this case.

1 They wanna blame somebody else for what they're doing, what
2 they're doing to do that is trying to keep themselves from
3 serving 18 to 25 years in prison and he talks about how
4 serious 6 years is, 6 years is nothing to a person in their
5 20s or 30s compared to 20 to 25 to 30 years.

6 Now the judge is gonna ask you -- excuse me, I need
7 some water. At the conclusion of my comments to you today,
8 the judge is gonna give you the law in the case, how do you
9 as a juror evaluate and use the law to evaluate the evidence
10 in the case? She's gonna tell you what you the charges are
11 against Mr. Tate. One of the things that the State has to
12 prove -- and and the standard of proof, uh, the judge is
13 gonna give you as to what their burden is is that they have
14 to prove to you beyond a reasonable doubt. That's so that
15 you, as a person, have a clear and convincing understanding
16 that he was involved in this activity and that he actually
17 knew about it and consented to be involved with it. They
18 have to show you, beyond a reasonable doubt, that he
19 actually sold drugs and intended drugs to be distributed,
20 uh, with these people throughout the State.

21 MR. UNDERWOOD: Objection, Your Honor, that that's a
22 misstatement of the law.

23 THE COURT: Alright, well I'll I'll allow ---

24 MR. FARNHAM: The judge will charge 'em on the law.

25 THE COURT: I'm gonna charge them on the law and,

1 ladies and gentlemen of the jury, you understand that the
2 law that I give you is the only law that you can accept.

3 Alright, Mr. Farnham, ---

4 MR. FARNHAM: Thank you ---

5 THE COURT: --- proceed.

6 MR. FARNHAM: --- Judge. She'll tell you that, uh, Mr.
7 Tate stands with the presumption of innocence, that his
8 entry of a plea of not guilty and that he states that he is
9 not involved in this, never been involved in this and is
10 innocent of these charges is a presumption that follows him
11 throughout the case until the State has taken that
12 presumption away by proof beyond a reasonable doubt, that
13 they've shown by clear and convincing evidence that he's
14 guilty of these charges. She'll define for you what
15 reasonable doubt is and that is and I would ask you this: As
16 you're evaluating the evidence in the -- this case, can you
17 say, based on believing just what these witnesses have told
18 you without one piece of evidence to support anything that
19 they've said, that this (indicating) man is actually the
20 person that's been supplying them with methamphetamine, that
21 they actually got it from him. Now I submit to you that if
22 there was a video of him handing drugs to someone, if there
23 was one telephone record to show that he had a phone call
24 with any of these people -- now we we have eleven people
25 here, ladies and gentlemen, and they haven't given us one

1 phone record to show that any phone calls were ever made to
2 this man.

3 Now they say that it's hard to get phone records from
4 phones that are dropped or prepaid phones but we know from
5 the evidence in this case that they said that they gave him
6 Verizon telephones. Those records are readily available.
7 When a police officer, I submit to you when a police officer
8 who's been involved in these kind of investigations like
9 Agent Asbill has for over twenty-six years tells you that he
10 hasn't got any evidence, the reason he hasn't been able to
11 get any evidence is because there's no evidence to be
12 gotten. There aren't any phone records in this case 'cause
13 Mr. Tate never spoke to these people. There aren't any
14 videos of him selling drugs because he's never sold them any
15 drugs and they can't get that evidence. You can believe
16 that if there was any chance at all that they could have
17 done a buy with him, contacted him and purchased drugs, got
18 him on surveillance, put him under a video, they would have
19 it. Why can't they get it? Because he wasn't doing those
20 activities. All of these people that were trying to pin
21 this on him to keep their real source of supply a secret
22 from the State and, in return for that, they're getting a
23 deal. He's no threat to them. They can get out with their
24 3 to 6 years and go right back to doing what they're doing
25 because the supplier that's been giving them their drugs is

1 still out there.

2 Now let me submit this to you as well: If they had any
3 one piece piece of either -- pieces of evidence like they
4 have against all of the other defendants in this case, I I
5 wouldn't have anything to say to you, I'd have to sit down,
6 I wouldn't be able to say they don't have any evidence to
7 support their accusations against Mr. Tate, they got a phone
8 record that clearly shows that mis -- Mr. Griffin called him
9 up and made a drug deal or we got him on video goin' to this
10 place in Atlanta and doing a controlled buy in this gas
11 station and think about all the things that they've said to
12 you, the the, uh, places that they say they went to are
13 generic places that we all know that are almost at any exit:
14 McDonald's, Waffle House. If you drive down 85 or go South
15 on 85 there's a Waffle House almost every exit between here
16 into Atlanta from Greenville. It's not hard for them to say
17 there's a Shell station at a interstate exit or there's a
18 McDonald's or a Waffle House but what what does your common
19 sense tell you? If these people are really buying drugs
20 from Mr. Tate day after day, what we heard was evidence that
21 it was two to three times a week, I've only driven up to
22 this courthouse a few times and I know what's on East North
23 Street, how difficult would it be for them to come in here
24 and say, you know, we went over to this apartment complex on
25 Southeast Avenue, it was green, it had a porch, they can't

1 describe any of the small details that are important in the
2 case because it never happened, they're making this all up
3 and these guys went out and did their job and couldn't
4 support anything that those people told 'em. They're
5 relying completely on these eleven people, and as Agent
6 Asbill told you yesterday, you know, I wish I had some
7 better witnesses, you're just gonna have to either believe
8 'em or not.

