

**STATE OF SOUTH CAROLINA**

**In The Court of Appeals**

**APPEAL FROM LEXINGTON COUNTY**

**DeAndrea G. Benjamin, Circuit Court Judge**

**RECEIVED**

**JUN 01 2015**

**SC Court of Appeals**

**THE STATE,**

**RESPONDENT,**

**V.**

**PHILLIP HELMS,**

**APPELLANT**

**APPELLATE CASE NO. 2014-000758**

**RECORD ON APPEAL**

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## Emily Homer - Cross-Examination by Mr. Kirkland

1 Q Okay. Now, I'm showing you, I'm showing you what  
2 looks like your Item No. here with a dash 2 on it. Do you  
3 see that?

4 A Yes.

5 Q Now this bag, this is how you received it in a bag,  
6 this bag?

7 A I guess that I only received part of the bag. I  
8 guess that's part of the bag, correct?

9 Q Yeah, I'll hand it to you and let you look at it  
10 more closely.

11 A Okay. Uh-huh (affirmative response).

12 Q So that looks like the bag; that's the way you  
13 received it?

14 A Yes.

15 Q Now it -- written on that bag was found on Robin in  
16 right pocket, correct?

17 A Well, I see, Found on Robin in R pocket.

18 Q In R pocket, right. Right. Then you found this  
19 item, which looks a dash 3 on it; is that your Item No. 3?

20 A Yes, sir.

21 Q Now, Item No. 3, it says on the bag, In living  
22 room, correct?

23 A Yes.

24 Q And you found no control or prescription  
25 substances, correct?

## Emily Homer - Cross-Examination by Mr. Kirkland

1 A Yes.

2 Q All right. I'm going to have to do this one  
3 sideways. All right.

4 Now, this, you mentioned that there was a spoon and  
5 a piece of aluminum foil that you tested, which was Item 4.

6 A Yes.

7 Q And it says at the top of this and this is the bag  
8 that you received it in?

9 A Yes.

10 Q And it says spoon and tin foil in box in Room 1 by  
11 Hodges, correct?

12 A Yes.

13 Q Now, you said that you didn't test that item for  
14 what reason?

15 A I don't test everything in the BEST Kit.

16 Q Right.

17 A Especially things that may have residue. It's rare  
18 that I'll find the -- I just don't always test spoons and  
19 utensils and bags and I've already meth present.

20 Q Well, here's what I'm asking. These different  
21 items were, if they were found in different people's  
22 pockets and there were various defendants and this was  
23 found in one particular place and it could be attributed to  
24 one defendant and not other defendants, it would be  
25 critical to test this because meth weight found in other

## Emily Homer - Cross-Examination by Mr. Kirkland

1 places may not apply to this defendant, correct?

2 A I don't know that. It doesn't have a different  
3 defendant name.

4 Q I understand, but there was nothing -- there was --  
5 the reason why you're saying that you didn't test this was  
6 I think you said, you didn't notice any residue initially  
7 on it, correct?

8 A Just visually looking at it. I mean -- I don't  
9 know -- and besides, I've already got methamphetamine found  
10 and residue on two -- and I've already got filter paper  
11 that I found methamphetamine. So even if I were to find  
12 methamphetamine, more methamphetamine residue, it doesn't  
13 change the overall charge.

14 Q Right.

15 A So unless I see a different defendant name, then I  
16 don't always analyze everything.

17 Q Okay. Well, let me -- let me show you something  
18 here. This is -- oh man, it looks terrible, but you see at  
19 the top there, it looks like an S, S, S, S, S, S. Are you  
20 looking at the top right of your report?

21 A Yes.

22 Q And you realize that there are one, two, three,  
23 four, five, six potential defendants?

24 A Yes.

25 Q So depending on -- and I'm not trying to give you a

## Emily Homer - Cross-Examination by Mr. Kirkland

1 hard time, but you understand that depending on where these  
2 things are found, it could have a dramatic impact on which  
3 defendant is charged with which particular offense,  
4 correct?

5 A Well, I don't know, I'm not given any other  
6 information in the case other than the evidence, the  
7 suspect names and where it occurred.

8 Q And so the BEST practice would be to test it  
9 though?

10 A No, because I get, each week there's -- we have a  
11 backlog. If I analyzed every single piece of evidence in  
12 every case that's turned it, I would only get through maybe  
13 two cases in a week. I have to get through -- I get over a  
14 1000 cases in a year. I have to get through a certain  
15 number of cases.

16 Q Yes, ma'am.

17 A So I have to take the best sampling technique that  
18 I can and that's how --

19 Q If -- well let me ask you this. If you had found  
20 burn marks on the bottom of this spoon, would that have  
21 increased the probability that you would have tested it?

22 A Not necessarily because I also look for the best  
23 evidence. In looking at this case, most -- looking at this  
24 case -- most filter paper, because it's usually used in the  
25 extraction process, I can either find either the extract

## Emily Homer - Cross-Examination by Mr. Kirkland

1 from -- if they're trying to get the pill washing cleaner  
2 or usually more than likely the filter paper is used for  
3 methamphetamine, to extract the methamphetamine base.

4 So --

5 Q If -- if those items were found in someone's pocket  
6 as opposed to in the living room, there could be, you know,  
7 a difference. I'm not trying -- in fact, I think I've made  
8 my point so I'm just going to go ahead and move on.

9 Was there -- did you notice burn marks on the  
10 bottom of this spoon? I'll hand you the picture again.

11 A I didn't it notate in my worksheets, so --

12 Q Okay.

13 A -- this was last June.

14 Q Okay. Have you ever heard of the term chalet?

15 A Honestly, today, yesterday --

16 Q Was the first time?

17 A -- it was the first time I've heard it.

18 Q Okay. Me too. I've never heard of it either. All  
19 right. I'm going to show you three items. The first  
20 item -- can you see that at all or do I need to bring it  
21 over there?

22 A I see the lace and I see -- yeah, an object right  
23 there.

24 Q Do you see something that appears to be a glass  
25 pipe? Let me --

## Emily Homer - Cross-Examination by Mr. Kirkland

1 A I see the pipe.

2 Q According to the testimony yesterday, these are the  
3 sort of pipes that roses -- roses are sold in convenience  
4 stores. Do you recognize that type of pipe?

5 A Well, my husband has sent me roses, but they're not  
6 from a convenience store.

7 Q I'm just staying in your experience, you know, as  
8 a -- as a drug tech, have you seen these sorts of pipes  
9 before?

10 A I've seen lots of different types of pipes, yes.

11 Q All right. Now, it appears that it is sort of  
12 black on the end there?

13 A Okay.

14 Q No, no, no, I'm asking you.

15 A I don't -- that's not a really good picture; it's  
16 very dark.

17 Q I know. Well, let me ask you this then: If that  
18 pipe had been used to smoke methamphetamine, could you have  
19 extracted a sample from it and tested it?

20 A At best -- very iffy, because, you know, in some  
21 cases to -- methamphetamine actually breaks down pretty  
22 easily.

23 Q Right.

24 A In some cases it can be burnt that I can't identify  
25 methamphetamine present.

## Emily Homer - Cross-Examination by Mr. Kirkland

1 Q Have you ever identified methamphetamine from a  
2 pipe before?

3 A Honestly, I've gotten crack off of pipes better  
4 than I've seen methamphetamine, but I mean --

5 Q You have recovered methamphetamine?

6 A I don't see it very often in a pipe, no.

7 Q But you do see it?

8 A No -- well, the problem is, as I said, the  
9 methamphetamine breaks down very easily on heat --

10 Q Yeah, I understand that.

11 A And there's even an issue that my instrumentation  
12 have to -- I have to -- I have to upload a standard of  
13 methamphetamine every single time I run it because the  
14 methamphetamine, it just, it breaks down easily.

15 Q I understand that.

16 A Even upon burning, it just --

17 Q Here's my question, again. Have you ever tested a  
18 pipe before that tested positive for methamphetamine? In  
19 your entire career?

20 A I mean, I might have. I don't remember honestly. I  
21 mean -- I'd have to look at my records.

22 Q And yet these terms -- these items that were  
23 referred to as chalets, if you had received these, could  
24 you have swabbed them and tested them for methamphetamine?

25 A Oh so a chalet is aluminum foil?

## Emily Homer - Cross-Examination by Mr. Kirkland

1 Q Yes.

2 A Oh.

3 Q Yeah. If -- if methamphetamine was present on  
4 these items, could you have swabbed them and tested them?

5 A I could have swabbed and I could have taken a test,  
6 but more than likely every -- like I said, methamphetamine  
7 upon burning, it rarely comes out. So usually I don't see  
8 a result.

9 Q That's fine. These straws right here, the  
10 allegation yesterday was that these straws were used to  
11 suck up methamphetamine. Could you have possibly tested  
12 the straw to determine if the straw tested positive for  
13 methamphetamine?

14 A I could have, depending on the diameter of the  
15 straw.

16 Q But it could be tested?

17 A It could be.

18 Q And then once it gets there to you, you can decide  
19 whether you test it or not?

20 A Then I decide depending on how much -- what other  
21 evidence is in the BEST Kit. But like I stated too, if  
22 there is other items that are, a straw is a little  
23 different because with the straw, you've got condensation  
24 points on it, so it's a little bit cooler but if you got  
25 like just a burn mark, so --

## Emily Homer - Cross-Examination by Mr. Kirkland

1 Q Okay. Are you familiar with the term -- and you  
2 may not be. Are you familiar with the term cake? The  
3 substance that collects at the bottom of a methamphetamine  
4 reaction vessel?

5 A I've heard of it.

6 Q Okay. Have people in the past brought you a  
7 mixture of a white substance that contains specks of  
8 lithium that you have tested for methamphetamine?

9 A They've brought -- I've seen specks of lithium  
10 in -- but the problem with lithium is that it's very  
11 reactive.

12 Q Correct.

13 A And usually I -- I try not to extract that  
14 because --

15 Q Not to extract the lithium?

16 A Well, you can't really because once you've got  
17 lithium exposed there -- lithium actually -- a lithium  
18 battery is kept usually in -- without water because you've  
19 got water everywhere.

20 Q Correct.

21 A Lithium is similar to the sodium in that it will  
22 react once it's present to water. And actually I had an  
23 old chemistry professor that tried to show this experiment  
24 in class and he brought in some sodium and it exploded on  
25 him right there in front of the classroom because he didn't

## Emily Homer - Cross-Examination by Mr. Kirkland

1 have it enough oil.

2 Q Right. Just a moment ago -- and I think you were  
3 in the room, Investigator Merckle testified that in cases  
4 that he's worked they have collected that cake and they  
5 have sent that cake off for testing and it has tested  
6 positive. So have you had an experience in testing this  
7 cake before or do you refuse to test it? Or -- is that  
8 what you're saying?

9 A I have to take extra measures to make sure --

10 Q Correct.

11 A -- that there isn't any lithium present.

12 Q Correct. But you can test it?

13 A I prefer not to.

14 Q Okay.

15 A Because the problem is, I don't want an explosion  
16 in the lab.

17 Q I get it.

18 A So --

19 Q But that's -- those materials have been submitted  
20 to you in the past for testing and you have tested them?

21 A I've tried to extract them. I think I remember one  
22 case, but the problem is there was lithium present and it  
23 was still reacting and they hadn't made methamphetamine  
24 yet. So that was one sample. I think there was other  
25 evidence submitted.

## Emily Homer - Cross-Examination by Mr. Kirkland

1 Q Right.

2 A But --

3 Q Here's what I'm asking. You have received samples  
4 before of this cake material that either contained or did  
5 not contain lithium, correct?

6 A Only one other time, but I didn't want to analyze  
7 it. I didn't, you know, it took a lot of extra work to  
8 make sure. You can't analyze everything that's submitted.

9 Q I understand that. Have you received -- have you  
10 received those materials before? And is it possible to  
11 test those materials?

12 A It would depend if there's a lithium present,  
13 usually I prefer not to. I don't want a reaction and I  
14 don't want an explosion in the lab.

15 Q I have no more questions.

16 MR. ROSS: Nothing further from this witness, Your  
17 Honor.

18 THE COURT: All right, ma'am, you may step down.

19 All right. Call your next witness.

20 MR. BELL: Your Honor, at this time, the State  
21 rests it's case.

22 THE COURT: All right. Ladies and gentlemen of the  
23 jury, the State has rested. At this time, I'm going to  
24 send you all out for a break. There are some matters of  
25 law I need to take up outside of your presence. I'm going

1 to send you all out for a break and I'm going to see how  
2 long it's going to take and we'll discuss lunch while you  
3 all are out. All right. Thank you.

4 (WHEREUPON the jury left the courtroom at 11:56  
5 a.m.)

6 THE COURT: All right. The State has rested.  
7 Anything from the Defense.

8 MR. KIRKLAND: Yes, ma'am, I do have a Directed  
9 Verdict Motion.

10 THE COURT: All right. Well, let me ask you all  
11 this: Should I -- do you -- I'm trying to decide about  
12 lunch. Should I go ahead and send them or --

13 Mr. Kirkland, I'm not trying to put you on the  
14 spot. Do you have any idea how many witnesses you have.

15 MR. KIRKLAND: I probably need to talk to Brandon  
16 and to Phil as to whether or not they wish to testify. It  
17 would probably be easier to go ahead and send them out for  
18 lunch and then I'll have everything straightened back out  
19 by the time they get back. If that's -- what -- what --  
20 you know, what are the concerns; tell me what you're  
21 thinking?

22 THE COURT: No, no, no, just for scheduling  
23 purposes. If you -- I was thinking that we'd hear your  
24 motion. Just -- and I'm not trying, I don't want to put  
25 you on the spot because I know you have to talk to your

1 client. I'm just trying to decide if we're going to be  
2 able to argue and charge this afternoon and if so, we have  
3 to go over the jury charges.

4 Well, you know what, I'll send them to lunch and if  
5 they -- and when they come back -- I'll go ahead and send  
6 them to lunch and then we'll come back -- and then maybe at  
7 1:30 -- I'll have them back at 1:30.

8 Yeah, we'll bring them back in and send them to  
9 lunch. Okay.

10 (WHEREUPON the jury entered the courtroom at 11:59  
11 a.m.)

12 THE COURT: All right. Ladies and gentlemen of the  
13 jury, instead of having you all sit back in the jury room  
14 while we handle these matters of law. I am going to send  
15 you out for lunch. And if you can be back at 1:30 we will  
16 continue at that time.

17 Remember to keep your buttons on. Do not speak  
18 with anyone. Do not discuss the case with your fellow  
19 jurors. And it would also be improper for you to form your  
20 own -- you've only heard from the State's case; it would be  
21 improper for you to form an opinion in your own minds as to  
22 the innocence or guilt of the defendant.

23 All right. Thank you.

24 (WHEREUPON the jury left the courtroom at 12:01  
25 p.m.)

1 MR. BELL: Your Honor, may I request a very brief  
2 bathroom break prior to making these --

3 THE COURT: Yes, sure.

4 MR. BELL: Thank you.

5 THE COURT: Are you waiting on Mr. -- are you  
6 waiting on Mr. Ross?

7 MR. BELL: Your Honor, we can -- I believe he went  
8 to go grab a case, but we can go ahead and proceed.

9 THE COURT: Okay. Whatever you all --

10 MID-TRIAL MOTIONS

11 MR. KIRKLAND: Your Honor, I'll go ahead and start.

12 Your Honor, the first argument that I'm going to  
13 make for directed verdict is -- actually has to do with  
14 statutory construction. I will start with establishing  
15 some general principles in statutory construction. I've  
16 handed up the case -- it's a Supreme Court case of Simpson  
17 v. United States. If you look on page 7 of that case, Your  
18 Honor, I will read the relevant portions.

19 It stands for the principal in part that to  
20 construe a statute to allow an additional sentence  
21 authorized by -- and they give a statute number -- the  
22 pyramid on a sentence already enhanced under another would  
23 violate the established rule of construction.

24 And this is what I'm referring to -- that am --  
25 ambi -- ambic -- ambiguity concerning the ambit of criminal

1 statutes should be resolved in favor of lenity. Simply  
2 establishing we're going to making a lenity argument.

3 The second element of statutory construction that I  
4 wish to draw upon is the principle that gives -- and this  
5 is on page 7 as well, it's on the right side of the page;  
6 it starts with the first full paragraph where it says:  
7 Finally, our result is supported by the principle that  
8 gives precedence to the terms of the more specific statute  
9 where a general statute and a specific statute speak to the  
10 same concern, even if the general provision was enacted  
11 later.

12 And here's what my argument actually is: In 1999  
13 we have a Court of Appeals case from the State of South  
14 Carolina, State v. Castineira. The issue in that case was  
15 that the trafficking statute, which I believe was  
16 44-53-370, they convicted a person under the conspiracy  
17 portion of that statute. The defense in that case argued,  
18 and it starts with the third issue, which is on page 3,  
19 Your Honor. The argument in that case was that the person  
20 should have been sentenced under 44-53-420; 44-53-420 is  
21 the general -- is the specific, excuse me, conspiracy  
22 provision and it reads that attempt and conspiracy, attempt  
23 to possess and penalties. And it says, Except as provided  
24 in Subsection B, a person who attempts or conspires to  
25 commit an offense being unlawful by the provisions of this

1 article, upon conviction, be fined or imprisoned in the  
2 same manner as for the offense planned and attempted, but  
3 confinement or imprisonment shall not exceed one-half of  
4 the punishment prescribed for the offense, the commission  
5 of which was the object of the attempt or conspiracy.

6 So what we're arguing, Your Honor, is that the  
7 language that's in the manufacturing statute is a general  
8 statute and it includes aiding, abetting, conspiring -- you  
9 know, various ways that you can commit the offense and  
10 because this is Phil Helms third offense, I believe he's  
11 facing a mandatory min -- a mandatory 10 to 30 years.

12 Now in the Castineira case, the Judge -- the Court  
13 actually found that the specific conspiracy statute did not  
14 apply. However, they found that it did not apply on the  
15 basis that -- and this is on page 4 of the Castineira  
16 Opinion, that there is actual language in the conspiracy,  
17 the trafficking conspiracy statute that says,  
18 Notwithstanding, 44-53-420 -- which is what I just read to  
19 you -- a person convicted of conspiracy pursuant to this  
20 subsection, must be sentenced as provided in this section  
21 with a full sentence or punishment and not one-half of the  
22 sentence or punishment prescribed for the offense.

23 That language does not appear in the  
24 methamphetamine statute. And so my suggestion, Your Honor,  
25 is that based on the concept of lenity, and the fact that

1 we do have an opinion that appears to suggest that this is  
2 a valid argument. It just simply wasn't a valid argument  
3 in this case. I believe that you can direct a verdict on  
4 the manufacturing methamphetamine and we can proceed to go  
5 to trial -- I've got other arguments for directed verdict,  
6 but proceed on the general conspiracy, the specific  
7 conspiracy statute on the basis that it is a  
8 lesser-included offense and these statutes are in conflict.  
9 And the rules of statutory construction would dictate that  
10 he only be sentenced and only be tried on the specific  
11 conspiracy statute and not the general methamphetamine  
12 statute that contains as one element, the possibility of  
13 conspiracy.

14 Now, did that makes sense what I just said or do  
15 you have questions?

16 THE COURT: I'm trying to figure out in the  
17 trafficking statute that they have here, what part under  
18 this -- you're saying that this statute, that the Court  
19 ultimately affirms it says that the sentencing was  
20 appropriate?

21 MR. KIRKLAND: Correct.

22 THE COURT: What part, what elements of that  
23 trafficking statute are different than the statute  
24 44-53-375(B)?

25 MR. KIRKLAND: The difference is that in the

1 sentencing portion of the trafficking statute, it contains  
2 the language -- and this is actually italics on page 4 so  
3 it's easy to spot. It contains the language  
4 notwithstanding 44-53-420, which is the specific conspiracy  
5 statute. A person convicted of conspiracy pursuant to this  
6 subsection must be sentenced as provided in this section.  
7 So my point I guess is, the legislature was clearly aware  
8 when they're writing these statutes that there was a  
9 specific conspiracy statute and that specific conspiracy  
10 statute provided for one-half punishment of the principle  
11 offense.

12 So to avoid, in the trafficking statute -- because  
13 it was a conspiracy case, if I'm not mistaken, because  
14 they -- they had convicted him under the conspiracy section  
15 of that statute. And obviously the case wouldn't have been  
16 heard if it wasn't a conspiracy issue. The legislature was  
17 aware that 44-53-420 existed and it cut sentences in half.  
18 And so to avoid it from occurring in the trafficking  
19 statute, they wrote some specific language in there.

20 They said a person convicted of the trafficking  
21 statute essentially is going to be sentenced pursuant to  
22 the trafficking statute and not the 44-53-420, which is the  
23 one-half sentence.

24 THE COURT: So your position is that they don't  
25 have it because it's not in --

1 MR. KIRKLAND: In the methamphetamine --

2 THE COURT: -- it's not in here as it pertains to  
3 meth --

4 MR. KIRKLAND: Correct.

5 THE COURT: That --

6 MR. KIRKLAND: The meth statute doesn't contain  
7 that -- that language. And that statute does not  
8 contain -- does not contain the language that says  
9 notwithstanding the section 44-53-420, a person convicted  
10 of conspiracy and so on and so forth.

11 So the meth statute doesn't contain that language.  
12 If the meth statute contained that language, I would have  
13 no argument whatsoever. But since they relied upon this  
14 language, the Court of Appeals, to rule that the  
15 sentence -- a sentence under the trafficking statute was  
16 appropriate and that language doesn't appear in the  
17 specific 44-53-420, the specific conspiracy statute, my  
18 opinion is that the concept of lenity should apply.

19 You should direct a verdict of not guilty on the  
20 meth statute and proceed pursuant to the specific  
21 conspiracy statute, which is what I believe that they're  
22 primarily going to be trying to establish in this case.  
23 That's the argument.

