

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

DeAndrea G. Benjamin, Circuit Court Judge

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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 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. J.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 1st 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

RECEIVED
JUN 01 2015
SC Court of Appeals