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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY

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R. Knox McMahon, Circuit Court Judge

JAN 12 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LEON LILLY,

APPELLANT

APPEALLATE CASE NO. 2015-000179

RECORD ON APPEAL

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1 State of South Carolina) In the Court
2 County of Aiken) Of General Sessions

3
4 Indictment No.: 2013-GS-19-00570

5
6 State of South Carolina,)
Plaintiff.)

7
8 vs.)

Transcript of Record

9
10 Leon Lilly,)
Defendant.)

11
12 January 20-21, 2015
13 Edgefield, South Carolina

14
15 B E F O R E:

16 The Honorable R. Knox McMahon, Judge, and a jury.

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

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20 Frank Young, Assistant Solicitor
Attorneys for the State

21 Aimee Zmroczek, Esquire
22 Attorney for the Defendant

23
24 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

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TUESDAY, JANUARY 20, 2015

MR. MAYE: The State now calls for trial Indictment 2013-GS-18-570, the State versus Leon Alvin Lilly, an indictment for distribution of methamphetamine. It was true billed by the Grand Jury of Edgefield County. The State now calls its case for disposition by trial.

THE COURT: Thank you. Thank you, Solicitor:

Ladies and gentlemen of the jury panel if you'd please give me your complete and undivided attention.

Well first, let's see Ms. Zmroczek, you represent Mr. Lilly?

MS. ZMROCZEK: I do, Your Honor.

THE COURT: Is Mr. Lilly present in the courtroom?

MS. ZMROCZEK: He is, Your Honor.

THE COURT: And ready for trial?

MS. ZMROCZEK: He is, Your Honor.

THE COURT: All right. Thank you. Thank you very much, Ms. Zmroczek.

Thank you, Mr. Lilly, you may be seated.

JURY VOIR DIRE

THE COURT: Ladies and gentlemen of the jury panel if you'd please give me your complete and undivided attention. The process we formally went through prior to our break was the general qualification for exemption concerning jury service. Now we are going into the

1 selection of the first case that's being called for trial
2 and our goal is to select a fair and impartial jury for the
3 trial of this case; fair and impartial to both Mr. Lilly
4 and to the State. Please consider yourselves still under
5 oath. I will ask you certain questions. I would ask you
6 to be, to please be full, complete and thorough in your
7 responses to the questions.

8 I will begin first by reading or publishing the
9 indictment to you. The indictment is not evidence. The
10 indictment is the formal charging document by which an
11 individual is placed on notice of the charges that have
12 been brought against him or her. It contains mere
13 allegations and it is no way evidence to the allegations
14 contained within. I'll read it to you because of certain
15 questions I will ask you as we go through this process.

16 Indictment 2013-GS-19-570, State versus Leon Alvin
17 Lilly. The indictment alleges that Leon Alvin Lilly did in
18 Edgefield County on or about January 17th, 2013, knowingly
19 and intentionally distributed to a confidential informant
20 working with Edgefield County Sheriff's Department a
21 quantity of methamphetamine, a controlled substance in
22 violation of 44-53-375(b)(1), South Carolina Code of Laws,
23 1976, as amended; such distribution not having been
24 authorized by law thus gives an indictment for distribution
25 of methamphetamine.

1 I introduced the attorneys previously to you and
2 I'm now going to ask, beginning with Mr. Maye, if he would
3 introduce himself to you and any member of the solicitor's
4 staff that may be assisting him in the trial of this case.

5 MR. MAYE: My name is Ervin Maye, and I'm Assistant
6 Solicitor in the 11th Judicial Circuit. I work for your
7 elected Solicitor, Mr. Donnie Meyers, who's based out of
8 Lexington. Seated with me at the State's table is Mr.
9 Frank Young, who is also an Assistant Solicitor. He's
10 going to be helping me today in selecting the jury.

11 THE COURT: Thank you. Thank you very much, Mr.
12 Maye.

13 The Defendant is represented by Ms. Zmroczek.

14 If you would please stand and introduce yourself
15 and your client to the jury panel.

16 MS. ZMROCZEK: Thank you, Your Honor. My name is
17 Aimee Zmroczek and I am a member of the South Carolina Bar.
18 I am also a contract lawyer for the Public Defender's
19 Office in Lexington and Richland County and also a member
20 of the Criminal Justice Act Panel of Federal Court
21 Defenders. My client is Leon Lilly and he is here today
22 with his wife, Trish Lilly. Thank you.

23 THE COURT: Thank you. I didn't mean to interrupt,
24 go right ahead.

25 MS. ZMROCZEK: That's all.

1 THE COURT: Thank you very much, Ms. Zmroczek.

2 Thank you again, Mr. Lilly.

3 Is any member of the jury panel related by blood or
4 marriage, close personal friends, have any social,
5 professional, or business relationship with either Mr.
6 Maye, Mr. Young to my front right, or Ms. Zmroczek? If so,
7 please stand.

8 And professional relationship would be if you or
9 any member of your immediate family have ever been
10 represented by or prosecuted by either Mr. Maye, Mr. Young,
11 or Ms. Zmroczek. If so, please stand.

12 (No one stood.)

13 THE COURT: Is any member of the jury panel or any
14 member of your immediate family related by blood or
15 marriage, close personal friends of the Defendant in this
16 case, Mr. Leon Alvin Lilly? If so, please stand.

17 (No one stood.)

18 THE COURT: Does any member of the jury panel have
19 any knowledge about the case from any source whatsoever;
20 talk, heard talk about it, news accounts on it, if there
21 were any; I have no knowledge of news or in the paper or
22 internet, radio, television -- anything about the case
23 whatsoever being the case of distribution of
24 methamphetamine in Edgefield County on January 17th, 2013?
25 That's the allegations.

1 (No one stood.0.

2 THE COURT: Does any member of the jury panel have
3 any bias or prejudice towards the parties, that being the
4 State or Mr. Lilly or towards the subject matter involved
5 in the case, that being allegations of distribution of
6 methamphetamine? If so, please stand.

7 Let's see, this would be Mr. Walker?

8 THE JUROR: Yes, sir.

9 THE COURT: No. 160? Your number is 160?

10 THE JUROR: Yes, sir.

11 THE COURT: All right. Step up here for me, Mr.
12 Walker.

13 (The juror came forward for a bench conference on
14 the record.)

15 THE COURT: Yes, sir, tell me your situation.

16 THE JUROR: I am a recovering alcoholic from
17 Florida. I have -- I feel like this: If they get
18 convicted, throw the book at them. That's just how I feel.
19 That's just me personal.

20 THE COURT: Yes, sir. Well --

21 THE JUROR: I just don't like it.

22 THE COURT: The only person who can throw a book in
23 this place is me.

24 THE JUROR: Well, you know --

25 THE COURT: The issue becomes, based on the fact

1 that you just told me that you're a recovering drug
2 addict --

3 THE JUROR: Alcoholic.

4 THE COURT: Can you be a fair and impartial juror
5 to both the State and Mr. Lilly? You would be sitting with
6 a -- on the jury as a jury panel. You would issue a
7 verdict based on the facts of the case, as y'all found the
8 facts to be and the law as I tell you the law is.

9 THE JUROR: I have to say I don't know.

10 THE COURT: Sure. Well, your answer is your
11 answer. There's no right or wrong.

12 THE JUROR: Uh-huh.

13 THE COURT: Can you tell me a little bit -- I mean
14 just tell me a little bit of your thought processes.

15 THE JUROR: I was addicted to alcohol. I live in
16 the community. I have kids now. I just -- you know, I
17 can't look at it -- that's just me.

18 THE COURT: All right. Well, I'm going to set you
19 aside in the trial of this case. Please do not say
20 anything to your fellow jurors.

21 Congratulations.

22 THE JUROR: Thank you.

23 THE COURT: Thank you. No. 160 is set aside.

24 Has any member of the jury panel had any formal or
25 informal, I'm not sure what informal means, or legal

1 training which would include, but not be limited to,
2 college course paralegal training, law enforcement
3 training, law school or anything of that nature? If so,
4 please stand.

5 All right. Yes -- yes, ma'am, right here on the
6 front, your number and name please?

7 THE JUROR: 88, Rose Krilcich.

8 THE COURT: All right. And could you tell me just
9 generally and briefly, the extent of your training?

10 THE JUROR: Yeah, I had two semesters of Business
11 Law in college.

12 THE COURT: Given that fact, can you be a fair and
13 impartial juror in the trial of this case for both the
14 State and defense?

15 THE JUROR: Yes.

16 THE COURT: All right. Thank you. You may be
17 seated.

18 Now this is, is this Mr. Sullivan?

19 THE JUROR: Yes, sir.

20 THE COURT: And tell me your number?

21 THE JUROR: 145.

22 THE COURT: One what?

23 THE JUROR: 145.

24 THE COURT: 145. And could you tell me just
25 generally and briefly the extent of your training?

1 THE JUROR: Law enforcement training for Richland
2 County at the jail.

3 THE COURT: All right. And did you work at the
4 Richland Jail?

5 THE JUROR: Not currently.

6 THE COURT: You did in the past?

7 THE JUROR: Yes, sir.

8 THE COURT: And for what -- what period of time?

9 THE JUROR: It was two years. I resigned and --
10 about a year and a half ago.

11 THE COURT: All right. Given that fact, given the
12 fact you were employed and had training as a correctional
13 officer at the Alvin S. Glenn Detention Center, I believe
14 the name of it is?

15 THE JUROR: Yes, sir.

16 THE COURT: And was employed there for a couple of
17 years, can you be a fair and impartial juror in the trial
18 of this case for both Mr. Lilly and the State?

19 THE JUROR: Yes, sir, I can.

20 THE COURT: Okay. Thank you very much. You may be
21 seated.

22 Yes, ma'am, your number and name please?

23 THE JUROR: Brittany Robinson, 127.

24 THE COURT: 137?

25 THE JUROR: 127.

1 THE COURT: 127. All right. And can you just
2 again briefly give me your --

3 THE JUROR: Yes, I've had several college courses
4 and also I've did security on the USS Robinson.

5 THE COURT: Given those facts, can you be a fair
6 and impartial juror in the trial of this case for both the
7 State and defense?

8 THE JUROR: Yes.

9 THE COURT: Thank you. You may be seated.

10 Yes, sir. Your number and name please?

11 THE JUROR: Willie Blocker, 13.

12 THE COURT: And your training?

13 THE JUROR: I was a Highway Patrolman, I was
14 Military Police and I took several courses during that.

15 THE COURT: All right. And you were a South
16 Carolina Trooper?

17 THE JUROR: Yes, sir.

18 THE COURT: And for what period of time?

19 THE JUROR: Approximately 4 years.

20 THE COURT: Sir?

21 THE JUROR: For about 4 years.

22 THE COURT: All right. And about what time frame
23 are we talking about?

24 THE JUROR: '72 to '76.

25 THE COURT: '72 to '76; I need to check your

1 driver's license.

2 And you are -- you were then Military Police in the
3 military?

4 THE JUROR: Yes, 11 years.

5 THE COURT: Sir?

6 THE JUROR: 11 years.

7 THE COURT: All right. And given -- given the fact
8 of that background and history, can you be a fair and
9 impartial juror in the trial of this case for both Mr.
10 Lilly and the State?

11 THE JUROR: Yes.

12 THE COURT: Tell me again your occupation?

13 THE JUROR: Now, I'm retired.

14 THE COURT: Now, you're retired?

15 THE JUROR: Yes, sir.

16 THE COURT: Well, you earned it. Thank you. Thank
17 you very much. You may be seated.

18 Yes, sir, number and name please?

19 THE JUROR: John Johnson, 85.

20 THE COURT: All right.

21 THE JUROR: I've been trained at the plant to
22 recognizing -- the dogs that work with us search for drugs.

23 THE COURT: All right. And I believe you're
24 employed now with security at SRS?

25 THE JUROR: Yes, sir.

1 THE COURT: Given that fact, can you be a fair and
2 impartial juror in the trial of this case for both the
3 State and defense?

4 THE JUROR: Yes, sir.

5 THE COURT: Thank you. You may be seated.

6 Yes, sir?

7 THE JUROR: She can --

8 THE COURT: Yes, ma'am, I'm sorry.

9 THE JUROR: I have an associates degree in criminal
10 justice.

11 THE COURT: And tell me your number and name.

12 THE JUROR: 70, Francine Gordon.

13 THE COURT: All right. And given that fact, can
14 you be a fair and impartial juror in the trial of this case
15 for both the State and defense?

16 THE JUROR: Yes, sir.

17 THE COURT: Thank you. You may be seated.

18 Yes, sir?

19 THE JUROR: I'm Juror 10, Charles Bledsoe. I have
20 an internet business, environmental law and an
21 undergraduate master's level in Uniform Code of Military
22 Justice in the Army.

23 THE COURT: Given those facts, can you be a fair
24 and impartial juror in the trial of this case for both Mr.
25 Lilly and the State?

1 THE JUROR: Yes, Your Honor. Yes.

2 THE COURT: Thank you. Thank you very much. You
3 may be seated. Yes, ma'am?

4 THE JUROR: Juror No. 78. I have 2 years in
5 Florida Business Law in college.

6 THE COURT: And given that fact, can you be a fair
7 and impartial juror in the trial of this case for both the
8 State and the defense?

9 THE JUROR: Yes, sir.

10 THE COURT: Thank you. You may be seated.

11 Any others?

12 (No one stood.)

13 THE COURT: Has any member of the jury panel ever
14 been a witness in a criminal case? If so, please stand.

15 All right. Yes, sir, this is No. 10?

16 THE JUROR: Yes, sir. As a Company Commander in
17 the Military, there were numerous cases where confiscation
18 of drugs being one of those areas back then.

19 THE COURT: Given that fact, can you be a fair and
20 impartial juror in the trial of this case for both the
21 State and the defense?

22 THE JUROR: Yes, sir.

23 THE COURT: Thank you, Mr. Bledsoe, you may be
24 seated.

25 Is any member of the jury panel a member of, donate

1 to, receive assistance from, any community law enforcement
2 or victim's advocacy groups; these groups may include, but
3 are not be limited to, Mother's Against Drunk Driving,
4 South Carolina Enforcement Officers Association,
5 Partnership for a Drug Free America, Sister Care, State
6 Office of Victim's Assistance, South Carolina Victim's
7 Assistance Network, or any neighborhood watch group or
8 similar organization? If so, please stand.

9 Yes, sir?

10 THE JUROR: I might as well keep standing.

11 (This is Juror No. 10, Mr. Bledsoe.)

12 THE JUROR: I have made donations to the South
13 Carolina Sheriff's Association.

14 THE COURT: All right. And I -- I didn't mention
15 that one, but that's a similar organization and you're just
16 a donator?

17 THE JUROR: Yes, Your Honor.

18 THE COURT: Given that fact, can you be a fair and
19 impartial juror in the trial of the case for both Mr. Lilly
20 and the State?

21 THE JUROR: Yes, I can.

22 THE COURT: Thank you. You may be seated.

23 Any others?

24 (No one stood.)

25 THE COURT: Has any member of the jury panel or any

1 member of your immediate family ever been a victim of any
2 crime; if so, please stand?

3 Yes, ma'am, your number and name?

4 THE JUROR: Patricia Morris, Juror 108.

5 THE COURT: Would you step up here for me please?

6 (The juror came forward for a bench conference on
7 the record.)

8 THE COURT: 108?

9 THE JUROR: Yes, sir.

10 THE COURT: Tell me what --

11 THE JUROR: My sister was a victim of rape.

12 THE COURT: And about when? Can you remember the
13 time frame?

14 THE JUROR: Let's see -- it would be about 1976,
15 '77.

16 THE COURT: Given that fact, can you be a fair and
17 impartial juror in the trial of this case --

18 THE JUROR: Yes, sir.

19 THE COURT: -- for both Mr. Lilly and the State?

20 THE JUROR: Yes, sir.

21 THE COURT: Thank you, I believe you can stay with
22 us.

23 All right. Yes, ma'am, you may step up here for me
24 please? Tell me your number again?

25 THE JUROR: 127.

1 THE COURT: And tell me your situation.

2 THE JUROR: I was robbed in Houston County, Georgia
3 last year. \$500 was stolen from my purse. It's not going
4 to affect me.

5 THE COURT: Was it a personal robbery or --

6 THE JUROR: Yes, it was a woman that my uncle had
7 brought into our home. She stole it.

8 THE COURT: All right. Given that fact, you can be
9 a fair and impartial juror --

10 THE JUROR: Yes, sir.

11 THE COURT: -- for both parties in this case?

12 THE JUROR: Thank you, you may stay with us.

13 THE COURT: Yes, yes, sir, your number and name
14 please?

15 THE JUROR: No. 91.

16 THE COURT: And your name?

17 THE JUROR: James Letbetter.

18 THE COURT: All right. Tell me your situation.

19 THE JUROR: I don't know if this matters, but my
20 dad was in prison for several years for manufacturing
21 methamphetamine.

22 THE COURT: All right. What time frame was that
23 in?

24 THE JUROR: From like 2007 to maybe 2010.

25 THE COURT: Given that fact, can you be a fair and

1 impartial juror in this case to both the State and Mr.
2 Lilly?

3 THE JUROR: Yes, sir.

4 THE COURT: All right. Thank you, you may be
5 seated.

6 Good morning. And tell me your number and name.

7 THE JUROR: 112, Ashley Nabritt.

8 THE COURT: Okay. And tell me your situation.

9 THE JUROR: Assault and battery -- is my father.

10 THE COURT: He was a victim of an assault and
11 battery?

12 THE JUROR: No, I was the victim.

13 THE COURT: Okay. By your father?

14 THE JUROR: Yes.

15 THE COURT: And given that fact can you be a fair
16 and impartial juror in the trial of this case for both the
17 State and Mr. Lilly.

18 THE JUROR: Yes, sir.

19 THE COURT: All right. Thank you. You may stay
20 with us.

21 Good morning. Your number and name please?

22 THE JUROR: 161.

23 THE COURT: 161?

24 THE JUROR: Yes, sir.

25 THE COURT: And your name.

1 THE JUROR: Richard wall.

2 THE COURT: All right. And tell me your situation.

3 THE JUROR: My house was broken into two years ago
4 by a convicted drug dealer.

5 THE COURT: Given that fact can you be a fair and
6 impartial juror in the trial of this case for both the
7 State and defense?

8 THE JUROR: I don't think I can.

9 THE COURT: You don't think you can?

10 THE JUROR: No, sir.

11 THE COURT: All right.

12 I'm going to sit No. 161 aside for the trial of
13 this case.

14 Thank you. Thank you very much.

15 THE JUROR: Yes, sir.

16 Good morning.

17 THE JUROR: Good morning, sir.

18 THE COURT: And your number and name?

19 THE JUROR: No. 6, Brian Bell.

20 THE COURT: Brian Bell. Tell me your situation.

21 THE JUROR: I a have a misdemeanor marijuana
22 offense from 27 years ago.

23 THE COURT: Given that fact can you be a fair and
24 impartial juror in the trial of this case for both the
25 State and the defense?

1 THE JUROR: Yes, sir.

2 THE COURT: Thank you I believe you can stay with
3 us.

4 Any others?

5 (No one stood.)

6 THE COURT: Thank you. Thank you very much.

7 I'm going to call out a list of names of potential
8 witnesses in the trial of this case, ladies and gentlemen.
9 I'll ask and if they're in the courtroom to please stand
10 when their name is called and face the jury panel. I would
11 advise -- advise you that the witnesses do not have to be
12 present during this process. So you may hear names and no
13 one will stand.

14 The question of course is, is anyone related by
15 blood or marriage, close personal friends, have any
16 personal, social, business or professional relationship
17 with any of these individuals whose names I call and/or who
18 stand before you.

19 Roosevelt Young, Edgefield County Sheriff's Office.

20 That's Detective -- Deputy Young to my front right.

21 Warren Miller, Edgefield County Sheriff's Office.

22 Deputy Miller also to my front right.

23 Michael Payne, who does not appear to be present in
24 the courtroom.

25 And then two individuals from the State Law

1 Enforcement Division, Lawrence --

2 MR. MAYE: Zivkovich.

3 THE COURT: Thank you so much. Say that again,
4 Solicitor?

5 MR. MAYE: Zivkovich and that took me a long time
6 too.

7 THE COURT: Well I'm going to have to practice.
8 It's spelled Z-I-V-K-O-V-I-C-H, Zivkovich, with the State
9 Law Enforcement Division; and Doris Yarborough with the
10 State Law Enforcement Division.

11 And again, ladies and gentlemen, the question is,
12 is any member of the jury panel related by blood or
13 marriage, close personal friends, have any business,
14 social, professional relationship with any those
15 individuals who stood before you and/or whose names I
16 called; if so, please stand.

17 THE COURT: Yes, your number and name please?

18 THE JUROR: Angie Hood, No. 82.

19 THE COURT: Say it again?

20 THE JUROR: Angie Hood, No. 82.

21 THE COURT: Would you step up here for me please?
22 This young man will step by the gate.

23 (There was a bench conference on the record.)

24 THE COURT: Tell me your number again. 80 --

25 THE JUROR: 82.

1 THE COURT: 82. Step up here where she can hear
2 you and tell me your situation.

3 THE JUROR: Mr. Miller --

4 THE COURT: Miller?

5 THE JUROR: Yes -- I teach his son.

6 THE COURT: Okay. You teach his son?

7 THE JUROR: Yes.

8 THE COURT: And how long have you taught his son?

9 THE JUROR: Just this year.

10 THE COURT: Just this year.

11 THE JUROR: And I just have him for math, one
12 period a day.

13 THE COURT: Did you know Mr. Miller before that?

14 THE JUROR: I don't know him now.

15 THE COURT: All right. Given that fact can you be
16 a fair and impartial juror in the trial of this case for
17 both the State and Mr. Lilly.

18 THE JUROR: I can.

19 THE COURT: Thank you. I believe you can stay with
20 us. Thank you, ma'am.

21 MS. ZMROCZEK: Your Honor, do you want us to put or
22 objection on the record? Because I would move to strike
23 for cause on that.

24 THE COURT: Well, it's noted and it's denied.

25 MS. ZMROCZEK: Okay.

1 THE COURT: Yes, sir, your number and name please?

2 THE JUROR: 81, Willis Holmes.

3 THE COURT: All right. Willie who?

4 THE JUROR: Willis Holmes.

5 THE COURT: And you work for the Derricks?

6 THE JUROR: Yes, sir. I know Mr. Young and
7 Mr. Warren.

8 THE COURT: All right. So you know the officers?

9 THE JUROR: Yes, sir.

10 THE COURT: All right. How long you known them?

11 THE JUROR: I graduated with Warren. Mr.
12 Roosevelt, I've been knowing him most all my life.

13 THE COURT: All right. Given those facts that you
14 know them and known them most of your life and graduated
15 from school -- can you be a fair and impartial juror in the
16 trial of this case?

17 THE JUROR: Yes, sir.

18 THE COURT: You wouldn't believe them just because
19 you've known them all your life? I mean --

20 THE JUROR: I believe the facts.

21 THE COURT: Sir?

22 THE JUROR: I said I'd believe the facts, whatever.

23 THE COURT: You'd believe the facts?

24 THE JUROR: Yes, sir.

25 THE COURT: Regardless of who testifies?

1 THE JUROR: That's right.

2 THE COURT: All right. You tell those Derrick boys
3 I said hello.

4 THE JUROR: Okay, sir. I will.

5 THE COURT: They all good?

6 THE JUROR: Yes, sir.

7 THE COURT: Thank you. I believe you can stay with
8 us.

9 Your number and name please?

10 THE JUROR: 61, Mark Fallaw.

11 THE COURT: All right, Mr. Fallaw. Tell me your
12 situation.

13 THE JUROR: I just wanted you to know me and
14 Mr. Young went to grade school and high school together.
15 We were childhood friends. We do not have a relationship
16 now.

17 THE COURT: Okay. Y'all didn't have a falling out
18 or anything?

19 THE JUROR: No, just childhood. Grew up together.

20 THE COURT: Okay. And y'all just different ways
21 now, is that what you're telling me?

22 THE JUROR: That's correct, yes, sir.

23 THE COURT: All right. Given those facts can you
24 be a fair and impartial juror for both Mr. Lilly and the
25 State?

1 THE JUROR: Sure. Yes, sir.

2 THE COURT: All right. Thank you. When's the last
3 time you've been around him.

4 THE JUROR: Oh, man, might have been school.

5 THE COURT: That's been a while?

6 THE JUROR: Yeah. We just may have seen each other
7 around town; but we don't have a relationship now.

8 THE COURT: Okay. All right. You can stay with
9 us.

10 All right. Good morning. How are you?

11 THE JUROR: Good.

12 THE COURT: Tell me your number and name?

13 THE JUROR: 62, Mary Felton.

14 THE COURT: All right. And tell me your situation.

15 THE JUROR: I know Roosevelt Young.

16 THE COURT: You know Mr. Young? How well do you
17 know him?

18 THE JUROR: We were neighbors.

19 THE COURT: All right. Given the fact that you
20 know -- how well do you know him?

21 THE JUROR: We used to be neighbors.

22 THE COURT: Used to be neighbors.

23 THE JUROR: Uh-huh.

24 THE COURT: How long has it been since y'all were
25 neighbors?

1 THE JUROR: About 20 something years.

2 THE COURT: About 20 something years. Okay. Do
3 you see him around.

4 THE JUROR: Occasionally.

5 THE COURT: Occasionally. So y'all don't have a
6 close personal relationship? Y'all used to be neighbors?

7 THE JUROR: He's like one of my children.

8 THE COURT: Ma'am?

9 THE JUROR: He's like one of my children.

10 THE COURT: He's like one of your children?

11 THE JUROR: Yeah.

12 THE COURT: That means he's a good man.

13 THE JUROR: Yeah.

14 THE COURT: Given that fact can you be a fair and
15 impartial juror in the trial of this case.

16 THE JUROR: Yes, sir.

17 THE COURT: And how -- explain that to me. If he's
18 like one of your children, would you believe one of your
19 children over a stranger?

20 That's a good question ain't it.

21 THE JUROR: I'd listen to the evidence and see is
22 it -- about I used to believe nothing they told me, but I'd
23 weigh the evidence and see what it's worth.

24 THE COURT: You been on jury duty before?

25 THE JUROR: Yes.

1 THE COURT: About when? Do you know? Do you know
2 about when?

3 THE JUROR: About 25 years ago.

4 THE COURT: Were you on a jury panel?

5 THE JUROR: Yes, sir.

6 THE COURT: Up here.

7 THE JUROR: Yes, sir.

8 THE COURT: All right. Did you know anybody
9 involved in that case?

10 THE JUROR: No, sir.

11 THE COURT: What kind of case was it? Do you
12 remember? A criminal case?

13 THE JUROR: I don't really remember I think in
14 involved and accident or something.

15 THE COURT: Okay. Maybe a traffic case or suing
16 over money or something like that?

17 THE JUROR: It was money.

18 THE COURT: Civil.

19 THE JUROR: Uh-huh.

20 THE COURT: All right. I'm going to set you aside
21 for this one. I believe everything you tell me, but I'm
22 going to set you aside for the trial of this case. Okay?

23 THE JUROR: Okay.

24 THE COURT: Thank you, thank you very much.

25 Any others?

1 (No one stood).

2 THE COURT: All right. The other names -- again
3 the question is if you're related by blood or marriage,
4 close personal friends, have a personal, social, business,
5 professional relationship with any of these witnesses,
6 please stand.

7 Trish Lilly, this is Ms. Lilly; she's at my front
8 left.

9 Jessie Lilly, who does not appear to be present
10 with us today yet. And Amanda Brissey.

11 Any member of the jury panel related by blood or
12 marriage, close personal friends of any those individuals
13 whose names I just called and/or who stood before you? If
14 so, please stand.

15 (No one stood.)

16 THE COURT: I did not and I decline to ask Number
17 1, 2, 3, excuse me -- 2, 3 -- question 3 is also a response
18 of the general juror information that was returned. I did
19 ask Number 5. I did not and decline to ask Number 6. I
20 asked Number 7. I decline to ask Number 8. And I'm going
21 to -- I decline to ask Number 10, Number 11, Number 12. I
22 asked Number 13. I decline to ask Number 14, 15, 16, 17,
23 18, 19, 20, 21. I did ask Number 22. I decline 23. It
24 then goes to -- after 22, it goes to, what I was handed
25 goes to then 29 looks like. I decline to ask that. I will

1 ask my version of Number 30 and I decline to ask Number 31.

2 With that being said, any additional questions voir
3 dire from the State?

4 MR. MAYE: None from the State, Your Honor, thank
5 you.

6 THE COURT: From the defense, Ms. Zmroczek?

7 MS. ZMROCZEK: None from the defense, Your Honor.

8 THE COURT: All right. So finally, ladies and
9 gentlemen, you've heard the allegations, mere allegations
10 in the indictment, the charge that is alleged. You've gone
11 through the series of questions. You have been introduced
12 to, either personally or by name, to the potential
13 witnesses in the trial of this case. You know our purpose
14 in this proceeding is to select a jury, a jury that will be
15 fair and impartial to Mr. Lilly as he sits here presumed to
16 be innocent; and fair and impartial to the State as the
17 State has to be the party of bearing the burden of proving
18 its case beyond a reasonable doubt.

19 You know yourselves best. Does any member of the
20 jury panel know of any reason whatsoever why you feel like
21 you could not be a fair and impartial juror in the trial of
22 this case for both Mr. Lilly and the State of South
23 Carolina? If it concerns you, it concerns me. I don't
24 want to select a jury -- I've had this happen -- you end up
25 on a panel and before -- before I appoint a foreman or

1 select a foreman, they have an issue that they didn't bring
2 or didn't think was important. That's not by way of
3 complaint, but if it concerns you, it concerns me.

4 If anyone needs to respond to that question, please
5 stand at this time.

6 All right. Your number and name?

7 THE JUROR: 38, Johnathan Clark.

8 THE COURT: All right. Just step right up here for
9 me please.

10 Tell me your situation -- tell me your number and
11 name again for the record.

12 THE JUROR: 38 Johnathan Clark.

13 THE COURT: All right.

14 THE JUROR: I believe that the use of drugs has
15 moral and ethical issues. I'm a Christian. But in terms
16 of legal drugs, I do have an understanding -- a belief
17 about the State and what they have jurisdiction over and so
18 that might cause me to be impartial.

19 THE COURT: All right.

20 THE JUROR: I don't if that --

21 THE COURT: You don't know what?

22 THE JUROR: Is that clear?

23 THE COURT: Well, can you explain it to me a little
24 bit more.

25 THE JUROR: I'm not sure that in all cases that the

1 State has the jurisdiction over drugs like this. Not that
2 I believe it should be done, but I just I'm not convinced
3 of that in some cases.

4 THE COURT: All right. So you feel like you could
5 not be fair and impartial juror in the trial of this case
6 on behalf of the State?

7 THE JUROR: (Nodded head.)

8 THE COURT: Is that yes?

9 THE JUROR: Yes, sir.

10 THE COURT: And therefore -- that's your personal
11 philosophy?

12 THE JUROR: Yes, sir.

13 THE COURT: If you were selected on the jury panel,
14 along with your other -- your fellow jurors and you were
15 told that -- you take an oath -- that you must -- you're
16 the judge of the facts in the case. And I'm the judge of
17 the law.

18 And the only law that you can apply is the law that
19 I tell you applies, regardless of what you may think the
20 law should be or ought to be.

21 THE JUROR: Sure.

22 THE COURT: Can you do that?

23 THE JUROR: I can adhere to the law that you give.

24 THE COURT: Regardless of your personal philosophy
25 of what the law should be or whether drugs should be legal

1 or illegal is the jurisdiction of the State to regulate
2 them? Is that a fair statement?

3 THE JUROR: Yes, sir.

4 THE COURT: Although you may not believe a
5 particular drug or drugs in general should be regulated,
6 you would follow the law as I tell you the law is because
7 they are regulated.

8 THE JUROR: Yes, sir.

9 THE COURT: You understand?

10 THE JUROR: Yes, sir.

11 THE COURT: You can to that?

12 THE JUROR: Yes, sir.

13 THE COURT: No doubt in your mind?

14 THE JUROR: No.

15 THE COURT: So I'll ask you again, can you be a
16 fair and impartial juror in the trial of this case for both
17 Mr. Lilly and the State?

18 THE JUROR: In that case, yes, sir.

19 THE COURT: All right. Thank you very much. I
20 think you can stay with us.

21 Any others?

22 (No one stood.)

23 THE COURT: Thank you. Thank you very much.

24 All right. I find our panel is qualified.

25 Solicitor, what are the strikes please?

1 MR. MAYE: It's 5 and 5 for each side.

2 THE COURT: Is that right, Ms. Zmroczek? 5 and 5?

3 MS. ZMROCZEK: I believe so, Your Honor.

4 THE COURT: All right. Thank you. Thank you very
5 much.

6 If you'd give us a jury panel, the State has 5
7 strikes and the defense will have 5 strikes.

8 Can you tell me, Madam Clerk, there was a juror
9 that had a medical appointment tomorrow?

10 THE CLERK: Yes, sir, that's what she told me.

11 THE COURT: And what time? Do you know?

12 THE CLERK: No, sir.

13 THE COURT: Can you ask her to step up here,
14 please.

15 THE CLERK: Juror 168, Candy White, Would you step
16 up here?

17 THE COURT: Step up here for me, for one minute.
18 And your juror number and name?

19 THE JUROR: Sir?

20 THE COURT: Your number and name?

21 THE JUROR: 168, Candy White.

22 THE COURT: And you have a doctor's appointment
23 tomorrow?

24 THE JUROR: Yes, it's either at 2 or 2:30.

25 THE COURT: Do you want to be -- you want to make

1 it to your doctor?

2 THE JUROR: I'd like to.

3 THE COURT: All right. Let's protect Ms. White for
4 tomorrow.

5 Which means you wouldn't be subject to sitting on
6 this panel, okay?

7 THE JUROR: Thank you, I appreciate it.

8 THE COURT: Just stay for now. Thank you.

9 All right. Madam Clerk, if you would get us a
10 panel; the strikes are 5 for the State and 5 for the
11 Defense.

12 JURY SELECTION

13 THE CLERK: As I call your juror number and name if
14 you would step in front of this desk and face the back of
15 the courtroom. If you have a purse or book or any
16 belongings, bring them with you.

17 Juror 154, James A. Turner.

18 (A white male approached the front.)