24 THE COURT: All right. I got it.

25 MR. KIRKLAND: And I will bring up a second issue

1 that's not related directly to this hearing, Your Honor,  
2 but at the end of the trial, if we do go forward, I'm going  
3 to ask that conspiracy be struck from the instruction on  
4 the same basis. If -- if -- because I think they're  
5 probably going to stand up and say well we're doing aiding  
6 and abetting as well. Well, I think that they have to,  
7 based on this -- what I presented, they're going to have to  
8 pick if they're going to go forward on both aiding and  
9 abetting and conspiracy or they're going to go forward on  
10 aiding and abetting. If they're going to go forward on  
11 both, I think conspiracy needs to be struck from the  
12 charge -- the jury charge for the reasons that I just  
13 stated because they have -- because it's improper to  
14 sentence him under conspiracy based on the arguments that I  
15 made and they should only go forward on aiding and  
16 abetting. Does that make sense?

17 THE COURT: I understand what you're saying.

18 MR. KIRKLAND: Which is not this hearing. That's  
19 later on when we're discussing jury charges and such.

20 THE COURT: Yes, sir.

21 MR. BELL: Your Honor, I think it's well  
22 established that when interpreting statutes, we're supposed  
23 to look towards legislative intent. I think by the very  
24 fact that it's included in the statute, that's aiding,  
25 abetting or otherwise conspiring or something to that

1 affect, that legislators were coming up with this due to  
2 these cases of manufacturing are not always cases where you  
3 find a reaction vessel in somebody's hand. That sometimes  
4 the case is built around a conspiracy or aiding and  
5 abetting process. With that said, Your Honor, I think  
6 because of the reason and intent of legislation, I think we  
7 should proceed with the statute as it's been indicted.

8 Further from that, Your Honor, State v. Dasher,  
9 which is 278 S.E. 2d 414, sets forth that conspiracy is to  
10 be a jury question and we would say that while certainly  
11 the strongest point of our case is admittedly that this is  
12 a conspiracy, it's still up to the jury to decide whether  
13 or not they think that he falls under any other portion of  
14 that statute as well, including actually manufacturing or  
15 just aiding and abetting or just conspiring to manufacture  
16 methamphetamine.

17 As far as the arguments that have been made thus  
18 far, we discussed on those points.

19 MR. KIRKLAND: Your Honor, I do have a response to  
20 that. The -- the statute that was at issue was  
21 44-53-370(E) and that's on page 3 of the opinion that I  
22 handed you. And they set forth the applicable part as  
23 follows of that statute: Any person who knowingly sells,  
24 manufactures, cultivates, delivers, purchases or brings  
25 into this state, or who provides financial assistance or

1 otherwise aids, abets attempts or conspires to sell,  
2 manufacture, cultivate, deliver, purchase or bring into  
3 this state -- and I won't read the complete the whole  
4 entire thing. My point is that the language is virtually  
5 identical in that regard to the manufacture of  
6 methamphetamine statute. This Court ruled that in spite of  
7 that language, it may not have been enough to take the case  
8 out of the specific statute of -- of conspiracy. In fact,  
9 they looked to a later part of the statute, which is on the  
10 next page, that specifically says, notwithstanding --  
11 44-53-420 -- a person convicted of conspiracy pursuant to  
12 this subsection, must be sentenced as provided in this  
13 section with the full sentence or punishment.

14           So the legislative intent argument, I don't  
15 think -- I don't think they have any traction on that.  
16 They have -- the legislature was clearly aware that when  
17 you put all that language in there, you need to later on  
18 exempt it from 44-53-420 and they simply did not do that in  
19 the manufacturing of methamphetamine statute. They didn't  
20 exempt the conspiracy statute.

21           So I don't -- I think the legislative intent -- if  
22 you read the trafficking statute, is we know how to keep  
23 the sentence from being cut in half by 44-53-370. We write  
24 this language that says this statute is exempt, but they  
25 didn't do it in the manufacturing statute. And, in fact,

1 the only reason that it appears that they upheld the  
2 Castineira sentence, was on the basis on that specific  
3 language and it's not contained in the manufacturing  
4 statute, the meth statute.

5 MR. BELL: May I reply, Your Honor?

6 THE COURT: Yes, sir.

7 MR. BELL: As you've heard, that case is particular  
8 to trafficking. The Court certainly could have taken at  
9 that point the opportunity to set forth and say that they  
10 believe that it should apply to all statutes and that they  
11 believe that language should be struck down to more  
12 narrowly focus the statute. However, that's not the case  
13 here. This is a manufacturing case versus a trafficking  
14 case. I think it's distinguishable by that alone.

15 Regardless from that the case as cited is a year  
16 2000 case. There's been, you know, 13, 14 years that  
17 legislators could have gone back and amended this statute.  
18 I think by the fact that the statute still remains as is is  
19 evidence of their intent for aiding and abetting and  
20 conspiracy part of this statute in order to properly combat  
21 manufacturing methamphetamine.

22 MR. KIRKLAND: I'll only state one more sentence  
23 about that, Your Honor. Legislative intent is to be  
24 determined from the wording of the statute and the concept  
25 of lenity as the Supreme Court has stated. It doesn't

1 matter when they were -- when these statutes were passed,  
2 whether one was passed before or after. The specific  
3 statute should generally be given more precedence than a  
4 general statute always. And South Carolina has apparently  
5 followed that rule in State v. Castineira and was  
6 considering that rule and decided that the only way to  
7 avoid that -- avoid Section 40, 44-53-420, the only way to  
8 prevent it from applying was the specific language of the  
9 statute, which is not contained -- but you understand all  
10 of that.

11 THE COURT: Well let me ask you this, if -- if I --  
12 it says in reviewing and, of course, I'm looking at -- when  
13 looking at statutory construction you have to look at the  
14 intent of the legislature.

15 MR. KIRKLAND: Yes.

16 THE COURT: If they didn't intend for conspiring to  
17 be in there, is what -- is what you're arguing that that  
18 should not have been the portion in there regarding  
19 conspiring, it's not -- I think this is what you -- is not  
20 applicable here because they did not put in that  
21 notwithstanding section in there?

22 MR. KIRKLAND: Correct.

23 THE COURT: Then why -- for what other reason would  
24 they have put conspire into the statute?

25 MR. KIRKLAND: Well, this is where we run into

1 statutory construction. This is where we run into the, the  
2 case that I gave you, United States -- Simpson versus  
3 United States, in which these principles of statutory  
4 construction apply; that the principle it gives precedence  
5 to the terms of a more specific statute as where as a  
6 general, where a general statute and a specific statute  
7 speak to the same concern.

8         So we're talking about two statutes that speak to  
9 conspiracy. The specific statute for conspiracy, according  
10 to statutory construction, should given -- should be given  
11 precedence over a general statute. It appears that when  
12 Castenella was written -- or Castineira was written, they  
13 understood these principles. They understand these  
14 principles well enough to specifically exclude it from the  
15 attempt and conspiracy statute, 44-53-420.

16         I think that it was a mistake, maybe, that they did  
17 not do it, but they simply didn't do it and all we can do  
18 is look at the specific language of the statute. I don't  
19 think it's necessarily just a -- an issue of legislative  
20 intent. We're talking about the fundamental principles of  
21 lenity and general construction of statutes -- a general  
22 statute versus a general statute -- a specific statute  
23 versus a general statute. I mean we're talking about sort  
24 of constitutional principles of statutory construction and  
25 these ambiguities are -- as you well know -- are

1 constitutionally to be resolved in favor of the defendant.

2 MR. BELL: Your Honor, I have a brief reply if you  
3 will hear it?

4 THE COURT: Yes, sir.

5 MR. BELL: In all honesty, Your Honor, I believe  
6 this is an issue that's passed the point of ripeness. This  
7 is something that more appropriately should have been  
8 brought during pretrial with a Motion to Quash the  
9 indictment altogether, that way we could have had an  
10 opportunity to proceed on an indictment that was more  
11 narrowly focused towards what Mr. Kirkland believes we  
12 should have gone forth with.

13 Aside from that, we do have the ability to proceed  
14 on a conspiracy to manufacture methamphetamine indictment,  
15 which is certainly more narrowly tailored that conspiracy  
16 violates drug laws. With that said, Your Honor, the State  
17 stands by that we should proceed as indicted to manufacture  
18 of methamphetamine third offense.

19 THE COURT: Wait, give me one second.

20 All right. Let me ask you this. In looking at  
21 this case that you handed up, Simpson v. United States, and  
22 I -- and I just want to make sure I'm clear. It's your  
23 position that we have two statutes. You're arguing you  
24 have a specific statute, which would be the -- the actual  
25 statute that we have here with the indictments.

1 MR. KIRKLAND: The conspiracy statute. No, that's  
2 not the specific.

3 THE COURT: Your position is that specific --

4 MR. KIRKLAND: Statute is the conspiracy statute  
5 that says conspiracy for anything in this entire section,  
6 this is how you sentence it. That is the specific  
7 conspiracy statute. The general statute is the  
8 methamphetamine statute, which lists all sorts of stuff,  
9 including conspiracy. Which is the same issue that came up  
10 in the -- that they were arguing about in the Castineira --  
11 which is C-A-S-T-I-N-E-I-R-A. They were fighting over the  
12 difference between this specific language and the more  
13 general language; the more specific language in the  
14 conspiracy statute versus the general language in the  
15 trafficking statute.

16 THE COURT: All right. Okay.

17 MR. BELL: Your Honor, I would simply reiterate  
18 that conspiracy in the manufacture of methamphetamine is  
19 more -- of the conspiracy to violate the law, Your Honor.

20 THE COURT: All right. And I'm not -- probably  
21 not -- but I'm -- I understand that ambiguity argument  
22 here. It's questionable as to which one you consider to be  
23 the specific and which one you is the general statute. I  
24 would think that the conspiracy based on even a hint that  
25 was in the conspiracy statute, which -- which refers to the

1 specific statute because it says it normally is a full  
2 sentence and the conspiracy is half of the sentence. My  
3 interpretation of that would seem as if that would be the  
4 general statute and that the actual statute would be the  
5 specific statute you're referring to drugs or the type of  
6 drug whether it's methamphetamine or cocaine.

7 But with that being said and looking at the  
8 construction, for purposes of statutory construction, we  
9 have to look at the plain and ordinary meaning of the  
10 statute without the Court expanding and limiting the  
11 construction of the statute. The statute that we have  
12 before us for manufacturing methamphetamine, clearly says  
13 conspiring and it only looks at the legislative intent  
14 that's in there.

15 I understand your position regarding the -- it not  
16 having that notwithstanding portion as brought up in  
17 Castineira, but it is also very clear in the statute that  
18 they go into the -- into the statute and say conspire to  
19 manufacture a quantity of methamphetamine. I can only take  
20 that to mean that the general assembly intended to have  
21 that portion in the statute and not rely on the -- I don't  
22 want to say general, but general conspiracy statute, and  
23 for that reason, I will deny the motion for directed  
24 verdict or the directed verdict as to the statute  
25 44-53-375(B)(3) based on the statutory construction of the

1 offense.

2 MR. KIRKLAND: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 MR. KIRKLAND: Just for the record, because we've  
5 been using these names and eventually somebody may be  
6 appealing this, I will put the citation into the record.

7 THE COURT: Yes, sir.

8 MR. KIRKLAND: It's just State v.  
9 C-A-S-T-I-N-E-I-R-A. The site is 341 S.C. 619, the year of  
10 2000.

11 THE COURT: All right. Thank you. And then the  
12 other case you had was Simpson versus United States and  
13 that statute is -- I mean that case citing is 435 U.S. 6.

14 MR. KIRKLAND: Thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 MR. KIRKLAND: Now I have, of course, additional --

17 THE COURT: Yes, sir, I'll be glad to hear from  
18 you.

19 MR. KIRKLAND: What I would like to do, and knowing  
20 me, it may not shorten it. I don't appear to every do  
21 anything that shortens anything. But I'd like to adopt the  
22 arguments that I made in pretrial as to the nexus which  
23 would be -- and you understand what I'm --

24 THE COURT: Uh-huh (affirmative response).

25 MR. KIRKLAND: All right. The -- basically,

1 they're trying to establish that there was -- that he is  
2 involved in either aiding or abetting or a conspiracy to  
3 manufacture methamphetamine. And the various pieces of  
4 evidence that they tried to introduce and I'll try to walk  
5 through some of them in order.

6 I'll start with the house. In the house, the only  
7 thing that was found in the house -- they didn't find any  
8 precursor's whatsoever to the manufacture. If they found  
9 anything, the only thing they found were things that could  
10 be used to smoke meth and so there were no precursors  
11 inside of the house.

12 Secondly, the -- the burn pile that was in the  
13 yard, they were not able to put up any witnesses that were  
14 able to suggest that even if -- well, first, they were not  
15 put up -- put up -- were able to put up witnesses that  
16 suggested that Phil Helms put those items into the burn  
17 pile or even necessarily knew that the items were in the  
18 burn pile.

19 They did put up circumstantial evidence that he had  
20 said that he had been burning things, which I agree, could  
21 give rise to an inference that he would have known that  
22 those items could have been in the burn pile; but they put  
23 up zero evidence whatsoever that he even, if he had seen  
24 those items, that he would have known what those items were  
25 or that he has any idea whatsoever as to how to manufacture

1 methamphetamine.

2           So I don't think there's enough of a nexus as far  
3 as the burn pile and potential knowledge that he would  
4 have. And it does not show that he had an agreement  
5 between another party. In fact, as to the burn pile, they  
6 can't establish who he would have an agreement with or how  
7 he would have aided and abetted them because they just  
8 simply can't show he knew what it was or even necessarily  
9 knew.

10           The Durango. The Durango was owned by -- I think  
11 that was Renee Krantz's Durango. They were not able to  
12 establish that Phil Helms had any knowledge of what was in  
13 the Durango. In talking to Paige Barnes -- you saw the  
14 pictures, I'm not going to get into any testimony; it  
15 doesn't matter. The -- the items of Coleman fuel were  
16 stuffed up under the driver's side steering wheel, of  
17 course. There's no evidence whatsoever that Phil knew that  
18 those items were inside the Durango or that he would have  
19 reason to know that those items were inside the Durango.

20           Now as to the Mustang, the Mustang rode up  
21 subsequent to the search warrant even being signed. They  
22 all testified -- and I'm not going to be able to argue that  
23 items were -- or I can't argue against their searching that  
24 those were items that could be used in the manufacture of  
25 meth. However, there's absolutely no evidence whatsoever

1 that Phil even knew those people. They didn't put up even  
2 one witness that could show that Phil had any clue who  
3 these people were, that he had ever seen that car before in  
4 his life, that he had any knowledge of what was in that  
5 vehicle. The closest connection they could draw was that  
6 Robin is the sister of Renee. And that's, in my opinion,  
7 no connection whatsoever to Phil. That has established  
8 potentially a conspiracy between Robin and Renee and if you  
9 recall, Renee had in her room some items for smoking meth,  
10 but they never were able to show the connection between  
11 that Mustang and anything that Phil knew, could have known  
12 or should have known.

13 So they just simply didn't establish any nexus  
14 whatsoever -- whatsoever that would establish a conspiracy  
15 concerning that Mustang.

16 And if you'll give me one minute, I want to make  
17 sure I'm not forgetting any items.

18 Oh, that's another thing. I forgot one item. I  
19 knew I had forgot something. Also the items that were  
20 found in the pockets of the people which were supposedly  
21 associated with meth like the Walfed in the seats. There  
22 was no information introduced that he had any idea, of  
23 course, what was inside of those pockets; and furthermore,  
24 items that the agent suspected that were even found in the  
25 house and according to the testimony, they were all found

1 in Renee Krantz's room except for a marijuana pipe that was  
2 found in the living room, that none of those were tested  
3 and no other items were found inside the house that were  
4 used in the manufacture of methamphetamine. Any evidence  
5 that was introduced, such as when Agent Barnes said, Well  
6 there's a knife and a knife could be used to cut open  
7 batteries. I mean stuff like that is pure speculation.  
8 They weren't able to put up any, because we're talking  
9 about a conspiracy or aiding or abetting. And so they have  
10 to show that there was an agreement between Phil and  
11 somebody else. And there's just no evidence of any  
12 agreement between him explicit or implicit to manufacture  
13 meth.

14           There's no evidence he aided or abetted. To aid  
15 and abet, you have to have some kind of overt act. He  
16 would have had to either take the items out to the trash  
17 can or help procure the ingredients or something. But  
18 there's just -- there's simply no evidence. I mean this,  
19 it's not just circumstantial, I mean -- and I know that  
20 that's -- they're going to say their case is  
21 circumstantial. It's just completely speculative. Just  
22 being in the presence of someone else that has committed a  
23 crime is not sufficient to send to the jury to indicate  
24 that they have committed a crime.

25           There's just no evidence. They can't put any

1 evidence up -- or I don't think they put any evidence up as  
2 to a conspiracy and who it was with or anything, any overt  
3 act that he made in furtherance of manufacturing meth. We  
4 think there should be a directed verdict on the entire  
5 thing and it shouldn't go to the jury.

6 THE COURT: All right. Yes, sir.

7 MR. BELL: Thank you, Your Honor. Briefly before  
8 getting into the body of the argument and the case law  
9 involved, I would correct one factual misstatement, which  
10 is that the Durango belonged to Renee Krantz. In actuality  
11 it belonged to Robin Krantz, the individual who arrived on  
12 scene in the red Mustang. As you may remember that vehicle  
13 was registered to Christopher Huggins as far as the red  
14 Mustang is concerned, which would also go along with the  
15 fact that Ms. Krantz had left that vehicle on the property.

16 Your Honor, it was mentioned earlier State v.  
17 Dasher, 278, S.E. 2d 414. Conspiracy is a jury question  
18 and I certainly respect Your Honor's ability to review this  
19 evidence, but I do think this is something that's more  
20 appropriately suited for the jury here.

21 Further, a series of cases speaks on this -- well  
22 for purposes of time as you want at this point, State v.  
23 Condrey, which is a State v. C-O-N-D-R-E-Y, that's 562 S.E.  
24 2d 320, says that you can prove a conspiracy with even the  
25 slightest connection to the conspiracy, or you can prove

1 that someone is a conspirator by showing the slightest  
2 connection to the conspiracy and that that connection alone  
3 is sufficient to convict a conspirator of knowing of a  
4 conspiracy.

5 Further in State v. Buckmon, that's B-U-C-K-M-O-N,  
6 555 S.E. 2d 402, State v. Buckmon explicitly states that  
7 proof of an overt act is not necessary for a criminal  
8 conviction of conspiracy. In fact, it can only be a tacit  
9 or mutual understanding to know if they are intentionally  
10 engaged in that criminal activity, whether it be a means or  
11 an end. Further it can be a legal means to get to a  
12 criminal end or it can be a criminal means to get to a  
13 legal end.

14 Proceeding onward, State v. Sims that is S-I-M-S,  
15 661 S.E. 2d 122, states that quite often the only way to  
16 establish an agreement is by using circumstantial evidence  
17 and that includes proof of overt acts of alleged  
18 coconspirators, which we certainly have in this case with  
19 the five other individuals, three of which were initially  
20 on the property and the two that later on arrived.

21 Every single one of those individuals had some sort  
22 of connection to drug activity, whether it be receipts for  
23 Pseudoephedrine or marijuana pipe, methamphetamine, or  
24 other ingredients typically used to manufacture  
25 methamphetamine.

1           And with respect to circumstantial evidence, State  
2 v. Wilson which is 433 S.E. 2d 864, states that the State  
3 should be given great latitude in introducing  
4 circumstantial evidence to prove the existence of a  
5 conspiracy.

6           Your Honor, I believe that this case that you've  
7 heard the past few days, is distinguished from most  
8 conspiracy cases by the fact that these -- that the  
9 incident took place on the defendant's property and that he  
10 was harboring these other individuals that had more tight  
11 connections to narcotics activity in his home. We have as  
12 well the defendant stating to officers upon their arrival  
13 that he was out there burning stuff.

14           Further he goes on to say that he was burning  
15 plastic limbs and the officers also testified that that  
16 burn pile was still smoldering, that it was recently  
17 active.

18           Aside from that, Your Honor, we have paraphernalia  
19 as you've heard, inside of the house and marijuana pipe  
20 sitting out in the open and it's not -- not being hid in  
21 any way. While that's not relevant to manufacturing  
22 methamphetamine, I think it does go to showing that Phillip  
23 Helms was allowing these individuals in his home and not  
24 objecting to any illegal activity they may have been taking  
25 part in.

1           And in reference to State v. Sims I cited earlier,  
2           but once again 661 S.E. 2d 122, they go on to say that it's  
3           sufficient to show that the defendant knew or had reason to  
4           know of the scope of a conspiracy and they further went to  
5           say that each defendant must have a reason or a reason to  
6           believe his own benefits were dependent on success of the  
7           entire venture. He was allowing these individuals, once  
8           again, to use his home, to use his property, to use his  
9           burn pile and there was all this paraphernalia around his  
10          house.

11           In conclusion, one final case, Your Honor, State  
12          versus Jeffcoat, which is 303 S.E. 2d 855, states that when  
13          a criminal objective cannot be committed without the  
14          cooperation of two or more persons, the failure of one  
15          object -- of one of the coconspirators to object to a  
16          wrongful act of another may be sufficient to establish a  
17          tacit agreement.

18           Your Honor, we would propose that even if we're  
19          unable to prove that Phillip Helms directly had his hands  
20          on anything to manufacture methamphetamine, he is still  
21          liable as a coconspirator of the conspiracy by allowing  
22          those people on his property, around drug paraphernalia,  
23          with expended methamphetamine vessels and bringing more  
24          items onto the property that could be used for the  
25          manufacture of methamphetamine.

1       Your Honor, if you'll allow me one second to  
2       consult with co-counsel.

3       (WHEREUPON there was a pause in the proceedings.)

4       MR. BELL: Your Honor, I would just briefly pull it  
5       in one more time and say that the defendant told those  
6       agents when they arrived that he was out there burning  
7       stuff. Upon observation of the burn pile that was  
8       smoldering where he was burning stuff, there were remnants  
9       of a methamphetamine lab.

