

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY

Roger L. Couch, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TRAVIS SCOTT CONNER

APPELLANT

APPELLATE CASE NO 2015-002097

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 TRAVIS SCOTT CONNER,) 2014-GS-11-00744
7 DEFENDANTS.) SEPTEMBER 15, 2015
GAFFNEY, SOUTH CAROLINA

8
9 (VOLUME I)

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11 B E F O R E:
12 THE HONORABLE ROGER L. COUCH, JUDGE. ; And a Jury.
13

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17 A P P E A R A N C E S:
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1 (PROCEEDINGS, JULY 15, 2015)

2 (CD marked as State's Exhibit No. 1 for
3 identification)

4 (Drugs marked as State's Exhibit No. 2 for
5 identification)

6 (Letter marked as State's Exhibit No. 3 for
7 identification)

8 THE COURT: All right. We will go on the record
9 in the case of the State of South Carolina versus Travis
10 Scott Conner.

11 All right, do you have the indictment, or does the
12 clerk have that?

13 MS. LESKANIC: The clerk has that, Your Honor.

14 THE COURT: Pass that up to me.

15 Thank you very much.

16 I have been passed up one indictment. It's for
17 the possession with intent to distribute methamphetamine.

18 Mr. Johnston, has your client been arraigned on
19 this charge?

20 MR. JOHNSTON: Your Honor, I don't know that
21 specifically. That would be the normal practice at the
22 jail --

23 THE COURT: All right,.

24 MR. JOHNSTON: -- when he's arraigned or when he
25 is arrested on the warrant.

1 THE COURT: I understand.

2 MR. JOHNSTON: To the extent that that may not
3 have occurred, we would waive it.

4 THE COURT: All right. I see. Is he still
5 pleading not guilty at this time?

6 MR. JOHNSTON: Yes, sir, and he wishes a trial by
7 jury.

8 THE COURT: Very good. Thank you.

9 Now, I have received a list of proposed witnesses
10 from the State.

11 Does the defense have any proposed witnesses?

12 MR. JOHNSTON: No, sir.

13 THE COURT: And standard voir dire would be
14 sufficient, Mr. Johnston?

15 MR. JOHNSTON: With one exception. I would ask
16 the court to ask the question along these lines: Is there
17 any member of the jury panel whose life or the life of an
18 immediate family member whose life may have been affected by
19 drugs such that they may not be able to be impartial in the
20 case that deals with drugs, words to that effect.

21 THE COURT: All right, I'll ask that question.

22 MR. JOHNSTON: But other than that, standard voir
23 dire is perfectly fine.

24 THE COURT: And I assume the State has no specific
25 voir dire for the jury?

1 MS. LESKANIC: That's correct, Your Honor.

2 THE COURT: All right.

3 Let's bring the jury panel in.

4 (Off the record)

5 (Back on the record)

6 (The following takes place in the presence of the
7 jury panel)

8 THE COURT: All right. The record will reflect
9 that the jury has returned to the courtroom.

10 Ladies and gentlemen of the jury, we are about to
11 begin the trial of the State of South Carolina against
12 Travis Scott Conner.

13 I have been presented a document known as an
14 indictment, and let me explain to you what that document is.
15 The indictment is the document that brings this case into
16 this court. It informs this court of the charge that's to
17 be tried. It informs the defendant of the charge that has
18 been lodged against him.

19 Now, an indictment does not constitute evidence of
20 anything and it could not be used by a jury in any fashion
21 whatsoever in determining the guilt or the innocence of the
22 person named in the indictment. Again, it is simply an
23 informational document. Again, it informs us of the charge
24 that's been brought and it informs the defendant also of
25 that same fact.

1 I'm going to go over the indictment with you at
2 this time. My purpose in doing so is so that you will
3 understand the nature of the allegations and the approximate
4 dates and perhaps places in which this might have occurred.
5 I believe that this may gave you a better opportunity of
6 more fully answering some questions that I'm going to ask
7 you that will pertain specifically to this case as we go
8 forward.

9 Now, the indictment in this case is case number
10 14-GS-11-744. The indictment is for the possession with the
11 intent to distribute methamphetamine.

12 The indictment states that Travis Scott Conner
13 did, in Cherokee County, on or about July the 6th of 2014,
14 manufacture, distribute, dispense, deliver, purchase, or
15 aid, abet, attempt, or conspire to manufacture, distribute,
16 dispense, deliver, or purchase, or possess with the intent
17 to manufacture, distribute, dispense, deliver, or purchase a
18 controlled substance, to-wit: A quantity of
19 methamphetamine, a Schedule II controlled substance, under
20 the provisions of the Code Section 44-53-375 of the Code of
21 Laws of South Carolina, 1976, as amended, such possession
22 having not been authorized by law against the peace and
23 dignity of the State and contrary to the statute in such
24 case made and provided.

25 Now, again, that is the document that brings the

1 case into this court and it informs us of the charge to be
2 handled in this matter.

3 To that document the defendant has pled not guilty
4 and we are proceeding with the trial by jury in this case.

5 Now, there is some information that I would like
6 to give you as well that might assist you in answering my
7 questions.

8 First of all, I'm going to have the attorneys
9 involved in this trial introduce themselves to you. And in
10 the case of the defense, I will ask that the defense
11 attorney introduce the defendant to you as well.

12 First of all for the State.

13 MS. LESKANIC: May it please the court?

14 THE COURT: Yes, ma'am.

15 MS. LESKANIC: Thank you, Your Honor.

16 My name is Kim Leskanic and I'm an assistant
17 solicitor here in Cherokee County.

18 THE COURT: Thank you.

19 For the defense?

20 MR. JOHNSTON: Good afternoon, ladies and
21 gentlemen. My name is Andy Johnston and I practice law in
22 Spartanburg and this is my client.

23 THE COURT: Sir, if you will stand and face the
24 jury panel so that they can put a face with the name.

25 MR. JOHNSTON: Travis Scott Conner.

1 THE COURT: All right. Thank you very much. You
2 can be seated.

3 Now, ladies and gentlemen of the jury, we are
4 going to go through a process here whereby I will be asking
5 you questions that apply to this case. I will be asking you
6 to stand to respond to those questions, if you have a
7 response. Again, as we did earlier, I'll need your name and
8 number on the record before I discuss any response that you
9 might give to this court.

10 Now, in this case, since we are starting a new set
11 of questions, it is necessary that you be sworn to respond
12 truthfully at this time. So, Madam Clerk, if you would,
13 please swear the jury panel.

14 THE CLERK: Ladies and gentlemen, please stand and
15 raise your right hand.

16 Do you solemnly swear the information that you
17 give to this court to be the through, the whole truth and
18 nothing but the truth, so help you God?

19 THE JURY PANEL: (Collectively said I do).

20 THE CLERK: You may be seated.

21 Now, if there was any member of the jury panel who
22 either failed or refused to take the oath just administered
23 by the clerk, I ask that you now please stand.

24 (No response).

25 THE COURT: The record will reflect that all

1 jurors have been sworn concerning my questions to you at
2 this time.

3 Now, Ms. Lewis, juror number 59, if you will
4 stand, please.

5 Ma'am, because of your previously disclosed
6 relationship to the court, I'm excusing you from the trial
7 of this case. You can be seated and you no longer have to
8 answer my questions. Thank you, ma'am.

9 My first question is, is there any member of this
10 jury panel who has ever been related by marriage or are you
11 related by blood to the defendant Travis Scott Conner? If
12 that's the case, please stand.

13 (No response).

14 THE COURT: Is there any member of this jury panel
15 who has ever had a close social, personal, or business
16 relationship with the defendant Travis Scott Conner? If
17 that's true, please stand.

18 (No response)

19 THE COURT: Concerning the attorneys that are
20 involved in this case, has any member of the jury panel ever
21 been represented by either of the attorneys involved in this
22 case, or have they ever appeared on the other side of some
23 legal matter from you? If that's true, please stand.

24 (No response).

25 THE COURT: Is there any member of the jury panel

1 who has ever been related by marriage, or are you related by
2 blood, or have you ever had a close social, personal or
3 business relationship with either of the attorneys involved
4 in this trial? If that's true, please stand.

5 (No response).

6 THE COURT: I'm going to go over with you at this
7 time a list of the people who have been described to me or
8 brought to my attention as possible witnesses during this
9 trial. There is about ten names on the list, so listen
10 carefully, because when I finish I will be asking you about
11 these individuals.

12 The first person is Aaron Bowles with the Cherokee
13 County Sheriff's Department.

14 Alvin Jennings with the Cherokee County Sheriff's
15 Department.

16 Jerry Smith with the Gaffney City Police
17 Department.

18 Amanda Henderson with the South Carolina -- is
19 that highway patrol, I believe, is that right?

20 MS. LESKANIC: Yes, Your Honor.

21 THE COURT: Okay. Billy Anthony with the Cherokee
22 County Sheriff's Department.

23 Rodney Bright with the Cherokee County Sheriff's
24 Department.

25 Rachael Powell.

1 Nick Federico with the Cherokee County Sheriff's
2 Department.

3 Lynn Black, who is a forensic scientist with the
4 State Law Enforcement Division.

5 And a person named Tina Blanton.

6 Now, as to the people that I have just named as
7 possible witnesses in this case, is there any member of this
8 jury panel who has ever been related by marriage, or you are
9 related by blood, or have you ever had a close social,
10 personal or business relationship with any of the
11 individuals that I have named as possible witnesses? If
12 that's true, please stand.

13 Over here, sir, name and number?

14 JUROR NUMBER 20: Yes, Matt Davis, juror 20.

15 THE COURT: Yes, sir.

16 JUROR NUMBER 20: And I get the pleasure of
17 working with these guys a lot on some of these scenes.

18 THE COURT: So you know most of the officers I
19 have talked about?

20 JUROR NUMBER 20: Yes, sir.

21 THE COURT: Now, assuming they are going to be
22 witnesses in this case, if you were on the jury panel, would
23 the fact that you have that knowledge of them or know them,
24 would that affect your ability to be fair and impartial to
25 both the State and the defense in this trial?

1 JUROR NUMBER 20: No, sir, I don't think so.

2 THE COURT: Well, I need to know for sure.

3 JUROR NUMBER 20: No, sir.

4 THE COURT: You can be fair and impartial?

5 JUROR NUMBER 20: Yes, sir.

6 THE COURT: All right. Thank you, sir.

7 JUROR NUMBER 20: All right.

8 THE COURT: Ma'am, name and number, please?

9 JUROR NUMBER 67: Hannah McAdams, 67. I used to
10 babysit for Nick Federico.

11 THE COURT: And you no longer do that at this
12 time?

13 JUROR NUMBER 67: No.

14 THE COURT: Now, would the fact that you have that
15 connection at some point in time, would that affect your
16 ability to be fair and impartial if you were on the jury in
17 the case?

18 JUROR NUMBER 67: No, sir.

19 THE COURT: Thank you, ma'am.

20 Anyone else?

21 (No response).

22 THE COURT: Has any member of this jury panel
23 gathered any information from any source whatsoever such
24 that it would have caused you to either form or express an
25 opinion about any issue or matter that might be involved in

1 this trial? If you have gathered or received such
2 information, please stand.

3 (No response)

4 THE COURT: Is there any member of the jury panel
5 who is aware of a bias or a prejudice that you might have
6 either for or against either the State or the defense in
7 this matter? If you are aware of such biases or prejudices,
8 please stand.

9 (No response).

10 THE COURT: Has any member of the jury panel ever
11 had an occurrence involving the use of illegal drugs through
12 either a friend or family member such that it would cause
13 you to be unable to be fair and impartial to both the State
14 or the defense in this case? If you have had such an
15 experience, please stand.

16 (No response)

17 THE COURT: Is there any member of this jury panel
18 who is a member of or a contributor to a group which has as
19 its primary concern the promotion of law enforcement and/or
20 victims rights? These groups would include, but not be
21 limited to, such groups as Mothers Against Drunk Driving,
22 Students Against Drunk Driving, Citizens Against Violent
23 Crime, the South Carolina Sheriff's Association, the South
24 Carolina Troopers Association, or other similarly oriented
25 organizations. If you are a member of or a contributor to

1 such a group, please stand.

2 (No response).

3 THE COURT: Does any member of this jury panel
4 know of any reason whatsoever why he or she should not serve
5 as a juror in this case with particular emphasis being
6 placed upon your ability to be both fair and impartial to
7 both the State and the defense? If you know of such a
8 reason, please stand.

9 Name and number, ma'am?

10 JUROR NUMBER 94: Anne Phillips, 94.

11 THE COURT: Your situation, ma'am?

12 JUROR NUMBER 94: The question before two times
13 back about family members with drugs?

14 THE COURT: Yes, ma'am.

15 My question then was if you had had any experience
16 involving a close friend or family member involving the use
17 of illegal drugs such that it would cause you to be unable
18 to be fair and impartial to both the State and the defense
19 in this case. I said if you had such an experience, please
20 stand.

21 JUROR NUMBER 94: I have had a grandson who had
22 been arrested for possession of illegal drugs.

23 THE COURT: Yes, ma'am.

24 JUROR NUMBER 94: But it will not affect my
25 decision one way or the other.

1 THE COURT: Okay. Thank you, ma'am. Then you can
2 be seated.

3 Anyone else?

4 (No response).

5 THE COURT: Does the State request any additional
6 questions of the jury?

7 MS. LESKANIC: No, Your Honor.

8 THE COURT: Does the defense request any
9 additional questions?

10 MR. JOHNSTON: No, Your Honor.

11 THE COURT: All right. Then I will declare that
12 the remaining members of the jury panel are qualified to
13 serve as jurors in this case.

14 I will ask the clerk to prepare a list of
15 potential jurors in this case. And in this case the State
16 will be given five strikes. The defense will be given five
17 strikes. We will pick one alternate, the State having one
18 strike, the defense having two strikes.

19 Now, ladies and gentlemen, what we are doing at
20 this time, we have a computer program that is approved by
21 the court system. It randomly selects names from your
22 number. We will place them on a list. What we will do is
23 once that list has been generated, we will begin to call
24 names in the order in which you appear on the list.

25 When your name is called, I would ask that you

1 come forward. You will come right down in front of the
2 clerk here, Ms. McBee. Stand and face the back door of the
3 courtroom. Once the attorneys are ready, then they will be
4 in a position to either exercise their strikes or not.

5 If you are selected to serve on the jury, you will
6 immediately have a seat in the jury box to my left. So if
7 you have any personal belongings - a sweater, a jacket, a
8 book you brought, anything like that - bring it with you
9 when your name is called. If you are selected, you won't be
10 returning to your seat. You will be in the jury panel and
11 you will be going back to the jury room.

12 Madam Clerk, when you are ready, let me know.

13 You may proceed.

14 THE CLERK: Juror 88, Dustin Parsons.

15 THE COURT: Come forward, sir, right in front of
16 Ms. McBee. All the way down to the front. Thank you.
17 Right there. Now, face the back door or the courtroom.
18 Thank you, sir.

19 THE CLERK: What says the State?

20 MS. LESKANIC: Please excuse the juror for service
21 in this case.

22 THE CLERK: You have been excused.

23 Juror 93, Nancy Peterson.

24 What says the State?

25 MS. LESKANIC: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. JOHNSTON: Please swear Ms. Peterson.

3 THE CLERK: Please take a seat in the jury box.

4 Juror 107, Joel Seals.

5 What says the State?

6 MS. LESKANIC: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. JOHNSTON: Please swear Mr. Seals.

9 THE CLERK: Please take a seat in the jury box.

10 Juror 46, Mamie Holmes.

11 What says the State?

12 MS. LESKANIC: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. JOHNSTON: Please swear Ms. Holmes.

15 THE CLERK: Please take a seat in the jury box.

16 Juror 35, Brittany Gaffney.

17 What says the State?

18 MS. LESKANIC: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. JOHNSTON: Please swear Ms. Gaffney.

21 THE CLERK: Please take a seat in the jury box.

22 Juror 52, Ricky Humphries.

23 What says the State?

24 MS. LESKANIC: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. JOHNSTON: Please swear Mr. Humphries.

2 THE CLERK: Please take a seat in the jury box.

3 Juror 94, Anne Phillips.

4 What says the State?

5 MS. LESKANIC: Please excuse the juror from
6 service in this case.

7 THE CLERK: You have been excused.

8 Juror 121, Stanley Williams.

9 What says the State?

10 MS. LESKANIC: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. JOHNSTON: Please swear Mr. Williams.

13 THE CLERK: Please take a seat in the jury box.

14 Juror 119, Dennis Watkins.

15 What says the State?

16 MS. LESKANIC: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. JOHNSTON: Please swear Mr. Watkins.

19 THE CLERK: Please take a seat in the jury box.

20 Juror 2, Mary Arrowood.

21 What says the State?

22 MS. LESKANIC: Please seat the juror.

23 THE CLERK: What says the defense?

24 MR. JOHNSTON: Please swear Ms. Arrowood.

25 THE CLERK: Please take a seat in the jury box.

1 Juror 122, Vicki Wood.

2 What says the State?

3 MS. LESKANIC: Please seat the juror.

4 THE CLERK: What says the defense?

5 MR. JOHNSTON: Please excuse her in this case.

6 THE CLERK: You have been excused.

7 Juror 71, Elizabeth Gonzalez-Cruz.

8 What says the State?

9 MS. LESKANIC: Please swear the juror.

10 THE CLERK: What says the defense?

11 MR. JOHNSON: Please swear Ms. Cruz.

12 THE CLERK: Please take a seat in the jury box.

13 Juror 83, Joseph Osment.

14 What says the State?

15 MS. LESKANIC: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. JOHNSTON: Please excuse him for this case.

18 THE CLERK: You have been excused.

19 Juror 10, James Bunch.

20 What says the State?

21 MS. LESKANIC: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. JOHNSTON: Please excuse him for this case.

24 THE CLERK: You have been excused.

25 Juror 4, Teresa Bedenbaugh.

1 What says the State?

2 MS. LESKANIC: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. JOHNSTON: Please swear Ms. Bedenbaugh.

5 THE CLERK: Please take a seat in the jury box.

6 Juror 87, Marcus Parris.

7 What says the State?

8 MS. LESKANIC: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. JOHNSTON: Please excuse him from this case.

11 THE CLERK: You have been excused.

12 Juror 90, Dana Peeler.

13 What says the State?

14 MS. LESKANIC: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. JOHNSTON: Please swear Ms. Peeler.

17 THE CLERK: Please take a seat in the jury box.

18 Juror 112, Sheena Spencer.

19 What says the State?

20 MS. LESKANIC: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. JOHNSTON: Please swear Ms. Spencer.

23 THE CLERK: Please take a seat in the jury box.

24 THE COURT: All right. We are now picking the

25 alternates in this case.

1 THE CLERK: Juror 41, Wells Gossett.

2 What says the State?

3 MS. LESKANIC: Please excuse the juror from
4 service in this case.

5 THE CLERK: You have been excused.

6 Juror 50, Timothy Huffman.

7 MS. LESKANIC: May we approach, Your Honor?

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 THE COURT: All right, you may proceed.

11 THE CLERK: What says the State?

12 MS. LESKANIC: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. JOHNSTON: Please excuse him in this case.

15 THE CLERK: You have been excused.

16 Juror 33, Shelley Evans.

17 What says the State?

18 MS. LESKANIC: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. JOHNSTON: Please swear Ms. Evans.

21 THE CLERK: Please take a seat in the jury box.

22 THE COURT: Is there any objection to the jury
23 selection process from the State?

24 MS. LESKANIC: No, Your Honor.

25 THE COURT: Any from the defense?

1 MR. JOHNSTON: No, Your Honor.

2 THE COURT: All right. Ladies and gentlemen,
3 those of you who were not selected as jurors in this case,
4 I'm going to excuse you at this time. The bailiffs will
5 show you out. I'll ask that you call in after six p.m.
6 this evening to the call-in number. We will give you
7 additional instructions at that time. Thank you very much
8 for your cooperation.

9 You are free to go at this time.

10 (Whereupon, the jury venire panel left the
11 courtroom)

12 THE COURT: All right. Are there any matters that
13 the State would like to take up before I have the jury
14 sworn?

15 MS. LESKANIC: No, Your Honor.

16 THE COURT: Any from the defense?

17 MR. JOHNSTON: No, Your Honor.

18 THE COURT: All right. Madam Clerk, at this time
19 I would ask you that you swear the jury panel for me.

20 THE CLERK: Ladies and gentlemen, please stand and
21 raise your right hand.

22 Do you solemnly swear that you will truly try the
23 issues joined in this case and true verdict render according
24 to the law and evidence, so help you God?

25 THE JURY PANEL: (Collectively said I do).

1 THE CLERK: You may be seated.

2 THE COURT: All right. Ladies and gentlemen,
3 before we begin the actual trial of the case there are some
4 matters that I'm going to go over with you at this time.

5 Of course, you have been selected as jurors in
6 this case and I would suspect that for most of you this
7 might be the first time that you have ever been in this
8 position where you are seated on a jury in a criminal case
9 and basically having to handle the responsibilities as a
10 juror in this situation. If you have never been in this
11 situation before, I would expect that most of what you might
12 know about what happens on juries during trials of cases you
13 would have learned from such sources as maybe television
14 shows you have watched, movies you have read -- books you
15 have read, movies you have seen, things like that. They
16 don't teach much about the jury system in actual school
17 these days, so I would expect that's probably where you have
18 gotten most of your information from. And, you know, while
19 those sources of information are always really interesting,
20 you know, TV shows have interesting plots, and movies have
21 good plots, and so do books, they are intended to keep your
22 attention throughout. In the case of television, it never
23 ceases to surprise me that you can have an event occur and
24 the case be tried and the case is ended in the space of an
25 hour, and, you know, you still have time to stop for

1 commercials five or six times. And so I hope that you
2 realize that when you watch those things, that they take
3 what's called literary license with what goes on in
4 courtrooms and what juries have to go through. What I mean
5 by literary license is they make what happens in the
6 courtroom fit the story they are trying to tell you, the
7 plot, so they don't actually depict what goes on in
8 courtrooms, because, you see, those things are intended for
9 your entertainment.

10 Now, what you are engaged in today is intended for
11 anything but your entertainment. What you are engaged in
12 today, and I have already talked about this briefly today,
13 you are engaged in a fundamental part of our governmental
14 process. You have been brought into this courtroom as
15 citizens. You have been appointed as jurors and now picked
16 to serve on a jury panel and you are going to be placed in
17 an important decision-making position during the trial of
18 this case.

19 What you are here to do is to seek the truth, to
20 find and determine the truth. You know, if I told you that
21 we were going to go on a search for the truth today and I
22 asked you how you would expect that would be conducted, I
23 would expect you to say, well, if I'm trying to figure out
24 what the truth is in any situation, I probably need to go
25 slow and I need to be deliberate. Sometimes I might need to

1 go over the facts two or three different times to be sure I
2 got them right, so I may have to go over things a couple of
3 times, so it might be slow and it might be repetitive and it
4 might be deliberate. I would expect that's what you would
5 think a search for the truth would be like, you see, because
6 this courtroom is a place of honor. It's dedicated to the
7 preservation of citizen's rights through both the
8 constitution of this state and of the United States. And as
9 jurors in this case you are going to fill an important role.

10 I'm going to talk to you in just a minute about
11 how you are going to the sole judges of the facts in this
12 trial.

13 Now, the attorneys who are here in this case, they
14 are here to represent their client's interests. I'm sure
15 they will do an excellent job in presenting those positions
16 to you during the trial, but I want to point out to you that
17 first, and foremost, these lawyers are also officers of this
18 court. At some point in time they have appeared before a
19 court in this state and they were required before they could
20 take their licenses as attorneys to take an oath. And part
21 of the oath that they took is that they will assist you in
22 your search for the truth during this trial. For that
23 reason you can anticipate and expect the attorneys will act
24 in a reasonable and a professional and an ethical manner in
25 the presentation of their cases before you during this

1 trial.

2 I'm going to remind you, too, since you just came
3 in front of this court, you just took an oath. Your oath is
4 to decide this case based upon the law and the evidence
5 presented during this trial. You, too, are now expected to
6 act in a reasonable, a professional, and an ethical manner
7 in the discharge of your duties as jurors in this case, and
8 I want to thank you very much for your willingness to step
9 up and accept the responsibilities that you have accepted by
10 serving on a jury in this trial.

11 Now, what I'm going over with you now is not
12 intended to be a charge on the law. At the end of the
13 trial, once you have heard all the evidence and all the
14 arguments, at that time I will go over the law with you and
15 charge you concerning the law that you are to apply in this
16 case. What I'm telling you now is really an explanation of
17 the procedure that we will follow and what your
18 responsibilities and duties are in following that procedure.

19 I indicated to you earlier that we have received
20 an indictment. The indictment charges the defendant with
21 the crime of possession with intent to distribute
22 methamphetamine. I'm not going to read it to you again. We
23 will go over it again at the close of the trial, but through
24 that indictment this defendant has pled not guilty. And
25 under the laws and the Constitution of this state, and of

1 the United States, that not guilty plea places the burden of
2 proof in this case solely upon the State. It's your job at
3 the close of this trial to determine whether or not the
4 State has met its burden of proof in proving the allegations
5 contained in the indictment by proof beyond a reasonable
6 doubt. So at the close of the trial I will go over those
7 concepts with you again and I'll charge you concerning the
8 law that you are to apply in this case and the
9 responsibility that the State has in proving its case, but I
10 will tell you again that the indictment itself is not
11 evidence in the case. It's not evidence of any guilt or
12 wrongdoing. It is simply the document that brings the case
13 into this court. And, again, it's the document that you
14 will decide whether the State has proven at the close of the
15 trial.

16 Now, your purpose in this trial is to find and
17 determine the facts of this case. And I will tell you that
18 in every case tried in this court before a jury, the jury is
19 always the sole and exclusive judge of the facts in this
20 case.

21 Now, I will be serving as the presiding officer in
22 this trial and it may be my responsibility at some point in
23 the trial to rule upon certain questions that might come up.
24 That might be the admissibility of evidence. It might be
25 the appropriateness of questions that are being asked. It

1 may be some procedural matter as we go forward.

2 Now, I'm going to caution you, please don't take
3 from anything that I say or do in the discharge of my duties
4 as the presiding officer to somehow indicate to you that I
5 have an opinion as to how you determine the facts in this
6 case. I have told you already you are the sole judges of
7 the facts. Therefore, the law does not allow me an opinion
8 concerning how you determine the facts. I will tell you
9 now, and I will tell you at every stage of this proceeding,
10 I have no opinion as to how you should determine the facts
11 in this case. That's your job and your job alone. But, you
12 know, the law that makes you the sole judges of the facts of
13 the case, it also makes me the sole judge of the law in the
14 case.

15 I have the additional duty at the close of the
16 trial to charge you concerning the law that you are to apply
17 to the facts as you decide the facts to be. Just as I
18 cannot disagree with you concerning your decision on the
19 facts, you are not allowed to disagree with me concerning
20 the law to be applied to those facts. So the law as I give
21 it to you at the close of the trial is the only law that you
22 are allowed to use under your oath in deciding the case. So
23 if you come into this courtroom with an opinion or an idea
24 as to what the law is, or you have a belief as to what the
25 law ought to be, you should leave those notions outside of

1 the jury room. Under your oath as jurors you are to take
2 the law exactly as I give it to you, apply that law to the
3 facts as you decide the facts to be. That should put you in
4 a position to render a just, a true, and a fair verdict as
5 to the guilt or the innocence of the defendant of the
6 indictment that's before the court in this trial.

7 It's important that you perform your duty as the
8 finders of facts diligently and conscientiously, because
9 under our system of justice ordinarily there is no means by
10 which an erroneous determination of fact made by a jury can
11 ever be corrected.

12 Now, you have taken an oath to decide this case
13 based upon the law and the evidence, and I'm going to tell
14 you the only place that you are going to hear, see, or read
15 the law and the evidence in this case is in this courtroom
16 during this trial. So if we take a break for the evening
17 when we go home, or at any other time, and you are allowed
18 to leave the courthouse, you should not attempt to gather
19 any information about this case or about the issues involved
20 in this case from any source outside of this courtroom. For
21 you to do that would be a violation of the oath that you
22 have just taken. And I will instruct you every time that
23 you leave this courthouse not to attempt to gather any
24 information on your own from any source outside of this
25 courthouse. You know, I'm not so naive that I don't know

1 you can do a Yahoo, or a Google, or a main search on just
2 about anything that you want to search on the Internet, and
3 I can assure you that some of the information you get by
4 doing that will be erroneous or will be information that is
5 not allowed into evidence in a court of law. So, again,
6 don't attempt to gather any information on your own. You
7 will get your information in this courtroom during this
8 trial from this witness stand and from the attorneys and the
9 judge during the trial. That's the only place that you
10 should attempt to gather any information about this case as
11 we go forward.

12 Also, we have gone to a lot of trouble to pick you
13 as fair and impartial jurors who don't have an opinion one
14 way or the other about this case. I want you to try to keep
15 that mindset, that open mind, throughout the trial and into
16 your deliberations. And in doing so, I'm going to caution
17 you every time you take a break, and this is a hard one for
18 jurors to follow for some reason, but I'm going to instruct
19 you to follow it, don't discuss this case with anyone, even
20 among yourselves. I hope that you realize that the most
21 innocent conversation that you might have with a fellow
22 juror or with a family member, when you start talking about
23 the people involved in the trial, the nature of the charges,
24 what evidence you have heard thus far, if you start talking
25 about those things with somebody, you will begin to make up

1 your mind about issues in this case and you haven't heard
2 all the evidence yet. You haven't heard my charge on the
3 law. You haven't heard the arguments made by counsel, so it
4 would be highly improper for you to do that. So I'm going
5 to caution you, and I will explain to you every time you
6 walk out that door, not to discuss this case with anyone
7 until I ask you to begin your deliberations in this matter.
8 You know, when you go home it's okay to tell a family member
9 that you have been picked on a jury, you are in the trial of
10 the case, and that's where the conversation should stop, and
11 you should then begin to talk about how beautiful the
12 weather is, what you are going to do this weekend, what you
13 are going to watch on TV tonight, but don't talk about the
14 case. That's how simple that that is.

15 Now, as the sole judges of the facts it's going to
16 be your responsibility to determine the credibility or the
17 believability of what you hear from this witness stand.
18 That's the case in every trial tried in front of a jury.
19 It's the jury's responsibility as the finder of fact to
20 determine the true story, the truth of the matter, so it's
21 necessary for you to determine the credibility and
22 believability of what you hear from the witness stand. In
23 doing so I'm going to urge you to use your good common
24 sense. You know, every single day you make decisions about
25 what you choose to believe and what choose not to believe.

1 You do it without even thinking about it, but you do it.
2 You decide whether you believe something you hear or you
3 don't believe something that you hear. You do that using
4 your good common sense, and this courtroom is no different
5 in that respect.

6 I'm going to ask you to pay close attention to
7 what's going on during the trial.

8 You have the right to believe all of, part of, or
9 none of what a witness might tell you. You have the right
10 to believe one witness against all the others that might
11 testify, or the other way around, all the others against
12 one. You have the right to consider such factors as to
13 whether or not a witness has a stake in the outcome of the
14 trial, whether or not a witness might express or show some
15 bias or prejudice one way or the other. You have the right
16 to decide whether that witness had the ability to know what
17 the witness is testifying about. And I have been in
18 courtrooms now, this November will be forty years. And
19 every courtroom I have ever been in during those forty
20 years, the witness stand is always right in front of the
21 jury box. The reason for that is is so you can observe the
22 witnesses as they testify, the way they speak. Pay
23 attention to what goes on in the courtroom, how things are
24 being done. Use your good common sense and make a
25 determination as to the credibility and the believability of

1 the witnesses that you hear. Be in a position to discuss
2 those issues with your fellow jurors when you go back into
3 your deliberations, so try not to let your thoughts wander.
4 Try to pay attention to what's going on from the witness
5 stand. Be in a position to talk about those things once the
6 case has been ended.

7 I want to caution you about one thing that might
8 happen during the trial. If I get into a discussion with
9 the lawyers about some issue that's come up, be it the
10 admissibility of evidence, or whether a question is being
11 properly asked, something like that, and I believe that my
12 discussion with the lawyers is going to lead to a discussion
13 of some matter or some issue or some fact that's not
14 admissible into evidence under the rules that govern the
15 admissibility of those things, if I think the discussion is
16 going in that direction, I will ask you to leave the
17 courtroom while I have that discussion. I hope that you
18 realize that it's just me doing my job, and part of my job
19 is that you decide this case based upon evidence that's been
20 admitted into the record properly under the rules that
21 govern the admission of evidence. Don't think that because
22 I have asked you to leave the courtroom that I have got an
23 opinion as to how you should determine the facts. Again,
24 it's just me doing my job as the gatekeeper, the person who
25 decides what comes in and what doesn't come in. When I

1 finish that discussion, I will bring you back into the
2 courtroom, I will make a ruling on whatever the issue was
3 and we will proceed with the trial, but don't think because
4 I have asked you to leave during that discussion, again,
5 that I have an opinion as to how you determine the facts.
6 It's just part of my job. That's something that I have to
7 do as the person who decides about the admissibility of
8 controversial evidence that might come up.

9 Now, I do not appoint a foreperson of the jury
10 until I charge you on the law. I do that for one reason,
11 primarily, and one reason only. At the close of the trial
12 I'm going to explain to you that your verdict, before you
13 can reach a verdict, it has to be unanimous. All twelve
14 jurors who are deliberating must agree upon the verdict
15 before a decision has been reached or made, so no one juror
16 in your group is more important than any other juror. All
17 of you have to agree before there is a verdict, so one
18 person disagreeing means there is no verdict, so everyone
19 has an equal say in the outcome of the case. I don't want
20 you to think because I have appointed somebody as the
21 foreperson that that's the smartest person on the jury, or
22 that's the one who counts the most and you don't need to
23 listen because that person will tell you what went on and
24 you can just go along with them. I want you to think that
25 you might be the foreperson of the jury. It might be your

1 job to lead the discussion of the jury as you go through
2 your deliberations. I want you to pay attention as if you
3 are going to be the foreperson in the case, so that you will
4 be in a position to discuss this case fully with your fellow
5 jurors when it goes back for your deliberation. In the
6 meantime, if some issue comes up, something that you think
7 ought to be reported to the court, talk to one of the
8 bailiffs. Let them know what the problem is. They will be
9 glad to tell me about it and we will address it directly.
10 You don't need a foreperson to report those things. If you
11 think something is being done that shouldn't be done, please
12 let the bailiff know and we will deal with it accordingly,
13 but I will appoint the foreperson at the close of the trial,
14 once I have gotten to the point of where I'm charging you
15 concerning the law, so don't think that I have forgotten
16 about that. I haven't forgotten it. I do it that way on
17 purpose, and I have been doing that for many years now and
18 that's just the way I do it.

19 I want to be sure I haven't violated anyone's
20 rights by what I have told you thus far.

21 Does the State have an objection to my opening
22 comments?

23 MS. LESKANIC: No objection, Your Honor.

24 THE COURT: Any objection from the defense?

25 MR. JOHNSTON: No, Your Honor.

1 THE COURT: All right. Now, ladies and gentlemen,
2 let me explain to you one more time, the State has the
3 burden of proof in this case because the defendant has pled
4 not guilty. That puts the burden on the State to prove the
5 allegations in the indictment. Because the burden of proof
6 in the trial is on the State, the State gets to go first in
7 its opening comments to you, followed by the defense. Then
8 in the presentation of evidence the State will go first,
9 followed by any evidence that the defense chooses to put up.
10 And then after all the evidence is in, we will have closing
11 arguments by lawyers and then we will have my charge
12 concerning the law. Then the case will be turned over to
13 you for your deliberations and verdict. So that's the order
14 that we will go in in this case.

15 I will tell you that attorneys are allowed to talk
16 directly to you twice during a trial; once at the beginning
17 in the opening comments and once all the evidence is in.
18 They will sum up the evidence in their closing argument to
19 you. That's the only two times they get to talk directly to
20 you. I'll point out to you, though, the statements made by
21 lawyers do not constitute evidence in the case, can't be
22 used directly by you in deciding guilt or innocence. The
23 only evidence in the case under your oath is the testimony
24 of witnesses who are sworn to tell the truth who testify
25 from this witness stand and whatever goes into the record

1 through that testimony or goes into the record by agreement
2 of the lawyers. So that's the evidence that you will be
3 considering.

4 Now, people in the courtroom have been working a
5 little longer than you have been involved in this, so I'm
6 going to take a short break before we start receiving
7 evidence in the case. I'm going to instruct you -- I told
8 you every time that you leave this courtroom don't discuss
9 anything about this case until I ask you to begin your
10 deliberations. You may retire to the jury room and we will
11 take a short break at this time. Then we will come back and
12 start with the first witness.

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

15 THE COURT: We will be in recess for about five to
16 ten minutes.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened)

19 THE COURT: Are we ready, Ms. Leskanic:

20 MS. LESKANIC: Yes, Your Honor.

21 Deputy Bowles has prepared a written transcript as
22 we discussed --

23 THE COURT: Oh, I see. Okay.

24 MS. LESKANIC: -- in chambers.

25 MR. JOHNSTON: And we are kind of going over the

1 transcript.

2 THE COURT: Go ahead and get finished. Let me
3 know when you are ready.

4 MR. JOHNSTON: We don't object to it as a concept,
5 but there are some particular things I wish to point out.

6 THE COURT: Okay. Just let me know when you are
7 ready.

8 (Off the record)

9 (Back on the record)

10 MR. JOHNSTON: Judge, as a preliminary matter we
11 would ask that the witnesses be sequestered.

12 THE COURT: All right. Let's see if there is any
13 problem with that from the State.

14 Ms. Leskanic?

15 MR. JOHNSTON: We certainly understand they can
16 keep the investigating officer.

17 MS. LESKANIC: No objection, Your Honor.

18 THE COURT: All right. Who is your chief
19 investigator?

20 MS. LESKANIC: Deputy Aaron Bowles.

21 THE COURT: Okay. So he will be staying.

22 Anyone else who is going to be a witness in the
23 case, if you will step outside the courtroom and I will
24 admonish you not to discuss your testimony even among
25 yourselves until the trial has ended.

1 MS. LESKANIC: Can you mark this as an exhibit,
2 please?

3 (Transcript marked as Court's Exhibit No. 1 for
4 identification)

5 MR. JOHNSTON: Your Honor, by way of explanation I
6 would like to set the scene a little bit. We did present
7 this issue to you in chambers --

8 THE COURT: Yes.

9 MR. JOHNSTON: -- but I think it would be proper
10 that we discuss it on the record right now.

11 THE COURT: Please do.

12 MR. JOHNSTON: There is a video in the case, Your
13 Honor, that involves a traffic stop, but then the traffic
14 stop develops into rather some extensive questioning. It
15 lasts over quite a significant period of time.