9 Now I submit to you, ladies and gentlemen, is that
10 beyond a reasonable doubt? If we can get convicted on the
11 evidence that's been presented in this courtroom over this
12 week, if you convict Mr. Tate based on a few people coming
13 in and saying that he did this and they can't provide one
14 document to support any of the things that they said, none
15 of us are safe from people coming into court and saying
16 anything false against us. You have to believe that they're
17 credible and the worst thing about this is these aren't
18 people in our society that you should find credible.

19 Uh, one of the things Judge Verdin is going to say to
20 you is, as a tool, is what the credibility of witnesses are
21 and whether or not you should believe the witnesses that
22 have testified in this case. Credibility comes down to
23 their demeanor on the stand, the method in-- of of how they
24 testified, their motives for testifying, whether they have
25 bias or prejudice. We all know, from a lot of the testimony

1 we heard, that these people have bias and prejudices. We
2 also know that they have a motive for lying in this case
3 because they wanna benefit themselves as much as they can.
4 In fact, Nate' Bashaw said, I'm gonna do what I can for me,
5 she told that to Mr. Ariail point blank, Yes, I'm gonna do
6 what they -- what I'm gonna do for myself. They're asking
7 you to put your faith in the voracity of everything that
8 they've said in order to take this man's (indicating)
9 freedom away who's been a law abiding citizen.

10 I submit to you that the credibility of witnesses is
11 the most important thing in this case and I would ask you,
12 as you evaluate the evidence today, when you go back in the
13 jury room and you look at each other and start talking about
14 this case, ask yourselves this question: Has Mr. Underwood
15 and his team actually proven to me these people drove down
16 to Atlanta and actually purchased drugs from that
17 (indicating) man? If I wake up tomorrow morning, get out of
18 bed and look in the mirror at myself and I say, I wonder if
19 Mr. Tate really did sell the man the drugs. Were they
20 credible? Do I believe them? Do I judge his entire future
21 from this point forward, a man who we know is a law abiding
22 citizen versus eleven people who have not been law abiding
23 and who actually have solid evidence against them for their
24 guilt in their their, uh, part in all of this drug selling
25 business that's been going on in South Carolina.

1 We know that they've done it, there's no doubt that
2 they've got solid evidence on every one of these eleven
3 people but he doesn't get the same accommodations because
4 all that they're basing their indictment on in this case --
5 and if you notice on the indictment itself he's only charged
6 on one count of whether or not he conspired with these
7 people and there's not one piece of corroborating evidence
8 to support that he ever did that. I submit to you, ladies
9 and gentlemen, that the burden of proof has not been met in
10 this case, that each citizen, especially a citizen who's
11 lived a law abiding life, who we know who's doing legitimate
12 businesses deserves the benefit of the doubt, there's a
13 lotta doubt in this case. This (indicating) man deserves
14 your greatest consideration when you consider the evidence
15 in this case and I submit to you that what our Founding
16 Fathers said, We're entitled to a jury of our peers before
17 the State can take away our freedom because we're a freedom
18 loving country, this man deserves your consideration, every
19 consideration for the life that he's led and this is not the
20 evidence to convict a person and put a felony of a serious
21 nature on them.

22 I ask that you find Mr. Tate not guilty because the
23 State in this case has not met the burden of proof. I ask
24 that you -- the judge will, uh, charge you on what the law
25 is and I am convinced that once you've understood, uh, what

1 she presents to you as your tools for evaluating the
2 evidence in this case that there can only be one fair
3 verdict and verdict means, in Latin, to speak the truth and
4 the only way to speak the truth today is to find Mr. Tate
5 not guilty and I thank you for your time and consideration.

6 THE COURT: Thank you, Mr. Farnham. Will the attorneys
7 approach for just a moment. Does any, my charge on the law
8 will take about twenty minutes, does anybody wanna break or
9 you wanna keep goin'?

10 (Whereupon, a bench conference was held off the
11 record.)

12 THE COURT: Ladies and gentlemen, before I begin my
13 charge on the law I need t -- I need to remind you of
14 something and that is that you are not to consider any
15 possible sentence in this case in determining, uh, whether
16 or not you you find that the State has met its burden of
17 proof in this case. You are to determine only if the State
18 has determined -- has met their burden of proof. You are
19 not consider any possible punishment, that is up to me,
20 that's that's my area, you are to determine whether or not
21 the State has met their burden of proof.