19 THE CLERK: What sayeth the State?

20 MR. MAYE: Please present the juror.

21 THE CLERK: What sayeth the defense?

22 MS. ZMROCZEK: Excuse me -- please seat the juror.

23 THE CLERK: I'm sorry, I couldn't hear you.

24 MS. ZMROCZEK: Please seat the juror.

25 THE CLERK: Have a seat.

1 Juror 128, Daniel Robinson.
2 (A white male approached the front.)
3 THE CLERK: What sayeth the State?
4 MR. MAYE: Please present the juror.
5 THE CLERK: What sayeth the defense?
6 MS. ZMROCZEK: Please seat the juror.
7 THE CLERK: Have a seat in the jury box.
8 Juror 81, Willis T. Holmes.
9 (A white male approached the front.)
10 THE CLERK: What sayeth the State?
11 MR. MAYE: Please present the juror.
12 THE CLERK: What sayeth the defense?
13 MS. ZMROCZEK: Please excuse the juror from this
14 trial.
15 THE CLERK: You can have a seat back there.
16 Juror No. 11, Karen N. Bledsoe.
17 (A white female approached the front.)
18 THE CLERK: What sayeth the State?
19 MR. MAYE: Please present the juror.
20 THE CLERK: What sayeth the defense.
21 MS. ZMROCZEK: Please seat the juror.
22 THE CLERK: 127, Brittany A. Robinson.
23 (A white female approached the front.)
24 THE CLERK: What sayeth the State?
25 MR. MAYE: Please present the juror.

1 THE CLERK: What sayeth the defense?

2 MS. ZMROCZEK: Please excuse the juror from the
3 trial of this case.

4 THE CLERK: No. 89, Devin L. Lacey.

5 (A white female approached the front.)

6 THE CLERK: What sayeth the State?

7 MR. MAYE: Please present the juror.

8 THE CLERK: What sayeth the defense?

9 MS. ZMROCZEK: Please seat the juror.

10 THE CLERK: No. 13, Willie H. Blocker.

11 (A black male approached the front.)

12 THE CLERK: What sayeth the State?

13 MR. MAYE: Please present the juror.

14 THE CLERK: What sayeth the defense?

15 MS. ZMROCZEK: Please excuse the juror from the
16 trial of this case.

17 THE CLERK: Juror 132, Jennifer M. Ross.

18 (A white female approached the front.)

19 THE CLERK: What sayeth the State?

20 MR. MAYE: Please present the juror.

21 THE CLERK: What sayeth the defense?

22 MS. ZMROCZEK: Please seat the juror.

23 THE CLERK: Juror 27, Perry W. Bussey.

24 (A black male approached the front.)

25 THE COURT: What sayeth the State?

1 MR. MAYE: Please present the juror.
2 THE CLERK: What sayeth the defense?
3 MS. ZMROCZEK: Please seat the juror.
4 THE CLERK: Juror 17, Debra Bradham.
5 (A white female approached the front.)
6 THE CLERK: What sayeth the State?
7 MR. MAYE: Please present the juror.
8 THE CLERK: What sayeth the defense?
9 MS. ZMROCZEK: Please seat the juror.
10 THE CLERK: Juror 173, Corinne L. Wilson.
11 (A white female approached the front.)
12 THE CLERK: What sayeth the State?
13 MR. MAYE: Please present the juror.
14 THE CLERK: What sayeth the defense?
15 MS. ZMROCZEK: Please seat the juror.
16 THE CLERK: Juror 50, Mark A. Dietrich.
17 (A white male approached the front.)
18 THE CLERK: What sayeth the State?
19 MR. MAYE: Please excuse the juror from the trial
20 of this case.
21 THE CLERK: Juror 107, Walter H. Morgan, Jr.
22 (A white male approached the front.)
23 THE CLERK: What sayeth the State?
24 MR. MAYE: Please present the juror.
25 THE CLERK: What sayeth the defense?

1 MS. ZMROCZEK: Please seat the juror.

2 THE CLERK: No. 6, Brian K. Bell.

3 (A white male approached the front.)

4 THE CLERK: What sayeth the State?

5 MR. MAYE: Please excuse the juror from the trial
6 of this case.

7 THE CLERK: Juror 106, Deborah J. Morgan.

8 (A black female approached the front.)

9 THE CLERK: What sayeth the State?

10 MR. MAYE: Please present the juror.

11 THE CLERK: What sayeth the defense?

12 MS. ZMROCZEK: Please seat the juror.

13 THE CLERK: Juror 10, Charles Bledsoe.

14 (A white male approached the front.)

15 THE CLERK: What sayeth the State?

16 MR. MAYE: Please present the juror.

17 THE CLERK: What sayeth the defense?

18 MS. ZMROCZEK: Please excuse the juror from the
19 trial of this case.

20 THE CLERK: Juror 85, John A. Johnson.

21 (A white male approached the front.)

22 THE CLERK: What sayeth the State?

23 MR. MAYE: Please present the juror.

24 THE CLERK: What sayeth the defense?

25 MS. ZMROCZEK: Please seat the juror.

1 THE CLERK: Juror 44, Tiffany N. Creasy.

2 (A white female approached the front.)

3 THE CLERK: What sayeth the State?

4 MR. MAYE: Please present the juror.

5 THE CLERK: What sayeth the defense?

6 MS. ZMROCZEK: Please seat the juror.

7 THE CLERK: That is our twelve.

8 THE COURT: Yes, ma'am.

9 Will one alternate be sufficient, Solicitor and Ms.
10 Zmroczek?

11 MR. MAYE: Should be sufficient, Your Honor. Thank
12 you.

13 MS. ZMROCZEK: I agree, Your Honor.

14 THE COURT: All right.

15 THE CLERK: Juror No. 87, Andrew J. Kraus, Sr.

16 (A white male approached the front.)

17 THE CLERK: What sayeth the State?

18 MR. MAYE: Please present the juror.

19 THE CLERK: What sayeth the defense?

20 MS. ZMROCZEK: Please seat the juror.

21 THE COURT: All right. Any motions regarding the
22 jury selection process and selection?

23 MR. MAYE: None from the State, Your Honor. Thank
24 you.

25 THE COURT: From the defense?

1 MS. ZMROCZEK: No, Your Honor, just some previous
2 objections that I'd like to put on the record later. Not
3 in regards to this, our jury.

4 THE COURT: All right. Thank you.

5 Juror No. 154?

6 THE JUROR: Yes, sir.

7 THE COURT: I'm going to appoint you the foreperson
8 of this jury. If you would always maintain that seat
9 closest to the bench.

10 THE JUROR: Yes, sir.

11 THE COURT: And you will be the jury spokesperson
12 in the courtroom and also responsible for signing and
13 dating the verdict. I'll give you further instructions
14 concerning that. You may be seated.

15 Juror No. 87, Mr. Kraus?

16 THE JUROR: Yes, sir.

17 THE COURT: All right. And you will be an
18 alternate juror. If you would always maintain that seat, I
19 would appreciate it. I need to keep up with thirteen
20 jurors. My foreperson always sits right there. Thank you.
21 Thank you very much.

22 Those other members of the jury panel, you may sit
23 wherever you like in the jury box. I have found in study
24 over the years that jurors are very territorial. They like
25 to sit in the same place and have the view of the courtroom

1 each and every time. You are certainly welcome to do that;
2 however, you don't have to do that.
3 I'm going to ask you momentarily to step to the jury room.
4 I'll see what we have time-wise administratively and I'll
5 bring you back out after I have released your colleagues
6 for the remainder of the day.

7 Do not discuss this case with anyone, fellow
8 jurors, family, friends or anyone else. You would not be
9 authorized to discuss the case until you've heard all the
10 evidence and all the testimony presented by the parties,
11 closing argument by the attorneys and instructions on the
12 law by the judge. As I said, I'll give you further
13 instructions after I have released your colleagues.

14 I'll have you back in here momentarily. When you
15 exit the jury box, you always exit to the right and follow
16 your bailiff.

17 Thank you. Thank you very much. You may go now to
18 your new temporary quarters.

19 (The jury left the courtroom at 12:14 p.m.)

20 THE COURT: Ladies and gentlemen of the jury panel
21 that were not fortunate enough to be selected as jurors in
22 the trial of this case, please, please do not give up hope.
23 The week is young with perhaps many other cases to try.

24 Momentarily, I'm going to release you from your
25 jury service for the remainder of the day, and of course,

1 evening. I would ask you to please call your jury number
2 that our clerk has pointed out to you on the back of that
3 green card. Call that number after 6 o'clock, after 6 p.m.
4 tonight. It will prompt you and give you instructions
5 concerning your jury service for tomorrow and -- for
6 tomorrow. It may tell you to call back tomorrow night and
7 what have you. It will prompt you and give you
8 instructions concerning your jury service for the remainder
9 of the week. And of course, 1 -- is 1 -- is it 168 that
10 had the appointment?

11 You are excused based on your medical tomorrow, so
12 you would -- you would not have to call; you do not have to
13 be here tomorrow at all, okay?

14 All right. Any questions? Thank you very much.
15 It has been my pleasure and my privilege to be with you
16 this morning.

17 (The remaining jury venire was excused from the
18 courtroom.)

19 THE COURT: Did you say you had some motions?

20 MS. ZMROCZEK: Yes, we do, Your Honor. I wanted
21 to -- I don't think it matters, but I just wanted to note
22 my objection on 62. I felt like she was excused even
23 though she said that she could be fair and impartial.

24 THE COURT: I set her aside?

25 MS. ZMROCZEK: You did. You set her aside. She

1 stated that she knew -- she knew very well Investigator
2 Young. But she also stated that she would give a listen to
3 the facts and be fair and impartial and so I just wanted to
4 note my objection for her being set aside.

5 And the other one I don't think it applies because
6 she wasn't called, which was 82. I noted that she was the
7 teacher of one of the officer students, but she wasn't
8 called. So I don't think that's even applicable.

9 And then, Your Honor, just fixing a scrivener's
10 scriveners' error on my voir dire, that I just completely
11 skipped from No. 22 to 29.

12 THE COURT: Yes, ma'am.

13 MS. ZMROCZEK: Probably because I did it in the
14 middle of the night. And also put -- just forgot to change
15 the defendant's name on there. But other than that, I
16 would ask that that be fixed. Obviously, you know which
17 defendant is on trial and I would ask that it to be
18 incorporated.

19 Specifically the question that I was concerned with
20 had to deal with the religious or moral questions about
21 drugs and alcohol. Specifically because of the one juror
22 who came up and had particulars, even though he said he
23 could be fair and impartial, had particular beliefs
24 about -- moral beliefs about drugs and alcohol. And I
25 think that's all I have.

1 THE COURT: Thank you. Thank you very much.

2 MS. ZMROCZEK: Oh, I would ask that the jury not be
3 sworn in because we have indictment issues, if we can just
4 hold off until we get this --

5 THE COURT: Thank you. Thank you very much.

6 Now administratively, time-wise, what's -- what's
7 the plan coach? Coaches?

8 MR. MAYE: Your Honor, we're prepared to go forward
9 with this case. We have witnesses for this afternoon. The
10 only thing that I have is, I have the chemist from SLED
11 that's scheduled to be here in the morning at 9:30. And so
12 we'd be, that was the best time I could come up with the
13 chemist to help him with his time. And that's going to be
14 our last witness, so I would think we ought to be able to
15 get it wrapped up -- at least the State's part of it by
16 tomorrow morning.

17 THE COURT: How long are these motions? I've
18 got -- I'm not going to sit here right now, quite frankly,
19 and listen to motions right now. My plan is to send the
20 jury panel to their luncheon recess. I'm going to take
21 mine. I've got two hearings at 2 o'clock I believe, a plea
22 and a bond matter that, quote, shouldn't take too long,
23 unquote. Famous last words.

24 And how long are these motions going to take; I'm
25 not going to sit here during the luncheon hour and listen

1 to them. I'll listen to them as long as it's going to
2 take, I just don't want the jury panel sequestered
3 basically back there. So how long do you think it'll take
4 if we get started back at 2:30.

5 MS. ZMROCZEK: Your Honor, I think we'll, it's
6 going to require some testimony from the officers and there
7 are several. I would guesstimate an hour and a half and
8 that's just being cautious. I'm trying to, I'm trying to
9 think about -- depending on what's the State's evidence is
10 because Your Honor, I didn't -- I never received a witness
11 list. So now that I know who the witnesses are, I have a
12 better idea of whether or not -- depending on how the
13 evidence plays out, I'm not sure if I'll put up a case,
14 Your Honor.

15 THE COURT: All right. You think that's a good
16 estimate, Solicitor?

17 MR. MAYE: Your Honor, I have no idea. Obviously
18 they're her motions. I would not think that I -- I don't
19 think they're with any merit and I don't know how long
20 they're going to take, Your Honor. I just -- I can't tell
21 you.

22 THE COURT: All right. Well, I'll tell the panel
23 to be back at 3:30. And so if they only have to sit back
24 there 30 minutes, that's better than sitting back there an
25 hour and 30 minutes. All right.

1 MS. ZMROCZEK: I have one more matter, Your Honor.
2 I typically -- I know different judges do it differently,
3 but my client has been out on bond; he's reported every
4 single roll call. I have spoke with -- I spoke with his
5 bondsman and he's agreed to, even though he's technically
6 not supposed to remain on the bond, he has agreed to
7 continue his obligations. I would just simply ask that my
8 client be allowed to remain out on bond during the pendency
9 of this trial.

10 THE COURT: When the jury is struck, the bond is
11 ended. He will be in the custody of the Edgefield -- when
12 the jury is sworn, the bond is ended. So he needs to
13 expect to be in custody of the Edgefield County Detention
14 Center this afternoon. I don't want -- I won't have the
15 jury sworn now. He'll be free for lunch, but after that,
16 I'll revoke the bond.

17 MS. ZMROCZEK: Thank you.

18 THE COURT: Thank you. Thank you very much.

19 MS. ZMROCZEK: And he has several medications. He
20 takes several prescribed medications that the jail -- I
21 know he had issues with when he was an inmate and is it
22 okay if his wife provides the medications to the jail
23 because, Your Honor, if he doesn't get those, I fear that
24 he --

25 THE COURT: Well I don't run the jail. I don't

1 operate the jail. They're supposed to take care of him.
2 I'll be glad to have Mr. Duran or someone in authority over
3 the jail to speak with you about his condition and all.
4 You know, he may not be there but overnight.

5 MS. ZMROCZEK: Yes, sir.

6 THE COURT: Depending on the length of the trial
7 and verdict rendered, but I -- I'll see that Mr. Duran is
8 made aware of that.

9 MS. ZMROCZEK: Thank you.

10 THE COURT: All right. I'm going to bring the jury
11 out and I'm going to release them until 3:30.

12 All right. Bring our jury back in please.

13 (The jury entered the courtroom at 12:25 p.m.)

14 THE COURT: Welcome back, ladies and gentlemen.
15 Momentarily I will release you for your luncheon recess. I
16 must advise you of certain -- certain duties and
17 responsibilities that you have and will have throughout
18 your service as jurors in this case.

19 You may have heard me say some of this prior to
20 excusing you to your jury room. You may not discuss this
21 case with others, that includes your fellow jurors, lunch
22 mates, family, friends, or anyone else except as authorized
23 by the Court. If anyone tries to talk with you about the
24 case, please let me know immediately.

25 You may not read, watch or listen to any news

1 reports about the case, should there be any present or
2 past. You may not use your computer, cellular phone or any
3 other electronic device for communication capabilities
4 while in attendance at trial or during deliberations.
5 These devices may be used during your lunch breaks, but may
6 not be used to obtain or disclose information prohibited.
7 Information prohibited includes, but is not limited to the
8 following: Information about a party, a witness or
9 attorney or court officer; news accounts of the case;
10 information collected through juror research on any topic
11 raised in the testimony offered by a witnesses; or
12 information collected through juror research or any other
13 topic the juror might think would be helpful in deciding
14 the case.

15 You decide a case based on the evidence and
16 testimony of the witnesses, the sworn witnesses, testifying
17 before you from the witness stand. Any inferences you may
18 think can properly be drawn from the evidence and the law
19 as I tell you the law is. Uninfluenced by anything on the
20 outside, doing no research whatsoever on your own or
21 reading no news accounts on your own. You solely focus on
22 the witnesses testimony and your evaluation of the
23 credibility and the believability of witnesses testifying
24 before you in this case.

25 Once you decide what the facts are as a jury, you

1 take those facts, apply them to the law that I tell you the
2 law is and you render your verdict. It speaks the truth;
3 guilty or not guilty.

4 As Mr. Lilly sits here, he is presumed innocent.
5 He has no burden to prove himself or herself -- nor does
6 any criminal defendant in South Carolina -- have the burden
7 to prove him or herself innocent. They're presumed to be
8 innocent. The State of South Carolina has the burden of
9 proving its case beyond a reasonable doubt. And I will
10 explain further to you those concepts as we -- at the end
11 of the trial.

12 But do not discuss the case until you've heard all
13 the evidence, all the testimony, and closing arguments by
14 the attorneys, and instructions on the law by the Court.

15 Ladies and gentlemen, this case is no different
16 than most cases that are called to trial. There are
17 certain pretrial matters I must take up after the jury is
18 selected and before we actually start the trial of the
19 case. So rather than have you return in an hour, hour and
20 a half, I'm going to give you somewhat of an extended
21 lunch -- luncheon recess. And perhaps you all are used to
22 an extended lunch recess. I don't know if you are or not,
23 but I do that so you won't be sitting there in the back.

24 Hopefully we'll be, it's hard to estimate how much
25 time these motions take, but hopefully we'll be in a

1 position to start at least upon your prompt return or
2 shortly thereafter. So I'm going to ask you to please be
3 back promptly at 3:30, promptly at 3:30, and hopefully
4 we'll be in a position to begin the trial of the case at
5 that time.

6 Any objections to anything I've told the jury from
7 the State?

8 MR. MAYE: None from the State, Your Honor, thank
9 you.

10 THE COURT: Defense?

11 MS. ZMROCZEK: None from the defense, Your Honor.

12 THE COURT: Thank you. Thank you very much. You
13 are now released for your lunch recess. I hope y'all have
14 a pleasant lunch.

15 (The jury left the courtroom at 12:31 p.m.)

16 THE COURT: All right. Anything further from the
17 State before we take our recess?

18 MR. MAYE: None from the State, Your Honor, thank
19 you.

20 THE COURT: Defense?

21 MS. ZMROCZEK: Nothing from the Defense.

22 THE COURT: And do you know if I have that plea at
23 2 o'clock?

24 MR. MAYE: I know that I told Mr. Milling to be up
25 here at noon today and that we would take it whenever Your

1 Honor directed us to do so.

2 THE COURT: Is he here?

3 MR. MAYE: I'm not sure. I haven't been back to
4 see yet.

5 THE COURT: I'll be back about 2.

6 MR. MAYE: That'll be fine, Your Honor.

7 THE COURT: Court will be in recess until 2
8 o'clock. Thank you.

9 (Court was in recess for lunch.)

10 THE COURT: All right. We're back on the record in
11 2000 -- 2013-GS-19-570, the State versus Leon Alvin Lilly
12 for distribution of meth charge arising on January 17th,
13 2003 (sic). The defense has a number of pretrial matters.

14 All right. Ms. Zmroczek?

15 MS. ZMROCZEK: Thank you. And, Your Honor, I just
16 wanted to state that my client has been here since prior to
17 two, they just wouldn't let him in. I just didn't want you
18 to think that they were not here on time.

19 THE COURT: Yes, ma'am.

20 MR. ZMROCZEK: Your Honor, when this was called to
21 trial last week, I had filed some pretrial motions, and so
22 I wanted to go through those briefly, but I think some of
23 them have been dealt with. And then I also filed some
24 today. So I guess I just wanted to do as far as
25 housekeeping, the motion to redact the indictments and this

1 was in the pretrial motions that I filed on January 13th.
2 Do you have that?

3 THE COURT: Yes, ma'am. Yes, ma'am.

4 PRETRIAL MOTIONS

5 MS. ZMROCZEK: All right. So I think No. 3 has
6 already been dealt with.

7 And No. 5 is not applicable because they're not
8 calling that case.

9 No. 8 has been ruled on.

10 And so -- and then the one's that I filed today, I
11 believe that there's a motion to sever, which obviously is
12 moot at this point.

13 And so what I was going to do is continue with the
14 motion to quash the indictments and encompass the motion to
15 dismiss within that. I can do these separately, Your
16 Honor. I guess it's just at the Court's pleasure which one
17 you would like to hear first.

18 THE COURT: Go right down the line. No. 1?

19 MS. ZMROCZEK: Okay. Your Honor, the -- the motion
20 to dismiss deals specifically with Rule 5 Brady, Lyle
21 violations. And I filed a written motion as well, Your
22 Honor, to supplement that today. It's defendant's motion
23 to dismiss for failure to comply with Brady or in the
24 alternative, suppress the evidence.

25 The evidence that we're looking to suppress, Your

1 Honor deals with the confidential informant video and the
2 drugs that were secured as a result of this contact or this
3 controlled buy that occurred on January 17th of 2013.

4 Your Honor, I was retained in this case in December
5 of 2013, and at that time, on December 4th, I e-mailed my
6 Notice of Appearance and I also sent it to the Court. It
7 was filed December 6th of 2013, but the State provided me
8 21 pages of discovery on December 5th via e-mail. Your
9 Honor, I would submit that I can hand you the 21 pages, but
10 I submit I don't think the State would disagree with me
11 that pages 1 through 12 deal specifically with on January 6
12 charges; 13 through 21 dealt with the charges that were,
13 that are not in front of the Court. So, Your Honor, I had
14 12 pages of discovery. And then, Your Honor, beginning in
15 January 2014, this case has been on the Trial Docket every
16 term. I finally requested -- I finally got to see -- I
17 requested -- they knew we were going to trial. I requested
18 the video. I was told that I couldn't have one, but I
19 could come see it. Your Honor, I did so in March. And in
20 March of 2014, I also received defendant's rap sheet and I
21 received five pictures, but I don't know who took them,
22 when they were taken, or what relevance they have to the
23 case.

24 I received the pictures again January 5th of 2015.
25 Your Honor, on January 6th of 2015, I finally received the

1 information that I had been repeatedly requesting about the
2 confidential informant. At that time, Your Honor, the name
3 was revealed to me of the confidential informant, which was
4 just 11 days ago, if my math is right, or 12 days ago. And
5 so I was able to some research on December, excuse me, on
6 January 7th, or excuse me, on January 7th I received that
7 basic information. I requested additional information and
8 received a very limited confidential informant agreement
9 and some additional warrant information, Your Honor, and
10 that was received January 16th, 2015. I again requested a
11 copy of the video and was told that they weren't going to
12 make me a copy that I had to come see it, which I did. I
13 did it again this morning, Your Honor, which leads me to, I
14 guess, the crux of my argument.

15 In that video, there are -- there's the
16 confidential informant, who they identified. And then
17 there is another person. Your Honor, through my
18 investigation since January 7th when I finally figured
19 out -- when they finally revealed to me the confidential
20 informant, I learned that that other person is a woman by
21 the name of Amanda Brissey. She, Your Honor, had the exact
22 same charges that the confidential informant, Michael
23 Payne, had. Your Honor, the information provided to me and
24 continued to be provided to me only deals with Michael
25 Payne. When they talk about executing the controlled buy,

1 they do the pat down, make sure that he doesn't have
2 anything on him, check his car; but, Your Honor, what's
3 very concerning is that when I watched the video again this
4 morning, there is no information related to -- to -- what
5 I'm going to call confidential informant number 2, Amanda
6 Brissey. She rode in the car. She was -- there's no
7 information to me whether she was patted down, whether
8 she -- she had any drugs. Your Honor, I did notice that
9 her charges were all nol prosed. I'm very concerned about
10 the lack of information.

11 Not only that, Your Honor, but the video is in 8
12 different sections and it's -- it's the most unusual
13 confidential informant controlled buy video I've ever seen
14 because it's over an hour long. But there are pieces and
15 parts that are missing. It's also inaudible. There's no
16 way to know what's being said, who's -- you can clearly see
17 that the -- the two confidential informants are working
18 together and you can see by their charges that are in the
19 public index that all of her charges were nol prosed and
20 then they did reveal to me what his deal was, somewhat.

21 And then -- but to go back to the beginning, Your
22 Honor, I have no idea how they even based their information
23 to perform this confidential buy -- this controlled buy.
24 I've been provided no facts or circumstances that gave rise
25 to the confidential informant or informants going to Mr.

1 Lilly's house and performing what we assert is -- is an
2 entrapment buy, the reason that it takes so long because
3 this is someone who I now have learned is very familiar
4 with the family and very close to the family and used that
5 information to get Mr. Lilly to provide him with a little
6 bit of -- of an illegal substance.

7 Your Honor, he has no predisposition to ever
8 deliver or sell or give away any drugs. Your Honor, the --
9 the facts -- there are no -- the record is -- the evidence
10 that I've been provided is -- is replete of any substantial
11 facts or circumstances to understand how we ended up here.
12 I've been provided -- like I say, I've been provided no
13 information regarding the second confidential informant, no
14 deals, no revealing the deal of the second confidential
15 informant.

16 And as -- this Court today -- in addition to the
17 cases that were cited in my motion, Your Honor, I also came
18 across an additional case State v. Gambill, which is 405,
19 the cite is 405 S.C. 409, 747 S.E. 2d 704. It's a 2013
20 Supreme Court case where it talks about evidence is
21 suppressed, the Supreme Court suppressed evidence, Your
22 Honor, because of the unknown circumstances surrounding the
23 investigation. What instigated the investigation. The
24 Fourth Amendment provides that Mr. Lilly is allowed to
25 question and to have knowledge of what led up to this

1 confident -- this controlled buy. In Gambill, just as in
2 this case, they used a confidential informant to gain
3 information about the defendant's activities. We don't
4 even know what information they used to -- they had
5 regarding Mr. Lilly's activities. Why were they
6 investigating Mr. Lilly; what's the foundation? The
7 evidence doesn't explain what events or knowledge or
8 information triggered this confidential buy.

9 Your Honor, this is all information that should
10 have been provided to defense counsel and defendant. And
11 not only that, Your Honor, this case has been on the trial
12 docket for over a year and it's been requested for over a
13 year and it's still not been provided.

14 THE COURT: All right. Anything further?

15 MS. ZMROCZEK: Not on that issue.

16 THE COURT: Mr. Maye?

17 MR. MAYE: Your Honor, the State has provided to
18 the defendant in this case the same standard packet of
19 information of every drug buy that I've ever in 20 years
20 been involved with. They're got the incident report,
21 they've got the warrants, they've got the drug results,
22 they've got the chain on the drugs. As has been our
23 practice for as long as I've been doing this, where there
24 have been wire buys or video buys, we have made the --
25 pursuant to Rule 5, we have made available the video and

1 the audio of this transaction.

2 She saw it for the first time in March of 2014,
3 which she acknowledges. She could have seen it as many
4 times as she would have liked to. We have never had a
5 practice of disclosing, we've got to balance here to
6 protect the confidential informant. I've never had any
7 requests -- most defense lawyers don't want the information
8 as to who the confidential informant is on the outset for
9 fear that any retaliation or anything that might befall the
10 CI that that might somehow come back on the defendant or
11 them.

12 Prior to trial, we certainly disclosed who the CI
13 was. I hand delivered it to her office on January the 5th.
14 The two charges that the confidential informant, a
15 trafficking and a child endangerment charge. I hand
16 delivered those charges, explained what the -- upon request
17 of the defendant in this case, explained and -- basically
18 they asked me what the deal was and I explained he had no a
19 written plea agreement; his charge was reduced from
20 trafficking to possession with intent to distribute and the
21 child endangerment was dropped and he pleaded straight up
22 in front of Judge Russo. He's received an 18 month
23 sentence. I provided the sentence sheet of the CI. I
24 provided the charges that the CI was facing at the time
25 that he pleaded, what it was reduced to.

1 I provided information that there was no deal
2 beyond the fact that there was a reduction in charges. She
3 has the same information. This defendant has the same
4 information that is always provided to individuals on drug
5 buys. A lot of what she's talking about is grounds for
6 cross examination. The CI in this case, it's now been
7 disclosed to the defendant is Michael Payne. We have given
8 his rap sheet, we have given what charges he had pending,
9 what he pleaded to. There was no second CI as she asserts.
10 The video makes it clear that there were only two of them
11 present at the time that the buy took place. That's all
12 grounds, we would assert, not for dismissal or suppression
13 of any evidence in this case but it's just part of her
14 cross examination.

15 We fully complied with Rule 5 prior to us being
16 here in court today. We continually asked her what it is
17 because when I got here last week and I saw that there was
18 grounds to dismiss this case on the basis of a Rule 5
19 violation, we told her who the CI was and gave her the
20 information on what the CI pleaded to. We sent her another
21 e-mail and said what is it that you want and in piece meal
22 fashion, we got well I want a CI Agreement; we got the CI
23 Agreement so we gave her that. There were a couple of
24 things that trickled in throughout the course of the week.
25 We made every effort prior to us proceeding to trial in

1 this case to comply with Rule 5. We've done so and we're
2 prepared to go forward. We certainly don't think that
3 there's any basis to dismiss this case for a failure for
4 the State to comply with Rule 5. They now have all the
5 information that they were entitled to and we're prepared
6 to proceed.

7 THE COURT: All right.

8 MS. ZMROCZEK: Your Honor --

9 THE COURT: I agree -- I agree that much of that
10 you have addressed are issues subject to cross examination.
11 For example, the five pictures that you want to know where
12 or who took them. And the relevancy, you know, is, you
13 know objections based on 403 and objections based on
14 authentication and such like that during the trial. And
15 there's specific -- and of course you can ask the -- the
16 investigator when he testifies about how did this come
17 about as far as the -- I'm sure the solicitor may ask that
18 too as far as the investigation itself.

19 You know the names were revealed, the best I can
20 tell, the reason we set the date was 6 January 15, Mr.
21 Payne was in jail for some 14 days ago. And we have the
22 formal agreement, plea agreement. The solicitor says, you
23 know, if you want -- Solicitor, if you have run a rap sheet
24 on Ms. Brissey? That is kind of information for the
25 evidence. I asked him to do that. I don't know if that's

1 a part and parcel of that transaction or not. Again,
2 that's subject to cross examination. Who was in the car
3 with the confidential informant.

4 Ms. Zmroczek?

5 MS. ZMROCZEK: Yes -- and, Your Honor, if I may
6 hand up two cases just to preserve the argument on the
7 record. It's State v. Diamond and then the similar case
8 which deals with confidential informants; which is the
9 Supreme Court of Rovario. And, Your Honor, these cases
10 indicate that -- that the defendant is entitled to a
11 pretrial or in-camera hearing to be aware of the relevancy
12 of the information possessed -- possessed by the informant.
13 They assert that -- that whom I call Ms. Brissey, who I
14 call the second confidential informant, had nothing to do
15 with this, but, Your Honor, the Supreme Court of the United
16 States Supreme Court is very clear that the facts indicate
17 that if there is a participant who is unidentified, but had
18 material information and a material application or
19 participation, excuse me, in this case, then, Your Honor,
20 we were entitled to that information and we're entitled to
21 an in-camera pretrial hearing to -- to know why that wasn't
22 turned over and what information she possessed.

23 THE COURT: Do you want to call Ms. Brissey? It
24 doesn't seem like you're focused on -- you've been provided
25 all the information about Mr. Payne. The solicitor, as an

1 officer of the Court there's only one confidential
2 informant. And Rovario as far as I know, focused on the
3 confidential informant. Give me a moment and I'll be glad
4 to --

5 MS. ZMROCZEK: Not only that, Your Honor, but it
6 also identified anybody who is a material witness and what
7 it states is if the government --

8 THE COURT: But she's not even, she's not even on
9 the witness list.

10 MS. ZMROCZEK: I understand, Your Honor, and that's
11 what's caused the concern because when you watch the video
12 and you look at the circumstances surrounding her arrest
13 and her charges and they not prosed all of her charges,
14 which were the exact same day, exact same charges of -- of
15 the -- of Mr. Payne. That's what's cause for concern but
16 until I got Mr. Payne's information, I had no way of being
17 able to even investigate her name that she was a material
18 witness.

19 THE COURT: Well, I'm not exactly tracking then
20 because I can't believe the case has been on the trial
21 docket for over a year and on the date that we strike the
22 jury and we're about to be sitting up in there and we're
23 still arguing over discovery. But it appears to me, of
24 course, you can ask the officers about it. I have one
25 lawyer telling me she's not in there with the buy. Another

1 lawyer's telling me she's material. It can't be both ways.
2 Those are mutually exclusive issues to me. I haven't seen
3 the tape. Nobody's put her on the witness stand to say she
4 is material. I thought Adams -- it's out of Sumter County
5 or Richland County -- give me just a minute. And Diamond
6 indicates in citing of Rovario -- in Rovario, the lead case
7 in informant's privilege; To determine whether disclosure
8 was necessary, the Court balanced the public interest in
9 protecting the flow of information of criminal activities
10 against the individual's right to prepare his defense. In
11 Rovario, only the accused and the informant actually
12 participated in the drug transaction. A police officer and
13 a federal narcotics agent observed the transaction, the
14 officer through the slightly raised trunk of the
15 informant's car and the agent from a sidewalk approximately
16 100 feet away. The Court held the government should have
17 disclosed the identity of the informant, finding the
18 accused's opportunity to cross examine the officer and
19 agent was hardly a substitute for an opportunity to examine
20 the man who had been nearest to him and took part in the
21 transaction. The Court stated a factor which tends to show
22 the prosecution is not entitled to withhold from the
23 accused the informant's identity is the qualification of
24 the informant to testify directly concerning the
25 transaction. The Court distinguished "tipsters" from

1 "participants" in determining whether to sustain the
2 invocation of the privilege of non-disclosure, and held
3 disclosure is required where an informant is an actual
4 participant, particularly where he sets up the criminal
5 transaction.

6 You have her name. The solicitor has stated that
7 she's not -- not involved in the actual buy. Therefore,
8 she's not a material participant in -- in the matter. I'm
9 trying to look for this in-camera hearing and it just deals
10 with the informant itself. Where is it in Diamond?