10       THE COURT: All right. All right. What I'm going  
11       to do is take a look at these cases over -- the cases that  
12       have been citing over lunch and then I'll get back with you  
13       all after that. I'm thinking we may, I told the jurors  
14       1:30. I should have told them 2:00, but I was trying --  
15       y'all can -- we can come back maybe -- we'll try if you can  
16       get back at 1:30, if not, we'll try to start back close to  
17       2:00, or a quarter till with the jury. We're going to try  
18       to get back by 1:30 if we can grab something real quick and  
19       review this. Maybe about 1:35 or 1:40 or so we'll come  
20       back and then I'll try to get them back and rule and I'll  
21       get them back in here by a quarter till.

22       What we need to do, Mr. Kirkland, if you can go  
23       ahead and speak with your client; is that going to be  
24       enough time?

25       MR. KIRKLAND: Yes. Yes, ma'am.

1 THE COURT: Speak with your client and let us know  
2 just -- of course, the directed verdict motion is still  
3 outstanding, but go ahead and talk to him and see what he  
4 wants to do so we can try to start right around 1:45 so I  
5 won't have them sitting back there so long.

6 MR. KIRKLAND: We'll be ready to go.

7 THE COURT: All right. We'll try to be back in  
8 here about twenty till.

9 MR. BELL: Thank you, Your Honor.

10 THE COURT: All right. Thank you.

11 (WHEREUPON a recess was observed for lunch.)

12 THE COURT: All right. I've had a chance to look  
13 at the cases that were cited over lunch. And in reviewing  
14 the cases and also in reviewing the issues regarding  
15 circumstantial evidence and directed verdict motions, in  
16 State v. Wilson, which was 315 S.C. 289, the Court stated  
17 that the State is permitted great latitude in the  
18 introduction of circumstantial evidence to establish the  
19 existence of conspiratorial agreement; moreover, to  
20 establish sufficiently the existence of a conspiracy, proof  
21 of an expressed agreement is not necessary and direct  
22 evidence is not essential, but the conspiracy may be  
23 sufficiently shown by circumstantial evidence in a comment  
24 of the parties. And that's quoting State v. Fleming.

25 While circumstantial -- in this case while

1 circumstantial evidence was introduced regarding Mr. Helms'  
2 admission to the burning of plastic -- in this case  
3 circumstantial evidence was introduced regarding Mr. Helms  
4 admission to burning plastic limbs. Further testimony was  
5 given that the burning pile contained materials used to  
6 manufacture methamphetamine. Also there was testimony that  
7 the Durango owned by Ms. Krantz, who later showed up and  
8 that was located on Mr. Helms' property contained evidence  
9 of methamphetamine -- evidence of things used to produce  
10 methamphetamine. I find it is, that it is sufficient to  
11 create a jury question as to whether or not the elements of  
12 44-53-375 were satisfied and the defendant's motion for  
13 directed verdict is denied based on that.

14 The -- I believe the issues are a, is a question  
15 for the jury. The issue regarding the burn pile alone  
16 gives rise to, or is circumstantial evidence, substantial  
17 enough to submit it to the jury.

18 All right. And now, Mr. Kirkland, we need to, I  
19 need to advise your client of his rights.

20 MR. KIRKLAND: He's prepared.

21 **QUESTIONING OF THE DEFENDANT**

22 THE COURT: All right. Let's see, all right. I'll  
23 have the Clerk --

24 Mr. Helms if you could raise your right hand.

25 ///

1 PHILLIP HELMS

2 having been duly sworn, testified as follows:

3 THE COURT: All right. Mr. Helms, you understand,  
4 sir, at this time, I'm going to explain certain of your  
5 rights to you. If you do not understand what I am  
6 saying -- anything I say, please let me know and I will  
7 further explain it to you.

8 We have now reached the stage of the trial where  
9 you may present your defense. You have a right to claim  
10 protections given to you by the Fifth Amendment to the  
11 Constitution of the United States. This amendment states  
12 in part, No person shall be compelled in a criminal case to  
13 be a witness against himself. This means that you cannot  
14 be required to testify in this case. You have the right to  
15 testify on your own behalf; however, no one can make you  
16 testify. This is a personal right and no one can waive  
17 that right except you. If you decide to testify, you will  
18 be subject to the same rules that govern other witnesses  
19 and you may be examined and cross-examined on any relevant  
20 issue in this case.

21 In addition, if you have any convictions involving  
22 dishonesty or false statement or for crimes punishable by  
23 imprisonment for more than one year and this Court  
24 determines that the probative value of admitting this  
25 evidence outweighs its prejudicial effect to you, the

1 solicitor will be able to introduce your record to attack  
2 your credibility.

3 If you decide to testify, the decision is on your  
4 part and must be freely, voluntarily, and intelligently  
5 made with the knowledge of the protection given to you by  
6 the Fifth Amendment and the consequences of the decision to  
7 testify. If you decide not to testify, I will instruct the  
8 jurors that they cannot give the fact that you did not  
9 testify any consideration whatsoever; and that there is to  
10 be absolutely no prejudice to you because you did not  
11 testify. It is left entirely up to you whether or not you  
12 testify.

13 At this time, you may talk with your attorney, your  
14 family or -- and friends or anyone else, but the final  
15 decision will be left up to you entirely.

16 Do you understand what I have explained to you, Mr.  
17 Helms?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you have any questions about what I  
20 just explained?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: All right. And do you need to speak  
23 with your attorney regarding whether or not you should  
24 testify?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: All right.

2 And, yes, sir, Mr. Kirkland, does he wish to  
3 testify?

4 MR. KIRKLAND: He has indicated that he does not.

5 THE COURT: All right. Thank you.

6 I will instruct the jurors accordingly regarding  
7 the failure of the defendant to testify and that they  
8 cannot hold that against him.

9 MR. KIRKLAND: Yes, ma'am.

10 THE COURT: All right.

11 MR. KIRKLAND: We're ready to rest.

12 THE COURT: Are you?

13 MR. KIRKLAND: Yes.

14 THE COURT: All right. I just need you to do it in  
15 front of the jury.

16 MR. KIRKLAND: Correct.

17 THE COURT: All right. All right. So let's see --  
18 so we'll bring them back in and you're going to rest. Will  
19 you all -- well you won't have anything to do on reply.

20 MR. KIRKLAND: We can start closings, I think.

21 THE COURT: Well, we need to go over the charge  
22 real quick. I may let them -- I have a charge that --

23 Can you print that?

24 All right. She's going to go print it real quick.

25 MR. KIRKLAND: Okay.

1 THE COURT: And it's just -- I think -- I think --  
2 and I know -- well part of it is what Judge Keesley usually  
3 uses in these cases.

4 MR. KIRKLAND: If that's the one, then I'm going to  
5 agree with that then.

6 THE COURT: Yeah, because we -- we -- I don't think  
7 we had much of it in our desk book, but apparently y'all  
8 try quite a few of these over here, so I'll keep his under  
9 manufacture of methamphetamine, but I'll let you look at  
10 it.

11 MR. BELL: Thank you, Judge.

12 THE COURT: All right. So let's bring them in and  
13 tell them that you rest and then I'll send them back out  
14 and I might give maybe 15 --

15 You have any proposed jury charges.

16 MR. BELL: None from the State, Your Honor.

17 THE COURT: Do you have any?

18 MR. KIRKLAND: No, ma'am.

19 THE COURT: All right. When I need you, I'll be  
20 able to look at the one I had and see if you have any  
21 exceptions or objections to it.

22 So I'll probably give them about 15 minutes and  
23 maybe, is it a problem for them to go outside and get some  
24 fresh air?

25 THE BAILIFF: No problem.

1 MR. KIRKLAND: Not for us either.

2 MR. BELL: None from the State, Your Honor.

3 THE COURT: All right. So we can -- all right.

4 All right. Well, you can bring them back in.

5 (WHEREUPON the jury entered the courtroom at 1:59  
6 p.m.)

7 THE COURT: All right. Ladies and gentlemen of the  
8 jury, the State has rested at this time. I will ask, we  
9 will hear from the defense.

10 Yes, sir, Mr. Kirkland.

11 MR. KIRKLAND: The defense will rest at this time.

12 THE COURT: All right. Thank you.

13 All right. Ladies and gentlemen of the jury, the  
14 defendant has rested. As I explained to you earlier, the  
15 burden is upon the State to prove the defendant guilty  
16 beyond a reasonable doubt and so, therefore, he does not  
17 have to present any evidence if he chooses not to and he  
18 has chosen not to.

19 All right. So there are some matters of law that I  
20 need to take up outside your presence. It's probably going  
21 to take about 15 or 20 minutes. If you all would like to  
22 go outside and get some fresh air while we're in here  
23 working, you are more than welcome to. The bailiffs will  
24 have some instructions for you.

25 It'll take about 20 minutes and then we will come

1 back. We will come and have closing arguments and the  
2 charge on the law.

3 All right. Thank you.

4 (WHEREUPON the jury left the courtroom at two  
5 o'clock p.m.)

6 THE COURT: All right. I'm going to go check and  
7 see if she has the jury charge for you to review and then  
8 I'll give you all about 5 or 10 minutes to look over that  
9 and then we'll bring them back in.

10 If you have any exceptions we'll discuss it and  
11 then we'll bring them back in.

12 MR. KIRKLAND: Yes, ma'am.

13 THE COURT: Let me go grab it.

14 MR. BELL: Thank you, Judge.

15 THE COURT: All right. Court Reporter ready?

16 THE COURT REPORTER: Yes, ma'am.

17 THE COURT: I didn't see you down there.

18 All right. I take it that you all have had a  
19 chance to look at the jury charges. Are there any  
20 objections or exceptions or any additions that needed to be  
21 added.

22 MR. KIRKLAND: Could I have just three more  
23 minutes, I'm on page 13, I have 16; I'm almost done.

24 THE COURT: Okay.

25 MR. KIRKLAND: I've been reading it very carefully.

1 MR. BELL: Your Honor, there is no objection from  
2 the State. I believe there was a mention of armed robbery  
3 and it's my understanding this was just a rough draft.

4 THE COURT: Where is it because I didn't see that.

5 MR. BELL: They aren't the actual page number, but  
6 it's referenced as page 6 in this stack; if that helps  
7 narrow it down for you.

8 THE COURT: Yeah, I see it.

9 MR. KIRKLAND: I have one other, other than the  
10 armed robbery thing, Your Honor, which I also saw, on my  
11 sheet, it's page 8, the first sentence before the section  
12 on stipulations; have you found that spot yet, Your Honor?  
13 If on the other hand you think there is -- do you see that  
14 sentence?

15 THE COURT: Yes.

16 MR. KIRKLAND: It says, If on the other hand you  
17 think there is a real possibility the defendant is not  
18 guilty, you must give the defendant the benefit of the  
19 doubt and find him not guilty. I think the proper charge  
20 would be if on the other hand, you think there is a  
21 reasonable possibility that the defendant is not guilty,  
22 you must give the defendant the benefit of the doubt.

23 THE COURT: I think that was checked as it came out  
24 of this book. Let's see what it says. Reasonable doubt.

25 MR. KIRKLAND: And I'll tell you what my concern

1 is, there's a big difference in determining whether  
2 somebody is really not guilty or if the government has  
3 failed to prove their guilty beyond a reasonable doubt.  
4 And I'm concerned that that will lead them to believe that  
5 they must actually find him innocent rather than find that  
6 the State has failed to meet their duty or their burden,  
7 excuse me.

8 THE COURT: And I understand that's the charge  
9 that's in the, the Criminal Trial Deskbook. It says real  
10 possibility. That's the one that we -- I think the one  
11 that we just usually -- let me read it again, I think it is  
12 real possibility.

13 MR. BELL: Your Honor, I believe reasonable doubt  
14 was referenced multiple times prior to that point. I think  
15 there is enough reference to reasonable doubt at this point  
16 it doesn't need to be --

17 THE COURT: And it goes on and it uses the word  
18 firmly convinced that there is a real possibility. That  
19 came from the deskbook. I'm going to leave it like that.  
20 That's the one that they give us to use that language. So  
21 I'm not going to -- but I will note your objection for the  
22 record.

23 MR. KIRKLAND: Thank you. Thank you, Your Honor.

24 THE COURT: Any other changes; are you still  
25 reading?

1 MR. KIRKLAND: That was -- no, that was it.

2 THE COURT: Okay. And the verdict form.

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

4 MR. KIRKLAND: I'm just looking at this for the  
5 first time.

6 THE COURT: Okay. Take your time.

7 MR. KIRKLAND: Now do you use an instruction, Your  
8 Honor, that the order that you have put of guilty and not  
9 guilty is not any indication of a correct answer, it is  
10 just randomly chosen?

11 THE COURT: Yeah.

12 MR. KIRKLAND: That word guilty or not guilty is  
13 meaningless and --

14 THE COURT: Yeah, and I'll tell them that, usually  
15 what I tell them is I had to put one before the other.

16 MR. KIRKLAND: Right.

17 THE COURT: But I'm not suggesting to them in any  
18 way which would they should circle.

19 MR. KIRKLAND: Thank you.

20 THE COURT: All right. All right. Do you all --  
21 are y'all ready for closing arguments; you need a break  
22 before we start?

23 MR. BELL: The State is ready whenever you are.

24 MR. KIRKLAND: I'm ready. Let's get this over  
25 with.

1 THE COURT: All right. So you're going to close on  
2 the law?

3 MR. BELL: Your Honor, I'll waive closing on the  
4 law.

5 THE COURT: You don't have to; I'm just asking. I  
6 just like to tell the jurors what's going to happen and go  
7 from there, but it's up to, I mean if you want to close on  
8 the law -- well I guess in that closing he didn't put any  
9 evidence in.

10 MR. BELL: They just get the one whole shot.

11 THE COURT: Yeah, I wasn't thinking about that.

12 Okay. All right. We will -- would you bring them  
13 on in?

14 MR. KIRKLAND: Oh, Your Honor, while they're coming  
15 in -- hold them for one second.

16 While they're coming in, because they lock these  
17 doors; the deputies informed me that if maybe, they lock  
18 the doors during -- it may not matter for purposes of  
19 closing -- I guess if they said they lock the doors during  
20 closing arguments and jury charges; is that what someone  
21 told me?

22 THE BAILIFF: They'll lock the doors. We typically  
23 they will let people in and out.

24 MR. KIRKLAND: Okay. That being the case, what  
25 they suggested to me is that Phil sit near the door so that

1 he could easily get out if has a medical issue.

2 THE COURT: Okay.

3 MR. KIRKLAND: So do you mind just letting them  
4 know that he's -- because they won't let people in and out,  
5 with his medical condition that he's near a door so he can  
6 get out?

7 THE COURT: I don't mind.

8 MR. KIRKLAND: Is that okay with you?

9 THE COURT: He can sit up here though if he wants  
10 to and if he needs to --

11 MR. KIRKLAND: And you'll let him, somebody will  
12 let him out?

13 THE COURT: Yeah, they'll let him; if he needs to  
14 go, they'll let him out.

15 MR. KIRKLAND: Okay. They just told me that --

16 THE COURT: Yeah, they were just, I guess it's  
17 easier for him to go out without being a distraction, but  
18 he can --

19 MR. KIRKLAND: I was just listening to what they  
20 suggested to me.

21 THE COURT: Yeah. Okay.

22 MR. KIRKLAND: They run the courtroom.

23 THE COURT: Yeah, let him sit -- yeah, let him sit  
24 up here, since that's where he's been sitting the entire  
25 time and if he needs to -- does he want to go now?

1 MR. KIRKLAND: Yeah, let's go ahead and send him.

2 THE COURT: Because it takes, this may take,  
3 depending on how long y'all are, this may take about an  
4 hour.

5 MR. KIRKLAND: Oh, it's going to take an hour.

6 THE COURT: It depends on how long y'all are. I'd  
7 say an hour. I don't think it should, but --

8 MR. BELL: The State should be 15 to 20 minutes,  
9 Your Honor.

10 THE COURT: Okay.

11 MR. KIRKLAND: I may be more than an hour.

12 THE COURT: Huh?

13 MR. KIRKLAND: If they take 15 or 20 minutes, it  
14 may be more than an hour.

15 THE COURT: Okay.

16 MR. KIRKLAND: In case Your Honor wasn't aware,  
17 Phil Helms is back in the courtroom now. I didn't know if  
18 you were waiting on him or something else.

19 THE COURT: All right. You want to put something  
20 on?

21 MR. KIRKLAND: If I could put on the record, Your  
22 Honor. I've asked Phil if he minded, while we were doing  
23 closing arguments, that if an episode presents itself or he  
24 has to go to the bathroom, I asked him if he minded just  
25 going out there and not interrupting the closing arguments

1 and waiving his presence during that period of time and he  
2 has agreed to do so.

3 THE COURT: All right. All right. Thank you.

4 All right. We ready to bring them in.

5 MR. BELL: State's ready, Your Honor.

6 THE COURT: All right. You may bring them in.

7 (WHEREUPON the jury entered the courtroom at 2:40  
8 p.m.)

9 THE COURT: All right. Ladies and gentlemen of the  
10 jury, at this time, we will have closing arguments. First  
11 you will hear -- you will here from Mr. Bell on behalf of  
12 the State. And then you will hear from Mr. Kirkland on  
13 behalf of the defendant.

14 All right. Thank you. Please pay close attention  
15 to both attorneys.

16 **CLOSING ARGUMENTS**

17 MR. BELL: Thank you, Your Honor, may it please the  
18 Court?

19 It takes two to tango. You heard my co-counsel  
20 talk to you about that earlier and he went on to tell you  
21 that he wasn't talking about dancing. Well, what was he  
22 talking about? Conspiracy.

23 Let's talk about what or how that is under the  
24 statute for manufacturing methamphetamine. Everybody on  
25 the jury see this okay?

1 All right. Great. I'm going to point out the  
2 relevant portions; you're welcome to read the rest of it,  
3 but it's a person who manufactures, otherwise aids, abets,  
4 attempts, or conspires to manufacture methamphetamine.

5 Now, the Judge is going to talk to you about the  
6 law better than I absolutely ever could. So you're going  
7 to have an opportunity to break down those individual words  
8 when she's talking to you later and exactly how they apply.  
9 I just want to emphasize that he's right. It does take two  
10 to tango. It takes two or more to aid, abet, attempt, or  
11 conspire to manufacture.

12 In the case that we're dealing with today, we are  
13 telling you that we believe Phillip Helms was the center of  
14 conspiracy and otherwise, he was aiding, abetting, or  
15 otherwise conspiring to aid in the manufacture of  
16 methamphetamine.

17 Now, I want to talk about something else that some  
18 of you might be familiar with, it typically takes more than  
19 two people to do. It's a game called Jenga. I see a  
20 little bit of recognition, some people nodding. But in  
21 case you don't know what that is, it's a game that was  
22 developed in the 80's. And what it is, it's a stack of  
23 blocks and the blocks are layered in multiple layers as you  
24 get higher. The object to this game is that multiple  
25 players take turns pulling blocks from the stack. Sure,

1 eventually somebody's going to pull the one block that  
2 causes the stack to tumble over. But what surprises me,  
3 every single time I play, I probably play Jenga a little  
4 too much for being as old as I am, but it surprises me just  
5 how many blocks you start with and it only takes a fraction  
6 of those blocks to maintain the sound -- to maintain the  
7 sound structure, to maintain that stack of blocks without  
8 falling over.

9           So why do I bring this up to you? Well, the  
10 defense has gone to great lengths to point out to you all  
11 the blocks we don't have. All of the things that they  
12 believe the police did wrong or improperly, didn't do at  
13 all. The blocks are the evidence that they didn't  
14 physically bring to you in the court today. Well, I  
15 propose to you, ladies and gentlemen, that those blocks are  
16 the unnecessary blocks and that without them, we still have  
17 a firm, sound case that Phillip Helms was conspiring and  
18 aiding in the process of manufacturing methamphetamine.

19           Now, in an ideal world, would we like to have every  
20 single piece of possible evidence, everything tested,  
21 everything brought into to you as it was seen on the scene  
22 so that we can sit up and put on this podium in front of  
23 you. I won't argue with that. I wish we did have that  
24 sort of possibility. I'm sure the agents that you heard  
25 testify wish they had the possibility. I certainly know

1 the defense wishes we had that possibility. But  
2 unfortunately, as we all know too well from anybody who  
3 watches the slightest bit of news, it's not exactly an  
4 ideal world, but we do the best we can. And the agents did  
5 the best they could and they do what they were trained to  
6 do. The items they couldn't bring to you today in court,  
7 they made sure to take pictures of it. And those pictures  
8 count as physical evidence and you heard them testify  
9 further that everything that's in those pictures was how  
10 they saw it on the day of the event. Those agents didn't  
11 want to expose themselves to something harmful. They  
12 didn't want to expose you to something harmful. They  
13 didn't want to expose anybody in here to something  
14 potentially harmful, so they took a picture.

15 Now, once again, we talked at length throughout  
16 this trial about the blocks we don't have, but I want to  
17 take some time to go back through with you, the blocks that  
18 we do have and why those blocks amount to a firm structure,  
19 something that you'll be able to put your opinion upon and  
20 be firmly convinced about.

21 You heard testimony that the agents arrived due to  
22 an anonymous complaint or anonymous tip and that when they  
23 arrived, one of the first things they noticed was a  
24 smoldering burn pile and we all know what that indicates.  
25 It indicates that they were very recently, if not still

1 burning something. It wasn't -- I'm just out here burning  
2 stuff. We had some testimony that he said I'm out here  
3 burning plastic limbs. In that burn pile, in Phillip  
4 Helms' backyard, firmly on his property, the agents found  
5 several things that raised their suspicion.

6 Now, you've heard them talked about and we're going  
7 to go through them again. One of the items was this blue  
8 bucket sitting outside of the burn pile. And at first  
9 glance to us, it doesn't look like a whole lot, but these  
10 agents go through extensive training as you heard, to be  
11 able to identify things used for the manufacture of  
12 methamphetamine. And I want to draw your attention aside  
13 from the aluminum foil picture to right where my thumb is  
14 and you'll have an opportunity to see all these pictures  
15 back in the jury room. Excuse me. Right here.