22 Alright, I'm gonna, I'm now gonna give you my charge on
23 the law and I read it to you and I read it to you for two
24 reasons. First is I wanna get it right, I don't wanna
25 forget anything, uh, but secondly, and most importantly, is

1 you're going to get a copy of exactly what I read to you in
2 the jury deliberation room with some instructions on how to
3 use this written copy, uh, to help you and guide you in your
4 deliberations.

5 Madam foreperson, ladies and gentlemen of the jury, you
6 have seen and heard the evidence presented as well as the
7 arguments of counsel. It now, therefore, becomes my duty
8 and obligation to instruct you on the law that is applicable
9 in this case. It will then be your duty and obligation to
10 begin your deliberations through which process you will
11 decide the facts, apply the law as instructed by the Court
12 and fair, and render a fair and impartial decision. It is
13 your exclusive duty to determine what the facts are. You do
14 that based upon your own common sense examination and
15 evaluation of the testimony and other evidence received
16 during the trial of this case. You twelve jurors alone will
17 decide what weight, value, and effect that is to be given to
18 any particular testimony or any other evidence received.
19 Your ultimate goal is to simply reach the truth in this
20 matter and by doing so you will have fulfilled your
21 obligations as jurors and that is to give both the State and
22 the defendant a fair and impartial trial based upon the
23 evidence presented and the law applicable to this case.

24 In this case the State of South Carolina, through the
25 attorney general, has charged the defendant with the

1 criminal offense known as "conspiracy to traffic in
2 methamphetamine for more than 400 grams". The allegations
3 charging the defendant with these crimes are set forth in
4 the indictment that has been previously explained to you.
5 As I've previously explained, the indictment is not evidence
6 in this case and may not be considered by you as evidence
7 against the defendant.

8 As to the charge set forth in the indictment, the
9 defendant has entered a plea of not guilty. That plea of
10 not guilty has, therefore, placed upon the State the burden
11 of proving the allegations that are set forth in the
12 indictment, the burden of proving each of the essential
13 elements of any crime charged and, therefore, the burden of
14 proving the guilt of the defendant to the satisfaction of
15 you twelve jurors beyond a reasonable doubt before a verdict
16 of guilty could be returned as to the indictment. The
17 burden is never upon a defendant to prove that he is not
18 guilty or to prove that he is innocent -- that he is innocent
19 because, in some cases, that may not be possible. The
20 burden is always upon the State because they have made the
21 allegations to prove the defendant guilty beyond a
22 reasonable doubt.

23 You are further instructed that it is a vital and
24 important cardinal rule of law that every defendant in a
25 criminal trial, no matter how serious the offense for which

1 he stands charged, the defendant shall always be presumed
2 innocent of those charges and that presumption of innocence
3 shall be with the defendant from the moment of his arrest
4 and throughout the course of the criminal process and even
5 throughout the course of the actual trial. The presumption
6 of innocence shall be with the defendant even as you go into
7 the jury room to begin your deliberations and that
8 presumption of innocence shall be with him there and be with
9 him forever unless you twelve jurors determine that he is no
10 longer entitled to that presumption of innocence. It is
11 only if, unless and until you are satisfied of the
12 defendant's guilt beyond a reasonable doubt that he would no
13 longer be entitled to the presumption of innocence.

14 I remind you that, during this trial, you and I have
15 certain duties to perform. As the trial judge, it is my
16 responsibility to preside over the trial of this case and I
17 also have the duty to rule on the admissibility of the
18 evidence offered during this trial. You are to consider
19 only the competent evidence before you. If there was any
20 testimony ordered stricken from the record in this case
21 during this trial, you must disregard that testimony. You
22 are to consider only the testimony which has been presented
23 from this (indicating) witness stand, any exhibits which
24 have ma -- been made a part of the record in this case and
25 any stipulations of counsel.

1 I have the additional duty to charge you the law
2 applicable in this case. As the presiding judge, I'm the
3 sole judge of the law in this case and it is your duty, as
4 jurors, to accept and apply the law as I now state it to
5 you. If you already have any idea as to what the law is or
6 any idea as to what the law ought to be and it does not
7 agree with what I tell you now the law is, you must abandon
8 this idea because you are sworn to accept the law and apply
9 the law exactly as I state it to you. In every case in this
10 court tried, excuse me, every case tried in this court
11 before a jury, the jury becomes the sole and exclusive judge
12 of the facts in a case. A trial judge cannot intimate,
13 state, comment on or make any statement to a trial jury
14 about the facts in a case. Since you, the jury, are the
15 sole judge of the facts in this case, you are not to infer
16 from what I have said during the progress of this trial in
17 ruling upon the admissibility of evidence or otherwise or
18 anything that I say now during the course of this
19 instruction to you that I have any opinion about the facts
20 in this case. I do not. The law does not allow me to have
21 an opinion about the facts in this case. This is a matter
22 solely for you, the jury, to determine. As jurors it is
23 your duty to determine the effect, value, weight and truth
24 of the evidence presented during this trial.