11 MS. ZMROCZEK: And, Your Honor, I know you're
12 reading, but I just wanted the Court to -- to make sure
13 that -- that the Court understood that the -- the
14 government never provided me her name. I was never
15 provided any information regarding her, her name, her deal,
16 her arrest. The only way that I got that, Your Honor, and
17 like I said, I've been asking for this for over a year
18 knowing that this case has been on the trial docket and
19 when I received this information on January 5th or January
20 7th and I received information regarding his charges and
21 his deal and I went to go verify that information on the
22 public index, I saw that she was a co-defendant. Then I
23 watched the video again and I saw she's in the car and
24 they're having conversations and she was never patted down.
25 She's charged with trafficking methamphetamine and

1 how do I know that, how do we know that she didn't have
2 methamphetamines on her because I have no information on
3 her whatsoever, that they even patted her down. According
4 to the -- the government's contention, she wasn't part of
5 it, but I would assert, Your Honor -- and you can watch the
6 video, that she's in the car, has conversations, is in the
7 house, has conversations, has conversation outside where
8 the transaction takes place and then gets back in the car
9 and continues with -- with Mr. Payne. And that's what's
10 concerning to me, Your Honor, is that they never provided
11 me her name. I was the one who did that.

12 THE COURT: All right. I'm not going to dismiss.
13 I don't think it's a Rule 5 violation. She's on your
14 witness list. You have the document where she's a
15 co-defendant and documents in the case that were available
16 to both parties pretrial. It's like an autopsy report, you
17 get it independently from the solicitor's office. I deny
18 the motion on the discovery issues.

19 MS. ZMROCZEK: And I would ask -- I would simply
20 ask, Your Honor, that I not be limited in the questions
21 that I am allowed to ask the police about her?

22 THE COURT: I'm not going to predict the future.
23 If during your cross-examination of the officer, if the
24 solicitor would object on any issue, I'd certainly take up
25 the matter and rule -- either overrule the objection or

1 sustain it. So I'm going to -- I'm not going to pretrial
2 rule now. It depends on how the evidence in the case goes.
3 All right.

4 MS. ZMROCZEK: The second motion, Your Honor, deals
5 with the -- a request for a hearing pursuant to Franks v.
6 Delaware to quash the indictment. And again, Your Honor,
7 it deals basically with the same set of facts being that
8 the -- the affidavit that was presented to the
9 magistrate -- the arrest warrant that was presented to the
10 magistrate left out any mention of any other person that
11 was out -- that was involved in this transaction. And like
12 I -- again, I just heard, the video clearly shows that she
13 was in the car, at the location, and on the way back.

14 And Your Honor, that leaves doubt in question as to
15 why she wasn't subjected to the same policies and
16 procedures as the confidential informant. One of the
17 reasons that they -- in a controlled buy one of the
18 policies that they have is to make sure that no evidence is
19 planted by -- by this confidential informant and by -- and
20 what they do in doing that and as their report reflects
21 with Mr. Payne, they pat them down, they check the car
22 before and then they do the same after. And, Your Honor,
23 there's no mention, even though she's involved in the
24 entire transaction, that this was ever done to her, which
25 raises the question about the possibility of did the meth

1 come from her.

2 The meth weight that was provided was .1 grams,
3 Your Honor, .1. And we have no idea from where that came.
4 The possibility that she could have somehow planted that --
5 planted that, because she received a benefit from it as
6 well, is what's concerning. And the fact that it was left
7 out completely of the affidavit is the reason that we would
8 request a Franks v. Delaware hearing.

9 THE COURT: I thought a magistrate's opinion, the
10 magistrate's usually make a common sense decision as to
11 whether or not the presence or absence of probable cause.
12 And there are a line of cases where perhaps officers maybe
13 withhold information from the magistrate, but I think it's
14 the standard of the probable cause. And if there's
15 probable cause in the warrant, to believe that a crime was
16 committed, and to believe that a particular individual
17 committed the crime, then I think the magistrate is to
18 issue a warrant.

19 It's just like an article I read about the grand
20 jury. The officer has no duty to exempt or exonerate the
21 information to the grand jury and I'm not sure exactly what
22 the standard of proof is before the grand jury. I read an
23 article about that. But it's probable cause in the
24 warrant. Just because another party was there, the fact
25 that they haven't told the magistrate another party was

1 there, I mean, I would think that would be fairly common
2 not to list all the witnesses and that sounds like it could
3 be a defense too.

4 Obviously, if you don't check the car, you don't
5 check the individual informant, you don't check the parties
6 that's also in the car, then I think those facts can all
7 come into play when you cross-examine. But I don't, I
8 don't think they're withholding. I don't think it's
9 withholding; I don't think it's necessary to provide that
10 information to the magistrate. If there's probable cause
11 in the warrant; I think they have at least probable cause.

12 So what are you asking me to do, Ms. Zmroczek.

13 MS. ZMROCZEK: Well, Your Honor, the specific
14 information in the warrant that we were challenging is
15 beginning on page 2 of the written motion. It says defense
16 counsel challenges the affidavit -- excuse me, affidavit
17 dated June 22nd where it contains information that is
18 either deliberately false or represents disregard for the
19 truth in stating that, quote, the confidential informant is
20 prepared to testify.

21 Again Defendant asserts that the magistrate was
22 out -- was without this information. State v. Robertson,
23 Supreme Court, said that information material to the
24 affidavit that could provide information that was unable to
25 support a probable cause hearing, Your Honor; and I

1 think -- if I understand the Court's ruling -- what you're
2 saying is there's no need for a Franks v Delaware Hearing
3 because that's just part of cross examination and I
4 guess --

5 THE COURT: I can conduct a Franks v Delaware
6 hearing, if that's what you he want. You're welcome to
7 call a witness if you would like.

8 MS. ZMROCZEK: Certainly, Your Honor, we would call
9 the witness who swore out the affidavit, which would be
10 Investigator Miller.

11 THE COURT: All right. May I see the copy of the
12 warrant? Do you have one?

13 MS. ZMROCZEK: I'm sorry?

14 THE COURT: I said may I have a copy of the
15 warrant.

16 MS. ZMROCZEK: Okay.

17 THE COURT: All right. Go ahead and call your
18 witness.

19 MS. ZMROCZEK: We would call Investigator Miller.

20 THE COURT: Please come around and be sworn.

21 THE CLERK: Raise your right hand for me and place
22 your left hand on the Bible.

23 WARREN MILLER,

24 having been duly sworn, testified as follows:

25 THE CLERK: Thank you.

Examination - In Camera by Ms. Zmroczek

1 THE COURT: All right.

2 EXAMINATION - IN CAMERA

3 BY MS. ZMROCZEK:

4 Q Investigator Miller, can you briefly describe where
5 it is you work and how long you've been there.

6 A I work narcotics for the Edgefield County Sheriff's
7 Office. I've been working in law enforcement approximately
8 17 or 18 years.

9 Q And did you provide the information, we're here
10 today specifically to discuss Arrest Warrant
11 2013A1910100371? Are you familiar with that warrant?

12 A I'm assuming it's in reference to Mr. Lilly and the
13 distribution of methamphetamine.

14 MS. ZMROCZEK: May I approach, Your Honor?

15 THE COURT: Yes, ma'am.

16 THE WITNESS: Yes, ma'am.

17 BY MS. ZMROCZEK:

18 Q And you're familiar with that warrant?

19 A Yes, ma'am.

20 Q That warrant states that this incident occurred on
21 January 17, 2013; would you agree with me?

22 A Yes, ma'am.

23 Q And you didn't, you didn't provide an affidavit to
24 the magistrate until June 27th of 2013; is that correct?

25 A It is possible.

Examination - In Camera by Ms. Zmroczek

1 Q On June 27th, you swore out this affidavit. Can
2 you explain the delay in the information provided?

3 A Yes, ma'am, it was a home-point investigation. We
4 may come across something else that's also in the well
5 being of our confidential informants. I mean we don't
6 always go out and get arrest warrants as soon as we make
7 buys.

8 Q And what information were you relying on from --
9 from the confidential informant referred to in this
10 warrant?

11 A The confidential informant told us he could get
12 methamphetamine from Mr. Lilly.

13 Q And when was that statement made?

14 A During the process of our interview with the
15 confidential informant.

16 Q When was that interview?

17 A Ma'am, I don't know.

18 Q You would agree that that information was never
19 provided; that's never been provided to the defense?

20 A I have now way of --

21 Q I'm sorry?

22 A Not that I mean -- why would I?

23 Q I can't hear you, I'm sorry?

24 A Why would I?

25 Q Maybe you don't understand the question. My

Examination - In Camera by Ms. Zmroczek

1 question was you state that the confidential informant
2 identified in this warrant who we now know as Michael Payne
3 provided a statement to you that he could get
4 methamphetamine from Mr. Lilly; is that correct?

5 A Yes, ma'am.

6 Q But do you recall when that statement was made?

7 A No, ma'am.

8 Q Were you present during the buy of this, during
9 this controlled buy?

10 A Yes.

11 Q Were there any other persons present?

12 A Meaning, a law enforcement officer?

13 Q No. Were there any non-law enforcement persons
14 present?

15 A Yes, ma'am.

16 Q Who was that?

17 A That would have been Mr. Payne's fiance.

18 Q And what information did she provide with regards
19 to this arrest warrant?

20 A Nothing.

21 Q You would agree that she participated in the
22 controlled buy?

23 A No, ma'am.

24 Q It's your testimony that she did not ride in the
25 car?

Examination - In Camera by Ms. Zmroczek

1 A Yes, ma'am, she rode with the confidential
2 informant.

3 Q Is it your testimony -- did she go to the location?

4 MR. MAYE: One second, Your Honor. She's cutting
5 him off, Judge. I just want to get an answer to the
6 question. She's cutting him off. I just ask that he be
7 allowed to answer completely before she goes on to the next
8 question.

9 MS. ZMROCZEK: And my apologies.

10 THE WITNESS: She simply with the confidential
11 informant, which was Mr. Payne, but she didn't say the
12 place, she didn't -- she wasn't involved in the
13 transactions.

14 BY MS. ZMROCZEK:

15 Q Was she patted down beforehand?

16 A Yes, ma'am.

17 Q Is there a reason that that was left out of that
18 report?

19 A No, ma'am.

20 Q Were you able to observe the entire transaction?

21 A I observed -- I do the electronic equipment and
22 stuff. I mean, we didn't go inside the house or in the
23 backyard with the confidential informant, nothing like
24 that.

25 Q Were you able to -- does the tape accurately -- is

Examination - In Camera by Mr. Maye

1 that the entire -- does the audio/video recording reflect
2 the entire transaction?

3 A Yes, ma'am.

4 Q And is it your testimony that you also patted her
5 down after the -- the buy?

6 A Yes, ma'am.

7 Q And is it your testimony that none of that
8 information was relevant for the magistrate in considering
9 whether there was probable cause as to the source of the
10 drugs?

11 A No, ma'am. There was no need then to inform
12 anybody.

13 MS. ZMROCZEK: That's all I have, Your Honor?

14 THE COURT: All right.

15 Solicitor?

16 **EXAMINATION - IN CAMERA**

17 BY MR. MAYE:

18 Q Investigator Miller, you've had ample opportunity
19 to review the video tape. In the video tape you can
20 clearly see the defendant in this case; Mr. Lilly, give a
21 powder controlled -- what tested positive later to be
22 methamphetamine; you could clearly see him do the hand to
23 hand as clear as you and I are sitting here looking each
24 other, could you not?

25 A Yes.

Examination - In Camera by Ms. Zmroczek

1 Q And Ms. Brissey was nowhere in the vicinity of the
2 transaction; she was, in fact, in the house at that time?

3 A That's correct.

4 Q Okay. So there's no question the tape is clear.
5 It clearly showed the transaction for which the charges
6 were brought against Mr. Lilly, correct?

7 A Yes, sir.

8 Q And you had that information at the time that you
9 went to the magistrate. You had seen the hand to hand
10 actually on the video clip?

11 A Yes, sir.

12 Q Nothing else. Thank you.

13 MS. ZMROCZEK: I have just one follow up question.

14 THE COURT: Go ahead.

15 **EXAMINATION - IN CAMERA**

16 BY MS. ZMROCZEK:

17 Q You would agree that there is a approximately a 16
18 minute time frame where Mr. Lilly is not in the shed, but
19 in the house where Ms. Brissey is located, correct, prior
20 to delivering the methamphetamine?

21 A I do not. I didn't time it to see how long he was
22 inside the residence, but the conversation before that was
23 between Mr. Payne and Mr. Lilly. And Mr. Lilly, said he
24 was going in the house and to get the stuff.

25 Q For a substantial -- I'm not holding you to the

Examination - In Camera by Ms. Zmroczek

1 time, but for a substantial period of time?

2 A Yes, ma'am, then Mr. Lilly returned and he gave it
3 to Mr. Payne.

4 Q But you can't testify that Ms. Brissey had no -- no
5 interaction with him while he was in the house, can you?

6 A No, ma'am.

7 Q You can not?

8 A I can't say that her and Mr. Lilly didn't speak in
9 the hallway or anything like that. I don't know what
10 transpired once -- I can tell you what happened when he
11 came back outside to Mr. Payne. I can also tell you that
12 we patted down Mr. Lilly, once this transaction, once we
13 got back to the meeting place after this was all said and
14 done.

15 Q You said you patted down who?

16 A Ms. -- I'm sorry, Ms. Brissey.

17 Q But you can't say whether or not Ms. Brissey
18 provided the methamphetamines prior -- well for that
19 substantial amount of time while Mr. Lilly was in the
20 house?

21 A There again, I can't tell you what happened inside
22 the residence. All I can tell you is what happened when
23 Mr. Lilly came back outside and met with Mr. Payne.

24 MS. ZMROCZEK: Thank you, Your Honor, that's all I
25 have.

1 THE COURT: All right. Thank you. Thank you very
2 much.

3 You may step down.

4 All right. I'll be glad to hear from you, Ms.
5 Zmroczek.

6 MS. ZMROCZEK: I'm sorry. Those are all the
7 witnesses I have for now.

8 THE COURT: Well, I've read the Robinson and I
9 thought that was Judge Cottingham. I see no false
10 information is even present in Robinson. It has been
11 presented in this case to the magistrate. From the
12 testimony of the officer, he states that Ms. Brissey was
13 not a participant in the drug transaction. When the drugs
14 happened to change hands. And although there may have been
15 times when Ms. Brissey and Mr. Lilly were together and
16 could not be seen by the surveillance officers, that --
17 that is not a about misleading or false statement, in my
18 opinion, to the -- to the rest of the issues in this case
19 nor is it no moment to me that it was not executed until
20 7/18/13. That's fairly traditional, if not always
21 traditional for confidential informants are held for a
22 period of time as the investigation continues on and for
23 the protection and safety of the confidential informants.

24 Obviously we have the issue on January 17th of '13,
25 whatever year it was of the transaction, and you go back

1 January 18th, well there's very few suspects, the defendant
2 can look at and figure out who the confidential informant
3 was. I would deny that motion as to --

4 MS. ZMROCZEK: Thank you, Your Honor. And at this
5 time --

6 THE COURT: As well as the on to continue.

7 MS. ZMROCZEK: And at this time, I would renew my
8 request again under Brady for any and all information. On
9 the stand, Mr. -- Investigator Miller testified that there
10 was, there were conversations with the confidential
11 informant identified as Michael Payne, which provided
12 knowledge as the basis for this controlled buy, which
13 still, on the eve of trial has not been provided to the
14 defendant, Your Honor.

15 THE COURT: And tell me, have there been -- are
16 there any witness statements?

17 MR. MAYE: No, sir, Your Honor, and I want to make
18 sure. This will help us and I wanted to, I don't want to
19 try this case but once. Mr. Lilly was on probation for
20 manufacturing meth at the time when this took place. His
21 wife had previously worked as a confidential informant.
22 Ms. Lilly, his wife, is present here in the courtroom.
23 It's my understanding she previously worked as a
24 confidential informant for law enforcement. Mr. Lilly was
25 on probation at the time that this took place. No money --

1 they gave the confidential informant in this case,
2 documented funds. He went to Mr. Lilly, you can tell from
3 the transaction -- they do the transaction. Mr. Lilly
4 won't accept the funds for it. We had purposely told the
5 confidential informant in this case, Mr. Payne, don't talk
6 about prior drug deals. We're talking about the buy, the
7 distribution that took place then. I want to try this case
8 and I'm not trying to get into -- they've already talked
9 about in this case that they don't want any mention of the
10 previous case.

11 The truth of the matter is, in this case, Mr. Lilly
12 and Mr. Payne had an ongoing drug relationship where drugs
13 passed back and forth in between them. They also traded
14 off work. Mr. Payne had loaned Mr. Lilly money to get his
15 wife out of jail on a bond earlier. Because the CI in this
16 case would testify if he was asked, why didn't the money
17 change hands in this case; because he'd given money to Mr.
18 Lilly to bond his wife out because they have an ongoing
19 relationship of trading and swapping off work and drugs and
20 we told the CI in this case, don't talk about the previous
21 crimes or criminal activity between the two of y'all. This
22 is only dealing with this distribution of meth on the 17th.
23 We cautioned him not to talk about it. Now if they ask him
24 about it on cross-examination, they may open the door for
25 it. But I don't want to try the case twice.

1 We have told the CI specifically, do not talk;
2 those are not statements that we intend to introduce in the
3 trial because it is my estimation in this case that if we
4 start going into that, we're getting in, we're getting into
5 other transactions that took place in an ongoing basis
6 while he was on probation. And I -- I specifically
7 directed them not to do that, now if they want to bring
8 that out on cross-examination, that would be up to them.
9 But there was an ongoing relationship involving the trading
10 back and forth of drugs and money in between these two
11 individuals and that's how the confidential informant, Mr.
12 Payne, was able to identify Mr. Lilly as a possible target
13 to get methamphetamine from when he was working for the
14 officer. But that's all the State has on that, Judge.

15 THE COURT: I'm going to say under Rule 5 (a)(1)(a)
16 states -- no, I'm sorry, that -- that's to cover the
17 defendant's statements. Under (2) information not subject
18 to disclosure except as provided in paragraph a, b, and d
19 in subdivision (a)(1), this rule does not authorize
20 discovery and inspection of documents, internal documents.
21 And it goes on to say: Or a statement made by prosecution
22 witnesses or perspective prosecution witnesses directly.
23 After a prosecuting witness has testified on direct
24 examination the Court shall, on motion of the defendant
25 order the prosecution to produce any statement of the

1 witness in possession or the prosecution which relates to
2 the subject matter as to which the witness has testified
3 and provide further the Court may upon a sufficient showing
4 require that production of any statements of any
5 prospective witness prior to such witness testifies.

6 Is there any statements from the witnesses, Mr. --
7 Mr. Payne or any others; they should be disclosed under
8 Rule 5 (a)(2). And also if there's any inconsistent
9 statements being made of any other potential witnesses,
10 anything, you know, that would tend to exonerate Mr. Lilly
11 if Mr. Payne had made inconsistent statements.

12 MS. ZMROCZEK: What's concerning -- what's
13 concerning to me, Your Honor, is -- is that all that's
14 under that same rule. It's like information that's
15 discoverable without any request even though there was a
16 request made. Evidence in State's possession must be
17 controlled, which includes evidence only known to police
18 investigators and not just to the prosecutors that has to
19 do with the reason that we're here.

20 Your Honor, this is the first time in two years
21 that I've been ever been told or ever heard that there was
22 an ongoing relationship. Your Honor, that's information
23 that I should have had to be able to prepare possibly a
24 different defense or to be able to attack those claims.
25 Your Honor, that -- that's information, that undisclosed

1 information is going to affect the materiality of -- of the
2 case at hand and how I prepare for a defense.

3 THE COURT: I don't understand how they could have
4 disclosed prior to today or prior to the --or even today
5 that Mr. Lilly had an ongoing drug relationship with Mr.
6 Payne. That therefore, would be given information whereby,
7 although, he was not given the -- directly name of the
8 confidential informant, he would be able to figure out who
9 it was and that would be a danger to the confidential
10 informant and the -- and the investigation.

11 MS. ZMROCZEK: I guess, again, Your Honor, it's my
12 concern that this could be information that's material in
13 preparing for a defense or even advising my client whether
14 or not to take a plea when I'm not in possession of that
15 information. The balancing test is going back to Rovario.
16 The balancing test of protecting the confidential informant
17 versus the rights of the defendant are clearly spelled out
18 that if it affects the case in any way in a decision
19 whether or not to plea or go to trial or to be able to
20 investigate the information or certain statements that that
21 information, it must be turned over, not maybe, must be
22 turned over.

23 THE COURT: All right. Well I will deny that
24 motion.

25 MR. MAYE: Your Honor, I have one other issue. I'm

1 just making sure, just out of an abundance of caution.

2 There was a photo lineup after he came back from making the
3 buy with Mr. Lilly, he did pick him out of a lineup in this
4 case. He'd known him for 18 years. I don't think that
5 there's any issue about suggestiveness of any lineup
6 because he had known him for some 18 years and they'd been
7 associates, business associates on many levels, we would
8 maintain, but I'll leave that to the defense in this case,
9 if they want any hearing in regards to any -- I guess a
10 Neal versus Biggers Hearing regarding him selecting him
11 from the lineup. When he came back, you know, he had told
12 them, you know, I'm going to Lilly's house. I'm going to
13 buy from Mr. Lilly, I believe I could buy from him.

14 They had a video recording of the transaction that
15 the officers could see themselves but as they always do
16 upon the completion of the buy; they get him in a
17 six-person lineup. They say, Is the person you bought
18 narcotics from, is he in this lineup. And he picked out
19 the defendant in this case, Mr. Lilly and they did that
20 just to, I guess, further document who it was that they
21 would be seeking arrest warrants from.

22 I don't know if they want a Neal versus Bigger's
23 Hearing regarding the suggestibility of it. I think that
24 there's any issue in this case that they both knew each
25 other. It's not a who done it or he's picking him out of a

1 lineup out of an armed robbery. They did that just to
2 confirm who was seeking identification. Certainly they
3 could challenge it. We'll go through that pursuant to Niel
4 v Biggers. If they have any issue as to the suggestiveness
5 of that out-of-court identification if they'd like to
6 address.

7 MS. ZMROCZEK: And, Your Honor, I believe that the
8 rules require me to as far as -- as properly -- properly
9 representing my client and, and making an inquiry as to the
10 suggestiveness of this lineup. Again, although the
11 government is in possession of the knowledge that these
12 people have known each other for 18 years, this is the
13 first time we're hearing about -- I'm hearing about it in 2
14 years, but I've been requesting this information so, so I
15 would request a Neil v. Biggers hearing, Your Honor.

16 THE COURT: Yes, ma'am. All right. I think he can
17 testify if he has to put him on the stand, Mr. Payne can
18 testify as to how he knows Mr. Lilly and he identifies him.
19 I was looking at this Liverman case tried by Judge Johnson
20 in Richland County where a witness new the suspect and
21 identified him. And then cites back to the McLeod case.
22 And neither of those cases either McLeod or the case called
23 in re: Robert D. required a full Neil versus Biggers, if
24 there is some knowledge of a pre-existing relationship or
25 if, you know, he can show that -- I've known him for this

1 period of time and testifies to that. However, given the,
2 the time, I don't have any objection to having a Neil v
3 Biggers also.

4 You have Mr. Payne available?

5 MR. MAYE: I sure do.

6 THE COURT: Let's take about a ten minute recess
7 and we will take that testimony and all other testimony we
8 need to.

9 MR. MAYE: Yes, sir.

10 (A brief recess was observed.)

11 THE COURT: Knowing we have this and another
12 motion, this being the identification motion, where are we
13 at now? You have other motions after that?

14 MS. ZMROCZEK: Your Honor, I think that what -- the
15 remaining motions that I have left deal with the lab
16 updates which obviously I think we need to address and then
17 there was a motion to -- here we go -- it's pre-marked as
18 State's evidence, but that was just to move the trial
19 along. I mean that's at the Court's discretion.

20 THE COURT: However y'all want to it. If y'all
21 want to pre-mark it that will be fine.

22 MR. MAYE: We don't have a whole lot of evidence.
23 We got the tapes and the drugs and I guess this lineup and
24 a few photographs. We can do that. I don't think it will
25 be a big issue.

1 THE COURT: Why don't you do that in the morning.

2 MR. MAYE: That will be fine, Your Honor.

3 THE COURT: Leave it in custody of where it's at
4 now.

5 MR. MAYE: That'll be fine.

6 MS. ZMROCZEK: And, Your Honor, may I make a
7 request; I have a jump drive with me today. May I request
8 to get -- now that we're in trial and the confidential
9 informant has been revealed, may I please have a copy of,
10 of all of the -- the undercover buy.

11 THE COURT: A copy?

12 MS. ZMROCZEK: Yes.

13 THE COURT: Solicitor?

14 MR. MAYE: I will endeavor to make it for her. It
15 was on a hard drive and they burned it onto a CD. It's
16 broken up; it's a very high tech wire that breaks things up
17 into -- because it's so tiny, it breaks things up into
18 small segments.

19 Is it possible to duplicate one today?

20 MR. MILLER: We can try.

21 MR. MAYE: We will do whatever we can from the
22 technology standpoint. It's not the unwillingness at this
23 point, but from a technology standpoint, if we have the
24 ability to do so, we will endeavor to get it done.

25 THE COURT: If you can, get it done.

1 MR. MAYE: We will.

2 MS. ZMROCZEK: And I have a jump drive that will
3 facilitate; that way they can just drag it over instead of
4 trying to burn it on a disk.

5 THE COURT: And we got Niel versus Biggers.
6 Anything else? We've taken care of the marking exhibits.
7 Is all that is left here Niel versus Biggers.

8 MS. ZMROCZEK: And any information regarding Lyle.
9 What Lyle -- as far as what I'll be allowed to go into as
10 far as the confidential informant as well as what, if any,
11 information will be presented regarding the defendant.

12 THE COURT: I'm not tracking with the Lyle.

13 MR. MAYE: I told this the informant don't talk
14 about these drug transactions. He's on probation for
15 manufacturing meth. We're not going to talk about any of
16 that -- we're not going to attempt to put up any evidence
17 outside this. In fact, are going to endeavor to keep this
18 trial free of it. They may elicit it on cross-examination
19 but we're not going to bring anything other than this buy
20 on the 17th.

21 MS. ZMROCZEK: We may, Your Honor, but I don't
22 think that the whole story can be told -- and I understand
23 that we may be opening the door, but if they're purporting
24 that they have information of 18 years worth of drug
25 transactions, I certainly to know about that in case I do

1 want to call --

2 THE COURT: Well whenever you call your witness,
3 you can -- you can do that then that would come out through
4 his knowledge -- when they call Mr. Payne that will come
5 out through his knowledge of how he knows Mr. Lilly. And
6 that's in-camera right now. I'm not saying just because it
7 comes out in-camera it's admissible at all. The solicitor
8 said he's not going to bring it up. So unless the door is
9 opened, it shouldn't be an issue.

10 How long do you think this hearing is going to
11 take.

12 MS. ZMROCZEK: I don't anticipate very long. It
13 may be a little bit longer, Your Honor, just -- I mean --
14 probably 10 or 15 minutes, but just so that I can get a
15 full understanding nature of what they intend to show in
16 their case in case we need that strategy to open the door.

17 THE COURT: Well, I was planning on working until
18 about 5:30 today, but if we're still in this hearing at
19 4:30. I'm going to bring the jury in. They've been
20 sitting back there since 3:30.

21 MR. MAYE: Absolutely, Your Honor.

22 THE COURT: All right. Solicitor?

23 NIEL V BIGGERS HEARING

24 MR. MAYE: The State calls Michael Payne.

25 THE COURT: Come around and be sworn, Mr. Payne.

Michael Payne - Direct Examination - In Camera by Mr. Maye

1 MICHAEL PAYNE,
2 having been duly sworn, testified as follows:
3 THE CLERK: Have a seat. State your full name and
4 spell your last name.

5 THE WITNESS: Michael Payne, P-A-Y-N-E.

6 DIRECT EXAMINATION - IN CAMERA.

7 BY MR. MAYE:

8 Q Mr. Payne, let me direct your attention -- I'm
9 going to show you a document here.

10 MR. MAYE: I'm going to mark it for identification
11 at this point in time as State's 1 for ID. And that one
12 will be 2.

13 (State's Exhibit No. 1 and No. 2 were marked for
14 identification.)

15 BY MR. MAYE:

16 Q Mr. Payne, let me ask you this: After the January
17 the 17th of 2013 transaction between you and Mr. Lilly, the
18 defendant in this case, on the 24th of January did you have
19 an occasion to meet with Investigator Warren Miller in
20 regard to looking at a photo array or a photo lineup?

21 A Yes, sir.

22 Q Okay. I'm going to show you what's State's Exhibit
23 1. I'm going to ask you is this the information, this
24 photo lineup affidavit, is that the information that he
25 provided to -- is this your signature on State's Exhibit 1?

Michael Payne - Direct Examination - In Camera by Mr. Maye

1 A Correct.

2 Q Okay. Investigator Miller shared this with you --

3 MS. ZMROCZEK: I'm sorry, I don't mean to
4 interrupt. I just -- I meant to say something earlier.
5 I'm having a real hard time hearing. So I don't know if
6 your microphone's cut off and I don't know if that
7 microphone's off, but maybe I'm going deaf, but I'm having
8 a real hard time hearing.

9 THE COURT: I don't know anything about that.

10 THE COURT REPORTER: It's on.

11 THE COURT: If it's dealing with technology, that's
12 not on me.

13 THE COURT REPORTER: It's on.

14 THE COURT: Just speak up for us, Mr. Payne. Thank
15 you. All right.

16 THE WITNESS: That's correct.

17 THE COURT REPORTER: Come closer.

18 THE CLERK: Come closer to the microphone.

19 BY MR. MAYE:

20 Q Investigator Miller reviewed this information with
21 you, correct?

22 A Correct.

23 Q Okay. And he told you you'd be asked to look at a
24 group of photographs, descriptive photographs that may or
25 may not contain a picture of the person who committed the

Michael Payne - Direct Examination - In Camera by Mr. Maye

1 crime, the fact the photographs are being shown to you
2 should not cause you to believe or guess that the guilty
3 person's been caught or identified, you do not have to
4 identify anyone; it's just as important to free innocent
5 persons from suspicion as it is to identify those who are
6 guilty; please keep in mind that hairstyles vary, mustaches
7 are easily changed, also photographs do not accurately
8 depict the true reflection of a person; it may be lighter
9 or darker than shown in the photo, you should pay no
10 attention to any markings that may appear on the photos.
11 Also pay no attention to whether the photos are color or
12 black and white or any other differences in the type or the
13 style of the photographs. You should study only the person
14 shown in each photograph. You must make up your mind and
15 not be influenced by the witnesses, if any. When you've
16 completed reviewing all photos, please tell me whether or
17 not you can make identification. If you can, tell me in
18 your own words how sure you are of the identification.
19 Please do not discuss the case with other witnesses about
20 nor indicate to them in any way until you have or have not
21 identified someone.

22 He went through that information, correct?

23 A Correct.

24 Q I'm going to show you State's 2 in this case. Did
25 he ask you if you could make an identification of the

Michael Payne - Direct Examination - In Camera by Mr. Maye

1 person that you did the narcotics transaction with on
2 January the 17th of 2013?

3 A Yes.

4 Q Who did you pick out in this case?

5 A No. 4, Leon.

6 Q Leon Lilly, the defendant in this case?

7 A Correct.

8 Q Is he present here in the courtroom? The same
9 person?

10 A Yes, he is.

11 Q Could you point him out and say where he's seated
12 and how he's dressed?

13 A Green shirt, striped shirt and blue jeans.

14 Q And at the time that you made this identification
15 you were absolutely certain that that was Mr. Lilly, the
16 same person that you did the drug transaction with on the
17 17th?

18 A Correct.

19 Q Okay. Nobody did anything to suggest one of these
20 photographs to you over the other, did they?

21 A No, sir.

22 Q Okay. And you had already been given all this
23 information regarding the person may or may not have been
24 in the lineup; you were aware of that at the time you saw
25 the photo, right?

Michael Payne - Direct Examination - In Camera by Mr. Maye

1 A Correct, I was showed this first.

2 Q Okay. Okay. And so you made this identification
3 of him based on the fact that this is the person that you
4 did the drug transaction with on the 17th?

5 A Yes.

6 Q Okay. Let me ask you this: At the time that you
7 went and did this transaction with Mr. Lilly on the 17th,
8 how long had you known him?

9 A About 10 years.

10 Q You'd known him about 10 years?

11 A Ten years.

12 Q About 10 years. Describe the nature of your
13 interaction with him. And we don't have the jury here so
14 you can go into it fully now. I don't want you in front of
15 the jury to go into anything involved in any other drug
16 transactions between the two of you other than the one on
17 the 17th, okay? What kind of business did y'all have
18 between the two of you that caused you to know the
19 defendant in this case, Mr. Lilly.

20 A We traded out work on -- equipment and things like
21 that, trucks, vehicles.

22 Q Equipment, trucks, vehicles? Okay.

23 A Right.

24 Q Was he in fact working on a tractor for you at the
25 time of this transaction on the 17th?

Michael Payne - Direct Examination - In Camera by Mr. Maye

1 A Correct.

2 Q Was your tractor, in fact, at his house that day?

3 A Yes.

4 Q Okay. You also had an ongoing narcotics
5 relationship with him too in the past, correct?

6 A Correct.

7 Q Okay. In the past you had gotten methamphetamine
8 from him; is that correct?

9 A Correct.

10 Q Okay. And you obviously at that time, you had a
11 methamphetamine addiction or problem, correct?

12 A Correct.

13 Q Okay. And when the officers caught you initially,
14 were you the one that identified Mr. Lilly as someone that
15 you could buy and purchase methamphetamine from?

16 A Correct.

17 Q They didn't tell you to go buy from Mr. Lilly; that
18 information came from you?

19 A Correct.

20 Q And that was based on your knowing him and your
21 past drug transactions with him?

22 A Correct.

23 Q Okay. Answer any questions the defense may have
24 for you. Thank you.

25 THE COURT: All right. Ms. Zmroczek?

Michael Payne - Cross-Examination - In Camera by Ms. Zmroczek

1 MS. ZMROCZEK: Thank you, Your Honor.

2 CROSS-EXAMINATION - IN CAMERA

3 BY MS. ZMROCZEK:

4 Q I want to talk about the nature of your
5 relationship just briefly so I can make sure I have it --
6 so that I understand it correctly. So you stated that
7 you'd known Mr. Lilly for 10 years?