16 THE COURT: All right.

17 MR. JOHNSTON: And during that period of
18 questioning there is case evidence which is introduced. The
19 solicitor, as I understand it, is going to play the first
20 part of the video, because we have confidence that nothing
21 inadmissible is going to pop up during that part. However,
22 once you get past that part, there are a number of very
23 potential potentially prejudicial and inadmissible things
24 that are elicited as part of their investigation but
25 wouldn't be part of what should be in court.

1 THE COURT: My understanding was that there was
2 some mention of other bad acts which may not be a part of
3 this case.

4 MR. JOHNSTON: Yes, sir, that would be certainly
5 one aspect of it.

6 THE COURT: Uh-huh.

7 MR. JOHNSTON: So what the solicitor has proposed,
8 and I am in agreement with the principle, is that the
9 officer has prepared sort of a handwritten transcript and
10 he's going to read from that transcript.

11 THE COURT: So these would be his notes that he
12 uses to refresh his memory about what was said on the
13 remainder of the recording?

14 MR. JOHNSTON: That's how I would characterize
15 them, and I don't know how the solicitor --

16 THE COURT: Is that correct?

17 MS. LESKANIC: That is correct, Your Honor.

18 THE COURT: Okay. Well, I will allow him to use
19 those notes to refresh his memory.

20 MS. LESKANIC: I have marked it as Court's Exhibit
21 1. There are seven pages of handwritten notes that were
22 prepared by Deputy Aaron Bowles, Your Honor, and I will hand
23 that up to the court --

24 THE COURT: All right.

25 MS. LESKANIC: -- just as a Court's Exhibit.

1 THE COURT: Why don't we go ahead and -- it's been
2 marked as a Court's Exhibit already?

3 MS. LESKANIC: Yes.

4 THE COURT: Very good. I will direct that it be
5 made Court's Exhibit No. 1.

6 MR. JOHNSTON: Thank you, Your Honor.

7 There are, however, a few points that are
8 discussed in the handwritten transcript that I don't think
9 are admissible.

10 THE COURT: All right.

11 MR. JOHNSTON: I would like to --

12 THE COURT: Let's discuss those now.

13 MR. JOHNSTON: Yes, sir.

14 Your Honor, on page one.

15 THE COURT: Yes.

16 MR. JOHNSTON: It starts at the top where it talks
17 about Miranda Warnings.

18 And, by the way, since we are on the subject of
19 Miranda, after having reviewed the tape I do not think that
20 there is an issue of voluntariness in this case. And, in
21 fact, some of the statements that are elicited from the
22 defendant could, in fact, possibly be helpful in our
23 defense. So while we have recognized that that could be a
24 concern, we are waiving any Jackson v. Denno issues.

25 THE COURT: You are doing that as part of the

1 trial strategy?

2 MR. JOHNSTON: That is correct.

3 THE COURT: Okay.

4 MR. JOHNSTON: The third line down.

5 THE COURT: Yes, sir.

6 MR. JOHNSTON: It says "concealed bag in right
7 hand." Is that something -- I'm not sure. Is that
8 something that is being said, or is that something that he
9 is going to say at that point it occurred?

10 MS. LESKANIC: We would strike that, Your Honor.
11 I don't believe that anything was said at that time. I
12 believe he was just making notes as to where it was found.
13 I think the officer was saying "I saw it in your right
14 hand."

15 THE COURT: They have agreed to strike that from
16 the transcript.

17 MR. JOHNSTON: All right. Thank you, Your Honor.

18 On that same page number one, about four-fifth's
19 of the way down, the officer states "I don't think you are a
20 bad guy. I just think you made a mistake."

21 THE COURT: Okay.

22 MR. JOHNSTON: Your Honor, my position on that,
23 and there is going to be several other comments which are
24 similar to that vein, would be this: Just because it's on
25 the video doesn't necessarily make it admissible in this

1 court. One of the things that could make something
2 admissible is if one side or the other makes admissions, and
3 there are things in here which I think are arguably
4 admissions and are proper to be admitted before the jury.
5 However, a lot of what is here is the officer's opinions
6 about what the defendant has said and conclusions and stuff
7 that he -- conclusions and things that he draws from what
8 the defendant says. So I don't think it's proper for him to
9 say "you made a mistake." I don't think that's relevant.
10 It's not an admission. It's really a comment on his guilt
11 by the officer.

12 THE COURT: Maybe character.

13 MR. JOHNSTON: Possibly, although he does say he's
14 not a bad guy, but then he goes on to say "you made a
15 mistake."

16 THE COURT: So do you want to put that in or do
17 you want it out?

18 MR. JOHNSTON: I want it out, Your Honor.

19 THE COURT: From where it says "how much weight,"
20 to where he answers "9 grams."

21 MR. JOHNSTON: I don't know how important it is to
22 the solicitor to keep the other parts in. The part I'm
23 objecting to is "I don't think you are a bad guy. I just
24 think you made a mistake." The rest of it I don't have an
25 objection to.

1 MS. LESKANIC: I don't have an objection from
2 removing that, Your Honor. I am looking more for the
3 defendant's statements than the officer's statements. We do
4 not compose this together so he just did a complete
5 transcript.

6 THE COURT: All right. So what do you want out?
7 You want out "I don't think you're a bad guy. I just think
8 you made a mistake"?

9 MR. JOHNSTON: Yes, sir.

10 THE COURT: They are agreeing to take that out.

11 MR. JOHNSTON: Yes, sir. Thank you.

12 THE COURT: And as I go along, I am striking
13 through those on the exhibit and initialing them that I did
14 strike them.

15 All right. You may proceed.

16 MR. JOHNSTON: All right, sir. If you give me
17 just a minute I'll read down through this.

18 THE COURT: Yes, sir.

19 MR. JOHNSTON: Your Honor, on page 4.

20 THE COURT: 4.

21 MR. JOHNSTON: Yes, sir, about two-thirds of the
22 way down. The officer has actually drawn a line.

23 THE COURT: Yes, sir, I see that.

24 MR. JOHNSTON: And it's the statements right above
25 that line.

1 The defendant says "that's what I'm saying. I was
2 trying to take her home and go back to my old lady."

3 Then the officer said "listen, being honest goes a
4 long way and I think I know when you are caught and this is
5 it you are caught." I think that would be a conclusion on
6 his part and would not be relevant before the jury.

7 THE COURT: Any objection to removing that
8 statement?

9 MS. LESKANIC: No, Your Honor.

10 THE COURT: All right. I will strike that
11 statement and initial it.

12 MR. JOHNSTON: On page five, Your Honor,
13 approximately halfway down.

14 THE COURT: Yes, sir.

15 MR. JOHNSTON: This is again the officer stating
16 this. He says "I appreciate you being honest with me like
17 that and I'll put in my report that once we discovered the
18 methamphetamine that you pretty much owned up to it."

19 THE COURT: Do you want that entire statement --

20 MR. JOHNSTON: Yes, sir.

21 THE COURT: -- deleted?

22 Any objection?

23 MS. LESKANIC: No objection, Your Honor. We will
24 delete the suspect's response to that as well.

25 MR. JOHNSTON: That would be fine.

1 THE COURT: All right. So that statement, as well
2 as the response immediately below it I am striking and
3 initialing.

4 MR. JOHNSTON: Probably also they would want to
5 take the next line out also, because it's really part of
6 that.

7 MS. LESKANIC: No objection.

8 MR. JOHNSTON: Your Honor, they have agreed to
9 take out the "I'm not asking you to sign your life away."

10 THE COURT: Okay. I'll initial that as well.

11 MR. JOHNSTON: All right, sir, page 6, at the top.

12 THE COURT: Okay.

13 MR. JOHNSTON: The officer says "you've got weight
14 and you have got cash and you don't have a job." I think
15 that is a conclusion on his part that would not be proper
16 there.

17 Then he goes on to say -- the officer says again
18 "right, but it's where you got the cash that's the problem."

19 THE COURT: So you want to start with the answer
20 that says "me." So it's where it says "you got weight," and
21 you want all that down to where it says "problem"?

22 MR. JOHNSTON: I would recommend starting with the
23 "you didn't find baggies or scales," because that's really
24 part of that.

25 THE COURT: This whole top section on page 6?

1 MR. JOHNSTON: That would be our request, yes,
2 sir.

3 THE COURT: State's position?

4 MS. LESKANIC: I would be asking the officer on
5 the stand if they found anything else indicating intent to
6 distribute. They did find one baggy, so I don't want to
7 mislead anyone about what we would offer. I don't mind if
8 it's not read from this. And he will be testifying I think
9 to the weight, although we have the SLED analyst coming with
10 the correct weight. They weighed it on the scale. It was
11 nine grams and his response was "you have the weight for
12 intent to distribute."

13 THE COURT: Uh-huh.

14 MS. LESKANIC: He had \$419 in his pockets, meaning
15 that you have got cash showing an intent to distribute, and
16 I believe the defendant told the officer that he was not
17 employed. So I would be eliciting those answers from the
18 officer, even if it's not directly quoted from this paper,
19 is what I'm saying.

20 MR. JOHNSTON: And I could see circumstances under
21 which eliciting that information would be proper. I just
22 don't think in this call and response for --

23 THE COURT: At this time I'm going to strike it
24 out, but you can retain the right to ask about this.

25 MS. LESKANIC: Thank you, Your Honor.

1 MR. JOHNSTON: And then right down below that,
2 Your Honor, the officer says "no, you know exactly what you
3 have done. You know it's from selling dope. You know
4 everything." We have --

5 MS. LESKANIC: No objection to striking that.

6 MR. JOHNSTON: We would ask that that be struck,
7 along with the defendant's statement "is there other stuff
8 I don't know about."

9 THE COURT: All right. Without objection I'll
10 strike that question and answer.

11 MR. JOHNSTON: That would conclude the issues
12 raised --

13 THE COURT: Okay.

14 MR. JOHNSTON: -- in the transcript.

15 THE COURT: So we have an agreement then?

16 MR. JOHNSTON: Yes, sir, I believe -- yes, sir, I
17 believe we do.

18 THE COURT: I'll have the Court's No. 1 now been
19 completed.

20 Do you want to pass that over to Mike?

21 All right. Anything further before we bring the
22 jury in?

23 MS. LESKANIC: The only thing, Your Honor, on page
24 1 --

25 THE COURT: Mike, pass it back up to me.

1 MS. LESKANIC: Sorry.

2 THE COURT: Thank you. Yes, ma'am.

3 MS. LESKANIC: Deputy Bowles began the transcript
4 at the start of the video. We are going to play
5 approximately fifteen to twenty minutes of the video.

6 THE COURT: All right.

7 MS. LESKANIC: So a lot of this is already on
8 there, including what we have struck; "I don't think you're
9 a bad guy. I just think you made a mistake." So that is
10 already going to be on the video. I didn't want to mislead
11 anyone again that that would not be heard by the jurors.

12 MR. JOHNSTON: That it would not be heard, or it
13 would be heard?

14 MS. LESKANIC: It -- well, it will be heard on the
15 video, but we had agreed that he would not testify to it,
16 but it's on the portion of the video that we have agreed to
17 play.

18 MR. JOHNSTON: I think the objection, Your Honor,
19 to those people who would apply to what's on the video, as
20 well as to him reading it out of the transcript.

21 THE COURT: Well --

22 MR. JOHNSTON: Now, if -- I don't want to cause
23 too great a technical problem here. The only -- if I may
24 ask the solicitor, the only part you are talking about is "I
25 don't think you're a bad guy. I just think you made a

1 mistake," is that the only part here that you would propose
2 to play on the tape?

3 MS. LESKANIC: That is correct --

4 MR. JOHNSTON: All right.

5 MS. LESKANIC: -- because I believe -- I mean,
6 because we would cut the video off, according to Court's
7 Exhibit 1, on page 2 where the defendant said "I mean I'm
8 sure it's ice." That is where I intend to cut it off,
9 because then he said that "his life's pretty much over", so
10 I plan on stopping the video once he says "I mean, I'm sure
11 it's ice."

12 MR. JOHNSTON: I will withdraw our objection to
13 that one line "I don't think you're a bad guy. I just think
14 you made a mistake." It's not particularly damaging and it
15 would be much easier.

16 THE COURT: It can be noted it can be played on
17 the video?

18 MR. JOHNSTON: Yes, sir.

19 THE COURT: Okay.

20 MS. LESKANIC: The only other thing to place on
21 the record, Your Honor, there were several offers extended
22 in this case.

23 THE COURT: Yes.

24 MS. LESKANIC: At one time at the beginning of the
25 case I believe Mr. Thompson was the defendant's attorney.

1 We had extended an offer. And when Mr. Johnston was
2 retained on this case, I extended a like offer with
3 possession with intent to distribute methamphetamine, second
4 offense. At trial today he will be going on the third
5 offense. The State's offer was ten years suspended to five
6 years, followed by probation. That was rejected. That was
7 the first offer that was made.

8 He came for trial and we had a ten year offer. We
9 discovered more evidence, Your Honor, with the videotape
10 issues that we had the last time Your Honor was here.

11 THE COURT: Uh-huh.

12 MS. LESKANIC: And then today we extended an offer
13 again of possession with intent to distribute
14 methamphetamine, second offense, ten years suspended to
15 seven years with ATU and probation and that has been
16 rejected by the defense.

17 We have not received any counter-offers. I just
18 wanted to place that on the record.

19 THE COURT: Is that still the case, Mr. Johnston?

20 MR. JOHNSTON: Yes, sir.

21 Your Honor, I have -- as the solicitor has
22 correctly stated how the offers have been made to us. We
23 appreciate that. I have counseled with the defendant about
24 those offers and he has directed me to reject them.

25 THE COURT: I see. Okay. I just want to be sure

1 that if -- he's in court. He heard her state the offers.

2 Sir, did you hear the solicitor go over the offers
3 with us?

4 THE DEFENDANT: Yes, sir, I did.

5 THE COURT: Did you understand them?

6 THE DEFENDANT: Yes.

7 THE COURT: And Mr. Johnston indicated those have
8 been rejected. Is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Thank you, sir. You can be
11 seated.

12 MS. LESKANIC: Thank you, Your Honor.

13 THE COURT: All right. Ready for the jury, Ms.
14 Leskanic?

15 MS. LESKANIC: Yes, Your Honor.

16 MR. JOHNSTON: Thank you, judge.

17 THE COURT: Bring the jury in.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: All right. The record will reflect
21 that the jury has returned to the courtroom.

22 I told you that when you returned we would be
23 beginning to have witnesses called, first all by the State.

24 You may proceed, Ms. Leskanic.

25 MS. LESKANIC: Start with openings, Your Honor?

1 THE COURT: Oh, yes, ma'am, you may proceed with
2 that.

3 MS. LESKANIC: Thank you, Your Honor.

4 Good afternoon, ladies and gentlemen.

5 As I stated earlier, I'm Kim Leskanic and I am a
6 prosecutor here for Cherokee County. It's my pleasure to be
7 in front of you today. I know it's already been a long day
8 for you.

9 You are here today because the defendant, Travis
10 Conner, has been charged with possession with intent to
11 distribute methamphetamine. He had it in his possession and
12 he intended to give it, or sell it, or deliver it to someone
13 else. It's that simple.

14 This occurred from a traffic stop that happened
15 here in Cherokee County back on July 6th, 2014. Deputy
16 Aaron Bowles with the Cherokee County Sheriff's Department
17 was on patrol with his partner, who was new, Alvin Jennings.
18 Deputy Jennings was with him in the patrol car. They saw
19 the car driven by the defendant cross over the yellow line.
20 It has two lines the vehicle was weaving over, so they
21 didn't know what was wrong. They turned on their blue
22 lights. The vehicle doesn't stop immediately, but it does
23 come to a stop. When it does, the defendant is then in the
24 driver's seat. There is a female passenger by the name of
25 Rachael Powell. She's in the passenger seat.

1 As Deputy Bowles approaches the vehicle, he
2 approaches on the driver's side of the car coming up for Mr.
3 Conner and Deputy Jennings is going to walk up on the
4 passenger's side of the vehicle where the female is seated.
5 As Deputy Bowles walks up to the driver's side window, the
6 window is down. Mr. Conner has his hand shoved down his
7 pants. His right hand is shoved down his pants. Deputy
8 Bowles doesn't know if he's reaching for a weapon or what
9 he's doing, so he draws his service weapon and says "show me
10 your hand." When he does, the defendant pulls his hands out
11 from his pants and he has a glassine baggy containing 8.44
12 grams of methamphetamine, tosses it into Ms. Powell's lap,
13 and that's what we are here about.

14 It's that simple. Traffic stop. As the officer
15 walks up to the window, that defendant, hand down his pants,
16 holding a baggy with 8.44 grams of methamphetamine.

17 You are going to hear from Deputy Bowles. You are
18 going to see part of the video. He had an in-car camera.
19 We are going to show you part of that and he is going to
20 tell you about statements that were made by the defendant.

21 You are going to hear from his partner, Deputy
22 Jennings. He's going to tell you what he saw that day as
23 well.

24 And you are going to hear from the passenger.
25 Rachael Powell, because she's important in this case. She

1 was in the car. The drugs were thrown in her lap and she
2 was a meth user and she will tell you that. She's cleaned
3 up now, but she was a meth user then. She had a needle
4 stuffed down in her bra loaded with methamphetamine on that
5 day. And about nine months after this happened she went
6 with the defendant and she signed a statement saying "that
7 nine grams of methamphetamine was mine," and she's going to
8 tell you why she did that. We are going to bring her in
9 here.

10 As Judge Couch stated at the beginning, this is a
11 search for the truth and we want to bring you every piece
12 that we can so that you can do your job in finding the truth
13 and I think that search has to include Ms. Powell, who was
14 in the car. It would be easy just to say, well, Mr. Conner
15 had his hand down his pants, he had the meth in his hand,
16 case closed, but there was someone else there. And she did
17 write a statement. She didn't give it to me and she didn't
18 give it to the police. She gave it to the defendant, who
19 then gave it to her attorney. I don't have the original
20 because it wasn't given to me, but I want to tell you about
21 it, because I think it's important for you to find the
22 truth, and that includes everything.

23 Now, I believe in your search for the truth, when
24 you listen to the witnesses and you listen to the evidence,
25 you listen to the statements that were made by the defendant

1 on this day, you will find the truth, and that is that he
2 was guilty of possession with intent to distribute
3 methamphetamine. Thank you.

4 THE COURT: Mr. Johnston.

5 MR. JOHNSTON: May it please the court?

6 THE COURT: Yes, sir.

7 MR. JOHNSTON: Ladies and gentlemen of the jury,
8 as a child we played a game called hot potato. The way we
9 played it was we had some kind of a plastic potato and it
10 had some kind of a wind-up timing device in it and you and
11 your friends stood in a circle and you would wind up that
12 timing device inside the potato and at some point when the
13 time expired, it would pop out. Something would pop out
14 when the time ran out. So the object of the game was to
15 pass the potato from person to person to person and you
16 wanted to be sure that you were not the one holding it when
17 the timer went boop, because that meant that you had lost
18 the game.

19 What we are here about today is obviously much
20 more serious than any childhood game, but I bring this to
21 your attention because that's basically what happened here.
22 From the very beginning in this case Travis has said that it
23 was the passenger, Ms. Rachael Powell, who had the drugs in
24 her possession and had passed it to him and he had passed it
25 to her and she had passed it back to him, all the while

1 because they know that the timer is fixing to go off behind
2 them because the police are following them and at some point
3 the police indicate their intention to pull them over and
4 nobody wants to be caught with the hot potato when the
5 police are there.

6 Now, this lady had methamphetamine in a syringe in
7 her bra, concealed in her bra, so we know, at least to that
8 point, what her involvement with methamphetamine was.

9 Further, this isn't a theory that I came up with.
10 The officer on the videotape of this matter makes the
11 following statement: "I believe the two of them were
12 passing it back and forth between each other."

13 They have to prove beyond any reasonable doubt
14 that Travis Conner possessed these drugs with the intent to
15 distribute.

16 The judge will at some point define for you the
17 legal definition of what constitutes possession, but I
18 believe that when he describes it to you, that it will not
19 include when somebody throws something at you and you try to
20 throw it back immediately, that that would not be possession
21 within the meaning of the law.

22 Now, is my client a perfect angel? No. He freely
23 admits that he had a bad drug problem. In fact, he self
24 describes as a junkie. That word junkie is an ugly word,
25 but, nonetheless, that's how he described himself, and I

1 think it accurately conveys what his addiction level was at
2 the time of this incident.

3 So I'll also ask you not only to be considering
4 whether or not the State has proven that Travis Conner
5 possessed these drugs, but also whether or not he possessed
6 them with the intent to distribute, or if he possessed them
7 and if he possessed them only to use them himself, that was
8 not the intention to distribute. Now, he doesn't have to
9 prove that. The State has to prove what its allegations
10 are. And, again, they have to prove them beyond any
11 reasonable doubt.

12 At the conclusion of this case I will ask you for
13 an appropriate verdict, whether it be a verdict of not
14 guilty, or a verdict of the lesser included offense of
15 possession.

16 Thank you very much for your attention.

17 THE COURT: Solicitor, you may call your first
18 witness.

19 MS. LESKANIC: Thank you, Your Honor.

20 The State calls Deputy Aaron Bowles.

21 THE COURT: Sir, if you will come forward, if you
22 would, and stand and be sworn, please.

23 DEPUTY AARON BOWLES, having been first duly sworn,
24 testified as follows:

25 THE COURT: State your name, please.

1 THE WITNESS: Deputy Aaron Bowles, Your Honor.

2 THE COURT: Ms. Leskanic, your witness.

3 MS. LESKANIC: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MS. LESKANIC:

5 Q. Where are you employed?

6 A. Cherokee County Sheriff's Office, ma'am.

7 Q. How long have you been at the Cherokee County Sheriff's
8 Office?

9 A. I have been employed as a full time deputy since
10 December 13th, 2011.

11 COURT REPORTER: Please pull that microphone
12 closer.

13 A. Yes, December 13th, 2011.

14 BY MS. LESKANIC:

15 Q. Okay. And what are your duties as a road deputy?

16 A. I conduct regular routine patrols of all areas within
17 Cherokee County. I conduct traffic stops. I answer calls
18 for service. I conduct property checks, things of that
19 nature.

20 Q. And were you working on July 6th of 2014, the date of
21 this incident?

22 A. Yes, ma'am, I was.

23 Q. Okay. And who was working with you that day?

24 A. Deputy Alvin Jennings.

25 Q. Was he a new deputy? Were you training him?

1 A. He was. I was his training officer for that day.

2 Q. Okay. Did you make a traffic stop in the area of South
3 Johnson Street here in Cherokee County?

4 A. I did.

5 Q. All right. And is South Johnston Street in Cherokee
6 County?

7 A. It is, ma'am.

8 Q. All right. Can you please describe for the jury why
9 you effectuated that traffic stop?

10 A. I believe we were driving on East O'Neal at first. I
11 would have to look at the date. The road that goes around
12 the university, Limestone College, and which is also within
13 Cherokee County.

14 And this driver, we come up -- we approached the
15 vehicle that is driving in front of us and I noticed that it
16 was driving somewhat erratically. It wasn't staying within
17 its lane. As I concentrated on this vehicle, multiple
18 times, I think at least once before I turned on the camera,
19 but definitely, one more time, as you will see on the
20 footage here, there is a portion where it goes approximately
21 one to two feet over in the opposite lane on a double
22 yellow, which is a traffic violation, and at that point I
23 started my procedure to conduct a traffic stop in the area
24 of East O'Neal and South Johnson Street.

25 Q. And did the vehicle stop immediately when you turned on

1 the blue light?

2 A. No, when the -- as soon as I activated my lights, they
3 had no identification that I was going to stop them. There
4 is some -- you know, I was talking to dispatch. I was
5 getting, you know, information back about the vehicle before
6 I actually stop it just as a safety precaution for myself, a
7 routine thing that I do.

8 And once I actually stop the vehicle, or turned my
9 lights on to affect the stop of the vehicle, it proceeded on
10 at least I think a whole block passing several spots where
11 it could have stopped, just -- you know, it could have
12 stopped on the side of the road, but it didn't do that. It
13 passed the side street that it could have turned down to
14 stop. And then it finally turned right onto South Johnson
15 Street and maybe two hundred feet down the road further and
16 it actually came to a stop after I had to honk my air horn
17 siren to stop the vehicle.

18 Q. Once the vehicle came to a stop, what did you do?

19 A. I immediately exited my vehicle. I always have the
20 door open before I get out. Any traffic stop I open my door
21 before we come to a complete stop. And as we came to a stop
22 I was already on my way out the door. I walked up to the
23 vehicle on driver's side as the passenger side was being
24 approached by Deputy Jennings.

25 As I approached the driver's side of the vehicle, I'm

1 looking for anything that's, you know, safety concerns as I
2 approached the vehicle. And as I approached the driver's
3 side of the vehicle I noticed the driver, Mr. Conner, making
4 several furtive movements, quick movements. And as I gained
5 further view inside the vehicle, he had his right hand down
6 into his pants. This is a major red flag indicator for me,
7 something, you know, that has potential to be dangerous to
8 myself and my partner, so I responded quickly by drawing my
9 weapon, and not knowing if he had a weapon as well, and
10 directing him to show me his hands immediately, which he
11 did. And as he brought his right hand out of his pants, he
12 produced a plastic bag and tossed it into the lap of the
13 passenger, Rachael Powell.

14 Q. And what did you do after that?

15 A. I immediately ordered him to show me his hands, which
16 he did. He complied and I pulled him out of the vehicle --
17 or holstered my weapon, pulled him out of the vehicle and I
18 detained him.

19 Q. Okay. And how about the passenger, Ms. Powell?

20 A. Deputy Jennings did detain her immediately as well. My
21 focus was on the driver as well.

22 MS. LESKANIC: May I approach the witness, Your
23 Honor?

24 THE COURT: You may.

25 BY MS. LESKANIC:

1 Q. I'm going to show you what's been marked State's
2 Exhibit 2. If you would take a look at that and tell me if
3 you recognize that?

4 A. I do.

5 Q. And what is that?

6 A.. This is the BEST/bag I submitted to SLED for analysis,
7 which contains the bag of what was presumed at the time to
8 be methamphetamine.

9 Q. Okay. So will you please explain to the jury after you
10 saw the bag being tossed into Ms. Powell's lap by the
11 defendant, you collected that?

12 A. Yes, ma'am, and as you will see, I actually -- I put it
13 on the hood of the car, you know, so that I could control
14 it. It's on video the whole time and I don't want it to go
15 anywhere. It was up there all the way to the point where I
16 actually tested -- field tested it on the street there with
17 a field test kit that we are issued by our office and it
18 tested presumptively for methamphetamine. And we then took
19 it into evidence and submitted it to SLED for further
20 analysis, further analysis, definitive analysis.

21 Q. Will you explain the procedure for placing that into
22 evidence and into the BEST/bag, please?

23 A. It was -- from that point in my control take it to
24 the -- back to the office where we have these pre-organized
25 bags called BEST/bags. It's an evidence bag. It's tear --

1 it's tear resistant, tamperproof, tamper-evident bag that we
2 drop the sample to be tested in. We fill out the
3 appropriate paperwork, you know, the chain of custody saying
4 who had it, who dropped it off, what time, what date. All
5 that is accompanied inside the bag, as well as the sample to
6 be tested, and it's part of our chain of custody to make
7 sure that everybody who knows who has it on the way to
8 court.

9 Q. So after it's placed into the tamper-evident packaging
10 you place it where?

11 A. I placed it into evidence, which is actually a sealed
12 vault within our sheriff's office and it doesn't come out of
13 there until the actual evidence technicians go in there and
14 hand deliver it to the SLED agents down in Columbia.

15 Q. And the only thing that was done to that substance, you
16 stated that you field tested it on the scene, is that
17 correct?

18 A. Yes, ma'am, I took a small portion of it, a small
19 sample so it can be checked on the street, and it's actually
20 a glass ampule. It looks like almost a cigarette filter
21 attached to a glass ampule and you break it and it has a
22 chemical that reacts with whatever the test kit is indicated
23 for, and in this circumstance it was methamphetamine, and as
24 soon as I touch the sample to the test kit, it give me a
25 positive indication with a bright blue hue or color on the

1 filter.

2 Q. And we have stated, your car was equipped with an
3 in-car video camera --

4 A. Yes, ma'am.

5 Q. -- is that correct?

6 A. Yes.

7 Q. All right. And did you read both Mr. Conner and Ms.
8 Powell their Miranda Rights on the scene?

9 A. Immediately, yes.

10 Q. Were both Ms. Conner and Ms. Powell searched on the
11 scene?

12 A. Yes. Yes.

13 Q. Could you please tell me about the search of Mr.
14 Conner? What was it you recovered?

15 A. My search of Mr. Conner recovered actually nothing
16 outside on him -- excuse me, no more further contraband, but
17 actual -- he did have cash, I believe, in his left front --
18 let me -- excuse me. Let me refer to my notes here.

19 All right. \$419 in his left-front pocket.

20 Q. That was the defendant?

21 A. Yes, ma'am.

22 Q. Did you find any cash or money on the female passenger
23 Rachael Powell?

24 A. No, ma'am, I did not.

25 Q. I'm going to show you now what's been marked State's

1 Exhibit 1. Tell me if you recognize this.

2 A. Yes, that's the video I produced for the court, yes.

3 Q. And has this been altered in any way or does this
4 substantially show the traffic stop that you effectuated on
5 July 6th of 2014?

6 A. Yes, ma'am, in its entirety.

7 MS. LESKANIC: Your Honor, at this time I would
8 offer State's Exhibit 1 for admission.

9 MR. JOHNSTON: Your Honor, subject to our pretrial
10 discussions we have no objection.

11 THE COURT: All right. It will be admitted
12 subject to our agreement and you may proceed.

13 (Whereupon, State's Exhibit No. 1 was entered into
14 the record as evidence)

15 MS. LESKANIC: May I publish to the jury, Your
16 Honor?

17 THE COURT: You may, the relevant portions.

18 MS. LESKANIC: Yes, Your Honor. Thank you.

19 (Whereupon, State's Exhibit No. 1 was played to
20 the jury panel)

21 BY MS. LESKANIC:

22 Q. I know that's not the complete traffic stop, but that's
23 the traffic stop up to that point --

24 A. Yes, ma'am.

25 Q. -- involving Mr. Conner and Ms. Powell, correct?

1 A. Yes.

2 Q. During the arrest of the traffic stop were you able to
3 determine whether or not Mr. Conner is employed or was
4 employed at that time?

5 A. I was able to determine that he is not employed or was
6 not employed at that time.

7 Q. So he was not working?

8 A. That's correct.

9 Q. And during the course of the traffic stop he was placed
10 under arrest?

11 A. Yes.

12 Q. And transported to the detention center?

13 A. Yes, ma'am.

14 Q. Did you continue to talk to him on the roadside as well
15 as on the way to the detention center?

16 A. All the way up until inside the jail, yes, ma'am.

17 Q. And did he make any additional statements to you?

18 A. He made several statements about his -- about his drug
19 use and his -- yes, ma'am, several things.

20 Q. Have you made notes from the video, as far as
21 additional statements that he made to you?

22 A. Yes, ma'am, I have.

23 Q. Would you please go through the statements that the
24 defendant made to you and share those with the jury?

25 A. Okay.

1 MR. JOHNSTON: Would you let us know which page
2 he's starting from, please?

3 THE WITNESS: Starting on page 3, sir.

4 MR. JOHNSTON: All right. Thank you, sir.

5 A. At the top it says "what's going to happen to me? I
6 know I'm going to jail."

7 I said "if and when it does test positive for
8 methamphetamine, I'm going to charge you with possession
9 with intent to distribute."

10 Further throughout the video -- I'm sorry I don't have
11 time stamps on these, but these are in chronological order
12 as they happened, my conversations with him, Mr. Conner.

13 "You didn't see it land in my lap?"

14 I said "no, I saw it in your hand in your lap, in your
15 pants."

16 And then he says "and I just grabbed it and tried to
17 shove it right in front of you. I didn't know what to do."

18 And then Deputy Jennings notes the reason for the
19 traffic stop is, as you saw him swerving over in the other
20 lane. I said "that's why I stopped you, for passing a
21 double yellow line."

22 And then there is an expletive here. He said -- I'll
23 just paraphrase. He said "I was just BS'n, man."

24 I said "was there a reason for that," asking him about
25 him driving over the yellow line.

1 He said "I mean, I didn't think nothing was going on.
2 I mean, I was just talking to" --

3 And then I say "did you notice you were driving all
4 over the road like that?"

5 And he says "I mean, all I was doing was just BSng,
6 man, talking. I didn't think all this was fixing to happen
7 or nothing."

8 I said "I understand."

9 And I stated -- do you want me to go into my
10 conversation, my brief conversation with Ms. Powell as well?

11 BY MS. LESKANIC:

12 Q. Just Mr. Conner, please.

13 A. Just Mr. Conner, okay.

14 Q. I believe it's six lines down on page 4.

15 A. Yeah.

16 He says "you know he came up" -- talking about -- I
17 believe he was talking about Deputy Jennings, but he is
18 saying "you know he came up on the wrong side of the car. I
19 just wish y'all would have seen the reason I was grabbing
20 and sticking it in my pants was because it landed in my
21 lap."

22 And I said "dude, your hand was in your underwear."

23 Q. And at the top of that page, Deputy Bowles?

24 A. Yes, ma'am.

25 Q. The sixth line down.

1 A. Oh, I'm sorry.

2 Q. That's okay.

3 A. I say to Mr. Conner, I say "when was the last time that
4 you used?"

5 He says "a couple hours. I'm all to hell because I
6 have been mean to my girlfriend."

7 And I go on to "who is your girlfriend?"

8 He tells me that and so forth.

9 Do you want me to continue in detail there?

10 Q. No, sir, you can go on to page five and pick up where
11 you left off.

12 A. Okay.

13 I said "dude, your hand was in your underwear," in
14 reference to where he was holding the methamphetamine.

15 He said "I grabbed it and shoved it in my shorts trying
16 to hide it, you know what I'm saying. I'm not saying that
17 it wasn't mine at all or nothing like that, or that I didn't
18 know about it. I'm just saying it got threw in my lap and
19 she just gets to ride out."

20 Then further and throughout the conversation he said "I
21 thought I had my life back together, man."

22 And then he -- it's kind of an unintelligible there. I
23 couldn't understand what he was saying when I reviewed the
24 video, but he said "what if it would have been more than 10
25 grams and I got a trafficking charge and what if some of it

1 was hers? I mean, it was all in one bag and it's in my lap.
2 That's all that matters, you know what I'm saying? I
3 appreciate y'all letting me talk."

4 And as the conversation progresses, I asked him, I said
5 "did you ask her to hide it and she just threw it back?"

6 And he says "no, she was holding it and she stuck it
7 down her pants."

8 I said "why was she holding it? Was she going to use
9 it?"

10 And he says "I don't know if she" -- and then something
11 unintelligible there. The microphone didn't pick it up. I
12 couldn't tell what he said. But he does say "she was
13 holding it. She stuck it down her pants and then right when
14 y'all walked up to the car all the sudden I can't do it and
15 she goes to put it over beside the seat and I was like don't
16 put it over there and she threw it in my lap and it was just
17 like" you were there -- "there you are," referring to me, I
18 believe.

19 Q. Okay. So he claims that the passenger, Ms. Powell,
20 threw the methamphetamine into his lap right as he
21 approached the vehicle?

22 A. Yes, ma'am, that's what he said.

23 Q. Okay. Hot potato?

24 A. Yeah, a hot potato.

25 Q. But it wasn't in his lap when you walked up to the car,

1 is that correct?

2 A. No, ma'am, it was all the way down his -- I couldn't
3 even see it, it was so far down his pants. I mean, that's
4 where his hand was.

5 Q. And in his statement to you that you just told the jury
6 he said "I'm not saying that it's not mine and I'm not
7 saying that I didn't know" --

8 A. That it was there, yeah, or about it, yeah.

9 And he actually goes on further to say that "you know,
10 what if some of it was hers? I mean, it's all in one bag
11 and it's in my lap and that's all that matters. You know
12 what I'm saying?"

13 Q. And he knew that if it had been 10 grams, it would have
14 been trafficking instead of possession with intent to
15 distribute?

16 A. That was interesting, yes, ma'am, he did know that.

17 Q. In the time that you walked up to the vehicle, did you
18 ever see --

19 MR. JOHNSTON: Your Honor -- Your Honor, I have a
20 matter of law.

21 THE COURT: Ladies and gentlemen of the jury, I'm
22 going to ask you to step back to the jury room. Don't
23 discuss anything about this case until I have asked you to
24 begin your discussions. You may retire.

25 (The following takes place outside the presence of

1 the jury panel)

2 MR. JOHNSTON: Your Honor, the defense moves to
3 strike the question and answer that was made a few moments
4 ago: "So the defendant knew that if there was 10 grams,
5 then it would be trafficking?

6 "Yes, that was interesting, he did know that."

7 Your Honor, I think that's prejudicial without
8 being in any way probative. I think there are many people
9 who know -- I mean, after all, it's published in the law
10 books what the weights are.

11 THE COURT: I think they are also posted on it.

12 MR. JOHNSTON: Sir?

13 THE COURT: We are charged with what's in the law
14 books, knowledge of that.

15 MR. JOHNSTON: Yes, sir, we -- we -- we are. So,
16 Your Honor, I think that that exchange of trying to
17 prejudice him because he happens to know what the law is is
18 unfair and it's not probative and I would ask that it be
19 struck.

20 THE COURT: Yes, ma'am?

21 MS. LESKANIC: I was just referring to the
22 statement that he made, Your Honor. We have to prove
23 possession with intent to distribute. I'm not sure what his
24 defense is going to be yet, but he seems to have -- I
25 understand it's in the law books, but not everybody knows

1 what's in the law books. I have to refresh my memory quite
2 often, and I believe it goes --

3 THE COURT: What was -- exactly what was his
4 statement? What did he say?

5 THE WITNESS: I'll read it, Your Honor.

6 THE COURT: What -- "if that was again more than
7 10 grams and I got a trafficking charge."

8 THE COURT: Okay.

9 MR. JOHNSTON: Your Honor, my position would be
10 that that sort of knowledge would be equally known to
11 someone who just uses drugs as opposed to someone who
12 traffics in drugs or someone who sells drugs.

13 Again, it's a matter of law.

14 MS. LESKANIC: I just think that's an issue for
15 the jury to whether that makes him think everybody that
16 would use drugs or possess them would know what the
17 trafficking weight was, or maybe somebody who was using
18 large quantities would make sure they didn't have more than
19 10 grams.

20 THE COURT: He made that statement after having
21 been giving his Miranda Rights indicating that what he says
22 could be and would be used against him in a court of law.

23 Mr. Johnston, it seems to me by that statement
24 that he raised the question of trafficking and what the
25 presumptive weights might have been in his own statement,

1 did he not?

2 MR. JOHNSTON: They weigh it in front of him.

3 THE COURT: I understand that. And then he made a
4 statement.

5 Read it again, Ms. Leskanic, what he stated.

6 MS. LESKANIC: It's actually the first portion is
7 on the video and Deputy Bowles did not read from that, but
8 when it is first weighed by Jerry Smith and he says nine
9 grams, the defendant says "not trafficking."