25 The State has the burden of proving the defendant

1 guilty beyond a reasonable doubt. Some of you may have
2 served as jurors in civil cases where you were told that it
3 is only necessary to prove that a fact is more likely true
4 than not true such as by the greater weight or preponderance
5 of the evidence. In criminal cases, the State's proof must
6 be more powerful than that. It must be beyond a reasonable
7 doubt. Reasonable doubt is the kind of doubt that would
8 make a reasonable person hesitate to act. Proof beyond a
9 reasonable doubt is proof that leaves you firmly convinced
10 of the defendant's guilt. There are very few things in this
11 world that we know with absolute certainty, and in criminal
12 cases, the law does not require proof that overcomes every
13 possible doubt. If, based on your consideration of the
14 evidence, you are firmly convinced that the defendant is
15 guilty of the crime charged, you must find the defendant
16 guilty. If, on the other hand, you think there is a real
17 possibility that the defendant is not guilty, you must give
18 the defendant the benefit of the doubt and find him not
19 guilty. Facts and circumstances that merely place upon the
20 defendant a grave suspicion of the crime charged or that
21 merely raise a speculation or conjecture of the defendant's
22 guilt are not sufficient to authorize a conviction of the
23 accused.

24 There are two types of evidence which are generally
25 presented during a trial: direction evidence and

1 circumstantial evidence. Direct evidence is the testimony
2 of a person who claims to have actual knowledge of a fact
3 such as an eyewitness. It is evidence which immediately
4 establishes the main fact to be proved. Circumstantial
5 evidence is a proof of a chain of facts and circumstances
6 indicating the existence of a fact. It is evidence which
7 immediately establishes collateral facts from which the main
8 fact may be inferred. Circumstantial evidence is based on
9 inference and not on personal knowledge or observation. The
10 law makes absolutely no distinction between the weight or
11 value to be given to either circumstantial evidence or
12 direct evidence nor is a greater degree of certainty
13 required of circumstantial evidence than of direct evidence.
14 After weighing all of the evidence, if you are not convinced
15 of the guilt of the defendant beyond a reasonable doubt, you
16 must find the defendant not guilty.

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

1 reject the remaining part of the testimony of that same
2 witness. You may believe the testimony of a witness in its
3 entirety or reject the testimony of a witness in it's
4 entirety. You may consider whether any witness has
5 exhibited to you any interest, bias, prejudice or other
6 motive in this case. You may also consider the appearance
7 and manner of a witness while on the witness stand. In
8 other words, you are to judge a witness's credibility in the
9 same way you would judge a person's credibility in your
10 daily life.

11 I instruct you and emphasize that the fact that the
12 defendant did not testify is not a factor to be considered
13 by you in any way in your deliberation and in your
14 consideration on the question of the guilt or innocence of
15 the defendant. It must not be considered by you in any
16 manner whatsoever. A defendant has the constitutional right
17 to remain silent and the assertion of this right must not be
18 considered by you in your deliberations. I repeat, under
19 your oath, you are to draw no conclusion whatsoever from the
20 fact that the defendant in this case did not testify. The
21 fact that this defendant did not testify should not even be
22 discussed in the jury room. The burden of proof of -- as I
23 have stated to you is on the State. The defendant is not
24 required to prove his innocence. The burden of proof
25 remains on the State to prove guilt beyond a reasonable

1 doubt.

2 In order to establish criminal liability, criminal
3 intent is required. For example, the mental state required
4 to be proven by the State for a particular crime might be
5 purpose, intent, knowledge, recklessness or criminal
6 negligence. Criminal intent must be proven by the State
7 beyond a reasonable doubt. Criminal intent is always a
8 matter that must be determined by the jury from the
9 circumstances surrounding the situation. There is no way to
10 prove criminal intent to a mathematical certainty. So the
11 law says that criminal intent may be inferred from the
12 circumstances shown to have existed. This is how you make a
13 determination of whether or not the element requiring intent
14 was present. It is not necessary to establish intent by
15 direct evidence, but intent may be established by inference
16 in the same way as any other fact by taking into
17 consideration the acts of the parties and all the facts and
18 circumstances of the case. Criminal intent is a mental
19 state of conscious wrongdoing. It is up to you to determine
20 what the defendant intended to do based on the circumstances
21 shown to have existed. Criminal intent can arise from an
22 action or failure to act. It may arise from negligence,
23 recklessness or an indifference to duty or to consequences
24 that is considered by the law to be the equiv -- the
25 equivalent of criminal intent.