8 A Correct.

9 Q And only through a work relationship?

10 A Correct. Well, work and drugs.

11 Q Work and drugs, that's it?

12 A Yes.

13 Q No other sort of relationship?

14 A None.

15 Q No other interactions?

16 A I mean we -- we -- throughout our work
17 relationship, yeah, we did have a friendship going, you
18 know, after 10 years of working with somebody, of course,
19 you're going to have friendship with them.

20 Q I'm sorry?

21 A After working with somebody for 10 years, you know,
22 and trading out work, you know, you're going to have some
23 type of friendship going on, you know.

24 Q And when you say you worked with him for 10 years,
25 was it an actual paying job; did you have an actual paying

Michael Payne - Cross-Examination - In Camera by Ms. Zmroczek

1 job?

2 A Yes.

3 Q What was that; was that with Mr. Lilly?

4 A No.

5 Q Where was that?

6 A Charleston Boy.

7 Q I'm sorry?

8 A Charleston Boy Farms.

9 Q And what do you do there?

10 A Heavy equipment operator.

11 Q And how long -- you stated that you have an ongoing
12 narcotic relationship with him?

13 A Correct.

14 Q How long is -- are you saying that happened?

15 A About 8 years.

16 Q About 8 years?

17 A Yes.

18 Q What information did you, when did you provide the
19 information to the police about being able to receive
20 methamphetamine from Mr. Lilly?

21 A Can you repeat that please?

22 Q When -- what -- when and what information did you
23 provide to the police about being able to purchase
24 methamphetamine; when did you tell them that you could do
25 that?

Michael Payne - Cross-Examination - In Camera by Ms. Zmroczek

1 A Whenever they asked me if I could -- whenever they
2 asked me if I could do buys for them.

3 Q So they asked you?

4 A Correct.

5 Q Did you do buys for other people or just for Mr.
6 Lilly?

7 A Yes, correct. I did it for other people.

8 Q Other people?

9 A Yes.

10 Q For how long did you make controlled buys for the
11 police?

12 A For several months.

13 Q When did you begin?

14 A I don't know the exact date, ma'am.

15 Q Okay. When did you end?

16 A The last one I think was January the 17th.

17 Q That was your last one?

18 A I think. I'm not quite sure.

19 Q So you had ones before that?

20 A Correct.

21 Q With Mr. Lilly or with Mr. Other people -- or with
22 other people?

23 A With other people.

24 Q When you were provided what's been marked as

25 State's Exhibit 2, and made all of that information, did --

Michael Payne - Cross-Examination - In Camera by Ms. Zmroczek

1 how long had you had an opportunity to view Mr. Lilly on
2 the 17th?

3 A How long did I view him on the 17th?

4 Q Correct.

5 A Speak with him?

6 Q How long did you have -- how long were you
7 interacting with him on the 17th?

8 A Probably an hour or so.

9 Q An hour. What kind of a -- what kind of things
10 were you doing during that hour? Were you focusing on him
11 the whole time or were there other things going on?

12 A There were other things going on.

13 Q Like what?

14 A Working on my tractor.

15 Q Before you went over there on the 17th, were you
16 able to provide the police with a description of Mr. Lilly?

17 A No.

18 Q No?

19 A No, ma'am.

20 Q What was the reason that you waited a week to
21 identify him in the lineup that was provided to you?

22 A I guess problems with them getting in touch with
23 me.

24 Q I'm sorry?

25 A They were having problems getting in -- in touch

Michael Payne - Cross-Examination - In Camera by Ms. Zmroczek

1 with me.

2 Q Why were they having problems getting in touch with
3 you?

4 A Because I don't let them -- I just kind of avoiding
5 them, that's how I guess.

6 Q Avoiding the police?

7 A Yes.

8 Q Why is that?

9 A I -- because at the time, you know, I was strung
10 out on drugs. I didn't have nothing. You know, I wasn't
11 worried about nothing else.

12 Q At the time you were strung out on drugs?

13 A Correct.

14 Q At the time that you executed this controlled buy
15 were you strung out on drugs?

16 A Yes.

17 Q I'm sorry?

18 A Yes.

19 Q Okay. At the time that you picked No. 4, and you
20 assert that this is your signature or this is your circle,
21 but you didn't put a signature or initials by it, did you?

22 A No.

23 Q At the time that you picked out No. 4, were you
24 strung out on drugs?

25 A Had I been using drugs that day? No.

1 Q I'm sorry?

2 A Have I --

3 Q At the time that you picked up No. 4, were you
4 strung out on drugs?

5 A No.

6 Q You were clean at that point?

7 A Kind of off -- I might not have been clean, but I
8 hadn't been using any drugs that day.

9 Q But you did use them on the 17th?

10 A No.

11 Q In addition to being read what's been marked as
12 State's Exhibit 1 about the photo lineup, what was your
13 understanding about the necessity to pick out Mr. Lilly
14 from that lineup; did you pick him out of the lineup
15 because you knew him already or because you knew him from
16 that specific day?

17 A Yeah, I knew him for that specific day.

18 MS. ZMROCZEK: I have no further questions, Your
19 Honor.

20 THE COURT: Redirect?

21 MR. MAYE: No, thank you, Your Honor.

22 THE COURT: Thank you. Thank you, Mr. Payne, you
23 may step down.

24 MR. MAYE: And, Your Honor, I don't have -- given
25 the fact that Neil v. Biggers, the inquiry -- only that we

1 identified him and that he had known him for some 10 years.
2 I would rely on that for the purposes of the Niel versus
3 Biggers. I don't think there's really any showing of
4 suggestibility or an issue with this identification given
5 the fact that this is someone that he had known for 10
6 years.

7 THE COURT: All right. Ms. Zmroczek?

8 MS. ZMROCZEK: Your -- Your Honor, I'm satisfied
9 with the inquiry at this time.

10 THE COURT: Ma'am?

11 MS. ZMROCZEK: I'm satisfied with the inquiry at
12 this time.

13 THE COURT: All right. Thank you. Thank you very
14 much. All right. Any other witnesses.

15 MS. ZMROCZEK: No, Your Honor, just -- I need to
16 know, if the door is open, what -- what information they
17 tend on introducing under Lyle for the purposes of this
18 case, if they do -- if we opened the door.

19 THE COURT: Well that depends on which door and how
20 wide it's open, I guess. You may not think it's open. You
21 object, I'll send the jury out and we'll see which
22 direction it's headed.

23 MS. ZMROCZEK: In reviewing the criminal record,
24 Your Honor, I see that he only has one applicable offense
25 and that would be the manufacturing of methamphetamines

1 from 2011. I just wanted to confirm that.

2 MR. MAYE: He's got all kinds of criminal record
3 and I don't what he may open the door for him, but I know
4 he's got a manufacturing methamphetamine in 2011, a
5 possession of amphetamines in 1991, disorderly conduct,
6 resisting arrest in '83, and receiving stolen goods in '75
7 out of Aiken County. I know that Billy Parker and W.A.
8 Seigler -- I see a warrant from back in 1973, caught him on
9 a manufacturing marijuana here, a conviction in Edgefield
10 County. And I think he got something out of state; he got
11 disorderly conduct in '83, and I know he was on probation
12 for the manufacture of methamphetamine when this took
13 place.

14 So I don't what they might open the door for, but
15 I've told my witnesses in this case; we're trying this drug
16 transaction on the 17th and I directed them not to go into
17 any other drugs deals or dope transactions. We're going to
18 try it on the basis of the 17th. I have no way of
19 predicting what they might open the door for or where they
20 might go with that information about their ongoing and long
21 term drug relationship.

22 MS. ZMROCZEK: And, Your Honor, certainly you would
23 agree with me and the solicitor is aware of the limits
24 under the rules of evidence as to the 10 years prior
25 convictions.

1 THE COURT: Well, we're not reviewing that now
2 under 609. It's not like a review for impeaching Mr. Lilly
3 if he were to testify. There are some case laws that
4 require Lyle to me not too remote or close and stuff like
5 that, but you've got prior criminal history and you've got
6 other bad acts and crimes. That's all in discovery.

7 I would agree I would think that just goes to -- -
8 as I don't know which door will be opened or how wide it is
9 opened, but I think -- Lyle is a different analysis under
10 609 for even '73 conviction, '75 conviction and such. But
11 again, if you think they attempt to do it, you object,
12 we'll send the jury out and we'll re address it. All
13 right?

14 MS. ZMROCZEK: Thank you, Your Honor.

15 THE COURT: Yes, ma'am.

16 MS. ZMROCZEK: And I'm sorry, we can do this, I
17 mean I'm going to have to do it after the jury's sworn
18 anyway, but, Your Honor, the testimony was -- from Mr.
19 Payne that he was -- he was a continuous confidential
20 informant for several months with Edgefield. And Your
21 Honor, the information that I was provided was that he was
22 a confidential -- he signed this confidential informant
23 agreement on January 16th. So just for clarity purposes
24 because clearly I'm going to attack that on the stand, but
25 if they have information different, I would like to know

1 about that ahead of time.

2 MR. MAYE: Your Honor, I don't know. He said he
3 wasn't sure as to the dates of when he did the buys or in
4 what order for them. I don't know because it doesn't have
5 any relevance to this case and what evidence that I intend
6 to get introduced in this case. I can -- I can make some
7 inquiries, but like I said, this is the transaction on the
8 17th. Mr. Lilly is the only one we're trying here today.
9 And I will -- I will look and see. I mean he's testified
10 he wasn't sure as to what order or exactly how long it took
11 place in this case. And that's just all subject to
12 cross-examination.

13 MS. ZMROCZEK: But again, Your Honor, I would
14 submit that the case law says that I'm -- I'm entitled to
15 and, in fact, must have information regarding his
16 reliability as a confidential informant and I'm just
17 confirming that it has to be in front of me or it doesn't
18 exist. That's all I'm asking for.

19 THE COURT: Is there any additional documentation
20 that needs to be provided to the defense concerning Mr.
21 Payne's reliability.

22 MR. MAYE: I don't have anything regarding his
23 reliability other than the fact that he made other
24 narcotics buys. If she wants information on the dates that
25 he made other buys, we could get that?

1 THE COURT: You okay with that?

2 MS. ZMROCZEK: Your Honor, I think that the rules
3 say that I'm entitled to his, his reliability and veracity
4 as a confidential informant as to the information that --
5 that he provided for the Edgefield County Sheriff's
6 Department or any other agency with whom he worked as a
7 confidential informant. I think that goes to his
8 impeachability and credibility. And I think the rules are
9 very clear that I'm allowed to go into -- into that
10 information.

11 THE COURT: So you want the dates he made other
12 purchases?

13 MS. ZMROCZEK: Yes, Your Honor, and any --

14 MR. MAYE: I'll find that out. I'll find that out.

15 THE COURT: All right. Anything else before we
16 bring in our jury?

17 MS. ZMROCZEK: Nothing, Your Honor.

18 THE COURT: All right. Bring us our jury please.

19 MS. ZMROCZEK: And, Your Honor, I'm sorry, just so
20 I know, if they're gonna call him as their first witness, I
21 would ask that I'm not forced to cross-examine him today
22 about that information.

23 THE COURT: Mr. Maye, are you going to call him
24 today?

25 MR. MAYE: I am.

1 THE COURT: We'll a -- we'll stop after the jury
2 gets back in.

3 MS. ZMROCZEK: Thank you.

4 (The jury entered the courtroom at 4:17 p.m.)

5 THE COURT: Madam Clerk, will you swear our jury
6 in?

7 (The jury was sworn at 4:18 p.m.)

8 THE COURT: Is there any member of the jury panel
9 unable to take the oath? If so, please stand.

10 Welcome back, ladies and gentlemen, I apologize for
11 the delay. It is not because of either of the parties. In
12 fact, they have been working very diligently well before
13 your return at 3:30 this afternoon.

14 **OPENING REMARKS BY THE COURT**

15 THE COURT: Now, ladies and gentlemen of the jury,
16 the case we're about to try is the case of State v. Leon
17 Alvin Lilly, the defendant. What I will now say is
18 intended to serve as an introduction to the trial of the
19 case. These remarks are not instructions on the law of the
20 case. I will instruct you on the law that applies to this
21 case at the end of the trial before you retire to consider
22 your verdict. This is merely an explanation of the
23 procedure that we will follow in this trial so that you
24 better understand what may be happening.

25 The defendant is charged, as you know, by an

1 indictment by this Court for the crime of distribution of
2 methamphetamine, the evidence of which will be explained to
3 you later. The indictment again, ladies and gentlemen, is
4 simply the charge by which the case is brought before the
5 Court and it is not in any sense evidence of any of the
6 allegations it contains.

7 Mr. Lilly has pled not guilty to this indictment.
8 The State, therefore, has the burden of proving each of the
9 elements of the indictment beyond a reasonable doubt. And
10 it will be your duty, ladies and gentlemen, to decide
11 whether the State has met that burden. Your purpose as
12 jurors is to find and determine the facts. You are the
13 sole judges of the facts. If at any time I make any
14 comments regarding the facts, you must disregard them. You
15 are to determine the facts from the testimony you hear and
16 the other evidence introduced in court. It is up to you to
17 determine the inferences which you feel may possibly be
18 drawn from the evidence.

19 It is especially important that you perform your
20 duty of determining the facts diligently and
21 conscientiously because ordinarily there is no way to
22 correct an erroneous determination of the facts by a jury.
23 On the other hand, and with equal emphasis, the same law
24 that makes you the judges of the facts, makes me the judge
25 of the law. The law as given by the Court is the only law

1 you may consider. You must accept and follow it even
2 though you may disagree with it. I cannot tell you what
3 the facts are, and you cannot disagree with me about what
4 the law is or should be. Your job is to take the law
5 exactly as I give it to you and apply it to the facts as
6 you find them from the testimony of the witnesses and any
7 other evidence that is introduced. After doing that you
8 will render your verdict, a true and just verdict under the
9 solemn oath that you have just taken as jurors.

10 It's important that you keep an open mind and not
11 decide an issue in the case until you've heard all the
12 evidence, the parties have made their closing arguments,
13 and you -- I have instructed you on the law and then
14 advised you to begin your deliberations with your fellow
15 jurors. It is your solemn responsibility to determine the
16 guilt or innocence of the defendant and your verdict must
17 be based solely on the evidence as it is presented to you
18 in this trial and under the law as I instruct you during
19 and at the close of the trial.

20 In just a moment the solicitor will make what is
21 called an opening statement in which the solicitor will
22 explain to you the issues in this case, or at least what
23 the solicitor thinks the issues are in the case. Ms.
24 Zmroczek, Mr. Lilly's attorney, will also make an opening
25 statement, although she is not required to do so. And that

1 goes back to the presumption of innocence, a criminal
2 defendant regardless of the serious nature of the crime in
3 South Carolina is always presumed to be innocent and has no
4 burden whatsoever to bear in the trial of the case. What
5 the attorneys tell you during their opening statements is
6 not evidence in the case. What the attorneys tell you in
7 the closing arguments is not evidence in the case. They're
8 not sworn witnesses. Their questions are not evidence in
9 the case. Their questions are the framework by which the
10 evidence is extracted from the witnesses. It's the
11 replies, it's the statements. I saw this, I did this or I
12 did the other. That's the evidence, the testimony coming
13 from sworn witnesses under oath and any physical items of
14 evidence and the like that may be introduced in the trial
15 of the case. Their opening statements is only their
16 contention as to what the issues are.

17 From time to time during the trial, you may hear
18 one of the attorneys say something like, Your Honor, I
19 believe we have a question of law or a matter of law to
20 discuss with you or, Your Honor, may we approach the bench
21 or sometimes I myself might find it necessary to excuse you
22 from the courtroom for a short while so the attorneys and I
23 can discuss a matter of law. The reason for this is not
24 hiding anything from you. The reason is because you are
25 the judge of the facts in this case and sometimes when I am

1 discussing matters of law with the attorneys, it may be
2 necessary for me to make some comment as to the facts or
3 the connecting ruling whether or not a particular law
4 applies. I am not supposed to tell you, nor will I tell
5 you what I think the facts are. So I will excuse you from
6 the courtroom while these discussions take place so that in
7 no way will you be influenced by anything that I might say
8 or do in connection with the facts.

9 In determining what the true facts are in this
10 case, you must decide whether or not the testimony of the
11 witnesses is believable. It will be my responsibility to
12 rule as a matter of law as to whether certain testimony is
13 admissible at all or not. In other words, you get to hear
14 it, but once the testimony is elicited, whether or not you
15 believe it is solely for you to determine using your good
16 judgment and your common sense both individually and
17 collectively as a jury. In deciding whether to believe a
18 witness, you have the right to consider the interest of any
19 witness, the bias of any witness, the prejudice of any
20 witness, the opportunity for the witness who has seen the
21 matters and things about for which the witness may testify
22 and the way, the manner, the demeanor, that the witness
23 exhibits to you while on the witness stand.

24 You have a right to consider anything that is in
25 the record that will help you evaluate whether testimony

1 and credibility of a witness. That means it will be your
2 duty to pay close attention to these witnesses, to observe
3 the witnesses, to listen to the witnesses, and to pay close
4 attention to the attorneys and to the Court. Don't let
5 your thoughts wander. Pay strict attention to the
6 testimony in this case so that at the end of all the
7 evidence, after the arguments of counsel, and the
8 instructions on the law by the Court, you will then be in
9 that position to determine what the true facts are and to
10 apply the law to those facts and thus render a true and
11 just verdict.

12 Administratively, ladies and gentlemen, there's
13 several things, items, physical items of evidence, a
14 document or something like that happens to be introduced
15 into evidence, many times it may be handed to our
16 foreperson and passed among the members of the jury while
17 you're in here in the courtroom. Please keep in mind --
18 you may look at it all you wish. Please keep in mind while
19 that item of evidence, physical items in evidence, you will
20 also have whatever it is, document, photograph, back in
21 with you in the jury room at the time of your
22 deliberations. While you're in the courtroom will not be
23 the only opportunity you will get to see those items. And
24 again, look at it all you want, all you wish.

25 The courthouse, this historic courthouse, may not

1 have the best acoustics around so if you cannot hear or see
2 a particular witness, please get my attention or the
3 attention of one of our fine bailiffs and I'll certainly
4 try to have them speak up because if you can't hear them,
5 you won't be able to determine what the true facts are.
6 From time to time you may see me on my computer. I don't
7 tweet, I don't repeat, I don't e-mail, or Facebook. These
8 are good lawyers. Many times I may see what I perceive may
9 be a legal issue coming around the curve and I'll do some
10 research. That's all I do on this computer.

11 And finally, finally what I'm really in charge of
12 is taking breaks and I have a very simple way of doing it.
13 When I want a break; we all get a break at one time. Well,
14 let's go back to not letting your thoughts wander. You sit
15 out here too long and your thoughts begins to wander -- any
16 time any of you need a break, just raise your hand and
17 y'all will take y'all's break, we will take our.

18 This may not be a lengthy trial. The length of the
19 trial is not related to the importance of the trial. And
20 it's not -- I'm not running a judicial marathon here. The
21 parties will be allowed to certainly try this case. And
22 again, as I said, any time you need a break just please
23 raise your hand.

24 Any objection to anything I told the jury from the
25 State?

1 MR. MAYE: None from the State, Your Honor.

2 THE COURT: Defense?

3 MS. ZMROCZEK: No objection.

4 THE COURT: All right. Solicitor, you may address
5 the jury.

6 **OPENING STATEMENTS**

7 MR. MAYE: May it please the Court, Your Honor,
8 thank you.

9 If it please the Court, my name is Ervin Maye, and
10 I'm an assistant solicitor in the Eleventh Judicial
11 Circuit. I one of the solicitors who typically take care
12 of Edgefield, McCormick, and Saluda counties and I've been
13 helping to take care of cases for the State for about 20
14 years.

15 It's my privilege to be here today representing the
16 State. That's people, that's all of us. I submit to you,
17 the case that you're about to hear involves a terribly,
18 destructive drug, methamphetamine. I know that everyone
19 that's here, present in the courtroom for the most part;
20 this is our workplace; where we come to work. The Judge
21 comes to you to typically the courthouses; certainly the
22 assistant solicitors do. We're cognizant of the fact that
23 you've been taken away from wherever you would be today;
24 whether or not you've been taken away from work, from being
25 with family, if you work, if you're retired, doing whatever

1 your typical daily activities are. That's because you got
2 a letter from Ms. Newby over here either at your post
3 office box or out at the road, or the rural carrier dropped
4 it off, and I doubt anybody skipped or celebrated when they
5 got that jury notice saying you've got to come down here to
6 the courthouse. You don't have any choice. If you don't
7 come down here we'll send the sheriff to come get you.
8 This is a total imposition on all of you. You've been
9 brought up here, you've had to sit out here and wait all
10 day and you've been waiting back there in the jury room.
11 Well, the time is at hand; this is serious business.
12 Because just as surely as Judge McMahon sits up there with
13 a robe on, he's the judge and he told you he presides over
14 what's going on; there's a lot more to it than just
15 deciding to take breaks. But just as surely as he is the
16 judge that presides over this trial, the twelve of you that
17 go back into that jury room to deliberate, once you've
18 heard all the evidence that's going to come from the stand
19 up here, you're just as surely judges as Judge McMahon is
20 as he sits up there on the bench right now because you're
21 the judges of the facts in this case. All of you come from
22 different backgrounds I suspect. I don't think anybody
23 here probably works at the same place, although you might
24 have the same occupation. One thing that you got in common
25 in this case is you all live here in Edgefield County.

1 The State's got the burden of proof in this case
2 and we welcome it. We take you directly to January the
3 17th of 2013. What we intend to prove in this case, not
4 just beyond a reasonable doubt, but beyond all doubt,
5 because the defendant, Mr. Lilly, sitting over here
6 distributed, not sold, but distributed a quantity of
7 methamphetamine, a dirty, destructive drug, here in
8 Edgefield County. That's what we've got the burden to
9 prove in this case. We've got to show it was him, that he
10 distributed it, not that he sold it, but that he
11 transferred it, he distributed it out and it happened here
12 in Edgefield County. Those are the things that the State's
13 got to prove in this case.

14 To do so, to tell you a little bit a background and
15 back up a little bit, let me introduce some other people
16 that are here in the courtroom. Now you heard the names,
17 the Judge asked you in this case if you know any of these
18 people, but sitting here at the State's table with me in
19 the suit over here to my far left is Roosevelt Young, who's
20 a narcotics investigator and a detective for Sheriff Dobey
21 and has been for a very long time. Seated right here next
22 to me is Warren Miller. He also works as a narcotics
23 investigator for Sheriff Dobey in this case and both of
24 them have for a very long time.

25 That's no mystery to a lot of people. Some people

1 in this courtroom already knew them in this case just by
2 knowing them in the community. And it's also no secret
3 that they can't just in their role as narcotics officers,
4 just get in the car and start riding down the road in
5 marked cars or unmarked cars and pickup trucks they drive
6 and ride up and down the streets here in Edgefield County
7 and say how about let me have some drugs? It just doesn't
8 work that way. And it's no secret how they make drug
9 cases. They catch people in a variety of fashions.
10 Sometimes they do undercover buys. Sometimes they get to
11 go up to peoples houses and issue what they call a knock
12 and call. Sometimes traffic officers just stumble over
13 stops and find them and they smell drugs in the car, or see
14 drugs in plain view and they call these narcotics officers.

15 But it's also no mystery and no secret, they've got
16 to develop confidential informants in this case, people
17 that they catch. They give them an alternative when they
18 catch them and they talk to them and say look, we can't go
19 out and buy drugs. If you can buy drugs from people,
20 unlawful narcotics, unlawful prescriptions; we want you to
21 do so; that's what they day do in and day out; that's the
22 only way they can do their jobs. And that's exactly what
23 happened in this case.

24 And you're going to hear that this is a little bit
25 unusual because you're going to hear back in April of 2012,

1 they had information, they believed that a guy named
2 Michael Payne was involved with methamphetamine. They
3 didn't have any probable cause to go arrest him. They
4 didn't go down to the magistrate and didn't have an arrest
5 warrant for him then. They didn't get that big truck they
6 got down there, the SWAT team and they didn't go knock his
7 door in and go in and catch him. All they did was they had
8 that information and believed Mr. Payne was involved in
9 methamphetamine and it was just the right circumstances and
10 the right place or they wouldn't have knocked on the door.
11 They went and knocked on Mr. Payne's door. He didn't have
12 to let them in. He didn't even have to talk to them. They
13 just said look, this is who I am, Investigator Roosevelt
14 Young and Warren Miller and we work for Mr. -- for Sheriff
15 Dobey in this case, and I believe you're involved with
16 methamphetamine. I believe you're involved with illegal
17 drugs; what do you say to that; let's talk about it.

18 It just happened to be, they walked up to the door
19 and went in and it was just eaten up and overwhelmed with
20 methamphetamine, an incredibly, addictive and destructive
21 drug. And he could have told them, look, get off of my
22 property; get off of my porch; get out of here; you don't
23 have a warrant, you can't kick my door in if you don't have
24 an arrest warrant for me. Take a hike; get off my
25 property. But you're going to find out Mr. Payne didn't do

1 that. He said you're right. I've got a problem with
2 methamphetamine. I'm -- I got back problems. I'm using a
3 lot of methamphetamine and I've got some here now and I'm
4 going to go get it and I'm going to admit it to you and I'm
5 going to give it to you and turn it over to you. And
6 that's exactly what he did. He had about 14 grams, a half
7 an ounce of meth on him. Without an arrest warrant,
8 without them knocking in his door, without any probable
9 cause to go in his house; he said, You're right, I've got a
10 problem; here it is.

11 These officers charged him with the offense of
12 trafficking methamphetamine because of the weight being
13 over 10 grams. They charged him with trafficking. They
14 charged him with child endangerment because he had a young
15 child in the household at the time when he had the
16 methamphetamine present. He had both of those charges.

17 They said we want you to go and we want you to make
18 some buys for us; who can you buy methamphetamine from? So
19 the guy that's an addict it's going to be a problem; he
20 knows where he can get it and that's exactly what he did
21 and you're going to hear that they enlisted him as a
22 confidential informant and they said we want you to go buy
23 from people that you can buy from.

24 And you know in the old days when people went out
25 and worked as a confidential informants, they say back in

1 really old days, J. Edgar Hoover wouldn't let FBI agents do
2 that. He said no, we're not going to mess with any
3 informants and we're not going to dirty our hands. They
4 said J. Edgar Hoover was a lot of the reason that narcotics
5 really took hold in the United States because he went to
6 keep federal authorities from going after people with
7 confidential informants because he thought that was a dirty
8 business. The pre-cursor to the DEA, the Bureau of
9 Narcotics Enforcement, the director there said that's not
10 the way to catch people with drugs. They were wanting
11 someone hired in to work with confidential informants and
12 half of those people they were addicts and people that were
13 involved in drugs, they said, Would you help us.

14 Whenever you can make somebody help you, you just
15 want to do whatever will get us in the park, to help us
16 fight drugs. And that's exactly what they did with Mr.
17 Payne in this case, and exactly what we agreed to do. And
18 in the very old days when somebody agreed to work as an
19 informant, they'd give them a little piece of money and say
20 here, you can buy from, he'd leave; he could go, he didn't
21 have any recording devices back then to talk about the
22 30's; didn't have tape recorders; didn't have a -- wasn't
23 going to take a court reporter with them to take a
24 transcript of what happened. They just went out and they
25 purchased it. No way to document it. And they came into

1 court and they testified that on such and such a date I was
2 given some money and I went to so and so's house and I
3 bought some drugs and here are the drugs that I bought and
4 that's how cases were made. And that was changed
5 dramatically when the technology finally got here and we
6 could start putting recorders on them, tape recorders.
7 They put a wire on people back a long time ago some of the
8 earlier equipment would screw and it would rub and it
9 didn't record very well and that technology got better and
10 we went from tapes to digital and it was just audio. But
11 as technology continued to increase, it's no secret for
12 those of you that watch TV and you see all of these crime
13 shows. They've got cameras now that are so covert and so
14 tiny now they're unbelievable. Technology is the key to
15 getting the evidence.

16 And with Mr. Payne they said go buy from who you
17 can buy from. And on the 17th, they went out to Mr.
18 Payne's house. He lives off of Sweetwater Road, turns off
19 Sweetwater Road, he lives out in the country and they went
20 to his house. They searched him to make sure he didn't
21 have any drugs on him ahead of time, so he didn't have
22 anything on him. They wanted to make sure he was going to
23 get something from somebody, he wasn't taking something
24 with him. He wasn't setting anybody up. They searched
25 him, they wired him, they put this audio recorder on him,

1 they put a little small covert camera on him to document
2 everything he did, which is so important to this case.

3 They went through standard procedure that they go
4 through with all the confidential informants, documenting
5 and getting everything ready. His wife also rode up there
6 with him because you're going to hear in this case that he
7 new Mr. Lilly, the defendant in this case. He'd known him
8 for about 10 years, just somebody that had an ongoing
9 business relationship with him. Sometimes Mr. Lilly worked
10 on equipment for him. Mr. Payne is a heavy equipment
11 operator and these guys knew each other. His wife went
12 with him, which was not unusual. They knew each other
13 socially.

14 Now the officers didn't tell him where to go and
15 said go buy meth from somebody that you can buy from. They
16 searched his wife, they searched his car that they drove
17 and they followed along behind him. When they get there
18 they had to stay out of sight when he pulled up to Mr.
19 Lilly's house. But he went over to his house about a mile
20 down Murrah Forest Road. He lived here in Edgefield
21 County. And I submit to you one of the things -- and I
22 apologize to you up front -- you guys have to a very
23 tedious tape in this case, a little tiny covert camera and
24 it goes on for about an hour. There's just no other way to
25 do it. We want you to see everything that took place

1 there. And you're going to see him get wired up by
2 Investigator Miller and Mr. Young and you'll see them start
3 out and he gets in his vehicle; some kind of Mercury or
4 like Ford Explorer vehicle. And you can see them a lot of
5 it, he gets in the vehicle with his wife and driving down
6 the road. You can hear the radio whining in the car and
7 you hear them talking back and forth and there's audio,
8 there's video. And you can see him driving from his house
9 in Edgefield County over to Mr. Lilly's house here in
10 Edgefield County. And you can see him when he pulls up in
11 the yard and gets out and you can see him go all around Mr.
12 Lilly's property there and you can see them talking about
13 working on the tractor.

14 What is interesting to note is you will see the
15 confidential informant in this case standing on the rim of
16 the tractor because Mr. Lilly was working on a tractor for
17 him at the time. And they talked about working on the
18 tractor and you can see all around Mr. Lilly's shop where
19 he works on equipment, all kinds of odds and ends stuck
20 around different places, tools and equipment and they
21 wander around and shoot the breeze and talk and Mr. Payne
22 is stands on the tractor rim for a while.

23 The whole while now Mr. Payne in this case has got
24 this audio and video recorder on. And he can't be hurried.
25 I mean he can't just go busting up in there and say, Give

1 me some meth right now, and stand with your chest poked
2 out. He was playing it cool. You can see it drags on for
3 about an hour. You'll hear some street talk and I
4 apologize to you up front, but you'll hear some eventual
5 talk in this case when they start talking about he's got
6 some, drug slang; you got me some. You're going to hear
7 the slang talk back and forth between them and you're going
8 to see in this case, now Mr. Payne brought his wife and
9 she's in with Mr. Lilly's wife and they're back in the
10 house. And they're standing out around his tractor shed
11 talking and all the talk turns, You have any shit? And
12 they start talking back and forth. He said, You know I'm
13 going to get you something, you know, you want to do it
14 here.

15 And you here talk between him and Mr. Payne and Mr.
16 Payne said, No, no I got to go eat later. I got to go out
17 and eat and I've got some stuff I got to do. So he,
18 obviously he was getting methamphetamine for these
19 officers. He wasn't going to do the drugs on the scene
20 there with him. He was wearing a wire in this case, but
21 certainly in this case he was going to get him to
22 distribute methamphetamine. The State submits to you that
23 he eventually did and bring it back to these officers so
24 they could test it and send it to the drug lab, document
25 proof that it was methamphetamine.

1 But the ball turns a bit. Mr. Lilly said let me go
2 in the house, you know, and get some. I've got to back in
3 the house and he goes and he stays up in the house and you
4 could see Mr. Payne there standing on the tractor wheel
5 waiting on his wife, but after a little bit, you see Mr.
6 Lilly comes back and you can see the talking going back and
7 forth, but you see their standing kind of out in the open
8 now from the tractor shed. Mr. Lilly kind walked back out
9 of concealment, more concealed with the little shed under
10 there off from just where the tractor shed is and he gets
11 back in there and it's clear, you can see from you to me
12 right here, you'll see he gets out a plastic bag in this
13 case and they're talking all this drug talk and street talk
14 about that. And you'll see him when he gets the straw out
15 and he pokes it in there and you'll see it as clear as
16 you're looking at me right here because they're eye to eye
17 and that covert camera is filming every bit of it, all the
18 audio and all the video. And you can see him stick that
19 straw in that bag and tell him to pull that a bag open and
20 give him a little bag to hold and you can see them get that
21 meth out and drops it over in the other bag and you can see
22 it.

23 Mr. Payne then -- once he got the methamphetamine
24 that Mr. Lilly distributed to him, Well, you know, the deal
25 was completed in this case, they make a little small talk

1 and he gets back in the car with his wife and they drive
2 away. They say their goodbyes and leave. He went straight
3 back. The officers in this case, they've got a camera on
4 him and they can hear what's going on; in case something
5 goes array or something goes bad with the deal, they can
6 monitor and eye what's going on. They weren't arresting
7 him today. They're not leaving him out on his own.
8 They're at a distance where they can covertly monitor
9 what's going on and they hear the deal's concluded and what
10 has happened in this case. Well, they follow him right
11 back to his house and determine whether that's the
12 substance -- they search him again and search his wife
13 again and search his car again. They cross their T's and
14 dot their I's. They do what they're supposed to as
15 narcotics officers.