10 THE WITNESS: He asked, actually, before that. He
11 said "how much weight," and Jerry tells him in response to
12 his question nine grams."

13 And then he says "it's not trafficking."

14 I said "no, almost."

15 THE COURT: Mr. Johnston, in his own statement he
16 raises that issue himself and he did that after having been
17 given Miranda Warnings. He was apprised of anything that he
18 said could and would be used against him in a court of law.

19 I'm going to overrule the objection and allow it
20 to stand.

21 MR. JOHNSTON: All right.

22 THE COURT: How much longer do you intend to go,
23 Ms. Leskanic, because we are about ten until five. I'm not
24 trying to cut you short. I'm just trying to get to a good
25 stopping point. You can carry it over until tomorrow

1 morning, if you want to.

2 MS. LESKANIC: I don't think I have much more for
3 Deputy Bowles.

4 THE COURT: Okay. Well, maybe we can get through
5 examination of him and then we will start with
6 cross-examination tomorrow.

7 MR. JOHNSTON: In the morning, Your Honor?

8 THE COURT: Yeah.

9 MR. JOHNSTON: Yes, sir.

10 THE COURT: That's what I'm thinking.

11 All right, bring the jury in.

12 (The following takes place in the presence of the
13 jury panel) /KWR-RBGS.

14 THE COURT: All right. I have overruled an
15 objection.

16 You may proceed, Ms. Leskanic.

17 MS. LESKANIC: Thank you very much, Your Honor.

18 THE COURT: Yes, ma'am.

19 BY MS. LESKANIC:

20 Q. When you were reading from the statements made by
21 defendant, you stated on page five "I'm not saying that it
22 wasn't mine at all or nothing like that or that I didn't
23 know about it. I'm just saying it got threw in my lap and
24 she gets to ride out."

25 "She gets to ride out." What -- I'm not going to ask

1 you what he meant by that, but what happened to Ms. Powell
2 that day?

3 A. Ms. Powell was released. We did find a syringe in her
4 bra that contained a clear liquid. At that point in time I
5 was not aware that you could test a liquid with the field
6 test kits that we had. I was instructed by another officer
7 later, at a later time, that you could, in fact. So at that
8 point I only had the suspicion that it may have contained
9 methamphetamine. So at that point I did not have any reason
10 to take her into custody, other than, you know -- it
11 didn't -- I couldn't tell that there was meth in there. It
12 looked like clear liquid, so I couldn't take her off to jail
13 at that moment in time based on that, but she did, in fact,
14 actually go to jail the next day, so she didn't go scott
15 free.

16 Q. So when you got back to the office, you tested --

17 A. Yes, ma'am.

18 Q. -- the substance in the syringe?

19 A. That evening I actually signed the warrants on her
20 based on the presumptive test, the field test, using the
21 substance that was in her syringe.

22 Q. And it was methamphetamine?

23 A. Yes, ma'am..

24 Q. And you issued an arrest warrant for her?

25 A. Yes, ma'am, and actually SLED confirmed that it was

1 meth.

2 Q. Okay. Now, during Mr. Johnston's opening he commented
3 on the statement made by you on the video. I think it was
4 talking to Deputy Henderson, the female officer, that
5 arrived to search Ms. Powell and the two of you were
6 searching the vehicle?

7 A. Yes, ma'am.

8 Q. You are overheard with your body mike stating "I
9 believe they were tossing it back and forth?"

10 A. Yes, ma'am.

11 Q. Is that correct?

12 A. It is.

13 Q. Can you explain what was going on in your mind at the
14 time?

15 A. At the time, I mean, when I walked up to the vehicle,
16 he's in exclusive possession of it. He's the only one
17 holding it.. It's down his pants. It's not like he's tried
18 to throw it onto the ground, or shuck it off, or something
19 that, you know, he didn't, you know, willfully hold in his
20 hand. He had it in his pants. And then as soon as he saw
21 me and, you know, I gave him the command, he pulls his hand
22 out and tosses it into her lap.

23 Now, based on his statement that, "you know, "she threw
24 it in my lap," I -- I conceded that that could have been a
25 possibility at that point, but the totality of

1 circumstances, everything that I saw during --

2 MR. JOHNSTON: Your Honor, I would object for him
3 to draw some sort of conclusion. He can testify to what he
4 saw, but now he's going to make a pronouncement on the
5 totality of the circumstances. I don't think that's proper.

6 THE COURT: I am going to sustain the objection to
7 that response.

8 THE WITNESS: Okay.

9 A. The --

10 BY MS. LESKANIC:

11 Q. Let me just ask you this.

12 A. Sure.

13 Q. You made a statement that maybe they were tossing it
14 back and forth.

15 A. Yes.

16 Q. What did you see?

17 A. I saw him holding it and he pulled it out of his pants
18 and he threw it in her lap.

19 Q. Did you ever see it in her pants?

20 A. No.

21 Q. Did you ever see it in her hand?

22 A. No.

23 Q. Did you ever see Ms. Powell toss it to the defendant?

24 A. No, she didn't even touch it when he threw it in her
25 lap.

1 Q. During the search that you and Deputy Jennings
2 conducted, did y'all find anything else, other than the 8.44
3 grams of methamphetamine and the \$419 cash in the
4 defendant's pocket?

5 A. In reference to the defendant himself, or just in
6 general?

7 Q. Anything in reference that may have been used in the
8 drug trade.

9 A. The syringe and one empty bag.

10 Q. And what are the baggies typically used for, if you
11 have knowledge of that?

12 A. Typically they are used to contain drugs. They are
13 small, you know, 1 X 1, or 1 X 2, 1 X 1/2 bag, small bags.
14 They are commonly referred to as jewelry bags, but very
15 rarely in those circumstances do they actually contain
16 jewelry.

17 Q. Was there anything in that bag or was it just an empty
18 bag?

19 A. It was empty.

20 Q. Okay. Did you get a written statement from the
21 passenger, Rachael Powell?

22 A. No, ma'am.

23 Q. To date have you received a written statement from --

24 A. No, ma'am.

25 Q. -- Rachael Powell --

1 A. No.

2 Q. -- the co-defendant?

3 MS. LESKANIC: I think that's all the questions
4 that I have for this witness, Your Honor.

5 If you will answer any questions Mr. Johnston may
6 have, or the court.

7 THE COURT: Mr. Johnston, why don't you just wait
8 a minute.

9 Ladies and gentlemen of the jury, I know we are
10 about five minutes from five o'clock and I think Mr.
11 Johnston is probably going to take a little longer than five
12 minutes with this witness, so we are not going to start at
13 this time. I'll allow you to go home.

14 As you are going home I'm going to caution you
15 about some things. Again, I will instruct not to attempt to
16 gather any information about the case on your own. Don't
17 discuss the case with anyone. Don't allow anyone to discuss
18 it with you. Don't listen to or watch any media reports
19 about the case. I don't know that it will be on the news,
20 but if it is, don't listen to it, don't watch it. Turn it
21 off, walk away, whatever you have to do to ignore it.
22 Please do.

23 And one other thing. If anyone were to contact
24 you about your service on the jury, I want you to report
25 that to the court as soon as you can, if anyone tries to

1 influence your decision, as I have indicated. It's a crime
2 in this state for someone to do that.

3 We will start again in the morning at nine
4 o'clock. I'll ask you to be back in the jury room. They
5 will show you where to report. Come to that location at
6 nine o'clock in the morning. We should start shortly
7 thereafter.

8 You are free to go at this time. Thank you very
9 much.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: I'll caution the witness that the
13 witnesses are sequestered. You are not to discuss your
14 testimony with anyone during the break.

15 We will resume at nine o'clock.

16 Now, let me mention something to your client, Mr.
17 Johnston.

18 MR. JOHNSTON: Yes, sir.

19 THE COURT: Sir, you have been out on bond up
20 until this point in time. I will allow you to remain on
21 bond during the trial.

22 Now, I will caution you we are going to start the
23 trial again at nine o'clock in the morning. Should you fail
24 to appear at that time, we will continue the trial at nine
25 o'clock in your absence and at that time I will issue a

1 bench warrant for your arrest. Do you understand what we
2 will do if you do not appear?

3 THE DEFENDANT: Yes, sir. I will be here.

4 THE COURT: Be in the courtroom at nine o'clock.

5 Thank you very much.

6 MR. JOHNSTON: Thank you, Your Honor.

7 MS. LESKANIC: Thank you, Your Honor.

8 THE COURT: Court is in recess until that time.

9 (Whereupon, proceedings were adjourned to
10 September 16, 2015)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 TRAVIS SCOTT CONNER,) 2014-GS-11-00744
7 DEFENDANT.) SEPTEMBER 16, 2015
GAFFNEY, SOUTH CAROLINA

8
9 (VOLUME II)

10
11 B E F O R E:

12 THE HONORABLE ROGER L. COUCH, JUDGE. ; And a Jury.
13
14
15
16

17 A P P E A R A N C E S:

18 KIMBERLY L. LESKANIC, ASSISTANT SOLICITOR
19 ATTORNEY FOR THE STATE

20 ANDREW JOHNSTON, ESQUIRE
21 ATTORNEY FOR THE DEFENDANT
22
23

24 MICHAEL R. WATTS
25 CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, SEPTEMBER 16, 2016)

2 THE COURT: All right, Ms. Leskanic, is the State
3 ready to proceed?

4 MS. LESKANIC: Yes, Your Honor.

5 THE COURT: Defense ready, Mr. Johnston?

6 MR. JOHNSTON: Yes, sir.

7 THE COURT: I believe we are going to start with
8 your cross-examination of the witness.

9 MR. JOHNSTON: That's where we left off, yes, sir.

10 THE COURT: Let's bring the jury in.

11 (The following takes place in the presence of the
12 jury panel)

13 THE COURT: All right. The record will reflect
14 that the jury has returned to the courtroom and I hope
15 everyone had a good evening.

16 If any of you had any problems or difficulty in
17 complying with my instructions concerning your behavior
18 while you were away from the courthouse, if you had any
19 problems in that regard, please stand.

20 (No response).

21 THE COURT: All right. It appears that all jurors
22 have been able to comply with my instructions thus far.

23 When we stopped yesterday the State had examined
24 this witness and it was the defense's opportunity now to
25 cross-examine the witness.

1 So, Mr. Johnston, you may proceed with your
2 cross-examination.

3 MR. JOHNSTON: Thank you, Your Honor.

4 CROSS EXAMINATION BY MR. JOHNSTON:

5 Q. Good morning, officer.

6 A. Good morning, sir.

7 Q. This video that we watched yesterday --

8 A. Yes, sir.

9 Q. -- by my sort of not exact calculations, but just kind
10 of watching it, it looked like there was about two minutes
11 that -- two minutes, at least, that you were following the
12 car that Travis was driving, is that correct?

13 A. We were on the same road, yes, sir.

14 Q. Okay. And it was daylight?

15 A. Yes, sir.

16 Q. And was your car a marked vehicle?

17 A. Yes, sir.

18 Q. Okay. So anyone seeing it would have known that it was
19 a law enforcement vehicle?

20 A. Yes.

21 Q. Okay. So for at least two minutes the occupants of the
22 vehicle knew, or could have known, that a law enforcement
23 officer was behind them?

24 A. I have no idea if they knew or not, sir.

25 Q. They could have known?

1 A. Yes, anybody that would look in their rearview mirror
2 could discern that we were a police vehicle, yes, sir.

3 Q. A lot can happen in two minutes?

4 A. Yes, sir.

5 Q. And at some point you went merely from following that
6 vehicle to actually turning the blue light on?

7 A. Yes, sir. We were on East O'Neal Street when I
8 actually engaged my blue lights, sir.

9 Q. All right. Now, is it fair to say that when the blue
10 light comes on, that is a direct command from you to the
11 driver to stop and pull over?

12 A. That's correct.

13 Q. So once the driver sees the blue light, he's required,
14 in fact, to pull over?

15 A. Yes, sir.

16 Q. And it even took some time -- I believe you described
17 yesterday that it took some time after you turned the blue
18 light on for the car to pull over?

19 A. Yes, sir.

20 Q. Do you have any estimation how much time that was?

21 A. I would guess you do. I don't -- I don't have that
22 exact.

23 Q. Actually I don't know on that point.

24 A. It was several seconds.

25 Q. I can't actually tell. Sometimes I can when I'm

1 watching the video I can see the lights come on. I really
2 couldn't see the lights on there.

3 A. There is a loud click from me turning on the lights,
4 and it appeared maybe two blocks.

5 Q. Two blocks. Okay.

6 So, again, some things can happen in two blocks?

7 A. Yes, sir.

8 Q. You are not what we would call a drug investigator, are
9 you?

10 A. Not specifically. My duties do -- I find myself from
11 time to time conducting patrols on the street and I very
12 frequently encounter drug use, so we do see that quite
13 frequently, sir.

14 Q. But you are not a dedicated --

15 A. No, sir.

16 Q. -- narcotics investigator?

17 A. No, sir, I'm not.

18 Q. And your agency, in fact, does have --

19 A. We do.

20 Q. -- dedicated narcotics investigators?

21 A. We do.

22 Q. I mean, dedicated in the sense of that's --

23 A. That's all they do --

24 Q. -- all they do?

25 A. -- yes, sir.

1 Q. And is it fair to say that this traffic stop was based
2 solely on the fact that you observed the vehicle, you
3 observed a traffic violation and you pulled it over?

4 A. That's correct, sir.

5 Q. Okay. So you were not following up on a tip from an
6 informant, or --

7 A. No, sir.

8 Q. -- you were not performing a drug investigation, per
9 say?

10 A. No, sir.

11 Q. This was a traffic investigation that turned into a
12 drug investigation when you saw the drugs?

13 A. Yes, sir.

14 Q. Fair to say?

15 A. Yes, sir.

16 Q. Now, yesterday I believe you testified that the driver
17 was making furtive movements?

18 A. Yes, sir.

19 Q. Is that a correct characterization of what you said?

20 A. Yes, sir.

21 Q. I had to look up furtive. What the it mean to you?

22 A. Exaggerated, non-normal movements.. Anything that would
23 draw suspicion or concern from me, the law enforcement
24 officer, to conduct my duties.

25 Q. Kind of sneaky, suspicious looking actions?

1 A. Suspicious is a relative term. Pertinent to me, yes,
2 sir.

3 Q. Okay. Well --

4 A. To your average person it may not appear suspicious,
5 but normal movements when I approach a vehicle on a traffic
6 stop, it seemed suspicious. Reaching out your hand seemed
7 suspicious to me.

8 Q. It seemed furtive?

9 A. Yes, sir.

10 Q. Well, now, the passenger was also making furtive
11 movements, weren't they?

12 A. I was not in the position to see the passenger, sir.

13 Q. Are you familiar with your report in this case?

14 A. Yes, I actually have it right here.

15 Q. Would you be kind enough to look at -- you have got two
16 kind of narratives. This is the one I'm interested in.

17 A. Yes, sir.

18 Q. Could you take a look at that?

19 Start for me, if you would, the third sentence and read
20 for me.

21 A. "I observed the suspect and the passenger making
22 several furtive movements. I approached the driver."

23 Q. That's good.

24 A. Okay.

25 Q. So in your report you noted that it wasn't just the

1 driver making those suspicious movements, but it was, in
2 fact, the driver and the passenger?

3 A. Yes, sir.

4 Q. Is it fair to say that after these drug were discovered
5 that Mr. Conner protested that they had been thrown in his
6 lap almost from the very beginning by the passenger?

7 A. He said they were thrown in his lap, yes, sir.

8 Q. Okay. Do you have the -- not exactly a transcript, but
9 we will call --

10 A. It's our conversation with him as it was pertinent to
11 the case, yes, sir.

12 Q. And these are the notes that you took based on the
13 video?

14 A. Yes, sir.

15 Q. Yesterday, if I recall correctly, you said when you
16 were reading what you say in response to what Travis said,
17 Travis says "you didn't see it land in my lap."

18 A. Uh-huh.

19 Q. And do you recall what you said yesterday?

20 A. I believe it's right here, but what did I say
21 yesterday?

22 Q. Well, that's what I'm asking you.

23 A. Well, here. It says "I saw it in your hands."

24 Q. That is what you said yesterday?

25 A. It is.

1 Q. But that's not what the paper says, is it?

2 Isn't that the paper right there?

3 A. I said -- in my report here I said "suspect moved his
4 hand and I observed him to be holding a plastic bag
5 containing white substance."

6 Q. So right now I'm asking you what you said on the video.
7 Now, you took notes off the video of what you said?

8 A. Uh-huh.

9 Q. You said yesterday "I saw it in your hand," right?

10 A. Yes.

11 Q. That's what you testified to today?

12 A. Yes.

13 Q. "I saw it in your hand".

14 A. Yes.

15 Q. The "it" means the bag of drugs?

16 A. Yes.

17 Q. But that's not what the transcript says, is it? Read
18 it carefully.

19 A. "I saw it in your hands."

20 Q. There is no "it" there. And where is the "it"?

21 A. Right after I saw it?

22 We are at the top here?

23 Q. Okay. Let me see what you are reading from.

24 Okay.

25 A. I'm on page one. You are on page two.

1 Q. I'm on page three.

2 A. Let's go to page three.

3 Q. Read what you said on page three, and this is the one I
4 was asking you about when you were reading from your notes
5 yesterday --

6 A. Uh-huh.

7 Q. -- that you said "I saw it in your hand in your lap."

8 A. "In your pants," yes.

9 Q. Read to me what the transcript says.

10 A. "No, I saw your hand in your lap in your pants."

11 Q. "No, I saw your hand in your lap in your pants."

12 A. He does have two hands.

13 Q. Sir?

14 A. He does have two hands.

15 Q. Well, I hope he does, but the transcript doesn't have
16 an "it" there, does it?

17 A. No, sir, that part does not. The first part -- the
18 first page I was referring to does.

19 Q. All right.

20 A. Where I say "I saw it in your hands."

21 Q. Now, despite the fact that you say that you saw it in
22 his hands, that you retrieved it from him, you continued to
23 ask questions. You asked questions of both the driver and
24 the passenger.

25 A. Yes, sir.

1 Q. You asked "whose is it?"

2 A. Yes, sir.

3 Q. You also, as we discussed yesterday, said to one of the
4 other officers "I think they were tossing it back and forth
5 between the two of them"?

6 A. I did say that, yes, sir.

7 Q. Now, while you are following the car --

8 A. Uh-huh.

9 Q. -- you can't see --

10 A. No, sir, I can't see --

11 Q. -- what people's hands are doing because there is
12 distance. There is the trunk of the car?

13 A. Absolutely.

14 Q. There is the two seats that probably go up at least to
15 where the heads of the individuals are?

16 A. Uh-huh.

17 Q. So you can't really tell at all what the hands were
18 doing --

19 A. No.

20 Q. -- while you are following it?

21 A. That's correct.

22 Q. So they could have been doing a lot?

23 A. They could have been doing anything, yes, sir.

24 Q. Okay. But after you stopped the car and you walked
25 toward it, you observed the driver and the passenger making

1 suspicious movements.

2 THE COURT: Is that a question, Mr. Johnston? Is
3 that a statement?

4 MR. JOHNSTON: It's intended to be a question.
5 I'm asking him to confirm that, if he would.

6 THE COURT: Okay.

7 A. Yes.

8 BY MR. JOHNSTON:

9 Q. Is that correct?

10 A. Yes.

11 MR. JOHNSTON: I'm sorry, Your Honor.

12 THE COURT: That's all right.

13 MR. JOHNSTON: I'll try to be more clear.

14 BY MR. JOHNSTON:

15 Q. Now, Travis told you that he had at least some time
16 within the recent past had a very good job?

17 A. I don't recall what he said. I don't remember. He
18 said he -- no, I do remember that, actually, looking at
19 the -- he said that at some point he did have a job.

20 Q. Okay. Well, did he say it was a very good job?

21 A. That's relative. I didn't -- I didn't --

22 Q. It's relative to him?

23 A. Yes.

24 Q. Okay. So if he said it was a very good -- I'm not --
25 I'm not asking you for your opinion about whether it was a

1 very good job.

2 A. I do recall him saying that, yes.

3 Q. He said he had a very good job?

4 A. In the past, yes. I don't recall when.

5 Q. Okay. He also said, when you asked about the \$419,
6 that he was going to pay a bill?

7 A. He said it was four bills, yes.

8 Q. Now, you are entitled to take -- to seize drug-related
9 money, are you not, sir?

10 A. Yes. We have certain protocol which we follow, but,
11 yes, by the law I think we are allowed to seize what we
12 believe is to be drug money.

13 Q. Did you --

14 A. No, I was directed not to seize that money, per our
15 supervisors.

16 Q. Don't tell me what somebody else said. Right now I'm
17 just asking you, you are entitled to seize what you believe
18 to be drug-related money?

19 A. Yes.

20 Q. That's correct?

21 A. And I attempted to do that.

22 Q. Okay. But you did not do it in this case?

23 A. I was not able to, no, sir.

24 Q. Okay. In fact, you gave the money back to him?

25 A. Yeah, I wouldn't have anything else to do. I wouldn't

1 throw it away.

2 Q. Okay. The passenger, Ms. Powell --

3 A. Yes.

4 Q. -- she had a loaded syringe --

5 A. Yes, she did.

6 Q. -- in her bra?

7 A. She did.

8 Q. You did not arrest her that day?

9 A. Not that day, no, sir.

10 Q. And the reason you did not arrest her was because you
11 didn't have a test kit?

12 A. No, we did have a test kit. I was not aware that --

13 Q. You were not aware that you could use it for later?

14 A. Yes, that's correct.

15 Q. I apologize. Okay.

16 Did she admit to you that it was methamphetamine?

17 A. No, sir, she did not.

18 Q. Did she deny it?

19 A. She said it was water I believe is what she said.

20 Q. She said it was water?

21 A. Yes.

22 Q. We now know that is a lie, don't we --

23 A. Yes, sir.

24 Q. -- because it's been tested by the State Law

25 Enforcement Division and it, in fact, contained

1 methamphetamine?

2 A. That was correct.

3 Q. So had she admitted to you that it was methamphetamine,
4 would you have arrested her?

5 A. Absolutely.

6 Q. Okay. So the fact that you didn't have the knowledge
7 to do the test and the fact that she lied to you allowed her
8 to leave?

9 A. Yes, sir.

10 Q. To ride, as Mr. Conner referred to?

11 A. "To ride out."

12 Q. "To ride out," as he put it?

13 A. Yes.

14 Q. And, in fact, she rode out with -- I don't know if this
15 is a purse. It was a funny looking plastic box. It almost
16 looked like a fishing tackle --

17 A. Yes, sir.

18 Q. Fishing tackle box?

19 A. Yes, sir.

20 Q. Do you know what I'm talking about?

21 A. I believe -- I believe so. I think he was searching it
22 on the hood of the car there. Deputy Jennings was, yes.

23 Q. Okay. And she left with that box, didn't she?

24 A. Yes, sir.

25 Q. So apparently that was hers?

1 A. Yes.

2 Q. Whether she was using it as a purse, or overnight bag,
3 or what have you?

4 A. I would guess there were female items in it. I don't
5 recall her claiming ownership of it, but I think she did
6 leave with it, yes.

7 Q. You do recall her claiming ownership, or you don't?

8 A. I said I don't recall her claiming ownership of it.

9 Q. Well, the video shows her walking off with it.

10 A. Okay.

11 Q. Do you agree with that?

12 A. I don't know.

13 Q. Okay. We don't dispute that --

14 A. Okay.

15 Q. -- do you?

16 A. No, I don't -- I don't dispute it. If the video, it's
17 on the video.

18 Q. All right.

19 A. I'm not saying I noticed it out there. I don't recall
20 it specifically.

21 Q. Fair enough. Fair enough.

22 Do you know how methamphetamine is converted from its
23 solid or powder form into a liquid to be placed inside of a
24 syringe?

25 A. I think it's mixed with other liquid.

1 Q. Yes.

2 Do you know that large tablespoons are often used for
3 that purpose?

4 A. And I saw the tablespoon you are talking about and the
5 reason I had him put it back in there, I don't recall seeing
6 any residue in there that would lead me to believe that it
7 had been used for that.

8 Q. Well, you are sort of rushing me, but let me take this
9 point by point, if we may.

10 A. Sure.

11 Q. You are aware that large tablespoons are, in fact, a
12 frequent medium for the mixing of powder and the liquid to
13 turn it into a liquid so that it can be placed into a
14 syringe so that it can be injected into the person's body?

15 A. Yes, sir.

16 Q. Fair enough?

17 A. That's correct.

18 Q. Okay. You didn't see any snacks in that big bag, did
19 you?

20 A. No, sir.

21 Q. No pudding or --

22 A. No.

23 Q. -- apple sauce?

24 A. No.

25 Q. The officer who was doing the searching, his name is?

1 A. Deputy Jennings.

2 Q. Deputy Jennings?

3 A. Yes.

4 Q. He, in fact, held that spoon up, showed it to you?

5 A. Yes.

6 Q. Apparently he thought it was of some interest?

7 A. He wanted to show it to me, yes, but I don't recall
8 seeing any residue or anything in there that would lead me
9 to believe that it had been used in the manufacture of
10 drugs.

11 Q. Okay. Well, you are aware that they have things like
12 kleenex?

13 A. Absolutely.

14 Q. Right?

15 A. Yes.

16 Q. And it's not too hard to wipe off a spoon, is it?

17 A. No.

18 Q. I mean, don't we wipe off spoons every day?

19 A. Yes, sir.

20 Q. Okay. Is it fair to say that that spoon was placed
21 back in the tackle box purse of the lady and given back to
22 her?

23 A. Yes, it was placed back in there, yes.

24 Q. Did you find the baggy somewhere?

25 A. We did. We found an empty bag, yes, sir.

1 Q. Where did you find it?

2 A. I believe Deputy Jennings may have found it in the box.
3 I would have to look back at the video. He didn't tell me
4 where he had found it."

5 Q. Which box?

6 A. I believe the clear box.

7 Q. The clear box?

8 A. Yes.

9 Q. And who did the clear box walk off with?

10 A. It walked off with Ms. Powell.

11 Q. Okay. So evidently the baggy that seems to be of some
12 evidentiary purpose, as it's mentioned in solicitor's
13 opening statement, isn't here for us?

14 A. No, sir, it's not.

15 Q. And, in fact, it left with the passenger Ms. Powell?

16 A. It did.

17 Q. Was it checked for residue?

18 A. There was no visible residue as I could tell, sir.

19 Q. Well, my question was was it checked?

20 A. I --

21 Q. Did you take it and look at it carefully is what I
22 mean?

23 A. Visible, yes. Visually, like I said, I couldn't see
24 anything on it.

25 Q. I'm just trying to see if you looked at it closely, or

1 if you just kind of looked at it from a distance. That's
2 all I'm trying to determine.

3 A. I really don't recall. I don't recall seeing anything
4 that would lead me to believe that there was any drugs in
5 it.

6 Q. Okay. So apparently it had no evidentiary value to
7 you?

8 A. Not to me, no, sir.

9 Q. And, in any case, it came out of the big purple -- I
10 mean out of the big plastic clear tackle box?

11 A. It may have. I don't recall.

12 Q. You don't know?

13 A. I didn't pull it out myself, no, sir.

14 Q. Okay. That's your best guess right now?

15 A. Yes, sir.

16 Q. All of the drugs that you found were in how many bags?

17 A. One.

18 Q. One bag?

19 A. Yes.

20 Q. And is it fair to say that it was basically in the
21 corner with the top tied so the contents wouldn't spill out?

22 Is that how this was --

23 A. Yes, sir.

24 Q. -- packaged?

25 A. Yes, sir.

1 Q. How was it closed up? Was it closed up by taking the
2 end and twisting it? Did it have a twist tie on it, or
3 what?

4 A. It was just tied in a knot, from the best I can recall.

5 Q. Just tied in a knot?

6 A. Yes, sir.

7 Q. But a knot that you could open again if you wanted to
8 get in it?

9 A. Yeah.

10 Q. So not a tight knot?

11 A. No, I don't know what you mean. It wasn't -- I mean, I
12 could untie it. I had to untie it to --

13 Q. Okay. That's all I wanted to know. You could untie it
14 and you could tie it back?

15 A. Yes.

16 Q. Right?

17 A. Yes, I had to untie it to actually test it.

18 Q. All right. And, in fact, you were concerned that that
19 bag might bust?

20 A. Uh-huh.

21 Q. So you had -- you were looking for a bag of your own --

22 A. Yes.

23 Q. -- from your car to put it in?

24 A. Yes, sir.

25 Q. Because you carry baggies in your car?

1 A. We carry -- I believe I wound up using a brown
2 envelope.

3 Q. You didn't have any baggies that day? You thought you
4 may have had some?

5 A. Right, right. Deputy Jennings or Deputy Henderson,
6 somebody had a bag.

7 Q. Somebody had one?

8 A. Yes.

9 Q. Travis freely admitted to you that he was a user of
10 drugs?

11 A. Correct, sir. They both did.

12 Q. And, in fact, he said -- he called himself a junkie?

13 A. He did.

14 Q. And he told you -- you asked him if he -- how he
15 ingested it?

16 A. Uh-huh.

17 Q. And I believe you said you smoke it or slam it?

18 A. Uh-huh.

19 Q. Is that right?

20 A. Uh-huh.

21 Q. We know what smoking is. What is slamming?

22 A. It's an injection. It's a common street term they use
23 to say inject, inject drugs intravenously.

24 Q. And you can also snort the drug, can't you?

25 A. Yes.

1 Q. All right. He said that he slammed drugs sometimes?

2 A. Yes.

3 Q. And did he show you needle marks on him?

4 A. He showed me one on his -- I believe right arm.

5 Q. Okay. Any question in your mind that he's a user of
6 drugs?

7 A. No, sir.

8 Q. Or that he was at that time, anyway?

9 A. Yes, sir.

10 Q. You say that you make drug busts from time to time,
11 that that's not your only --

12 A. No.

13 Q. Only thing.

14 A. When it comes across. I don't very frequently --
15 infrequently I do actually go out and --

16 Q. On occasion when you make drug arrests do you find
17 drugs?

18 A. Yes.

19 Q. And drugs are drugs -- powder drugs, marijuana, things
20 like that, other than pills, they are generally sold by
21 weight?

22 A. Correct, sir.

23 Q. Am I correct?

24 A. Yes.

25 Q. So in terms -- in order for a person to know how much

1 he's selling or how much he's buying --

2 A. Uh-huh.

3 Q. -- he would need to know the weight, or it would be
4 advantageous --

5 A. It would have to be weighed.

6 Q. It would be advantageous for him to weigh it?

7 A. Yes.

8 Q. I mean, I suppose that someone could eyeball it and
9 make a guess as to what it was?

10 A. Somebody could weigh it for him, yes, sir.

11 Q. But is it fair to say that scales are often found in
12 proximity to people who are selling drugs?

13 A. Yes.

14 Q. In their possession?

15 A. Yes.

16 Q. You found no such scales in this case?

17 A. Not in this case, no, sir.

18 Q. Is it fair to say that firearms are often associated
19 with narcotics trafficking?

20 A. I actually infrequently find firearms on the drug
21 dealing cases that I -- but, yes, they are commonly known to
22 be found with drug sales, but myself personally I have found
23 very few firearms.

24 Q. But as you said, you are not a dedicated drug --

25 A. That's correct.

1 Q. -- investigator?

2 A. That would be fair to say.

3 Q. But you basically just -- when you see them, you make
4 the arrest or investigate the case, what have you?

5 A. Yes, sir.

6 Q. You found no firearms in this case?

7 A. No, I didn't.

8 Q. You asked Travis the following question, and I'm
9 talking about on page six --

10 A. Okay.

11 Q. -- of the notes --

12 A. Okay.

13 Q. -- about four-fifths of the way down --

14 A. Okay.

15 Q. -- you asked the question "why was she holding it? Was
16 she going to use it?"

17 A. Uh-huh.

18 Q. Please answer other questions the solicitor has for
19 you.

20 THE COURT: You may redirect.

21 MS. LESKANIC: Thank you, Your Honor.

22 THE COURT: Yes, ma'am.

23 REDIRECT EXAMINATION BY MS. LESKANIC:

24 Q. Deputy Bowles, will you start where Mr. Johnston left
25 off on page six with Mr. Conner's response to your question?

1 A. Yes, ma'am. I asked him, I said "why was she holding
2 it? Was she going to use it?"

3 And I said -- or excuse me, Mr. Conner said "I don't
4 know. She" -- dot, dot, dot, and it was -- the speech was
5 muffled between myself and the partition. I couldn't
6 understand. My microphone really didn't pick him up there,
7 but he went on to say "she was holding it. She stuck it
8 down her pants and then right when y'all walked up to the
9 car, all the sudden I can't do it," quoting her. "And she
10 goes to put it over beside the seat and I was like don't put
11 it over there and she threw it in my lap, and I was just
12 like there you are," referring to me being on the car.

13 Q. Okay. So what she was doing, according to the
14 defendant, was holding it?

15 A. Yes.

16 Q. Okay. And then she was going to hide it beside the
17 seat and he said "don't put it there?"

18 A. Yeah, and before that I said "did you ask her to hide
19 it and she just threw it back," questioning him about it?

20 And he said "no, she was holding it and she stuck it
21 down her pants."

22 And I said "why was she holding it? Was she going to
23 use it," and then he went on to say those other things.

24 Q. If you would, please, go to page three of those notes.
25 This is something Mr. Johnston was asking you about where

1 y'all had the conversation over the word "it". And I
2 believe on page one, your comment, what was confusing is you
3 do say "I saw it in your hand?"

4 A. Yes.

5 Q. But then Mr. Johnston referred you to page three.

6 A. Yes.

7 Q. And his client's question was "you didn't see it land
8 in my lap."

9 And your response was "no, I saw your hand in your lap
10 in your pants."

11 What is Mr. Conner's, the defendant's response to that?

12 A. "And I just grabbed it and tried to shove it right in
13 front of you."

14 Q. So there is the word "it" --

15 A. Yes.

16 Q. -- by the defendant?

17 A. Yes.

18 Q. "I just grabbed it and shoved it in my pants?"

19 A. Yes.

20 Q. Is that correct?

21 A. Yes.

22 Q. Or "tried to shove it right in front of you." Okay.

23 Let's go back to the furtive movement. Can you
24 describe for the ladies and gentlemen of the jury what
25 movements you saw on behalf of the defendant as you were

1 approaching the vehicle?

2 A. As I approached the vehicle, my focus is on him. And
3 as I get up to the window, he's got his right hand down his
4 pants, like all the way up to the wrist, and that startled
5 me at the very least, and then I drew my weapon and I
6 ordered him to show me his hands. That's the point he
7 pulled his hand wrist deep out of his pants holding the
8 baggy and tossed it into Ms. Powell's lap.

9 Q. Okay. And then there was a question about whether or
10 not you saw furtive movements on behalf of the passenger Ms.
11 Powell. Did you see any suspicious movements from Ms.
12 Powell that you recall?

13 A. No, and what I was -- I'm the only one that writes the
14 report, or I'm the only one that wrote the report here.
15 Deputy Jennings, you know, he may have seen more than me. I
16 don't recall what he said to me directly, but, no, they were
17 both moving back and forth in the car. That's not disputed.
18 They were both moving back and forth, but I don't recall
19 her --

20 Q. What do you remember by that, moving back and forth in
21 the car?

22 A. There was movement between the two of them. It's -- it
23 was nondescript, but the only movement that I saw directly
24 that I can really define was his movement out of his pants,
25 into his pants and out of his pants.

1 Q. And I just want to be clear for them. When you say
2 movement between the two of them, do you mean they were
3 doing something together, or you saw --

4 A. They were just moving in the car.

5 Q. -- them moving separately?

6 A. Moving more than normal in the car.

7 Q. And where were you when you saw the movement?

8 A. Walking up to the car.

9 At one point I tried to make my approach to the vehicle
10 to the center the trunk. And, you know, I touched the
11 trunk. At that point I -- you know, I'm still kind of high
12 on the vehicle. I can't see much, but as I'm walking up
13 there, there are -- you know, there is movement in the
14 vehicle. And then I walk around to the driver's side and
15 deputy -- you can see me on the video. I direct Deputy
16 Jennings to go to the passenger side so we are not both
17 standing on the same side of the vehicle for safety
18 concerns..

19 Q. All right. Were there any -- and I assume when you
20 stop someone on the traffic stop, you don't know what you
21 are going to find as you are walking up to the vehicle?

22 A. No.

23 Q. So you are looking through the back window of the car?

24 A. Yes.

25 Q. Okay. Did you see -- what would the ladies and

1 gentlemen of the jury have seen if they had been in your
2 shoes as you walk up to the car, if you can recall?

3 A. They would have seen, you know, the back of their heads
4 moving, or their shoulders. You can see movement from their
5 shoulders. There is movement there, side-to-side movement.

6 And when I go up to the car, again, you have got --
7 again, up to the car on the driver's side, you know, as much
8 as I can without over-exposing myself unnecessarily. I see,
9 you know, through the driver's side window, you know, as you
10 are right here looking down into my lap and that's where I
11 can see, you know, Mr. Conner's hand, you know, in his pants
12 and then coming out of his pants. And at that point I'm --
13 you know, I'm aware of the situation of -- I draw my weapon.
14 I'm very focused on him and I can see him tossing the bag
15 into Ms. Powell's lap.

16 Q. All right. Is it fair to say that despite seeing some
17 movement inside the car, do you know what they were doing
18 inside the car before you approached the window?

19 A. I have no -- I have no clue. That's -- yeah, the only
20 thing I could see was him pulling the bag out of his pants
21 and tossing it into her lap. It would be an unfair
22 assumption to say I could see everything in the car.

23 Q. Before you got up to the window did you know -- could
24 you tell from the movements that you saw through the window
25 that he had shoved his hand down his pants?

1 A. Before I had got there, no.

2 Q. Okay. So you are just looking through the back glass
3 and they are not sitting perfectly still?

4 A. Yeah, I can't see below the seat.

5 Just like you were standing behind me here, you
6 couldn't see what I'm doing. You know, you could see my
7 shoulders moving. You can see my -- you know, my head
8 moving, but you can't see what my hands are doing, unless
9 they are above the back of the seat, which they were not.

10 Q. I think we went over this yesterday. Mr. Johnston
11 touched on it again. Your statement to Deputy Henderson "I
12 think they were tossing back and forth." Did you see that
13 happen?

14 A. No, never. Well, he tossed it into her lap, but there
15 was no back and forth that I could see. It was just by his
16 statement and I felt obligated to investigate it.