16 What I'm pointing at, ladies and gentlemen, were  
17 the battery casings that you heard testified about, the  
18 lithium batteries. And what does that matter? Because in  
19 the process of manufacturing methamphetamine, those  
20 batteries are taken and with a knife or pliers or anything  
21 else, they strip them down and pull out that lithium so  
22 they can utilize it in the process. What do you do with  
23 the casings; well, the same thing they're apparently doing  
24 with the rest of the stuff, throwing it out and burning it.

25 We heard testified that in another bucket in this

1 burn pile, they found multiple starter fluid cans. Here,  
2 the green bottle; and here, the orange can. Now, I  
3 certainly sympathize and I think we're all aware the  
4 defendant, Phillip Helms, has a disability and I don't mean  
5 to be harsh about that, but what I mean to get to is that  
6 given the amount of starter fluid cans you found out there,  
7 one might think that he just has a hobby as a mechanic or  
8 he's fixing yard tools, like a chain saw or a lawn mower or  
9 anything else of that nature. I think it would be highly  
10 unlikely, given his condition.

11 The officers talked about the different grouping of  
12 items that they saw. They testified that they saw another  
13 starter fluid can in the pile, one that was discolored and  
14 charred. And why is that important? Because it indicates  
15 that isn't the first time they've thrown out a starter  
16 fluid can into this burn pile. There have been burns  
17 before. There have been multiple starter fluid cans.

18 What else did they see? They said they saw a few  
19 acid generators and a reaction vessel. We got down into  
20 the weeds probably more than you ever thought you would in  
21 talking about methamphetamine and they talked about this  
22 device that sounds a lot fancier than it really is, but  
23 they called it an acid generator. They went on and they  
24 talked about why it's burned up in the bottom; it's part of  
25 the harsh reaction that can take place inside of it. And

1 then went on to further identify that you know this is an  
2 acid generator because at the top, there was a little piece  
3 of tubing sticking out. And you even heard the defense  
4 comment, Well, did you cut off the tubing and test it? And  
5 the officer responded no because what was remaining of that  
6 tubing was too small to actually test.

7 Finally, any plastic container, even as small as 16  
8 ounces, you heard testimony -- you can go to any gas  
9 station to get this stuff. This is what they call a  
10 reaction vessel or a one-pot cook. This is where you heard  
11 all of that testimony about there being a white residue  
12 remaining in the bottle and that that white residue is what  
13 they called meth cake, because that is one of the final  
14 byproducts of the process.

15 They also pointed out little specks such as the one  
16 that I'm pointing to and they said that that is a lithium  
17 speck. And once again, we've already talked about the  
18 lithium battery casings and full lithium batteries on the  
19 scene.

20 After they had a chance to look around the burn  
21 pile, you heard it mentioned that there was a Dodge  
22 Durango. And what is leaning up against the back of this  
23 Dodge Durango; it's a walker. I certainly don't mean to  
24 embarrass anyone, but I think we know who would be using  
25 the walker on this premises. We heard testimony from Agent

1 Paige Barnes that they eventually ran the VIN number and  
2 the registration on this vehicle and it came back to a  
3 Robin Krantz. Keep in mind, we'll talk about it more in a  
4 moment, but this is the Robin Krantz that also arrived as a  
5 passenger in a red Mustang later on.

6           Inside of this Dodge Durango another item of  
7 interest; two containers of Coleman fuel. Another possible  
8 element in the manufacturing of methamphetamine, and when I  
9 say possible, you heard the agents testify that they use  
10 starter fluid or Coleman fuel. Also in the Durango, coffee  
11 filters. I bet you all never thought coffee filters could  
12 be so darn relevant to drugs, but you -- here you have a  
13 Dollar General package of coffee filters. I drink as much  
14 coffee as the next person, but not typically with my  
15 Coleman fuel.

16           Later on after they've had a chance to go through  
17 the house, they find the chalets, they find the little  
18 emptied out pens and the ends of convenience store roses  
19 that you heard testimony are typically used to smoke  
20 methamphetamine. A vehicle arrives on the property; it's a  
21 red Mustang. Who is in the red Mustang? Two individuals.  
22 The driver is Christopher Huggins. The passenger, none  
23 other than Robin Krantz, who is related to the same Krantz,  
24 Renee Krantz, that was already in the home.

25           Now, we've talked about several individuals and

1 before we go further with the pictures, I just want to  
2 remind you who they are. Inside the house we have Jimmy  
3 Johnson, Olivia Mason, Phil Helms' girlfriend, and Renee  
4 Krantz, the sister of Robin Krantz, as you heard through  
5 Agent Paige Barnes. Robin Krantz arriving there with those  
6 materials in her car, which we'll review in a second, is  
7 not accident. She wasn't turning around in his backyard or  
8 stopping off just to use his burn pile. She was returning  
9 to that residence because her sister was already there and  
10 because they needed more ingredients to cook  
11 methamphetamine.

12           What were those ingredients? In that red Mustang,  
13 officers found two bags, one of which contained most of the  
14 things you'll see in this picture. And what do you see?  
15 We've got Claritin D, two boxes of it purchased the very  
16 same day of the incident. What is the main ingredient?  
17 Pseudoephedrine. And what is that used for? Manufacturing  
18 methamphetamine. We've got two ice compresses, which you  
19 heard testified to are used in the process in manufacturing  
20 methamphetamine. And you have crystal drain opener,  
21 another item commonly used in manufacturing  
22 methamphetamine.

23           What else? You've heard it before; lithium  
24 batteries, more lithium batteries, a lot of them. You've  
25 got the Coke bottle, plastic bottle, and you have receipts.

1 And what did closer examination of those receipts reveal;  
2 they had purchased Pseudoephedrine products the very same  
3 day and they had brought them with them closely packaged to  
4 all those other elements and brought them to Phillip Helms'  
5 property.

6           You heard about smurfing. Sure, maybe Robin Krantz  
7 just had a cold and just was going to Phillip Helms' to  
8 medicate. But I guess that means that Jimmy Johnson also  
9 had a cold and was just going to Phillip Helms' to  
10 medicate. Because if you recall, the agents testified that  
11 in Jimmy Johnson's pocket, who was inside of Phillip Helms'  
12 house and who Phillip Helms referred to as a friend, also  
13 had a receipt in his pocket for the purchase of  
14 Pseudoephedrine products on the very same day. I believe  
15 the testimony said it was five or six hours prior to when  
16 they arrived and you also heard testimony about a shake and  
17 bake that probably at its longest, takes about two hours.

18           Further, ladies and gentlemen, when the red Mustang  
19 arrived, he had MSN. You heard, they call that a fancy  
20 term, I think cutting agent or cutting additive; it's  
21 typically used to add to methamphetamine to create weight.  
22 They had more lithium batteries in the center console of  
23 that vehicle. And then on those two individuals, they had  
24 narcotics, finished product; marijuana, not really relevant  
25 here; and methamphetamine, the finished product, that you

1 heard testimony about from the chemist earlier.

2 Now, I want to bring it all back together. I want  
3 to take those pieces of evidence, those blocks, and I want  
4 to stack them up and create that structure. What is it,  
5 which final block is it that makes this a stable structure,  
6 something that won't topple at the slightest sign of wind;  
7 it's the fact that this property indisputably belonged to  
8 Phillip Helms, that the burn pile indisputably was on  
9 Phillip Helms' property and that the red Mustang  
10 indisputably arrived on his property. The individuals in  
11 the house told agents, we're just some of his friends.

12 One of the individuals in that house was Renee  
13 Krantz. One of the individuals in the Mustang was Robin  
14 Krantz. Those individuals in the Mustang were coming to  
15 that residence to bring those ingredients for them to  
16 continue to manufacture methamphetamine at which point,  
17 they would use Phillip Helms' burn pile to burn that stuff.  
18 And you heard testimony again and again and you heard it  
19 from me, Phillip Helms told the officers he was out there  
20 burning stuff.

21 Those battery casings, starter fluid cans, acid  
22 generators, reaction vessels, they weren't buried, they  
23 weren't hidden, they were out in the open. Heck, the  
24 starter fluid cans you saw were sitting at the very top of  
25 the bucket. What does that indicate? If they were the

1 last thing in the bucket, they were probably one of the  
2 most recently used things in that pile.

3 Ladies and gentlemen, we looked at the statute and  
4 you saw it includes aiding, abetting, helping, or  
5 conspiring; you can hear the law from the judge yourself.  
6 It's his property; it's his burn pile; it's his front yard  
7 the Mustang pulled into; it's his backyard that they  
8 eventually parked in; it's his house. He was allowing all  
9 of these individuals to gather around. It was his house  
10 where all of these smoking implements were found. It was  
11 his house where there was a marijuana pipe just sitting out  
12 in the open on top of the stove. If he didn't want that  
13 stuff going on there, he could have just called somebody.  
14 When the officers arrived, he was by himself in his  
15 backyard. No one was holding a gun to that man's head. He  
16 was allowing these individuals once again to stay in his  
17 house and to use his property for the manufacture of  
18 methamphetamine.

19 And we should take everything we've talked about,  
20 you stack those blocks, you will have that platform. Be  
21 firmly convinced that Phillip Helms should be found guilty  
22 as charged. Thank you.

23 THE COURT: Thank you.

24 MR. KIRKLAND: Before I even get started today --  
25 and I have a lot of things to talk about. And I've had to

1 make a lot of notes based on what I just heard Mr. Bell  
2 talk to you about. I want to remind you of one thing and I  
3 think this is going to be contained in the -- in the jury  
4 instructions that you receive. But I want to remind you of  
5 something extremely important. The indictment that he is  
6 charged with specifically states that Phil Earl -- Phillip  
7 Earl Helms, did in Lexington County, on or about June 11th,  
8 2013; and I want you to pay very close attention to that  
9 date, June 11th, 2013, he knowingly, intentionally,  
10 willfully, unlawfully manufactured, or otherwise aided,  
11 abetted, attempted, or conspired to manufacture a quantity  
12 of methamphetamine. And it goes on to give the statute  
13 numbers.

14       The reason why this is important is a lot of the  
15 evidence that they -- and this is just a preface, I'm gone  
16 talk to you about this in more detail. A lot of the  
17 evidence that they're going to attempt to show that  
18 established that he conspired or aided or abetted on that  
19 day, you -- I'm going to show you that it didn't occur on  
20 that day. They occurred before that day or after that day.  
21 This indictment is specific. They didn't say a date range;  
22 they didn't say over the last week or over the course of a  
23 month, so it's not one of those things that you can say,  
24 Well, he may not have been doing it on this day, but he --  
25 he may have been involved in it earlier. That's not what

1 he's charged with. He's charged with doing it on this day,  
2 June 11th, 2013.

3 Now, when I first got up here and I talked to you  
4 guys at the very beginning of the trial, I told you that  
5 Phillip Helms is not just not guilty because he has a  
6 presumption of innocence, I told you that he was not guilty  
7 because he is, in fact, not guilty of this offense. Phil  
8 Bell or Solicitor Bell actually went so far as to say that  
9 they believe that he is at the center of this conspiracy to  
10 manufacture. I mean what appears to have happened here is  
11 that they -- they've got in their mind that he's involved  
12 in this and there's been nothing that they have seen, none  
13 of the evidence, the actual evidence that they looked at  
14 could change their opinion that he is involved. But we're  
15 going to talk about the evidence and let -- and what the  
16 evidence actually shows.

17 Now, I also talked to you at the beginning about  
18 your duties as a juror and I explained to you that your  
19 duty as a juror is vastly different than the kind of things  
20 that you see on television. I talked about Judge Judy even  
21 because a lot of my clients say, I know a little bit about  
22 the law because I've watched Judge Judy. And as I said,  
23 criminal law -- well, first of all, that's not law at all.

24 Second of all, this is a criminal trial. We  
25 obviously don't have any burden of proof. They have the

1 only burden that there is to prove to you that what they're  
2 saying is true. So it is their burden to collect the  
3 evidence. You guys are the judges. The opinions of police  
4 officers, the opinions of -- of any of the witnesses that  
5 are called are irrelevant unless they prove to you that  
6 these things are actually true. So when you were watching  
7 the witnesses, I encouraged you to be an active participant  
8 because you have to hold them to this burden. I can't hold  
9 them to the burden. As you noticed, I could barely get  
10 Paige Barnes to even answer a question. I could ask her if  
11 the sky was blue and I don't think she would have said yes  
12 to it.

13 I can't hold them to the burden. There's nothing  
14 that I can do to hold them to the burden. You are the only  
15 guys that can hold them to the burden. And I explained to  
16 you the difference between, you know -- or how the founding  
17 fathers originally were highly suspect of government power  
18 and are we are vastly different from other countries like  
19 North Korea and Iran. In North Korea and Iran, police get  
20 to determine if you're guilty or not guilty. Not so in  
21 this country.

22 So I asked you, when you were watching these  
23 witnesses to pay close attention to how they testified, pay  
24 close attention to their answers, pay close attention as to  
25 whether they were combative when they answer simple

1 questions. But I would submit to you that Agent Merckle  
2 was pretty much the only witness that got up there and --  
3 and would -- was no combative. He seemed absolutely honest  
4 throughout all of the things, you know, like he explained  
5 that that was his opinion of what these things were. And,  
6 you know, I might have, I take issue with that, but  
7 overall, he was honest. He said a lot of things that were  
8 completely honest. He said that they had tested that cake  
9 and things like that before.

10           Everybody else was just did that for whatever  
11 reason and they know it's true. It happens in many cases,  
12 but for whatever reason, they were denying that it  
13 happened.

14           Now, you told the judge that you were going to  
15 treat the testimony of the officers the same as you would  
16 treat any other witness. And I know that's very hard to  
17 do. We are conditioned as citizens, you know, to have  
18 great confidence and great trust in law enforcement or any  
19 public servants, teachers -- it doesn't matter who it is.  
20 To everybody that takes that stand that really was  
21 completely, as far as I can remember, all agents; just  
22 remember, they're the same as me or you or anybody else or  
23 any of your coworkers and you judge their credibility based  
24 on, you know, their demeanor and things that you saw on  
25 that stand.

1           So let's talk about then what it was that you saw.  
2 I told you right from the start that this case was going to  
3 be extremely thin on facts and be based primarily on  
4 opinion or speculation. Now, I told you that they were  
5 going to couch the opinion and speculation in a fancy term  
6 called training and experience; that because they have seen  
7 these things before, then they know what they are. It took  
8 quite a bit of effort -- well, not with Agent Merckle  
9 because he was pretty straight on it, but everybody else  
10 that took the stand, I could barely get them to recognize  
11 the difference between a fact and an opinion. The facts of  
12 this case, there simply -- are very little, almost none, I  
13 would submit to you.

14           What was even more surprising to me because they  
15 actually, for whatever reason, they did not submit even one  
16 physical piece of evidence to you. Now, I'm going to just  
17 ignore for a minuet all the stuff in the burn pile that  
18 they said was too dangerous to bring in and all that, but  
19 you remember, I was showing the -- the -- the lab  
20 technician -- I was showing them the pictures. I don't  
21 know if I can find them quickly. I was showing them -- I  
22 was showing her all these things that were actually  
23 collected and you remember this red box? I have no idea  
24 why would you -- why would they not bring this in here to  
25 show you?

1           This little packet here; these are just pictures of  
2 evidence that they actually collected and for whatever  
3 reason, they decided not to bring these things into you and  
4 let you actually look at them. That's what -- that's what  
5 I'm telling you. It's a bazaar situation that I have never  
6 experienced. They didn't bring any evidence into this room  
7 to actually let you look at it yourself. And as a juror, I  
8 would think that would be something that you would be very  
9 interested in seeing.

10           Now, I asked Paige Barnes about her training and  
11 she agreed that as part of her training, one of her jobs  
12 was to collect as much evidence as she possibly could and  
13 collect the best evidence that she possibly could. I'm  
14 going to submit to you today that they simply did not --  
15 they didn't do that at all. And I'll start with them  
16 arriving at, at, at the residence.

17           Now, it's interesting to me because they really  
18 made a big deal and I think that they were making a big  
19 deal to show the search was consensual or something. I  
20 don't know why they were, but they made a big deal about  
21 when they pulled up to the property that Phil Helms saw  
22 them; they said, Hey, we're a bunch of police officers and  
23 he waved them in. He waved them in; he asked them to come  
24 in.

25           They said can you -- can we look around? He said,

1 Absolutely you can look around. In fact, he lead them on a  
2 tour of the property. You have to ask yourself, if  
3 somebody has any knowledge or believes that methamphetamine  
4 is being manufactured on their property or believes that  
5 there's any evidence of methamphetamine being manufactured  
6 on their property, why in the world would Phil Helms have  
7 invited them in without a warrant and have lead them on a  
8 tour of his house and property, but that's exactly what he  
9 did.

10 Now, when they walk into the property -- and this  
11 is very interesting. Paige Barnes and I think maybe -- I  
12 don't remember if Agent Merckle or the other agent  
13 mentioned that they walked through the house. Well, when  
14 they walked through the house, they noted that they had,  
15 they did not notice any smell whatsoever associated with --  
16 with meth.

17 Now, I questioned the agents about this smell of  
18 meth. Agent Barnes admitted unequivocally that the smell  
19 of meth is, without a doubt, one of the worse smells that  
20 she or anybody else has ever smelled. I asked her have you  
21 smelled it yourself and -- and don't other agents say when  
22 they smell it, that it is one of the most horrendous smells  
23 that they have ever smelled and she said yes. And I said,  
24 It's one of those smells that is so bad that it takes your  
25 breath away; and she said yes.

1 I asked her about acid generators. I asked them if  
2 they create the sort of haze and they also have a very  
3 pungent, very noticeable smell; she said yes. And I asked  
4 if there had been situations in the past in which you've  
5 been driving your car down the street in an area that --  
6 that manufactures meth or pulling up on a scene that you  
7 believe a meth lab is active and before you get there,  
8 blocks away, you can smell it; and she said yes to that.  
9 So this is an unbelieve -- that's one of the most notorious  
10 things about methamphetamine is that it smells so  
11 unbelievably terrible.

12 However, after all that questioning, she spent the  
13 rest of the time that she was on the stand whenever she was  
14 asked about meth, trying to back it off; saying, Well, you  
15 know it doesn't really smell all that bad and they burned  
16 it and you know, it's not really that bad of a smell. The  
17 reality is it's one of the worse smells on Planet Earth.  
18 And the reality is that that kind of smell just doesn't go  
19 away in a couple of hours.

20 And their theory -- one of their theories was that  
21 meth was cooked, I don't know, at, at some time after 11:30  
22 or 12:00 or something because of that receipt that they  
23 had. I submit to you that that's virtually impossible. I  
24 mean, I can't cook a piece of fish in my house without my  
25 house smelling like fish for two days and we're talking

1 about one of the worse smells that anybody has ever  
2 experienced in their life. It's just not believable. It's  
3 just not credible. Meth was not cooked in that house that  
4 day, period. There was absolutely no evidence of that  
5 smell when they got there.

6 Now, I asked her about the tools that she uses to  
7 investigate meth products and she went through -- I'm  
8 looking real quick at that note that I have. Oh, they  
9 also -- and before I get too far along. They also talked  
10 about when they walked up that there was this burn, there  
11 was this burn pile and the burn pile was on fire. In fact,  
12 Merckle said, Agent Merckle, said that one of his concerns  
13 was that there was a unattended fire on the property and  
14 that that was something that gave him certain concern  
15 because, you know, you don't want to have an unattended  
16 fire on the property and that it was smoking profusely as  
17 if it had, it was burning and stuff had been immediately  
18 put on, had put on there just recently. I want you to look  
19 at these photos. They took a pile of photos of this burn  
20 pile. There is no evidence whatsoever that that pile had  
21 been burned that day or was active at that time -- well,  
22 the pictures are in here and I know that you guys can find  
23 them. I'm not going to sit here and look at them, but look  
24 at the pictures. Find one bit of evidence in any of these  
25 pictures of any -- you know, hot coal, of any smoke, of

1 anything at all that indicates that that burn pile was an  
2 active burn pile on that day. I can't find them, but  
3 you -- you'll -- they'll be able -- they'll give you these  
4 and they'll take -- you'll have them back there. Look at  
5 the pictures. There was simply not -- if I -- I don't know  
6 what they're talking about, but they're suggesting that  
7 Phil was out there burning items and that he -- and he was  
8 trying to get rid of the meth on that day. And it's simply  
9 not true in regard that there was nothing burning on that  
10 day.

11 Now, one of the things they mentioned was the sort  
12 of things that they have that they carry around with them  
13 in the backs of their cars and they have Tyvek suits. I  
14 think they mentioned something about flame retardant suits,  
15 they have various types of gloves, sample bottles and these  
16 sample bottles are sort of safety bottles that you can  
17 collect even somewhat dangerous substances and then you put  
18 them in this plastic thing, which prevents them from  
19 spilling out and harming a technician when they -- they  
20 test them.

21 They have Type F's also known as chemical droppers;  
22 we've explained those; PH paper which she admitted that she  
23 had. She also had motor oil with her and a standard  
24 respirator.

25 All right. Now, I'm going to talk about those

1 different items in a minute. But I'm going to talk  
2 about -- let's talk about the burn pile a little bit. All  
3 right. This burn pile is truly a curiosity. It is a --  
4 it's truly a curiosity because none of the pictures, none  
5 of them, indicate that the -- that the pile was on fire.  
6 Now remember, they got there at around four o'clock. Okay.  
7 So they're saying that despite this fire, this unattended  
8 fire and this profuse smoke coming off of it, which  
9 indicated that it was active, within a few hours, there was  
10 no indication whatsoever that this thing was on fire.

11 What I'm -- what I'm getting at -- I'm not calling  
12 these guys liars. You know, I work with them all the time.  
13 I mean, I know their intentions are the best. But what I'm  
14 telling you is, this investigation has been terribly flawed  
15 and there were a lot of mistakes made and I think that was  
16 one of them. Agent Merckle didn't do his own report. They  
17 just don't remember things well and they didn't process the  
18 scene well.

19 For example, I went through this in great detail.  
20 It says in the report initially that when Paige Barnes went  
21 out to the burn pile that she saw two plastic containers  
22 that appeared to be consistent with acid generators. Now I  
23 think this is extremely important -- and I'm sorry, I  
24 shouldn't say I think anything. My opinion doesn't matter.  
25 But I submit to you that this is, this is very important.