1 The defendant is charged with conspiracy to traffic
2 methamphetamine for more than 400 grams. The State must
3 prove, beyond a reasonable doubt, that the defendant
4 combined with one or more persons for the purpose of
5 committing an unlawful act or of committing a lawful act by
6 unlawful means. The State alleges that the defendant
7 conspired to commit the unlawful act of trafficking in
8 methamphetamine for more than 400 grams. The State must
9 prove, beyond a reasonable doubt, that the defendant
10 conspired to traffic methamphetamine for 400 grams.
11 Trafficking means to knowingly sell, manufacturer,
12 cultivate, deliver, purchase, bring into the State, provide
13 financial assistance or otherwise aid, abet, attempt or
14 conspire to sell, manufacturer, cultivate, deliver, purchase
15 or bring into this state, was knowingly in actual or
16 constructive possession, knowingly attempted to become in
17 actual or constructive possession of more than 400 grams of
18 methamphetamine.

19 In order to prove that the defendant conspired to
20 traffic methamphetamine for more than 400 grams, it is not
21 necessary to prove that he did traffic methamphetamine. All
22 that is necessary to prove is that he conspired to traffic
23 more than 400 grams of methamphetamine. In or -- in order
24 to prove conspiracy, the State must also prove that there
25 existed a mutual understanding, agreement or common

1 intention and plan to carry out the unlawful act. Mere
2 passive knowledge of or consent to the criminal contact of
3 another is not enough to make a person a conspirator. There
4 must be guilty knowledge and participation.

5 Similarly, the mere fact that the defendant may have
6 associated with another person or met with another person
7 and discussed common names and interest does not necessarily
8 establish proof of the existence of a conspiracy or that the
9 defendant was involved in a conspiracy. On the other hand,
10 it is not necessary that the agreement be a formal one, that
11 it be in writing, that the persons hold a meeting and
12 expressly state the terms of the common plan or that the
13 agreement be stated in words between them. The agreement of
14 a criminal conspiracy may come into being through an implied
15 mutual understanding, the wilful intention and knowing
16 adoption by two or more persons of a common plan is
17 sufficient. No overt acts need to be shown to establish a
18 conspiracy. A conspiracy may be shown by circumstantial
19 evidence and the conduct of the parties.

20 In order to convict the defendant of conspiracy, the
21 State must prove, beyond a reasonable doubt, not only that
22 the defendant knew of the unlawful conduct but that the
23 defendant agreed to combine with the other persons for the
24 purpose of accomplishing the unlawful conduct.

25 I will give you a copy of these instructions in written

1 form. During your deliberations, you may refer to the
2 instructions to decide, excuse me, to guide your decision-
3 making. You must consider the instructions as a whole and
4 not follow some and ex -- ignore others. Please return the
5 copy of the instructions to the Court at the time your
6 verdict is rendered.

7 Now, madam foreperson, the verd -- we have done a
8 verdict form in this case. It's a very simple one. It
9 says, We, the jury, in the above-named case find the
10 defendant, Antonio Emerson Tate, either guilty beyond a
11 reasonable doubt of conspiracy to traffic methamphetamine
12 for more than 400 grams or not guilty beyond a reasonable
13 doubt of conspiracy to traffic methamphetamine for more than
14 400 grams. There is no significance to the order in which I
15 listed the two possible verdicts in this case, none
16 whatsoever, one had to be listed first, one had to be listed
17 second. When you have marked your verdict on this verdict
18 form, madam foreperson, if you will sign and date it in the
19 spaces provided. Ladies and gentlemen, your verdict must be
20 a unanimous one. Madam foreperson, when the jury agrees on
21 the verdict, you will write the verdict on the verdict form
22 and sign as the foreperson as I just explained to you, then
23 knock on the jury room door and inform the bailiff that you
24 have reached a verdict. At that time we'll receive you back
25 into the courtroom.

1 I ask now that you return to your jury deliberation
2 room but do not begin your deliberations until you are told
3 by the bailiff to do so. Uh, your signal to begin your
4 deliberations will be when you receive these written
5 instructions, uh, my instructions in written form, uh, the
6 verdict form in this case and all of the evidence. Thank
7 you so much for your service.

8 (The following takes place outside the presence of the
9 jury.)

10 (Whereupon, a discussion was held off the record.)

11 THE COURT: Any objection to my charge on the law from
12 the State?

13 MR. UNDERWOOD: Your Honor, not an objection, I know,
14 uh, one concern I just had was that, uh, since they're
15 getting the the written charge, is there any way that, I
16 don't think we need to bring them out, where you just send
17 the note that if they have any questions they can ask the
18 Court for further explanation ---

19 THE COURT: Okay ---

20 MR. UNDERWOOD: --- just ---

21 THE COURT: --- we'll ---

22 MR. UNDERWOOD: --- so they know that they have that
23 option.

24 THE COURT: --- we'll let them know. Uh, the bailiffs
25 I always wonder how it is they get ahold of those yellow

1 sheets of paper they always send out but the bailiff gives
2 them a a a pad and tell them if that they they have any
3 questions they can ---

4 MR. UNDERWOOD: Great ---

5 THE COURT: --- write ---

6 MR. UNDERWOOD: --- thank you, Your Honor.

7 THE COURT: --- so we will take care of that. Yes,
8 sir?

9 MR. ARIAIL: No objections, Your Honor.

10 THE COURT: Alright, thank you so much. Will you all
11 take a moment and make sure that all of the exhibits are
12 together and make sure that they're all supposed to go back
13 to the jury and then we'll send 'em back.