17 Q. Okay. So that was based on what the comments that he
18 had made to you?

19 A. Yes.

20 Q. And that was just your speculation --

21 MR. JOHNSTON: Your Honor, I object to leading the
22 witness.

23 BY MS. LESKANIC:

24 Q. Was that speculation?

25 THE COURT: I'll -- let me rule on the objection.

1 She's rephrasing the question, so I'll allow her
2 to do so.

3 MR. JOHNSTON: All right.

4 THE COURT: You may proceed.

5 MS. LESKANIC: I apologize. Thank you, Your
6 Honor.

7 BY MS. LESKANIC:

8 Q. Were you speculating when you made that statement?

9 A. I'm sorry?

10 Q. I'm sorry.

11 Were you speculating when you said "I think they were
12 tossing it back and forth?"

13 A. Yes, that was purely based off his statement.

14 Q. There were questions about the defendant's employment,
15 that he had made statements to you that at one time he had a
16 good job. Did he make any statements about what had
17 recently happened in his life or how his life was going?

18 A. I would have to look back at it, but as I recall, he --
19 I mean, he made several statements throughout our -- you
20 know, the time of the -- the great length of time that we
21 were out there that he had been back on drugs and things
22 were going downhill significantly.

23 Q. So at the time of the stop he was not employed --

24 A. No.

25 Q. -- is that correct?

1 A. That's correct.

2 Q. And his statements about -- do you know how long he
3 said he had been back on drugs?

4 A. I would have to look here. I don't recall directly.

5 He said he had used drugs about a couple hours is what
6 is quoted, but -- I don't recall exactly how long he said he
7 had been back on drugs. I'm sorry.

8 Q. Okay. That's all right.

9 But what was the general statement that he made to you?

10 A. That -- I mean he started to get back on drugs and his
11 life was going down. He said he was doing good for awhile
12 and now it's -- you know, things had gone downhill
13 significantly and he started using again.

14 Q. Okay. The \$419, you found that in his, I believe,
15 right or left front pant's pocket, but anyway --

16 A. Left front.

17 Q. -- inside hit pants, is that correct?

18 A. Yes, ma'am.

19 Q. And that was cash?

20 A. Yes, ma'am.

21 Q. Will you please explain why that was not seized as or
22 kept by the police department?

23 A. At that time, and it's actually since changed, we have
24 our own internal policies at the sheriff's office. It cost
25 the sheriff's office some money to actually seize money.

1 It's a legal process and we just can't take people's money.
2 That's not how we work, or how any law enforcement agency
3 works.

4 But, yes, the attorney was correct, we do typically
5 seize money that we associate with drug sales, and that
6 large amount of drugs indicated -- you know, sales in
7 conjunction with the money is very frequently a further sign
8 of drug sales, and we did attempt to seize that money. I
9 called several supervisors and --

10 MR. JOHNSTON: Your Honor, I object if he's going
11 to say what the supervisors said.

12 A. Our policy is not to seize --

13 THE COURT: I'll sustain the objection, so you may
14 proceed, without quoting that individual.

15 THE WITNESS: Okay.

16 A. The policy at the sheriff's office is not to seize
17 money less -- at that time it was not to seize money less
18 than a \$1,000, which is this is far less than a \$1,000. And
19 now it has since changed to no less than \$2,000, so we have
20 to err on the side of caution.

21 Yes, that money did go back to him. I'm not going to
22 throw his money away.

23 BY MS. LESKANIC:

24 Q. But based on sheriff's department policy you were not
25 allowed to seize that money?

1 A. Correct. That is correct.

2 Q. Now, Ms. Powell, she -- you questioned her as well on
3 the side of the road, is that correct?

4 A. Yes.

5 Q. Did she make any statements to you about whether or not
6 she was a methamphetamine user?

7 A. Yes, she admitted that she had a needle in her bra. We
8 had a female deputy come out there and search her. She -- I
9 do have a couple of quotes from her.

10 I asked the suspect "where is the needle?"

11 She said she didn't have any needles.

12 I look at Powell. I said, "Ms. Powell," I said "do you
13 shoot it," and she said "I do sometimes."

14 And I said "do you have any on you," and she kind of
15 motions with her head, and I said yeah.

16 And I said "are those needles loaded," and she said
17 "no."

18 And then I said "when was the last time that you used,"
19 and she said "hour."

20 And I said -- she said -- excuse me, I said "an hour
21 ago?" I said where do you stay at?" She gives me her
22 address, and I say "okay."

23 Q. All right. So she admitted to you that she had used
24 methamphetamine within the hour or an hour prior to the
25 traffic stop?

1 A. Yes, ma'am.

2 Q. And she did have needles on her?

3 A. She had a needle on her, yes, ma'am.

4 Q. A needle on her.

5 And how many needles did you find on the defendant?

6 A. None. None. Zero.

7 MS. LESKANIC: That's all questions that I have.

8 Thank you very much.

9 THE COURT: Recross?

10 RECROSS EXAMINATION BY MR. JOHNSTON:

11 Q. Officer, you write reports all the time, don't you?

12 A. We do.

13 Q. How many a day do you write; five, six, ten?

14 A. Probably between three and ten.

15 Q. Between three and ten?

16 A. Yeah. It depends on the day. It could be very busy or
17 very slow.

18 Q. They teach you down at the academy, they teach you a
19 course about how to write reports?

20 A. Chronologically, yes, sir.

21 Q. They tell you to do it chronologically?

22 A. Yes.

23 Q. I'm sure your department has requirements that your
24 reports be accurate?

25 A. Yes, sir.

1 Q. And that they contain all the pertinent information. I
2 know they can't necessarily contain everything that
3 happened, but that they contain all the pertinent
4 information?

5 A. Yes, sir.

6 Q. The important stuff?

7 A. Yes, sir.

8 Q. You chose in this case to write a report?

9 A. Yes.

10 Q. You chose to use the word furtive?

11 A. Yes.

12 Q. You could have simply said I saw movements. You could
13 have said that?

14 A. It wouldn't have served the situation correctly. I
15 mean, they were moving more so than any other person that I
16 stop, any other traffic stop. So, yes, it was furtive.

17 Q. Okay. So you chose that word --

18 A. Yes.

19 Q. -- specifically?

20 A. Yes.

21 Q. And specifically you chose to say that the furtive
22 movements were displayed not only by the driver, but by who
23 else?

24 A. The passenger.

25 Q. All right. And you have documented that in your

1 report?

2 A. Yes.

3 Q. You felt it was important enough to write it down?

4 A. Yes.

5 Q. You don't seize the money at that time unless it's at
6 least a \$1,000?

7 A. Yes.

8 Q. This is a lot less than a \$1,000.

9 A. Yes.

10 Q. Now you don't seize the money unless it's \$2,000?

11 A. Yes.

12 Q. That's a whole lot less than \$2,000, isn't it?

13 A. Expensive, yes.

14 Q. When was the last day that Travis worked and where?

15 A. I have no clue.

16 Q. You don't know?

17 A. No, I guess -- I haven't been in touch with him since.

18 Q. No, no, I'm talking about at the time of the stop.

19 When was the last day that he had worked --

20 A. I don't recall.

21 Q. -- and where?

22 A. I don't know.

23 Q. You don't know?

24 A. No.

25 Q. Could he have worked the day before?

1 A. He could have. He didn't say that.

2 Q. Okay. Well, did he say the last day he worked?

3 A. No.

4 Q. So it could have been three days before?

5 A. I don't know.

6 Q. A week before?

7 A. I don't know.

8 Q. You don't know, do you?

9 A. No.

10 Q. All right. Now, "I think, I think." You said the
11 words "I think."

12 A. Yes.

13 Q. You didn't say "he says they have been passing it back
14 and forth between them," did you?

15 A. No, sir.

16 Q. You didn't say "it might be that they were passing it
17 back and forth between them."

18 A. Yes.

19 Q. You said "I think they were tossing it back and forth
20 between the two of them."

21 A. That is what I said, yes, sir.

22 Q. Are there other ways to ingest methamphetamine other
23 than smoking and intravenous ingestion?

24 A. Yeah, like you said earlier, snorting.

25 Q. Snorting?

1 A. Uh-huh.

2 Q. You didn't inquire about that?

3 A. No.

4 Q. Not directly?

5 A. No.

6 Q. Okay.

7 MR. JOHNSTON: No further questions, Your Honor.

8 THE COURT: All right, sir, you may step down.

9 The State may call its next witness.

10 MS. LESKANIC: The State calls Deputy Alvin
11 Jenkins (sic).

12 THE COURT: Deputy Jenkins, please?

13 MS. LESKANIC: Jennings, I'm sorry.

14 THE COURT: I'm sorry, Jennings.

15 Come forth, sir, down to my left to be sworn,
16 please.

17 DEPUTY ALVIN JENNINGS, JR., having been first duly
18 sworn, testified as follows:

19 THE COURT: State your name, please?

20 THE WITNESS: Deputy Alvin Jennings, Jr..

21 THE COURT: Thank you.

22 Counsel, your witness.

23 MS. LESKANIC: Thank you.

24 DIRECT EXAMINATION BY MS. LESKANIC:

25 Q. Where are you employed, Deputy Jennings?

1 A. Cherokee County Sheriff's Office.

2 Q. And how long have you been employed there?

3 A. Year and a half.

4 Q. So how long had you been there back on July 6th of
5 2014, when you and Deputy Bowles made this traffic stop?

6 A. About two months.

7 Q. All right. You were involved in the traffic stop
8 involving Mr. Conner and Ms. Powell on July 6th of 2014, is
9 that correct?

10 A. Yes.

11 Q. All right. Can you please explain to the jury what you
12 did after the car stopped and you and Deputy Bowles exited
13 your vehicle.

14 A. Well, I approached the passenger side. Once I
15 approached the passenger side, Deputy Bowles, he drew his
16 weapon, because I couldn't see because the passenger side
17 window was raised. It wasn't raised all the way up.
18 Approximately one to two inches. And then so when he drew
19 his weapon, I drew mine. And then both of us, we got -- he
20 got the driver out and detained him. I got the passenger
21 out and detained her. And then once I had detained her, I
22 went back in. And when I looked inside the vehicle, it was
23 something that appeared to be, you know, a controlled
24 substance, which was in plain view which was sitting in the
25 seat, and that's when I picked it up and I put it on the

1 roof of the car.

2 Q. And did Deputy Bowles take possession of it at that
3 time?

4 A. Yes.

5 Q. Okay. I'm going to show you what's been marked State's
6 Exhibit 2. I'll let you take a look at this and tell me if
7 you recognize that?

8 A. Yes, ma'am.

9 Q. And what is this?

10 A. That's -- that's the package that I picked up out of
11 the passenger's seat.

12 Q. Okay. And this was what you set on the roof of the car
13 that we saw in the video?

14 A. Yes.

15 Q. Okay. Now, you stated that when you approached the
16 passenger's side, you could not see in the vehicle because
17 the window was --

18 A. The window -- the window was dark tint and it was --
19 and it was cracked.

20 Q. What do you mean by cracked?

21 A. It was -- it wasn't raised all the way up. So it was
22 raised enough that I could see the top of the passenger's
23 head.

24 Q. Could you see anything above the top of the passenger's
25 head? Could you see what was going on down below?

1 A. No, I could not.

2 Q. Okay. Thank you.

3 Please answer any questions Mr. Johnston has for you.

4 THE COURT: Mr. Johnston, your witness.

5 CROSS EXAMINATION BY MR. JOHNSTON:

6 Q. At the time you were relatively inexperienced, Officer
7 Jennings?

8 A. I was.

9 Q. Okay. Were you in charge of searching bags and boxes,
10 containers that were inside the car?

11 A. At that time I did.

12 Q. All right. Do you recall one of the things that you
13 searched being a container that was a square container made
14 of see-through plastic?

15 A. Correct.

16 Q. It looks to me kind of like a tackle box. I don't know
17 what it is, but you know what I'm talking about?

18 A. Yes.

19 Q. Do you know whose box that was?

20 A. Assuming so that it was a female because it had female
21 items in it.

22 Q. All right. Did you search that box --

23 A. I did.

24 Q. -- with the female items?

25 A. I did.

1 Q. Did you find the baggy in there?

2 A. I did.

3 Q. Okay. What kind of baggy was it?

4 A. It was a small ziploc-type bag.

5 Q. Okay. Did you examine it closely?

6 A. Well, I did.

7 Q. Okay. What did you see?

8 A. It had residue.

9 Q. It had residue in it? What kind of residue?

10 I'm not asking you for a chemical analysis. What did
11 it look like?

12 A. It was -- it was a crystal-type -- a white crystal-type
13 residue.

14 Q. A white crystal-type residue was in that baggy?

15 A. (Shaking head yes).

16 Q. All right. What did you do with the baggy?

17 A. The baggy out of the -- out of the container?

18 Q. Out of the tackle box, or whatever it was?

19 A. Oh, I placed it on the hood of Aaron Bowles -- Deputy
20 Bowles patrol car.

21 Q. You put the baggy back in the box?

22 A. Yes.

23 Q. And you left the box on the patrol car, is that
24 correct?

25 A. Yes.

1 Q. Now, did you also find a spoon?

2 A. There was a spoon in there.

3 Q. Okay. Is it like one of those large tablespoon spoons?

4 A. Yes.

5 Q. Was it made out of metal?

6 A. Yes.

7 Q. Did you find any food in there that you would use a
8 spoon for, like applesauce, or pudding, or something like
9 that?

10 A. I don't -- I don't remember.

11 Q. Okay. You don't remember seeing anything like that?

12 A. No.

13 Q. Do you remember taking the spoon and showing it
14 specifically to Officer Bowles?

15 A. I don't remember.

16 Q. That's fine.

17 Please answer any other questions.

18 MS. LESKANIC: No redirect, Your Honor.

19 THE COURT: All right. You may step down, sir.
20 Thank you very much.

21 THE WITNESS: Yes, sir.

22 MR. JOHNSTON: We have no objection to him being
23 excused, if they want him to.

24 MS. LESKANIC: That's fine.

25 THE COURT: Do you want to excuse the witness?

1 MS. LESKANIC: Yes, that's fine, Your Honor.

2 THE COURT: All right, sir, you are free to go.

3 Thank you for coming today.

4 THE WITNESS: Yes, sir.

5 THE COURT: You may call your next witness.

6 MS. LESKANIC: The State calls Rachael Powell.

7 MR. JOHNSTON: Your Honor, I have a matter to take
8 up before that, if we may.

9 THE COURT: All right. Well, ladies and gentlemen
10 of the jury, that means that I need to ask you to step back
11 to the jury room while we discuss the matter.

12 As always, when you leave the courtroom my
13 instructions are not to discuss anything about this case
14 until I ask you to begin your deliberations.

15 You may retire.

16 (The following takes place outside the presence of
17 the jury room).

18 THE COURT: All right, Mr. Johnston.

19 MR. JOHNSTON: And, Your Honor, we may want to
20 wait a minute for Ms. Powell to come in.

21 Well, we can go ahead.

22 THE COURT: Go ahead and bring her in.

23 MR. JOHNSTON: I have -- apparently in this case
24 no written statement has been elicited from Ms. Powell by
25 the State.

1 THE COURT: Right.

2 MR. JOHNSTON: I have a thumbnail sketch of what
3 the solicitor told me she was going to say.

4 THE COURT: Okay.

5 MR. JOHNSTON: There is at least one part of it
6 which I think is objectionable and I would like to clear
7 that up with a motion in limine at this time.

8 THE COURT: Yes, sir.

9 MR. JOHNSTON: I have been told that she is going
10 to testify as to previous drug sales, drug transactions
11 from -- or by my client, Mr. Conner. Your Honor, I would
12 argue that that is not admissible in a case like this,
13 unless they can show some sort of common scheme or plan,
14 that it complies with Lyle 404 (b) as to the charge in this
15 case. So I would argue that that would be inadmissible at
16 this time under our rules.

17 MS. LESKANIC: May it please the court?

18 THE COURT: Yes, ma'am.

19 MS. LESKANIC: I do not have a written statement
20 from Ms. Powell, but when I met with her, she did
21 indicate -- I asked her how their day began, how she knew
22 Mr. Conner. She stated she had I believe been with him the
23 night before. And on this particular day prior to the
24 traffic stop she was with Mr. Conner and witnessed him sell
25 methamphetamine to someone.

1 He also gave her methamphetamine for her syringe
2 that she admitted to the officer that she used.

3 So I believe it does go to common scheme or plan,
4 his motive, his intent with this methamphetamine.

5 THE COURT: What time of day was the stop? I know
6 it was daylight, but I don't remember what time of day it
7 was.

8 MS. LESKANIC: 3:52, Your Honor, it looks like.

9 THE COURT: Mid afternoon.

10 MS. LESKANIC: About four o'clock in the
11 afternoon.

12 THE COURT: Mid afternoon.

13 MS. LESKANIC: Yes, sir.

14 But it's the State's position that being on the
15 same day and she has personally witnessed this. It's not
16 something that she was told about. It goes to his state of
17 mind and his intent, which is necessary on possession with
18 intent to distribute, as well as the fact that he
19 distributed it to her.

20 THE COURT: You may or may not know this. Do you
21 know whether they intended to go to other points of sale?

22 MS. LESKANIC: I am not sure of that, Your Honor.
23 She gave me more information that I actually was not going
24 to elicit, because he had, according to her, he apparently
25 had gone somewhere. She did not go with him to purchase a

1 large quantity of meth.

2 THE COURT: Uh-huh.

3 MS. LESKANIC: Took part of that with them and had
4 made a drug sale and had also provided her with
5 methamphetamine. But because she was not present for that
6 initial purchase, I don't know where she went or how much
7 money, I was not going to inquire of that. I was just going
8 to ask her to testify to what she personally saw on the day
9 of the stop.

10 THE COURT: So this would have been within six
11 hours of the stop -- three hours of stop?

12 MS. LESKANIC: I can ask her if she remembers what
13 time, Your Honor.

14 THE COURT: You might need to make -- we might
15 need to make a proffer in order to find out how close in
16 time it was --

17 MS. LESKANIC: Yes, sir.

18 THE COURT: -- the previous distributions took
19 place. That's one of the things I should consider in this.

20 MS. LESKANIC: Certainly.

21 THE COURT: Why don't we put her up and let her
22 make a proffer.

23 Ma'am, come forward and be sworn over here to my
24 left.

25

1 RACHAEL POWELL, having been first duly sworn,
2 testified as follows:

3 THE COURT: Have a seat, please, ma'am.

4 Once you are seated state your name, please.

5 THE WITNESS: Rachael Powell.

6 THE COURT: Thank you, ma'am.

7 Your witness Ms. Leskanic.

8 DIRECT EXAMINATION BY MS. LESKANIC:

9 Q. Ms. Powell, right now I want to ask you a few questions
10 about how your day began with Mr. Conner the day of the
11 traffic stop.

12 Did you spend the night with him the night before?

13 A. Yes, ma'am.

14 Q. Okay. And where did you go --

15 Do you remember approximately what time y'all got up on
16 July the 6th, the day of the traffic stop?

17 A. We would have been up the entire night.

18 Q. Okay. You would have been up the entire night?

19 A. Yes.

20 Q. Okay. And then where did y'all go prior to being
21 stopped by Deputy Bowles, do you remember?

22 A. From Spartanburg, then to his house. He was taking me
23 to Pacolet Highway to drop me off and that was -- we got
24 pulled over before we made it to Pacolet Highway.

25 Q. Okay. You said -- so did y'all spend the night in

1 Spartanburg?

2 A. Yes, ma'am.

3 Q. Okay. And then you went to his house?

4 A. Yes, ma'am.

5 Q. Did y'all make any other stops along the way?

6 A. Days before we did. This was like a nine day --

7 Q. Okay. So y'all did not -- I misunderstood then when
8 you and I spoke on the telephone. I thought you had
9 indicated that when we spoke in my office that --

10 A. It would have been earlier that morning we did make a
11 stop.

12 Q. Okay. Do you know what time? We are trying to figure
13 out a time frame, how much time passed from the time you
14 made the stop until you were pulled over by the police, if
15 you recall?

16 A. Six or seven o'clock in the morning.

17 Q. Six or seven in the morning?

18 A. Yes.

19 Q. And where did the two of you go?

20 A. It was in Spartanburg.

21 Q. And what did you do in Spartanburg?

22 A. He went in the house. I stayed in the car.

23 Q. Okay. So you don't know what happened inside?

24 A. No, ma'am.

25 Q. Okay. All right.

1 MS. LESKANIC: Then I won't be going into those
2 questions, Your Honor.

3 THE COURT: All right.

4 MR. JOHNSTON: I think that would resolve that
5 issue, Your Honor.

6 THE COURT: Thank you. I think you just did.

7 All right. We are going to take about five to ten
8 minute break while we have got the jury out at this time.
9 We will have a short recess.

10 Ma'am, let me caution you. You have been sworn
11 and you have begun testifying. You should not discuss your
12 testimony with anyone during the break.

13 Now, when we come back the jury is going to come
14 back in, you will be called back to the witness stand and
15 placed under oath again in front of the jury. Do you
16 understand that?

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. Thank you very much.

19 MS. LESKANIC: Your Honor, may I ask one more
20 question while she's under oath, so I make sure --

21 THE COURT: It's your proffer. I'll let you go
22 ahead.

23 MS. LESKANIC: Thank you. I just want to make
24 sure I'm correct on something else.

25 You used methamphetamine the day of the traffic

1 stop, is that correct?

2 THE WITNESS: Yes, ma'am.

3 MS. LESKANIC: Where did you get that
4 methamphetamine?

5 THE WITNESS: Travis.

6 MS. LESKANIC: From the defendant Travis Conner?

7 THE WITNESS: Yes.

8 MS. LESKANIC: Okay. I just want to make sure
9 that I was correct on that point, Your Honor.

10 THE COURT: All right. You may step down, ma'am.

11 MS. LESKANIC: Thank you.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: Is the State ready to proceed?

15 MS. LESKANIC: Yes, Your Honor.

16 THE COURT: Defense ready?

17 MR. JOHNSTON: Yes, sir.

18 THE COURT: Bring the jury in.

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: All right. The record will reflect
22 the jury has returned to the courtroom.

23 The State may call its next witness.

24 MS. LESKANIC: Thank you, Your Honor.

25 May it please the court, the State calls Rachael

1 Powell.

2 THE COURT: Ma'am, come forward and be sworn.

3 RACHAEL POWELL, having been first duly sworn,
4 testified as follows:

5 THE COURT: Have a seat, please.

6 State your name.

7 THE WITNESS: Rachael Powell.

8 THE COURT: Thank you.

9 Counselor, your witness.

10 MS. LESKANIC: Thank you, Your Honor.

11 THE COURT: Yes, ma'am.

12 DIRECT EXAMINATION BY MS. LESKANIC:

13 Q. Ms. Powell, do you know the defendant Travis Conner?

14 A. Yes, ma'am.

15 Q. And how long have you known him?

16 A. Roughly a year.

17 Q. Do you know -- how long had you known him on July 6th
18 of 2014, when y'all were pulled over?

19 A. I don't know. It wasn't quite that long.

20 Q. Can you give me an approximation?

21 A. A couple weeks to maybe a month.

22 Q. And you were the passenger in his vehicle?

23 A. Yes, ma'am.

24 Q. What was your relationship with Mr. Conner during that
25 couple of weeks to a month?

1 A. Friends.

2 Q. Okay. Were you in any sort of romantic relationship?

3 A. Yes, ma'am.

4 Q. What kind of things did the two of you do together?

5 A. Just get high.

6 Q. Get high on what?

7 A. Meth.

8 Q. All right. When you were pulled over on July 6th,
9 2014, when is the first time that you remember that you knew
10 a police officer was behind you?

11 A. A minute to two after where we were stopped -- right
12 before we were stopped.

13 Q. Okay. Do you recall the conversation in the car once
14 you realized there was a police officer behind you?

15 A. No, ma'am.

16 Q. Okay. What happened in the vehicle after you were blue
17 lighted and told to pull over?

18 A. We were pulled over and Aaron steps out and Travis
19 reached from down his crotch and grabbed what he had and
20 threw it in my lap and that was when Aaron started shouting.

21 Q. Okay. What did he have in his hand?

22 A. Methamphetamines.

23 Q. When is the first time that you saw that bag of
24 methamphetamine?

25 A. I can't say specifically the first time, but I reckon I

1 knew he had it, but I can't say I seen it.

2 Q. Were you holding it for him?

3 A. No, ma'am.

4 Q. Did you ever have it in your possession?

5 A. No, ma'am.

6 Q. Let me finish the question.

7 Did you ever have it in your possession while you were
8 in the vehicle?

9 A. No, ma'am.

10 Q. Okay. So the first time that you saw the bag while you
11 were in the --

12 MR. JOHNSTON: Object to leading the witness.

13 THE COURT: Well, she hasn't completed the
14 question, but I'll caution counsel against leading.

15 You may proceed.

16 MS. LESKANIC: Thank you.

17 BY MS. LESKANIC:

18 Q. The first time that you saw the bag in the vehicle was
19 when?

20 A. When we were pulled over.

21 Q. Okay. And when did you see it?

22 A. When he reached from down inside of his crotch area.

23 Q. Had you used methamphetamine on that day, on July 6th,
24 2014?

25 A. Yes, ma'am.

1 Q. Where did you use that day?

2 A. I believe it was in his car when we pulled up to his
3 trailer where it --

4 Q. And where did you get the methamphetamine?

5 A. From Travis.

6 Q. Where did he get the methamphetamine?

7 A. I don't know.

8 Q. I mean --

9 MR. JOHNSTON: Objection, Your Honor. She says
10 she doesn't know. I think they should probably leave it at
11 that.

12 THE COURT: Overruled.

13 Go ahead.

14 BY MS. LESKANIC:

15 Q. How was it given to you?

16 A. From him.

17 Q. And did you -- was it in a small baggy? Was it a
18 loaded syringe? I'm trying to figure out what was given to
19 you.

20 A. Just the meth itself in his palm, like handed it to me
21 just to fix my own shot.

22 Q. So am I correct that the meth that you saw was in his
23 palm?

24 A. Yes, ma'am.

25 Q. And handed off to you?

1 A. Yes, ma'am.

2 Q. Did you see where the meth came from that he had in his
3 palm?

4 A. Not specifically. I mean, it came from him, but I
5 guess he get it out of the bag.

6 Q. That's what I was asking. Thank you.

7 Where were you living back on July 6th of 2014?

8 A. At Drive.

9 Q. Is that a house that you were renting?

10 A. I was staying in it but I wasn't renting it.

11 Q. Why not?

12 A. I didn't have the money to.

13 Q. Why didn't you have the money?

14 A. Because I was a drug addict. I didn't work.

15 Q. So no job?

16 A. No job at that time and I was a full blown addict and
17 it was a place to stay for free.

18 Q. Whose vehicle were you riding in the day of the traffic
19 stop?

20 A. Travis'.

21 Q. Did you have a car?

22 A. No, ma'am.

23 Q. Did you smoke cigarettes at the time?

24 A. When I could get them.

25 Q. All right. Could you buy a pack of cigarettes?

1 A. Not usually.

2 Q. Why?

3 A. Because I never had -- I never had money.

4 Q. How long were you -- was it just methamphetamine?

5 A. Mainly.

6 Q. What drugs would you use?

7 A. I would use Xanaxes too. But, I mean, if I had

8 money -- if I were to have money, I would have bought -- I

9 would have bought Xanaxes.

10 Q. You would have or would not?

11 A. It wasn't my addiction, but if they were given freely,

12 I would do them.

13 Q. If you had money, what would you have done with it?

14 A. Bought methamphetamines.

15 Q. Okay. How much money did you have at a time?

16 A. I never had any money. I mean, I might have a few

17 dollars to get something to drink or a pack of cigarettes

18 and that was roughly three dollars, three, four.

19 Q. How long were you an addict?

20 A. Before this?

21 Q. Yes, ma'am.

22 A. About five years.

23 Q. So up until the time of this you had been using

24 methamphetamine for approximately five years?

25 A. Uh-huh.

1 Q. What is your current status of addiction?

2 A. I have been sober since May 16th.

3 Q. Of this year?

4 A. (Shaking head yes).

5 Q. What was your life like as a meth addict? What was
6 your day-to-day life like?

7 MR. JOHNSTON: I would object on the grounds of
8 relevance, Your Honor.

9 THE COURT: Relevance?

10 MS. LESKANIC: It goes to -- do you want us to
11 approach, or happy to --

12 MR. JOHNSTON: I would prefer that, judge.

13 (Whereupon, the lawyers approached the bench for
14 an off-the-record discussion).

15 THE COURT: You may proceed, Ms. Leskanic.

16 MS. LESKANIC: Thank you, Your Honor.

17 BY MS. LESKANIC:

18 Q. Let me show you what's been marked State's Exhibit 2.
19 Do you recognize that?

20 A. No, I honestly can't say I do.

21 Q. Okay. If I were to tell you that this is
22 methamphetamine, would you have enough money to purchase
23 this amount of methamphetamine when you were an addict?

24 A. No, ma'am.

25 Q. Okay. How much methamphetamine would you use at a

1 time?

2 A. As much as I could obtain.

3 Q. Which -- what was your daily usage?

4 A. As much as I could get off of somebody, which would --
5 I mean, maybe sometimes I wouldn't be able to use but ten
6 dollars worth, but depending upon who else I was around, I
7 could use a lot more.

8 Q. Okay. How much is a lot more? I'm sorry, I don't know
9 what that means to you.

10 A. A half eight, probably.

11 Q. Okay. Which is how much?

12 A. Dollar-wise or --

13 Q. Dollar-wise.

14 A. About a hundred dollars.

15 Q. Okay. And that may be the maximum that you could get
16 if somebody would give it to you?

17 A. Probably.

18 Q. All right. Would that be used in a day or over a
19 period of days?

20 A. A day.

21 Q. Did you continue to see the defendant after this
22 incident where you were both arrested?

23 A. Not up until I seen him again in December before I
24 moved to Georgia.

25 Q. Okay. December of?

1 A. 2014.

2 Q. All right. Where did you see him?

3 A. I believe he pulled up to where I was staying, which
4 was 116 River Drive.

5 Q. All right. Did you write a statement in this case on
6 April 29th of 2015?

7 A. Yes, ma'am.

8 MR. JOHNSTON: Your Honor, I have a matter of law.

9 THE COURT: All right.

10 Ladies and gentlemen of the jury, I will ask you
11 to step back to the jury room. Do not discuss anything
12 about the case while you are outside the courtroom.

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

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

16 MR. JOHNSTON: Your Honor, again, I don't have a
17 written statement from this witness. I know what I have
18 been told by the solicitor is going to be said. I think
19 that we may get into some inadmissible evidence here.

20 What I have been told was that this individual is
21 going to say that she was given either money or
22 methamphetamine to write -- an inducement to write this
23 statement. I do not intend to impeach her with this earlier
24 statement. The only impeachment that is coming --

25 THE COURT: Back up just a second.

1 MR. JOHNSTON: Yes, sir.

2 THE COURT: You are saying you have been told --

3 MR. JOHNSTON: By the solicitor.

4 THE COURT: -- that she was offered
5 methamphetamine to give this statement?

6 MR. JOHNSTON: I'm not making myself clear, Your
7 Honor. I'm sorry.

8 The solicitor has told me that the witness will
9 testify that the defendant gave her methamphetamine and/or
10 money as an inducement to write this statement. I'm --

11 THE COURT: I see. All right.

12 MR. JOHNSTON: Now, I am not impeaching with this
13 statement.

14 THE COURT: But, again, you were informed of that
15 prior to this time?

16 MR. JOHNSTON: Yes.

17 THE COURT: Okay. Go ahead.

18 MR. JOHNSTON: So I'm telling you this is what I
19 know about it.

20 THE COURT: All right.

21 MR. JOHNSTON: So I'm not impeaching her with this
22 statement. The only person impeaching her with this
23 statement is the prosecutor. So I would argue that how this
24 issue should be handled is the issue of the statement should
25 not be brought up at all. I'm not going to -- I don't plan

1 to mention the statement if the solicitor does not elicit
2 it. However, if the solicitor does elicit it, it's going to
3 also elicit evidence of other --

4 THE COURT: Generally a statement can be -- a
5 prior statement can only be brought in if it becomes a prior
6 inconsistent statement.

7 MR. JOHNSTON: Yes, sir.

8 THE COURT: In other words, you would ask her to
9 testify concerning the matters covering the statement.

10 MR. JOHNSTON: Yes, sir.

11 THE COURT: If she gives a different story today,
12 then the prior statement can be used to impeach her current
13 testimony.

14 MR. JOHNSTON: I concur with that, Your Honor, and
15 I do not intend to impeach her in that fashion..

16 THE COURT: Well, let's talk to the solicitor for
17 just a moment.

18 What are you -- have you -- you see, I don't know
19 what's in the statement. I don't know if you have already
20 asked her about matters that are in the statement or not in
21 the statement.

22 MS. LESKANIC: If I may approach, Your Honor, I'm
23 going to you State's Exhibit 3, which is the statement.

24 THE COURT: Thank you.

25 Let me take a moment to read it.

1 (Off the record).

2 (Back on the record).

3 THE COURT: All right. Some of these matters she
4 has already been asked about, Mr. Johnston, because -- and
5 I'm referring to State's Exhibit No. 3 at this time.

6 MR. JOHNSTON: Yes, sir. May I --

7 THE COURT: What it states is that she's -- that
8 she "threw her drugs on Mr. Conner that I had on me until we
9 were pulled over during a routine traffic stop. He had no
10 knowledge of the methamphetamine that I had on me until we
11 were stopped at a routine traffic stop at the corner of
12 O'Neal Street." So she's already said that that information
13 is not true in her current testimony.

14 Am I correct?

15 MS. LESKANIC: That is correct.

16 MR. JOHNSTON: If she has --

17 THE COURT: So she now has given -- her current
18 testimony is at odds with the prior statement.

19 MR. JOHNSTON: Yes, but this is the statement
20 that -- what's in the record is testimony favorable to the
21 State. What that statement would purport to do is --

22 THE COURT: So I don't look at it either way. I
23 just look at it as a prior -- as a statement that's made in
24 court, testimony that she's given, which is inconsistent
25 with the prior statement that she gave. It doesn't matter

1 to me whose favor it's in. That's not the issue.

2 MR. JOHNSTON: But it hasn't been -- the fact that
3 she's given an inconsistent statement has not been raised by
4 anyone, other than the solicitor.

5 THE COURT: She has a right to now, because she's
6 going to say -- I think the rule actually requires that she
7 inform her of the time and place and the fact that a prior
8 statement was given and then she has a right to examine her
9 concerning the inconsistency.

10 Let's pull up the rules and see exactly what it
11 says. It's kind of like a road map. It tells you what to
12 do.

13 MR. JOHNSTON: Yes, sir.

14 MS. LESKANIC: And maybe I don't understand where
15 Mr. Johnston is going. I wish I didn't have the statement.
16 However, it wasn't provided to police. It wasn't provided
17 to our office. I found out about it just prior to the last
18 term of court. We were going to call the case for trial and
19 Ms. Powell indicated to me that Mr. Conner had gotten her to
20 write a statement. And I said well, I don't know anything
21 about that statement. I asked Mr. Johnston and he informed
22 me that he did have one in his file that was given to the
23 prior defense attorney I believe from Mr. Conner, but was
24 given just to defense.

25 My only concern is that in my opening I did

1 mention that she wrote a statement claiming the drugs. I
2 didn't know that Mr. Johnston was not going to want to go
3 into this.

4 THE COURT: All right. Rule 613.

5 MR. JOHNSTON: Yes, sir.

6 THE COURT: It says that "in examining a witness
7 concerning a prior statement made by the witness, whether or
8 not written, the statement need not be shown or its contents
9 disclosed to the witness at that time, but on request the
10 same shall be shown or disclosed to opposing counsel."

11 Extrinsic evidence of a prior -- this is
12 subparagraph b.

13 "Extrinsic evidence of a prior inconsistent
14 statement by a witness is not admissible unless the witness
15 is advised of the substance of the statement, the time and
16 the place that it was alleged to be made, and the person to
17 whom it was made, and given the opportunity to explain or
18 deny the statement. If the witness does not admit that he,"
19 in this case she, "made the prior inconsistent statement,
20 then extrinsic evidence of such statement is admissible.
21 However, if a witness admits making the prior statement,
22 extrinsic evidence of the prior statement made is
23 inadmissible."

24 MR. JOHNSTON: Yes, sir.

25 THE COURT: So at this point in time if she has

1 now testified at odds to her prior statement, and in this
2 case it is a written statement, the solicitor has an
3 obligation to inform her of the substance of the statement,
4 the time and the place it was allegedly made and the person
5 it was made, and then ask her why there is an inconsistency.
6 She has then the opportunity to either explain, or admit, or
7 deny having made the statement. If she in any way denies or
8 qualifies her answer, then the solicitor has the right to
9 introduce extrinsic evidence to establish the statement was
10 made.

11 MR. JOHNSTON: All right, sir.

12 What I'm concerned with is not so much the
13 admission of the statement or asking her whether or not she
14 made such a statement.

15 THE COURT: Well, credibility is always an issue
16 for any witness, even ones that you call yourself.

17 MR. JOHNSTON: Yes, sir.

18 THE COURT: You can impeach your own witness now
19 under the rules.

20 MR. JOHNSTON: Yes, sir, but they are not
21 impeaching her for the purpose of questioning her
22 credibility. They are impeaching her for the purpose of
23 introducing otherwise inadmissible evidence. And the
24 otherwise --

25 THE COURT: What is that?

1 MR. JOHNSTON: The otherwise inadmissible evidence
2 is they are going to ask her "well, why did you sign this
3 statement?"

4 THE COURT: Well, I don't know if they -- whether
5 that's not in what she can ask her.

6 MR. JOHNSTON: All right, sir. So if that's not
7 going to come in, I don't have a problem with it.

8 THE COURT: Well, I'm going to follow the rule.
9 She has a right to ask her about the statement.

10 MR. JOHNSTON: Yes, sir.

11 THE COURT: And she has the right to give her an
12 opportunity to explain her prior inconsistent statement.

13 Now, whatever she answers is what she answers. It
14 says that is given the opportunity to explain or deny the
15 statement. So it's whatever her explanation is of that
16 statement and why it's inconsistent she can give it.

17 MR. JOHNSTON: Yes. Yes.

18 All I'm saying is, though, when she begins to
19 explain why she gave that statement --

20 THE COURT: Yes.

21 MR. JOHNSTON: -- she's going to introduce
22 otherwise inadmissible evidence.

23 THE COURT: Maybe, maybe not, because she has a
24 right to explain why she gave an inconsistent statement.

25 MR. JOHNSTON: Could we proffer it?

1 THE COURT: This rule says she does.

2 MR. JOHNSTON: Could we proffer it, Your Honor, so
3 we know?

4 THE COURT: Certainly if you proffer it, but,
5 again, I'm going to let her explain.

6 MR. JOHNSTON: All right, sir.

7 THE COURT: Because the rule says she can.

8 MR. JOHNSTON: Yes, sir. But, of course, there
9 are other rules that say prejudicial evidence can't come in.

10 THE COURT: So if you want me to weight that as to
11 whether the threat -- the probative value outweighs its
12 prejudicial effect?