1 She actually says that she picks one of these things up,  
2 holds it -- and Paige is fairly short -- so you know, she  
3 holds it at arm length and looks at it.

4 Now, they're trying to portray these things as  
5 being like bombs that are just about to go off instantly.  
6 You know, they try to train as the most dangerous things on  
7 the Planet Earth. And yet, she picks one up with no  
8 indication she was wearing any kind of eye protection. I  
9 would presume she was wearing gloves, but she didn't  
10 indicate she was wearing eye protection and she looks at it  
11 and she smells it. Do you recall that testimony? She says  
12 that she identified this item as an acid generator. She  
13 did list on the in -- in -- inventory report, which is in  
14 the same incident report, that she didn't just find two  
15 acid generators, she found three acid generators.

16 She then calls invest -- Investigator Govan, talked  
17 to him on the phone. Because you remember there was a  
18 search warrant and he had to put in the search warrant and  
19 what the probable cause was and she tells him acid  
20 generators, we found. She then issues an arrest warrant  
21 for Phil Helms. And I asked her, Well what did you put was  
22 the probable cause in the search warrant and it was acid  
23 generators.

24 Okay. So then even worse, she had to sign this  
25 return. And you remember we talked about it being a sworn

1 statement that when you get a search warrant, then you have  
2 to do a sworn statement and you have to resubmit the sworn  
3 statement to the judge and it's -- it's an administrative  
4 type of thing, but you have to list every single item that  
5 you recovered and swear under oath that these are the items  
6 that you recovered. I asked her what did you list on that;  
7 three acid generators again.

8 Now later, even there's another instance of it. I  
9 forgot about this until I just read the note. She later  
10 sends a report to the DEA, which as she said, it's supposed  
11 to list all of the items that are recovered at the scene,  
12 all of the solvents, all of the chemicals, I can't remember  
13 the exact wording, but it's like catalyst, reagents,  
14 solvents, something like that, and she's supposed to list  
15 all of those things that she found on that scene and one of  
16 the things that she did not check was lithium. And why did  
17 she not check it; because she didn't think there was any  
18 lithium on the scene because she thought they were acid  
19 generators. If you'll recall, lithium is in the one pot  
20 cook.

21 So on multiple documents, over multiple days, she  
22 clearly, unequivocally, misidentified what she saw in that  
23 pile. And I submit to you then that all of this talk of  
24 training and experience -- and they want you to take this  
25 training and experience as deemed a fact; that's what they

1 want you to do. They want you to -- they want you to --  
2 they want to say, We looked at it, we know what it is;  
3 therefore, it's a fact and you should consider it a fact.  
4 Well, she didn't know what it was. Her training and  
5 experience did not resolve what it was. So I asked her,  
6 Well what did we do with the acid generators; how could we  
7 had proven this to the jury since, you know, obviously  
8 we've got some discrepancies here going on. And I asked  
9 her, when you look at an acid generator, you smell -- it's  
10 a pungent, ashed -- acid smell; no, when she picked one up  
11 that she thought was an acid generator, she smelled ether.  
12 She didn't smell sulfuric acid; she smelled ether.

13 If you'll recall, ether is something that is used  
14 in the reaction vessel. So even though she knew, for  
15 whatever reason, that it had ether in it and not a pungent  
16 sulfuric acid smell; she still identified it as an acid  
17 generator in every single piece of paper she generated.

18 She even recognized that the, the sworn statement  
19 that she gave to the judge was not true and never made any  
20 effort whatsoever to correct it. Now, from this, what I  
21 would suggest that you -- that you could -- an inference  
22 that you could draw is that she didn't know what was on  
23 that pile at the time. She had no idea.

24 Agent Merckle got up there and testified that he  
25 recognized these items and I asked him, you know, well did

1 you do the report; no, I didn't do a report  
2 contemporaneously. Well, did you talk to her about this;  
3 yeah, I talked to her about it. But you didn't do a  
4 report; no. Well how did you prepare for trial; all I --  
5 well I read Paige Barnes' -- Paige Barnes' report before I  
6 came to trial. I think he was being honest. And I think  
7 what happened is right before the trial, they realized that  
8 they had totally messed this thing up and they're trying to  
9 fix it now. Well, that's not how it works. That creates  
10 reasonable doubt. You know, you can't take these opinions  
11 as being fact when you see these kind of discrepancies.  
12 And so I would ask you to absolutely not even consider the  
13 items that were found in that burn pile concerning the acid  
14 generator or -- or the reaction vessel because there is a  
15 tremendous amount of doubt as to what they were.

16           Furthermore, I asked her, all right, Well, if you  
17 were going to try to remove the doubt, what could you  
18 possibly do? Despite the fact that she held them in her  
19 hand and she had smelled it and they had taken pictures;  
20 there's a picture in there; I won't try to find it; I can  
21 never find these pictures. They have a picture like from  
22 two or three feet away from this thing. And I said well,  
23 you know, what's in an acid generator and she said, Well,  
24 it's sulfuric acid and salt. And I said, Well doesn't that  
25 sulfuric acid and salt create a very specific a -- a -- a

1 crystal pattern, you know when it reacts, it has this  
2 cubics -- God, I don't know -- sort of squared off cubic  
3 crystal structure.

4           And I said, Well, you know, you're just a few feet  
5 away from it, I mean couldn't you get down there and just  
6 get us a picture so that the jury could actually see this  
7 is what you're saying it is and she said, you know, no,  
8 it's too dangerous. But she was holding this thing in her  
9 hand just a few minutes ago. I asked her if she touched it  
10 with the PH paper -- and this was my favorite -- this was  
11 my favorite; I'm going to say it was my favorite a few  
12 times probably, but this was, I think, my favorite. I  
13 asked her if you could just touch it with the PH paper and  
14 she said, Well no, we don't do that. And I said, Well why,  
15 you know, it wasn't dangerous; you were holding it in your  
16 hand. And she said, Well, we don't do that because we only  
17 do that for unknown substances. I loved it when she said  
18 that. And the reason why I loved it is because she didn't  
19 know what it was; you guys definitely don't know what it  
20 was because you weren't there, I wasn't there. I mean why  
21 would you not confirm what it is especially when you had  
22 misidentified it. And that goes to the heart of this case.

23           What they want to do is they want to tell you, We  
24 know what all this stuff is. You know, we're from the  
25 government; we're here to help; trust us. And I'm not

1 saying they had any ill will; I'm saying they were  
2 mistaken. They didn't get it right. And there were steps  
3 that they could have taken to get it right and they chose  
4 to just not to take those steps because they say, we know  
5 what it is, but their reports would indicate otherwise.  
6 They did not know what it was.

7 Now, those solvent cans, unfortunately this is  
8 going to drag on a little. And I apologize, but I have to  
9 go through this stuff.

10 Solvent cans. A solvent can contains ether, she  
11 told you. And she said -- the way that she said this --  
12 the way that they know that these were used in the  
13 manufacturing of meth -- and I asked her this, I said, What  
14 they do is -- she said there was puncture holes in them and  
15 I said, from my understanding in talking with people, the  
16 reason why there's puncture holes is because they don't  
17 want to sit there and spray, take the whole time to spray  
18 the thing out; they hold it upside down, which then allows  
19 the propellant to leave very quickly and once the  
20 propellant is gone, then you only have the liquid in the  
21 bottom of it and then they poke a hole in the bottom and  
22 dump it into their reaction vessel.

23 And I asked her, I said -- you know, here's all the  
24 pictures in evidence, knock yourself out. Find one single  
25 picture, one, with that hole in the bottom that you've been

1 telling us about. And she said I can't. Well, why in the  
2 world -- but take her, take our word for it; it was there.  
3 I mean that's what, that's what I'm telling you. That's  
4 what this whole case is about; take our word for it; it was  
5 there, but there was absolutely no evidence that this  
6 exists.

7 She didn't collect it. Couldn't she have -- they  
8 said solvent cans -- this is another thing she said --  
9 well, solvent cans, they're kind of dangerous and we don't  
10 collect them because they contain ether and you know ether  
11 is -- is dangerous. And I said, Well, doesn't ether burn  
12 or ignite at around 170 to 180 degrees; that's why they use  
13 this starter fluid because it ignites at such a low  
14 temperature. And I said that you said that these things  
15 had been in a fire. Fire burns around 1500 degrees, so  
16 wouldn't all the solvent be out of it; well no, there could  
17 be residue; residue of what, its ether. I mean it either  
18 burns or it doesn't burn. The reality is they didn't  
19 collect it, they don't have a good reason for collecting it  
20 and they didn't even bother to go through the trouble of  
21 just flipping a can around and just taking a picture of the  
22 hole in the bottom and they can say see; it's what I'm  
23 telling you it is, but they didn't do that.

24 Now, all of this -- and I'm going to keep -- and  
25 I'm going to say this over and over and I think I said it

1 after the last, about the acid generators, this is  
2 reasonable doubt. This is a text book definition of  
3 reasonable doubt. Every fact, it doesn't matter what that  
4 fact is, if that fact, if they say it goes to one of the  
5 elements of this criminal offense, they have to prove that  
6 fact beyond a reasonable doubt, every single fact. And the  
7 question is what we just talked about, is there any  
8 reasonable doubt this is what they say it is?

9 I submit to you there is tremendous doubt. They  
10 could have resolved the doubt. They had all the means  
11 necessary and they just flat out didn't do it.

12 They talked about the batteries and they see all of  
13 these batteries in the burn pile and you can easily -- you  
14 know, we looked at them and -- and it was clearly stripped  
15 open batteries. I want you to look at those pictures.  
16 I -- I -- I defy you to find something in that picture that  
17 is an actual battery. They -- Paige Barnes -- excuse me,  
18 Investigator Paige Barnes, said that the batteries already  
19 had the lithium stripped out; they could have pulled the  
20 batteries out; they could've, they could've preserved them  
21 and let you see them, but fine, okay, so they didn't. So  
22 that's their protocol. They didn't do that.

23 At least they could have, you know, pushed it out a  
24 little bit and taken a clearer picture of it so that you'd  
25 know what it is, but once again, it's -- trust us. I

1 mean -- and that's just not -- that's not proving something  
2 beyond a reasonable doubt to just say trust us with every  
3 single piece of evidence that they recovered and that has  
4 been so far everything that I've talked about has been just  
5 trust us.

6           And I also should point out, there's really -- if  
7 that's what they were, they didn't -- they didn't explain  
8 any justification whatsoever for not just recovering it and  
9 bringing it here and letting you look at it. In fact, I  
10 just remembered something. She said that the reason, I  
11 think this might have been the point in the trial, I  
12 apologize -- it's -- it's juvenile behavior on my part, but  
13 this was the part of the trial I think that she said, Well  
14 we don't collect stuff because they've been in a fire and  
15 have a smoky smell. And I think I said, are you just  
16 starting to make stuff up as you're on the stand? I mean,  
17 what would they do in an arson investigation at this point  
18 in time? So there wasn't a reason, I mean, other than a  
19 smoky smell was the reason they didn't collect it, but they  
20 weren't dangerous and they could have.

21           Now -- so what -- oh, I've got one more thing. One  
22 pot cooks. They said that they found a one pot cook in  
23 there and we talked about it and they explained that meth  
24 could be contained in the cake. Now, this is something  
25 that was identified here at the trial. It was never

1 identified in any of the -- any of the paperwork. She  
2 even -- Paige Barnes -- excuse me, Investigator Paige  
3 Barnes even went so far as to say because we got into a  
4 discussion about it, were all the elements in the Mustang,  
5 did they have all the elements necessary to make meth and  
6 she said, Well, no, they don't have the elements, but yes,  
7 they do. They didn't have the elements for the acid  
8 generator, but they had all the elements for the reaction  
9 vessel. And if you'll remember, the reaction vessel -- and  
10 I'll have to flip to -- well, the reaction vessel contained  
11 a solvent, let me go back over there to my stuff.

12 The reaction vessel contained the solvent, which is  
13 either Coleman fuel or ether, sodium hydroxide, which is  
14 just lye, ground up pills, lithium, which they say is this  
15 most dangerous stuff on the planet, and a soda cap full of  
16 water. All right. And they say they mix it and they --  
17 and -- and -- and it creates a reaction and then the meth  
18 floats up into the meth oil; you remember them talking  
19 about that in the, in the Power Point, they actually  
20 printed it out and showed it to you I think -- and that it  
21 leaves a cake on the bottom.

22 Now presumably, up in the meth oil was where the  
23 meth was, but what she told me -- despite the fact --  
24 because the second step, if you'll remember, was they  
25 create the acid generator and they pump the acid into the

1 meth oil and then the, the meth snows out. Okay. And  
2 that's what they said. They said that that's how that  
3 happens. Well, when I started asking her about these, that  
4 did they have every single element available to cook meth,  
5 she said, they didn't have the acid generator in the  
6 Mustang, but that's how some people just make it. They  
7 just do the reaction vessel and then, you know, they get  
8 the meth out of the cake. And I said wait a minute, you  
9 just told me that this stuff, you can't get it out. If you  
10 try to get it out, it's going to blow up and kill  
11 everybody. She says, Well that's what they do. I just --  
12 it was baffling. I don't even understand that.

13 She says if on one hand you cannot take this stuff  
14 out of there because it's going to blow up, but on the  
15 other hand, they had a full meth lab in the Mustang because  
16 sometimes they just use that part that she says is the most  
17 dangerous stuff on Planet Earth. Her testimony simply did  
18 not -- it contradicted itself.

19 She also said something else interesting. She said  
20 that if she had happened upon a -- a reaction vessel, which  
21 is the one pot cook thing -- if she had happened upon a  
22 reaction vessel that had stopped bubbling and doing all of  
23 its stuff, but was full of the meth oil and the cake was on  
24 the bottom and the whole thing -- she said that in that  
25 situation, she would have taken a sample. I would think

1 that a reaction vessel with all of this stuff in it would  
2 be the most dangerous time that you possibly could because  
3 that's when all of the reaction is taking place. That's  
4 not when the reaction is over and that they've dumped it  
5 out and they've let it dry. But that's what she said. She  
6 would have been more likely to take a sample from a  
7 reaction vessel that was, that had all of the ingredients  
8 still in it. So it just, none of it made sense to me.

9 Also concerning reaction vessels, Agent Merckle  
10 said that he has at least on a few occasions, I won't  
11 speculate as to how many because I can't remember what he  
12 said, but they have taken these reaction vessels and they  
13 have scraped off a little piece of the -- a little bit of  
14 the cake and they have sent it in to be tested. The -- I  
15 understand. That's not desirable necessarily. The chemist  
16 even said that she has received the cake before from these  
17 things and picked out the lithium.

18 In fact, Agent Merckle, being perfectly honest,  
19 said that you know, some -- I've watched people bang it out  
20 and then we would separate the lithium, burn it off in  
21 water, I think he said and then just take, collect just the  
22 cake part and then we would, you know, submit that for  
23 testing. Well, the thing is, it's possible to do. It's  
24 possible to do something. It's possible to do something  
25 more than call it an acid generator on every single piece

1 of paper and then get on the stand and say no, it's a  
2 reaction vessel. I mean they needed to nail this stuff  
3 down. All they did was create tremendous confusion and  
4 they didn't preserve any of the evidence or even they  
5 didn't preserve any indication of what the evidence was in  
6 the sense that they didn't use PH paper or anything on  
7 this. So the testimony is extremely inconsistent and I  
8 would submit that anything in that burn pile, we can't know  
9 beyond a reasonable doubt what that was. You should  
10 discount it.

11 Now the living -- that search of the house -- the  
12 living room, I'll go over this pretty briefly. The vast  
13 majority of the batteries, even though they took pictures  
14 of them, were an alkaline battery. They saw one single  
15 lithium battery. Investigator Barnes agreed that it was  
16 only one battery and then she said, see this, this is what  
17 it gets to, I think they started to realize before they got  
18 to court to -- today or on Monday -- I think they started  
19 to realize we didn't do it and we can't create a case  
20 beyond a reasonable doubt against Phil Helms and you  
21 started to see them really start stretching when they were  
22 on the stand. One of the best examples of that was when I  
23 show her the picture of the, I don't know, it was a little  
24 table in the living room and it has that box of junk in it,  
25 tons of stuff, batteries and everything else and there was

1 a blue knife sitting beside it and she testified initially  
2 that -- and see there's a knife right there and that's the  
3 kind of knife they use to cut open batteries.

4 I asked her, I said so they use a particular type  
5 and brand and that's the knife? And she said, Well, no,  
6 not necessarily. I said, So you're not saying that that  
7 knife was used to cut open batteries. Well, no, because  
8 none of her answers were just immediately yes or no. And I  
9 said, you're just saying that somebody could have used that  
10 knife to cut open a battery. And she said, Well, yeah, I  
11 guess so.

12 I mean, that's -- you're seeing it happen. You got  
13 to watch it happen. And sort of stretching and trying to  
14 make a case exist when they knew that they didn't have one.  
15 They say that they had a -- that there was one lithium  
16 battery and that may be some evidence, but they didn't  
17 collect it. They didn't even take a picture of it.

18 The spoon -- you're going to get to see pictures of  
19 the spoon. They're going to try to suggest that this spoon  
20 was used to -- to cook up meth and inject it in your veins,  
21 but I asked them, you know -- look at the spoon because  
22 there's a picture of it. Tell me if you see burn marks on  
23 that spoon; it's a silver spoon. I mean you look at it;  
24 you tell me what it is. If -- you know, I submit to you,  
25 it looks like it's tarnish on the spoon and there's no

1 evidence whatsoever. And in fact, the chemist said that  
2 she didn't see any evidence whatsoever that there were any  
3 residue on it. Additionally, they didn't find any  
4 tourniquets, no cotton balls, no hypodermic needles, no  
5 bloody rags or napkins, nothing that would normally be  
6 found for people that shoot up if they were shooting up.  
7 So that -- I mean that piece of evidence has no value  
8 whatsoever.

9           Tin foil. They recovered the tin foil, from what I  
10 can tell, there was confusion about this, but it appears  
11 that all of the chalets that they found were found in Renee  
12 Krantz's room. Okay. Now, there was something said  
13 during -- I just don't want to forget -- there was  
14 something said about Renee Krantz and they tried to tie  
15 Renee Krantz to Robin because Robin was in the Mustang.  
16 And Gil Bell, the Solicitor Bell, said that his  
17 recollection of -- of Agent Barnes' testimony was that he  
18 referred to Renee Krantz as one of his friends -- or excuse  
19 me, Huggins as one of his friends, I believe it was.  
20 Because Huggins had the thing -- this was him pointing  
21 fingers. I just -- it took me a minute to remember.  
22 Huggins had -- or Jimmy Johnson was the guy that was in the  
23 living room that had the Walfed in his pocket; he had  
24 Walfed receipts. And Gil Bell said that if you recall,  
25 Phil Helms said that -- that this guy, Jimmy Johnson, was

1 one of his friends. I specifically asked Investigator  
2 Barnes about this. When she walked into that house, I  
3 asked her if, if she heard male voices in the back of the  
4 house and she asked him who else was in the house and he  
5 stated, Oh, I forgot. That's Renee's friend. They didn't  
6 put up any evidence whatsoever that Phil Helms is friends  
7 with, I think it's Jimmy Johnson, or I forget the name, the  
8 guy in the living room that had the stuff in his pocket.  
9 The only thing Investigator Barnes testified that he --  
10 that -- that, Phil Helms said was that, Oh, that's Renee's  
11 friend. And if you recall, Renee was staying in that back  
12 bedroom. That's where they found the chalet. That's where  
13 they found this cup. There's a blue cup, you may remember  
14 it, but there was a blue cup that they said that they found  
15 with a coffee filter in and I asked them if they could have  
16 pulled that coffee filter out and take a picture of it  
17 because you can't tell it's a coffee filter and she agreed  
18 that you couldn't tell it was a coffee filter.

19 So this Renee -- that room is Renee -- I -- and  
20 Jimmy Johnson's room and they did not establish through any  
21 testimony that Phil was particularly friends with Jimmy  
22 Johnson.

23 Now, they recovered all that tin foil from inside  
24 the junk drawer thing. That wasn't tested either. There  
25 weren't apparently any burn marks on it; you can look at

1 it. I honestly don't even know why that was ever even put  
2 into evidence. They found a glass pipe; they admitted the  
3 glass pipe was used to smoke marijuana. They got some  
4 plastic bags. Now, the plastic bags, I don't know if we  
5 have pictures of the plastic bags, but you do have a copy  
6 of the report and some plastic bags were found. They were  
7 Item No -- there were some plastic bags that were supposed  
8 to have been found and I think they're in one of these  
9 pictures. Some plastic bags that were supposed to be found  
10 in the living room. They were recovered and those plastic  
11 bags, even though they were sort of a corner of a plastic  
12 bag, that plastic bag test, tested negative for anything.

13 Like I said, Renee's room, that's where they found  
14 that coffee filter looking thing. They never took it out;  
15 they never recovered it; they never tested it. He can't  
16 even tell it's a coffee filter. It looks like a wadded up  
17 cloth or shop cloth of something, but they say it's, once  
18 again they just say, you know, we know what it is; trust  
19 me. Never, didn't take even a good photograph of it.  
20 Never sent off for testing. Didn't do PH paper. Didn't  
21 touch it to it. You know, it's just trust us, we're  
22 telling you what it is and we think he's guilty. Believe  
23 us.

24 The chalets, none of those were recovered. None of  
25 those were tested. You know, I talked to her about if you

1 could smoke other things; she denied it.

2 Listen, you guys, I'm sure you've had experiences  
3 in your lives -- not personally -- but you know, I submit  
4 to you that it's ridiculous to say the only thing you can  
5 smoke out of a piece of tin foil is methamphetamine, but  
6 we'll never know because it was never tested anyway.