14 MR. UNDERWOOD: And, Your Honor, just ---

15 THE COURT: Yes, sir.

16 MR. UNDERWOOD: --- to check, how, uh, how did Your
17 Honor wanna handle the drug evidence? I know different
18 judges do different things as far as securing that.

19 THE COURT: You know, I've always just sent it back and
20 never given it a thought. What ---

21 THE CLERK: Usually SLED takes evidence they have a
22 SLED form for the chain of custody.

23 THE COURT: Okay.

24 MR. UNDERWOOD: 'Cause, Your Honor, ---

25 THE CLERK: What I ---

1 MR. UNDERWOOD: --- the 'cause the these are not ---
2 THE CLERK: --- do is ---
3 MR. UNDERWOOD: --- sealed.
4 THE COURT: Right, right, and that's the one thing I
5 know we unsealed the things that we have. Uh, ---
6 (Whereupon, a discussion was held off the record.)
7 THE COURT: Alright, let's go back on the record.
8 There are a couple of options, uh, one was that a SLED agent
9 would take it back there, however, I'm more comfortable with
10 the clerk goin' back there with the form and with, uh, the
11 drugs just to, uh, I don't think any SLED agent would say
12 anything to the jury or anything like that but just so
13 there's no question whatsoever we'll send the clerk back
14 with the drugs and ---
15 MR. ARIAIL: Okay.
16 THE COURT: --- the the inventory form, alright?
17 MR. UNDERWOOD: Thank you, Your Honor.
18 THE COURT: Thank you.
19 MR. ARIAIL: And then one last thing, I'm sorry.
20 THE COURT: Oh, yes, sir.
21 MR. ARIAIL: I was just gonna make sure, I don't know
22 if the alternates were excused already ---
23 THE COURT: I I'm gonna I'll excuse them before they
24 get going.
25 MR. ARIAIL: That's what I thought. I thought you

1 would. Thank you.

2 THE COURT: I will.

3 (Whereupon, a discussion was held off the record.)

4 THE COURT: Mr. Farnham ---

5 MR. FARNHAM: Yes, Judge.

6 THE COURT: --- the the jury had an odd request from
7 the outset: They wanted a list of witnesses who had
8 testified, uh, and I know there's the proposed list of
9 witnesses but, excuse me, not all those witnesses test
10 testified. We can make a list of witnesses if you'd like,
11 uh, but I needed to know, uh, what your position was on
12 that.

13 MR. UNDERWOOD: I don't have a problem with them just
14 having a list of who testified. I I don't think that's a

15 ---

16 THE COURT: Alright.

17 MR. UNDERWOOD: --- a problem.

18 THE COURT: Would you take your proposed list and get
19 with Mr. Farnham and ya'll agree on who testified. I'm be
20 honest with ya, I don't know, I mean, -- oh, you've got it.

21 MR. PAULING: You got it, yeah.

22 THE COURT: Maggie's got 'em. Well we'll make a list
23 from Maggie's list.

24 MR. UNDERWOOD: Okay.

25 THE COURT: You -- you're alright with that, Mr.

1 Farnham?

2 MR. FARNHAM: Yes, that's fine.

3 (Whereupon, a discussion was held off the record.)

4 (Whereupon, the alternate jurors were released off the
5 record.)

6 (Whereupon, the jury began deliberations at 12:21 p.m.)

7 (Jury charge marked Court's Exhibit No. 1 and witness
8 list marked Court's Exhibit No. 2 for identification.)

9 (Whereupon, a verdict was reached at 2:07 p.m.)

10 THE COURT: Alright, it's my understanding the jury has
11 a verdict, we ready to bring the jury back in?

12 MR. UNDERWOOD: State's ready, Your Honor.

13 THE COURT: Defense?

14 MR. ARIAIL: Yes, Your Honor.

15 THE COURT: Go get 'em. Before anybody comes back in,
16 uh, before we bring the jury back in let me just say to
17 everyone in the courtroom, Mr. Tate, you're included in
18 this, I know this is an emotional case, uh, I know that, uh,
19 well emotions will be runnin' high either way. Uh, let me
20 just say this jury didn't ask to be here. They didn't ask
21 to be a part of this case. They've sat here attentively.
22 They deserve our respect and they'll get our respect. Uh,
23 if there are any outbursts, anything like that in the
24 courtroom, you can just expect, there's a deputy in the back
25 and two right here (indicating), you can expect you'll spend

1 tonight at the law enforcement center, alright.