13 MR. JOHNSTON: Yes, sir, that --

14 THE COURT: Okay. You didn't say that, but just
15 until now.

16 MR. JOHNSTON: You had to drag it out of me, Your
17 Honor. I'm sorry.

18 THE COURT: I apparently did.

19 All right. Go ahead. You may make a proffer.

20 MS. LESKANIC: Thank you, Your Honor.

21 BY MS. LESKANIC:

22 Q. Ms. Powell, State's Exhibit 3 --

23 MS. LESKANIC: I believe Your Honor has it.

24 THE COURT: Oh, I'm sorry. Yes.

25 MS. LESKANIC: May I show her the statement, Your

1 Honor?

2 THE COURT: You can have it.

3 MS. LESKANIC: Thank you.

4 BY MS. LESKANIC:

5 Q. Would you just take a look at that?

6 A. Yes, ma'am.

7 Q. And is this a statement that you wrote?

8 A. Yes, ma'am.

9 Q. Is it a statement that you signed?

10 A. Yes, ma'am.

11 Q. All right. And on what day did you write and sign this
12 statement?

13 A. 4-28-2015.

14 Q. Okay. Was that still when you were using
15 methamphetamine?

16 A. Yes, ma'am. To say I was high would be an
17 understatement.

18 Q. I'm sorry?

19 A. To say I was high would be an understatement.

20 Q. So you were high at the time that you gave this
21 statement?

22 A. Very high.

23 Q. Okay. Who was with you when you gave the statement?

24 A. Travis and the lady who notarized it and one other guy.
25 I can't remember his name.

1 Q. Okay. Where were you when the statement was notarized?

2 A. At the notary's house.

3 Q. How did you get to the notary's house?

4 A. Travis.

5 Q. He drove you there?

6 A. Yes, ma'am.

7 Q. Why did you give that statement?

8 A. To receive methamphetamines.

9 Q. From whom?

10 A. Travis.

11 Q. Okay. So what exactly was the nature of your agreement
12 with the defendant with regard to that statement?

13 A. To write this -- to write this out to be paid pretty
14 much in meth.

15 Q. And were you paid in methamphetamines?

16 A. Yes, ma'am.

17 Q. And who gave you the methamphetamine?

18 A. Travis.

19 Q. Okay. Thank you.

20 MS. LESKANIC: That would be the testimony.

21 THE COURT: You may question, Mr. Johnston.

22 MR. JOHNSTON: I don't have any questions for her,
23 Your Honor.

24 THE COURT: All right. Then I'll hear argument
25 concerning it.

1 MR. JOHNSTON: Your Honor, this is what I was
2 concerned about. Had I attempted to impeach her with this
3 prior inconsistent statement, I think I would have opened
4 the door to whatever it is that she said induced her to
5 write that statement. I, of course, did not raise that
6 point. The solicitor raised the point of the inconsistent
7 statement. She is raising it not to help her, but because
8 pointing out the fact that your own witness has given a
9 statement which is inconsistent to the testimony that you
10 wanted today is not helpful to your case, but for the
11 fact -- but for the fact that they wanted then to elicit
12 this information about how it was obtained from her.

13 THE COURT: Well, now, Mr. Johnston, quite often
14 attorneys will -- they are aware that witnesses they have
15 called have given prior inconsistent statements which just
16 so happened to coincide with explanations that have been
17 testified to by other witnesses in this case that were given
18 by your client as to how the drugs bandied about, you call
19 it the hot potato situation, where they were passed around
20 inside the car. So this statement would be consistent with
21 what your client told the police officer when he was
22 stopped, would it not?

23 MR. JOHNSTON: It might be.

24 THE COURT: Well, is it or is it not?

25 MR. JOHNSTON: I guess it would be consistent with

1 that, Your Honor.

2 THE COURT: All right. And so I can understand
3 why the solicitor might then want to -- since they are aware
4 of that statement and it does -- it does -- it is consistent
5 with your client's story and it's now at odds with her
6 current testimony would want to bring that up and have that
7 placed before the jury, so it's not something that would be
8 used by you in cross-examining the witness.

9 You know, quite often people preemptively bring up
10 issues. I have defense lawyers ask their clients about
11 prior convictions when they don't really have to do that,
12 but they do it so it's not a surprise brought up by the
13 other side and it looks like something they are trying to
14 hide.

15 MR. JOHNSTON: Yes, sir.

16 THE COURT: I know that happens.

17 MR. JOHNSTON: I do not think -- yes, sir, and I
18 agree with that.

19 THE COURT: Okay.

20 MR. JOHNSTON: But I do not think that is what the
21 case is here in this particular --

22 THE COURT: Well, let's ask Ms. Leskanic.

23 MR. JOHNSTON: Sir?

24 THE COURT: Let's ask her. I'll let her argue why
25 she thinks it ought to come in.

1 MR. JOHNSTON: I'm sorry.

2 THE COURT: Okay, that's fine.

3 MS. LESKANIC: Your Honor, as I stated, this case
4 was on the trial docket before Your Honor the week before
5 last.

6 THE COURT: Right.

7 MS. LESKANIC: And it was at that time I met with
8 Mr. Johnston back behind the courtroom and inquired whether
9 he had a statement from Ms. Powell, because she had
10 indicated to me on the phone that she had written a
11 statement and I was not the aware of any statement. He said
12 yes. He pulled it out of the file and I made a copy of it.
13 I assumed that the defense would attempt to impeach Ms.
14 Powell with this statement, and, therefore, as the court
15 stated, I felt like preemptively I needed to address it with
16 her and find out why she wrote it, because it is
17 inconsistent with her testimony today and I think she has a
18 right to explain. It wouldn't be fair just to say, "okay,
19 this is my statement. I'm testifying to this today," so the
20 defense could stand up and say "well, she's just a liar."
21 She needs to have an opportunity to explain why her
22 testimony today is different than what she wrote in this
23 statement so that the jury can assess her credibility and
24 they can decide to believe what she wrote in the statement
25 or they can decide to believe what she testifies to today.

1 MR. JOHNSTON: If I were to impeach her with that
2 statement, then I believe that the solicitor is exactly
3 correct. However, I do not intend to impeach her with that
4 statement. It is the solicitor who is impeaching her, but
5 not for the purpose of showing that her testimony is
6 different from today, as I would be doing. She is, in fact,
7 eliciting it with the additional purpose of getting these
8 other crimes into evidence that are otherwise inadmissible.

9 I will not impeach her with it. I will not
10 mention it, unless the solicitor is allowed to go into it.
11 If she's allowed to go into it, I may have to, but I will
12 not impeach her with it. I will not mention it, nor make
13 reference to it in any fashion.

14 MS. LESKANIC: I have already stated in my opening
15 that she gave a statement claiming the drugs. I did not
16 know that this was Mr. Johnston's trial strategy before
17 right now.

18 THE COURT: The motion in limine was not made
19 prior to trial.

20 MS. LESKANIC: It was not, Your Honor, so I
21 would -- because they had it, because he provided it to me,
22 I assumed they would be using it, and so I did want to
23 present it to Ms. Powell first and let her explain why she
24 wrote it.

25 Had I known this was not going to be an issue,

1 that actually would have been a better case for the State.
2 I would love not to have a statement written by Ms. Powell
3 claiming the drugs, but unfortunately we do, and I felt --

4 THE COURT: You have already mentioned it in your
5 opening.

6 MS. LESKANIC: And I mentioned it in my opening,
7 because I didn't realize Mr. Johnston was not going to try
8 to raise the fact that she had written a statement claiming
9 the drugs, or I would have been happy not to mention it
10 either, but I believe that we have already let that out of
11 the gate.

12 MR. JOHNSTON: Well, Your Honor, the jury does not
13 know the substance of the statement. There is lots of --

14 THE COURT: She said it was claiming the drugs.

15 MS. LESKANIC: Yes, sir.

16 MR. JOHNSTON: Well, Your Honor, there are times
17 in which things are said in opening statement that are
18 not -- do not come to become admissible during the course of
19 the trial. That happens all the time.

20 I would do this. I will not mention to the jury
21 in my final summation that, "hey, do you remember when the
22 solicitor said that she wrote a statement claiming the
23 drugs?" I will make no reference to this statement
24 whatsoever.

25 THE COURT: State's position in regard to that

1 offer?

2 MS. LESKANIC: Can we look back? I would like to
3 see what I said before he made his --

4 THE COURT: Sure.

5 MS. LESKANIC: I just don't want --

6 MR. JOHNSTON: I have no problem with that.

7 THE COURT: We will take a short break and let you
8 take a look at what was said. It's hard to unring a bell
9 sometimes. I understand that.

10 MS. LESKANIC: And that's the situation I'm in,
11 Your Honor. I'm afraid they are going to remember that I
12 said it in opening and that prior to him making a motion.

13 THE COURT: Take a look and see what you said.

14 MR. JOHNSTON: Well, Your Honor, as the court has
15 already --

16 THE COURT: You are going to have to stop.

17 MR. JOHNSTON: I'm sorry.

18 THE COURT: This gentleman has got to look it up
19 for us.

20 MR. JOHNSTON: All right.

21 THE COURT: So let's get through talking on the
22 record and then we will let him look it up for us.

23 MR. JOHNSTON: All right.

24 THE COURT: We will take a short break. I'll stay
25 on the bench.

1 (Whereupon, proceedings were recessed)

2 (Whereupon, proceedings were reconvened)

3 THE COURT: Why don't you approach and let's do
4 this at the bench.

5 MR. JOHNSTON: Yes, sir.

6 (Whereupon, the lawyers approached the bench for
7 an off-the-record discussion).

8 THE COURT: State's Exhibit No. 3 is going to be
9 made a part of the court exhibits.

10 MR. JOHNSTON: Yes, sir.

11 THE COURT: Let's bring the jury in.

12 (The following takes place in the presence of the
13 jury panel)

14 THE COURT: All right, the record will reflect
15 that the jury has returned to the courtroom.

16 In your absence I have gone over some matters with
17 the attorneys. I have ruled that a prior statement given by
18 this witness is inadmissible and has stricken it from the
19 record at this point in time.

20 You may proceed, Ms. Leskanic.

21 MS. LESKANIC: Thank you, Your Honor.

22 BY MS. LESKANIC:

23 Q. Did you have a syringe loaded with methamphetamine in
24 your bra the day of the traffic stop?

25 A. Yes, ma'am.

1 Q. And did you admit to the officer that you had used that
2 methamphetamine that day?

3 A. I honestly don't remember that.

4 Q. Okay. Were you under the influence of methamphetamine
5 during the traffic stop?

6 A. Yes, ma'am.

7 Q. Let me show you, once again -- I know that you said you
8 didn't recognize State's Exhibit 2, but let me ask you, is
9 this bag of methamphetamine yours?

10 A. No, ma'am.

11 Q. Have you ever had that much methamphetamine at one
12 time?

13 A. Not that I recall.

14 Q. Okay. How would you get your methamphetamine when you
15 would use?

16 A. By any means necessary.

17 Q. What does that mean?

18 A. Sex usually.

19 Q. Sex in exchange for mathamphetamine?

20 A. Yes, ma'am.

21 Q. Who threw the bag of methamphetamine in your lap on
22 July 6th?

23 A. Travis Conner.

24 Q. Was that your bag of methamphetamine?

25 A. No, ma'am.

1 Q. Were you ever given that bag of methamphetamine to
2 hold?

3 A. No, ma'am.

4 Q. Thank you. Please answer any questions that the
5 defense may have.

6 THE COURT: Mr. Johnston, your witness.

7 CROSS EXAMINATION BY MR. JOHNSTON:

8 Q. Are you the same Rachael Corinne Powell who was found
9 guilty of shoplifting --

10 A. Yes, sir.

11 Q. -- on 4-30 of 2014?

12 A. Yes, sir.

13 Q. In the city court at Gaffney?

14 A. Yes, sir.

15 Q. You admit that at the time of the events of this case
16 that you were an habitual user of methamphetamine?

17 A. Yes, sir.

18 Q. A heavy user of methamphetamine?

19 A. Yes, sir.

20 Q. And you have already told us that you would acquire
21 methamphetamine, your words, not mine, "by any means
22 necessary?"

23 A. Yes, sir.

24 Q. Because the addiction was that powerful?

25 A. Yes, sir.

1 Q. Did you have a box in the car that contained your
2 effects?

3 A. My what?

4 Q. A box?

5 A. With clothes?

6 Q. Yeah.

7 Let me describe the box for you, because it's kind of
8 unusual. It's kind of like this big, this big, and it's
9 plastic and you could see through it.

10 A. Yes, sir.

11 Q. That was your box?

12 A. Yes, sir.

13 Q. At the scene you were asked by the officer, after they
14 retrieved the syringe loaded with liquid from your bra, you
15 were asked whether or not there was methamphetamine in it?

16 A. Yes, sir.

17 Q. And you lied --

18 A. Yes, sir.

19 Q. -- didn't you?

20 A. Yes, sir.

21 Q. And you lied because you didn't want to go to jail?

22 A. Yes, sir.

23 Q. You don't like jail?

24 A. No, sir.

25 Q. Well, what do you call someone who lies to get

1 something they want?

2 A. It would be a con artist.

3 Q. A con artist.

4 Now, let's talk about what happened now in this case
5 with your charges, okay?

6 Can you tell us what happened to your charges? You
7 were charged with possession of methamphetamine. I presume
8 that's the methamphetamine in the syringe that you had
9 denied was methamphetamine?

10 A. Yes, sir.

11 I was taken to jail July 9th by Officer Aaron Bowles
12 and I did 71 days. I pled guilty in court and I got
13 conditional probation.

14 Q. All right. You got a conditional discharge?

15 A. (Shaking head yes).

16 Q. Do you understand what that means?

17 A. Yes, sir.

18 Q. Is it fair to say that a conditional discharge means
19 that if you will follow the rules of probation for the time
20 specified by the judge, that it goes off your record?

21 A. Yes, sir.

22 Q. Like it never happened?

23 A. Yes, sir.

24 Q. You were given a conditional discharge?

25 A. (Shaking head yes).

1 Q. And did the prosecution recommend that?

2 A. I don't -- I don't recall honestly.

3 Q. Well, did the prosecution stand up and say they didn't
4 want you to have it?

5 A. Not that I recall.

6 Q. Not that you recall?

7 A. Uh-uh.

8 Q. But you didn't live the terms of your conditional
9 discharge, did you?

10 A. I only did the first three months. I absconded the
11 last three.

12 Q. You what?

13 A. I absconded the last three.

14 Q. You absconded. Okay. That means you took off?

15 A. Yeah.

16 Q. You took off for the last three, so you didn't finish
17 the terms of your conditional discharge?

18 A. (Shaking head no).

19 Q. So what did they do to you?

20 A. I was put back in jail over a General Sessions bench
21 warrant and just came back for sentencing to General
22 Sessions.

23 Q. All right. Now, when you are in on a bench warrant you
24 can't get out of jail?

25 A. Uh-huh.

1 Q. Is that right?

2 A. Yes, sir.

3 Q. Only a judge can release you from jail?

4 A. Yes, sir.

5 Q. You can't get a bond and make a bond and get out, like
6 you can on other things?

7 A. Uh-uh.

8 Q. You sat in jail for how long the second time?

9 A. From May 29th to July 16th.

10 Q. From May 29th to July 16th?

11 A. Yes, sir.

12 Q. When was the first time that you spoke with either the
13 police or the prosecution about your testimony in this case?

14 A. I spoke with Kim Leskanic three to four weeks ago.

15 Q. Okay. Did you ever speak with her while you were in
16 jail?

17 A. No, ma'am -- no, sir.

18 Q. Did you ever speak with anyone else while you were in
19 jail?

20 A. No, sir.

21 Q. Not the -- I know you spoke with other people here.
22 Anybody else about this case -- about this case; the police,
23 prosecutors, solicitor's office?

24 A. About my case, or --

25 Q. Well, your case and/or what was going to happen to you?

1 A. I spoke with my lawyer.

2 Q. Okay. I don't want to ask you anything about what your
3 lawyer said.

4 A. Okay.

5 Q. Okay. Is it fair to say that you were sitting in jail
6 on a bench warrant, couldn't get out, and then one day you
7 were released?

8 A. Yes, sir.

9 Q. And did you have to do probation then?

10 A. No, the judge sentenced me to time served.

11 Q. You got time served?

12 A. Uh-huh.

13 Q. And did the prosecutor oppose that?

14 A. No, sir.

15 Q. Okay. Did they recommend that?

16 A. I honestly don't believe he made any recommendations.
17 He just --

18 Q. Okay.

19 A. And my lawyer asked for --

20 Q. Don't -- you can say what he said. That's fine. Your
21 lawyer asked for time served?

22 A. And the judge granted it.

23 Q. All right. No probation?

24 A. No, sir.

25 Q. No fine?

1 A. No, sir.

2 Q. No community service?

3 A. None.

4 Q. Please answer other questions.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION BY MS. LESKANIC:

7 Q. Do you recall if I was the prosecutor handling the
8 prosecution of your case, Ms. Powell?

9 A. No, it was Matt Kendall.

10 Q. Okay. Solicitor Kendall was the one that handled your
11 case, not me?

12 A. Yes.

13 Q. And you and I met -- did we meet -- did you and I meet
14 or talk when your case was still pending?

15 A. No, ma'am.

16 Q. Okay. Did I make you any promises if you would come in
17 here and say certain things, that something would happen to
18 your methamphetamine charge?

19 A. No, ma'am. I have never met you until three weeks ago.

20 Q. Okay. Solicitor Kendall, did he promise you something
21 if you would meet with me and help me with my case?

22 A. I have also never even spoke with Matt Kendall, so, no,
23 ma'am, you did not.

24 Q. You had an attorney?

25 A. Yes, ma'am.

1 Q. So the prosecutor did not speak with you?

2 A. No, ma'am.

3 Q. All right. You used the word con artist, lied to get
4 what they want. Are you a con artist? Are you referring to
5 yourself?

6 A. I would say I was when I was using drugs, but not since
7 I have been sober.

8 Q. Okay. Are you sober today?

9 A. Yes, ma'am.

10 Q. Are you telling the jury the truth today of what
11 happened on July 6th?

12 A. Yes, ma'am.

13 Q. Was that methamphetamine yours?

14 A. No, ma'am.

15 Q. And you would do anything to get methamphetamine, is
16 that true?

17 A. At that point in time in my life. I mean, while I was
18 using meth the first five, six years, yes.

19 Q. And was that the nature of your relationship with Mr.
20 Conner? What was the connection with Mr. Conner that
21 brought the two of you together?

22 A. Our -- he -- we had what each other wanted would be the
23 right way to put it.

24 Q. Well, what's the direct way to put it? What did he
25 want?

1 A. Sex.

2 Q. What did you want?

3 A. Drugs.

4 Q. And did you both get what you wanted out of that
5 relationship?

6 A. Yes, ma'am.

7 Q. Thank you very much.

8 MR. JOHNSTON: I have no further questions for the
9 lady.

10 THE COURT: You may step down.

11 Do you wish to excuse the witness?

12 MS. LESKANIC: Yes, Your Honor.

13 MR. JOHNSTON: No objection.

14 THE COURT: You are free to go, ma'am.

15 THE WITNESS: Thank you.

16 THE COURT: The State may call its next witness.

17 MS. LESKANIC: The State calls Rodney Bright,
18 Cherokee County Sheriff's Department.

19 THE COURT: Mr. Bright from the sheriff's
20 department.

21 Sir, come forward and be sworn, please.

22 OFFICER RODNEY BRIGHT, having been first duly
23 sworn, testified as follows:

24 THE COURT: Have a seat.

25 State your name.

1 THE WITNESS: Rodney Bright.

2 THE COURT: Thank you.

3 Ms. Leskanic, your witness.

4 MS. LESKANIC: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MS. LESKANIC:

6 Q. Where are you employed?

7 A. Cherokee County Sheriff's Office.

8 Q. And how long have you been employed there?

9 A. Since 2007.

10 Q. And what is your title and your duties at the sheriff's
11 department?

12 A. Currently I'm a lieutenant and my duties are I'm over a
13 training division, as well as I help with the canines, just
14 small things.

15 Q. Okay. At one time did you assist with evidence storage
16 at the sheriff's department?

17 A. Yes, ma'am, I did.

18 Q. And were you doing that back in July of 2015?

19 A. Yes, ma'am.

20 Q. I would like to show you what's been marked State's
21 Exhibit 2 and tell me if you recognize this?

22 A. Yes, ma'am, I do.

23 Q. All right. And what is that or what was your contact
24 with that package?

25 A. This is a SLED sealed BEST/bag and my contact with it

1 is when the deputies drop it into our drop box, evidence
2 drop box, I take it out of the drop box, I log it into our
3 system and we store it in our vault.

4 Q. Can you explain -- I think Deputy Bowles did a little
5 bit, but explain how the evidence drop box works with the
6 sheriff's department, where it actually goes when the
7 officers finish sealing it in the BEST/bag.

8 A. Yes, ma'am.

9 Once the officer finishes sealing a BEST/bag, what they
10 will do is they will drop it in a 3 X 12, like a mailbox
11 drop. It's a one-way door and it will fall down into a
12 padded box. And from there we will pull them out and I open
13 them up and I inspect them to make sure that the sealed bag
14 is sealed and it's got all the paperwork that's correctly
15 filled out and a signature and everything is done. Then I
16 log them into our system and we will store them in our vault
17 until they get ready to take them to SLED.

18 Q. Okay. Do you know -- and I don't know if you have the
19 paperwork, but do you know the day that you received it from
20 the evidence drop box?

21 A. I do not know that right off without the paperwork.

22 Q. If you looked at the proof chain of physical custody,
23 would that help refresh your memory?

24 A. Yeah, it should have my name on it.

25 Q. Okay. Take a look at that and see if that applies to

1 this case and if that would help refresh your recollection.

2 A. Yes, ma'am, that is my name and my signature.

3 Q. Okay. And how do you know that that belongs with this
4 case?

5 A. Because at the top of the form it's control number is
6 B-242053 and it should match the control number that's on
7 top of the sealed BEST/bag, 242053.

8 Q. And what day did you receive it from the evidence drop
9 box?

10 A. The day I received it was 8-15 of 2014.

11 Q. Now, does that mean that's the day that it's dropped
12 into the box, or how often would you check the box? How
13 does that procedure work?

14 A. No, ma'am, that's the day that I pull it out of our
15 box, that I was in there and pulled it out of the box. The
16 signature above that is usually the day that it's dropped
17 into the box.

18 Q. Okay.

19 A. And it's usually the officer that's dropping it in, he
20 will put that day and time. And when I pull it out and I
21 get ready to log it in, that's the day and time that it's
22 logged into our system.

23 Q. Okay. When you say logged in, is that entering
24 something into the computer system?

25 A. Yes, ma'am, I apologize. That's entering the case, as

1 well as the officer's name and the control numbers that's
2 logged into the -- we call it the B system and it's logged
3 in that way.

4 Q. And did the evidence where the evidence drop box is
5 located, is that a locked secured room with limited access?

6 A. Yes, ma'am, it is. There is only four people that have
7 access to that room.

8 Q. Okay. So officers that want to drop evidence do not
9 walk into that room to drop anything --

10 A. No, ma'am.

11 Q. -- is that correct?

12 A. No, ma'am.

13 Q. How do they get evidence into the evidence box?

14 A. The only way that they can get evidence into the
15 evidence box is that 3 X 12 metal drop box. It's a one-way
16 door. Once it goes in, it probably goes down two foot and
17 then it drops down into a padded box. There is no way to
18 retrieve nothing once it's placed in there.

19 Q. Kind of like a mail slot?

20 A. Yes, ma'am, like a mail slot.

21 Q. Okay. So you received that package and logged it in on
22 August 14th of 2014, is that correct?

23 A. Yes, ma'am.

24 Q. All right. And then it was secured in the evidence
25 room at the Cherokee County Sheriff's Department?

1 A. Yes, ma'am.

2 Q. All right. Did you tamper with the package in any way?

3 A. No, ma'am.

4 Q. Would you be able to tell if anyone had tampered with
5 the package?

6 A. Yes, ma'am, you can.

7 Q. How you tell that?

8 A. With the BEST/bags, once they are sealed by the
9 officer, and that's one thing we check for is to make sure
10 they are sealed, the correct paperwork is placed inside.
11 There is no way to open it up without cutting the package
12 open. You have to physically cut the package open. It's a
13 tight real heavy plastic and the only way to get in there is
14 to cut it open.

15 Q. Okay. Thank you very much. Please answer any
16 questions that the defense may have.

17 MR. JOHNSTON: I have no questions for this
18 gentleman.

19 THE COURT: You may step down. Thank you very
20 much.

21 MR. JOHNSTON: No objection to him being excused.

22 THE COURT: Any objections?

23 MS. LESKANIC: No objection, Your Honor.

24 THE COURT: Thank you.

25 You are excused. You are free to go.

1 THE WITNESS: Thank you, sir.

2 THE COURT: The State may call its next witness.

3 MS. LESKANIC: The State calls Billy Anthony.

4 THE COURT: Billy Anthony, please.

5 Come forward, sir, and be sworn.

6 OFFICER BILLY ANTHONY, having been first duly
7 sworn, testified as follows:

8 THE COURT: Have a seat, please.

9 State your name.

10 THE WITNESS: Lieutenant Billy Anthony.

11 THE COURT: Thank you.

12 Counselor, your witness.

13 MS. LESKANIC: Thank you, Your Honor.

14 May it please the court?

15 THE COURT: Yes, ma'am.

16 DIRECT EXAMINATION BY MS. LESKANIC:

17 Q. - Lieutenant Anthony, where are you employed?

18 A. The Cherokee County Sheriff's Office.

19 Q. How long have you been employed there?

20 A. I have been employed there 14 years.

21 Q. What are your current duties?

22 A. I work crime scenes and I'm the evidence custodian.

23 Q. Were you the evidence custodian back in July of 2014?

24 A. Yes, ma'am, I was.

25 Q. I would like to show you what's been marked State's

1 Exhibit 2 and tell me if you recognize that.

2 A. Yes, ma'am. This is a BEST/kit that was placed into
3 evidence.

4 Q. Okay. And what was your involvement with that kit?

5 A. We log evidence in when it's dropped in the evidence
6 drop box. Myself, Detective Jimmy Henson and Lieutenant
7 Rodney Bright all work in the evidence vault.

8 Lieutenant Bright logged this BEST/kit in the inner
9 packaging here, logged it into the evidence vault. I
10 actually received it from the evidence vault, transported it
11 to SLED for testing and brought it back after it had been
12 tested at SLED.

13 Q. What is SLED?

14 A. It's the State Law Enforcement Division.

15 Q. And why do you take it to SLED as a policy?

16 A. They do all of our drug analysis.

17 Q. Okay. Now, when you received that package, had it been
18 tampered with?

19 A. No, ma'am, it hadn't. There is a seal on the top that
20 the officer that actually impounds it. He signs the
21 front -- writes the name, date, and signs the bag. He seals
22 this strip. There is a strip across the top that's a
23 tamper-resistant strip. If anybody tries to open it, it
24 will distort the strip so you can tell it's been tampered
25 with. When we remove it we always check the seal. It has

1 to be sealed and intact before we can accept it into the
2 evidence vault.

3 Q. And what day did you take it to the State Law
4 Enforcement Division?

5 A. Let me refer to my notes.

6 Q. Please.

7 A. I took it on October the 14th, 2014.

8 Q. And when was it returned and how was it returned to the
9 sheriff's department?

10 A. It was returned February the 10th, 2015. While I was
11 there dropping off evidence on other cases, I picked that
12 evidence up, along with other evidence. I transported it
13 back to the sheriff's office where I logged it back into the
14 evidence vault and placed it into the narcotics cage.

15 Q. And has it been in the evidence vault, except when it's
16 been needed for you to bring to trial?

17 A. Yes, ma'am, it has.

18 Q. Did you transport it here yesterday from the evidence
19 vault at the start of this trial?

20 A. Yes, ma'am, I did.

21 Q. Okay. Thank you. Please answer any questions that Mr.
22 Johnston has.

23 MR. JOHNSTON: I have no questions for this
24 gentleman and no objection to him being excused.

25 THE COURT: You may step down.

1 Do you wish to excuse the witness?

2 MS. LESKANIC: Yes, Your Honor. Thank you.

3 THE COURT: You are free to go. Thank you for
4 coming, sir.

5 The State may call its next witness.

6 THE COURT: The State calls Lynn Black from SLED.

7 THE COURT: All right. Lynn Black.

8 Come forward, please, ma'am, and be sworn over
9 here to my left, please.

10 SLED AGENT LYNN BLACK, having been first duly
11 sworn, testified as follows:

12 THE COURT: Have a seat, please, ma'am.

13 State your name.

14 THE WITNESS: Lynn Black.

15 THE COURT: Thank you.

16 Ms. Leskanic, your witness.

17 MS. LESKANIC: Thank you, Your Honor.

18 May it please the court?

19 THE COURT: Yes, ma'am.

20 DIRECT EXAMINATION BY MS. LESKANIC:

21 Q. Good morning.

22 A. Good morning.

23 Q. How are you today?

24 A. Doing well.

25 Q. Good. Thank you.

1 Could you please introduce yourself to the ladies and
2 gentlemen of the jury and tell them where you are employed?

3 A. My name is Lynn Black and I work for the South Carolina
4 Law Enforcement Division, commonly known as SLED, in the
5 drug analysis department.

6 Q. How long have you worked in the drug analysis
7 department?

8 A. I have worked there for almost seven years.

9 Q. Could you tell the jury, please, about your training,
10 education and experience to work in the drug analysis
11 department at the South Carolina Law Enforcement Division?

12 A. Yes, I have a Bachelor of Science Degree in Chemistry
13 from Kentucky Wesleyan College, a Certificate of Medical
14 Technology from the University of Louisville, and a Master
15 of Science Degree in Forensic Science from Marshall
16 University.

17 Prior to my job at SLED I also worked as a drug analyst
18 for the Georgia Bureau of Investigation in Atlanta, Georgia,
19 for about eight years.

20 Q. And what are your current duties at SLED?

21 A. My duties include receiving and analyzing substances
22 brought in by law enforcement personnel and then I determine
23 whether they are controlled substances or not.

24 Q. Okay. And do you have any idea approximately how many
25 substances you have tested during the time as an analyst at

1 SLED?

2 A. At SLED I have analyzed probably over four thousand
3 cases.

4 Q. All right. And how about your time in Georgia?

5 A. In Georgia probably about the same.

6 Q. So about eight thousand different substances that you
7 have tested during your time?

8 A. Correct.

9 Q. Okay. Have you ever been qualified as an expert in a
10 General Sessions Court before?

11 A. Yes, I have.

12 Q. Do you know what counties you have been qualified in?

13 A. That would be a tough one. In South Carolina I have
14 testified twenty times. In Georgia I testified -- I have
15 testified a hundred times.

16 Q. And always qualified as an expert?

17 A. Yes.

18 MS. LESKANIC: Your Honor, at this time I would
19 like to offer Lynn Black as an expert in the field of
20 chemistry and also the analysis of narcotics.

21 THE COURT: Any objection?

22 MR. JOHNSTON: Your Honor, we believe she's
23 qualified to offer her opinion.

24 THE COURT: All right.

25 Ladies and gentlemen of the jury, I'm going to

1 qualify the witness as an expert within the field that she's
2 been offered to testify in.

3 Let me explain to you briefly what we are doing so
4 that you will understand a little more about this process.

5 Generally witnesses who testify in court, lay
6 witnesses, are not allowed to give their opinions about
7 subjects. They are required to testify concerning facts
8 within their knowledge but aren't allowed to draw opinions
9 from those facts. There is an exception to that general
10 rule and that is for witnesses who are designated as an
11 expert within some profession, science, field. For
12 witnesses who are designated as experts within certain
13 fields, they are allowed to testify concerning their
14 opinions within their field of expertise and they are also
15 allowed to give the reasons why they hold the opinions they
16 have.

17 This particular witness has been offered as an
18 expert witness within the field of analysis of chemicals
19 and/or drugs. I'm qualifying her as such. That will allow
20 her to state her opinions within that field and state the
21 reasons why she holds those.

22 Later on when I charge you concerning the law in
23 this case I will give you some additional information about
24 expert witness testimony and how you have the right to
25 consider it, but at this time suffice it to say she has been

1 qualified, and you may proceed, Ms. Leskanic.

2 MS. LESKANIC: Thank you, Your Honor.

3 May it please the court?

4 THE COURT: Yes, ma'am.

5 MS. LESKANIC: May I approach the witness?

6 THE COURT: You may, yes.

7 MS. LESKANIC: Thank you.

8 BY MS. LESKANIC:

9 Q. Ms. Black, I'm going to show you State's Exhibit 2. If
10 you can take a look at that and tell me if you recognize
11 that?

12 A. I do.

13 Q. And what is that?

14 A. This is the evidence in a case that I analyzed. I
15 recognize it by my initials are on the inside bag, along
16 with a case number and the date, and also my initials are on
17 the bottom seal of this bag.

18 Q. Could you please explain to the jury how you received
19 the evidence, how it was packaged, when it first comes into
20 your possession?

21 A. When evidence comes into my possession, it comes in
22 what we consider it's called a BEST/kit. And BEST is an
23 acronym for Best Evidence Sample Testing. It's a way that
24 SLED has come up with to streamline how drug evidence is
25 submitted to us. And what we do is we give out this kit and

1 it's a manila envelope that has a sticker on it that has
2 what is called a BEST/number. That's a way to kind of track
3 that particular kit. And what's inside is a tamper-evident
4 plastic bag and that's what this bag that's inside of this
5 outer bag. That's what this is in here. That is the bag
6 that was inside the BEST/kit. So we --

7 Inside that also is paperwork that the agency will fill
8 out and turn in to SLED when they do submit drug evidence.

9 So when I get it, I get a manila envelope. And inside
10 is that tamper-evident bag that has evidence inside of it.

11 Q. When you received that bag in this particular case, had
12 the bag been tampered with?

13 A. No, it was intact.

14 Q. Okay. And how would you know if it had been tampered
15 with?

16 A. I would have noticed that the bag itself had a hole in
17 it or the seal had been -- where they sealed it at the top
18 would have been distorted. And when I receive it, I check
19 all those things and then I write on that bag that the seal
20 was intact and the date and my initials and that's what is
21 on here.

22 Q. So if the bag had not been intact, would you have
23 tested the substance?

24 A. At the time when I received this, we would have sent it
25 back to have the agency, you know, make sure that everything

1 was correct, you know, that what was in there had not been
2 tampered with and what they had submitted was still in there
3 and then they would have to resubmit it. I think now we
4 have changed our policy and we would have taken it and we
5 would have noted on our report that it had been unsealed,
6 but in this particular case, since it was -- it was intact
7 and I continued with my analysis.

8 Q. Okay. And how does that analysis continue? What's
9 your first step?

10 A. The first step, as I said, was to make sure that the
11 bag had not been tampered with and to write the unique crime
12 lab case number. That's what this bar code sticker is here.
13 When it comes into SLED, our log-in technicians enter all
14 the information into our computer system and then generate
15 this number and this bar code and they actually affix it to
16 the manila envelope that I said was considered the BEST/kit.
17 When I'm finished with it, I'm the one who puts this sticker
18 on this bag. But once I get the evidence -- do you want me
19 to continue on how --

20 Q. Please --

21 A. -- the log-in --

22 Q. Just continue your procedure, yes, ma'am. Thank you.

23 A. Okay. Once the evidence is taken to log-in and then
24 they enter all the information and generate the sticker,
25 they place it on that manila envelope and then they scan

1 that sticker to themselves. They bar code it to them. This
2 sticker is what we use to track this piece of evidence at
3 SLED. So anybody who takes possession of that piece of
4 evidence, they scan that evidence to them. So we can look
5 and see in our computer system who has had this evidence.
6 So they do that and then they will scan it to the vault, the
7 main vault that's in the log-in department. And then when
8 I'm ready to come down and get evidence, I come down and
9 they will scan that evidence to me. And then I take the
10 evidence upstairs to my department. Generally I place it in
11 our -- we have a drug vault up there as well and I'll place
12 it there until I'm ready to sample it.

13 Once I'm ready to sample I'll take out usually a batch
14 of cases. Then I open each one, each piece of evidence one
15 at a time. I never have more than that one piece of
16 evidence open. So when I get it, I get it -- like I said, I
17 get that bag that's inside here and I will cut the bottom
18 part. It's sealed at the top.

19 It's hard to tell on this one, because they didn't
20 color the tamper-evident seal, but I will cut it at the
21 bottom and open it up and get out whatever the evidence is.

22 In this case it's a plastic bag, like a sandwich bag.
23 And I will take that substance that's inside there and I
24 will weigh it. How I do that is I have a balance and I'll
25 put a piece of weigh paper on it and zero it out. It's

1 called tearing the balance. And then I will take the
2 substance out of that bag that's in here and place it on
3 that piece of tear paper or weigh paper and place it on the
4 balance to get the net weight and that's what I record on my
5 worksheet. Then I'll take a small part of this sample and
6 do a chemical, also known as a color test, and then I will
7 take another small sample and do another test.

8 In this particular case I did what's called, and it's a
9 mouthful, Fourier Transform Infrared Spectroscopy, and we
10 call that FTIS for short for obvious reasons. It's much
11 easier to say that. So those are the two tests that I
12 performed on this particular piece of evidence.

13 Once I'm done doing those two tests I put the substance
14 back in -- actually put it back in the bag it came in, if it
15 doesn't have holes in it or anything, and I put a piece of
16 tape on here where I write the case number and my initials
17 on that piece of tape that's attached to this bag. And then
18 I will place it back -- I place it in this outer bag we call
19 a K-pack. I think that's just what the manufacturer calls
20 it. And we place, you know, that tamper-evident bag back in
21 there and also the actual bag that had the controlled
22 substance in it back in here. And then I heat seal it and
23 put my initials and then I print out a sticker, the bar code
24 sticker, and place it on here, and then I'm finished with
25 it. I take it back down to log-in once my report is

1 finished and then they will return it to the law enforcement
2 agency that it came from.

3 Q. And did you generate a report in this case?

4 A. I did.

5 Q. Were you able to determine the weight of the substance?

6 A. I did.

7 Q. What is that weight?

8 A. The net weight was 8.44 grams.

9 Q. And were you able to determine what the substance is?

10 A. Yes.

11 Q. And what is that?

12 A. The substance, it was methamphetamine in the sample
13 test.

14 MS. LESKANIC: Your Honor, at this time I would
15 offer State's Exhibit 2 for admission as evidence.

16 THE COURT: Any objection?

17 MR. JOHNSTON: No, Your Honor.

18 THE COURT: Without objection, it will be admitted
19 into the record as marked.

20 (Whereupon, State's Exhibit No. 2 was entered into
21 the record as evidence)

22 MS. LESKANIC: Thank you, Your Honor, and I have
23 no further questions of this witness.

24 BY MS. LESKANIC:

25 Q. If you will answer any questions Mr. Johnston may have.

1 THE COURT: Mr. Johnston, your witness.

2 CROSS EXAMINATION BY MR. JOHNSTON:

3 Q. Ms. Black, is it fair to say that you test for the
4 presence of methamphetamine? That's what you do?

5 A. Correct.

6 Q. You can't testify today that everything -- or that the
7 entire contents of State's Exhibit No. 2 is pure
8 methamphetamine, can you?