7 Now a pipe, that was interesting. The pipe they  
8 didn't send in for testing. You remember that was that  
9 bulbous, it had that bulbous end they found in Renee  
10 Krantz's room. I asked if that -- I asked specifically,  
11 Agent Barnes, if she -- if you know, crack cocaine and  
12 other things were smoked out it and she said no, it's not.  
13 I asked the chemist and she says yeah, when we get those,  
14 we test them and they all can test positive for crack  
15 cocaine. So there's a big difference of opinion about  
16 those two things.

17 Now, in Phil's room they found absolutely nothing.  
18 Now, Jimmy Johnson, I've talked about him all -- all --  
19 already. He was identified by Phil as a friend of Renee's.  
20 He didn't identify him as a friend of himself. I talked  
21 about the -- the -- if there was any way, any evidence  
22 inside of Jimmy Johnson's pocket. If any indication that  
23 Phil was involved in the purchase of this Walfed. Just  
24 anything, any physical evidence that they can show you and  
25 they can show you nothing. Nothing to know what is in

1 somebody else's pocket.

2 And I may have already talked about the timeline,  
3 but I will do that again in a minute, if I didn't.

4 All right. The search of the house. The search of  
5 the house they found -- I don't remember anything that they  
6 found. You guys may have a better recollection than me,  
7 but I don't think they found anything in the house that  
8 tested positive for methamphetamine. In fact, I'm pretty  
9 sure that they didn't, but look through the evidence and if  
10 they did, that's fine. But oh, oh, it might have been  
11 found in Jimmy Johnson's pocket or something. If I think  
12 they found something associated with meth, but anything in  
13 the house itself.

14 They also didn't find any precursor's to the  
15 manufacture of meth, identifying packs of, no coffee  
16 filters, no blister packs of pills, they didn't find any  
17 plastic bottles, they didn't find lye. They didn't find  
18 ether, they didn't find Coleman fuel in the house, they  
19 didn't find sulfuric acid in the house, they didn't find  
20 muriatic acid in the house. They didn't even find a roll  
21 of aluminum foil in the house. There was absolutely no  
22 smell in the house. No smell whatsoever. And I think I  
23 did talk to you about the timeline a little bit.

24 You know, they say that -- and I'll have to find  
25 the receipt. They say that -- you'll have the stuff back

1 there and you can look at it because I may have gotten this  
2 mixed up, but if I'm not mistaken, the -- the receipt for  
3 the Walfed that was found in his pocket was -- was on the  
4 same day at 11:38 and if I'm not mistaken, that was bought  
5 on Broad River Road. This may be it. This is it. Yeah,  
6 this is the one that they found in Jimmy Johnson's pocket  
7 and it was bought on Broad River Road and it was bought on  
8 the same day at 11:35 a.m. or 8/11/13.

9 Now, you heard what Phil's address was, the name of  
10 the road he lived on [REDACTED] I'm sure some  
11 of you are familiar with Lexington. I don't even live in  
12 Lexington, but my understanding is, it's about 40 minutes  
13 away or 35 or 40 minutes away. So let's just assume for a  
14 minute that they bought this and they were going over there  
15 to cook it at Phil Helms' house.

16 Now Paige Barnes testified that is a minimum of a  
17 two-hour process. So we're talking here from 11:35 and one  
18 at 11:38 so let's call that 11:40. Let's say it takes 40  
19 minutes to get over there. So, you know, we're at 12:30,  
20 12:00 or so getting over there. When they get over there  
21 at 12:30, then they have to set up to do this cook. Say  
22 after we do the cook, I'm just speculating, but, you know,  
23 they got to get all that stuff and they got to put all that  
24 stuff together, and I don't know, say 30 minutes, an hour.  
25 So we're already at 1:30. At 1:30, as they started cooking

1 that meth that they say that Phil Helms knows about because  
2 of this receipt. They started cooking that meth at 1:30  
3 then it would have been a two-hour process at least  
4 according to Agent Barnes.

5 Now, we are at 3:30 now. Remember what Paige --  
6 when Paige Barnes said that she arrived on the property;  
7 four o'clock. And they didn't have any smell, nothing to  
8 indicate that meth had been cooked. Now I know she says  
9 that they can vent it and they can get it out of the house  
10 real quick and all that sort of thing, but I don't think  
11 they can get the worse smell that anyone has ever smelled  
12 out in 30 minutes before they arrive. There was no  
13 notation of any smell whatsoever.

14 So I submit to you this theory that they have that  
15 these receipts in Jimmy Johnson's pocket and that was, you  
16 know, the evidence that you saw on the burn pile, that's  
17 just ridiculous; it's impossible if that's the case.

18 Now, I'm going to go over this stuff quick. I know  
19 y'all are getting tired. I understand. Search of the  
20 Durango, I asked them very simply could you prove that Phil  
21 Helms knew, even knew what was in that Durango; they said  
22 no. But you got the pictures. The stuff -- this may be  
23 something I can get through quickly. The stuff was jammed  
24 up under the, it was jammed up under the steering wheel and  
25 it was jammed up under there, and you're going to have to

1 look at this so you can see it yourself. It is so jammed  
2 up under there that one of the bottles is actually tilted  
3 back slightly. They pushed it up there as far as they  
4 could. It looks like they pushed it as far up there as  
5 they could, so that nobody would see them, that it was in  
6 the Durango. But the picture we got there, if you guys  
7 look at it and you guys decide what you think about it.  
8 But they couldn't produce any evidence whatsoever that Phil  
9 knew what was in that Durango because I asked them, was  
10 this door open when you got there and they said no, they  
11 opened the door.

12           They didn't -- there was no fingerprints on the  
13 car, no items that Phil owned in the car, nothing that they  
14 could show other than pure speculation that he might have  
15 known what was in that car. Oh, and she also said, well,  
16 I'm not going to get into that.

17           Now, the search and the processing of the Mustang.  
18 I'll go ahead and just concede they had a bunch of stuff to  
19 make meth in that Mustang. I mean there's no doubt about  
20 that. Those people wanted to, at some point in time in the  
21 future, they wanted to manufacture methamphetamine. There  
22 is no doubt about it. In fact, I need to find that other  
23 receipt. There it is right there. But if you recall, they  
24 pulled up at night. Okay, on January -- June 11th, they  
25 pulled up at night after the search warrant had been

1 served. Not only did they pull up at night, but the  
2 receipts, the time on the receipts was, I think this is  
3 6:34 is what the receipt was. You'll have to look. I  
4 thought that Agent Merckle testified that the receipt was 7  
5 or 7 -- Oh yeah, I think Agent Merckle testified the  
6 receipt was 7:30 and that they had arrived after that  
7 because it was dark. At 7:30 it would have still been  
8 light. So Agent Merckle testified that the time that they  
9 had bought the stuff was at 7:30, regardless, here's the  
10 point I'm making. This stuff was bought while Phil Helms  
11 was sitting there talking to police. Somehow they're going  
12 to try to establish that Phil Helms somehow conspired with  
13 these people to buy these items while, I guess he was with  
14 the police. It doesn't make any sense whatsoever. That's  
15 what I'm telling you. The date is very important. You  
16 know, it was supposed to have occurred on this day. I  
17 asked them, you know, Well, you recovered all of their  
18 phones and you have software that you can use that you can  
19 dump the phones and you can get all the names and the text  
20 messages and all that stuff and -- and -- and Paige Barnes  
21 said, Yeah, we had that stuff. I said, Well did you do  
22 that and she said no. Well that would have been a pretty  
23 good piece of evidence if they could have shown, you know,  
24 that Phil Helms had been in contact with them prior to them  
25 coming over there, but they got nothing.

1           The only thing that they have is the car arriving  
2 and a receipt being or something being bought while Phil  
3 Helms was with the police. It makes absolutely no sense to  
4 say -- because you've got to conspire. The judge is going  
5 to tell you what a conspiracy is. It's an agreement  
6 between two or more people to engage in criminal activity.  
7 I don't know how they're going to establish there's any  
8 agreement whatsoever; they couldn't put up a single witness  
9 that said that he had ever seen that Mustang; they couldn't  
10 put up a single witness that said that he even knows Robin  
11 Krantz; they couldn't put up a single witness that said  
12 that, I think the guys name was Huggins that was in the  
13 car; they couldn't put up a single witness that says he  
14 knew them; they couldn't put up a single witness that said  
15 that they had been by there before. The only thing that --  
16 the only tie was that Robin is the sister of Renee and that  
17 Phil knows Renee. And then we have these receipts that  
18 were clearly purchased while police were out there and the  
19 car pulled up while the police were there and they're  
20 saying, Oh, well that proves, obviously, Phil had agreed to  
21 commit a crime.

22           And I mean you can't agree to commit a crime until  
23 you agree to commit a crime. If they had pulled up there  
24 and they were to get out of the car and say Phil, can we  
25 cook meth, yeah, a conspiracy would have occurred at that

1 point. But my point is, there's no evidence that any  
2 conspiracy occurred prior to that, none. None whatsoever.

3 Oh, Clandestine Laboratory Seizure Report. All  
4 right. If you recall, I asked Paige Barnes if she had  
5 filled out what's called a Clandestine Laboratory Seizure  
6 Report and she said yes, she had. And I said one of the  
7 parts on the report was to identify the rolls of the  
8 parties and the -- the -- the various -- now, you've got to  
9 understand, Phil is at the center according to Mr. --  
10 excuse me, Assistant Solicitor Bell. He is at the center  
11 of this entire conspiracy according to what he said in his  
12 closing argument.

13 So here -- here's the roll; here's what they could  
14 have checked. They could have checked cook, chemist,  
15 distributor, enforcer, financier, smuggler, broker,  
16 chemical courier, or criminal associate, that would have  
17 been a good one, or other. And if you'll recall, neither  
18 criminal associate, cook, chemist, distributor -- nothing  
19 was checked except other. And the other that she checked  
20 identified him as a addict flophouse -- addict flophouse.

21 So around the time that all this happened, that's  
22 what the belief was, addict flophouse. Nothing about in  
23 this form, him being involved in any way in the cooking,  
24 distributing, the manufacturing, the financing, the  
25 chemical courier, nothing in this form identified him as --

1 as -- as playing a role.

2 Now, they also had Robin Krantz. Now, she was the  
3 one in the Mustang and they identified as a cook chemist,  
4 quite appropriately with all the stuff in her car and they  
5 identified her as a distributor, if you'll recall, quite  
6 appropriately. And I submit to you, this is a statement  
7 made by Paige Barnes, you know, shortly after all of this  
8 happened. This was their opinion. That's what I'm saying,  
9 this thing conspire -- has ended up spiraling out of  
10 control. I don't know how it did and Phil Helms gets  
11 caught in the middle of this based on -- and the judge told  
12 you, you cannot -- you cannot find someone guilty based on  
13 the fact that they are in the presence of or they know  
14 other people that may be guilty. But that's basically  
15 their case. That's basically what they want -- that they  
16 want to tell you -- well, you know, this is the reason why  
17 he's guilty.

18 So I've already talked to you about they have to  
19 prove that things occurred on June 11th. They can't prove  
20 that anything occurred on June 11th, nothing.

21 MR. BELL: Objection, Your Honor, I didn't want to  
22 have to interrupt his closing, but the indictment  
23 specifically says on or about June 11th, not just  
24 specifically June 11th.

25 THE COURT: All right. Objection sustained.

1 MR. KIRKLAND: On or about June 11th, they went out  
2 there on that day and it's on or about. They didn't say it  
3 was a week or a month. When you say on or about June 11th,  
4 you know, they could have, they could have specified a  
5 range. They could have specified a week. They could have  
6 specified -- they could have more appropriately specified.  
7 They didn't. Well, on or about June 11th, which was the  
8 time that they got there and so I submit to you that June  
9 11th is the date that they were looking at.

10 Now as to the manufacturing, nothing in the house.  
11 I've gone through all of that. Oh, the aiding, abetting;  
12 once again, nothing in the house. The conspiracy, I think  
13 we've addressed that ad nauseum at this point. You know,  
14 there has to be an agreement between two or more people,  
15 you know, so let's -- show me the agreement. I mean, you  
16 know, everything that they tried to introduce does not show  
17 that he actually has any kind agreement.

18 They couldn't even establish -- they didn't have  
19 any witnesses that could establish that Phil saw the items;  
20 they circumstantially are trying to show to say that he saw  
21 the items in the pile because he said that he had been  
22 burning stuff and we have no witness that he even saw the  
23 items in the pile. They have no witness that can say that  
24 Phil Helms, even if he had seen the items, that he would  
25 know what the items are. I mean, they have to prove this

1 beyond a reasonable doubt. It cannot just be speculation.  
2 It cannot be just based on training and expertise and  
3 opinion. They have to prove that this things beyond a  
4 reasonable doubt actually occurred, and they simply haven't  
5 been able to do that.

6 Now, the Judge is going to talk to you about mere  
7 presence, and she's going to instruct you that being merely  
8 present at the scene where a crime has been committed, with  
9 nothing more, does not prove that a person is guilty.  
10 There's no doubt that Renee Krantz -- she seemed to be a  
11 smoker. Robin Krantz and that guy in the car with her,  
12 he's a meth dealer; there's no doubt about it. But what  
13 they have to do is they have to connect that to Phil Helms.  
14 I submit to you that at best, they can show that he was  
15 merely present. That no conspiracy, no aiding or abetting,  
16 I mean they can't show -- I guess that he might be -- he  
17 took the items out to the burn pile. They have no proof of  
18 that. That he had bought pills himself. They had no proof  
19 of that. A conspiracy that he had, I don't know, called  
20 these people before they came by. They have no proof of  
21 that. They say that just, they even said this, that the  
22 fact that these things were found in and around his house,  
23 is sufficient to prove conspiracy or aiding and abetting  
24 and the judge is going to instruct you that -- listen to  
25 her instructions. Don't listen to me. But I think that

1 your reading of her instructions are going to be that's not  
2 what makes a person guilty. Merely being present when  
3 other people are potentially committing a crime, doesn't  
4 make them guilty.

5 So that first day that I stood up here and I told  
6 you that Phil Helms was not guilty. He was not guilty on  
7 the day that this happened; he was not guilty sitting over  
8 there and he's not going to be guilty -- or I don't think  
9 when you return your verdict and the reason why is because  
10 Phil Helms, even if you're think probably, maybe, possibly  
11 he could have known something about it; that's not the same  
12 as beyond a reasonable doubt. You have to be convinced of  
13 this beyond a reasonable doubt and if you respect and you  
14 love the constitution, then you will hold the government to  
15 their burden and you will find him not guilty.

16 Thank you, Your Honor.

17 THE COURT: Thank you. Ladies and gentlemen of the  
18 jury, we've been going for about an hour and a half. Do  
19 you all need to take a short break, stand up and stretch or  
20 --

21 I'm going to do the jury charge. It may take  
22 another 20 to 25 minutes. All right.

23 (WHEREUPON it was conveyed to the judge that the  
24 jury wanted to move forward.)

25 ///

## JURY CHARGE

THE COURT: Ladies and gentlemen of the jury, you have heard all the evidence, the arguments of the parties. It is now my responsibility to charge you as to the law. I remind you that during this trial, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case and I also have the duty to rule on the admissibility of the evidence offered during this trial. You're -- you are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record in this case during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from the witness stand, any exhibits which have been made a part of the record in this case, and any stipulations of counsel.

I have the additional duty to charge the law applicable to this case. As the presiding judge I am the sole judge of the law of this case and it is your duty as jurors to accept and apply the law as I now state it to you. If you already had any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon this idea because you are sworn to accept the law and apply the law as I state it to you.

1           In every case tried in the court before a jury, the  
2 jury becomes the sole and exclusive judge of the facts in a  
3 case. A trial judge cannot intimate, state, comment on, or  
4 make any statement to a trial jury about the facts in a  
5 case. Since you, the jury, are the sole judge of the facts  
6 in this case, you're not to infer from what I have said  
7 during the progress of this trial in ruling on the  
8 admissibility of the evidence or otherwise anything that I  
9 say now during the course of this instruction to you that I  
10 have any opinion about the facts in this case. The law  
11 does not allow me to have an opinion about the facts in  
12 this case. This is a matter solely for you, the jury, to  
13 determine.

14           As jurors, it is your duty to determine the effect,  
15 evaluate and truth of the evidence presented in this trial.  
16 There are two types of evidence which are generally  
17 presented during a trial, direct and circumstantial  
18 evidence. Direct evidence is the testimony of a person who  
19 claims to have actual knowledge of a fact, such as a eye  
20 witness. It is evidence which immediately establishes the  
21 main fact to be proved. Circumstantial evidence is proof  
22 of a chain of facts and circumstances indicating the  
23 existence of a fact. It is evidence which immediately  
24 establishes collateral facts from which the main fact may  
25 be inferred.

1           Circumstantial evidence is based on inference, and  
2           not on personal knowledge or observation. The law makes  
3           absolutely no distinction between the weight or value to be  
4           given to either direct or circumstantial evidence, nor is a  
5           greater degree required of circumstantial evidence than of  
6           direct evidence. You should weigh all of the evidence in  
7           the case. After weighing all the evidence in the case, if  
8           you are not convinced of the guilt of the defendant beyond  
9           a reasonable doubt, you must find the defendant not guilty.

10           Necessarily, you must determine the credibility of  
11           witnesses who have testified in this case. Credibility  
12           simply means believability. It becomes your duty as jurors  
13           to analyze and evaluate the evidence and determine which  
14           evidence convinces you of its truth. In determining the  
15           believability of witnesses who have testified in this case,  
16           you may believe one witness over several witnesses or  
17           several witnesses over one witness. You may believe a part  
18           of the testimony of a witness and reject the remaining part  
19           of the testimony of that same witness.

20           You may believe the testimony of a witness in its  
21           entirety or reject the testimony of a witness in its  
22           entirety. You may consider whether any witness has  
23           exhibited to you an interest -- any interest, bias,  
24           prejudice, or other motive in this case. You may also  
25           consider the appearance and manner of a witness while on

1 the witness stand.

2           The rules of evidence ordinarily do not permit  
3 witnesses to testify to opinions and conclusions. An  
4 exception to this rule is for witnesses we call expert  
5 witnesses. A witness who by education and experience who  
6 has become an expert in some art, science, profession, or  
7 education may state an opinion as to relevant and material  
8 matter in which the witness claims to be an expert and may  
9 also state the reasons for their opinion. You can -- you  
10 should consider any expert opinion received in evidence in  
11 this case and like any other evidence, give the weight you  
12 think it deserves.

13           If you decide the opinion of an expert witness is  
14 not based on sufficient education and experience or if you  
15 conclude that the reasons given in support of their opinion  
16 are not sound or that the opinion is outweighed by other  
17 evidence, you may disregard the opinion entirely. An  
18 expert witnesses' testimony is to be given no greater  
19 weight than that of other witnesses simply because a  
20 witness is an expert. Further, you are not to accept an  
21 expert's opinion even though it is not contradicted.

22           A statement alleged to have been made by the  
23 defendant has been admitted into evidence in this case.  
24 While the Court has determined that the statement is  
25 admissible, I instruct that you make the ultimate decision

1 of whether or not the defendant made the statement. If the  
2 defendant did make the statement, you must determine  
3 whether the statement was made by the defendant voluntarily  
4 and of his own free will. This means that the statement  
5 was not caused by pressure, force, fear, threats, coercion,  
6 or intimidation, or by a hope or a promise of leniency or  
7 award of any kind.

8           In determining whether the statement was voluntary,  
9 you should consider both the characteristics of the  
10 defendant and the details of the questioning. Some of the  
11 factors you must consider are, one, the age of the  
12 defendant; two the defendant's -- defendant's education or  
13 lack of education, defendant's mental capacity or ability,  
14 the defendant's IQ or intelligence, the defendant's  
15 background and environment, the place and length of  
16 detention, the nature of questioning, and the advice or  
17 lack thereof to the defendant of his constitutional rights  
18 including, but not limited to the right to remain silent,  
19 that anything could be used against him in a court of law,  
20 the right to have a lawyer present, that if he could not  
21 afford a lawyer, a lawyer would be appointed to represent  
22 him without any costs and then he could stop making the  
23 statement at any time. You must carefully consider all of  
24 the surrounding circumstances before you give any weight to  
25 any alleged statement.

1           The State has the burden of proving beyond a  
2 reasonable doubt that the alleged statement was voluntary.  
3 If you determine it was, you may give the statement any  
4 further consideration that you deem proper. You must  
5 decide what weight, if any, should be given to the alleged  
6 statement. If you determine the alleged statement was not  
7 the free and voluntary statement of the defendant, you  
8 should not consider that statement at all.

9           Ladies and gentlemen of the jury, the indictment  
10 charges the defendant with the manufacture of  
11 methamphetamine. I remind you that the fact that the  
12 defendant was arrested, charged, and indicted in this case  
13 is not evidence in this case and cannot be considered by  
14 you as evidence of guilt in this case, nor does it create  
15 any presumption or inference of guilt. This document is  
16 simply the formal written instruction, which contains the  
17 charges, charged -- made against the defendant. It is the  
18 formal document by which this case is brought into this  
19 court.

20           The defendant in this case has pled not guilty to  
21 this indictment and that plea puts the burden on the State  
22 to prove the defendant guilty. A person charged with  
23 committing a criminal offense in South Carolina is never  
24 required to prove himself innocent. I charge you that it's  
25 a -- it is an important rule of the law that the defendant

1 in a criminal trial, no matter what the seriousness of the  
2 charge may be, will always be presumed to be innocent of  
3 the crime for which the indictment was issued unless guilt  
4 has been proven by -- unless guilt has been proven by  
5 evidence satisfying you of that guilt beyond a reasonable,  
6 reasonable doubt.

7 This presumption of innocence does not end when you  
8 begin your deliberation -- deliberations, but it  
9 accompanies the defendant throughout the trial until you  
10 reach a verdict of guilt based on evidence satisfying you  
11 of that guilt beyond a reasonable doubt. The presumption  
12 of innocence is a like a robe of righteousness placed about  
13 the shoulders of the defendant, which remains with the  
14 defendant until it has been stripped from the defendant by  
15 evidence satisfying you of the defendant's guilt beyond a  
16 reasonable doubt.

17 The presumption of innocence is not mere legal  
18 theory. It is not just a legal phrase. It is a  
19 substantial right to which every defendant is entitled  
20 unless you, the jury, are satisfied from the evidence of  
21 the defendant's guilt beyond a reasonable doubt.