16 You can hear in this case that Investigator Young,
17 he immediately puts it in what's called a Best Kit, Best
18 Evidence Kit and seals it up in a tamper resistant seal and
19 the material, that powder that they believe to be
20 methamphetamine that Mr. Lilly has given Mr. Payne there,
21 puts it up in that Best Kit and seals it up with a tamper
22 resistant label and takes it and puts it in a safe in this
23 narcotics headquarters. And you can hear the next day he
24 takes it out of the safe, he takes it to the South Carolina
25 Law Enforcement Division; they can move it through their

1 protocol with an agent that goes by the name you can hardly
2 pronounce, Agent Zivkovich, he's a certified chemist and he
3 tests it and he says, Yes, in this case. This powder that
4 you can see on this tape recording, this covert camera that
5 we have, that Mr. Lilly gets out of a bag and shovels it
6 underneath his hands by Mr. Payne in this case, that that
7 substance is an incredibly and destructive drug,
8 methamphetamine.

9 And I submit to you the State's got the burden of
10 proof in this case. You're going to hear from Mr. Payne.
11 He's going to get up here and tell you he knows Mr. Lilly
12 in this case, about how he got caught, the drug problems he
13 had, that he was using drugs, that he was selling to
14 support his habit, and he turned to the investigators.
15 That he had this problem.

16 He's going to tell you that he went to work for
17 Young and Miller here in this case, he buys for them in
18 this county. He had those charges pending and he came up
19 here and they charged him for abuse. He was initially
20 charged with trafficking in this case and he came up in
21 this very courtroom and pleaded guilty to possession with
22 intent to distribute methamphetamine rather than
23 trafficking. He wasn't guaranteed any sentence; he wasn't
24 made any promises. He came up before the judge, we
25 presented the evidence in this case and the judge put him

1 in prison for 18 months. He's going to tell you in this
2 case that he had a terrible meth problem and he didn't get
3 out from under the influence of meth and this terrible
4 addiction until he went and spent that time in South
5 Carolina Department of Corrections. He's going to tell you
6 in this case, it's a good thing that happened. He's clean
7 now. He hasn't used since he got out and even though he
8 went to prison and even though it was a bad day when
9 Investigator Young and Miller knocked on his door, it was
10 also a good day because he got out of the clutches of
11 methamphetamine in this case.

12 Again, we've got the burden of proof; we welcome it.
13 It's a simple case. When I asked them about what they did
14 back in the 30's to sell it. Yeah, I went and I got some
15 money and I tried to get drugs from Mr. Lilly and I got
16 drugs from Mr. Lilly. Trust me, you won't have to do that.
17 You've got a camera. I submit to you, you'll see that
18 proof that's clear as day. We've got the burden of proof;
19 we welcome it.

20 After the conclusion of all the evidence in this
21 case, we're going to ask you for a guilty verdict against
22 Mr. Lilly, the defendant in this case, for distributing
23 methamphetamine in the county.

24 THE COURT: Thank you. Thank you, Solicitor.

25 All right. Yes, ma'am, you may address the jury,

1 Ms. Zmroczek.

2 MS. ZMROCZEK: Thank you, Your Honor, may it please
3 the Court?

4 THE COURT: Yes, ma'am.

5 MS. ZMROCZEK: Tricked, cracked, and taken
6 advantage of. My name is Aimee Zmroczek and that is not
7 important. What's important is Mr. Lilly and what's
8 important is you. This is the only reason I am in this
9 courtroom, because I have the pleasure of representing the
10 constitution. Just yesterday I was working, getting ready
11 for trial and there were, of course, a lot of speeches, a
12 lot of quotes from the great Martin Luther King, Jr. I
13 assert that I would not be doing my job if I didn't ask the
14 tough questions.

15 The constitution guarantees us the right not to be
16 convicted because somebody's trying to get out of trouble.
17 The constitution guarantees us when you sit up on that
18 stand, you're going to tell the truth. One of the things
19 that either came to me, I don't know how many of y'all new
20 this, but y'all did it twice today, raised your hand and
21 swore and the story behind that goes like that this: Way,
22 way back in the olden times, if you were convicted of
23 perjury they would brand a pea on your hand and so when you
24 stood up and you were asked to raise your hand, it was so
25 people would know you weren't lying. We don't do that

1 today. We think that's cruel and unusual punishment, but
2 what we do today, is symbolic and people sit up there and
3 they answer the questions that are asked and the evidence
4 that's purported to be presented to you is questionable
5 because drugs are bad; they're bad. But the zeal to
6 eliminate drugs that means the State and the nation forsake
7 ancient heritage of our constitutional liberty, the stuff
8 that Martin Luther King, Jr. -- yesterday was celebrating,
9 was fighting for. Liberty covers a far greater pick when
10 the zeal to prosecute drugs to injure a few overcomes the
11 loss of liberty. Because that's what we're talking about.

12 They keep talking about they have the burden and
13 they welcome that burden. And maybe you watch TV, maybe
14 you sat on a criminal trial, maybe you sat on a civil
15 trial, but the burden here that the State must meet is that
16 they must prove beyond a reasonable doubt bias, burden and
17 jurisprudence, that what Michael Payne, drug trafficker,
18 child endangerer, sat up on that stand and said that what
19 he did wasn't a lie just so he could get out of trouble. I
20 want you to ask yourself those questions; does that make
21 sense?

22 And these investigators have done their job a long
23 time. And they're going to tell you what their procedures
24 are and I have to ask the tough questions because if I
25 don't ask the tough questions, then our constitutional

1 rights aren't protected.

2 One thing I want y'all to keep in mind when you're
3 seeing the cast of characters that the State presents to
4 you as evidence; Mr. Payne, the police officers and ask
5 yourself, who else has it presented; who else had a stake
6 in this. I submit to you, you will learn that not only was
7 Mr. Payne arrested that day back in April, but his wife,
8 the mother of his children charged with trafficking and
9 child endangerment. I submit to you, you will not hear any
10 of her charges because they made a deal. When you make
11 deals with the devil and you put the loss of liberty
12 beneath the securing of the prosecution or conviction.

13 Judge McMahon will tell you the law says you must
14 find Mr. Lilly not guilty.

15 THE COURT: Thank you. Thank you very much, Ms.
16 Zmroczek.

17 Mr. Foreman, ladies and gentlemen of the jury,
18 perhaps now will be a good time to take our evening recess.
19 I'm reminding you during this recess, you are not to
20 discuss this case with anyone, either your fellow jurors,
21 family, friends, or anyone else. Do not watch, read,
22 listen to any news accounts about the case. Do not use
23 your computer, cellular phone or any other electronic
24 device to obtain or disclose information about the case
25 when you're not in court, it is prohibited.

1 Such information includes, but it not limited to
2 the following: Information by a party, a witness, an
3 attorney, or a court officer, news accounts of the case,
4 information collected through juror research on any topics
5 raised in the testimony offered by any witness.
6 Information collected through juror research on any other
7 topic a juror might think would be helpful in deciding this
8 case. You decide the case based on the evidence and the
9 testimony you hear from the witnesses testifying under oath
10 in the courtroom and the law as I tell you the law is:

11 With that being said, I'm going to release you from
12 your jury service for the remainder of the day and ask you,
13 I'm going to apologize, I do have an appointment that I
14 must attend in the morning, early morning and I apologize
15 but I'm starting 30 minutes late. I ask you to please be
16 back at about 10 o'clock in the morning. Be back at 10
17 o'clock. So you don't have to set your alarm. I'm sure
18 many of you may have child care and such like that.

19 Please be back promptly at 10 o'clock. Thank you
20 very much. You are now excused from your jury service for
21 the remainder of the day.

22 (The jury left the courtroom at 4:56 p.m.)

23 THE COURT: Anything from the State?

24 MR. MAYE: Nothing from the State, Your Honor.

25 Thank you.

1 THE COURT: Ms. Zmroczek?

2 MS. ZMROCZEK: Not regarding the remarks, Your
3 Honor. I do have a few requests based on Mr. -- Solicitor
4 Maye's opening, I would ask that I be provided all the
5 discovery motions for the arrest in April of Mr. Payne,
6 because I need to be able to at least challenge the
7 veracity what was told to the jury. I was not provided any
8 of that information.

9 THE COURT: You want the incident report and the
10 arrest of Mr. Payne?

11 MS. ZMROCZEK: Correct.

12 THE COURT: All right.

13 MS. ZMROCZEK: And -- and then, Your Honor, he -- I
14 would also ask that I be provided the policies and
15 procedures when dealing with confidential informants just
16 because he mentioned it and I don't, I don't have a copy of
17 that.

18 THE COURT: All right. Can you provide that,
19 Solicitor?

20 MR. MAYE: I'm going to ask Detective --

21 Your Honor, they're going to go to work on it.
22 They're going to -- they're going to get any policies and
23 procedures they have dealing with informants, the dates of
24 any buys. And Investigator Miller is going to attempt to
25 make a copy -- I don't know -- excuse me. I'm sorry, the

1 jury was out, I apologize. They're going to get the,
2 they're going to get the information. I was trying to
3 think as I was talking what she wanted. They're going to
4 work on it as quickly as they can.

5 THE COURT: All right. So the policies and
6 procedures, the information on Mr. Payne's arrest and the
7 incident report --

8 MR. MAYE: We'll get that.

9 THE COURT: -- the dates of his arrest --

10 MR. MAYE: The dates of any buys.

11 THE COURT: -- and I'm assuming Mr. Miller is going
12 to work on making a copy of the audio/video; is that right.

13 MR. MAYE: Yes, correct.

14 THE COURT: Anything else, Ms. Zmroczek?

15 MS. ZMROCZEK: No, Your Honor, and they can e-mail
16 me the policies and information if that -- if it would
17 assist Investigator Miller, I can give him my jump drive to
18 see if that helps transfer that information and all.

19 THE COURT: All right. Well, it sounds like
20 they'll be able to work that out. Anything further?

21 MS. ZMROCZEK: No, Your Honor. Did you say be here
22 at 10?

23 THE COURT: 10, yes, ma'am.

24 THE COURT REPORTER: If we're going to mark the
25 exhibits, we're going to need to be here by 9:30.

1 THE COURT: If you want exhibits to be premarked,
2 be here at 9:30. All right.

3 MR. MAYES: Yes, sir.

4 MS. ZMROCZEK: We'll be here at 9:30.

5 THE COURT: Thank you. Mr. Lilly is in the custody
6 of the Edgefield County Sheriff. Thank you. Thank you
7 very much.

8 MS. ZMROCZEK: And, Your Honor, were you able to --
9 I'm sorry. Were you able to inquire about the medication
10 that he needs?

11 THE COURT: I have not. I don't know. I'll see
12 about that.

13 MS. ZMROCZEK: Okay. Thank you.

14 (The Court was in recess for the evening.)

15 WEDNESDAY, JANUARY 21, 2015

16 THE COURT: Is our jury here?

17 THE BAILIFF: Yes, sir.

18 THE COURT: All right. Bring them on.

19 (The jury entered the courtroom at 10:20 a.m.)

20 THE COURT: Mr. Foreman, ladies and gentlemen of
21 the jury panel, good morning. I hope y'all had a pleasant
22 evening. I apologize for the delay in getting you in the
23 courtroom today. It had nothing to do with parties
24 whatsoever. My appointment went longer than I thought it
25 would.

Michael P. Payne - Direct Examination by Mr. Maye

1 We're beginning the presentation of the testimony
2 in the case by the State and its case in chief. I would
3 ask you to please give the parties your complete and
4 undivided attention.

5 Solicitor, you may call your first witness.

6 MR. MAYE: The State would call Michael Payne.

7 MICHAEL PAYNE,

8 having been duly sworn, testified as follows:

9 THE CLERK: Have a seat. State your full name and
10 spell your last name for the Court.

11 THE WITNESS: Michael Pshawn Payne.

12 THE COURT: Speak up for me please, Mr. Payne.

13 THE WITNESS: Michael Pshawn Payne, P-A-Y-N-E.

14 THE COURT REPORTER: Spell your middle name too,
15 please.

16 THE WITNESS: P-S-H-A-W-N.

17 THE COURT REPORTER: Thank you.

18 DIRECT EXAMINATION

19 BY MR. MAYE:

20 Q Mr. Payne, look over here where the jury is.

21 Tell me where are you originally from, Mr. Payne?

22 A Edgefield.

23 Q You're from Edgefield. Okay. Where did you go to
24 school?

25 A Merriweather and Strom Thurmond.

Michael P. Payne - Direct Examination by Mr. Maye

1 Q Merriweather and Strom Thurmond.

2 You got family in the area?

3 A Yes, my mother, father, brother, and sister.

4 Q Tell the ladies and gentlemen of the jury what type
5 of work that you do now?

6 A I'm a heavy equipment operator.

7 Q You operate what, backhoes and heavy equipment?

8 A Tractors, yes.

9 Q All right. Is that something you've been trained
10 in and worked at on an off throughout your whole career?

11 A Yes, sir.

12 Q Okay. Let me ask you this. Back in April of 2012,
13 is it true that you had a problem with methamphetamine?

14 A Correct.

15 Q Were you consistently using methamphetamine back in
16 April of 2012?

17 A Yes, sir.

18 Q Okay. Were you also selling methamphetamine to
19 support your habit at that time?

20 A Yes, sir.

21 Q Let me talk to you about April the 2nd of 2012.
22 Did Investigator Young and Miller come and knock on your
23 door on that day?

24 A Yes, they did.

25 Q Did they ask you --

Michael P. Payne -- Direct Examination by Mr. Maye

1 MS. ZMROTCZEK: Objection, Your Honor, leading.

2 MR. MAYE: I haven't got the question out.

3 THE COURT: If you're objecting to the last
4 question, that's been asked and answered.

5 State your question, Solicitor. State your
6 question.

7 BY MR. MAYE:

8 Q What did they ask you about when they came to your
9 house?

10 A They asked me if I had any narcotics in the home
11 and I stated to them yes.

12 Q Okay. Did you in fact give them the narcotics at
13 that point in time?

14 A Yes, sir.

15 Q Okay. About how much meth did you have at your
16 house at that time?

17 A About an ounce.

18 Q You had about an ounce which is about 28 grams?

19 A Yes.

20 Q Okay. Only part of that, really about 14 or a
21 little -- about more than half an ounce was tested; is that
22 correct?

23 A Yes, sir.

24 Q But you actually had pretty close to an ounce?

25 A To an ounce.

Michael P. Payne - Direct Examination by Mr. Maye

1 Q Okay. Did they show you any warrants or indicate
2 they had any basis to come there?

3 A No, sir, it was a knock and talk.

4 Q A knock and talk?

5 A Yes, sir.

6 Q What did they explain to you about a knock and talk
7 meant in regard to whether or not they could or couldn't
8 come in?

9 A I could have told them to leave. I didn't have to
10 speak --

11 Q You could have told them to leave?

12 A Yeah, I didn't have to speak to them.

13 Q Okay. But you did not tell them to leave; in fact,
14 you told them to come in?

15 A Correct. Well I knew I had an addiction problem
16 and once -- once the officers done showed up at your door
17 about it, it's gone a little far.

18 Q It's gone a little far..

19 What did you -- once you gave them the drugs and
20 admitted what was going on there, what did you agree to do
21 to assist them or help them?

22 A I agreed to wear a wire and a camera.

23 Q Okay. When you agreed to wear a wire and a camera,
24 did they identify who they wanted you to go see or did you
25 identify who you could buy from?

Michael P. Payne - Direct Examination by Mr. Maye

1 A I identified.

2 Q Okay. So it was not based on what they told you
3 but what you knew personally?

4 A Correct.

5 Q Okay. Let's talk about January the 17th of 2013.
6 Did you encounter Young and Miller on that day?

7 A Yes.

8 Q Okay. Tell the ladies and gentlemen of the jury
9 what took place, where y'all eventually, where y'all first
10 met and what took place.

11 A We met at my home and then Roosevelt and Mr. Miller
12 wired me up and then they put a box in my truck, searched
13 me and my vehicle and then I went to Leon's to make the
14 buy.

15 Q You went to Leon's. Who is Leon?

16 A Lilly.

17 Q Leon Lilly. Let's just get this out of the way
18 now. Leon Lilly, the person you're talking about, is he
19 present here in the courtroom today?

20 A Yes, sir.

21 Q Could you point him out say where he's sitting and
22 how he's dressed?

23 A White shirt and bluejean pants.

24 Q Okay.

25 MR. MAYE: Your Honor, I just ask that he has

Michael P. Payne - Direct Examination by Mr. Maye

1 identified the defendant, Mr. Leon Lilly, and ask that the
2 record reflect that.

3 THE COURT: So reflected.

4 BY MR. MAYE:

5 Q Now, you already testified they searched you,
6 correct?

7 A Correct.

8 Q Who went with you? Did anybody go with you when
9 you left?

10 A Yes, my wife.

11 Q She went with you as well. Did they search her as
12 well?

13 A Correct.

14 Q Okay. And you've already testified they searched
15 your vehicle, correct?

16 A Correct.

17 Q Okay. Whose vehicle did you drive; what vehicle
18 was it?

19 A It was mine.

20 Q What kind of vehicle was it?

21 A It was a '98 Ford Mountaineer.

22 Q A '98 Ford Mountaineer.

23 Okay. Where did you live, where was that location
24 that they came to your house?

25 A ■ Ryan Ranch Court.

Michael P. Payne - Direct Examination by Mr. Maye

1 Q [REDACTED] Ryan Ranch Court?

2 A Correct.

3 Q When you leave the courthouse here, how do you get
4 to where your house is?

5 A Straight down Sweetwater and turn on Mealing.

6 Q Okay. And once you turn, you turn right on
7 Mealing?

8 A Yes, sir.

9 Q Once you do that, how far down Mealing do you go to
10 get to your house?

11 A About a mile.

12 Q About a mile. You live on the right-hand side or
13 left-hand side?

14 A Right-hand side.

15 Q Right-hand side. Okay.

16 When you left out of your house there going over to
17 Leon Lilly's house, tell them how you go to get where Leon
18 Lilly lived?

19 A I come out my driveway and make a right, go to the
20 four-way stop and go straight across, come to the stop sign
21 at Sweetwater Road -- no, Currytown and make a left -- No,
22 it's Murrah Road; you make a left on Murrah Road and then a
23 left into Murrah Forest.

24 MS. ZMROCZEK: Your Honor, I can't hear.

25 THE COURT: Ma'am?

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1 MS. ZMROCZEK: I can't hear.

2 THE COURT: All right. If you can speak up some or
3 you can move around some. Is that microphone working down
4 there?

5 THE CLERK: Yes, sir.

6 THE COURT: Thank you.

7 BY MR. MAYE:

8 Q What happened when you got there?

9 A We went to the back.

10 Q Who is we?

11 A Me and Mr. Leon Lilly.

12 Q Okay. What happened when you first got there, who
13 all was in the car with you?

14 A Me and my wife.

15 Q Okay. When you first got there, where did she go
16 and where did you go?

17 A She went in the house and I went out back, back
18 behind the shed.

19 Q Okay. Who did you interact with back there in the
20 shed?

21 A Mr. Leon.

22 Q Leon Lilly?

23 A Right.

24 Q Let me ask you this -- don't go into too much
25 detail, but how long had you known Leon Lilly at this point

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1 in time?

2 A About 10 years.

3 Q About 10. What kind of -- what kind of things did
4 y'all do for one another in regard to equipment? What kind
5 of relationship did you have with him with regard to
6 equipment or working on equipment?

7 A We traded out working on equipment.

8 Q Traded out working on equipment?

9 A Right.

10 Q Was he working on a piece of equipment that
11 belonged to you when you went there on January the 17th of
12 2013?

13 A Yes, sir, he was working on my tractor.

14 Q What kind of piece of equipment was that?

15 A A Ford 2000.

16 Q A Ford 2000?

17 A Correct.

18 Q Tell the ladies and gentlemen on the jury what kind
19 of equipment is a Ford 2000; what is that?

20 A It's a tractor.

21 Q A tractor. Okay. And that belonged to you and he
22 was working on it?

23 A Yes, sir.

24 Q Okay. What was wrong with it; what kind of repairs
25 was he doing for you?

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1 A He was working on one of my rims and the radiator
2 was leaking.

3 Q He was working on one of your rims and the radiator
4 was leaking?

5 A Yes, sir.

6 Q So what happens when you first get there; y'all go
7 around to the back and your wife goes inside; what happens
8 next?

9 A We walk over to the tractor and start messing with
10 the radiator and then we leave that alone and I walked over
11 and started standing on one of my rims.

12 Q Okay. Now that takes place for a pretty good
13 amount of time, you stand on the rims for a pretty good
14 amount of time, didn't you?

15 A Yes, sir.

16 Q When does the conversation turn towards
17 methamphetamine and what directed the conversation towards
18 the subject of methamphetamine and you possibly getting it
19 from him?

20 A I remember I was standing on the rim and I asked
21 him if he had some shit and he said yes, that he'd have to
22 go into the house.

23 Q He would have to go into the house?

24 A Correct.

25 Q And you asked him if he had some shit?

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1 A Yes.

2 Q Okay. And that's a slang term you associate with
3 asking for methamphetamine?

4 A Correct.

5 Q Okay. And so where again did he say he would have
6 to go get it?

7 A In the house. He'd have to go to the bathroom.

8 Q Okay. So what happens next, when's the next time
9 you see him?

10 A He comes back out and we walk into the shed and he
11 hands me a baggy to hold open for him to drop it in.

12 Q He hands you a baggy to hold open for him to dump
13 it in. And what takes place then?

14 A I -- I, held it open, he dumped it in and I closed
15 it up and we went inside.

16 Q You went inside?

17 A Correct.

18 Q What happened next?

19 A I got my wife and we had left. I talked for a
20 little bit and then we had left.

21 Q Okay. Where did you go once you left Mr. Lilly's?

22 A Directly back to Mr. Young and Miller.

23 Q Okay. What did you do with the substance when you
24 had asked him for methamphetamine, he gave you, the
25 substance he gave you in the bag; what did you do with that

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1 when you got back, who did you give that to?

2 A Mr. Young.

3 Q Okay. Let me show you what's been marked as
4 State's 9 for ID only at this point in time. Let me ask
5 you this. What did he do with the substance; did he drop
6 it in the bag and seal it there with you?

7 A Correct.

8 Q Okay. Is it consistent with what's in State's 9
9 that he dropped it into a bag and sealed it there in your
10 presence?

11 A Yes.

12 Q Okay. Let me ask you this, Mr. Payne, have you had
13 a chance to view the video footage that was shot from the
14 covert camera and recorder that you were wearing on the
15 17th of 2013 when you went to Mr. Lilly's house?

16 A Yes.

17 Q Have you viewed each and every segment of that
18 footage of that transaction?

19 A Yes. Yes.

20 Q You've seen them all?

21 A Yes, twice, matter of fact.

22 Q You've seen them all twice. Let me ask you this.
23 Does that video footage in all those clips, does it fairly
24 and accurately represent all of the events that were
25 recorded from the time you basically -- that you left your

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1 house until you departed Mr. Lilly's house, does it fairly
2 and accurately reflect all of the events that took place
3 there and your interaction between yourself and Leon Lilly?

4 A Yes.

5 Q And you're certain of that when you viewed it?

6 A Yes, I'm positive.

7 Q Okay.

8 MR. MAYE: Your Honor, at this time I'm going to
9 ask to publish that video tape. We've laid the foundation
10 that it fairly and accurately reflects the footage between
11 the two of them. I ask to publish it at this time.

12 MS. ZMROCZEK: Without objection, Your Honor.

13 THE COURT: And what's the number?

14 MS. ZMROCZEK: It's No. 10, I believe.

15 MR. MAYE: State's Exhibit 10. We're going to move
16 that into evidence and ask that we publish this.

17 THE COURT: State's 10 is in evidence without
18 objection.

19 (State's Exhibit No. 10 was entered into evidence.)

20 THE COURT: And you may publish.

21 MR. MAYE: Thank you, Your Honor.

22 THE COURT: Give them just a moment.

23 (The video was played for the jury.)

24 THE COURT: All right. Solicitor.

25 BY MR. MAYE:

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1 Q Mr. Payne, at the time that Mr. Lilly makes that
2 hand-to-hand transaction with you, what county were y'all
3 in?

4 A Edgefield.

5 Q You were in Edgefield County?

6 A Yes, sir.

7 Q Do not say what for, but at the time that you went
8 over there on the 17th of 2013, did Mr. Lilly owe you
9 money?

10 A Yes.

11 Q About how much money did he owe you, again do not
12 go into what it was for, but how much money did he owe you
13 at the time you went over there on the 17th?

14 A \$800.

15 Q About \$800. When you attempted to pay him for the
16 controlled substance, the methamphetamine that he gave to
17 you, what was his response and were you able to give the
18 documented ones that Investigator Young and Miller had
19 provided to you to purchase the methamphetamine?

20 A No, he said he didn't need it.

21 Q He would not accept payment of it?

22 A No.

23 Q Okay. Did you try to pay him for it when he gave
24 it to you there?

25 A Yes.

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1 Q And he would not take it?

2 A No, sir.

3 Q Okay. During the course of the conversation
4 between the two of you, it was a statement by you, I don't
5 want to ruin my appetite when you were having an exchange
6 with him; what was the nature of the conversation that you
7 were having there and what was your response; what was that
8 about?

9 A Because I knew I couldn't do any because --

10 THE COURT: Speak up a little bit for me please.

11 THE WITNESS: I knew I couldn't do any and I knew
12 when I went over there he was going to offer me some, so if
13 I told him I went out to eat, then if he offered me, I'd
14 tell him I would ruin my appetite.

15 BY MR. MAYE:

16 Q That was your response to him on the offer to get
17 the -- to do it there on site at that location?

18 A Correct.

19 Q Your response to him was you didn't want to ruin
20 your appetite?

21 A Correct.

22 Q In exchange for that -- okay. Were y'all having a
23 conversation about doing it there on site?

24 A Yes.

25 Q Okay. He obviously was not aware you were wearing

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1 a wire and you were not going to do anything, obviously,
2 while you were doing a controlled transaction for law
3 enforcement?

4 A Correct.

5 Q Okay. I'm going to show you 5 photographs marked
6 for ID at this point in time as State's Exhibit 7, 4, 6, 5
7 and 3; take a look at all those photographs. Look at each
8 one of them individually. Let me ask you this. Are you
9 familiar with the residence of Leon Lilly?

10 A Yes.

11 Q Okay. Have you been there numerous times?

12 A Yes, sir.

13 Q Okay. Did you go there on the 17th of January in
14 2013 for the purpose of doing this transaction?

15 A Yes.

16 Q Have you looked at the photographs that I've handed
17 you there?

18 A Yes.

19 Q Do those photographs fairly and accurately reflect
20 his property although not necessarily on that day, but do
21 they reflect the property that you went to on the 17th at
22 his residence here in Edgefield County?

23 A Yes.

24 MR. MAYE: Your Honor, I move to admit these into
25 evidence as State's Exhibits; I've laid the proper

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1 foundation.

2 THE COURT: May I see them please?

3 MR. MAYE: Sure, Your Honor, I'm sorry.

4 MS. ZMROCZEK: And I have an objection, Your Honor.

5 THE COURT: Ma'am?

6 MS. ZMROCZEK: I have an objection to one of the
7 photographs.

8 THE COURT: All right. One particular or all of
9 them?

10 MS. ZMROCZEK: I think they're repetitive. I don't
11 see the relevance; and, Your Honor, I don't know when those
12 were taken. I was informed today that they were taken by
13 Mr. Maye.

14 THE COURT: All right. Just a minute, please.

15 Mr. Foreman, ladies and gentlemen of the jury,
16 please step to the jury room and take about a 15 minutes
17 recess. Do not discuss the case during this recess.

18 (The jury left the courtroom at 11:36 a.m.)

19 THE COURT: All right. Solicitor, the relevance?

20 MR. MAYE: Your Honor, demonstrative evidence to
21 show the location where the transaction took place.

22 They're color photographs and they show his residence there
23 and a few others on the street. And that is the relevance
24 and the State's contention in this case, it's of his
25 residence.

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1 THE COURT: All right. Well, 4 -- 3, 4, 5, and 6,
2 appear to be further out and come closer in.

3 All right. What about relevancy now, Ms. Zmroczek.

4 MS. ZMROCZEK: Your Honor, if he's just putting
5 that into show that's the residence even though it wasn't
6 on that date, we would allow the -- I mean we would agree
7 that one of them can be relevant. I don't see the
8 relevance of putting five pictures in of someone's house.

9 THE COURT: All right.

10 MS. ZMROCZEK: We believe that Mr. Lilly's house.

11 THE COURT: All right. State's 7 is in evidence
12 subject to objections. As to 3, 4, 5, and 6, Solicitor, I
13 think two of those would be relevant. I think the other
14 two to be cumulative. It just shows going far out and
15 close in. It's sort of like South Carolina lottery, pick
16 two, okay?

17 MR. MAYE: That's fine, Judge. And they were just
18 all taken at different zoom settings.

19 THE COURT: Out of 3, 4, 5, and 6 it just gets
20 closer and closer in and it's all subject to defense
21 objections.

22 MR. MAYE: Okay, Your Honor. The number that you
23 said was actually in evidence now is 7?

24 THE COURT: Yes, because I think it shows kind of a
25 different view of the overall area.

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1 MR. MAYE: And then as to the other ones, you said
2 to pick two.

3 THE COURT: Pick two out of 3, 4, 5 -- 3, 4, 5 and
4 6; and as I say, that's subject to defense objection.

5 All right. Anything further before we take our
6 recess, Ms. Zmroczek?

7 MS. ZMROCZEK: No, Your Honor.

8 THE COURT: All right.

9 MR. MAYE: Your Honor, we would select, then 4 and
10 3 to go into evidence, which are taken at substantially
11 different zoom settings.

12 THE COURT: 4, 3 and 7?

13 MR. MAYE: And I withdraw these; they've been
14 marked for ID. At this point in time, I'm going to return
15 them to the court reporter.

16 THE COURT: Okay. If you would mark those still
17 for the record and let her mark 5 and 6 for identification
18 purposes in case there's --

19 MR. MAYE: They are.

20 THE COURT: Okay. Thank you.

21 MR. MAYE: They are.

22 THE COURT: 3, 4 and 7 is in evidence subject to
23 defense objections.

24 (State's Exhibit No. 3, No. 4 and No. 7 were
25 entered into evidence.)

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1 MS. Zmroczek: And, Your Honor, the only thing I
2 would ask if we're going to take our recess that the
3 witness be instructed that he's not allowed to discuss his
4 testimony.

5 THE COURT: I'm going to have him in custody of one
6 of the officers during this brief recess. You may not
7 discuss your case with -- your testimony with anyone, Mr.
8 Payne, during this brief recess. Lieutenant Rio wants to
9 maintain custody of you and one of the other officers that
10 is not involved in the -- in the trial of the case.

11 MS. ZMROCZEK: Sorry and one more thing. Your
12 Honor, he has some -- Mr. Maye, or Solicitor Maye,
13 discussed some of his 2012 charges that he received a deal
14 specifically in relation to this case. However, Your
15 Honor, he does have some other charges that I am going to
16 ask him about and I didn't know if we wanted to clear that
17 up before the --

18 THE COURT: Ask him about it under Rule 609?

19 MS. ZMROCZEK: Correct.

20 THE COURT: And what are those other charges?

21 MS. ZMROCZEK: In 2007, Your Honor, he was charged
22 with manufacturing, but he pled to possession of marijuana.

23 THE COURT: All right. Solicitor, what's your
24 position on that?

25 MR. MAYE: I'm looking at his prior convictions. I

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1 pulled his rap. A simple possession of marijuana would not
2 subject him to impeachment in this case, Your Honor.
3 Magistrate's Court offense wouldn't be a crime that carried
4 more than a year. Even possession greater than an ounce
5 doesn't carry a year. So that is a Magistrate's Court
6 conviction carrying less than a year, we would say that
7 would be ineligible for impeachment. We would concede that
8 his -- the charge that we've already spoken about in this
9 case, possession with intent to distribute, that he pleaded
10 down to from the trafficking, we would certainly concede
11 that.

12 MS. ZMROCZEK: Your Honor, that leads me to an
13 inquiry because in 2007 the witness was charged with
14 manufacturing marijuana, he was charged with -- which he
15 pled to simple possession. He was charged with receiving
16 stolen goods, which was not probed. He was charged with
17 possession of marijuana which was not probed and he was
18 charged with child endangerment. Your Honor, that leads me
19 to I think a fair inquiry as to did he snitch back in 2007
20 and is that why he received a deal or did the Solicitor
21 just arrest him on all of these serious charges and they
22 just dismissed them for no reason whatsoever. And I think
23 they ought to; there should be an answer to that, Your
24 Honor.

25 THE COURT: For purposes of attacking the

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1 credibility of the witness under Rule 609, evidence that a
2 witness has been convicted of a crime shall be subject to
3 Rule 403 if the crime is punishable by death or
4 imprisonment in excess of one year under the law which the
5 witness was convicted and evidence that the accused has
6 been convicted of such crime shall be admitted if the Court
7 determines that the probative value of admitting this
8 evidence outweighs the prejudicial effect. And evidence of
9 any witness who has been convicted of a crime shall be
10 admitted if it involves dishonesty, false statements
11 regardless of the punishment.

12 I would find that the simple possession of
13 marijuana does not meet the standards of Rule 609, that
14 those charges were not prosed are in excess of 5 years
15 previous to his charge in April '12 would not be admissible
16 under Rule 403 and it would misleading to the jury. So the
17 possession of marijuana on 2007 is not admissible under 609
18 after a 403 analysis.

19 Now are there others, Ms. Zmroczek?

20 MS. ZMROCZEK: Yes -- well my inquiry -- well,
21 actually it's two-fold, Your Honor, and I'll tell you why.
22 My inquiry isn't into why he dropped all of those serious
23 charges, dismissed. My inquiry is, is it because he also
24 provided information in 2007 or is it because they didn't
25 have evidence against him and with regards to the

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1 marijuana, Your Honor, it actually is -- it does come into
2 play in this account because when he was arrested for his
3 drug charges, the trafficking in 2012, that simple
4 possession of marijuana could have been used to enhance
5 that to a second.

6 THE COURT: What about that, Solicitor?

7 MR. MAYE: He got a meth charge and my
8 understanding, now marijuana can only be used for
9 marijuana; it can't enhance. As much as I'd like to go
10 back in the days when a guy gets caught for trafficking a
11 100 to 200; if he had two simple possessions that would
12 work. And, Your Honor, I do want to make sure as an
13 officer of the Court, I want to make sure that I clarify, I
14 actually have a sentence sheet for what he pleaded to in
15 2007. It was 2007-GS-19-497; he pleaded not to simple
16 possession, but possession of marijuana greater than 1
17 ounce which carries 6 months is my understanding.