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: Madam foreperson, it's my understanding
5 that the jury's reached a verdict, is that correct?

6 JURY FOREPERSON: Yes, we have.

7 THE COURT: Alright, if you would please hand the
8 verdict form to the bailiff.

9 (Whereupon, the jury foreperson complied.)

10 THE COURT: The verdict form appears to be in order.
11 Publish it, madam clerk.

12 THE CLERK: Sure. In the matter of the State of South
13 Carolina vs. Antonio Emerson Tate, we the jury in the above
14 named case find the defendant Antonio Ener -- Em -- Emerson
15 Tate guilty beyond a reasonable doubt of conspiracy to
16 traffic methamphetamine for more than 400 grams.

17 THE COURT: Alright, you can ask them if this is their
18 verdict.

19 THE CLERK: I I'm gonna poll the jury now. Ladies and
20 gentlemen, of the jury I'm gonna ask you two questions
21 relating to your verdict. As I call your juror ---

22 THE COURT: Madam clerk, you don't have to poll them,
23 if you'll ---

24 THE CLERK: Okay.

25 THE COURT: --- just ask them is this, is this their

1 verdict, ---

2 THE CLERK: Okay, alright.

3 THE COURT: --- signify by raisin' their right hand.

4 THE CLERK: Okay, was this your verdict, uh, if it was,
5 will you raise your right hand.

6 THE COURT: And all have so signified, thank you so
7 much. Ladies and gentlemen of the jury, I thank you so much
8 for your service. Uh, I'm gonna, uh, come back to your jury
9 deliberation room but if you'll step back there I know they
10 need to get you your cell phones and and that sorta thing,
11 uh, before you leave anyway so I'll be right back there to
12 speak with you. Thank you so much.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: We'll take up the matter of sentencing
16 shortly. Uh, I'm gonna release the jury, is there any
17 matter that we need to take up, I know there -- they'll be
18 some matters you'll need to take up but is there any matter
19 we need to take up before I release the jury from the ---

20 MR. UNDERWOOD: Not ---

21 THE COURT: --- State?

22 MR. UNDERWOOD: --- from the State, Your Honor.

23 THE COURT: Any from the ---

24 MR. ARIAIL: Your Honor, I ---

25 THE COURT: --- defense?

1 there were some people who were sad I can tell so they
2 clearly took their responsibility very seriously.

3 (Pause.)

4 (Whereupon, Attorney Farnham entered the courtroom.)

5 MR. FARNHAM: Sorry, Judge.

6 THE COURT: That's fine, I just walked back in. I was,
7 I told the attorneys before you were back in here the jury
8 showed, uh, they were complimentary of the attorneys
9 involved and they were -- showed, uh, uh, appropriate level
10 of gravity of the situation and, uh, uh, alright, we ready
11 to move to sentencing?

12 MR. UNDERWOOD: Yes, Your Honor.

13 THE COURT: Alright, thank you. If ya'll wanna step
14 forward and do it just as if..

15 (Whereupon, the defendant and his counsel came
16 forward.)

17 MR. UNDERWOOD: May it ---

18 THE COURT: Yes.

19 MR. UNDERWOOD: --- please the Court, Your Honor. Uh,
20 Your Honor, as you're aware, this charge carries a minimum
21 sentence of 25 years to a maximum of 30 years and a \$200,000
22 fine. Uh, Your Honor, is very well aware of the facts due
23 to the trial and the other pleas. Uh, we would leave the
24 sentence to your appropriate discretion.

25 THE COURT: And hi -- he has a, if any, a very, very

1 limited prior record.

2 MR. UNDERWOOD: It is limited, Your Honor. In 2001 a
3 driving under suspended revoked license, uh, 2002 a
4 probation violation, 2003 giving false name or info. to
5 police and 2003 another probation violation, Your Honor.

6 THE COURT: Okay. Alright, Mr. Ariail.

7 MR. ARIAIL: Your Honor, and, uh, you've heard the the
8 testimony. You've learned a little bit about my client in
9 regards to it. Uh, uh, to say the least we're a little
10 shocked in regards to kinda what happened today, uh, and I
11 know, uh, him just seated here he's ex -- he's lookin' at 25
12 to 30 years, uh, others in this have, uh, gotten
13 substantially less. It is our hope, based upon what you've
14 got in front of you, he can get the mandatory minimum in this,
15 uh, that's 25, uh, and that's pretty much, uh, the best he
16 knows he can do in that and that we hope that you will go
17 with that instead of the the maximum.