22 What is reasonable doubt in the law? A reasonable  
23 doubt is a kind of doubt that would cause a reasonable  
24 person to hesitate to act. The State has the burden of  
25 proving the defendant guilty beyond a reasonable doubt.

1 Some of you may have served as jurors in civil cases where  
2 you were told that it is only necessary to prove that a  
3 fact is more likely true than not true, such as by the  
4 greater weight or preponderance of the evidence. In  
5 criminal cases, the State's proof must be more powerful  
6 than that. It must be beyond a reasonable doubt. Proof  
7 beyond a reasonable doubt is proof that leaves you firmly  
8 convinced of the defendant's guilt. There are very few  
9 things in this world that we know with absolute certainty  
10 and in criminal cases the law does not require proof that  
11 overcomes every possible doubt.

12 If based on your consideration of the evidence you  
13 are firmly convinced that the defendant is guilty of the  
14 crime charged, you must find the defendant guilty. If on  
15 the other hand, you think there is a real possibility --  
16 real possibility that the defendant is not guilty, you must  
17 give the defendant the benefit of the doubt and find him  
18 not guilty.

19 Ladies and gentlemen of the jury, there have been  
20 some stipulations entered into in this case. A stipulation  
21 is an agreement as to a fact. Once a fact is stipulated to  
22 that fact becomes established for purposes of the case and  
23 cannot be questioned or contradicted. In this case the  
24 parties have stipulated as to the chain of custody.

25 Manufacture of methamphetamine. The defendant is

1 charged with manufacturing of methamphetamine. To  
2 manufacture means to produce, prepare, compound, convert,  
3 or process a controlled substance naturally or chemically.  
4 To aid means to help promote the course or accomplishment  
5 of, to give support to, or to give assistance to. To abet  
6 means to encourage or support. An attempt is an effort to  
7 accomplish a crime that does not succeed. An attempt  
8 includes specific intent to do a criminal act along with an  
9 act falling short of the act intended to the extent that  
10 the State's case involves reliance on an attempt. The  
11 State must show more than mere preparation and intent.  
12 There must be some overt act committed in the effort to  
13 commit the crime.

14 To conspire means combine with one or more persons  
15 for the purpose of committing an unlawful act or committing  
16 a lawful act by unlawful means. To be a conspirator  
17 requires that the defendant must have had a mutual  
18 understanding, agreement or common intention and plan with  
19 others to accomplish the manufacture of methamphetamine.  
20 Mere passive knowledge of or consent to the criminal  
21 conduct of another is not enough to make a person a  
22 conspirator. There must be -- there must be guilty  
23 knowledge and participation.

24 Similarly the mere fact that the defendant may have  
25 associated with another person or met with another person

1 and discussed common aims and interests, does not  
2 necessarily establish proof of an existence of a conspiracy  
3 or that the defendant was involved in a conspiracy. On the  
4 other hand, it is not necessary that the agreement be a  
5 formal one; that the person holding meetings and expressly  
6 stating the terms of the common plan or that the agreement  
7 be stated and words between them.. The agreement of a  
8 criminal conspiracy may come into being through an implied,  
9 mutual understanding. The willful, intentional, and  
10 knowing adoption by two or more persons of a common plan is  
11 sufficient.

12 No overt acts need to be shown to establish a  
13 conspiracy. A conspiracy may be shown by circumstantial  
14 evidence and the conduct of the parties. In order to  
15 establish a conspiracy involving the defendant, the State  
16 must prove beyond a reasonable doubt not only that the  
17 defendant knew of the unlawful conduct, but that the  
18 defendant agreed to combine with another person or persons  
19 for the purpose of accomplishing unlawful conduct. To  
20 constitute a conspiracy the person involved must act  
21 knowingly. To prove that the defendant conspired to  
22 manufacture methamphetamine, the State must prove beyond a  
23 reasonable doubt that the defendant knew of the unlawful  
24 conduct and that the defendant agreed to combine with other  
25 persons for the purpose of accomplishing the unlawful

1 conduct.

2           So as a recap, in order to prove the defendant  
3 guilty of manufacturing methamphetamine, the State must  
4 prove certain things beyond a reasonable doubt. First, the  
5 substance in question -- first, the State must prove that  
6 that substance in question was methamphetamine or that the  
7 defendant was engaged in attempting to manufacture  
8 methamphetamine.

9           Second, the defendant knowingly and intentionally  
10 manufactured methamphetamine either by actually  
11 manufacturing the drug or by aiding, abetting, attempting  
12 or conspiring to manufacture the drug. The State must  
13 prove that the defendant engaged in this conduct knowingly.

14           Third, that the unlawful conduct occurred in  
15 Lexington County, South Carolina.

16           In order to establish criminal liability, criminal  
17 intent is required. For example, the mental state required  
18 to be proven by the State for a particular crime might be  
19 purpose, intent, knowledge, recklessness, or criminal  
20 negligence. Criminal intent must be proven by the State  
21 beyond a reasonable doubt. Criminal intent is always a  
22 manner, a matter that must be determined by the jury from  
23 the circumstances surrounding the situation. There is no  
24 way to prove intent to a mathematical certainty. There is  
25 no way medical science can dissect a person's brain and

1 determine what the person had in mind. So the law says  
2 that criminal intent may be inferred from the circumstances  
3 shown to have existed. This is how you make a  
4 determination of whether or not the element requiring  
5 intent was present. It is not necessary to establish  
6 intent by direct and positive evidence, but intent may be  
7 established by inference in the same way as any other fact  
8 by taking into consideration the acts of the parties and  
9 all the facts and circumstances.

10 Criminal intent is a mental state, a conscious  
11 wrongdoing. It is up to you to determine what the  
12 defendant intended to do based on the circumstances shown  
13 to have existed. Criminal intent can arise from action or  
14 from a failure to act. It may arise from negligence,  
15 recklessness or an indifference to duty or the consequences  
16 that is considered by the law to be the equivalent of  
17 criminal intent.

18 Mere presence at the scene is not sufficient to  
19 prove someone guilty of a crime. The defendant's presence  
20 where a crime is being committed or mere association with  
21 the person who commits a crime does not make a defendant an  
22 accomplice or an aider or abetter of the person committing  
23 the crime. The burden is on the State to prove every  
24 element of the crime charged. If you find, after reviewing  
25 all the evidence that the State has proved that the

1 defendant was only present at the scene of a crime and that  
2 they have not proved beyond a reasonable doubt any other  
3 participation in the crime, then you must find the  
4 defendant not guilty. The law is that proof of -- proof of  
5 at the scene of a crime is not sufficient to find someone  
6 guilty.

7       Next we'll talk about spoliation of evidence. In  
8 this case there are allegations of spoliation or  
9 destruction of evidence. The State not only has a burden  
10 of proof of guilt beyond -- guilt, but also it has the  
11 burden of producing evidence which can establish the  
12 innocence of the defendant. When evidence is lost or  
13 destroyed by a party, you may infer that the evidence which  
14 was lost or destroyed by that party would have been adverse  
15 to that party. If you find first that evidence was spoiled  
16 or destroyed and if you further find that the evidence can  
17 help establish the innocence of the defendant, you may then  
18 consider those facts in deciding whether or not the State  
19 has met its burden of proof.

20       I instruct you and emphasize that the fact that the  
21 defendant did not testify is not a factor to be considered  
22 by you in any way in your deliberations and in your  
23 consideration on the question on the guilt or innocence of  
24 the defendant. It must not be considered by you in any  
25 manner whatsoever. A defendant has a constitutional right

1 to remain silent and the assertion of this right must not  
2 be considered by you in your deliberation. I repeat, under  
3 your oath, you are to draw no conclusion whatsoever from  
4 the fact that the defendant in this case did not testify.  
5 The fact that the defendant did not testify should not even  
6 be discussed in the jury room. The burden proof, as I have  
7 stated to you, is on the State. The defendant is not  
8 required to prove his innocence. The burden of proof  
9 remains on the State to prove guilt beyond a reasonable  
10 doubt.

11 The State and the defendant are entitled to the  
12 individual opinion of each juror on the issues of fact in  
13 this case. It is the duty of each of you to consider and  
14 weigh all the evidence in this case and for such evidence  
15 to determine, if you can, the question of the guilt or  
16 innocence of the defendant. There is nothing different in  
17 the way a jury should consider the evidence in a criminal  
18 case from that in which all reasonable persons treat any  
19 question depending on evidence presented to them.

20 You are expected to use your good sense, consider  
21 the evidence in the case for only those purposes for which  
22 it has been admitted, and give it a reasonable and fair  
23 construction in the light of your common knowledge of the  
24 natural tendencies and inclinations of human beings. If  
25 the accused be proved guilty beyond a reasonable doubt, say

1 so. If not, if not so proved say so.

2 Your verdict in this case will be one of two forms.  
3 If from the evidence and the law, you find that the  
4 defendant is not guilty, you will circle not guilty on the  
5 verdict form that I will give you and the forelady will  
6 sign her name. If on the other hand, you find that the  
7 defendant is guilty based upon the evidence and the law  
8 which you have heard, you will circle guilty on the verdict  
9 form and the forelady will sign her name.

10 Your verdict must be unanimous; it must be guilty  
11 or not guilty. The law requires a jury verdict to be  
12 unanimous, which means that all the jurors must agree. The  
13 only two forms of the verdict are guilty or not guilty.

14 Madame Forelady, once the jury reaches a verdict of  
15 not guilty or guilty, circle the verdict on the face of the  
16 verdict form and sign under the verdict to signify what you  
17 have circled is the verdict of all the jurors. Then you  
18 will notify us that you have reached a verdict by knocking  
19 on the door.

20 All right. I have in here and you will receive it  
21 back in the jury room, a verdict -- the verdict form. It  
22 reads the State of South Carolina, County of Lexington,  
23 State of South Carolina versus Phillip Earl Helms,  
24 Defendant, In the Court of General Sessions of the 11 --  
25 11teenth (sic) Judicial Circuit, Indictment No.

1 2014-GS-32-535, Verdict Form. Please circle the  
2 appropriate verdict below and follow the accompanying  
3 instructions carefully.

4           It says one, as to the indictment alleging  
5 manufacture of methamphetamine, we, the jury, unanimously  
6 find the defendant, and I have here, guilty or not guilty;  
7 you will circle which one. I have -- they are placed here  
8 and I did not put them in any specific order, I had to put  
9 one before the other; please do not infer that I have any  
10 opinion as to how -- your verdict in this case. You will  
11 stop and end your deliberations.

12           Madame Forelady, you will sign where it says  
13 presiding juror and date it. You will knock on the door  
14 and notify the bailiffs that you have reached a verdict.

15           I am going to send you all back to the jury room at  
16 this time. You cannot begin your deliberations though  
17 until you have received all of the evidence and the verdict  
18 form and the instructions from the bailiffs to begin your  
19 deliberations. Once you get the instructions from the  
20 bailiffs to begin your deliberations, you may start at that  
21 time.

22           All right. Thank you.

23           (WHEREUPON the jury left the courtroom at 4:24  
24 p.m.)

25           THE COURT: All right. Any objection or exceptions

1 to the jury charge?

2 MR. BELL: None from the State, Your Honor.

3 MR. KIRKLAND: Only the one I made earlier, Your  
4 Honor.

5 THE COURT: Oh, yes, your objections are preserved  
6 for the record as to the --

7 MR. KIRKLAND: Real or reasonable.

8 THE COURT: Yes. All right.

9 MR. KIRKLAND: Thank you, Your Honor.

10 THE COURT: All right. Do you all want to take a  
11 look at the --

12 MR. KIRKLAND: Exhibits.

13 THE COURT: -- the evidence to make sure everything  
14 is in there and once it is, here's the verdict form; you  
15 can take a look at that and hand it to the bailiffs and  
16 we'll give it to the jury.

17 (WHEREUPON the attorneys were conferring over the  
18 exhibits.)

19 THE COURT: 4:30?

20 THE COURT REPORTER: 4:30.

21 (WHEREUPON the alternate juror entered the  
22 courtroom.)

23 THE COURT: We -- Mr. Wright?

24 THE JUROR: Yes.

25 THE COURT: Mr. Wright, we -- as my old boss once

1 said, being an alternate is kind of like being invited to  
2 the dance, but not being asked to dance. So we are -- we  
3 are concluding the trial and we will not need your services  
4 any further, but I do want you to know that we appreciate  
5 you being here and we needed you here. But you are free to  
6 leave or if you wish to hang around and see what your  
7 fellow jurors are going to do, you are more than welcome to  
8 do that also. But you're free to leave for the remaining  
9 part of the week. We do, on behalf of the State and the  
10 defendant, we appreciate your service here.

11 THE JUROR: Thank you.

12 THE COURT: Thank you.

13 All right. Did we send them back there?

14 THE COURT REPORTER: Yes, ma'am.

15 MR. BELL: Thank you, Your Honor.

16 (WHEREUPON a question was received by the Court  
17 from the jury.)

18 THE COURT: Okay. So the question is, they would  
19 like -- well the question raised, "Bring in the board with  
20 the description of manufacturing and the law that was  
21 presented in closing arguments by the State."

22 I'll mark this as a Court Exhibit, I'm not sure of  
23 which number it is.

24 (WHEREUPON Court's Exhibit No. 3 was marked for  
25 evidence.)

1 THE COURT: Of course, that is not evidence so they  
2 can't see it, but I will mark it in my jury charge. I can  
3 ask them, I can bring them back in, send them back out and  
4 ask them if there is a particular part and what they wish  
5 for me to read.

6 MR. KIRKLAND: Yes, ma'am.

7 THE COURT: Okay. Okay. You can bring them in.

8 (WHEREUPON the jury entered the courtroom at 5:44  
9 p.m.)

10 MR. KIRKLAND: May I go ahead and put this on the  
11 record, Your Honor. I'm going to waive my client's  
12 presence at this hearing. He's in the bathroom.

13 THE COURT: Okay. All right.

14 Madame Forelady, I have received your question  
15 regarding the board that was, that the State used in his  
16 closing argument. That is not evidence and so, therefore,  
17 it cannot come back into the jury room. However, if you  
18 have a question about the law, I will be more than happy to  
19 read the portion of the charge or all of the jury charge  
20 that you, whatever part you request.

21 THE FOREPERSON: Just the part about -- on the  
22 thing I have to sign that says manufacturing; can you just  
23 tell us exactly how that -- what that -- mainly what that  
24 entails and what, what, --

25 THE COURT: All right. So I will read the section

1 that deals with manufacturing methamphetamine for you.

2 All right. It reads that the defendant is charged  
3 with manufacture of methamphetamine. Methamphetamine. I'm  
4 sorry. To manufacture means to produce, prepare, compound,  
5 convert, or process a controlled substance naturally or  
6 chemically. To aid means to help to promote the course or  
7 accomplishment of, to give support to, or to give  
8 assistance to. To abet means to encourage or support. An  
9 attempt is an effort to accomplish a crime that does not  
10 succeed. An attempt includes a specific intent to do a  
11 particular criminal -- criminal act along with an act  
12 falling short of the act intended.

13 To the extent that the State's case involves  
14 reliance on an attempt, the State must show more than mere  
15 preparation and intent. There must be some overt act  
16 committed in the effort to commit the crime.

17 To conspire means to combine with one or more  
18 persons for the purpose of committing an unlawful act or of  
19 committing a lawful act by unlawful means. To be a  
20 conspirator requires that the defendant must have had a  
21 mutual understanding, agreement or common intention and  
22 plan with others to accomplish manufacturing of  
23 methamphetamine.

24 Mere passive knowledge of or consent to the  
25 criminal conduct of another is not enough to make a person

1 a conspirator. There must be guilty knowledge and  
2 participation. Similarly the mere fact that the defendant  
3 may have associated with another person or met with another  
4 person and discussed common aims and interests, does not  
5 necessarily establish proof of the existence of a  
6 conspiracy or that the defendant was involved in a  
7 conspiracy. On the other hand, it is not necessary that  
8 the agreement be a formal one; that the persons hold a  
9 meeting and expressly state the terms of the common plan or  
10 that the agreement be stated in words between them.

11 The agreement of a criminal conspiracy may come  
12 into being through an implied, mutual understanding. The  
13 willful, intentional, and knowing adoption by two or more  
14 persons of a common plan is sufficient. No overt -- no  
15 overt acts need to be shown to establish a conspiracy. A  
16 conspiracy may be shown by circumstantial evidence and the  
17 conduct of the parties. In order to establish a conspiracy  
18 involving the defendant, the State must prove beyond a  
19 reasonable doubt not only that the defendant knew of the  
20 unlawful conduct, but that the defendant agreed to combine  
21 with another person or persons for the purpose of  
22 accomplishing unlawful conduct.

23 To constitute a conspiracy the persons involved  
24 must act knowingly. To prove that the defendant conspired  
25 to manufacture methamphetamine, the State must prove beyond

1 a reasonable doubt that the defendant knew of the unlawful  
2 conduct and that the defendant agreed to combine -- combine  
3 with the other persons for the purpose of accomplishing the  
4 unlawful conduct.

5 So in order to prove that the defendant is guilty  
6 of manufacturing methamphetamine, the State must prove  
7 certain things beyond a reasonable doubt. First, that the  
8 substance in question was methamphetamine or that the  
9 defendant was engaged in attempting to manufacture  
10 methamphetamine.

11 Second, that the defendant knowingly and  
12 intentionally manufactured meth -- methamphetamine either  
13 by actually manufacturing the drug or by aiding, abetting,  
14 attempting, or conspiring to manufacture the drug. The  
15 State must prove that the defendant engaged in this conduct  
16 knowingly.

17 Third, that the unlawful conduct occurred in  
18 Lexington County, South Carolina.

19 Is that what you were --

20 THE FOREPERSON: Yes.

21 THE COURT: All right. Ladies and gentlemen of the  
22 jury, you may return to the jury room and continue your  
23 deliberations.

24 (WHEREUPON the jury left the courtroom at 5:49  
25 p.m.)

1 THE COURT: All right. Any objections or  
2 exceptions to what I just read?

3 MR. BELL: Nothing from the State, Your Honor.

4 MR. KIRKLAND: Nothing.

5 THE COURT: All right. All right. We'll wait to  
6 here from them.

7 (WHEREUPON it was reported to the Court that the  
8 jury had reached a verdict at 6:10 p.m.)

9 THE COURT: It's my understanding that they have a  
10 verdict. Bring them on in -- Y'all ready to bring them in.

11 MR. BELL: State's ready, Your Honor.

12 MR. KIRKLAND: Yes, ma'am.

13 (WHEREUPON the jury entered the courtroom at 6:20  
14 p.m.)

15 **VERDICT**

16 THE COURT: All right. Madame Forelady, it's my  
17 understanding you all have reached a verdict.

18 THE FOREPERSON: Yes, ma'am.

19 THE COURT: All right. Can you hand that over to  
20 the bailiff.

21 All right. I will ask the Clerk to publish the  
22 verdict.

23 THE CLERK: Indictment 2014-GS-32-00535, the State  
24 versus Phillip Earl Helms. As to the indictment alleging  
25 manufacturing of methamphetamine, we, the jury, we find the

1 defendant guilty as so signed by the Forelady dated April  
2 2nd, 2014.

3 Madame Forelady, ladies and gentlemen of the jury,  
4 if this is your verdict, please indicate, each of you, by  
5 raising your right hand.

6 All hands raised, Your Honor.

7 THE COURT: Thank you. Anything else from the  
8 State before I release the jury?

9 MR. BELL: Nothing from the State, Your Honor.

10 THE COURT: All right. Anything from the defense?

11 MR. KIRKLAND: May we please poll the jury, Your  
12 Honor?

13 THE COURT: Yes, sir, you may.

14 Madame Clerk, will you please poll the jury.

15 **POLLING THE JURY**

16 THE CLERK: As I call your name, if you'll hold  
17 your hand up for me please, so I can recognize you. I will  
18 ask you the question, as to the verdict was this your  
19 verdict; is this still your verdict. At that time, give me  
20 your response please.

21 Marshall, Sandra Marshall. You don't have to  
22 stand, just hold your hand up where I can recognize you,  
23 ma'am.

24 THE JUROR: Yes.

25 THE CLERK: As to the verdict, was this your

1 verdict; is it still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Linda Jones. Was this your verdict; is  
4 it still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Stephen Ivey. As to the verdict, was  
7 this your verdict; is it still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Jill Leclair-Lincoln. As to the  
10 verdict, was this your verdict; is it still your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Andres Abole. As to the verdict, was  
13 this your verdict; is it still your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Brian Rathburn. As to the verdict, was  
16 this your verdict; is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Amy Weaver. As to the verdict, was  
19 this your verdict; is it still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Marilyn Smith Betters. As to the  
22 verdict, was this your verdict; is it still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Jenna Dowd. As to the verdict, was  
25 this your verdict; is it still your verdict?

1 THE JUROR: Yes.

2 THE CLERK: John Felkel. As to the verdict; was  
3 this your verdict; is it still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Jennifer Mitchell. As to the verdict,  
6 was this your verdict; is it still your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Gail Watson. As to the verdict, was  
9 this your verdict; is it still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: All jurors polled, Judge.

12 THE COURT: All right. Thank you. Thank you,  
13 ladies and gentlemen of the jury. I'd like to thank you  
14 for your service here this week. We have, as you can tell,  
15 we have matters that come up and they are disputed and the  
16 only way that we can resolve those matters is through a  
17 jury of twelve like you and there's juries all across the  
18 state making these tough decisions just as you all have  
19 today.

20 I want to thank you all for your attention, paying  
21 close attention and being here. I know this has been a  
22 sacrifice for you to leave your jobs and your families to  
23 be here and I do want you all to understand that we  
24 appreciate your service here this week.

25 Is there anything else, Madame Clerk, they will --

1 that you I'd like to discuss with them?

2 You do not have to come back tomorrow.

3 THE CLERK: I just need to get the forelady to  
4 write the face of the indictment.

5 THE COURT: Yes, ma'am.

6 THE CLERK: Other than that, a check for the jury  
7 service will be mailed probably the first of next week.

8 THE COURT: All right. And so, Madame Forelady, we  
9 need to get you to write in the verdict and sign your name  
10 on the indictment.