18 THE COURT: Thank you.

19 MR. MAYE: So it would not be simple possession,
20 but I wanted to be sure I was not misleading the Court
21 because I knew that I had pulled that sentence sheet; and
22 Your Honor, it would not subject him -- if they want to
23 stipulate that that kind of thing enhances -- but I imagine
24 we'll get around if there's any sentencing in this case,
25 talking about marijuana, my understanding is marijuana can

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1 now only be used or at the time that his charges were
2 pending, marijuana can only be used for marijuana and not
3 for opiates as an enhancement.

4 So I would refute that argument and would maintain
5 that possession of marijuana greater than one ounce would
6 be subject to the same 609 inquiry the Court just applied
7 to the simple possession.

8 THE COURT: What about that, Ms. Zmroczek?

9 MS. ZMROCZEK: I'm reading, Your Honor, I'm reading
10 a little cheat sheet that we have.

11 THE COURT: All right.

12 MS. ZMROCZEK: To be quite honest, that's the only
13 way I can do it. And the way that I am reading it is --
14 the way that it stands right now, the way the law stands
15 right now under 44-53-75(b) which is what he pled to in
16 2000 and well in 2013 for what he was arrested for in 2012,
17 Your Honor, as it stands now, an enhancement for any drug
18 conviction including a prior marijuana, as long as it was
19 Council. Your Honor, it was and it --

20 THE COURT: Well I understand the Council issue,
21 that's why I wanted to see the sentence sheet.

22 MR. MAYE: He did. He was then represented by J.
23 Strom Thurmond and he pleaded up here in this Court. So it
24 was a Council plea, but I want to be sure what they're
25 arguing, because in this case Mr. Lilly, this may -- I'm

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1 not going to count any chickens before they hatch, but Mr.
2 Lilly has -- and I looked for -- Billy Parker, the former
3 Sheriff in 1973 convicted or was involved in the
4 prosecution of a case against Mr. Lilly for violation of
5 the South Carolina Drug Laws and it was for manufacturing
6 marijuana. I have the indictment from '73. He pleaded to
7 that. Then on 5/31 of 1991 he has a possession of
8 amphetamine charge which may be a subsequent offense. Then
9 in 2011 he had a manufacturing of methamphetamine. If they
10 want to take that position that the previous marijuana
11 conviction on this defendant which is a possession greater
12 than allowed to only carry six months can be used for
13 enhancement, it's going to be very difficult for them to
14 come back if he is convicted of a crime for which he is
15 charged in this case of distribution of methamphetamine and
16 state that it's a second drug offense and not a third drug
17 offense.

18 My -- the school that I went to, when they talked
19 about subsequent offenses, possessory offenses of marijuana
20 had a 5 years shelf life in contemplation of enhancement or
21 making a second offense. If you get a simple possession of
22 marijuana, it lasts for 5 years. And if you get another
23 one during that time period, then it becomes a second
24 offense. It's got a 5 year shelf life. If after 5 years
25 has past, you can't use that. For opiates and other

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1 Schedule II drugs it's a 10 year shelf life basically for
2 enhancement, but any subsequent offense stays on your
3 record and can be used forever is my understanding.

4 Now I contemplated that the marijuana, what I have
5 been told is, marijuana, can only be used for marijuana and
6 all the opiates and other drugs can be used for enhancement
7 purposes. He's got a '73 simple possession of marijuana,
8 if that then makes the 531 of 1991, possession of
9 amphetamine a subsequent offense in that case, we would
10 maintain with what they're arguing that this is going to be
11 a third offense distribution of methamphetamine if you're
12 following the same logic that they've proffering here.

13 That's why I want them to be sure that's what
14 they're stating in this case because if he's convicted, the
15 issue I would maintain in this case is going to be whether
16 or not this is a second offense distribution of
17 methamphetamine or a third offense distribution of
18 methamphetamine. And it is precisely the same issue that
19 we're discussing with this defendant.

20 MS. ZMROCZEK: And, Your Honor, under my
21 contention, it is not precisely the same. It's within 10
22 years and that -- that's plainly which is the statute.

23 THE COURT: That's under 609; that's not under the
24 sentencing.

25 MS. ZMROCZEK: And, Your Honor --

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1 THE COURT: 609 has a 10 year limit.

2 MS. ZMROCZEK: Under 44, under State v. Raynie
3 and --

4 THE COURT: State v. What?

5 MS. ZMROCZEK: Rainey.

6 THE COURT: All right.

7 MS. ZMROCZEK: 307 S.C. 150, 404 S.E. 2d 131, 1992.

8 And the legislative history of 44-53-470 which talks about
9 being the enhancement statute, Your Honor, it, again it's
10 unclear, but certainly -- we understand that simple
11 possession has a 5 year shelf life, but as they said, this
12 wasn't simple possession.

13 THE COURT: Well, you said originally your argument
14 was it was simple possession and then that's changed:

15 MS. ZMROCZEK: Well, he clarified that it wasn't
16 simple.

17 THE COURT: I understand that, but your argument
18 initially was that a simple possession and it be -- now
19 your argument is standings that only 6 months of the
20 possession of marijuana under what he was sentenced to
21 doesn't have the 5 year shelf life. I'll research it.

22 MS. ZMROCZEK: Your Honor, I -- my argument changes
23 because the 5 year shelf life would still have applied in
24 this case to that charge.

25 THE COURT: You know, quite frankly, I think it's a

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1 tempest in a teapot. You have a person being charged with
2 a distribution of methamphetamine. You've got a witness up
3 here with a conviction for 2012 with possession --
4 possession with intent to distribute, originally charged
5 with trafficking and in possession with intent to
6 distribute methamphetamine. No good thinking juror in my
7 humble opinion is ever going to be concerned about a 5 year
8 old marijuana conviction in 6 months --

9 MS. ZMROCZEK: And -- and -- and --

10 THE COURT: -- you also still have the issue of 609
11 and the Coit case that says if you have the same or similar
12 prior offenses that you have to -- have to change them; you
13 can't use all the armed robberies, you can't use all the
14 burglaries. Were you convicted in 2007 of a misdemeanor?
15 You know, that's a 403 in that. I personally think it's --
16 well I'll look it up.

17 MS. ZMROCZEK: Well and -- and let me be clear. I,
18 I really -- that issue is not as important as my real
19 inquiry which is why did he get all the other charges
20 dismissed; that's really my inquiry.

21 THE COURT: The other charges are not admissible of
22 why they got dismissed. That's too remote. It's 5 years
23 old. It's a waste of time for the jury and I think it's
24 being speculative unless there's some evidence that 5 years
25 ago there was some predictability that later on he would be

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1 involved in drug transactions and then thereafter become a
2 confidential informant. Under 403 -- under the 403
3 analysis, although relevant, I don't think it is relevant,
4 the evidence may be excluded if its probative value is
5 substantially outweighed by the danger of unfair prejudice;
6 that's my tempest in a teapot argument, confusing of the
7 issues or misleading the jury.

8 MS. ZMROCZEK: And I --

9 THE COURT: A resolution in 2007 case, whatever it
10 was, has nothing to do with a case that comes in 5 years
11 later against him and then 6 years later against Mr. --
12 your client.

13 MS. ZMROCZEK: Right. But maybe I'm not
14 articulating perfect. My simple question -- and if I could
15 just proffer, the question is this: Did he -- was he a
16 confidential informant in 2007; that's all I really wanted
17 to know.

18 THE COURT: Why is that relevant; why is it
19 relevant that he may have been a confidential informant?

20 MS. ZMROCZEK: Because then he understands how the
21 system works and how he needs -- how -- what he needed to
22 do again in 2012.

23 THE COURT: Were you a confidential informant in
24 2007, Mr. Payne?

25 THE WITNESS: Yes, I think so.

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1 THE COURT: All right. You can ask him. Do you
2 object to her asking --

3 MR. MAYE: Judge, I don't know whether he was or
4 not. I don't have any recollection of that. I know he was
5 represented by J. Strom Thurmond.

6 Do you have any recollection of wearing a wire and
7 making any buys or acting as an informant at that point in
8 time? The only -- I don't have any record. I don't have
9 any -- I prosecuted the case, I believe. I'll go back and
10 look at the sentence sheet. I just saw he pleaded to
11 possession of greater than an ounce.

12 THE COURT: Why would the fact that he was a
13 confidential informant 6 years before this be relevant?

14 MR. MAYE: And, Your Honor, I think the probative
15 value is outweighed by any prejudicial effect. They're
16 attempting to go in and impeach someone on the collateral
17 issue of the possession greater than an ounce charge and
18 say that he's somehow repeating some performance as a CI
19 and he had knowledge of it. I think that, that kind of
20 knowledge is based on common knowledge and we would again
21 maintain that the prejudicial effect is outweighed by any
22 probative value that it would have.

23 And I'm unaware if he worked as a confidential
24 informant. I don't have any information about him making
25 buys or wearing a wire or anything else in 2007. We

Michael P. Payne - Direct Examination by Mr. Maye

1 haven't looked. We would have to go back and pull his case
2 file to see that. I don't have any indication of that.

3 THE COURT: Why is the fact if he were a
4 confidential informant in 2007 relevant?

5 MS. ZMROCZEK: Because, Your Honor, the relevance
6 goes to his understanding of what he needs to do to protect
7 himself and get his charges dismissed to get a benefit.
8 And that he has history of doing so.

9 THE COURT: I'm not going to allow that. Under
10 403, I think it's misleading to the jury. Possession of
11 marijuana, 6 months offense is not admissible, nor is that
12 inquiry.

13 Now the other charges he had under 609 that are --
14 that you intend to go into Ms. Zmroczek?

15 MS. ZMROCZEK: I don't intend to go into any of his
16 charges, Your Honor. It was simply a question of -- and --
17 and maybe this will clarify it for the Court. Prior to --
18 maybe if I ask it this way, prior to 2012, had you ever
19 been a confidential informant and that's it. So -- so --
20 and then my follow up question would be, so you know how
21 the system works; you know what you need to do --

22 THE COURT: Do you object to either one of those
23 questions?

24 MR. MAYE: Yes, sir, by saying he's worked as a
25 confidential informant, it plants a seed with the jury that

Michael P. Payne - Direct Examination by Mr. Maye

1 he got in trouble before and worked as an informant. Again
2 I think that goes exactly back to doing the same thing. I
3 think it's even more speculative because then, well what
4 was that; what was he in trouble for then? Again, I think
5 that's completely prejudicial and not probative to the
6 events that are taking place in this case.

7 We stipulated and concede, but I've already told
8 the jury, he had a trafficking charge, he had the child
9 endangerment charge that we not prosed, and he pleaded down
10 to PWID for trafficking in this case. That's already
11 before the jury here in this case. She's just basically
12 wanting to get at it another way and plant a seed for the
13 jury that he's a bad guy. Impeaching his character on a
14 collateral basis that we would maintain is more prejudicial
15 than probative.

16 MS. ZMROCZEK: And, Your Honor, if I could just
17 briefly --

18 THE COURT: I've ruled, Ms. Zmroczek. Under Rule
19 403 I would also find additionally it's misleading to the
20 jury.

21 MS. ZMROCZEK: Okay.

22 THE COURT: Thank you very much. Now that we've
23 taken all our recess, be back please in 5 minutes.

24 Thank you. Thank you very much.

25 Sheriff, will you please take Mr. Payne into

Michael P. Payne - Direct Examination by Mr. Maye

1 custody during this recess.

2 All right. Mr. Payne, during this recess did you
3 discuss your testimony with anyone?

4 THE WITNESS: No, sir.

5 THE COURT: All right. Thank you. Thank you very
6 much.

7 Yes, ma'am?

8 MS. ZMROCZEK: Your Honor, I'm not going to argue,
9 just for the record, I just need the Court to make a ruling
10 that I'm not allowed to proffer the testimony that I was
11 seeking under the motive and bias for his providing
12 testimony at this time.

13 THE COURT: I have ruled that it is not admissible
14 under 403. I thought I had ruled on that. Was I not
15 specific?

16 All right. Thank you. Thank you very much.

17 All right. Bring us our jury, please.

18 (The jury entered the courtroom at 12:06 p.m.)

19 THE COURT: All right. Welcome back, ladies and
20 gentlemen. We'll continue the trial of the case by the
21 presentation of the testimony of Mr. Payne by the State in
22 its case in chief.

23 Solicitor, you may continue.

24 BY MR. MAYE:

25 Q Mr. Payne, when you went and made the buy on

Michael P. Payne - Direct Examination by Mr. Maye

1 January the 17th of 2013, at that time, you had a
2 trafficking charge and a child endangerment charge pending;
3 is that correct?

4 A Correct.

5 Q Okay. Did Investigator Young or Miller make any
6 concrete promises of what they were going to do with your
7 charges that were pending at that time?

8 A No, sir.

9 Q Okay. Now, you eventually pleaded in this Court to
10 possession with intent to distribute down from trafficking,
11 correct?

12 A Correct.

13 Q Okay. And your child endangerment charge was
14 dismissed or not proseed, correct?

15 A Correct.

16 Q Okay. The Judge decided your sentence, correct?

17 A Yes, sir.

18 Q And he gave you how much time?

19 A 18 months.

20 Q He gave you 18 months. Now, you continued to use
21 methamphetamine up until the time you went to prison,
22 didn't you?

23 A Yes, sir.

24 Q Okay. Did you know what you were doing the day
25 that you made this buy; were you using meth on that day?

Michael P. Payne - Direct Examination by Mr. Maye

1 A No, sir; yes, I knew what I was doing.

2 Q You knew what you were doing. Did you do meth on
3 that day?

4 A No, sir.

5 Q Okay. Did you continue to use sporadically up
6 until the time that you went to jail?

7 A Yes, sir.

8 Q Okay. Are you clean and off of meth now that
9 you've done your time in jail and gotten out?

10 A Yes, sir.

11 Q Have you used it since that time?

12 A No, sir.

13 Q Okay. Are you working now as a heavy equipment
14 operator?

15 A Yes, sir, about 60 or 70 hours a week.

16 Q Okay.

17 A We just cut back to 40.

18 Q Let me ask you this: On the 17th of January of
19 2013 when you returned the substance to Investigator Young,
20 who distributed that to you here in Edgefield County?

21 A Leon Lilly.

22 Q Okay. Did you or your wife bring anything with you
23 to the buy in the way of controlled substances?

24 A No, sir, we were searched before we left.

25 Q Okay. Was your vehicle searched?

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 A Yes, sir.

2 Q Okay. Who provided the substance that you turned
3 over to Investigator Young and that the video depicts the
4 hand-to-hand straw to you, who distributed that to you?

5 A Leon Lilly.

6 Q Okay. Answer any questions the defense has for
7 you. Thank you.

8 THE COURT: Thank you, Solicitor.

9 Ms. Zmroczek.

10 MS. ZMROCZEK: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. ZMROCZEK:

13 Q I want to make sure I heard you correctly. Was it
14 your testimony on direct that you were not using
15 methamphetamine when you made the controlled buy on January
16 17th, 2013?

17 A No, I was not under the influence.

18 Q Do you recall yesterday sitting in that very same
19 seat giving testimony?

20 A Yes.

21 Q Do you recall yesterday saying that you were -- at
22 the time you were strung out on drugs?

23 A Yes.

24 Q Yes, you recall saying that yesterday?

25 A Yes, ma'am.

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 Q But today you're saying you weren't?

2 A Just because I was strung out on drugs don't mean I
3 was using the 17th of January.

4 MS. ZMROCZEK: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes, ma'am.

7 BY MS. ZMROCZEK:

8 Q I'm going to show you a transcript from yesterday's
9 testimony.

10 THE COURT: If it's the same as what he's already
11 testified to; you can't go into that.

12 MS. ZMROCZEK: It's not the same, Your Honor.

13 THE COURT: All right.

14 BY MS. ZMROCZEK:

15 Q I would ask you to read lines 15 through 19 please.

16 MR. MAYE: Your Honor, I don't see where -- again,
17 I object that that's asked and answered in this case.
18 Asked and answered, Your Honor. I'll hand that up. It's
19 exactly the same question; just asking him to read from the
20 transcript.

21 THE COURT: Yes, ma'am. He admitted. He can't
22 be --

23 MS. ZMROCZEK: I'm sorry?

24 THE COURT: He's admitted what he testified to
25 yesterday and you just asked that question.

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 MS. ZMROCZEK: Okay.

2 THE COURT: So I would sustain the objection.

3 BY MS. ZMROCZEK:

4 Q In 2012 on April 2nd, you testified that you had a
5 knock at the door and that you were charged with
6 trafficking and child endangerment, correct?

7 A Correct.

8 Q What were the penalties you were facing with those
9 charges?

10 A Trafficking methamphetamines.

11 THE COURT: Speak up for me a little bit, Mr.
12 Payne.

13 THE WITNESS: Trafficking methamphetamines.
14 Trafficking meth.

15 BY MS. ZMROCZEK:

16 Q Right. What was the penalty you were facing in
17 that charge?

18 A 10 to 15 years.

19 Q Okay. And for the child endangerment?

20 A I'm not quite sure.

21 Q Okay. A substantial amount of time?

22 A Yes, ma'am.

23 Q And were you the only person arrested that day?

24 A No.

25 Q Who else was arrested that day?

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 A So was my wife.

2 Q Your wife, Amanda?

3 A Yes, ma'am.

4 Q Okay. And I just want to make sure I have this
5 clear, on April 2nd when you turned over the 24 or
6 whatever, an ounce of methamphetamines to was it these two
7 investigators, Investigator Young and Investigator Miller?

8 A Yes, ma'am.

9 Q When you turned that over, did you agree to enter
10 into an agreement to be a confidential informant?

11 A That day, no.

12 Q Okay. When did that occur?

13 A Months later. It was during one of the court
14 sessions.

15 Q I'm sorry?

16 A It was during one of the court sessions.

17 Q How many days did you spend in jail for this
18 charge?

19 A One day.

20 Q That charge?

21 A One day.

22 Q One day. And the reason that you agreed to be a
23 confidential informant was because you expected to receive
24 some sort of benefit, correct?

25 A Correct.

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 Q And that benefit -- in fact, you did receive a
2 benefit because you pled to possession with intent to
3 distribute?

4 A Yes, ma'am.

5 Q And what does that charge, what did that charge
6 carry?

7 A I'm not sure what it carried.

8 Q A substantial amount of time, less than
9 trafficking, but still a substantial amount of time?

10 A Correct.

11 Q Okay. And it's your understanding that you were
12 going to have to snitch on other people to get yourself out
13 of trouble?

14 A Correct.

15 Q And that you would have to come and testify so that
16 they could get convicted so that you could receive this
17 benefit?

18 A Yes.

19 Q Okay. And I think you testified that you have
20 known Leon Lilly for about 10 years?

21 A Yes, ma'am.

22 Q And you and Mr. Lilly have more than just a work
23 relationship, right?

24 A Well yeah, after 10 years.

25 Q But he treated you like part of the family; isn't

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 that right?

2 A Yeah, but -- after we'd known each other for a
3 while, yes.

4 Q In fact, when your daughter was 3 days old, y'all
5 went to go stay with Leon and his wife; isn't that right?

6 A No.

7 Q And your kids oftentimes stayed with Trisha?

8 A Yes.

9 Q You know his son?

10 A Yes.

11 Q You know about his health problems?

12 A Yes.

13 Q You know that he fell off a roof and was impaled
14 and it went straight through his lungs?

15 A Correct.

16 Q And you know that he uses meth?

17 A Correct.

18 Q And he uses meth because just like you, just like
19 y'all talked about on the video, he lays in bed and he
20 can't get out of bed because of his health problems, right?

21 A Correct.

22 Q And he can't play with his grand kids or your kids,
23 right?

24 A Correct.

25 Q And in fact in 2011, he was arrested for making

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 meth, wasn't he?

2 A Correct.

3 Q And you taught him how to make meth, didn't you?

4 A Wrong. No.

5 Q Can you -- tell the jury how do you make meth?

6 A You -- you get the Sudafed and --

7 THE COURT: Speak up for me please.

8 THE WITNESS: You get the Sudafed, a Gatorade
9 bottle, Drano, and Coleman lantern fluid.

10 THE COURT: Drano and what?

11 THE WITNESS: Coleman lantern fluid. And you mix
12 them up and shake it until it's done and strain it off.

13 BY MS. ZMROCZEK:

14 Q And when you were wearing -- and you use coffee
15 filters, right?

16 A Correct.

17 Q And lithium batteries?

18 A Correct.

19 Q And you wore a camera along with your audio on
20 January 17th, 2013, correct?

21 A Correct.

22 Q And we can go back and watch that video again, but
23 you want see any of those items on there will you?

24 A No.

25 Q Okay. On January 17th, 2013, you and Amanda went

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 over to Leon's house to trick him, right?

2 A No.

3 Q Why did you go over there?

4 A I went over there to make a buy.

5 Q Did you call him ahead of time?

6 A No, ma'am.

7 Q Did you have a plan set up with the Edgefield
8 County Sheriff's Department?

9 A No.

10 Q Did y'all meet and discuss how much you were going
11 to buy?

12 A That day whenever they met up with me at my home,
13 yes.

14 Q And what was the plan?

15 A That I was going to go make a purchase from Leon
16 Lilly.

17 Q For how much?

18 A 40.

19 Q 40? Not 30?

20 A No, I think it was 40.

21 Q Okay. And -- and you testified that you had \$40
22 and you gave it to Leon?

23 A No. He wouldn't take it.

24 Q What section of the video that we just watched did
25 he say that, I don't want the money?

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 A I'm not quite sure, ma'am.

2 Q But if he said it, it would be on -- it would be on
3 the video?

4 A Yes, it should be.

5 Q Because that video can't change; that video is
6 exactly what happened that day?

7 A Yes, ma'am.

8 Q Okay. Leon trust you?

9 A Yes.

10 Q You trusted him?

11 A Yeah.

12 Q He'd do anything for you?

13 A Just about.

14 Q In fact, he'd do anything for a lot of people. I
15 think -- on the video you mentioned that he gave a
16 refrigerator to Ms. Ruth and you were mad because you had
17 given that to him, right?

18 A Correct.

19 Q And you were mad because Leon actually had written
20 a will out and was going to leave you the backhoe and then
21 he had to get rid of that; isn't that right?

22 A Yes.

23 Q That kind of made you angry?

24 A You don't know the whole story to it.

25 Q Okay. Were you frustrated? You weren't happy

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 about it?

2 A What, him getting rid of the backhoe? Well he
3 asked me for it before he got rid of it, if he could do it.

4 Q You would agree with me on the video that you and
5 Amanda are discussing what needs to be done on the way over
6 there, correct?

7 A No.

8 Q You'd agree that you and Amanda are both on the
9 video, on the audio?

10 A Yes.

11 Q And sometimes she's on the video?

12 A Yes.

13 Q Okay. And that that was recording everything that
14 was said and sometimes you couldn't hear it real well, but
15 most of the time it was recording everything that was said?

16 A Yes.

17 Q And it's broken down into -- I think there are 8
18 different clips?

19 A Yes, ma'am.

20 Q Almost simultaneous, there may be some missing?

21 A Yes, ma'am.

22 Q Just a little bit?

23 A Yeah.

24 Q But -- but on clip 3, and I'll -- I can show it to
25 you again if you like, but is she saying I know what we can

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 tell her as far as they know we both told her I had gone,
2 or we both told them we had gone. Those weren't
3 discussions about why you were headed over there; those
4 weren't discussions about knowing that you were going over
5 there to trick them and trap them, but that didn't have
6 anything to do with that that day?

7 A No.

8 Q What were those discussions about?

9 A I think it was about her father and mother..

10 Q I'm sorry?

11 A Her father.

12 Q Her father?

13 A Yeah.

14 Q If they -- I think on the video you were talking to
15 Leon when you first got there about how nervous you were or
16 being irritated, you'd never -- this was the first time you
17 were going to meet her father, right?

18 A No, I mean I've had sat down with him before.

19 Q In his living room?

20 A Yes, ma'am.

21 Q But y'all hadn't gone in?

22 A No.

23 Q And, and those are -- those are subjects that you
24 feel comfortable enough confiding in Leon and Leon with
25 you, right?

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 A Right.

2 Q Because y'all had a very trusting relationship?

3 A Correct.

4 Q Even though you knew you were over there wired up
5 to get him in trouble?

6 A Yes.

7 Q To save yourself?

8 A Well, yes, I mean I didn't know exactly what they
9 was going to do for me or what was going to happen.

10 Q You were hoping?

11 A Yes.

12 Q And you did receive a benefit?

13 A Yes.

14 Q So it worked out?

15 A Yes, ma'am.

16 Q But not for Leon?

17 A I -- no.

18 Q And you said -- so you were the one who initiated
19 the conversation saying, You have any shit?

20 A Yes.

21 Q Because you knew that Leon was a user?

22 A Yes.

23 Q But -- but that he wasn't a dealer?

24 A At the time, I didn't know.

25 Q Okay. And he was gone for 15 minutes, right?

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 A Correct.

2 Q Because he -- he told you when you asked do you
3 have any shit and he said no, I don't have any; I'm out;
4 isn't that right?

5 A No. He said that he had to go in the house and get
6 it and he was going in the bathroom and do it.

7 Q Who is David Payne?

8 A My father.

9 Q Where was your father living on January 17th, 2013?

10 A I don't remember.

11 Q Isn't it true that he was living at Leon Lilly's
12 house?

13 THE COURT: Living where?

14 BY MS. ZMROCZEK:

15 Q Leon Lilly's house.

16 A I'm not quite sure if it was before -- if it was
17 during that time or if it was after.

18 Q Isn't it true that when he came out after 15
19 minutes and he's talking that old bastard giving him the
20 meth, he's talking about David Payne, your dad?

21 A No, my father was not there.

22 Q Is it your testimony he was talking about himself,
23 talking about himself in the third person, calling himself
24 an whole bastard?

25 A I don't remember him saying that. He might have

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 been talking about Trish.

2 Q Okay. Could he have talked about Amanda?

3 A No.

4 Q But he said that he didn't think Amanda liked him,
5 right?

6 A No.

7 Q He didn't say that?

8 A No.

9 Q But he didn't go get meth from your dad and y'all
10 go into the shed --

11 THE COURT: Ma'am, that's not a proper question.
12 There's no evidence in the record whatsoever upon which to
13 base that question.

14 MS. ZMROCZEK: Okay. I'll rephrase, Your Honor.

15 THE COURT: Strike that from the record.

16 BY MS. ZMROCZEK:

17 Q So he gets some meth from inside the house?

18 A Correct.

19 Q And gives you a little bit?

20 A Yes.

21 Q And then he uses right there in front of you,
22 doesn't he?

23 A No.

24 Q In between the time that he was in the house for
25 that 15 minutes, Amanda comes outside?

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 A Correct.

2 Q And talks to you, right?

3 A Correct.

4 Q And you tell her that he's going to get it?

5 A Yes, and she said that he's in the bathroom now.

6 Q So she wasn't just a passenger that day, she was
7 part of helping make sure that Leon got set up?

8 A No.

9 Q But she knew about it?

10 A Yes.

11 Q And when y'all were riding back, you even told her
12 that he didn't even ask about the weight, right?

13 A No.

14 Q You would agree with me that the video and audio
15 reflects exactly what was said and heard that day, correct?

16 A Yes.

17 Q Okay. Isn't it true and isn't it fact you're,
18 you're the dealer; you're the distributor?

19 A No.

20 Q Is it your testimony that that 24 -- or that ounce
21 methamphetamine that they found in your house that day was
22 not to distribute?

23 A Ma'am, I -- I used more than I distributed. I
24 distributed it too because of my addiction.

25 Q So you did distribute?

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 A Yes.

2 Q Okay. Amanda worked as a confidential informant?

3 A Yes.

4 Q Did she receive a benefit for working as a
5 confidential informant?

6 A Yes.

7 Q What was her benefit?

8 A All her charges were dismissed.

9 Q All of her charges were dismissed; the same charges
10 that you had trafficking and child endangerment?

11 A Correct, but I had took all responsibility of it
12 because she didn't -- she didn't want me doing it. Matter
13 of fact, the day before she had cried to me and asked me
14 not to do it because she -- she knew that eventually I'd
15 get in trouble. So -- and at the time she was at work.
16 She worked at Kit n Kaboodle.

17 Q It was just you at home with the children and the
18 meth?

19 A Correct. Matter of fact, during the knock and talk
20 she wasn't even here; she was at work.

21 Q You continued to go over to Leon's and Trisha's
22 house after January 17th, 2013, right?

23 A Correct.

24 Q And you continued to let them watch your children?

25 A No, I continued to go over to Leon's because my

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 tractor was sitting in his yard.

2 Q It's your testimony that after January 17th your
3 children never were over there?

4 A Not -- not in my memory, no.

5 Q Well, let's talk about your memory for just a
6 second. I'm sure you're clean now. How long did you use
7 methamphetamine?

8 A About 2 and 1/2 years -- 2 years. It got bad in
9 about the last 8 or 9 months.

10 Q What are the effects of that?

11 A It speeds you up.

12 Q It affect your memory?

13 A Maybe a little bit.

14 Q Okay. So it's possible that all the
15 methamphetamine you were using may have messed -- may have
16 messed with your memory?

17 A No.

18 Q Not at all?

19 A None.

20 Q When did you stop using meth?

21 A About two days prior before I went to prison.

22 Q Two days before you went to prison. Okay. And you
23 signed a confidential informant agreement with the
24 Edgefield County Sheriff's Department, right?

25 A Correct.

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 Q And that agreement required certain things of you,
2 right?

3 A Correct.

4 Q One of those things was to not use drugs, right?

5 A Right.

6 Q But you disregarded that?

7 A Correct.

8 Q And even though you disregarded the rules of the
9 confidential agreement, you still got the benefit?

10 A Correct, they wasn't under the knowledge that I had
11 been using.

12 Q I'm sorry?

13 A They wasn't -- they didn't know that I had been
14 using.

15 Q They didn't know that you had been using?

16 A No.

17 Q Okay. You said they patted you down before and
18 after?

19 A Correct.

20 Q And took the -- took the substance from you and
21 then did y'all talk about anything?

22 A No.

23 Q Did you have to pick him out of a lineup? Did you
24 have to identify Mr. Leon?

25 A Yes.

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 Q Did you do it that day?

2 A No.

3 Q When did you do that?

4 A It was a couple of days after?

5 Q Why did you wait? Why did you wait a couple of
6 days to -- to pick Mr. Lilly out of the lineup?

7 A Well, at first I was kind of avoiding them, because
8 something that you really don't want to -- you know, you
9 don't want to, you know, wear a wire against one of your
10 friends, you know, and also I was waiting on -- it was a
11 couple of days after.

12 Q They were having trouble getting in touch with you?

13 A Right.

14 Q Because you were using meth?

15 A That's possible.

16 Q And do you recall when you testified yesterday that
17 that's what you testified to under oath?

18 A Right.

19 Q You said you don't like or you didn't like
20 testifying on your friends or turning your friends in?

21 A Correct.

22 Q And in fact, I think in the beginning of the audio
23 when they're wiring you up, you even commented on that the
24 only person that he can be pissed off with is me?

25 A Correct.

Michael P. Payne - Cross-Examination by Ms. Zmroczek

1 Q But the most important thing to you is saving
2 yourself?

3 A Correct.

4 Q Even knowing that Mr. Lilly trusted you, treated
5 you like family and would do anything for you?

6 A Correct.

7 MS. ZMROCZEK: I have no further questions, Your
8 Honor.

9 THE COURT: Redirect, Solicitor.

10 MR. MAYE: Your Honor, I've got a matter of law we
11 better take up prior to me starting the redirect.
12 Something I believe the door was open and I'd like to have
13 a brief -- just out of an abundance of caution, I'd like to
14 do that before I start my redirect.

15 THE COURT: All right. Thank you, Solicitor.

16 Mr. Foreman, ladies and gentlemen, please step to
17 your jury room momentarily. Do not discuss the case during
18 this brief recess.

19 (The jury left the courtroom at 12:38 p.m.)

20 THE COURT: Yes, sir.

21 MR. MAYE: Judge, the defense has brought up and
22 opened the door in this case on his 2011 charges. They
23 have stated that his case in 2011, they said that he was
24 arrested for making methamphetamine and then went to great
25 lengths to ask him questions about him just being a user

1 and not a dealer and that he was not a person that
2 manufactured or made meth and asked a whole series of
3 questions involving, you didn't see anything indicating
4 that he was making meth.

5 I intend to ask these questions -- if he's got
6 knowledge that he was not just charged or arrested for
7 making meth, but he was convicted for manufacturing
8 methamphetamine and this defendant has personal knowledge
9 of the manufacturing methamphetamine from information he's
10 provided to law enforcement and he has gotten
11 methamphetamine from this defendant on a regular basis; has
12 information about the quality of his product whether or not
13 he liked it or not.

14 And I intend to go into all of those questions on
15 this case because we would maintain in this case they've
16 opened the door. Certainly I had told this defendant or
17 this witness, don't talk about any prior conviction in
18 2011, but we take the position that the door is now wide
19 open. They have basically put his character at issue and
20 talked about how he was a person that would do anything for
21 you, put his good character at issue, all the good things
22 that he has done. We maintain that they've opened the door
23 for anything involving character as well. But I figure
24 this is going to garner an objection and so I wanted to
25 take it up outside the presence of the jury because I don't

1 like trying cases twice.

2 THE COURT: Ms. Zmroczek?

3 MS. ZMROCZEK: Thank you, Your Honor. I certainly
4 opened the door to the manufacturing. The questions I -- I
5 definitely disagree that I've opened the door to any
6 character evidence. The -- the questions were specifically
7 directed towards what he did for the witness and how that
8 trust was built.

9 THE COURT: Well, that clearly is his character.
10 You asked did they -- they had a relationship for 10 years;
11 they've worked together and Mr. Lilly treated him as part
12 of the family, that his daughter, the witness's daughter
13 stayed with the Lilly's; they moved in when she was 3 days
14 old; that Mr. Payne knows Mr. Lilly's son; Mr. Payne knows
15 about Mr. Lilly's health problems, falling off the roof and
16 impaling into his lungs; that Mr. Lilly uses meth because
17 he lays in bed and can't get out of bed without help. In
18 2011 he was arrested for meth.