9 A. I cannot. I take a representative sample and what I
10 found was methamphetamine.

11 Q. Okay. And, again, you're finding the presence of
12 methamphetamine?

13 A. Yes, sir.

14 Q. The distinction I'm trying to make is this. I'm sure
15 you are aware that when methamphetamine is sold, or other
16 drugs are sold, it's not necessarily sold in its pure state?

17 A. Correct..

18 Q. Very oftentimes fillers, powders, inert substances are
19 added?

20 A. That's correct.

21 Q. So you don't know how much of State's Exhibit No. 2 is
22 an inert powder or whatever? You only know that some of
23 State's Exhibit No. 2 is, in fact, methamphetamine?

24 A. That is correct.

25 Q. Okay.

1 MR. JOHNSTON: No further questions.

2 THE COURT: Redirect?

3 MS. LESKANIC: Just briefly.

4 REDIRECT EXAMINATION BY MS. LESKANIC:

5 Q. Can you tell whether it is pure methamphetamine or
6 whether there is filler in this product through the testing?

7 A. Based on the test that I performed I cannot.

8 I could have done a different analysis and it might
9 have told me that there is some other substance in there,
10 but not necessarily.

11 Q. So based on your testing, you cannot state or give an
12 opinion as to whether this is pure methamphetamine or
13 whether it is methamphetamine mixed with a filler, is that
14 correct?

15 A. That is correct.

16 Q. Thank you.

17 MR. JOHNSTON: No other questions, sir.

18 THE COURT: You may step down.

19 Do you wish to excuse the witness?

20 MS. LESKANIC: Yes, Your Honor.

21 THE COURT: Any objection?

22 MR. JOHNSTON: No objection.

23 THE COURT: Ma'am, you are free to go. Thank you
24 very much.

25 THE WITNESS: Thank you.

1 THE COURT: The State may call its next witness.

2 MS. LESKANIC: Your Honor, the State calls Nick
3 Federico.

4 We may need to discuss something with Your Honor
5 briefly before this witness testifies.

6 THE COURT: All right.

7 Ladies and gentlemen of the jury, I'm going to ask
8 you to step back to the jury room again. And, as always,
9 when you leave the courtroom, my instructions are not to
10 discuss the case at all until I tell you to do so.

11 (The following takes place outside the presence of
12 the jury panel)

13 THE COURT: Yes, ma'am.

14 MS. LESKANIC: Your Honor, the State's next
15 witness is Nick Federico. He's employed in the narcotics
16 division with the Cherokee County Sheriff's Department.
17 It's my intention to call him to the stand in an attempt to
18 have him qualified as an expert in the illegal trade of
19 methamphetamine, specifically in Cherokee County, to try to
20 give the jury some information about what 8.44 grams of
21 methamphetamine is worth and how the sale of methamphetamine
22 occurs in Cherokee County. He was not a part of the
23 original case file, so I just wanted to bring that to the
24 attention of both Mr. Johnston and the court prior to the
25 start of his testimony.

1 THE COURT: Mr. Johnston?

2 MR. JOHNSTON: Your Honor, I'm not sure that
3 street value would be relevant in this case, and, in fact,
4 it certainly could be prejudicial. There has already been
5 evidence in the record about the amount of the drug. I just
6 don't think that -- I think it would be prejudicial to my
7 client to have just general statements about street values
8 and about how methamphetamine is sold.

9 THE COURT: What's the probative value of that
10 information in this case?

11 MS. LESKANIC: It's the State's burden to prove
12 possession with intent to distribute.

13 THE COURT: Uh-huh.

14 MS. LESKANIC: Officer Federico has worked in
15 narcotics for several years. He has had interactions with
16 quote, unquote, junkies, which the defendant claims to be.
17 And I believe his testimony will be is that it's rarely, if
18 ever seen, a junkie has this amount of methamphetamine; that
19 the street value of 8.44 grams of meth is probably around
20 six to \$800; that he had \$419 in his pocket.

21 We are stuck with the burden of proving his
22 intention of distributing this. I know the jury can --

23 THE COURT: Are you saying those are all relevant
24 factors that a jury should consider in determining the
25 totality of the circumstances of what the intent might have

1 been on those circumstances?

2 MS. LESKANIC: Yes, Your Honor. And I believe
3 when a jury looks at that amount of drugs, they may think,
4 well, that doesn't look like much, but in the world of
5 methamphetamine that is a great deal of methamphetamine.
6 And I just want -- I felt like Lieutenant Federico could
7 offer the jury something that a lay witness could not, and,
8 therefore, he could be qualified as an expert.

9 THE COURT: Mr. Johnston?

10 MR. JOHNSTON: Your Honor, the State is already
11 aided by permissive inference that I know they are going to
12 request Your Honor charge.

13 THE COURT: They are not limited to that.

14 MR. JOHNSTON: No, sir, they are not limited to
15 that, but I'm just saying that I don't think the street
16 value is relevant to establishing whatever intent my client
17 might have had.

18 THE COURT: Well, I don't know, Mr. Johnston. You
19 know, if someone is simply a user --

20 MR. JOHNSTON: Yes, sir.

21 THE COURT: -- the likelihood of them stockpiling
22 a large quantity, as far as value is concerned, of a
23 particular drug is relatively low. I would imagine most
24 junkies or users don't invest heavily in inventory. They
25 tend to buy it and use it. I think that's what this

1 gentleman is going to testify to.

2 MS. LESKANIC: Yes, Your Honor.

3 THE COURT: That's -- and that's been somewhat my
4 experience in sitting on the bench, so I suppose that's what
5 his expertise might go towards is the fact that people who
6 use the drugs don't usually have a lot of the drug on them.

7 MR. JOHNSTON: Your Honor, first of all I think
8 that would be highly speculative.

9 The other thing is he knows nothing of my client
10 and my client's specific situation. If he's done an
11 investigation of my client and he knows all about my client,
12 then perhaps that might have some relevance, but for him to
13 just boldly say "I think he must have had the intent to
14 distribute because there is a lot here --

15 THE COURT: No, I don't think he's going to say
16 that. What he's --

17 You are telling me that he's going to speak from
18 his experience, long-time experience as a narcotics agent in
19 this community?

20 MS. LESKANIC: Yes, sir.

21 THE COURT: And I think he's just telling me he's
22 going to testify as to what his experience over those years
23 would indicate concerning amounts of drugs and possession of
24 users as opposed to dealers?

25 MS. LESKANIC: That is correct, Your Honor.

1 He is not going to say Mr. Conner had the intent
2 to distribute. He doesn't know that.

3 He's offered as an expert in an attempt to give
4 the jury information that they are not going to have to
5 understand that 8.44 grams of methamphetamine is a large
6 amount of methamphetamine and not something that you would
7 typically see in the hands of a quote, unquote, junkie.

8 THE COURT: All right, Mr. Johnston?

9 MR. JOHNSTON: I object, Your Honor.

10 THE COURT: I understand.

11 I'm going to allow him to testify, if he gets
12 qualified, and I haven't even passed on his qualifications
13 yet, but if he is qualified as an expert concerning those
14 matters, then he's allowed to state his opinions within that
15 area of expertise and the reason why he felt so. I'll
16 listen to what his qualifications are.

17 MS. LESKANIC: Thank you, Your Honor.

18 THE COURT: All right. Anything further before we
19 bring the jury back?

20 MR. JOHNSTON: Your Honor, I need to use the
21 restroom and my client needs to use the restroom, if you
22 would so allow.

23 THE COURT: We will take about -- I intend to go
24 to about 12:30, I think.

25 MS. LESKANIC: This is my last witness, Your

1 Honor.

2 THE COURT: Okay. That would be a good breaking
3 point, so we will take about a five minute break.

4 MR. JOHNSTON: Thank you, Your Honor.

5 THE COURT: I'll stay on the bench.

6 Before I do that I did not have passed down Ms.
7 Powell's statement of State's No. 3 and I directed that it
8 be made a court's exhibit instead of a state's exhibit.

9 MS. LESKANIC: Thank you, Your Honor.

10 MR. JOHNSTON: Yes, sir.

11 THE COURT: Ms. McBee, pass that over and let him
12 mark it. Thank you.

13 All right, we will be in recess briefly.

14 (Whereupon, State's Exhibit No. 3 was remarked as
15 Court's Exhibit No. 2)

16 MS. LESKANIC: Thank you, Your Honor.

17 (Whereupon, proceedings were recessed).

18 (Whereupon, proceedings were reconvened)

19 THE COURT: Is the State ready to proceed?

20 MS. LESKANIC: Yes, Your Honor.

21 THE COURT: Defense ready?

22 MR. JOHNSTON: Yes, sir.

23 THE COURT: All right. Bring the jury in.

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT: All right. Let the record reflect the
2 jury has returned to the courtroom.

3 Let's see, sir, you need to approach and be sworn,
4 please. You have been called as a next witness.

5 MS. LESKANIC: Yes, Your Honor.

6 The State calls Nick Federico.

7 THE COURT: All right.

8 OFFICER NICK FEDERICO, having been first duly
9 sworn, testified as follows:

10 THE COURT: Have a seat, sir.

11 Once you are seated state your name.

12 THE WITNESS: I'm Sergeant Nicholas Federico.

13 THE COURT: All right. Your witness, counsel.

14 MS. LESKANIC: Thank you.

15 DIRECT EXAMINATION BY MS. LESKANIC:

16 Q. Sergeant Federico, where are you employed?

17 A. Cherokee County Sheriff's Office.

18 Q. How long have you been employed at the sheriff's
19 office?

20 A. A little over eight years.

21 Q. And what different positions have you held during those
22 eight years?

23 A. I started out, half of my career, I spent four year as
24 a road patrol officer. And now I have been in narcotics for
25 a little over four years.

1 Q. So strictly narcotics for the last four years?

2 A. Yes, ma'am.

3 Q. Did you also have occasion to deal with narcotics while
4 you were a road deputy?

5 A. Yes, ma'am.

6 Q. Do you know approximately how many drug cases you have
7 had made during your time with the sheriff's department?

8 A. I mean, I would venture to say over a hundred.

9 Q. Have you dealt with the substance methamphetamine
10 during your time in the narcotics division?

11 A. Yes, ma'am.

12 Q. And can you tell the jury a little bit about
13 methamphetamine and any training that you have gone through,
14 specifically geared toward methamphetamine, or narcotics in
15 general?

16 A. Yes, ma'am. I actually -- I don't know the years, but
17 probably about three years ago I went to an undercover op
18 class, about a forty hour class, at the academy, the
19 Criminal Justice Academy Columbia gives. It basically deals
20 with the dope trade, undercover work, that kind of thing.

21 Then shortly after that I went to Meridian, Mississippi
22 for two weeks. It was split up. I went one week and then
23 went back on a different week, but it was basically on
24 clandestine lab class, which is basically a meth cooking
25 procedures, cultivating of meth, the actual drug itself,

1 indoor marijuana grows, which is part of a lab situation.
2 That was an eighty hour class.

3 And then as far as narcotics, I went to a cultivating
4 informants for a sixteen hour class, two day class in
5 Charlotte shortly after that.

6 And then I do have a date for May of 2011, Desert
7 Storm, which is basically the transportation, recognition
8 and concealment in vehicles of narcotics.

9 Q. And with your narcotics duties at this time, what type
10 of cases do you make?

11 A. Anywhere from possession to trafficking cases of
12 narcotics.

13 Q. And are there different types of situations that you
14 run into, such as traffic stops, search warrants,
15 distributions, things of that nature?

16 A. Yes, ma'am.

17 Q. Can you tell the jury a little bit about those, what
18 your interaction would be with drugs and how you would come
19 about those cases?

20 A. Yeah. Of course, traffic stops is kind of
21 self-explanatory. You run across drugs on traffic stops.

22 But like distributions, a lot of times we work
23 informants, confidential informants, to help us, because
24 it's hard for us to go out in our community and buy dope
25 because people know who we are. So basically we go out and

1 we buy twenty and forty dollars worth of different various
2 types of drugs to bring back, they bring back to us, and
3 then we do that on video and it shows that they did
4 distribute the drugs for the small amount of money.

5 Search warrants, same issue. There is several
6 different ways, but a lot of times we use informants that we
7 have qualified and they go in places where dope is being
8 traded or sold out of that residence and they are known to
9 have more dope at that residence and we type up search
10 warrants and go to them houses and search for the dope or
11 the narcotics.

12 Q. In your dealings with narcotics and the training
13 classes that you have had, do you have an idea of the value
14 of methamphetamine?

15 A. Yes, ma'am.

16 Q. Based on the amount?

17 A. Yes, ma'am.

18 Q. Okay. And have you been trained to recognize
19 methamphetamine?

20 A. Yes, ma'am.

21 Q. All right.

22 MS. LESKANIC: Your Honor, at this time I would
23 offer Sergeant Federico as an expert in the illegal trade of
24 methamphetamine, specifically here in Cherokee County, based
25 on his training and experience as a narcotics officer and as

1 a deputy with the sheriff's department for total of eight
2 years.

3 THE COURT: Any objection?

4 MR. JOHNSTON: Your Honor, we would ask has he
5 ever been qualified as an expert before?

6 BY MS. LESKANIC:

7 Q. Have you ever been qualified as an expert in General
8 Sessions court before?

9 A. Yes, I have.

10 MR. JOHNSTON: How many times?

11 THE WITNESS: Just one time.

12 MR. JOHNSTON: One time?

13 THE WITNESS: Yeah.

14 MR. JOHNSTON: Okay.

15 Your Honor, we believe he's qualified to offer his
16 opinion as to certain aspects, but there may be some things
17 that I will bring the court's attention to that I think he's
18 going to be outside --

19 THE COURT: I will give you the right to reserve
20 specific objections to specific questions that are asked.
21 However, I will generally qualify him as an expert
22 concerning drug trafficking or trade in Cherokee County, and
23 so I will allow him to give his opinions within that area.

24 You may proceed.

25 MS. LESKANIC: Thank you, Your Honor.

1 BY MS. LESKANIC:

2 Q. Sergeant Federico, you mentioned doing controlled buys
3 and you said twenty to forty dollars?

4 A. Uh-huh.

5 Q. Why that amount? Is there a significance to a twenty
6 to a forty dollar buy?

7 Can you explain, I guess, the buy procedure to the jury
8 and then why you give them that amount of money?

9 A. Yes. Just the -- generally when we are going out and
10 doing distribution buys we give a low amount of money
11 because that's normally what users use twenty, forty dollars
12 worth at a time, so that's a normal day of a user's life.
13 They go from -- they go to buy twenty dollars, forty dollars
14 worth of dope, narcotics, so we basically do it on a small
15 scale because that's what's -- I mean, it would look crazy
16 if I send a user, or who they believe to be a user, to buy
17 an ounce of methamphetamine, you know if -- you know, \$1,500
18 in their pocket and it would look crazy for them, you know,
19 going and trying to buy that much narcotics or dope they are
20 not used to buying.

21 Q. Okay. So twenty dollars to forty dollars would be what
22 you would expect a -- is that the amount you would expect a
23 user to buy at a time?

24 A. Yes, ma'am.

25 Q. Okay. Do you know how much the going rate in Cherokee

1 County for a gram of methamphetamine?

2 A. On the street level, if you was selling a gram of
3 methamphetamine, it's generally a \$100.

4 Q. So if we had 8.44 grams of methamphetamine, what would
5 be the street value of that?

6 A. Right at eight and a half would be \$850.

7 Q. Okay.

8 A. 840.

9 Q. \$850?

10 A. Yes.

11 Q. In your experience is that an amount of methamphetamine
12 that a quote, unquote, junkie would have in their
13 possession?

14 MR. JOHNSTON: Your Honor, I would object to that
15 question, to him answering that question. I don't believe
16 that is within his field of knowledge.

17 THE COURT: All right. I'll ask you to lay a
18 better foundation.

19 MS. LESKANIC: Yes, sir, Your Honor.

20 BY MS. LESKANIC:

21 Q. Sergeant Federico, have you in your time as a road
22 officer and also in narcotics had occasions to deal with
23 individuals who considered themselves heavily addicted to
24 methamphetamine, or junkies, for lack of a better word?

25 A. Yes, ma'am.

1 Q. Have you had an opportunity to interview individuals
2 who were in that situation and asked them questions about
3 their drug habits and life habits while addicted to
4 methamphetamine?

5 A. Yes, ma'am.

6 Q. All right. And based on that information, would you
7 expect a quote, unquote, junkie to have 8.44 grams of
8 methamphetamine in his or her possession?

9 A. No, ma'am.

10 Q. Okay. How much methamphetamine, in your experience,
11 have you seen a junkie have on them at a time?

12 MR. JOHNSTON: Your Honor, please note our
13 continuing objection.

14 THE COURT: Objection is noted.

15 You may ask the question.

16 A. Generally anywhere from a tenth of a gram to -- I mean,
17 possibly up to a gram.

18 BY MS. LESKANIC:

19 Q. Okay. So that's one or 0.10'--

20 A. Yes, ma'am.

21 Q. -- is that correct?

22 A. Yes, ma'am.

23 Q. Now, are there occasions -- have you come across
24 someone who is both a user and may possibly distribute the
25 methamphetamine as well?

1 A. Yes, ma'am.

2 Q. How often do you come across that situation?

3 A. A lot.

4 Q. All right. Why is that? Can you explain?

5 A. Yes. I guess most -- I guess most users, junkies,
6 however you want to word it, are not employed. They have to
7 find ways to get their dope. I mean, they have the habit so
8 they have to have it. So basically they will get enough
9 dope -- when they -- when they start building up with the
10 dealer, with a bigger dealer, they get enough dope to
11 start -- they use theirs, but they also supply other people
12 to generate funds back to them to supply their habit, if
13 that makes sense.

14 Q. So, in other words, they sell to support their own
15 habit?

16 A. Right.

17 Q. If someone is selling methamphetamine, would you always
18 find a -- in every case have you found individuals weighing
19 it on a scale, or is it sometimes they eyeball it in the
20 sale? Is there an absolute method to how they determine how
21 much they are going to sell?

22 A. No, ma'am.

23 Q. And what have you seen?

24 A. I have seen it both ways. I mean, you know, sometimes
25 they will eyeball it. I mean, once a -- I'm assuming once a

1 dealer -- it's just like anything that you do. Once you
2 have sold so much, you know, you can kind of, you know, put
3 what you think in certain size bags and know about what they
4 are going to weigh. There is different size bags that they
5 use, so, you know, if they -- if you had a small bag and you
6 held it up and you was given two-tenths of a gram to
7 somebody, a twenty dollar sale, I mean, they can -- they can
8 basically about look at that and eyeball it and tell how
9 much they are selling.

10 Q. Okay. So scales are not necessarily --

11 MR. JOHNSTON: Object to leading the witness, Your
12 Honor.

13 THE COURT: I'm going to ask you to finish the
14 question. I don't know whether it suggests -- you know, a
15 leading question must suggest an answer. I don't know
16 whether she is suggesting an answer or not, so I'll have to
17 let her finish the question.

18 MS. LESKANIC: Thank you.

19 THE COURT: You may proceed.

20 MS. LESKANIC: Thank you, Your Honor.

21 BY MS. LESKANIC:

22 Q. Are scales always found on or with someone who is
23 selling?

24 A. No, ma'am.

25 Q. If your -- when you have dealt with individuals that,

1 you know, were placed under arrest for drug violations, have
2 you -- do you have any knowledge about how much money a
3 quote, unquote, junkie would typically have on their person?

4 MR. JOHNSTON: Your Honor, we would object. That
5 calls for speculation outside of his area of knowledge.

6 THE COURT: You have to lay a foundation for that.

7 BY MS. LESKANIC:

8 Q. Have you --

9 THE COURT: Even as an expert he has to have a
10 basis or a reason for holding opinions, so it has to be some
11 basis for him having an opinion on that subject.

12 BY MS. LESKANIC:

13 Q. And I'm trying to ask have you had conversations or
14 personal experiences where you would know whether or not a
15 full-blown addict who is just a junkie had money in their
16 possession or did not have money in their possession? I'm
17 trying to inquire whether you have any knowledge in that
18 area?

19 A. Yes. I mean, I come across people, users, every day,
20 whether -- not necessarily arresting them, but talking to
21 them, you know, getting out with them, being involved in the
22 community. So dealing with them on a law enforcement side
23 when I get out with them and, you know, they get arrested
24 for a little possession or anything like that, no, they
25 generally do not have any extra money.

1 MR. JOHNSTON: Your Honor, the fact that he's
2 talking to some people wouldn't be a legal foundation for
3 offering an expert opinion about the totality of the
4 situation.

5 THE COURT: Overrule the objection.

6 MS. LESKANIC: Thank you, Your Honor.

7 BY MS. LESKANIC:

8 Q. That's all the questions that I have.

9 If you would, please answer any questions that Mr.
10 Johnston will have for you.

11 THE COURT: Mr. Johnston, your witness.

12 CROSS EXAMINATION BY MR. JOHNSTON:

13 Q. Have you kept any records of your studies in this area?

14 A. Any records? I mean, I have records of distribution
15 buys and that type thing.

16 Q. Okay. You have incident reports where you have made a
17 case?

18 A. Yes, sir.

19 Q. But what I want to know is have you gathered any
20 data --

21 A. No.

22 Q. -- to show your findings over your history of working
23 in narcotics or working in the sheriff's office that could
24 lead you to draw conclusions about what is the most likely
25 amount of money a drug user would have?

1 A. I have no data, no.

2 Q. You don't?

3 A. No, sir.

4 Q. Is it fair to say that basically what you are telling
5 us is you have talked to some people?

6 A. Yeah. I mean, every time I arrest people I talk to
7 people.

8 Q. Okay.

9 A. Even if I don't make the arrest I talk to them.

10 Q. Okay. Will you agree that every person is different?

11 A. Yes, sir.

12 Q. Will you agree that every drug user is different?

13 A. Yeah, we all have different personalities, yes, sir.

14 Q. Okay. Will you agree that every drug user may have
15 different needs, requirements, desires for the amount of
16 drugs that they may use? You agree with that?

17 A. Yeah.

18 Q. Okay.

19 A. I agree with that.

20 Q. All right. You offered the statement that most junkies
21 are not employed?

22 A. Yes.

23 Q. How about most drug users?

24 A. Most drugs users?

25 Q. Yeah.

1 A. Yeah, I would say it was the same statement.

2 Q. Most drug users are not employed?

3 A. Right.

4 Q. Are there people who are employed who use drugs?

5 A. Yes.

6 Q. Is that why they drug test them? At Home Depot when
7 you walk in you see a sign that says we drug test our
8 employees?

9 A. Yeah.

10 Q. Must be somebody using drugs while they were working?

11 A. Oh, yeah.

12 Q. So you can't say that because someone uses drugs --
13 that because someone is unemployed, that they must use
14 drugs?

15 A. No, I never said that.

16 Q. And you can't say that because they use drugs, they
17 must be unemployed?

18 A. I didn't say that, no.

19 Q. All right. Is it fair to say that in the drug trade,
20 volume, the more you buy, the cheaper it is?

21 A. Yes, sir, absolutely.

22 Q. Okay. Similar to if you go to the convenience store,
23 you buy one can of Coke, you might spend a dollar -- I don't
24 know the exact price, but you might spend \$1.50 on one, but
25 if you go to Sams, you might buy a whole case and you might

1 spend something likes thirty-five cents a can?

2 A. I agree with that.

3 Q. So the larger the amount you can buy, that generally
4 the cheaper it is available to you?

5 A. Yes, sir..

6 Q. Is it also fair to say -- take a look here at State's
7 Exhibit No. 2, that -- I'm going to tell you that's been
8 tested and that it has the presence of methamphetamine.

9 A. Uh-huh.

10 Q. Can you tell me the purity of that?

11 A. By looking at it?

12 Q. Yeah.

13 A. No, I can't.

14 Q. Okay. Now, is it fair to say that people who sell
15 drugs, that there is a chain, that it goes often from one
16 person to another person to another person? Is that fair to
17 say?

18 A. I'm not understanding what you are saying.

19 Q. Okay. Well, you got the Medellin Cartel down in
20 Columbia?

21 A. Yes, sir.

22 Q. They are shipping in tons of cocaine here?

23 A. Right.

24 Q. Then it goes to various levels of street dealers?

25 A. Yeah.

1 Q. Maybe many, many times --

2 A. I got what you are saying.

3 Q. -- before it gets to a single user?

4 A. Uh-huh.

5 Q. Is it common for people in that distribution chain to
6 add filler --

7 A. Yes.

8 Q. -- to the product?

9 A. Somewhere in there, yes.

10 Q. In order to increase their profit?

11 A. Yes, sir.

12 Q. Now, when they add filler, they weaken the quality, if
13 you will, of the drug?

14 A. Yes.

15 Q. Is it fair to say that the more filler is added to a
16 particular quantity of methamphetamine, the more a person
17 would need to get a satisfactory high?

18 A. I would say that's true, yeah.

19 Q. All right. So how much a person uses could be
20 determined by their own desires and needs, their own
21 experience with the drug, and by the purity of the drug, or
22 lack of purity of the drug, is that fair to say?

23 A. Yes.

24 Q. All right. Methamphetamine is sold by weight?

25 A. Yes, sir.

1 Q. On the street if I'm going to buy some methamphetamine,
2 I don't say "I want a bag full," or "I want a bushel," or "I
3 want a peck"?

4 A. No.

5 Q. That sounds pretty silly, wouldn't it?

6 A. Yes, probably wouldn't get far.

7 Q. Probably wouldn't get very far?

8 A. No.

9 Q. What do you send your informants to ask for?

10 A. Depends on what I'm buying. Twenty dollar, forty
11 dollar.

12 Q. Okay. Well, is there a weight to that?

13 A. Does the informant request a weight, or --

14 Q. I'm asking you --

15 A. When it comes back, yes.

16 Q. When you come back you weigh it?

17 A. Yes.

18 Q. Do you ever ask them to buy it by weight?

19 A. Sometimes.

20 Q. For example, in some of your bigger cases --

21 A. Yes.

22 Q. -- would you ever say "I want you, Mr. Informant, to go
23 and buy an ounce of methamphetamine?"

24 A. Yes.

25 Q. Okay. It's also sold by the gram?

1 A. Yes.

2 Q. And, in fact, you priced what a gram costs here for us
3 today?

4 A. Yes, sir.

5 Q. At a \$100 a gram?

6 A. Yes, sir.

7 Q. Is it cheaper if you buy eight?

8 A. Yes.

9 Q. How much cheaper?

10 A. I can tell you from my experience a quarter of a ounce
11 is seven grams.

12 Q. Yes.

13 A. And -- I mean, I would say you could probably get it
14 around 350.

15 Q. \$350?

16 A. Yes.

17 Q. So the only way it would cost you \$800 to get this is
18 is if you bought it eight individual times at one gram a
19 pop?

20 A. Most likely, yeah.

21 Q. If you were going to buy it in its quantity, you could
22 get it for probably 350, plus a little bit more, because
23 it's more than a quarter?

24 A. Yes, sir.

25 Q. And by a quarter, you mean one-quarter of an ounce?

1 A. Yes, sir.

2 Q. Okay. And to make sure that -- we know there are 28.33
3 grams in an ounce. Can we agree on that?

4 A. Yes, sir.

5 Q. Okay. Now, in order to sell something by weight, would
6 you agree it's a lot easier to have some scales?

7 A. Yes.

8 Q. Okay. And scales, you can get them anywhere -- well,
9 not anywhere, but they are commonly available?

10 A. Yeah, most convenience stores.

11 Q. Most convenience stores?

12 A. Yes.

13 Q. And they might be anything from those postal scales,
14 where you hang it on, I guess that's kind of low tech?

15 A. Yeah.

16 Q. Now they --

17 A. Old school.

18 Q. Sir? Old school?

19 A. Yeah.

20 Q. They are still out there?

21 A. Right. Right.

22 Q. Okay. Now we got these digital scales?

23 A. Yes, sir.

24 Q. Everything is digital now?

25 A. Yes, sir.

1 Q. You get them at the convenience store?

2 A. Yes, sir.

3 Q. And I suppose they are relatively accurate?

4 A. Yes, sir.

5 Q. So if I wanted to divide this up -- what's an
6 eight-ball?

7 A. 3.5 grams.

8 Q. 3.5 grams?

9 A. Which is an eighth of an ounce.

10 Q. One-eighth of one ounce, hence the term eight-ball?

11 A. Right.

12 Q. If I wanted to -- and how much is a forty dollar bag?
13 What's the weight on a forty dollar bag?

14 A. .4.

15 Q. I'm sorry?

16 A. .4.

17 Q. .4?

18 A. Yeah.

19 Q. Now, that's less than one-half of one gram?

20 A. Yes, sir.

21 Q. It would be a pretty tall order for me to figure out --
22 I mean, I guess you could divide it in half, roughly, but
23 when you get down into smaller quantities, it would really
24 be much more useful to have a set of scales, wouldn't it?

25 A. Useful, yeah.

1 Q. Okay.

2 A. I agree with that.

3 Q. Now, do you know if any scales were found -- do you
4 know anything about the facts of this case?

5 A. No, sir.

6 Q. Okay.

7 A. I do not. All I know is it was a traffic stop.

8 Q. All right.

9 Scales is something you look for when you think someone
10 may be dealing drugs?

11 A. Are you asking me?

12 Q. Yes.

13 A. Not necessarily. I mean, I'm going to look for the
14 dope.

15 Q. Okay. You are going to look for the dope?

16 A. Uh-huh.

17 Q. But some people have dope just to use it themselves,
18 don't they?

19 A. Yes, they do.

20 Q. Now, if you find scales on them, what does that tell
21 you?

22 A. That they are weighing their dope.

23 Q. That they are weighing their dope?

24 A. Uh-huh.

25 Q. Which could mean either that they are checking what

1 they buy, or --

2 A. Yes.

3 Q. -- they are checking what they sell?

4 A. I agree with that.

5 Q. And what do they usually put things into in order to
6 sell them, what kind of containers?

7 A. Usually little jewelry ziploc bags.

8 Q. Little jewelry ziploc bags?

9 A. Yes.

10 Q. Ziploc bag?

11 A. I'm not saying that's the only way.

12 Q. No, I'm not saying you said that.

13 A. Cigarette, cellophane. I mean, I've seen --

14 Q. Well, cigarette, cellophane --

15 A. -- paper towels.

16 Q. Well, that's kind of unwieldily, isn't it, in that
17 there is a good chance that it's going to spill out, which
18 would kind of defeat the whole purpose?

19 A. Oh, yeah. Yeah, they are creative.

20 Q. All right. So if you find a bunch of jewelry bags,
21 empty jewelry bags, and a quantity of methamphetamine, or
22 you find methamphetamine with lots of little bits of amounts
23 in those jewelry bags, you would draw the conclusion that
24 that person was likely selling, wouldn't you?

25 A. Yes, sir.

1 Q. Okay. People who deal in narcotics often have guns
2 with them, don't they?

3 A. Yes, sir, pretty high percentage.

4 Q. Pretty high percentage?

5 A. Uh-huh.

6 Q. So if it's packaged -- if you find persons with drugs
7 packaged in more than one package, that would lead you to
8 believe that they are probably selling?

9 A. Yes, sir.

10 Q. As opposed to one bag?

11 A. Not necessarily.

12 Q. Not necessarily, but if you had that information, you
13 might conclude that?

14 A. I could say it would be more obvious to me.

15 Q. It would be more obvious to you?

16 A. Yeah.

17 Q. It could also mean that the person was going to use
18 everything in one bag, since it wasn't split out into a lot
19 of little bags? That could be possible, couldn't it?

20 A. At one time?

21 Q. No, not at one time.

22 A. I'm just making sure what we talking about, but, yeah,
23 I mean anything is possible.

24 Q. Okay. And, again, we don't know the purity of it?

25 A. Right.

1 Q. It takes a lot more if it's -- the less pure it is, the
2 more it takes to get the desired effect?

3 A. Yes, sir.

4 MR. JOHNSTON: Beg the court's indulgence one
5 moment.

6 THE COURT: Yes, sir.

7 (Off the record)..

8 (Back on the record)

9 BY MR. JOHNSTON:

10 Q. Please answer any other questions the solicitor has for
11 you.

12 THE COURT: You may redirect.

13 MS. LESKANIC: Thank you, Your Honor.

14 REDIRECT EXAMINATION BY MS. LESKANIC:

15 Q. You made a little bit of a face when Mr. Johnston
16 showed you the bag and asked you about using that. What is
17 your concern with 8.44 grams -- do you have a concern with a
18 junkie having 8.44 grams of methamphetamine? Is that --

19 MR. JOHNSTON: Your Honor, the term -- the "do you
20 have a concern" is awfully broad. I mean, any illegal drug
21 would be a concern to law enforcement officer.

22 THE COURT: I'll sustain the objection.

23 Be more specific with your question.

24 BY MS. LESKANIC:

25 Q. Would you expect someone who is simply a user to

1 possess at one time 8.44 grams of methamphetamine, as well
2 as \$419 in cash?

3 MR. JOHNSTON: Your Honor, I would object to that.
4 That's not within his expertise. He doesn't know anything
5 of this defendant or this defendant's circumstances. He
6 hasn't kept any data. He hasn't done any studies. It would
7 be speculation outside of his expertise.

8 THE COURT: Overruled.

9 MS. LESKANIC: Thank you.

10 A. Can you ask the question again, please?

11 BY MS. LESKANIC:

12 Q. Yes, sir.

13 Based on your experience, what you have seen as a
14 police officer and specifically as a narcotics officer,
15 would it be usual or unusual for you to find someone who is
16 considered a quote, unquote, junkie to possess both 8.44
17 grams of methamphetamine, as well as \$419 in cash?

18 A. It would be very, very, very, very rare.

19 Q. Okay. Now, Mr. Johnston has been talking about
20 fillers, and we don't know the purity, and you stated, I
21 believe, that you cannot tell the jury what the purity is of
22 this methamphetamine?

23 A. No, I can't.

24 Q. When are fillers used? If you are a user, are you
25 going to add fillers to your methamphetamine?

1 A. No, ma'am.

2 Q. Will you explain that to the jury?

3 A. Explain a little bit. Basically if a dealer buys bulk
4 dope that's more pure -- just say we bought a half an ounce,
5 fourteen grams of dope, that has no fillers in it. It's
6 coming basically straight from a big source. They call it
7 on the street stepping on it, cutting it, however you want
8 to word it, but they add fillers to stretch that amount out,
9 like he asked me. Stretch that amount out, it's all about,
10 you know, the profit and getting your return back, just like
11 anything else, so they add the fillers to make that dope
12 stretch farther so they can package it up and sell it at
13 smaller levels.

14 Q. And, if you know, in your experience, methamphetamine
15 that contains fillers, would it still take -- and we will go
16 with the low value of seven grams buying in bulk. I believe
17 you said that was \$350. Would you still expect someone to
18 buy \$350 worth to get high?

19 A. No.

20 Q. How much methamphetamine would it take to get high?

21 A. Probably a tenth of a gram.

22 Q. Okay. So .10.

23 A. .10.

24 Q. And we are at 8.44, is that correct?

25 A. Yes.

1 Q. Thank you. I have no further questions.

2 RE CROSS EXAMINATION BY MR. JOHNSTON:

3 Q. How about if you wanted to get high over the next sixty
4 days?

5 A. I mean, that's depends on how much you smoked it, I
6 guess, how often or however you do it. There is different
7 ways to do it.

8 Q. If you are a true user, a junkie, you want to use it
9 for as long as you can?

10 A. Yes.

11 Q. Unfortunately.

12 A. Unfortunately, yeah.

13 MR. JOHNSON: No other questions, judge.

14 THE COURT: All right, sir, you may step down.

15 THE WITNESS: Yes, sir.

16 THE COURT: Do you wish to excuse the witness?

17 MS. LESKANIC: Yes, Your Honor.

18 THE COURT: Any objections?

19 MR. JOHNSTON: No objection.

20 THE COURT: All right, you are free to go, sir.

21 THE WITNESS: Thank you.

22 The State may call its next witness.

23 MS. LESKANIC: The State rests, Your Honor.

24 THE COURT: All right. Ladies and gentlemen of
25 the jury, the State has rested. That means that they have

1 presented their evidence in this matter and there are some
2 matters I have to take up with the lawyers outside of your
3 presence at this stage of the proceedings, and I know that
4 it's already about 12:30, so we are going to let you go to
5 lunch at this point in time. I will ask you to be back in
6 the jury room at two o'clock this afternoon. We should be
7 in a position to resume at that time.

8 Now, as you are aware, I'm going to give you
9 instructions as you leave the courthouse, that is, don't try
10 to gather any information about this case on your own.
11 Don't discuss the case with anyone or any aspects of it.
12 Don't allow anyone to discuss it with you. Don't listen to,
13 watch, or read any media reports about this case. And, of
14 course, I will be inquiring of you concerning my
15 instructions when you return.

16 Please be back in the jury room at two o'clock.
17 We will start shortly thereafter. You are free to go.

18 (The following takes place outside the presence of
19 the jury panel)

20 THE COURT: All right. Motions?

21 MR. JOHNSTON: Not at this time.

22 THE COURT: All right. Then we will be adjourned
23 until two o'clock.

24 I will caution your client that he needs to be in
25 the courtroom at that time.

1 MR. JOHNSTON: Yes, sir.

2 THE COURT: We will resume in his absence if he
3 fails to appear.

4 And I will advise you, Mr. Conner, that if you
5 fail to appear at two o'clock I would issue a bench warrant
6 for your arrest. Do you understand that?

7 THE DEFENDANT: Yes, sir. I'll be here.

8 THE COURT: All right. Two o'clock. Thank you
9 very much.

10 MR. JOHNSTON: Thank you, Your Honor.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 THE COURT: All right, Mr. Johnston, I do want to
14 inquire of your client concerning his Constitutional Rights.
15 Sir, if you would stand.

16 Madam Clerk, place Mr. Conner under oath.

17 TRAVIS SCOTT CONNER, having been first duly sworn,
18 testified as follows:

19 THE COURT: You can be seated, sir.

20 Mr. Conner, we have reached the stage of this
21 trial where you have the right to present your defense in
22 this matter. As part of your defense you have the right to
23 testify in this matter, but you also have the right not to
24 testify.

25 I'm going to go over with you, in particular, one

1 of your Constitutional Rights that's guaranteed by the Fifth
2 Amendment to the United States Constitution.

3 When I finish discussing this with you, I will
4 give you an opportunity to ask questions if you don't
5 understand what I have explained, so please pay attention
6 and let me know if you do understand when I finish.

7 As I indicated, you have the right to testify in
8 this case, but you also have the right not to testify.

9 The Fifth Amendment to the United States
10 Constitution states, in part, that no person can be required
11 to testify in a criminal case against himself.