11 If not, you all are free to leave and once again,  
12 thank you all for your service here.

13 (WHEREUPON the jury was excused.)

14 MR. BELL: Your Honor.

15 THE COURT: Yes, sir, Mr. Solicitor.

16 MR. BELL: Your Honor, if you would allow us a few  
17 moments in the interest of superstition, we have a  
18 sentencing sheet prepared. Assistant Solicitor, Michael  
19 Ross, is actually walking in now.

20 THE COURT: All right.

21 MR. KIRKLAND: Your Honor, are you wishing to  
22 proceed with the sentencing portion at this time?

23 THE COURT: Yes, if you all are prepared to do so,  
24 I am.

25 MR. BELL: The State is ready, Your Honor.

1 MR. KIRKLAND: Let me just check with my client for  
2 one thing. Your Honor, may I approach?

3 (WHEREUPON there was a bench conference out of the  
4 hearing of the court reporter.)

5 MR. KIRKLAND: Your Honor, we are going to go  
6 forward with sentencing today.

7 THE COURT: All right.

8 MR. KIRKLAND: I suppose since he's in a  
9 wheelchair, we'll have him to sit here at the table.

10 THE COURT: That's fine. That's fine.

11 MR. KIRKLAND: Court's indulgence one more moment.

12 THE COURT: I'm sorry?

13 MR. KIRKLAND: And for the record, I talked to my  
14 client about, I explained to him that he's going to be  
15 taken into custody today regardless, obviously; but I asked  
16 him if he wanted me to, because we didn't know when a  
17 verdict would come back. I asked him if he wanted me to --  
18 to delay sentencing until tomorrow to have other friends  
19 and family members here and he says that he is fine with me  
20 presenting mitigation. So we're prepared to go forward.

21 THE COURT: All right. And then the other thing  
22 is, I didn't ask you about post-trial motions.

23 MR. KIRKLAND: I'll do that -- I'll do that real  
24 quick.

25 THE COURT: Okay.

## 1 POST-TRIAL MOTIONS

2 MR. KIRKLAND: I can't remember if this is just a  
3 federal motion or this is a state motion as well, but I'll  
4 make it in the abundance of caution. I'd move the Court at  
5 this time for a directed verdict of not guilty based on all  
6 of the previous motions that I've made.

7 Did you hear me.

8 THE COURT: Huh-uh (negative response).

9 MR. KIRKLAND: Because I can't remember if this is  
10 a -- just a federal motion or if this is traditionally made  
11 in the state as well, but I know I can do it federally.

12 THE COURT: Go ahead.

13 MR. KIRKLAND: At this time, I move for the Court  
14 to direct a verdict notwithstanding the jury's verdict, I  
15 would ask the Court to direct a verdict for -- of not  
16 guilty based on the evidence and based on all the motions  
17 that I have made previously.

18 THE COURT: All right.

19 MR. KIRKLAND: That's the first one. The second  
20 one is that I would move, if you do not direct a verdict, I  
21 would move for a new trial on the basis of all of the  
22 motions that I have made throughout the trial.

23 So a directed verdict and a new trial.

24 THE COURT: All right. I'll be glad to hear from  
25 the State at this time.

1 MR. BELL: I'm sorry, Your Honor.

2 THE COURT: Any response to his motions? He has a  
3 motion, a directed motion, I think it's judgment  
4 notwithstanding the verdict.

5 MR. KIRKLAND: Your Honor, they call it a directed  
6 verdict in federal court.

7 THE COURT: Yeah, or a directed verdict and also a  
8 new trial.

9 MR. BELL: Your Honor, it is my understanding, he  
10 did not raise any new grounds for a directed verdict. At  
11 this time the State would stand by its earlier arguments as  
12 it relates to a directed verdict.

13 THE COURT: All right. I'm going to respectfully  
14 deny the motion. Your objections and motions are preserved  
15 for the record.

16 MR. KIRKLAND: Thank you, Your Honor.

17 THE COURT: And that is both the motion for a new  
18 trial and also the motion, directed verdict motion or JNOV  
19 motion.

20 MR. KIRKLAND: Thank you, Your Honor. And the  
21 motion for the new trial.

22 THE COURT: And the new trial, yes.

23 MR. KIRKLAND: Thank you, Your Honor.

24 **SENTENCING**

25 MR. BELL: Your Honor, I would like to start off by

1 telling you about his prior record and with that, we do  
2 have certified copies of that record that does enhance this  
3 offense to a third offense.

4 Your Honor, I will hand these up as a Court's  
5 Exhibit when I'm done speaking about them. In -- on  
6 October 16th of 2006, here in Lexington, the defendant was  
7 convicted of being in possession of crank. That is under  
8 Indictment No. 2006-GS-32-1512. In that case he was given  
9 91 days and that was provided upon the service of two days,  
10 which was a time-served sentence.

11 Your Honor, on August 28th of 2008, the defendant,  
12 Phillip Helms, was convicted of possession of  
13 methamphetamine first offense under Indictment No.  
14 2008-GS-32-2563. And on that charge he received a year; it  
15 looks like the balance was suspended upon one year of  
16 probation.

17 Another conviction, Your Honor, on June 23rd of  
18 2011, for the manufacture of methamphetamine first offense.  
19 The defendant Phillip Helms pled guilty under the  
20 Indictment No. 2011-GS-32-2069. On that indictment he  
21 received 3 years provided upon the service of 22 days.

22 Your Honor, at this point in time, I would offer up  
23 a certified copy of these indictments and these sentencing  
24 sheets. Your Honor, these are now marked as Court's  
25 Exhibit No. 4. Does Your Honor wish to see these.

1 (WHEREUPON Court's Exhibit No. 4 was entered into  
2 evidence.)

3 THE COURT: Yes, sir. Does he have any other prior  
4 record?

5 MR. BELL: Your Honor, not to my knowledge.

6 THE COURT: Okay. All right.

7 MR. BELL: Your Honor, I would like to give you a  
8 little bit of a procedural background as far as how we came  
9 to this point today. When the charges were initially  
10 brought, we did look at the case. I sat down with the  
11 agents and we had started talking about plea offers at that  
12 point. I was told by one of my superiors that Phillip  
13 Helms had in fact cooperated in a murder trial. Because of  
14 that we made a generous offer of PWID methamphetamine 2nd  
15 offense, which is actually suspendable down to probation.

16 Phillip Helms exercised his right to a trial, which  
17 we certainly have no qualms with and we proceeded to trial  
18 on the charge as it was originally charged. With that  
19 said, Your Honor, it was an extremely difficult decision to  
20 even make a plea offer in this case. This is a gentleman  
21 who is known through law enforcement for manufacturing  
22 methamphetamine. As Your Honor has seen through the  
23 record, this is certainly not his first run-in with this  
24 drug. Further, Lexington County and truly South Carolina  
25 in general is suffering from an epidemic of methamphetamine

1 and it's because of what Your Honor heard through  
2 testimony.

3 It's an exceptionally easy process; it's a mobile  
4 process; the ingredients are not regulated. With that  
5 said, Your Honor, the State would be asking for a  
6 substantial prison sentence on this charge. We truly  
7 believe that 20 to 21 years would be appropriate in this  
8 case. When Your Honor finds it or deems it fit, I do  
9 believe Agent Barnes who is the primary officer on this  
10 case does wish to address the Court.

11 THE COURT: All right. I'll be glad to hear from  
12 her.

13 MR. BELL: Agent Barnes.

14 AGENT BARNES: Your Honor, just for the record,  
15 during my time in narcotics, 5 and a 1/2, 6 years, Phil  
16 Helms has been on our radar for quite some time. He's a  
17 nuisance to Lexington County. He has continued to be a  
18 problem. He is a meth haven is what he is and his  
19 residence and his property. I know he's -- has a  
20 disability and in a wheelchair, but that doesn't stop the  
21 fact that he is -- has continued to manufacture meth and  
22 produce meth for the last 6 years that I'm aware of.

23 MR. BELL: Your Honor, I would conclude in saying  
24 that once again, you have seen his prior record and his  
25 latest charge, I believe was disposed of in 2011 and even

1 on that charge, he essentially received a time served  
2 sentence. Now I think this is one of those cases where  
3 they have continually slipped through the cracks. There is  
4 a reason that manufacturing 3rd carries a minimum of 10;  
5 it's because this is a serious charge and it is seriously  
6 affected our community. The State once again does  
7 sincerely believe that this is a case that should require  
8 substantial prison time.

9 THE COURT: All right. Thank you.

10 MR. BELL: Thank you, Your Honor.

11 THE COURT: All right. Yes, sir.

12 MR. KIRKLAND: Thank you, Your Honor, may it please  
13 the Court?

14 THE COURT: Yes, sir.

15 MR. KIRKLAND: Your Honor, I actually got to know  
16 Phil pretty well, a little bit better than I know most of  
17 my clients because as the assistant solicitor had indicated  
18 to you, he was cooperating in another case. It was  
19 actually a murder/armed robbery case that he was  
20 cooperating in. Him and Olivia Mason came in. They  
21 decided ultimately not to use Phil during the case, but  
22 Olivia did testify in their case and they came in sort of  
23 as a team. And so that's the reason why I think it was  
24 Sean Graham or whoever it was, asked Mr. Bell to -- to --  
25 to give him some consideration for cooperation.

1           That being said, the reason why I know him a little  
2 bit better than other clients that I've represented in the  
3 past is we had numerous, numerous interviews with Sean  
4 Graham. Other people were being interviewed at the same  
5 time. What was really going on at the house; this is what  
6 I believe was going on at the house. I understand the jury  
7 has convicted him of conspiracy; I don't think they  
8 convicted him of manufacturing itself. I think they  
9 probably considered the aiding or abetting or conspiracy.  
10 What was going on at the house, even according to these  
11 witnesses that were involved in this other trial, was that  
12 Phil was one of those guys that, I know he's sitting right  
13 behind me and I'm going to say some things that are  
14 probably going to sound a little bit insulting to him, but  
15 you need to understand this about Phil.

16           He does not have a strong constitution. It's not  
17 easy for him to say no to these people. In fact, one of  
18 the witnesses said when Phil wasn't in the room that if  
19 they ever went up to Phil and said Phil, you know, let me  
20 borrow \$10, then he said no, then they would just simply  
21 say Phil, give me \$10; he'd give you \$10. The same sort of  
22 things happened with people coming and going at his  
23 residence according to the witnesses in this other case.  
24 It was easy for people to run over him.

25           I'm not saying that he didn't have any involvement

1    whatsoever in meth. He is, he was definitely a meth addict  
2    for a period of time and may still be; I have no idea. But  
3    my point is, this -- this representation that he's at the  
4    center of this, of this manufacturing conspiracy, I just  
5    don't think that's accurate. I think that people did --  
6    did gravitate there and I think they gravitated there  
7    because number one, he was a pretty nice guy and he wanted  
8    to let as many people stay there as he, as he could. I  
9    think he liked Renee Krantz.

10           I mean, you know, I have no doubt that he was  
11    letting her stay there, but even if he did want somebody to  
12    stay there, I don't think he really had the intestinal  
13    fortitude to keep them out. That's just the kind of guy he  
14    is. He's not particularly smart. He's not particularly --  
15    you know, he doesn't have a very forceful personality.  
16    He's ended up because of his addiction, he's ended up  
17    getting himself involved with a lot of bad people. These  
18    people obviously, a lot of them, are manufacturing meth. I  
19    firmly believe that what Phil told me that he does not know  
20    the process at this point in time in his life, how to  
21    manufacture, how to manufacture meth himself.

22           He's told me that if he ever caught somebody  
23    manufacturing or attempting to manufacture at his house, he  
24    runs them off. I've talked to friends and family members  
25    of him -- of his prior to this trial and they told me the

1 same thing, that they have been over to the house when  
2 people brought ingredients over and he told them to get  
3 that out of my house. But it's one of those things where,  
4 you know, it was a burn pile and the car pulling up that I  
5 understand. They convicted him.

6 But, Your Honor, I -- the point I'm making; he's  
7 not the center of some meth ring. He's where all these  
8 people go because they can go because Phil doesn't stop  
9 them and really can't stop them. Yeah, he can call the  
10 police, but you know, you've got to see his history with  
11 the police.

12 So all I would say, Your Honor, is to take into  
13 consideration he did cooperate in another case. Take into  
14 consideration that he does have cerebral palsy which is  
15 going to make any potential sentence that you give him  
16 substantially more difficult than it would be for other  
17 people. You know, hear things like, I allowed him to  
18 easily go to the bathroom and such; it's pretty simple.  
19 They just don't have facilities that easily take care of  
20 people in wheelchairs at prison. I mean that's just a  
21 fact. He's going to be in greater danger in a prison  
22 because he's in a wheelchair and not able to easily defend  
23 himself. I mean, they don't segregate them from the  
24 general population. So I think as far as punishment, any  
25 time that you give him would be -- is going to be more

1 severe than it would be a typical defendant.

2 I think Phil has a good heart. I think Phil has a  
3 bad addiction. I think Phil hangs out with a lot of bad  
4 people. But I would ask you to consider the minimum  
5 sentence. I believe it's a minimum mandatory; am I not --  
6 it's not suspendable, is it?

7 MR. BELL: The minimum is not suspendable, Your  
8 Honor.

9 MR. KIRKLAND: I'll make the argument just in case  
10 I'm wrong. I would ask you to give him less than if it  
11 were suspendable.

12 THE COURT: Everything I've looked at says it's not  
13 suspendable.

14 MR. KIRKLAND: Just to cover my bases, if it were  
15 to be suspendable, I'd ask you to give him less. If it's  
16 not suspendable, he's 47 years old. His health is getting  
17 poorer every single day. His cerebral palsy has  
18 significantly gotten worse since he was 35 years old. In  
19 fact, that's when it sort of manifested itself. It's worse  
20 now to be perfectly honest with you than when I met him  
21 almost a year ago or 9 or 10 months ago, but I'd ask you to  
22 consider his health. I'd ask you to consider -- and the  
23 things I've told you about what his friends and family have  
24 told me about his -- his -- you know, his intelligence  
25 level and his ability to be forceful with others.

1 I've actually seen witnesses tell Sean Graham the  
2 exact same thing. And I ask you to give him the -- the  
3 minimum sentence and I think his mother may want to and she  
4 may not want to. Let me check.

5 THE COURT: Let me ask you, Solicitor --

6 MR. BELL: Excuse me, ma'am?

7 THE COURT: I know it's classified as violent.

8 MR. BELL: I believe manufacturing is still --

9 THE COURT: 85.

10 MR. BELL: It is 85 percent.

11 MR. KIRKLAND: This is his mother, Your Honor.

12 State your name for the record first.

13 MS. HELMS: My name is Carrie Elaine Helms.

14 MR. KIRKLAND: Tell the Judge whatever you would  
15 like for her to hear.

16 MS. HELMS: Judge, Brad has pretty well summed it  
17 up. But Phil -- we -- his whole family has told him about  
18 letting all these people come into his house. It's like  
19 Brad said, he's got a good heart and he can't say no. And  
20 I don't think he's never made any meth. Now, he did do  
21 marijuana; I'm sure of that. But as far as meth, I don't  
22 think he's ever, I don't know if he's ever inhaled or  
23 smoked it or anything. But now marijuana, I know he has  
24 and some of these charges that he's charged with, he has  
25 not been guilty. And the reason he told Brad that he

1 didn't want to plead guilty is because he was not guilty.

2 I know the circumstances around it, all the fire  
3 about -- but Phil keeps his yard immaculate. He cleans  
4 from the road back and my nephew lives in that vicinity too  
5 and he had said how the drug addicts just strewed their  
6 stuff from one end to the other. And it's easy access to  
7 Phil's fire barrel; it's right there on the road that  
8 accesses his property. So I know all that made him look  
9 guilty, but I know in my heart that he has not manufactured  
10 any meth and it's like Brad said, if anybody he knew, he  
11 would, he would put them out.

12 But so many times he wasn't at home and they would  
13 come to his house and I told him, Phil, you don't know what  
14 they're doing when you're not there. And so I know that's  
15 where a lot of that meth trash come from was when he was  
16 not home. They'd go there and if not in the house, make it  
17 in the shed or somewhere.

18 But, Judge, I know he has not, he don't even know  
19 how to make meth and the only problem he has is not being  
20 able to say to people. He would let anybody come stay at  
21 his house and we, we tried to tell him as his family that  
22 they were going to get him in trouble one day. And so the  
23 day has come. But he is not guilty of making meth, even  
24 though I know it that the evidence was great, but as you  
25 know, they didn't find anything in his house to indicate

1 that he had made meth in his house.

2 So I pray that you will be lenient with him.

3 MR. KIRKLAND: And Phil --

4 You may go sit down.

5 MS. HELMS: Thank you, ma'am.

6 MR. KIRKLAND: Phil has told me he would like to  
7 address the Court, Your Honor. I will move this microphone  
8 over there for him. He's ready, Your Honor.

9 THE COURT: Yes, sir.

10 THE DEFENDANT: All I want to say, ma'am, is no  
11 matter what everybody believes, I've never made it before  
12 in my life; I don't know how to make it; I don't know, I  
13 didn't know the first step to make it.

14 THE COURT: All right. Thank you. Does he have  
15 any credit, Mr. Kirkland?

16 MR. KIRKLAND: It's going to be minimal.

17 Do you know how many days you spent in jail, Phil?  
18 I think you can just check --

19 THE COURT: Yeah, I'll just check it and then give  
20 it to the jail or get with them.

21 All right. Anything else from the State.

22 MR. BELL: Your Honor, very briefly, I would just  
23 say that as you well know, when it comes to other crimes,  
24 we have something called hand of one, hand of all and it  
25 comes with drugs when you have conspiracy and even this

1 gentleman wasn't actually touching those one pot cooks, he  
2 was allowing them to use his house and to use his property  
3 and we'd ask you to keep that in mind as well as the  
4 serious nature of the construction of the statute.

5 There's a reason that there is a minimum of 10 and  
6 up to 30 years.

7 THE COURT: All right. On Indictment No.  
8 2014-GS-32-535 Phillip Earl Helms will be sentenced to the  
9 State Department of Corrections for 16 years. And I have  
10 checked on here to give him credit for whatever time he  
11 served. All right. Thank you.

12 MR. KIRKLAND: Thank you, Your Honor.

13 MR. BELL: Thank you, Judge.

14

15 \* \* \* \* \* END OF TRANSCRIPT \* \* \* \* \*

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1 State of South Carolina )

2 County of Aiken )

**Certificate of Reporter**

3  
4  
5  
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official  
7 Court Reporter for the Fifth Judicial Circuit of the State  
8 of South Carolina, do hereby certify that I reported the  
9 proceedings in the captioned case in the Court of General  
10 Sessions in and for the State of South Carolina on the 31st  
11 day of March through the 2nd day of April, 2014.

12 I FURTHER CERTIFY that the foregoing pages  
13 constitute a true, accurate and complete transcript of said  
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,  
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and  
18 seal at Aiken County, this 13th day of October, 2014.

19  
20  
21 *Brenda J. Sigwald*

22 \_\_\_\_\_  
23 Brenda J. Sigwald,  
24 Court Reporter and Notary Public  
25 For the State of South Carolina  
My commission expires  
January 4, 2020.

648

WITNESSES

Lexington County Sheriffs Department

Paige B. Tucker

Law Enforcement Case #: 13010425

GB

ARREST WARRANT NUMBER

2013A3210201179

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury  
Date: 2/10/14

VERDICT

Guilty

Foreperson of Petit Jury

Date: 04/02/14

DOCKET NO. 2014GS3200535

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2014

THE STATE  
vs.

Phillip Earl Helms

CDR #: 3200

Indictment for

Manufacture of Methamphetamine

§ 44-53-0375(B)(3)

DONALD V. MYERS, SOLICITOR

TRUE COPY

Lex. Co. C.C.P. G.S. & F.C.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

INDICTMENT FOR  
Manufacture of Methamphetamine  
§ 44-53-0375(B)(3)

At a Court of General Sessions, convened on February 2014, the Grand Jurors of Lexington County present upon their oath:

That **Phillip Earl Helms** did in Lexington County, South Carolina, on or about June 11, 2013 knowingly, intentionally, willfully, and unlawfully manufacture or otherwise aid, abet, attempt, or conspire to manufacture a quantity of methamphetamine, a controlled substance under the provisions of § 44-53-110, et. Seq. and in violation of §44-53-375 (B) Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington  
STATE VS.  
Phillip Earl Helms

AKA: \_\_\_\_\_  
Race: White Sex: M Age: 47  
DOB: [REDACTED] SS#: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: Gaston, SC 29053  
DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was  
TO: Manufacturing Methamphetamine - Third Offense

in violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3200  
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45  
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.  
ATTEST:

[Signature] Solicitor 100001 SC Bar# \_\_\_\_\_ Defendant \_\_\_\_\_ Attorney for Defendant \_\_\_\_\_ SC Bar# \_\_\_\_\_

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 16 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

#### SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

|                                        |         |                  |
|----------------------------------------|---------|------------------|
| *Fine:                                 | \$      |                  |
| § 14-1-206 (Assessments 107.5 %)       | \$      |                  |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ <u>100.00</u> |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$               |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$               |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$               |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$               |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ <u>25.00</u>  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$ <u>150.00</u> |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$               |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$               |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ <u>5.00</u>   |
| 3% to County (if paid in installments) | \$      | \$               |
| TOTAL                                  | \$      | \$               |

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (03/2011)

(10-30/15) a/o (\$50,000)  
IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS3200535

A/W#: 2013A3210201179

Date of Offense: 6/11/2013

S.C. Code § : 44-53-0375(B)(3)

CDR Code #: 3039

#### SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP \_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Presiding Judge [Signature]

Judge Code: 2161

Sentence Date: 4-2-14

AIR JUDGE COPY  
 Lex. Co. U.C.C.P. F.S. & P.D.

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 1<sup>st</sup> day of June, 2015



Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

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SC Court of Appeals