19 You then asked if he, Mr. Payne, knew how to make
20 meth; and you also -- he also said that -- you asked did
21 you teach Mr. Lilly how to make meth and he said no. And
22 you asked did he know how to make meth and he said yes.

23 MS. ZMROCZEK: I guess my only question, Your
24 Honor, was he kept saying Mr. Finney --

25 THE COURT: Please -- please let me finish.

1 You asked if Mr. Lilly was just a user, not a
2 dealer. I believe his response was, at the time. You also
3 asked, you're the dealer, you use; he said he used more
4 than he distributed to feed his addiction. Further you
5 asked whether or not he had gone back over there with his
6 children after this buy and he said, of course not that I
7 remember.

8 I think the door is clearly open. I think it's
9 misleading to the jury just to say he was just a user of
10 meth and he was charged with manufacturing meth and if he
11 knows it and he knows he manufactured meth.

12 MS. ZMROCZEK: Can I just get a clarification on
13 who Mr. Findley is?

14 THE COURT: Ma'am?

15 MS. ZMROCZEK: I just need a clarification on who
16 Mr. Findley is? Mr. Payne said that he -- he -- he -- the
17 witness, has personal knowledge that Mr. Lilly received
18 product from Mr. Findley and what type of product that was,
19 but I don't know who Mr. Findley is.

20 THE COURT: I don't either.

21 MR. MAYE: I didn't say Mr. Findley. I don't know
22 what --

23 MS. ZMROCZEK: Oh --

24 MR. MAYE: -- that's a mishearing of what I said.

25 MS. ZMROCZEK: Oh, didn't you --

Michael P. Payne - Redirect Examination by Mr. Maye

1 MR. MAYE: He was manufacturing methamphetamine,
2 purchased the product on a regular basis. Said this last
3 product, it's basically substandard, I guess, tractor shed
4 meth, and the meth that he used is a much better quality
5 because he'd used his meth in the past; he used his
6 methamphetamine in the past, it was poor quality, he didn't
7 like it. I'm going to ask him all of those things, about
8 manufacturing. I don't know anything about who Mr. Findley
9 is. She misheard what I said.

10 MS. ZMROCZEK: Okay. As long as he's talking about
11 this. I understand that was trial strategy.

12 THE COURT: All right. Bring us our jury please.

13 All right. Thank you, Ms. Zmroczek.

14 (The jury entered the courtroom at 12:46 p.m.)

15 THE COURT: All right. Solicitor, you may
16 continue.

17 **REDIRECT EXAMINATION**

18 BY MR. MAYE:

19 Q Mr. Payne, in 2011 Mr. Lilly wasn't just arrested
20 for manufacturing methamphetamine, he was convicted for
21 manufacturing methamphetamine here in Edgefield County,
22 wasn't he?

23 A Yes.

24 Q And he is a meth manufacturer; he does make meth,
25 doesn't he?

Michael P. Payne - Redirect Examination by Mr. Maye

1 A Yes.

2 Q You have gotten meth from him, he has distributed
3 meth that he has manufactured to you in the past, hasn't
4 he?

5 A Yes.

6 Q About how many times -- the meth that he makes has
7 he transferred or distributed that to you in the past?

8 A A lot.

9 Q A lot. Tell us about the quality of the
10 methamphetamine that he manufactured and your impression of
11 the manufacturing quality of the methamphetamine that he
12 makes based on what you typically used. Discuss that with
13 the jury and tell them about the quality of his product
14 that he's distributing?

15 A His quality was poor. It was a poor quality.

16 Q Is that why you did not utilize his product on a
17 regular basis; you didn't like the quality of it?

18 A Correct.

19 Q Okay. But he was manufacturing that himself wasn't
20 he?

21 A Correct.

22 Q And you knew that from your own personal knowledge;
23 isn't that correct?

24 A Correct.

25 Q And had gotten meth from him on multiple occasions?

Michael P. Payne - Redirect Examination by Mr. Maye

1 A Correct.

2 Q He is a meth manufacturer and a meth distributor
3 here in Edgefield County, isn't he?

4 A Correct.

5 Q And has been convicted for manufacturing meth here,
6 hasn't he?

7 A Correct.

8 Q Did you do anything to force Mr. Lilly the day that
9 you went wearing the wire, did you do anything to force him
10 to distribute that methamphetamine to you?

11 A No, sir.

12 Q Okay. Did anybody do anything in your presence to
13 force him to turn over and distribute that methamphetamine
14 to you on that day?

15 A No, sir.

16 Q And he's done so and distributed meth to you
17 countless times in the past, isn't that correct?

18 A Correct.

19 Q He also distributed to other people hasn't he?

20 A Yes.

21 Q Mr. Lilly in this case even after he got convicted
22 of manufacturing methamphetamine, he continued to use
23 methamphetamine himself, didn't he?

24 A Yes.

25 Q What steps did he take to conceal that from

Michael P. Payne - Redirect Examination by Mr. Maye

1 supervisory authorities here in Edgefield County; what
2 discussions did you have with him regarding his continued
3 use of methamphetamine and how he was able to conceal that?

4 A We really didn't have any, he just kept it low key.

5 Q He kept it low key?

6 A Yeah.

7 Q How was he able to -- did he have discussions with
8 you on how he was able to defeat testing that he had as a
9 result of his conviction?

10 A Just it's not hard to lay down for 3 or 4 days to
11 get -- it only takes about 70 -- 2 to 5 days to get out of
12 your system.

13 Q He would lay off for that amount of time prior to
14 going and being tested?

15 A Correct.

16 Q And he boasted to you that he continued to use
17 during that whole time period, correct?

18 A Correct.

19 Q You were asked on cross-examination in this case if
20 everything worked out well for you; is that correct?

21 A Correct.

22 Q Now, you confess Investigator Young had no ability
23 to convict you absent your confession, correct?

24 A Correct.

25 Q You voluntarily gave him the methamphetamine that

Michael P. Payne - Recross-Examination by Ms. Zmroczek

1 you had, almost an ounce, correct?

2 A Correct.

3 Q And you went to prison for it, correct?

4 A Correct.

5 Q How well did that work out for you?

6 A Worked pretty good; I'm clean now.

7 Q You're clean now. That's the part that worked out
8 well for you?

9 A Yeah.

10 Q Out of going to prison, was going to prison good;
11 was that a good experience beyond the fact that it cleaned
12 you off of doing meth; was that enjoyable?

13 A No.

14 Q But being off of meth is enjoyable?

15 A Yeah, I got a steady job..

16 Q Thank you.

17 THE COURT: Recross, Ms. Zmroczek?

18 MS. ZMROCZEK: Yes, Your Honor.

19 **RECROSS-EXAMINATION**

20 BY MS. ZMROCZEK:

21 Q You went to prison for 18 months, but you didn't go
22 to prison for 7 years which was what trafficking carries,
23 right?

24 A Correct.

25 Q That's a substantial benefit?

Michael P. Payne - Recross-Examination by Ms. Zmroczek

1 A Correct.

2 Q And that's violent time, you have to serve 85
3 percent of that for trafficking?

4 A Yes.

5 Q But for your 18 months you didn't have to serve but
6 65 percent, right, because that's non-violent?

7 A Correct.

8 Q And that's a substantial benefit?

9 A I did 10 of the 18.

10 Q So you only served 10 months?

11 A Correct; that's still a while.

12 Q You were asked on redirect about Mr. Lilly using
13 after he was arrested because he stopped manufacturing
14 after he was arrested, right; he just used, that's what you
15 testified to, right?

16 A Yes.

17 Q And you're familiar with Mr. Lilly and -- and his
18 criminal charges related to meth?

19 A Correct.

20 Q And you're familiar that he has never, ever been
21 arrested for distributing meth until you set him up, right?

22 A Correct.

23 Q Now, the cops -- you testified that he had been
24 distributing to a lot of people?

25 A Correct.

Michael P. Payne - Recross-Examination by Ms. Zmroczek

1 Q Before 2011?

2 A Before 2011?

3 Q Before he got arrested when he stopped making it?

4 A Yes.

5 Q Are the cops just really bad at their job? They
6 couldn't -- they couldn't catch him one time?

7 THE COURT: He wouldn't know what the cops were
8 doing. He wouldn't have any personal knowledge of that one
9 way or the other. You might want to withdraw that
10 question.

11 MS. ZMROCZEK: Okay. I'll rephrase the question,
12 Your Honor.

13 THE COURT: I shouldn't say cops, the officers.

14 MS. ZMROCZEK: Officers, sorry.

15 BY MS. ZMROCZEK:

16 Q Investigators. The investigators that showed up at
17 your house April 2nd, and you testified that you just
18 opened the door and handed them meth; they didn't have to
19 knock on the door or anything, they didn't beat the door or
20 scream?

21 A Yeah, they knocked on the door.

22 Q And did they scream and yell at you?

23 A No, they didn't scream and yell; they just kept
24 knocking.

25 Q Okay.

Michael P. Payne - Recross-Examination by Ms. Zmroczek

1 A I was asleep at the time.

2 Q They were at your house April 2nd to investigate
3 you?

4 A Correct.

5 Q For distributing methamphetamine?

6 A Correct.

7 Q Not Mr. Lilly?

8 A No.

9 MS. ZMROCZEK: That's all I have, Your Honor.

10 THE COURT: Thank you. Thank you very much.

11 Thank you, Mr. Payne, you may step down.

12 All right. Perhaps now would be a good time to
13 take our luncheon recess.

14 Mr. Foreman, ladies and gentlemen of the jury,
15 please remember my instructions to you. Do not discuss
16 this case with anyone including your fellow jurors, lunch
17 mates, family, friends, or anyone else. Do not read,
18 watch, or listen to any news reports about the case, should
19 there be any. Do not use your cellular phone, computer, or
20 any other electronic device with communication capabilities
21 to research or attempt to find any information that is
22 prohibited.

23 Information that is prohibited includes, but is not
24 limited to information about the parties, the attorneys, an
25 officer of the court or witnesses, news accounts in the

Michael P. Payne - Recross-Examination by Ms. Zmroczek

1 case, past or present, information collected through juror
2 research on any topic that has been raised in this court or
3 information that any juror, him or herself might think
4 would be helpful in deciding the case. Remember you decide
5 the case based on the evidence and the testimony of the
6 witnesses testifying under oath before you in court and the
7 law as I tell you the law is. Keep an open mind. Do not
8 begin your deliberations until you've been instructed to do
9 so by the Court.

10 If you'd please be back at say two o'clock. Please
11 be back promptly at two o'clock. Thank you very much. I
12 hope y'all have a pleasant lunch.

13 (The jury left the courtroom at 12:55 p.m.)

14 THE COURT: All right. Court will be in recess
15 until two. Thank you. Thank you very much.

16 (A lunch recess was observed.)

17 THE COURT: All right. Anything from the State
18 before we bring in our jury?

19 MR. MAYE: Nothing from the State, Your Honor.
20 Thank you.

21 THE COURT: And I apologize for that delay. I did
22 not know they were bringing an inmate today, and I didn't
23 think it would be prudent to have those officers sit all
24 day long when they got here this morning -- and the
25 defendant.

Roosevelt Young - Direct Examination by Mr. Maye

1 All right. Bring us our jury please, Mr. Bailiff.

2 (The jury entered the courtroom at two o'clock
3 p.m.)

4 THE COURT: All right. Welcome back, ladies and
5 gentlemen of the jury panel. I hope you had a pleasant
6 lunch. We're continuing with the trial of the case by the
7 presentation of evidence and testimony by the State in its
8 case in chief. If you would, please continue to give the
9 parties your complete and undivided attention.

10 Solicitor, you may call your next witness.

11 MR. MAYE: The State calls Investigator Roosevelt
12 Young to the stand.

13 THE COURT: All right.

14 THE CLERK: Raise your right hand.

15 ROOSEVELT YOUNG,
16 having been duly sworn, testified as follows:

17 THE CLERK: Have a seat. State your full name and
18 spell your last name.

19 THE WITNESS: Roosevelt Young, Y-O-U-N-G.

20 **DIRECT EXAMINATION**

21 **BY MR. MAYE:**

22 Q Investigator Young, tell the ladies and gentlemen
23 of the jury a little bit about your background in law
24 enforcement: How long you've been employed with law
25 enforcement and in what capacity.

Roosevelt Young - Direct Examination by Mr. Maye

1 A I've been at the Edgefield Sheriff's Office
2 approximately 19 years and I work in narcotics.

3 Q Let's go back in April of 2012, did you have an
4 occasion to go and do a knock-and-talk at Michael Payne --
5 who was a confidential informant in the case against Mr.
6 Lilly; did you do that?

7 A Yes, sir, I did.

8 Q Explain to the ladies and gentlemen of the jury --
9 it's kind of obvious, but what's a knock-and-talk? And how
10 does that differ from other encounters that you have with
11 informants? What are the ways with suspects?

12 A Basically Mr. Payne's incident, we got a call from
13 DSS, an anonymous complaint came in through them that Mr.
14 Payne was abusing illegal drugs, specifically
15 methamphetamine, at his residence and there was small
16 children present at the home. I explained to Ms. McDowell
17 that we couldn't go at the time that she called because we
18 had, sort of had our plate full with other stuff to do.

19 We went down on April the 2nd, knocked on the door,
20 basically identified ourselves as police officers,
21 explained to Mr. Payne why we was there, the nature of the
22 allegations so to speak and gave him his Miranda warning
23 and his rights, and he basically said, yeah, he had some
24 meth in the house and he gave it to us.

25 Q Did you have any legal basis to enter his residence

Roosevelt Young - Direct Examination by Mr. Maye

1 to search it or anything else based on -- prior to getting
2 it did you have any legal basis to force him to comply with
3 the things you were doing?

4 A No, sir.

5 Q He did so voluntarily, complied, and gave you the
6 drugs?

7 A Yes, sir, he also gave us a consent to search. He
8 filled out a consent to search form that gave us permission
9 to search everything in his house.

10 Q And you did not have to?

11 A No, sir.

12 Q You advised him of his rights and you still did it?

13 A Yes, sir.

14 Q Okay. Once you got what you suspected out -- I
15 mean, you subsequently had it tested. Once you got the
16 stuff that later turned out to be meth, did you have it
17 tested at the drug lab and handle it just like any other
18 case?

19 A Yes, sir, I did.

20 Q Okay. What did you charge him with at that time?

21 A Trafficking in methamphetamines and child
22 endangerment.

23 Q Did you charge his wife as well?

24 A Yes, sir.

25 Q Because she was a resident of the house?

Roosevelt Young - Direct Examination by Mr. Maye

1 A Yes, sir.

2 Q Okay. Did he agree to work for you as a
3 confidential informant?

4 A At a later date, yes, sir.

5 Q Okay. And let's talk about the 17th of January,
6 2013. Let's talk about the operation that he did involving
7 Mr. Lilly, the defendant, in this case. Tell me about
8 that?

9 A I -- after he signed the agreement to work at the
10 sheriff's office to basically go out and make buys, we
11 agreed to meet at his place off of Ryan Ranch Court. At
12 that time he was -- he gave us a list of what he can do
13 orally. We didn't write anything down. He said he knew
14 Mr. Leon Lilly; they was friends. He knew him from past
15 relationships. So we wire him up, searched him, and
16 searched his wife, the vehicle. Officer Miller gave him
17 the documented funds and -- excuse me, we went on and made
18 the purchase from Mr. Lilly at Murrah Forest Road.

19 Q Okay. Were y'all following behind where y'all
20 could monitor the wire and --

21 A Yes, sir, we ride along --

22 Q -- try to keep it under control as best you could?

23 A Yes, sir, we was probably about a half a mile to a
24 mile behind him, yes, sir.

25 Q Okay. But were you close enough where you could

Roosevelt Young - Direct Examination by Mr. Maye

1 monitor all the feed and all that?

2 A Yes, sir. Yes, sir.

3 Q And your system allows you to do that though?

4 A Yes, sir.

5 Q Monitor? And you did throughout the course of the
6 buy, didn't you?

7 A Yes, sir.

8 Q Okay. When he returned from carrying out the buy
9 with Mr. Lilly, did he return items of suspected narcotics
10 or a quantity of substance that you expected was
11 methamphetamine at that time?

12 A Yes, sir, he did.

13 Q Okay. I'm going to show you what's been marked as
14 State's 9. What did you do with the substance that he gave
15 you when he returned from the buy?

16 A This is a Sled BEST Kit and what I simply done was
17 put inside of this BEST Kit and it's got a tamper resistant
18 seal on it. Once you seal it, the chemist at SLED is the
19 only one that will unseal it and basically put their
20 initials and stuff on it, but I just put it in here and
21 sealed it.

22 Q What was the number of that BEST Kit, the whole
23 number that is printed right on the BEST Kit?

24 A B232274.

25 Q What did you do with it? And what day did you

Roosevelt Young - Cross-Examination by Ms. Zmroczek

1 receive it the same day on the 17th of 2013?

2 A Correct.

3 Q What did you do with it next?

4 A I put it in the drug safe at our headquarters on
5 the 17th. On the 18th I took it out and took it to SLED,
6 State Law Enforcement, and I dropped it off with Ms. Doris
7 Yarborough.

8 Q And she is the drug intake person or was on that
9 day when you dropped it off?

10 A Yes, sir.

11 Q Okay. You had it sealed in a tamper resistant BEST
12 kit, correct?

13 A Yes, sir.

14 Q During the time that you had custody of control of
15 it, did you change or alter it in any way?

16 A No, sir.

17 Q Investigator Young, what county did that buy take
18 place in?

19 A Edgefield.

20 Q Answer any questions the defense may have.

21 THE COURT: Thank you. Ms. Zmroczek.

22 MS. ZMROCZEK: Thank you. Please the Court, Your
23 Honor.

24 CROSS-EXAMINATION

25 BY MS. ZMROCZEK:

Roosevelt Young - Cross-Examination by Ms. Zmroczek

1 Q Investigator Young, I believe on direct you
2 testified that the -- on April 2nd when you responded to
3 the home of Michael Payne, someone had told you that he was
4 using a substance?

5 A Yes, ma'am.

6 Q But do you recall writing the report for that --
7 for that incident on April 2nd?

8 A Yes, ma'am.

9 Q What was the -- what were the allegations actually
10 that were provided to you for the -- that -- the reason
11 that y'all needed to go to -- to go by and check it out?

12 A The initial complaint from DSS, ma'am, I think it
13 was using and/or manufacturing also.

14 Q Okay. And would it refresh your recollection to --
15 to review your report?

16 A Yes, ma'am.

17 MS. ZMROCZEK: Your Honor, may I approach?

18 THE COURT: Yes, ma'am.

19 BY MS. ZMROCZEK:

20 Q All right. You got -- refresh your recollection of
21 what the actual allegations were?

22 A Yes, ma'am.

23 Q And tell the jury what those were.

24 A That he had sold to an anonymous person and that
25 person contacted DSS and then he was possibly also

Roosevelt Young - Cross-Examination by Ms. Zmroczek

1 manufacturing it at that location.

2 Q So he had distributed or sold methamphetamine to
3 this person and was also manufacturing?

4 A Yes, ma'am.

5 Q And do you recall in your report where that -- that
6 sale had taken place?

7 A Inside of a shed.

8 Q Inside of a shed?

9 A Yes, ma'am.

10 Q And that was Michael Payne?

11 A Yes, ma'am.

12 Q No further questions. Thank you.

13 A And also what I didn't put in the report was Ms.
14 McDowell was under the impression that the complainant --
15 the male complainant that called in was basically furious
16 with Mr. Payne. She didn't know if that was some kind of
17 retaliation or what have you with those complaints also.

18 Q Okay. But when you went to the house you -- you
19 actually found enough methamphetamine to qualify for a
20 charge of trafficking, correct?

21 A Yes, ma'am. We found the trafficking, but I didn't
22 find any indicators of drug paraphernalia that would
23 substantiate him manufacturing of drugs in his residence.

24 Q And you searched the shed as well?

25 A We searched the shed, the outer perimeters,

Lawrence Zivkovich - Direct Examination by Mr. Maye

1 everything, yes, ma'am.

2 Q Okay.

3 THE COURT: Redirect?

4 MR. MAYE: Nothing else.

5 THE COURT: Thank you. Thank you, Investigator
6 Young, you may step down.

7 MR. MAYE: Next we call Agent Lawrence Zivkovich.

8 THE CLERK: Raise your right hand please?

9 LAWRENCE ZIVKOVICH,

10 having been duly sworn, testified as follows:

11 THE CLERK: Have a seat and state your full name
12 and spell your last name please.

13 THE WITNESS: Lawrence Zivkovich,
14 Z-I-V-K-O-V-I-C-H.

15 DIRECT EXAMINATION

16 BY MR. MAYE:

17 Q Agent Zivkovich, would you just state for the
18 record where you're employed and in what capacity you're
19 employed?

20 A I work with the South Carolina Law Enforcement
21 Division, commonly known as SLED. And I work there as a
22 forensic scientist with a specialty in drug identification.

23 Q Let me ask you this. What specialized training do
24 you have in the area of drug identification; what's your
25 background?

Lawrence Zivkovich - Direct Examination by Mr. Maye

1 A I received a Bachelor of Science in Chemistry from
2 the University of South Carolina. And then when I was
3 hired at SLED I received certification as a drug
4 identification forensic scientist and I've attended
5 numerous seminars with the Drug Enforcement Agency.

6 Q Have you been previously qualified by the Courts in
7 the State of South Carolina as an expert witness in the
8 field of drug identification testing?

9 A Yes, sir.

10 Q Approximately how many times have you previously
11 been qualified as an expert witness in the courts of this
12 state?

13 A 26.

14 Q 26 times today?

15 A Yes, sir.

16 MR. MAYE: Your Honor, I'm going to offer Agent
17 Zivkovich as an expert witness in the area of drug testing
18 and identification. I would submit him to the defense for
19 any cross-examination regarding his qualifications as an
20 expert witness?

21 THE COURT: All right. Ms. Zmroczek?

22 MS. ZMROCZEK: And, Your Honor, the reason I was
23 standing earlier was to say that we -- we have no objection
24 to him being qualified.

25 THE COURT: Drug identification did you say,

Lawrence Zivkovich - Direct Examination by Mr. Maye

1 Solicitor?

2 THE WITNESS: Yes, sir.

3 MR. MAYE: Drug identification and analysis, yes,
4 sir.

5 THE COURT: Mr. Foreman, ladies and gentlemen of
6 the jury, normally a person cannot give opinion testimony.
7 Normally when a person testifies they must testify as to
8 either what they saw, heard or sensed by smell or something
9 of that nature. However, there is an exception when
10 someone is qualified because of education, training and
11 experience in some particular art, science or field. They
12 are committed to give their opinion in certain areas if the
13 Court qualifies them that way. This witness, Agent
14 Zivkovich, will be qualified in the area of drug
15 identification to give opinion testimony in that area and
16 the basis for that opinion. It does not mean that you must
17 accept the opinion, but it is evidence that you, the jury,
18 can use in any way you see fit.

19 Thank you, Solicitor. You may continue.

20 BY MR. MAYE:

21 Q Mr. Zivkovich, I'm going to show you what's been
22 marked as State's Exhibit No. 9 and ask you to take a look
23 at it and look at the BEST kit that is contained therein.

24 A Yes, sir.

25 Q Okay. I would ask you what the BEST kit number is

Lawrence Zivkovich - Direct Examination by Mr. Maye

1 that was provided to you. And I will ask you in what
2 condition was it when you examined it at your laboratory at
3 SLED when you received it with regard to the tamper
4 resistant seal. Please tell the number of it and what
5 condition it was in when you received it.

6 A The BEST kit number is B232274 and the tamper
7 evident seals were all intact as I noted on the outside of
8 the kit where I stated "seal intact," January 24, 2013 with
9 my initials.

10 Q Had the seal not been intact or there had been any
11 evidence of tampering, would you have deducted any
12 scientific or chemical analysis on the substance that was
13 inside?

14 A No, sir.

15 Q Okay. Let me ask you this. What hands did that
16 pass through at SLED? Would you just identify the hands
17 that that passed through from Ms. Doris Yarborough, at
18 Intake until it arrived at you at SLED?

19 A If I could address my chain of custody?

20 Q You may pull your notes and refresh your
21 recollection.

22 A The BEST kit was dropped off by Roosevelt Young on
23 January 18th and logged in by Doris Yarborough who replaced
24 it -- who placed it into the evidence storage. I received
25 it from Doris Yarborough on January 24th, 2013 and upon

Lawrence Zivkovich - Direct Examination by Mr. Maye

1 completion of my analysis, I returned it to Patricia Crooks
2 on February 12th of 2013.

3 Q So your records indicate that what Investigator
4 Young brought and dropped to Ms. Yarborough was the same
5 BEST kit and that identifies every person that touches it
6 prior to initiating any testing on the 24th, correct?

7 A That is correct.

8 Q Okay. Please tell the ladies and gentlemen of the
9 jury based on your scientific training in the area of drug
10 identification what steps you made once you unsealed that
11 tamper resistant BEST kit; what substance you found inside;
12 and what steps you took to identify what that substance
13 was.

14 A When we receive a BEST kit, first we make sure
15 everything's intact. Once it's intact, we realize if it's
16 okay to examine. We open it and compare the contents with
17 what is stated on the request form to make sure they match
18 up and once we find out whether they match, then the first
19 thing we do is do a spot test and what that does is it
20 identifies particular classes of drugs. Once a spot test
21 has been performed, then we do an instrumentation analysis
22 on the material and try to identify what that particular
23 material is. In this particular case, the substance that
24 was contained in the BEST kit was found to be
25 methamphetamine with a weight of 0.1 grams.

Lawrence Zivkovich - Direct Examination by Mr. Maye

1 Q So to a reasonable degree of scientific certainty,
2 you have an expert opinion that the substance that was
3 tendered to you from Investigator Young, the substance of
4 this case or the subject of this case was in fact
5 methamphetamine; is that correct?

6 A Yes, sir.

7 Q And that is your expert opinion that this substance
8 contained inside of there, the powdery substance is
9 methamphetamine?

10 A Yes, sir.

11 Q At this point in time, let me ask you, did you
12 generate a written report regarding findings on the
13 methamphetamine?

14 A I did.

15 Q Did you bring it with you here today?

16 A I did, sir.

17 MR. MAYE: Your Honor, at this point in time, I'm
18 going to move to admit Agent Zivkovich's report of, it
19 looks like February the 8th of 2013, into evidence as a
20 State's Exhibit.

21 MS. ZMROCZEK: Without objection, Your Honor.

22 THE COURT: State's 13, State's 13 is in evidence
23 without objection.

24 (State's Exhibit No. 11 was entered into evidence.)

25 THE COURT REPORTER: I've got No. 11., Your Honor.

Lawrence Zivkovich - Direct Examination by Mr. Maye

1 THE COURT: Ma'am?

2 THE COURT REPORTER: No. 11, State's 11.

3 THE COURT: State's 11?

4 THE COURT REPORTER: Yes, sir.

5 THE COURT: Thank you, ma'am.

6 BY MR. MAYE:

7 Q Agent Zivkovich, at this time the BEST kit and the
8 materials contained therein, I ask you, is that the same
9 substance and packaging you attempted to test there at
10 SLED?

11 A Yes, sir, the evidence that's contained inside the
12 heat sealed bag has the laboratory number on it with my
13 initials and the heat sealed bag has not been tampered with
14 and is sealed at the bottom with the date of January 30th,
15 2013 with my initials over the heat seal.

16 Q Intact and has not been tampered with?

17 A Correct.

18 MR. MAYE: At this point, I offer State's 9, as
19 previously for identification as evidence as, State's
20 Exhibit?

21 MS. ZMROCZEK: Without objection, Your Honor.

22 THE COURT: State's 9 is in evidence without
23 objection.

24 (State's Exhibit No. 9 was entered into evidence.)

25 BY MR. MAYE:

Lawrence Zivkovich - Direct Examination by Mr. Maye

1 Q Agent Zivkovich, it wasn't a large quantity, but
2 what was the quantity of methamphetamine as a result of
3 your testing?

4 A I found it to be 0.1 grams which is equivalent to
5 1.5 grains.

6 Q Okay. Answer any questions that the defense has
7 for you.

8 Thank you, Agent Zivkovich.

9 THE COURT: Thank you, Solicitor. Ms. Zmroczek?

10 MS. ZMROCZEK: No questions, Your Honor.

11 THE COURT: All right. Thank you for being with us
12 today, I appreciate it very much.

13 THE WITNESS: Yes, sir.

14 THE COURT: Any objections to Agent Zivkovich being
15 excused?

16 MR. MAYE: None from the State, Your Honor, thank
17 you.

18 THE COURT: Defense?

19 MS. ZMROCZEK: None from the Defense.

20 THE WITNESS: Thank you.

21 THE COURT: All right. Solicitor, you may call
22 your next witness.

23 MR. MAYE: The State rests at that time, Your
24 Honor.

25 THE COURT: All right.

1 All right. As you heard, ladies and gentlemen of
2 the jury, the State has rested in its presentation of its
3 evidence in its case in chief. The law requires me to take
4 up certain matters at this time outside of your presence.
5 It will not be as lengthy as the matters I took up
6 Monday -- Tuesday, I apologize, Tuesday, outside your
7 presence. But if you'd please step to your jury room. Do
8 not discuss the case during this brief recess and I'll have
9 you back out very soon. Thank you. Thank you very much.

10 (The jury left the courtroom at 2:42 p.m.)

11 THE COURT: Do you have any motions, Ms. Zmroczek?

12 MID-TRIAL MOTIONS

13 MS. ZMROCZEK: Thank you, Your Honor. At this
14 time, Rule 19, we would ask that the Court direct a verdict
15 of not guilty against Mr. Lilly based on the -- the lack
16 and insufficiency of evidence.

17 THE COURT: All right. Thank you. I think there
18 is a sufficient direct evidence and circumstantial
19 evidence. The direct evidence is the testimony of Mr.
20 Payne corroborated by the video which I watched from start
21 to finish. Further the testimony of the agent that just
22 stepped down that the substance is, methamphetamine.
23 Further the manner in which the officers conducted the
24 investigation as far as wiring Mr. Payne up, searching him,
25 searching his car, his wife was also searched. I just find

1 more than enough sufficient evidence in this case and it
2 would be a question for the jury. So I would respectfully
3 deny your motion.

4 Do you want me to -- any other motions?

5 MS. ZMROCZEK: No, Your Honor, it's -- I have
6 proposed jury instructions. I can e-mail them to your
7 clerk. I would need probably about -- I'm not going to put
8 up a case, but he can certainly -- obviously I know you
9 will want to question the witness as to whether or not he
10 wants to assert his right to testify.

11 THE COURT: All right. Certainly. If you'll come
12 around, please, Mr. Lilly, to the bar.

13 MS. ZMROCZEK: And, Your Honor, he's hard of
14 hearing. So --

15 THE COURT: All right. I'll try to speak up.

16 MS. ZMROCZEK: Thank you.

17 THE CLERK: Raise your right hand.

18 LEON ALVIN LILLY,

19 having been duly sworn, testified as follows:

20 THE COURT: Would you tell me your full name
21 please?

22 THE DEFENDANT: Leon Alvin Lilly.

23 THE COURT: All right, Mr. Lilly, I need to go over
24 some things with you. I have to do this with everyone who
25 is on trial and I need your responses to be under oath,

1 which you are now.

2 We have reached the stage of the trial where the
3 State has rested and your side, the defense, now has the
4 opportunity to present evidence for the jury to consider.
5 Do you understand where we're at in the trial? Do you
6 understand where we're at the trial?

7 THE DEFENDANT: Yes, sir. I think.

8 THE COURT: In that regard, you and your side may
9 call witnesses to testify. If you choose to testify
10 yourself, you may do so; do you understand?

11 THE DEFENDANT: Yes.

12 THE COURT: No one can force you to testify. You
13 have an absolute right to remain silent and if you choose
14 not to testify, I will tell the jury that they cannot hold
15 your silence against you in any way. I will tell them that
16 they are not to discuss that in the jury room; do you
17 understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: If your side offers no evidence at
20 all -- in other words, if neither you nor anyone on your
21 behalf testifies or offers any exhibits, then your attorney
22 will get to make the last argument to the jury. Otherwise
23 the prosecutor will get to make the last argument; do you
24 understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Ms. --- well, Attorneys, are there any
2 criminal convictions that subject him to the 609
3 impeachment?

4 MS. ZMROCZEK: There are, Your Honor. I believe
5 we've already admitted to the conviction for manufacturing
6 methamphetamine which occurred in 2011 for which he
7 received a probationary sentence.

8 THE COURT: Are there any others, Solicitor?

9 MR. MAYE: Your Honor, he doesn't have anything
10 else within the 10 years and I would just offer he's got
11 possession of methamphetamine back in '91, I think it's
12 outside the 10 years and I'm going to decline to try to
13 offer anything else. He's got extensive prior criminal
14 history, but it's all outside the 10 years.

15 THE COURT: All right. Thank you.

16 Mr. Lilly.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: If you were to testify, the law allows
19 the prosecutor to ask you in front of the jury about
20 whether or not you have been convicted of certain offenses
21 in the past. The offense is manufacturing methamphetamines
22 in 2011. They cannot go into the details of the prior
23 offense, but they can ask you if you've been convicted of
24 that offense. If that happens, I will tell the jury that
25 they can only consider that evidence against you if they

1 consider it at all on the issue of whether your testimony
2 is believable or not and for no other purpose; do you
3 understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: The decision about whether you testify
6 or not is your decision to make and yours alone. I expect
7 that you may have conferred with your attorney or with
8 others whose opinion that you value on important decisions,
9 but the decision about whether you testify or not is your
10 call to make, your decision; do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has anyone exercised any undue
13 influence over you to get you to choose to testify or to
14 choose to not testify?

15 THE DEFENDANT: No, sir.

16 THE COURT: Today are you under the influence of
17 any drugs, alcohol, medication or anything that may
18 negatively affect your thinking ability?

19 THE DEFENDANT: No, sir.

20 THE COURT: Do you suffer from any physical or
21 mental problems that affect your thinking today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Whatever decision you have made about
24 whether or not to testify, is it your decision made of your
25 own free will and accord?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you had an ample opportunity to
3 speak with your attorney about that decision?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And what is your decision?