18 THE COURT: Mr. Tate, is there anything you'd like to
19 say, you you looked earlier like you wanted to say somethin'
20 and I've ---

21 THE DEFENDANT: Yeah, he just, uh, stated that, uh, I
22 had a probation violation. Did he, I don't know if it said
23 in my paperwork the probation that I was on was to pay a
24 speedin' ticket off that I thought was taken care of ---

25 THE COURT: Okay, I see, I see.

1 THE DEFENDANT: --- so I was on probation to pay a
2 speedin' ---

3 THE COURT: Alright.

4 THE DEFENDANT: --- ticket off.

5 THE COURT: Alright, and I'll I'll say for the record I
6 will not consider that probation violation. We we don't
7 have somethin' like that here in South Carolina, uh, where
8 somebody would be on probation for something like that. So
9 that's I'm not even gonna take it into consideration
10 whatsoever, alright. I'll take into cons -- I, well I'll
11 just say to you, Mr. Tate, you you have probly more family
12 support than anybody I've seen in in my recent memory in the
13 courtroom, great deal of family support, uh, and I couldn't
14 couldn't blame them for for bein' emotionally involved in
15 this case of course because it was obvious they they care
16 about you a whole lot. Uh, I take into consideration that
17 you're a young man, relatively young man for who we see and
18 that, uh, that you do have have very little prior record,
19 uh, sentence of the Court is 25 years and credit for the
20 time you served. Good luck to you.

21 POLICE OFFICER: This way, please.

22 MR. ARIAIL: Thank you, Judge.

23 THE COURT: Thank you.

24 MR. UNDERWOOD: Thank you, Your Honor.

25 THE COURT: Thank you. Mr. Ariail, you wanna save it,

1 you do wanna save any post-trial motions ---
2 MR. ARIAIL: I will ---
3 THE COURT: --- for ---
4 MR. ARIAIL: --- reserve those, yes, Your Honor.
5 THE COURT: Absolutely.
6 MR. ARIAIL: I talked with Mr. Farnham in regards to
7 those and let you know ---
8 THE COURT: No problem whatsoever, ---
9 MR. ARIAIL: --- so I guess we ---
10 THE COURT: --- they ---
11 MR. ARIAIL: --- we file those ten ten days, that would
12 be, I wanna make sure I got the right date on that, when we
13 do this that looks like it would be ---
14 THE COURT: Well I can tell ya this, Mr. Ariail, I will
15 not be in this circuit for two weeks ---
16 MR. ARIAIL: Okay.
17 THE COURT: --- so so I will not receive any motions so
18 how 'bout with say June the 16th, is that the day I'm back
19 here?
20 MR. ARIAIL: June 16th ---
21 LAW CLERK: Seventeenth.
22 MR. ARIAIL: --- okay, or June ---
23 THE COURT: June the 17th ---
24 MR. ARIAIL: --- 17th?
25 THE COURT: --- is the day that I'm back in this

1 circuit holding court --- .
2 MR. ARIAIL: So we ---
3 THE COURT: --- so why don't we just hold motions open
4 until that time?
5 MR. ARIAIL: Okay, that be ---
6 THE COURT: Alright.
7 MR. ARIAIL: --- fine, Your Honor. Thank you.
8 THE COURT: Thank you.
9 MR. FARNHAM: Your Honor, could I just state for the
10 record that it was an honor to practice in your court ---
11 THE COURT: Well I thank you very much.
12 MR. FARNHAM: --- found your your whole system here was
13 extremely organized, your clerks downstairs durin' the jur
14 -- jury selection was amazingly organized, ---
15 THE COURT: They are somethin' else.
16 MR. FARNHAM: --- your staff's been very assist, uh,
17 very very helpful to me personally and I appreciate it.
18 THE COURT: Well I thank you for sayin' that. I thank
19 you for sayin' that and it's been a pleasure workin' with
20 you this week and, uh, and I say to all attorneys you tried
21 and outstanding case. Ya'll all tried an outstanding case.
22 It might not a been the outcome that you wanted but I don't
23 think anybody could've got a better case. Good luck to ---
24 MR. FARNHAM: Thank ---
25 THE COURT: --- you.

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MR. FARNHAM: --- you, Judge.
MR. ARIAIL: Thank you,
THE COURT: Thank you.
MR. ARIAIL: Thanks.

1 CERTIFICATE OF REPORTER

2
3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on May 28, 29, 30 and 31, 2013 at the time and
6 place heretofore set forth; and that the foregoing pages
7 numbered from 7 through 748, inclusive, constitute a true and
8 accurate transcription of my stenographic notes of the said
9 proceeding.

10 I further certify that I am neither attorney nor counsel
11 for, nor related to or employed by any of the parties
12 connected to the action, nor am I financially interested in
13 the action.

14 January 15, 2014

15
16 Margaret A. Woods

17 Margaret A. Woods, Court Reporter
18 in and for the State of South Carolina at Large.

CERTIFICATE OF COUNSEL

I, Wendy Keefer, Esq., certify that this Record on Appeal includes all of the material proposed by the parties for inclusion in the Record on Appeal and does not contain any other material.



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