12 Now, while that means you have the right to
13 testify, you also have the right not to do so and no one can
14 make you testify in this matter. Therefore, you have the
15 right to remain silent in this case.

16 Now, I will tell you that if you decide to
17 testify, your testimony would be governed by the same rules
18 that govern the testimony of any other witness. You would
19 be examined by your lawyer and you would be cross-examined
20 by the State's lawyer. And should you have convictions on
21 your record that carry a prison term of more than one year
22 in the last ten years, or you have convictions on your
23 record that involve dishonesty and this courts makes a
24 determination that the probative value of admitting evidence
25 of those convictions outweighs its prejudicial effect to

1 you, the State would be in a position, should I make that
2 ruling, then to use those convictions to challenge your
3 credibility in this matter.

4 Now, the right to remain silent is a right that
5 belongs solely to you. You have the right to consult with
6 anyone you would like to consult with concerning your
7 decision as to whether or not to testify in this case, and
8 that includes family, friends, your lawyer, or anyone else,
9 but the ultimate decision is yours and yours alone.

10 I will advise you that if you decide not to
11 testify in this case, that I will instruct the jury that
12 your silence could not be used against you in any manner.
13 In fact, my instructions to the jury would be that they
14 could not even discuss the fact that you did not testify in
15 the case during their deliberations.

16 Now, sir, do you understand the right that I just
17 went over with you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions of me
20 concerning that right?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you discussed this matter with
23 your lawyer already?

24 THE DEFENDANT: I have.

25 THE COURT: Do you need to discuss this matter

1 with him or anyone else before you make a decision as to
2 whether to testify or not?

3 THE DEFENDANT: No, we have made the decision.

4 THE COURT: All right. Do you intend to testify
5 in this case?

6 THE DEFENDANT: I don't.

7 THE COURT: All right. Thank you.

8 Now, Mr. Johnston, do you intend to call any other
9 witnesses in the case?

10 MR. JOHNSON: No, Your Honor.

11 THE COURT: All right. So you will be resting
12 when the jury comes back?

13 MR. JOHNSTON: Yes, sir, and I assume you would
14 like for me to -- you are going to call on me and I'm going
15 to say defense rests?

16 THE COURT: Yes, I will do that when they come
17 back.

18 We have had a brief charge conference in my
19 chambers before I came out. I think I have gone over my
20 charges with the attorneys. There was one exception to what
21 I intended to charge and I'll allow you to discuss that with
22 me at this time, Mr. Johnston.

23 MR. JOHNSTON: Thank you, Your Honor.

24 I think we were all in agreement about the other
25 issues that we discussed as to your charge. However, in

1 this particular case I would request that only actual
2 possession as a theory be charged and not constructive
3 possession, because I would assert to the court that only
4 the alleged facts of the case could only show actual
5 possession.

6 There is a case, State v. Fripp, Court of Appeals,
7 2012 case, where I understand that the holding of that case
8 was that the appellate court reversed the conviction where
9 the State's theory was that the defendant threw away the
10 drugs when approached by police and the court instructed on
11 both actual and constructive possession. I think that might
12 be analogous to our situation here.

13 THE COURT: Well, now that case weren't the drugs
14 thrown like out of a vehicle or something of that nature
15 and --

16 MR. JOHNSTON: I'm not sure.

17 THE COURT: Well, let's pull that up and look at
18 it just to be sure.

19 MR. JOHNSTON: Yes, sir.

20 THE COURT: I think that might be the case.

21 MR. JOHNSTON: I have the cite.

22 THE COURT: Please do look that one up for me,
23 please, and let's take a look at it.

24 MR. JOHNSTON: It's 725 S.E.2d 136.

25 THE COURT: All right.

1 MR. JOHNSTON: Court of Appeals 2012.

2 THE COURT: All right. And the State's position
3 in regard to that?

4 MS. LESKANIC: It's the State's position that
5 constructive possession is a correct charge in this case.
6 It's my understanding constructive possession is when a
7 person has dominion or control, or the right to exercise
8 dominion or control, over either the object or the premises
9 upon which the object is located.

10 In this case the testimony from the officer was
11 that when he first approached the vehicle the defendant's
12 hand was down his pants. When he pulled it out, he had
13 actual possession of the bag of methamphetamine, but then he
14 tossed it into the lap of the passenger. This was his
15 vehicle. He still had dominion and control over the
16 vehicle.

17 And there was an additional statement made by the
18 defendant during the course of the trial when we were
19 talking about statements that he made to the police where he
20 tells Ms. Powell "don't put it over there."

21 If the jury believes his version that she at one
22 time had possession of it, he still is exercising dominion
23 and control by telling her what to do and what not to do
24 with the substance, so we believe that that charge is
25 appropriate.

1 THE COURT: Let me talk to my law clerk about
2 that.

3 (Off the record)

4 (Back on the record)

5 THE COURT: Give us the cite again.

6 MR. JOHNSTON: I'm sorry, Your Honor. State v.
7 Fripp, 2012, Court of Appeals -- give me one second to find
8 the actual cite.

9 THE COURT: Are you saying Fripp, like Fripp
10 Island?

11 THE COURT: Okay.

12 MR. JOHNSTON: It's Fripp, like Fripp Island.

13 And I have got the South Carolina cite, if that
14 helps you. It's 397 S.C. 425, and it would be State v.
15 Fripp, F-R-I-P-P.

16 THE COURT: What is the citation used?

17 MR. JOHNSTON: 397 S.C. 455, or 725 S.E.2d 136.

18 THE COURT: 397 you said?

19 MR. JOHNSTON: Yes, sir, 397 S.C. 455.

20 THE COURT: Okay. I think I have got it.

21 I'm reading the Fripp case and it refers to a
22 Ballenger case as well.

23 MR. JOHNSTON: Yes, sir. I haven't read that one.

24 THE COURT: And the Fripp case says "the facts of
25 this case are similar to those in Ballenger, in that the

1 contraband was discovered in a public area over which Fripp
2 had no dominion or control. The State's theory, as in
3 Ballenger, was that Fripp had actual possession of the
4 drugs, tossed them when he disappeared behind a black pickup
5 truck. Such a scenario means that the constructive
6 possession theory is not applicable and the giving of a
7 constructive possession charge was erroneous. However, in
8 order to warrant reversal of Fripp's conviction, the giving
9 of an instruction must also have been prejudicial.
10 Prejudice to the appellate's case is a pre-requisite to a
11 reversal."

12 I think they have found that the erroneous
13 instruction in this case was not prejudicial. But in both
14 of the cases they talk about, Fripp and Ballenger, the drugs
15 were disposed of in a public place over which the defendant
16 had no dominion or control.

17 Here the disposal of the drugs, if it went from
18 his actual possession, it went into a vehicle over which he
19 did have dominion and control. It was his vehicle that he
20 was operating at that time.

21 So I find the difference in the fact that I think
22 it would be correct to charge both actual and constructive
23 possession, since they were observed being tossed by him,
24 but they were discovered and actually recovered in a vehicle
25 that he was operating.

1 I don't think I heard any testimony that the drugs
2 made it into or onto the person of the other party not in
3 their clothing, but they were apparently tossed into her
4 lap, or something of that nature.

5 So it appears that there is a difference between
6 Ballenger and Fripp and our case in that the disposal, and
7 in both -- and in Ballenger the gentleman was running. He
8 was climbing a fence to get away and he fell and they found
9 the drugs in a public area about five feet from where he had
10 fallen, and, again, in an area that he did not exercise
11 dominion or control over. There was no evidence that he
12 did. So I see a difference factually in the cases.

13 I will charge constructive possession in this
14 case.

15 MR. JOHNSTON: All right, sir. Thank you very
16 much.

17 THE COURT: Anything else?

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

19 MS. LESKANIC: Not from the State, Your Honor.

20 THE COURT: All right.

21 Now, I indicated to the attorneys that I do intend
22 to charge the lesser included offense of simple possession
23 of methamphetamine. My charge would be that it's the only
24 difference -- the element is that there is a lack of intent
25 to distribute. Other than that the elements are the same.

1 Any objection to that charge from the defense?

2 MR. JOHNSTON: No, sir.

3 THE COURT: Any from the State?

4 MS. LESKANIC: No, Your Honor.

5 THE COURT: Okay. Now, let's see, the defense --
6 I don't know if you offered any evidence or not.

7 MR. JOHNSTON: I don't believe that we did, Your
8 Honor.

9 THE COURT: Okay. Do you maintain that he did?

10 MS. LESKANIC: Unfortunately he did not, sir.

11 THE COURT: I didn't recall.

12 MR. JOHNSTON: They are trying to change that
13 rule, judge, and I'm opposed to it.

14 THE COURT: I understand that.

15 Okay, that means that you will be going first.

16 MS. LESKANIC: Yes, Your Honor.

17 THE COURT: Bring the jury in.

18 (The following takes place outside the presence of
19 the jury panel)

20 THE COURT: All right, ladies and gentlemen, the
21 jury has returned to the courtroom. I hope everyone had a
22 good lunch.

23 If anyone had any difficulty in complying with my
24 instructions concerning your behavior, please stand.

25 It appears that all of you have been able to

1 comply with my instructions thus far.

2 Now, when we left the State had completed the
3 presentation of its evidence. At this time the defense has
4 the right to present any evidence that the defense chooses
5 to present.

6 MR. JOHNSTON: May it please the court, Your
7 Honor, at this time the defense rests.

8 THE COURT: All right. Ladies and gentlemen, the
9 defense has rested, so that means that completes the
10 presentation of evidence in the case.

11 When we reach this stage of the proceedings I told
12 you that I will allow the attorneys to again address you
13 directly in what they call the closing argument or
14 summations.

15 The State will be going first in this situation.
16 So Ms. Leskanic, you may proceed.

17 MS. LESKANIC: Thank you, Your Honor.

18 May it please the court?

19 THE COURT: Yes, ma'am.

20 MS. LESKANIC: Good afternoon.

21 The defendant said "I'm not saying it wasn't mine
22 at all or nothing like that or that I didn't know about it.
23 I'm not saying it wasn't mine and I'm not saying I didn't
24 know about it. She just tossed it in my lap." That's what
25 his story was to the police on that day.

1 Mr. Johnston, in his opening referred to the game
2 of hot potato, throwing something back very quickly.
3 Officers saw no evidence of throwing anything back and
4 forth.

5 The hot potato was down the defendant's pants. He
6 had exclusive control and possession of 8.44 grams of
7 methamphetamine. He pulled that out when deputies
8 approached the vehicle and he tried to get rid of it and he
9 tossed it onto Rachael Powell. The testimony was she didn't
10 even try to touch it then.

11 He had \$419 cash in his pocket. He had no job.
12 He had 8.44 grams of methamphetamine, that if sold
13 individually by the gram, it would be \$800, \$850. You buy
14 it in bulk, it might be about \$350, plus \$419 cash.

15 Rachael Powell, no money, one loaded syringe of
16 methamphetamine in her bra.

17 He says "I'm a junkie." And maybe it's going to
18 be I need 8.44 grams of meth for personal use, because I use
19 that much. He didn't have any needles on him. He didn't
20 need to use so badly and so much that he had to have needles
21 at his disposal. And he told the officer "I slam it. Look
22 at my needle marks on my arm."

23 He made several statements to officers; "I have
24 got a drug problem. I'm sorry." He was somewhat relieved,
25 maybe, when it was nine grams of methamphetamine, the

1 officer said, and he said "not trafficking."

2 So there is a lot of talk about scales, you know,
3 why didn't he have scales if he was selling. Well, if he
4 was selling or buying, why didn't he know how much it was?
5 Sometimes they have a big bag and they pinch it off and
6 maybe he wasn't sure how much he had pinched off. He wasn't
7 sure of the weight. "Not trafficking. Not enough grams."
8 You don't need the scales when you do it a lot, as Sergeant
9 Federico testified. You get to eyeball it at that point.
10 You just pinch it off. You know how much you get for a
11 twenty and how much you get for a forty, and you know how
12 much you give for sex, so he has distribution too. You
13 don't have to get money for it. You just have to give
14 methamphetamine to somebody else. They don't even have to
15 give you anything in return. You just have to give them the
16 illegal substance.

17 And Rachael Powell came in here to talk to you and
18 had to tell the thirteen of you and everybody else in this
19 courtroom, something humiliating. She was so addicted to
20 methamphetamine that she would have sex in order to get her
21 next high. That's how little she values herself and how
22 important methamphetamine was to her. She had no job. She
23 had no house that she owned or could pay rent. She said she
24 had to bum cigarettes. That's not somebody that has 8.44
25 grams of methamphetamine. She was an addict and she was

1 with the defendant because she gave him what he wanted, and
2 that was sex, and he gave her what she thought she needed or
3 wanted, and that was methamphetamine, and that's
4 distribution. That's possession with intent to distribute.

5 He said "I'm sure it's ice. I used in the last
6 couple hours. I grabbed it and shoved in it my shorts
7 trying to hide it. You know what I'm saying. I'm not
8 saying it wasn't mine at all or nothing like that or that I
9 didn't know about it. She was holding it."

10 So Rachael says she never held it. And the twelve
11 of you who go back to deliberate, you are going to have to
12 assess the credibility of Ms. Powell's testimony. She said
13 "I wasn't holding it. I was a meth addict. I had
14 methamphetamine in my bra and I pled guilty to it. I wasn't
15 offered anything for my testimony and I'm coming in here to
16 tell you I have been clean for a couple of months and I used
17 to trade my body for meth," and that's a hard thing to tell
18 thirteen strangers in a courtroom.

19 He continued to say "she stuck it down her pants
20 and y'all walked up and said I can't do it." She goes to
21 put it over beside the seat and then he says "don't put it
22 over there." He knows it's in the car, ladies and
23 gentlemen. It's his. He's telling her -- if you believe
24 his version, he's telling her what to do with it.

25 She referred to herself as a con artist and she

1 probably was one, because she was a meth addict and nothing
2 meant more than the next hit of meth and she would do what
3 she had to do to get that, but she came in here today sober,
4 I believe she said since May of this year, and off of
5 methamphetamine and told you what her life was like at that
6 time. She had known the defendant for a few weeks to a
7 month. There was a spoon and a glassine baggy that was
8 found in her little container that Officer Jennings put up
9 on the patrol car. One little baggy, enough to hold a
10 user's meth, and a spoon, a place to dilute the meth so she
11 could put it in her syringe. It all fits.

12 8.44 grams of methamphetamine. This is not an
13 amount of methamphetamine for personal use. It may not look
14 like much to folks that don't deal in the drug trade, but
15 the legislature has tried to help with that and they have
16 said that you, as jurors, may infer -- you don't have to,
17 but you may infer that possession of one or more grams, one
18 or more grams you may infer possession with intent to
19 distribute. That's how powerful this stuff is. So if you
20 want to, one or more grams, you may infer that the person
21 that possessed this, the defendant, intended to distribute
22 it. He had eight times that amount that's been set by our
23 legislature for intent to distribute. He had \$419 cash in
24 his pockets.

25 Sergeant Federico testified people will use and

1 then sell to support their habit. And Rachael Powell said
2 "he gave it to me that morning. That's where I got the meth
3 that I used." That's distribution.

4 There was some talk about filler, and I'm not
5 quite sure where that is going yet, but I will let you know
6 that the judge will instruct you on the law that for
7 methamphetamine, possession with intent to distribute, it's
8 any mixture of methamphetamine. This may be pure
9 methamphetamine, I don't know. Everyone testified they
10 don't know if it's pure or someone has added something to
11 it, but the legislature says it doesn't matter. You weigh
12 it and if any of this contains methamphetamine, that's how
13 much you would have, so I just don't want you to be confused
14 by the we don't know if it's pure meth, or how much of it is
15 filler. It doesn't matter. Any mixture or compound
16 containing methamphetamine is what methamphetamine is. This
17 is 8.44 grams of methamphetamine, over eight times what the
18 law says that you may infer as possession with intent to
19 distribute.

20 I essentially have to prove three things to you.

21 Number one, the substance was methamphetamine.
22 That was testified to by Lynn Black with SLED.

23 Number two, he possessed the methamphetamine. It
24 was down his pants and his hand and he told the officer "I'm
25 not saying it's not mine." It was his. He exercised

1 dominion and control over it. And even if you believe the
2 statements he made to law enforcement, he was telling
3 Rachael Powell what to do with it. He never said "it's
4 hers," and he didn't say "it's not mine." He specifically
5 said "I'm not saying that it wasn't mine and I'm not saying
6 that I didn't know about it."

7 The third thing we have to prove is that, number
8 one, methamphetamine; number two, he possessed it; number
9 three, he possessed it with the intent to distribute it.
10 Did he intend to distribute it. Eight times over what the
11 legislature says you may infer.

12 Rachael Powell, "he gave me methamphetamine."
13 That's what was loaded in the syringe. "That's where I got
14 it earlier that day when I used it."

15 \$419 cash in his pocket.

16 And it doesn't mean he had to intend to distribute
17 it right then, but they had to be driving somewhere that
18 particular moment from the seller. Did he intend to
19 distribute it in the future? "Oh, but he didn't have scales
20 in the car and he didn't have guns in the car." There was a
21 traffic stop. You are right. Maybe he wasn't on his way
22 right then to make a sale, but that doesn't mean that he
23 didn't intend to distribute it. He doesn't have to have
24 intended that at that very moment. That just has to have
25 been his intent at some point to give some of that to

1 someone, like Rachael Powell for sex.

2 You will have the opportunity, if you want to, to
3 watch the portion of the video that we played at the
4 beginning of the trial, to ask that any testimony that you
5 heard be replayed. If you have questions about what someone
6 said, you can ask that that happen.

7 Mr. Johnston is going to come up here and he is
8 going to have an opportunity to address you next. I will
9 not have an opportunity to stand back up. This is it, and
10 I'm sure there are things that he will say that I will wish
11 I could respond to, but I can't. This is my only chance,
12 but the evidence shows beyond a reasonable doubt, firmly
13 convinced, that Travis Conner, back in July of 2014,
14 possessed methamphetamine and he possessed it with the
15 intent to either give it to somebody, sell it to somebody,
16 share it with somebody, those three things, and he's guilty,
17 and that's the verdict that I ask you to return.

18 Thank you.

19 THE COURT: Mr. Johnston, for the defense.

20 MR. JOHNSTON: May it please the court?

21 THE COURT: Yes, sir.

22 MR. JOHNSTON: Ladies and gentlemen of the jury,
23 Travis Conner is presumed to be innocent, just like any
24 other person who is charged with a criminal offense in this
25 state or in this country. If there is a reasonable doubt as

1 to any element of the crime charged, it will be your duty,
2 as the judge will instruct you, to find Travis Conner not
3 guilty.

4 He has no burden to prove himself not guilty. All
5 of the burden lies exclusively on the State of South
6 Carolina. And it's for that reason that our forefathers
7 gave the right to remain silent, and he has the right to
8 remain silent, which means that he doesn't have to testify
9 in this case. And in order for that right to have any
10 meaning, you will have to follow the judge's instruction
11 that you can't consider that fact. You can't consider his
12 Constitutional Rights exercised against him. And, in fact,
13 that you cannot even discuss the fact that he didn't testify
14 in your deliberations, because it's not relevant.

15 I think it's important for you to keep in mind
16 that this is a pure traffic stop. This is not a drug
17 investigation that was made by a drug officer who has
18 informants, or who has been doing surveillance, or has been
19 taking wiretaps and he's onto someone that he thinks may be
20 selling or distributing of drugs. This is a happenstance.
21 This is a traffic stop. During the traffic stop some drugs
22 are discovered, but what this tells you is that there is no
23 evidence that they had that kind of information about
24 Travis. They didn't have informants. They didn't have
25 surveillance. They didn't have wiretaps on him that he was

1 someone they were looking for. This is simply two people
2 out for a ride and the officer gets suspicious of them,
3 starts watching them, sees a traffic violation and pulls
4 them over.

5 Two minutes go by. You can see from the video two
6 minutes go by from the time that the police in this marked
7 car begins to follow the vehicle that Travis and Ms. Powell
8 were in. A lot can happen in two minutes. Two blocks went
9 by after the blue lights were turned on, but I submit to you
10 that the more likely scenario is that they knew the police
11 were behind them. During that time I submit to you the
12 wheels begin to turn how to get rid of the drugs. And I
13 submit to you that it's just as likely that those wheels
14 were turning in the mind of Rachael Powell as they were in
15 Travis, because, again, they are the ones that have to prove
16 it and they have to prove it beyond any reasonable doubt.

17 Now, this case is about possession. You don't
18 have to be a police officer, or a lawyer, or a judge to know
19 that possession is what it's all about in drugs. So if you
20 don't have possession of it, chances are you are not going
21 to go to jail, but I submit to you that it's just as likely
22 that Rachael Powell didn't want to go to jail as it is that
23 Travis didn't want to go to jail.

24 Now, this word furtive, I had to look it up;
25 sneaky, suspicious. Furtive action.

1 Now, first the officer testifies that he saw
2 furtive actions on the part of Travis. That was his
3 testimony here to you in court. I had to point out to him
4 that when he wrote his report, he said that the furtive, the
5 sneaky, suspicious actions were not just on the part of
6 Travis, but were also on the part of the passenger Rachael
7 Powell. So she was also acting furtively, sneaky,
8 suspicious looking.

9 I think the real insight into how these cases are
10 made, if you watched the portions of the video or listened
11 to the parts of the video that were testified to by the
12 officer, if we didn't have that video, that information
13 would have been lost, or at least we would have had to rely
14 exclusively on the fallible memory of the human being. So I
15 ask you to take what's on that video and treat it for what
16 it's worth, which I think is very important.

17 Even though they now want to say that the officer,
18 Officer Bowles, was convinced that if these drugs were in
19 the possession, the exclusive possession of Travis, he
20 continued to investigate that very issue. He asked of
21 Travis "did you ask her to hide it and she just threw it
22 back? Why was she holding it? Was she going to use it?"

23 I submit to you that those are not the questions
24 that a person who is convinced, who has been an eyewitness
25 to a crime, and who seemed so sure about it today, but back

1 then when it had just happened seems to evidence a lot of
2 doubt, a lot of matters that needed further investigation.

3 Travis from the beginning protested that Rachael
4 Powell had thrown the drugs into his lap. The other
5 officer, I believe it was Officer Jennings, when he comes to
6 Rachael Powell's side of the car, he has the opportunity for
7 observation. And Travis poses the question to him and the
8 question was -- well, I don't know if he posed it to him or
9 if he posed it to both him and to Officer Bowles, but this
10 is what he said; "did the guy on this side of the car see
11 anything? Did the guy on this side of the car see
12 anything?" He's referring to Officer Jennings. Did Officer
13 Jennings see anything from his closer vantage point to
14 Rachael Powell?

15 Now, what did Officer Jennings tell you about
16 this? Officer Jennings said "I couldn't see." The window
17 was rolled up almost all the way. I guess he means the
18 windows were tinted and couldn't see through, but, in any
19 event, he couldn't see anything, but Travis was carefully
20 calling the officer's attention to the fact that Officer
21 Jennings may have seen something. I submit to you that's
22 not something, that's not something that someone who knows
23 what happened would have said. That is what someone would
24 say if they were engaged, as I have told you in opening
25 statement, that game that we played as children of hot

1 potato, where the person who last has it loses the game.
2 And I submit to you that's what will happen here if you find
3 Travis guilty of possession, that he will have been the one
4 with the hot potato when the buzzer went off, and I submit
5 to you, ladies and gentlemen, that that's not possession,
6 that that's not justice. And they have no evidence that
7 anything like that didn't happen. In fact, the officer, the
8 chief officer, Officer Bowles, says to one of the other
9 police officers on the video, and I quote, "I think they
10 were tossing it back and forth between the two of them. I
11 think they were tossing it back and forth between the two of
12 them." I think means I have concluded, I have reason to
13 believe, and that's what he said.

14 Now, Ms. Powell says she didn't touch it. So if
15 she is telling the truth about that, then the officers on
16 the scene conclusion is wrong. So there is no real evidence
17 here as to whose drugs these were. The only evidence they
18 brought in is Rachael Powell. They have to rely on the
19 testimony of Rachael Powell in order to persuade you that
20 Travis was in possession of these drugs and I submit to you
21 she is not reliable. She is not credible. Rachael Powell
22 had every reason to lie about whose drugs they were. She
23 doesn't want to claim them now. She doesn't want to go to
24 jail.

25 Other reasons why I submit to you you should not

1 give any credibility to Rachael Powell. She's been
2 convicted of a crime of dishonesty. The judge will tell you
3 that the law provides that people who have been convicted of
4 crimes of dishonesty, that that's something that you can
5 consider in determining whether they are telling the truth.

6 She, I submit to you, is beholdng to this state.
7 She got a conditional discharge, even though the
8 methamphetamine was found, unquestionably, on her person, in
9 her bra no less, she got a conditional discharge. All that
10 she had to do was comply with a few months of probation and
11 that charge would have gone off of her record like it never
12 happened. She couldn't even do that. In her words she
13 absconded. Well, as these things happen, she absconded but
14 she was found. They put her in jail on a bench warrant. As
15 you heard, when you're in jail on a bench warrant you can't
16 get out on bond, so she stays in jail for awhile. Then
17 she's brought up here and she gets time served. No
18 probation. No community service. No fine. No nothing.
19 Time served. I submit to you she's beholdng to the State.
20 Now, maybe they didn't talk directly to her about her
21 testimony, maybe her lawyer talked on her behalf. I would
22 have.

23 This is a person who has no moral compass. By her
24 own admission she would do anything to get drugs. And in
25 her words, she would get drugs by any means necessary. By

1 any means necessary. By any means necessary, does that
2 include stealing and robbing? They say she didn't have the
3 money to buy these drugs. Maybe she stole them. Maybe she
4 was having relations with someone and they fell asleep, she
5 took the drugs and left, then she hooked up with Travis. By
6 any means necessary she would have gotten these drugs, if
7 she could. Her words.

8 Now, we know that she lied to the police. We know
9 that she lied to the police on the scene. They pull it out
10 of her bra, a loaded syringe, and they say "this got any
11 meth in it?" She says "no, it's just water." If she would
12 have admitted it, the officer would have taken her into
13 jail. Because of some issue about not testing it or not
14 understanding whether to test it or not, she is allowed to
15 ride on out. She lied so she could ride on out. I asked
16 her "what do you call a person who would lie so they could
17 get their own way," and she said "a con artist." A con
18 artist. And that, ladies and gentlemen, I submit to you is
19 one thing that she said in her testimony that is absolutely
20 truthful. Someone who would do that would be a con artist.

21 Now, the solicitor told you in her opening that
22 they found a baggy, like that was going to be important
23 evidence against Travis, but as the case got tried what did
24 we find out about the baggy? The baggy was hers. The baggy
25 belonged to the con artist. How do we know that? Because

1 she had this clear plastic trunk thing, whatever you want to
2 call it that she was using to carry her personal effects in.
3 Officer Jennings searched it. He found female effects in
4 it. She admitted on the stand "that box was mine." What
5 did they find in the box? That's where they found the baggy
6 that the solicitor was mentioning. That's where they found
7 the baggy. And what's more, the baggy had residue in it.
8 Officer Jennings testified that he looked in the baggy and
9 there was residue there.

10 What else was in the bag, or in that box? A big
11 old tablespoon. That's how -- that's how methamphetamine in
12 powder form is converted to an injectable solution. It is
13 mixed with water in something like a big spoon. Now, the
14 officer said he didn't place any importance on that spoon,
15 because it didn't have any residue on it. Well, apparently
16 he didn't place any importance on the bag that apparently
17 did have residue in it.

18 You will have three choices for your verdict in
19 this case. You can find Travis not guilty, or you can find
20 him guilty of possession with the intent to distribute of
21 methamphetamine, or you can find him guilty of possession of
22 methamphetamine. We submit that they haven't proven
23 possession beyond a reasonable doubt. But if you disagree,
24 then you have the choice of finding him guilty of the lesser
25 offense, of possession, because they have to prove that part

1 of the charge as well and they have to prove it beyond a
2 reasonable doubt that he intended to distribute this
3 substance here in the bag.

4 Now, whether or not he had any prior dealings with
5 distribution of methamphetamine, whether or not he gave
6 Rachael Powell what she had in her bra is not the crime that
7 you are charged with determining whether or not they have
8 proven he's guilty of it. He's not charged with
9 distribution. He's not charged with distributing it to her
10 at an earlier time. They have to prove that he intended to
11 distribute what's in this bag and that he had that intent at
12 the time that he allegedly possessed it. If it would have
13 occurred to him later to distribute it, that's not intention
14 at that time. It's what he has an intention to do at the
15 time he allegedly possesses it. That is the question in the
16 case.

17 He admitted that he was a user. He called himself
18 a junkie. He showed where he had needle marks. Who has the
19 needle? Rachael Powell.

20 The judge is going to instruct you that if a
21 person has in his possession one gram or more of
22 methamphetamine, then you may, you may, infer that that
23 person intended to distribute it. However, that is what we
24 call a permissive inference, a permissive inference, which
25 means you are free to find the facts of the case whether or

1 not there is an intent to distribute regardless of this
2 statutory permissive inference. You can consider it, you
3 can throw it out, that's up to you.

4 Now, I have no question with the fact that if you
5 mix methamphetamine with another substance, that the law
6 considers it all to be methamphetamine. That is not the
7 point that I raise here when I raised the question of is
8 this pure. The reason I raised that point is because the
9 purity of the drug could affect how much you need to take of
10 it to get the desired effect. If the drug has been heavily
11 diluted with a benign filler substance, then it's not strong
12 enough. It's weak. And if it's weak, you have got to use
13 more of it to get the desired effect. Now, they don't know
14 if this is 99 percent methamphetamine or 99 percent filler.
15 It could be either one. It's all methamphetamine under the
16 law, but I'm telling you it would significantly affect how
17 much a person would need to use themselves.

18 They made a big deal because he had \$419 on him.
19 I submit to you, ladies and gentlemen, \$419 is not much in
20 today's economy. In fact, it's such a small amount that the
21 Cherokee County sheriff's office doesn't even bother to try
22 to seize it as drug proceeds unless it's at least a
23 thousand, or at least it was at that time. Now it's two
24 thousand. That's a long way from \$2,000, \$419.

25 Furthermore, he said that he had had a very good

1 job. The officer doesn't know when he became unemployed.
2 He might have worked the day before or the week before.

3 They want to say these drugs were worth \$850. If
4 you buy them in bulk, only 350. I submit to you that that's
5 not a large sum of money either.

6 There were no baggies in the car except for the
7 one that Rachael Powell had with residue on it. If you were
8 going to sell this drug, you have to sell it by weight.
9 That is how the drug is distributed. It's distributed by
10 weight, whether by ounce, whether by gram, whether by
11 quarter ounce, whether by eighth of an ounce. If you are
12 going to distribute it you need a set of scales. Yeah, it
13 might be possible to eyeball something, but I submit to you
14 that that is not what's likely here.

15 What's he going to put it in? What was he going
16 to put it in? There were no baggies. There were no baggies
17 to put it in. This is all in one bag. One bag. I submit
18 to you that that indicates that he was going to, if he
19 possessed it, use it himself.

20 And the size of the bag that Rachael Powell had
21 was not a little tiny bag. The officer testified that it
22 was a ziploc bag which holds a whole lot more than just one
23 little small dose.

24 There is no proof that he intended to do anything,
25 if he possessed these drugs at all, other than to use them

1 himself. Anything else, any other conclusion based on this
2 evidence as to that point would be pure speculation. The
3 judge is going to instruct you that speculation has no place
4 in a jury verdict.

5 There is thirteen of you now. Only twelve of you
6 go back. The alternate will stay behind, but there is a
7 principle that goes back with you twelve and that is the
8 principle that all persons are presumed innocent until they
9 are proven guilty beyond a reasonable doubt. I like to say
10 that's the thirteenth juror. That's Mr. Or Mrs. Presumed
11 Innocent and that that juror goes back with the twelve of
12 you. The problem with that juror, it doesn't have any vocal
13 cords. It can't talk. He's there but he can't talk. He
14 needs one or more of you to talk for him. He needs one or
15 more of you to raise the questions of reasonable doubt. He
16 needs one or more of you to say why would the officer say he
17 believed that they were tossing it back and forth if he
18 didn't believe that? Why would the officer, if he was
19 convinced the drugs were Travis', why would he continue to
20 ask questions about whose they were? Can we trust Rachael
21 Powell, a convicted shoplifter, a person who self-described
22 as a con artist, a person we know has lied to the police, a
23 person who would sell her body for drugs, a person who would
24 get drugs by any means necessary. She didn't have any love
25 for Travis. By her testimony, if you believe it, she was

1 using him.

2 Other questions Mr. Presumed Innocent juror would
3 ask: How can they say Travis has an intent to distribute
4 when there aren't any methods of distribution at his
5 disposal; no baggies, no scales?

6 Another question: Does \$419 mean anything when he
7 may have had a good job as recently as the day before and
8 the Cherokee County Sheriff's Office wouldn't even think it
9 was important enough to seize it?

10 If you hear a voice to the presumption of
11 innocence in this case, I submit to you that you will find
12 Travis not guilty, or at least guilty only of possession.

13 I thank you for your time.

14 (Whereupon, at 3:15 p.m. the Court instructed the
15 jury panel with the jury charges)

16 THE COURT: All right, ladies and gentlemen, that
17 completes the closing statements made by attorneys. I told
18 you at this time it would be my responsibility to charge you
19 concerning the law that you are to apply in this case.

20 I'm going to go back and remind you concerning the
21 indictment in the case. The indictment is the document that
22 brings the case to this court. I will be allowing this
23 indictment to go back to the jury room with you so that you
24 can review the indictment during your deliberations.

25 The indictment is for the charge of possession

1 with intent to distribute methamphetamine.

2 The indictment states that Travis Scott Conner
3 did, in Cherokee County, on or about July the 6th of 2014,
4 manufacture, distribute, dispense, deliver, purchase, or
5 aid, abet, or attempt, or conspire to manufacture,
6 distribute, dispense, deliver, or purchase, or possess with
7 the intent to manufacture, distribute, dispense, deliver, or
8 purchase a controlled substance, to-wit: A quantity of
9 methamphetamine, a Schedule II controlled substance under
10 the provisions of Section 44-53-375 of the Code of Laws of
11 South Carolina, 1976, as amended, such possession having not
12 been authorized by law, against the peace and dignity of the
13 State and contrary to the statutes in such case made and
14 provided.

15 Now, the defendant was arrested, charged and
16 indicted in this case and those facts are not evidence in
17 this case and cannot be considered by you as evidence of
18 guilt in this case, nor does the fact that a defendant has
19 been arrested, indicted, or charged serve as any evidence of
20 guilt in this case. It doesn't create any presumption or
21 inference of guilt. The document I read to you is simply
22 the formal written instrument which contains the charges
23 made against the defendant. It's the document that brings
24 the case into the court.

25 I told you earlier that the defendant has pled not

1 guilty to this indictment. That plea under our law places
2 the burden of proof solely upon the State to prove the
3 defendant guilty.

4 A person charged with the commission of a criminal
5 offense in South Carolina, no matter what the seriousness of
6 the crime might be, is never required to prove himself
7 innocent. It's an important rule of law that a defendant in
8 a criminal trial, no matter what the case might be, is
9 always presumed to be innocent of the crime for which the
10 indictment has been issued, until, and unless, guilt has
11 been proven to you, the jury, by proof that satisfies you of
12 that guilt beyond a reasonable doubt.

13 The presumption of innocence doesn't end when you
14 begin your deliberations. It accompanies the defendant
15 throughout the trial and into your deliberations.

16 Some people describe that presumption of innocence
17 like the robe the judge wears into the courtroom. It's
18 around the defendant's shoulders at the beginning of the
19 trial. It remains about his shoulders throughout the trial.
20 It accompanies the defendant into your deliberations, and it
21 remains about his shoulders until such time as it has been
22 stripped from him by evidence that satisfies you of the
23 defendant's guilt beyond a reasonable doubt. For that
24 reason the presumption of innocence is not just a legal
25 theory and it's not just a legal phrase. It's a substantial

1 right that every defendant is entitled to, unless you, the
2 jury, are satisfied from the evidence of the defendant's
3 guilt beyond a reasonable doubt.

4 Now, you have heard me refer to that standard of
5 proof, proof beyond a reasonable doubt, a couple of times
6 already. It's an important concept in our Criminal Justice
7 System; that is, that a defendant has to be proven guilty
8 beyond a reasonable doubt.

9 You may ask yourself well, what do we mean by a
10 reasonable doubt? What is a reasonable doubt? How does the
11 law define what a reasonable doubt is? And I will tell you
12 the cases that have defined that phrase have said that a
13 reasonable doubt is that kind of doubt which would cause a
14 reasonable person to hesitate to act and the State has the
15 burden of proving the defendant guilty beyond a reasonable
16 doubt.

17 Now, I want to clear up one thing that there might
18 be some confusion on your part as to standards or burdens of
19 proof. If you have ever been involved in a civil case, I
20 talked about those when we qualified you earlier. Civil
21 cases are where people seek monetary damages. And if you
22 have been involved in one of those kinds of cases, the
23 standard of proof or the burden required for one side to win
24 or the other is proof by the greater weight of the evidence,
25 sometimes referred to as the preponderance of the evidence.

1 So in a civil case for one side to win or the other, the
2 Scales of Justice just need to tilt ever so slightly in
3 favor of the plaintiff so the greater weight of the evidence
4 is on that side. That side wins. If it tilts in favor of
5 the defense ever so slightly, the defendant wins. So that's
6 the standard of proof for someone to prevail in a civil
7 case.

8 The standard of proof in a criminal case is more
9 powerful than that. I will tell you that proof beyond a
10 reasonable doubt is that kind of proof that leaves you
11 firmly convinced of the defendant's guilt.

12 I'm going to tell you there is very few things
13 that go on in this world that anyone can prove beyond any
14 doubt whatsoever, and the State is not required to that
15 level of proof. They are not required to present evidence
16 which overcomes every possible doubt.

17 What I will tell you is that if, after your
18 consideration of the evidence, if you are firmly convinced
19 that the defendant is guilty of the crime charged beyond a
20 reasonable doubt, then you must find the defendant guilty.

21 However, on the other hand, if you find that there
22 is a real possibility that the defendant is not guilty, you
23 must give the defendant the benefit of the doubt and find
24 him not guilty.

25 Now, I'm going to remind you that during the trial

1 we have had different duties to perform. I told you earlier
2 it was my job to preside over the case and I have the duty
3 now of charging you concerning the law. I had the duty of
4 deciding the admissibility of evidence as well, and if there
5 was anything in this case that I ruled out of evidence, did
6 not allow into the case, you should disregard those matters
7 in their entirety. They should not even be considered by
8 you at all in reaching a verdict in this case. You are to
9 consider only the evidence that was placed into the record
10 of the case during the trial. That would be whatever
11 exhibits were admitted into the record through the testimony
12 of the witnesses sworn to tell the truth from the witness
13 stand and any exhibits which were made a part of the record
14 by agreement of counsel, those are the matters that you
15 should consider.

16 Now, as I charge you on the law and as the
17 presiding judge, I told you I am the sole judge of the law
18 in this case and it's your duty as jurors to accept the law
19 as I give it to you and apply it to the facts as you decide
20 the facts to be.

21 Again, if you have an idea as to what the law is
22 or an opinion as to what the law ought to be, leave those
23 ideas outside of the jury room, because you are to take the
24 law exactly as I give it to you and apply that law to the
25 facts as you decide those facts to be.

1 Now, you, therefore, are the sole and exclusive
2 judges of the facts.

3 I will remind you again don't take from anything
4 that I say or do in the discharge of my duties in this case
5 to somehow indicate to you that I have an opinion one way or
6 the other as to how you decide the facts. Just as you
7 cannot disagree with me concerning the law, I'm not allowed
8 an opinion concerning your decision on the facts, so don't
9 take from anything that I say or do in the discharge of my
10 duties to indicate otherwise in this matter. I have no
11 opinion as to how you should determine the facts in this
12 case, because it's your job as jurors to determine the
13 effect, the value, the weight and the truth of the evidence
14 that you have heard during this trial.

15 Now, in doing that you have the right to consider
16 two types of evidence. Let me explain what I mean by two
17 types of evidence so you will understand what I mean by
18 that. The law generally classifies evidence into what we
19 call either direct or circumstantial evidence.

20 Now, direct evidence is testimony from a witness
21 who claims to have direct knowledge of the facts about which
22 that witness testifies, someone who claims to have actually
23 experienced the events about which they are testifying.
24 They are testifying directly on the fact they are seeking to
25 prove. That's what we mean by direct evidence.

1 There is another type of evidence that you have
2 the right as a jury to consider and that's referred to as
3 circumstantial evidence.

4 Now, circumstantial evidence is proof of a chain
5 of facts and circumstances which somehow indicate the
6 existence of a fact. It's been described as evidence which
7 immediately establishes collateral facts from which a main
8 fact could be reasonably inferred.

9 Now, that's pretty fancy language and I like to
10 use a very simple example as to what we mean by proof of a
11 fact by circumstantial evidence. Let's say last night
12 before you went to bed you walked over to the window in your
13 bedroom and you looked outside the window. When you looked
14 outside you noticed the stars were shining and a beautiful
15 night outside. So you went to bed and you slept all night
16 and you didn't wake up at all. You know, the next morning
17 you got up and you walked over to that same window that you
18 were at the night before. You looked outside and while the
19 sun was shining, you looked a little closer and you noticed
20 there is water dripping out of all the trees outside. The
21 grass or the lawn in front of the house is soaking wet. You
22 look at the driveway and there is puddles in the driveway
23 that weren't there the night before. Now, you slept all
24 night. You didn't see it rain, you didn't hear it rain, so
25 you couldn't testify directly as to whether or not it rained

1 or not, but from the collateral facts that you know to be
2 true - water dripping out of the trees, wet lawn, puddles in
3 the driveway that weren't there the night before - from
4 those collateral facts you could reasonably infer that at
5 some time during the night it rained. So that's what we
6 mean by proof of a fact by inference, or proof of collateral
7 facts from which a main fact could be inferred.

8 Now, the law doesn't make the distinction between
9 the weight or the value that you, the jury, can give to
10 either direct or circumstantial evidence, nor is a greater
11 degree of certainty required of circumstantial evidence than
12 that of direct. As a jury you should weigh all of the
13 evidence in the case, both direct and circumstantial. And I
14 will tell you after you have weighed the evidence of the
15 case, if you are not convinced of the defendant's guilt
16 beyond a reasonable doubt, you must find the defendant not
17 guilty.

18 However, on the other hand, if you are firmly
19 convinced of the defendant's guilt beyond a reasonable
20 doubt, you must find the defendant guilty.

21 As part of your job as jurors I told you at the
22 beginning of the trial you were going to have to decide the
23 credibility or the believability of the testimony that you
24 heard. It's your duty as jurors to analyze and evaluate the
25 evidence. You determine which evidence convinces you of its

1 truth. I told you to use your own good common sense in
2 making that consideration as the trial went along.

3 You have the right as a jury to believe one
4 witness against all the others. You have the right to
5 believe all the others against one. As jurors you have the
6 right to believe all of, part of, or none of what any
7 particular witness may have testified to.

8 You have the right to consider some such factors
9 as to whether a witness might have a stake in the outcome of
10 the case or exhibited some bias or prejudice one way or the
11 other. You can consider the appearance and the manner in
12 which the witness testified.

13 Again, use your good common sense. Make the
14 determination as to the credibility and the believability of
15 the testimony that you have heard during the trial. That's
16 one of your responsibilities as jurors in this case.

17 I told you earlier we had some witnesses that were
18 allowed to testify as experts and I told you I would talk to
19 you about that again when I charged you on the law. And I
20 will tell you again the rules of evidence ordinarily do not
21 allow witnesses to express opinions or conclusions. The
22 exception to that general rule is for a witness designated
23 as an expert. That's a witness who because of their
24 education or experiences have become an expert in some field
25 or profession and they are allowed to state their opinions

1 as to relevant and material matters that are within their
2 area of expertise. You should consider the experts opinions
3 as evidence in this case just like any other evidence. You
4 give it the weight you think it deserves. Should you decide
5 that the opinion of an expert is not based on sufficient
6 education or experience, or should you conclude that the
7 reasons given to support the opinions are not sound or are
8 outweighed by other evidence, you, the jury, have the right
9 to disregard an expert's opinion in its entirety, if you
10 choose to do that.

11 I will tell you that an expert witness' testimony
12 is not to be given any greater weight simply because the
13 person was declared to be an expert. In other words, it's
14 your responsibility again to analyze that evidence and
15 determine whether or not it convinces you of its truth. So
16 you are not even required to accept an expert's opinion even
17 though it might not be contradicted by other evidence.

18 I'm going to instruct you on something at this
19 time and I'm going to emphasize to you the fact that the
20 defendant did not testify in this case is not a factor to be
21 considered by you in any way during your deliberations. It
22 must not be considered by you in any manner whatsoever,
23 because, you see, a defendant has a Constitutional Right to
24 remain silent and the assertion of that right must not be
25 considered by you in your deliberations.

1 I repeat, under your oath you are to draw no
2 conclusions whatsoever from the fact that the defendant did
3 not testify. The fact that the defendant did not testify
4 should not even be discussed by you in the jury room.

5 The burden of proof in this case, as I have told
6 you from the beginning, is upon the State. The defendant is
7 not required to prove his innocence. The burden of proof
8 remains upon the State throughout the trial to prove the
9 defendant guilty beyond a reasonable doubt.

10 Also there was testimony from a witness who had a
11 past criminal record in this case. And I will tell you a
12 person who has a past criminal record is competent to
13 testify in a trial. A past record does not affect the
14 ability of a witness to testify. The past record may be
15 considered by you, if at all, in determining the witness'
16 believability.

17 Remember, you are the sole judges of the facts in
18 this case and you are the sole judges of the believability
19 of any and all witnesses who testify during the trial.

20 Now, there were statements made by the defendant
21 that were admitted into evidence in this case and the court
22 allowed those statements to come in, and I instruct you that
23 the ultimate decision of whether or not the witness made the
24 statement is up to you.

25 If the defendant did make the statement, then you

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

6 In determining whether statements made by the
7 defendant are voluntary, you should consider the facts and
8 circumstances surrounding the taking of the statement. And
9 you can consider factors such as the age of the defendant,
10 the defendant's education, mental capacity, intelligence,
11 background and environment, the place and length of the
12 discussion that took place, the nature of the questioning.
13 In other words, you, the jury, should consider those factors
14 in weighing whether or not to consider the statements.

15 The State has the burden of proving beyond a
16 reasonable doubt the alleged statements were voluntary. And
17 if you determine that the statement was not made
18 voluntarily, you shall not give it any weight at all in this
19 case.

20 Also I'm going to be charging you concerning the
21 law, the statute that deals specifically with the crime in
22 this case. And as you are aware, the crime is possession
23 with the intent to distribute methamphetamine.

24 I want to talk to you a little bit about the
25 element of that crime; that is, the element of intent, one

1 of the elements of that crime.

2 In order to establish criminal liability, criminal
3 intent is generally required. That is the mental state
4 required to be proven by the State for a particular crime,
5 and that might be purpose, intent, knowledge. It could even
6 be criminal recklessness or negligence.

7 Now, criminal intent must be proven again by
8 evidence beyond a reasonable doubt. Criminal intent is
9 always a matter that has to be determined by you, the jury,
10 from the facts and circumstances surrounding what happened.
11 The reason for that is there is no way in the world that we
12 can scientifically cut open somebody's head and look at
13 their brain when they are committing an act or involved in
14 an act and then see what they intended to do scientifically.
15 It can't be proven that way, so criminal intent is always a
16 matter that has to be shown from the facts and circumstances
17 that surrounded the occurrence at the time that it happened.
18 In other words, criminal intent may be inferred from the
19 circumstances that have been shown to you to have existed at
20 that time. That's how you make a determination as to
21 whether or not the element of a crime which requires intent
22 was present.

23 It's not necessary to establish intent by direct
24 or positive evidence, as I have stated. It could be
25 established by inference, in the same way that any other

1 fact is established in that fashion, by taking into
2 consideration the acts of the parties and all of the facts
3 and circumstances of the case.

4 I will tell you, though, that criminal intent is a
5 mental state. It's a conscious wrongdoing and it's up to
6 you to decide what the defendant intended to do based on the
7 circumstances that have been shown to you to have existed at
8 that time.

9 Now, the charge, the main charge in this case, is
10 possession with the intent to distribute methamphetamine.

11 The State must prove beyond a reasonable doubt
12 that the defendant possessed methamphetamine with the intent
13 to distribute it.

14 Now, I want you to listen carefully to the charge
15 concerning possession with the intent to distribute.

16 Also listen to it for the elements that are
17 required to prove possession, because I want to talk to you
18 about that in more detail in a second.

19 To prove possession the State must prove beyond a
20 reasonable doubt that the defendant had both the power and
21 the intent to control the disposition or the use of the
22 methamphetamine.

23 Now, possession can be either, under the law, can
24 be either actual possession or constructive possession.

25 Now, actual possession means that the drug was in

1 the actual physical custody possession of the defendant.

2 Constructive possession means that the defendant
3 had dominion and control or the right to exercise dominion
4 or control over either the drug, the methamphetamine itself,
5 or the property on which the drug was found.

6 Now, merely being present at a scene where drugs
7 are found is not enough to prove possession.

8 A defendant's knowledge and possession may be
9 inferred when a substance is found on property under the
10 defendant's control. However, this inference is simply an
11 evidentiary fact to be taken into consideration by you,
12 along with any other evidence in the case, and you give it
13 the weight that you think it deserves.

14 And I will tell you that under the law two or more
15 persons may have joint possession of a drug.

16 The State must also prove beyond a reasonable
17 doubt that the defendant intended to distribute the
18 methamphetamine.

19 Distribute means to deliver the drug, other than
20 by administering it or dispensing a drug.

21 Intent may be shown by the acts and conduct of the
22 defendant and other circumstances from which you might
23 reasonably and naturally infer intent.

24 In determining whether a defendant had the intent
25 to distribute the drug you may consider the circumstances

1 surrounding the defendant's alleged possession.

2 You may consider the amount of the substance
3 alleged to have been possessed, the manner in which it was
4 allegedly possessed, the place where it was allegedly
5 possessed, and any other factors which you consider to be
6 important.

7 You must find that the defendant did not intend to
8 have the methamphetamine solely for his own use for this
9 main charge of possession with intent to distribute.

10 And I will tell you that under our law possession
11 of one or more grams of methamphetamine creates an inference
12 that the defendant possessed the methamphetamine with the
13 intent to distribute it. However, this inference does not
14 relieve the State from proving beyond a reasonable doubt
15 that the defendant had the intent to distribute. It is
16 simply an evidentiary fact. It can be taken into
17 consideration by you, along with other evidence in the case,
18 and be given the weight you think it should have.

19 Now, I'm also going to offer you an alternative
20 verdict form. Should you find that the State did not prove
21 the elements of the crime of possession with the intent to
22 distribute methamphetamine, then so you would find the
23 defendant not guilty of that charge. I'm going to ask you
24 then to consider whether or not the State has proven the
25 defendant guilty of the lesser included charge of simple

1 possession of methamphetamine.

2 Now, possession of methamphetamine has all of the
3 same elements that I just went over with you concerning
4 possession with intent to distribute, except that it does
5 not contain the element of the intent to distribute the
6 drug.

7 So if you find that the defendant possessed the
8 drug, either actually or constructively, then you could find
9 the defendant guilty of possession of the drug. So, again,
10 that's a lesser included offense. You will only consider
11 that lesser included offense, should you find the defendant
12 not guilty of the original charge, possession with the
13 intent to distribute methamphetamine.

14 Now, Ms. Bedenbaugh, raise your hand, please.

15 You are going to be the foreperson of the jury.
16 That means you will be the person who will lead the
17 discussions of the jury. You will also, should the jury
18 have any questions during deliberations, you will write that
19 question on a piece of paper, give it to the bailiff. They
20 will submit it to me and then I'll consider what answer I
21 can give you.

22 I can't answer every question you may have during
23 deliberations. I'm not allowed to get involved in your
24 discussions concerning the facts in the case. I can answer
25 questions about my charge on the law. I can answer

1 questions concerning certain questions about the evidence,
2 or allow you to view or listen to evidence, things of that
3 nature, but don't edit any of the questions, Ms. Bedenbaugh.
4 Just write them down and I'll decide what the appropriate
5 response will be and I'll let you know how I intend to
6 respond to the questions.

7 Also I'm going to give you a verdict form in just
8 a few minutes. I'll go over it with you so that when the
9 verdict is reached, you will record the verdict on the form.
10 Again, sign it, knock on the door and let the bailiff know a
11 verdict has been reached. We will bring the jury back into
12 the courtroom to receive the verdict from you.

13 Now, your verdict on any question I ask of you
14 must be unanimous. All of you are who are deliberating, the
15 twelve of you that are deliberating, must agree upon the
16 verdict before it's the verdict of the jury. Once all
17 twelve agree on that verdict, it's the bailiff's
18 responsibility -- I mean the foreperson's responsibility to
19 record that verdict on the form. And, again, inform the
20 bailiff and then the verdict will be taken back into the
21 courtroom.

22 No one juror has any greater say in the outcome of
23 the case than any other juror. You all must agree. The
24 fact that I have appointed Ms. Bedenbaugh does not give her
25 a greater say in the outcome than any other juror in the

1 case.

2 I have gone over a great deal with you. We are
3 going to get the evidence together and let you see it back
4 in the jury room and I want to be sure only the properly
5 admitted evidence goes back with you. So there is some
6 things I have to take up with the lawyers before I can tell
7 you to start your deliberations. So this will be the last
8 time I will tell you to go back to the jury room. Don't
9 discuss anything about the case until I bring you back
10 shortly to give you your final instructions.

11 You may retire to the jury room,

12 Ma'am, you will be seated in that seat when you
13 come back.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: Objections or exceptions to the charge
17 from the State?

18 MS. LESKANIC: Your Honor, the only thing that
19 raised a question when you were talking about the inference,
20 and I'm not even sure that it's necessary, the way I am
21 looking at an old book of Ralph King Anderson and it talks
22 about being a permissive inference. I don't know if the
23 word permissive is necessary, and you may have stated it
24 later.

25 THE COURT: I just said by permissive, that means

1 they can take it or leave it. And it says -- I said it is
2 simply an evidentiary fact to be considered by you and you
3 give it the weight you decide it should have. So that tells
4 them they can -- I think it tells them they can take it or
5 leave it.

6 MR. JOHNSTON: Yes, sir, that's how we would like
7 it phrased.

8 THE COURT: All right.

9 MS. LESKANIC: Okay. I just wasn't sure if I
10 heard that correctly.

11 THE COURT: That's -- I think that language
12 indicated that it's permissive.

13 MS. LESKANIC: Thank you, Your Honor.

14 THE COURT: Objection from the defense?

15 MR. JOHNSTON: Only, Your Honor, our earlier
16 objection is renewed to the --

17 THE COURT: Constructive possession.

18 MR. JOHNSTON: Constructive possession.

19 THE COURT: All right. It's noted and I will
20 leave the charge as it is.

21 If you will come up and go over the evidence. We
22 are going to leave the CD with the court reporter and I'll
23 inform them that they will have to come back to the
24 courtroom to watch that.

25 Is that the only evidence?

1 MS. LESKANIC: That's it, yes.

2 MR. JOHNSTON: Yes.

3 THE COURT: Step up and take a look at the verdict
4 form, please.

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion).

7 MR. JOHNSTON: Satisfactory with me, Your Honor.

8 THE COURT: Any objection?

9 MS. LESKANIC: No objection.

10 THE COURT: All right, Wayne, let's bring the jury
11 back into the courtroom.

12 THE BAILIFF: Yes, sir.

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

15 THE COURT: All right, hand it to her, please.

16 All right, Ms. Bedenbaugh, I have had him hand you
17 a couple of documents. The bottom document there, the one
18 that you are looking at now, is the indictment. I told you
19 that I would let you take that back for you to read.

20 The other document is the verdict form and at the
21 top it has state and county that we're located in, the name
22 of the case, State, of course, versus Mr. Conner. And below
23 that there are two questions that are asked of the jury.

24 Question number one has to do with the charge
25 stated in the indictment, that is the possession with the

1 intent to distribute methamphetamine. The choices there are
2 not guilty or guilty. Once the jury has reached a unanimous
3 verdict as to the charge contained in the indictment, you
4 will record it on that form.

5 Let me explain to the jury don't think that
6 because I have put the choices in any order on that form
7 that that indicates a preference on my part as to what
8 verdict you should reach. I have been preparing these now
9 for about twelve years and every one I have ever done the
10 verdict choices are always the same. I don't change them,
11 so that doesn't indicate any preference on my part.

12 Now, should the jury find the defendant not guilty
13 of the main charge, then you must decide whether or not the
14 State has proven the defendant guilty of the charge of
15 simple possession of methamphetamine. That's the second
16 question.

17 So if the answer to the first question is guilty,
18 that would end your deliberations. You would sign it and
19 return to the courtroom. Do you understand how that will be
20 answered?

21 JURY FORELADY: Yes, sir.

22 THE COURT: Now, the only exhibit that's going
23 back with you is the bag with the alleged drugs in them in
24 it. Now, I will caution you, don't try to open that bag.
25 Let's leave it closed. If you need to examine it any closer

1 in reviewing it, let me know and we will discuss what we
2 will do in that case.

3 Also, there is a video that's been introduced into
4 evidence. However, the equipment to view it is in the
5 courtroom. So if you wish to see that video again, or any
6 portion of it, you certainly have a right to do that, what's
7 been put into the record. Let the bailiff know and we will
8 bring you back into the courtroom and play it for you in
9 here, or whatever portion of it you would like to see. So
10 it's available to you. It just won't be back in the jury
11 room with you.

12 JURY FORELADY: Thank you.

13 THE COURT: All right. You may retire to begin
14 your deliberations, everybody but the alternate. Ma'am, you
15 remain seated.

16 The jury can retire and begin deliberations.

17 (Whereupon, at 3:47 p.m. the jury went to the jury
18 room to begin deliberations)

19 THE COURT: All right, ma'am, your name should be
20 Shelley Evans, is that right?

21 ALTERNATE JUROR: Yes, sir.

22 THE COURT: You were the alternate in this case
23 and you were available in case somebody got sick or had an
24 emergency and you could have filled in. We wouldn't have
25 had to throw the case out and we could have gone on and

1 finished it with you sitting in, but all twelve of them have
2 now retired and begun deliberations and the statutes state
3 that once that occurs you are released from any further
4 responsibility in the case.

5 So I told you all along not to discuss the case
6 with anyone. I will tell you now that you can, if you want
7 to, but you don't have to. A citizen owes no one an
8 explanation for their service on a jury panel, so you are
9 not required to discuss it unless you choose to do that.

10 And if anybody were to try to bother you, I can't
11 imagine why they would, but if somebody did harass you about
12 your service, let the clerk's office know and we will take
13 the appropriate action.

14 ALTERNATE JUROR: Yes, sir.

15 THE COURT: The good news for you is I got a note
16 just a few minutes ago and we have got about 31 cases I have
17 got to handle tomorrow and Friday that don't require a jury,
18 so we are releasing the jury panel at this time, so this
19 will be the end of your jury service. You are free to go.
20 I want to thank you for your assistance in being here.

21 If you go down by the clerk's office they will be
22 able to give you a letter for your work, if you need that,
23 or they could tell you about your voucher for your pay.
24 Don't plan to retire on that check. It's not going to be
25 enough to do that, but it's all the law allows us to pay you

1 and certainly not enough for your time.

2 Thank you for your help. The bailiff will show
3 you out and you are free to go at this time. Thank you,
4 ma'am.

5 ALTERNATE JUROR: Yes.

6 (Whereupon, at 3:50 p.m. the alternate juror was
7 discharged from the trial)

8 THE COURT: Any objection to my final
9 instructions, from the State?

10 MS. LESKANIC: No, Your Honor.

11 THE COURT: Any from the defense?

12 MR. JOHNSTON: No, sir.

13 THE COURT: All right, we are in recess in this
14 case until the verdict is reached. Thank you very much.

15 (Whereupon, at 3:51 p.m., proceedings were
16 recessed pending the verdict of the jury panel)

17 (Whereupon, at 4:35 p.m., proceedings were
18 reconvened)

19 THE COURT: Counsel, if you would approach the
20 bench, please.

21 (Whereupon, the attorneys approached the bench for
22 an off-the-record discussion)

23 THE COURT: We are back on the record in the
24 Conner case and I would ask everyone to take their seat and
25 bring the jury in.

1 (Whereupon, at 4:37 p.m., the jury panel was
2 brought back in to the courtroom)

3 THE COURT: All right. I have received about five
4 questions from the jury and I will go over these with you.

5 First of all, the first question is "how long has
6 Travis Conner been a user?"

7 I do not recall any testimony as to the length of
8 that time and so I will tell you any of the questions that
9 you ask, if those matters are not already contained in the
10 record of the case, they cannot be supplied at this point in
11 time. The record of the case, the evidence, is closed. It
12 will not be reopened at this time. So if the evidence is
13 not in the record, then you have to decide the case based on
14 what is in evidence in this matter.

15 The second question asks if he has a history of
16 drug arrests? I am certain that that is not in the record
17 and can't be supplied and it's probably not relevant in this
18 matter.

19 "How old is Travis Conner?"

20 I do not recollect that being in the record.

21 Number 4, "how long has it been since he worked?"

22 There was some mention about his employment. If
23 it's necessary for us to go back and play portions of the
24 evidence, you have the right to hear the testimony again,
25 but you need to specifically request what you would want the

1 court to try to retrieve and that's kind of an involved
2 process, but we can do that, if necessary.

3 And then the final question "does he have family
4 that might be helping him?"

5 Again, I do not recall any evidence being
6 presented on that point and it cannot be supplied at this
7 point. The record is closed.

8 So I have responded to the questions that you
9 have. As I told you earlier, I can't answer all of the
10 questions you might have during your deliberations, and so I
11 have given you the answer that I think is appropriate in
12 this case.

13 I'll ask you to return to the jury room and
14 continue your deliberations. Thank you.

15 (Whereupon, at 4:40 p.m., the jury panel returned
16 to the jury room to continue deliberations)

17 THE COURT: Any objection to the court's response,
18 from the State?

19 MS. LESKANIC: No, Your Honor.

20 THE COURT: Any from the defense?

21 MR. JOHNSTON: No, Your Honor.

22 THE COURT: All right. The questions themselves
23 would be marked as Court's Exhibit No. 3 and made part of
24 the record.

25 (Jury Note marked as Court's Exhibit No. 3 for

1 identification)

2 THE COURT: We are in recess until a verdict is
3 reached in this case. Thank you.

4 (Whereupon, at 4:41 p.m., proceedings were
5 recessed, pending the verdict of the jury panel)

6 (Whereupon, at 4:55 p.m., proceedings were
7 reconvened)

8 THE COURT: I have been informed by the bailiff
9 that a verdict has been reached.

10 Is the State ready to receive the verdict?

11 MS. LESKANIC: Yes, Your Honor.

12 THE COURT: Defense?

13 MR. JOHNSTON: Yes, sir.

14 THE COURT: All right. Let's bring the jury in.

15 (Whereupon, at 4:58 p.m., the jury panel returned
16 to open court to report its verdict)

17 THE COURT: All right. The record will reflect
18 the jury has returned to the courtroom.

19 And, Madam Forelady, I understand that a verdict
20 has been reached, is that true?

21 JURY FORELAYD: Yes, sir.

22 THE COURT: Please pass that up to the bailiff,
23 please. Thank you.

24 You may publish the verdict.

25 THE CLERK: 2014-GS-11-744, State of South

1 Carolina versus Travis Scott Conner, we, the jury,
2 unanimously find the defendant Travis Scott Conner
3 concerning the offense of possession with the intent to
4 distribute methamphetamine not guilty.

5 As to question two, we, the jury, unanimously find
6 the defendant Travis Scott Conner concerning the offense of
7 possession of methamphetamine guilty.

8 Signed by foreperson Teresa Bedenbaugh.

9 Ladies and gentlemen of the jury, if this is the
10 verdict of you all, please indicate by raising your right
11 hand.

12 Thank you.

13 THE COURT: Anything further from the State before
14 I release the jury?

15 MS. LESKANIC: No, Your Honor. Thank you.

16 THE COURT: Anything further from the defense?

17 MR. JOHNSTON: No, sir.

18 THE COURT: All right. Ladies and gentlemen, this
19 completes your responsibilities in this case and I want to
20 thank you very much for your attention to your duties in
21 this matter.

22 I have been informed that we have about thirty
23 some cases that I'm going to be finishing up this week, but
24 none of them require a jury to be present, so we are going
25 to release you at this time from any further responsibility

1 for the week, so this ends your jury service.

2 Now, they will be checking you out. You can get
3 an excuse for your work and a voucher for your pay, so it's
4 not going to be enough to buy Christmas, but it's going to
5 be all that they allow us to pay you.

6 I have told you all along not to discuss this case
7 with anyone. I will advise you that you have a right to do
8 that now, if you choose to. You see, a citizen owes no one
9 an explanation for your service on a jury. You are not
10 required to talk about this at all, unless you choose to do
11 that.

12 Thank you very much for your assistance this week
13 and the clerk is going to check you out at this time.

14 (Whereupon, at 5:10 p.m., the jury panel was
15 discharged from further service)

16 (Off the record)

17 (Back on the record)

18 THE COURT: All right. Any post-trial motions
19 before sentencing from the State?

20 MS. LESKANIC: No, Your Honor.

21 THE COURT: Any from the defense?

22 MR. JOHNSTON: No, Your Honor.

23 THE COURT: All right. If you will approach the
24 bar.

25 All right, Mr. Conner, having been found guilty of

1 the offense of possession of methamphetamine by a jury of
2 your peers, I will now consider sentencing in this matter.

3 And I believe -- first of all, let me hear from
4 the State. I think there is some matters that may enhance
5 sentencing in this case?

6 MS. LESKANIC: That is correct, Your Honor.

7 Going through the defendant's prior record, 2006,
8 possession of less than one gram of methamphetamine or crack
9 cocaine.

10 2011, it looks like distribution of cocaine base.

11 Those are South Carolina convictions, and he's
12 currently on probation, Your Honor.

13 And then in Georgia there is a 2010 possession of
14 methamphetamine, and there are three separate counts and
15 convictions of that, Your Honor.

16 THE COURT: All right. Tell me about the terms of
17 his probation, please.

18 PROBATION OFFICER KEVIN RHODES: Yes, Your Honor.

19 The defendant was sentenced on July 20th of 2011,
20 by Judge Nettles out of Aiken County.

21 THE COURT: Uh-huh.

22 PROBATION AGENT KEVIN RHODES: It was distribution
23 of methamphetamine, second, Your Honor. He received a
24 sentence of six years upon the service of three years and
25 two years of probation with ATU being recommended while

1 incarcerated, Your Honor.

2 THE COURT: All right. Now, this offense occurred
3 on July the 6th of '14. Would that be a violation of that
4 probation?

5 PROBATION AGENT KEVIN RHODES: It does, Your
6 Honor.

7 THE COURT: All right. Mr. Conner, it appears
8 that this conviction would constitute in and of itself a
9 violation of your probation. Do you wish for us to handle
10 these matters both at this time?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. And do you want Mr.
13 Johnston to represent you on both matters for the sentencing
14 of this case and the probation issue?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you willing to accept that
17 responsibility, Mr. Johnston?

18 MR. JOHNSTON: I am, sir.

19 THE COURT: All right. Mr. Johnston, I'll hear
20 from you concerning sentencing in this case, as well as the
21 probation violation matter. You may proceed.

22 MR. JOHNSTON: Thank you, Your Honor.

23 Your Honor, I have been over his record and I have
24 done everything that I could to see if I could figure out a
25 way that it was not a true third offense, but it --

1 THE COURT: It appears that's what the sentencing
2 would be for.

3 MR. JOHNSTON: Yes, sir.

4 One thing I would like to correct. I think the
5 law treats cocaine base and meth as the same, so the
6 solicitor said he was convicted of a cocaine base charge. I
7 think it would actually be a meth charge. I think it all
8 would have been methamphetamine for Travis.

9 THE COURT: I see.

10 MR. JOHNSTON: He's thirty years of age, Your
11 Honor.

12 He does have a high school diploma. He's
13 originally from Aiken. That's where he got his diploma
14 from.

15 He has three children, one of whom still lives
16 down in Aiken, but he's got two children here. Those two
17 children live with him and his common law wife, and on that
18 third child he does pay child support on that child.

19 Your Honor, he's had good steady employment in the
20 past. He's been a welder's helper and machine operator, but
21 since his arrest on this case he hasn't really been able to
22 find much, other than odd jobs, doing some pressure washing,
23 working for a relative at the flea market and that kind of
24 thing.

25 Your Honor, as far as I know the only violation

1 that's been cited here is the conviction in this case, which
2 I know, of course, is a serious violation, but I would ask
3 the court to consider that that's the only violation that's
4 been handed to you.

5 I know the court is going to treat it as a
6 possession charge. He was charged with possession with
7 intent. The jury found him guilty only of possession. I
8 know Your Honor is going to treat him as that being the
9 case.

10 THE COURT: Yes, sir, that's right.

11 MR. JOHNSTON: Because this is a third offense,
12 Your Honor, he faces up to ten years on that.

13 THE COURT: I want to be sure we agree that the
14 maximum on this is up to ten years and/or a fine of up to
15 \$12,500.

16 MR. JOHNSTON: That is my understanding, Your
17 Honor.

18 THE COURT: Okay.

19 MR. JOHNSTON: And, of course, he has exposure on
20 the probation violation.

21 THE COURT: Right, as well.

22 MR. JOHNSTON: I would ask the court to fashion a
23 sentence and at least run -- if you are going to incarcerate
24 him, that you at least run the time for the probation
25 violation and any time you deem necessary for this

1 conviction, if you would run them concurrently.

2 I would also ask the court to consider that I
3 believe the only record this man has ever had is for
4 methamphetamine. He's never been involved in crimes of
5 violence. He's never been involved with firearms or
6 anything of that nature.

7 As the court well knows, methamphetamine is a
8 deadly plague on our society and it's gotten ahold of this
9 young man. I just ask for mercy for him.

10 I believe some of his family might want to speak
11 on his behalf, if you would allow.

12 THE COURT: All right. If they do, come forward
13 now.

14 MR. JOHNSTON: All right, one at a time.

15 THE COURT: One at a time, please.

16 MR. JOHNSTON: State your name and your
17 relationship.

18 THE COURT: Your name, ma'am?

19 LISA CONNER FRAZIER: My name is Lisa Conner
20 Frazier. I'm his aunt, but I'm just as close to being his
21 mother as I can be without birthing him.

22 THE COURT: I understand.

23 LISA CONNER FRAZIER: When he was released from
24 prison he lived with me for a long time until he bought his
25 home. And if there is anything that I could do to help him

1 to not have any problems with his -- with his drugs, I would
2 do whatever I can.

3 I would ask that you have mercy on him. If -- I
4 would even suggest for inpatient rehab for him, because as
5 far as I know, he's never had anything like that that he's
6 been through. He's had a really hard life growing up and
7 without me and my mother -- and my mother would be here now,
8 but she's at work. We have been his strongest and securest
9 family that he has had.

10 THE COURT: Yes, ma'am.

11 LISA CONNER FRAZIER: And I know that my mother
12 would do whatever that she could do, other than moving this
13 earth, to help him. Thank you.

14 THE COURT: Yes, ma'am.

15 Any other family members wish to be heard? Come
16 forward.

17 MR. JOHNSTON: State your name and your
18 relationship with him.

19 BRITTANY RICE: I'm Brittany Rice. I'm his
20 girlfriend.

21 THE COURT: Yes, ma'am.

22 BRITTANY RICE: He's the father of my two kids --
23 I mean not biologically. He takes care of them.

24 MR. JOHNSTON: Thank you, Your Honor.

25 We have one more person who has asked to speak on

1 his behalf.

2 State your name and your relationship.

3 TERESA HAMRICK: My name is Teresa Hamrick. I'm
4 Travis's -- he's my daughter's common law husband. He -- I
5 can say that he has been trying. His family and myself have
6 to help them with the bills. He has tried to get a job.
7 Nobody will hire him and hold it over his head. He's tried
8 to take odd jobs. He gets stuff that people throws out
9 that's trash and tries to put it back together and fix it to
10 sell it to make money. Travis is -- he does try and he's
11 got a good heart. And like his aunt said, he's had a very
12 bad childhood. His mother gave him away. His dad tried but
13 didn't give a good stable home for him, but I have seen,
14 since he's been with my daughter and how he's been with my
15 grandchildren, he is a good person. He does have a heart
16 and he wants things. He wants a life, but our society
17 chooses not to give people that's been in trouble another
18 chance. If they do, we have not found it for him, as far as
19 work.

20 I just ask that the court give him mercy for my
21 grandchildren. They will be devastated today because if he
22 doesn't go home, daddy is not going to be there. It's just
23 a bad situation all together, but, Your Honor, he is trying.
24 He is. I help with their bills. His aunt helps. His
25 grandmother helps.

1 And Cherokee County is just not a good place to
2 live. I wish we could get him out of here. I mean, this is
3 nothing but drugs. And if you get in with the wrong
4 people -- I wish I could just move them out of here with a
5 fresh start, but I can't. Unfortunately my hands are tied
6 with that right now.

7 When he gets finished with his sentencing or in
8 his probation, our intent is -- my husband and I have fifty
9 acres of land in North Carolina. Our intention is to give
10 them land and either find a doublewide or build a small
11 house for them, for them to have a fresh start in life.

12 THE COURT: Thank you, ma'am.

13 TERESA HAMRICK: Thank you, Your Honor.

14 MR. JOHNSTON: Thank you for hearing us, Your
15 Honor.

16 THE COURT: All right.

17 This is your opportunity to speak, Mr. Conner.
18 Anything that you would like to tell me?

19 THE WITNESS: I just want to apologize for, you
20 know, taking up your time up here going through this trial
21 and stuff. I appreciate you giving me, you know, a fair --
22 everything being fair and all that. And -- I don't know,
23 you know, I just want to say I'm sorry for everything. I
24 don't really know what to say right now. I can't --

25 THE COURT: All right. Anything further from the

1 State?

2 MS. LESKANIC: No, Your Honor.

3 THE COURT: Are you claiming any credit for the
4 time that you have already served?

5 MR. JOHNSTON: Let me ask him about that, Your
6 Honor.

7 (Off the record)

8 (Back on the record)

9 MR. JOHNSTON: Two days, Your Honor.

10 MS. LESKANIC: He bonded out the same day.

11 THE COURT: As far as his probationary status, he
12 served three years on the sentence and he was on probation
13 for awhile. How was he doing?

14 PROBATION AGENT KEVIN RHODES: He has never paid
15 on the court costs. He's four payments behind on the fees.
16 He has generally reported as instructed and we had him going
17 to some outpatient treatment that he was in general
18 compliance with.

19 THE COURT: Okay. Good.

20 MS. LESKANIC: Your Honor, according to the bond
21 sheet he bonded out the same day of the arrest, July 7th of
22 2014.

23 MR. JOHNSTON: We will yield to the record, Your
24 Honor.

25 THE COURT: All right. On the probation I am

1 going to revoke in full and any financial obligations would
2 be converted to a civil judgment.

3 On the sentence in this case, Mr. Conner, the
4 sentence is you be confined to the State Department of
5 Corrections for a period of eight years. I have suspended
6 that to the service of four years, with probation for three.

7 I'm ordering substance abuse counseling, random
8 drug testing.

9 I'm recommending you to the Addictions Treatment
10 Unit while you are incarcerated.

11 I will run these sentences concurrently with each
12 other.

13 Good luck to you, sir.

14 MR. JOHNSTON: Thank you, Your Honor.

15 MS. LESKANIC: Thank you, Your Honor.

16 (END OF REQUESTED TRANSCRIPT OF RECORD)
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18
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 15th and 16th days of September, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

MARCH 4, 2016



Michael R. Watts
Circuit Court Reporter

WITNESSES

Cherokee County Sheriff's Office

[Signature]

ARREST WARRANT NUMBER

2014A1110100397

ACTION OF GRAND JURY

WILL

Wayne Atkins

Foreperson of Grand Jury

Date: 8-7-14

VERDICT

Guilty of possession

of meth

Steve Boudinoff 9-16-15

Foreperson of Petit Jury

Date:

DOCKET NO.
14-GS-11-00744

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

W. 17-11-14 TERM

THE STATE

vs.

TRAVIS SCOTT CONNER

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE METHAMPHETAMINE

SC Code: 44-53-375

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

14 AUG 7 AM 10 29

GRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)

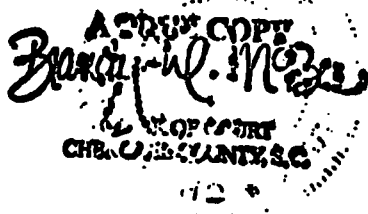
INDICTMENT

At a Court of General Sessions, convened on _____, the
 Grand Jurors of Cherokee County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE

That Travis Scott Conner, did in Cherokee County on or about July 6, 2014, manufacture, distribute, dispense, deliver, purchase or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance, to-wit: A quantity of Methamphetamine, a schedule II controlled substance under provisions of §44-53-375, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended, such possession not having been authorized by law.

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



Kimberly D. Jackson
 ASSISTANT SOLICITOR,

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 21st day of April, 2016



Robert M. Pachak
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

CERTIFICATE OF COUNSEL FOR APPELLANT

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This 21st day of April, 2016



Robert M. Pachak
Appellate Defender

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ATTORNEY FOR APPELLANT

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