6 THE DEFENDANT: I won't testify.

7 THE COURT: You will not testify?

8 THE DEFENDANT: No, sir.

9 THE COURT: And that is your decision?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Made of your own freewill and accord?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And do you want -- do you have any
14 questions that you want to ask me about your right to
15 testify or not testify or the decision you've made?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. Thank you. Thank you very
18 much, Mr. Lilly, you may return to your seat.

19 I find that the decision of the defendant to not
20 testify is his own decision made freely, voluntarily and
21 knowingly.

22 Anything further, from -- you going to offer any
23 evidence or testimony?

24 **POST-TRIAL MOTIONS**

25 MS. ZMROCZEK: I'm not, Your Honor. At this time I

1 would simply renew my motions. I can specifically identify
2 them if you want to, but if you think they're properly
3 identified in the Court -- basically it was the motion
4 regarding the proffered evidence of the -- of Mr. Payne
5 from the 2007; and the Brady issue, which actually I don't
6 know that I raised those in trial. So -- I don't think we
7 actually came across any of the issues during the trial.
8 And -- and any issues that related to the jury selection.

9 But other than that, Your Honor, we will not be
10 providing any more evidence and we would rest at the
11 appropriate -- I would simply ask, I really need about 20
12 minutes to -- I have some demonstrative -- demonstrative
13 boards that I'm going to use for closing and I have them
14 here, I've just got to put them together. So as far as
15 timing, I didn't know if you wanted us to have a charging
16 conference or --

17 THE COURT: All right. Whatever requests y'all
18 have to charge, if you'll give them to me. What I intend
19 to do is bring the jury out and have you -- have you rest
20 in front of the jury then advise the jury where we're at in
21 the trial of the case and then I will give y'all a 20
22 minute recess to prepare your closing and whatever else.

23 If you give me the requests to charge now, I will
24 look over them during that break and will be happy to
25 discuss it when we come back in, we'll do so.

1 How long do you think your closing will be,
2 Solicitor.

3 MR. MAYE: Mine will not be long, Your Honor, 15
4 minutes; it won't be long.

5 THE COURT: Ms. Zmroczek?

6 MS. ZMROCZEK: Judge, because I have to show
7 portions of the video, Your Honor, I would, that may slow
8 it up a little bit, but no more than half an hour.

9 THE COURT: All right. Do you have your request to
10 charge in written format?

11 MS. ZMROCZEK: I can e-mail it to you and I e-mail
12 it in Word, if that's okay.

13 THE COURT: And do you have any, Solicitor?

14 MR. MAYE: The State has one, Your Honor, just that
15 you charge the standard charge in this, Your Honor. It's
16 not a complicated case.

17 THE COURT: All right. All right, if you'd bring
18 the jury back out and let me advise them.

19 (The jury entered the courtroom at 2:52 p.m.)

20 THE COURT: All right. Mr. Foreman, ladies and
21 gentlemen of the jury panel, as you heard before our recess
22 the State had rested. That's all the evidence and all the
23 testimony you're going to hear from the State in its case
24 in chief.

25 The defense now has the opportunity to present

1 evidence and testimony if they choose to do so. As I have
2 told you throughout the trial of the case, a criminal
3 defendant in South Carolina, regardless of the nature of
4 the charges, never has the burden of proving himself or
5 herself innocent. The burden of proof is on and always
6 remains on the State of South Carolina to prove its case,
7 each and every element of the offense charged, beyond a
8 reasonable doubt. The defendant is always presumed to be
9 innocent and bears no burden whatsoever. However, again, a
10 criminal defendant may present evidence and testimony if he
11 or she chooses to do so.

12 So we will turn our attention to Ms. Zmroczek and
13 ask Ms. Zmroczek, does the defense intend to offer any
14 evidence or testimony?

15 MS. ZMROCZEK: Your Honor, the defense rests.

16 THE COURT: All right, thank you very much, Ms.
17 Zmroczek.

18 You have now heard all the evidence and all the
19 testimony you're going to hear in the trial of this case.
20 We're now at the point in the trial of the presentation of
21 closing arguments by the attorneys. The manner in which
22 they're presented to you is the State, the Solicitor, will
23 close first on behalf of the State of South Carolina, again
24 the parties bearing the burden of proof; followed by Ms.
25 Zmroczek on behalf of her client, Mr. Lilly. Thereafter, I

1 will instruct you on the law that you are to apply and the
2 facts of the case as you find them to be.

3 The attorneys need a few minutes to get prepared
4 for the closing arguments. It is about three o'clock right
5 now. So I'm going to grant them about 20 minutes. So I'm
6 going to allow you to go back out for about 20 minutes and
7 we'll have you back in here and we'll begin the closing
8 arguments in this case this afternoon.

9 Okay. Thank you. Thank you very much. If you'll
10 go back to the jury room. Do not discuss the case with
11 anyone.

12 (The jury left the courtroom at 2:58 p.m.)

13 THE COURT: All right. We'll be in recess for
14 about 20 minute. Thank you. Thank y'all very much.

15 MS. ZMROCZEK: Thank you, Your Honor.

16 (A brief recess was observed.)

17 THE COURT: All right. I have my standard charge
18 prepared. And most of what you presented, Ms. Zmroczek, is
19 consistent with my standard charge. The only -- I'm not
20 going to charge prior inconsistent statements. That does
21 not mean that you cannot argue it, but I'm not going to
22 charge it.

23 Solicitor, did you review her requests to charge?

24 MR. MAYE: I have not, Your Honor, I haven't seen
25 them.

1 THE COURT: All right. There's a request to charge
2 she submitted that is entrapment.

3 MR. MAYE: No evidence in this record -- her
4 questions are not evidence. There's no evidence of
5 entrapment in this record. They didn't put up any
6 evidence. I thought they were going to put up something in
7 that regard, but there's nothing that directly suggests
8 that. We would object to entrapment.

9 I don't even know that they can argue entrapment.
10 They didn't put up any evidence whatsoever and there's
11 nothing in the record to suggest that.

12 THE COURT: All right. Ms. Zmroczek?

13 MS. ZMROCZEK: Yes, Your Honor, I have case law on
14 that. It's in similar case, State v Johnson, but I'm also
15 referring to Drug Litigation in South Carolina, Third
16 Edition, which is published by the Bar. And I've actually
17 marked it if you'll allow me to --

18 THE COURT: All right.

19 MS. ZMROCZEK: -- get to the right page.

20 THE COURT: Sure.

21 MS. ZMROCZEK: Your Honor -- and on the front of
22 page, 394, is the entrapment defense. The affirmative
23 defense of entrapment is available only to a defendant who
24 does not have a predisposition to commit the crime with
25 which the defendant has been charged independent of

1 government inducement or influence. And that cite's State
2 v. Johnson. The officer must plainly see the offense and
3 procure its commission by one who would have not portrayed
4 it any separate degree, persuasion or fraud of the officer.
5 And, Your Honor, they include confidential informants
6 within that scope.

7 The fact that the government official merely
8 afforded opportunities does not constitute entrapment, thus
9 entrapment consists of two elements, government induced and
10 lack of predisposition. The defendant bears the burden to
11 prove that he was not predisposed to commit the crime and
12 that he was induced, tricked or incited to commit the
13 crime. Again, they're all citing State v. Johnson. The
14 defendant has the initial burden to prove more than
15 scintilla of the evidence the government induced him to
16 commit the prior offense before the burden shifts to the
17 government to prove beyond a reasonable doubt defendant's
18 predisposed to commit the crime. Because in fact, it is a
19 question of fact for the jury if the defendant meet his
20 initial burden of proof producing some evidence of
21 government inducement. The defendant is entitled to the
22 charge to an entrapment jury instruction.

23 And that, Your Honor, again cites State v. Johnson.
24 The fact that defendant does not testify or call witnesses
25 is not grounds for denying entrapment jury instruction if

1 evidence of entrapment is present through -- is presented,
2 excuse me, through at least through evidence -- through
3 other evidence including through prosecution witnesses.
4 And that cites State v. Brown, which is a Supreme -- or a
5 Court of Appeals Court Case 362 SC 262, 607 Se 2d 93 and at
6 95 it's Court of Appeals 2004.

7 And, Your Honor, we submit that in the lengthy
8 cross-examination of the confidential information who was
9 acting as an agent of the government, that we have met the
10 burden with a scintilla of evidence.

11 THE COURT: All right. Thank you. Thank you very
12 much. I deny the charge on entrapment. I do not believe
13 the defendant has met his burden in that regard. I'm
14 charged with charging the law that applies to the facts in
15 the case. I do not believe this case applies to the
16 offense of entrapment.

17 Anything further before we bring in the jury,
18 Solicitor?

19 MR. MAYE: Nothing from the State, Your Honor,
20 thank you.

21 THE COURT: Ms. Zmroczek?

22 MS. ZMROCZEK: Yes, Your Honor, simply I would like
23 to renew my objection. We believe that we've met our
24 burden and I understand the Court's ruling. I'm simply
25 preserving the objection.

1 THE COURT: Yes, ma'am. Certainly.

2 All right. If you'd bring in our jury panel.

3 (The jury entered the courtroom at 3:36 p.m.)

4 THE COURT: Welcome back, ladies and gentlemen of
5 the jury panel. You've heard all the evidence and
6 testimony in the case and now we're at the point of closing
7 arguments by the attorneys. Closing arguments are
8 different from most of the statements in they are arguments
9 the attorneys may comment on the facts as they perceive
10 them to be, inferences that may properly be drawn, and how
11 they may apply to the law that I will advise you on after
12 the closing arguments. Please remember they're not
13 evidence, but they're very important.

14 If you'd please give the parties your complete and
15 undivided attention. Thank you very much.

16 Solicitor.

17 CLOSING ARGUMENTS

18 MR. MAYE: May it please the Court. Ladies and
19 gentlemen, I am mindful of the fact that we've taken away
20 what you could have normally been doing this week and
21 compelled you to come up here and sit as judges of the
22 facts in this case. We know it's an imposition. You've
23 had to sit back there and be patient and be taken away from
24 what you would have normally been doing; it's a major
25 imposition. But this is the highest duty that a citizen

1 has here in peace time. This is the only compulsory public
2 service that we got left. We used to have the draft; you
3 used to have to work on the roads; there used to be all
4 kinds of things that were requirements of citizenship and
5 this is the last one and it's vitally important.

6 As I told you at the outset, one thing that the
7 twelve of you have in common when you go back in that jury
8 room and deliberate is all of you live here in Edgefield
9 County. And what goes on up here in the courthouse are
10 people being charged with criminal offenses for serious
11 crimes such as distributing methamphetamine, a scorn and a
12 poison if there ever was one. A drug that destroys
13 people's bodies, minds, will, homes, stealing everything
14 they've got. Anybody would be distributing
15 methamphetamine, making methamphetamine, any of those
16 things have absolutely no regard for his fellow man. It's
17 just distributing out poison. That's all it is.

18 You heard some recitation up here of the
19 ingredients of it. Horrible, dangerous chemicals all mixed
20 together. Utter sludge, poison. I told you at the outset
21 of this case, we've got the burden of proof and we welcome
22 that. I guess I ought to sit down. The twelve of you that
23 go back in that jury room to deliberate, you bring into
24 this courtroom the sum total of all your life experiences
25 judging whether somebody's telling you the truth or telling

1 a lie, all of the business acumen that you have, the
2 education that all of you have, individually, let alone
3 applying it all collectively. The collective wisdom of the
4 twelve of you outskirts that opinion of one person
5 anywhere. And this is a simple case. I told you at the
6 outset.

7 Mr. Payne, nothing really notable about him in this
8 case or no -- except the fact he had a bad problem. He was
9 making -- well, he was selling meth, he was taking meth, he
10 was involved in meth, but he didn't have to tell them so.
11 He knew the score. Roosevelt Young came up there to his
12 house and just knocked on the door and said look, we got a
13 complaint. Maybe he knew it was eating him up and
14 consuming him. He got up here eventually and said his
15 life's a whole lot better now. Because he was under the
16 clutches of methamphetamine and it took getting sentenced
17 by a judge up here and going to prison to break him of it.
18 That's one good thing that happened to him. It was the
19 worse day of his life and ended up probably being the best
20 because this stuff just eats people up inside out. It is
21 utter poison and he was on his way out, being addicted to
22 meth.

23 And he was selling it. He was selling it and he
24 was doing that to support his own habit. He didn't have
25 any regards for anybody else in doing that, but he did tell

1 on himself and he had some sort of epiphany. He could have
2 told these officers to take a hike, but he didn't do that.
3 Instead they enlisted him to work as a confidential
4 informant. And, ladies and gentlemen, there's no way out
5 of this scorch but fighting fire with fire.

6 I tell you and it's going to be no secret, I don't
7 get the last argument in this case; but it doesn't make any
8 difference because there's nothing anybody can say that
9 changes the truth of the matter. This is a scorn, a plague
10 upon this county that anybody would distribute out and make
11 methamphetamine and sell it to people and steal from them
12 their health, their family, their livelihood. You've got
13 to fight fire with fire. Investigator Young -- people know
14 him. Certainly outlaws know him. People that's going to
15 be messing with methamphetamine, you ask any of them who is
16 the narcotics officers, or who are they in Edgefield
17 County, they can tell you what they drive, who they are;
18 they know exactly what's going on.

19 Roosevelt Young didn't go out to Mr. Lilly's house
20 and show up and say how about sell me some methamphetamine;
21 it doesn't work that way. You've got to fight fire with
22 fire. There's only one way time tested to catch drug
23 dealers, you got to catch one and give him a choice.
24 Either help us and wear a wire and go out and make buys or
25 go to prison.

1 Now Mr. Payne got both. He didn't get out scot
2 free. Well, you say, oh he was looking at getting 25
3 years; he was looking at going to prison. They had him
4 behind the eight ball, but he did do the right thing. They
5 didn't really have him. He could have just told them to
6 take a hike at that point in time, but he agreed to
7 cooperate in order to drop his charges in the case and he
8 didn't get out scot free. He went to prison and it's a
9 good thing that he did because he ended up healthy.

10 He's sitting up here talking like he's got some
11 sense and he's not using methamphetamine. But you can bet
12 if he was, by this time he'd have been falling apart. He
13 helped these officers. That's the only way they can combat
14 this problem. He helped them and he went out and started
15 making buys. Good thing.

16 Every drug dealer, every manufacturer of
17 methamphetamine, every distributor of methamphetamine ought
18 to get set up. A CI ought to show up at their house. They
19 ought to get hood winked to think they're selling to
20 somebody who is just a helpless addict who is in fact
21 helping law enforcement. That's exactly what ought
22 happened to every person that touches this stuff. There is
23 no legal distribution of methamphetamine. It is a totally
24 illegal drug with no medical uses whatsoever. It is a
25 plague and it is a poison.

1 They've already started sowing the seeds in this
2 case and you could hear it through the cross-examination.
3 Never mind that the judge told you at the outset of this
4 case, the lawyers questions are not evidence. What were
5 these questions up here; isn't it true that he's got a bad
6 injury, you know where he got impaled; he's hurt; he's
7 broken down; he needs methamphetamine to keep him going.
8 That's just trying to generate some sympathy. Their whole
9 thrust for us in this case, they can't combat the wire, the
10 camera, the naked evidence in this case that shows him with
11 that straw blatantly pulling that stuff out of that bag and
12 transferring that poison on to this young man. He knew
13 full well that his buddy was addicted to methamphetamine
14 and he didn't care; utter and total disregard for anybody
15 else other than himself spreading that poison.

16 There's no legal way to do it. It didn't matter
17 where he got it. It didn't matter who handed it to him,
18 they want you to just basically nullify the law in this
19 case. You get the facts from the witness stand up here and
20 you heard -- the judge is going to charge you the -- what
21 the law is in this case. All that we simply ask that the
22 twelve of you do in this case is apply the law to the
23 facts, calmly and rationally. The word verdict means to
24 speak the truth. You saw the evidence in this case. What
25 they're going to ask -- and I would dare say implore you to

1 do is just not right. He just got set up and but for the
2 fact that these dirty law enforcement officers were sending
3 a snitch out, somebody that was behind the eight ball, just
4 pat him on the back and send him on his way. It's a good
5 time. This is just fundamentally not fair.

6 Great that it's not fair. No drug dealer should be
7 met with any fairness when they're distributing out this
8 poison in this community. Amen, that's it's unfair, and it
9 needs to be. They need to fight fire with fire and there's
10 no other way to do it. But he's broke down and he's hurt
11 up and he just can't keep going without his
12 methamphetamine. There are doctors all over Edgefield
13 County and there are pharmacies and CVS's just up the road
14 from there. There are all sorts of legal drugs to deal
15 with people's infirmities and problems and methamphetamine
16 has no legitimate use. That is a ridiculous assertion.
17 And it doesn't matter where he got it, oh if they got it
18 from his daddy or whoever, the mere fact that he
19 distributed it -- because you don't have to sell it.
20 That's not the law in South Carolina. They gave him money
21 to make the buy because most of the time money's going to
22 change hands, but Mr. Payne told you that they had running
23 dealings going on.

24 Now to start with, we certainly told him to stay
25 away from all of the information about Mr. Lilly in this

1 case being a convicted manufacturer of methamphetamine,
2 somebody's that's already been busted and convicted of
3 manufacturing methamphetamine. We told him to stay away
4 from that because he's only being tried for the January the
5 17th of 2013 event in this case, trying to be fair to him.
6 They're talking about the constitution and constitutional
7 right, well we only charged him and we're only talking
8 about the events of the 17th of January, 2013, whether or
9 not he distributed methamphetamine to someone here in
10 Edgefield County. That's all we've got to prove, the
11 distribution, giving it to somebody. The fact that any
12 money changes hands or what the source of the drug was
13 makes absolutely no difference.

14 You just listen to what the judge charges you with
15 the law in this case and you don't get a pass because, oh,
16 I don't feel good and I want to take meth and get myself
17 going and self-medicate me. It doesn't work that way. The
18 law's simple. This drug is so devastatingly destructive
19 you cannot distribute it lawfully in any way. Simple fact
20 of the matter, he was in Edgefield County and he
21 distributed to someone, he is guilty of distribution of
22 methamphetamine and they were successful with fighting fire
23 with fire in this case and that's absolutely the way it
24 ought to be. This needs to be snuffed out, there's no
25 question.

1 Mr. Payne went and made the buy. You can see it
2 with your own eyes. It's not like it was in the 20's or
3 30's. We brought somebody in who had a meth problem and
4 just sat up here and said well on this day I did it. You
5 don't have to speculate; you've got the wire. You see what
6 happened. I told you from the outset of this case it's
7 clearly as we're standing here together; you can see him
8 doling it out and they want to say, oh, he was set up and
9 he was entrapped. I guarantee you you'll hear something
10 about that. This is disgusting; it's just not fair.

11 Entrapment is a substitution of intent. If you've
12 got an intent to commit a crime, you're guilty of it and
13 you carried it out. Intent, it's where you have no intent
14 to do it. A good example of entrapment, one could think of
15 would be if Mr. Young had gone to Mr. Lilly and said, you
16 know we got us a new wire and we want to test it out so we
17 want to see how this works. So here take this meth and go
18 get somebody to buy it and we're going to ride by your
19 house in a little bit and we're going to pretend to run an
20 operation and we just want to see if the camera's working
21 well. And just take this and when the guy comes up to your
22 yard just play acting, just hand it to him because we're
23 just testing our wire.

24 Well if they had him do that, then they go jerk him
25 up when he agreed to help them in a plot. You know that

1 would be entrapment because he had no intent to commit a
2 crime; he was just assisting. He thought he was
3 playacting. He'd be hard pressed to come up with any other
4 circumstance where it would be a defense that you were
5 entrapped because you have no intent to commit the crime
6 when you're entrapped.

7 Just look at the look -- and one thing about it is
8 y'all got to see Mr. Lilly conveying what he's like when
9 he's not sitting up here in the courtroom politely. You
10 got to see what he's really like out there at his house.
11 Did he look like anybody was twisting his arm when he out
12 there in the house and came back with that methamphetamine?
13 Did y'all see anybody holding a gun to his head? Or did he
14 look like he was under duress? He was happy as a clam. He
15 was laughing and joking and digging in that bag with that
16 straw, and taking that stuff out as Mr. Payne held the bag
17 open. Did he look like he was under any kind of distress?
18 No, he was distributing meth out to his friend who he knew
19 full well was an addict.

20 A person that makes it, a person distributes it, a
21 person that continues to use it when he knows he's not
22 supposed to be doing so and takes measures to hide it from
23 authorities. There's just no stopping him; none. He's
24 going to make it, he's going to use it and he's going to
25 distribute it. Never mind what the law says. Never mind

1 what the authorities say; never mind what it does to
2 anybody here in the community. I'm going to do this; it's
3 going to happen. I'm going to keep using it, I'm going to
4 hide it, I'm going to cover it up, I'm going to do it
5 whenever I feel like it. Just utter selfishness.

6 What he wants is nullification of the law. He
7 wants sympathy. He wants mercy. Never mind the poison
8 he's sold out there in the community. Liquid form was not
9 heard of; I need this for my medicine. That's what they're
10 going to tell you.

11 It's up to you to decide what's justice, what the
12 law dictates in this case and whether or not it's all right
13 for somebody to make, sell, distribute, take, have meth in
14 this community and you say so with your verdict in this
15 case. Just come back with a verdict that's true and just.
16 It's a simple case and no excuse for his behavior other
17 than utter selfishness and disregard for other human
18 beings.

19 THE COURT: All right. Ms. Zmroczek?

20 (The TV was being set up to play some of the video
21 for the jury.)

22 MS. ZMROCZEK: Thank you, Your Honor, may it please
23 the Court?

24 THE COURT: Yes, ma'am.

25 MS. ZMROCZEK: Good afternoon. Respectfully, I

1 disagree with the Solicitor that what you've done for the
2 last two days is an imposition. In fact, I think it's a
3 right that you should embrace. It breaks my heart when
4 people say, whew, I had to sit on a jury because that's a
5 fundamental thing. The judge is going to charge on the
6 law. And if I say anything different than what the judge
7 says, of course, take his word. What -- what our role --
8 my role is, as defense attorney, as is a standard of the
9 constitution, is to tell you what I think the evidence
10 shows, and what I think the evidence should have shown and
11 what I think the lack of evidence shows.

12 If you recall just yesterday, Tuesday, in opening
13 statements, Solicitor Maye said this is what we're going to
14 prove to you. We're going to prove to you that they
15 followed their procedures. But remember what we say is not
16 evidence because what you've heard from that witness stand
17 regarding procedures of protecting people from -- criminals
18 who are trying to get a time cut, a substantial time cut.
19 All you've heard was about procedures is what Mr. Payne
20 said. I submit to you Mr. Payne is hard pressed to tell
21 the truth for anything and -- and -- and I get it.
22 Methamphetamine is bad. That is one point that the
23 solicitor and I will continue to agree upon. And in no way
24 were questions I was submitting regarding Mr. Lilly's
25 health in any way to validate or justify or excuse him

1 using an illegal substance. The point was that evidence
2 showed is that Mr. Lilly was a user. He used to make it
3 and he got arrested for it and he stopped. The evidence
4 also showed from Investigator Young, the only police
5 officer to take the stand, 19 years on the force and he
6 told you they were at Mr. Payne's house to investigate a
7 complaint of distribution in the shed by Mr. Payne, a
8 possible manufacturer. No, they didn't find any evidence
9 of that. But what they did find was 24 grams of
10 methamphetamine. And then Mr. Payne tells you Mr. Lilly,
11 Leon, distributed all the time; his stuff was bad; his
12 stuff was terrible.

13 Ladies and gentlemen, the things that have been
14 admitted, is evidence you get to take back with you. You
15 have a little bit of methamphetamine. More importantly,
16 the certified SLED report. It doesn't say poor quality, it
17 doesn't say low meth. I assure you had that been the
18 evidence, it would have been presented to you, but it
19 wasn't. I assure you if they followed the proper policies
20 and procedures that would have been presented to you, but
21 it wasn't.

22 You're going to have this video back with you. You
23 get to watch it and listen to it as many times as you want.
24 What I've done is identify the places that I would like for
25 you to focus on and if you disagree with what my

1 interpretation of the words are, you follow yours, because
2 you are the most important deciders of the facts.

3 He was tricked. He was tricked. He was trapped.
4 And he was taken advantage of. And the proof is right
5 there in these words. You can start the clip. There are
6 eight clips. And I submit that, that you can see that
7 there some, there are some things that, I think it's
8 actually a matter of --

9 And the first clip, I -- I'll talk about it and
10 then play it.

11 Michael Payne, he knows what he's doing; he knows
12 what he's doing right there. He knows it's wrong, he knows
13 he's doing it to save himself and then remember I
14 specifically asked him what the plan was; oh it was to buy
15 \$40. I understand money doesn't have to change hands;
16 that's not the point. The point is he could not get up
17 here and tell the truth.

18 (A portion of the video was played for the jury.)

19 MS. ZMROCZEK: He testified, he being a
20 confidential information, Mr. Payne. He testified there
21 was no plan. He didn't set anything up. That's
22 Investigator Miller discussing what they had discussed.

23 We can go ahead and go to clip 3.

24 The reason I highlighted clip 418 is because what
25 we here on the tape, but what you didn't hear on the stand.

1 Excuse me. For instance, because she said, I'm in charge.
2 The one person who had trafficking, methamphetamine and
3 child endangerment and all her charges are gone. But we
4 didn't get to confirm, we didn't get to ask her.

5 Clip 3, beginning at one point, showed Mr. Payne
6 and his wife riding in the car.

7 (A portion of the video was played for the jury.)

8 MS. ZMROCZEK: Mr. Payne testified no, they were
9 talking about dinner. They were talking about dinner with
10 her dad. I submit to you they were discussing how they
11 were going to trick, entrap, Leon Lilly and his wife, who
12 had taken care of their children, who had opened their home
13 to them. That's what they were discussing. I submit
14 that's what the evidence shows.

15 Clip 4 is the longest one.

16 And what's important -- I'm sorry. What's
17 important about this and why I'm pointing it out to you and
18 why I really want you to pay attention to it are for these
19 reasons. The judge is going to charge you on entrapment
20 and we'll talk about that in just a little bit. And he's
21 going to talk about government induced behavior. In this
22 instance, this situation, Mr. Payne was an extension of the
23 government for all intents and purposes because he had
24 signed a confidential informant agreement and he was
25 working as an agent of theirs. So our argument and what we

1 submit is that he, Mr. Payne, had a close, 10-year close
2 familial relationship with Leon Lilly. And the only reason
3 that Leon Lilly is seen later on in this video is because
4 of the behavior of Mr. Payne.

5 Sorry, it might be clip 5. And there is some time
6 in between the two, but we submit they're not trying to
7 hide anything. There were probably conversations that went
8 on, but what is on the tapes and what is on the audio is
9 exactly what transpired even though when questioned, Mr.
10 Payne denied it. Mr. Payne started talking about --
11 talking to Mr. Lilly about personal things about his
12 relationship with his -- the father of his wife, his father
13 in-law. I don't want to go to dinner and you can hear the
14 conversation. Then around 5:18 is when it starts. The
15 ingrate into the meth.

16 (A portion of the video was played for the jury.)

17 MS. ZMROCZEK: If you're a distributor of
18 methamphetamine, how do you happen to have any; you see
19 later on that he's using. The only reason -- the only
20 reason he even leaves for 15 minutes, leaves, nowhere in
21 the vicinity, inside the house, possibly. There's been no
22 testimony. There was testimony that Amanda got her charges
23 dismissed was inside the house. He's gone for 15 minutes
24 and the only reason he goes is because his friend of 10
25 years, a person who -- whose children he watches and plays

1 with, asked him.

2 The reason that we skipped ahead to 1630 is because
3 Amanda comes outside, they have a conversation again;
4 they're going to assert all day long she had nothing to do
5 with this, and I believe he asserted they were still
6 talking about her dad, but listen closely at 16 -- as he
7 begins to play 1630.

8 (A portion of the video was played for the jury.)

9 MS. ZMROCZEK: That's what he's doing now is
10 getting something. We got to be all -- want to find out is
11 Leon brought it to him. You'll get to hear their words.
12 There was testimony that this evidence was preserved.
13 Stored in the storage locker just like methamphetamines.
14 Nobody's altered it.

15 The rest I just have up here because it goes to
16 inducement. It goes to Leon Lilly's intent and his
17 actions. His intent and his actions were solely because of
18 the request of his friend. He's not going to play this,
19 but you'll hear it. I mean, I think y'all heard it loud
20 and clear as well. Mr. Payne said, I'll talk to you when
21 we get through. Amanda said, Bye, Leon, love you. This is
22 not a work relationship. This is a strong, firm foundation
23 relationship and one that Leon Lilly made a decision for.
24 It doesn't excuse his behavior. What the judge is going to
25 tell you and what the law is -- I don't think there's a

1 variation of this.

2 Just remember what the judge says is the law and
3 you follow the law. We argue -- our interpretation is for
4 entrapment you have to have government inducement and lack
5 of predisposition. Not one police officer, not one
6 narcotics investigator ever got on that stand and testified
7 that Leon Lilly was suspected of distributing, ever caught
8 distributing, but for his involvement with Mr. Payne.
9 Certainly had he been a suspect that evidence would have
10 been presented to you. The reason that this is so
11 important is because it's a question of fact. Do you
12 believe. Do you believe Mr. Payne, that -- that he was
13 distributing left and right so he had a predisposition?
14 Then you would find that he did have a predisposition. We
15 questioned his motives and his bias, but the State has to
16 prove to you beyond a reasonable doubt that there was not
17 entrapment.

18 The judge is also going to tell you about the law
19 on the burden of proof. Like I told you in my opening and
20 the State's told you all along -- and the judge would keep
21 mentioning the burden of proof. The reason that it is so
22 high, it's the highest burden in jurisprudence, is because
23 of what happens if that burden's not met. So you can look
24 at the burden of proof two ways. Did they prove to you
25 that he distributed with intent to distribute? And you go

1 through the arguments; maybe. The judge is going to tell
2 you the law says you can have a doubt. Probably? He
3 probably had the intent? The judge is going to tell you
4 that doesn't meet the burden. The judge is going to tell
5 you that burden has to beyond a reasonable doubt. And
6 he'll define as best you can. There's -- nothing is
7 certain. I believe that the charges include it's a doubt
8 that a reasonable hesitate to act.

9 When he's explaining reasonable -- when he's
10 explaining the burden of proof and reasonable doubt,
11 remember that you have to also apply that -- that they have
12 to disprove the trafficking; disprove it. And the same
13 burden applies.

14 On behalf of Mr. Lilly and his wife, I want to
15 thank you for your time and I muddled this on Tuesday
16 because I was tired of hearing myself talk, so I wrote it
17 out this time. What I was trying to tell you is that if
18 the zeal to eliminate drugs leaves this state and this
19 nation to forsake the history of constitutional liberty,
20 then we will suffer a far greater injury than just drugs
21 ever inflicts on this society or upon us. Drugs injure
22 some of us, but the loss of liberty injures all of us. And
23 I submit to you when you weigh the evidence, weigh the
24 testimony, apply the facts and apply the law that the judge
25 gives you that you will find Mr. Lilly not guilty. Thank

1 you.

2 THE COURT: Thank you, Ms. Zmroczek.

3 JURY CHARGE

4 THE COURT: Mr. Foreman, ladies and gentlemen of
5 the jury, will you please give me your complete and
6 undivided attention. I'm fixing to you charge or instruct
7 you on the law that applies to this case. The procedure I
8 use in instructing the jury on the law is I instruct the
9 general criminal law that applies to all criminal cases in
10 South Carolina first. When I change from one topic to
11 another, I will generally give you the caption of that
12 particular section I'm fixing to cover.

13 After I have covered the general criminal law, I
14 will then go to intent. I will then go to the charge in
15 the indictment, distribution of meth. And finally the form
16 of the verdict. The charge is about 20, 21 pages long.
17 However, in my case it is double spaced and the font is
18 much bigger for purposes of me being able to see it and
19 read it. So it should take, I think about 30 minutes
20 worth. But I'll try to move along and try to change the
21 tone of my voice as best I can.

22 Charge, arrest and indictment is not evidence. The
23 indictment charged the Defendant with distribution of
24 methamphetamine. The State must prove beyond a reasonable
25 doubt that on January 17th, 2013, Mr. Lilly did knowingly

1 and intentionally distribute methamphetamine to a
2 confidential informant and was not entrapped. I remind you
3 that the fact that the defendant was arrested, charged,
4 indicted in this case is not evidence. It cannot be
5 considered by you as evidence of guilt in this case nor
6 does it create any presumption or inference of guilt.

7 This document, this indictment is simply the formal
8 written instrument which contains the charges made against
9 the defendant. It is the formal document by which this
10 case is brought into court.

11 Duties of jury and trial judge: I remind you that
12 during this trial, you and I have certain separate and
13 distinct duties to perform. As the trial judge it is my
14 responsibility to preside over the trial of this case and I
15 also have the duty to rule on the admissibility of the
16 evidence offered during the trial. You are to consider
17 only the competent evidence before you. If there was any
18 testimony ordered stricken from the record in this case
19 during the trial, you must disregard that testimony. You
20 are to consider only the testimony which has been presented
21 from this witness stand, any exhibits which have been made
22 part of the record in this case. I have the additional
23 duty to charge you the law applicable to this case. As the
24 presiding judge, I am the sole judge of the law of this
25 case and it is your duty as jurors to accept and apply the

1 law as I now state it to you. If you already had any idea
2 as to what the law is or what the law ought to be and it
3 does not agree with what I now tell you the law is, you
4 must abandon your idea because you are sworn, you have
5 taken an oath to accept the law and apply the law exactly
6 as I state it to you. In every case tried in this court
7 before a jury, the jury becomes the sole and exclusive
8 judge of the facts in the case.

9 A trial judge cannot intimate, state, comment on,
10 or make any statement to a trial jury about the facts in a
11 case. Since you, the jury, are the sole judge of the facts
12 in this case, you are not to infer from what I have said
13 during the progress of this trial in ruling upon the
14 admissibility of evidence or otherwise, or anything that I
15 say now during the course of this instruction that I have
16 any opinion about the facts in this case. The law does not
17 allow me to have an opinion about the facts in this case.
18 This is a matter solely for you, the jury, to determine.
19 As jurors, it is your duty to determine the effect, the
20 value, the weight, and the truth of the evidence that has
21 been presented during this trial.

22 Presumption of innocence: The defendant has pled
23 not guilty to the indictment and that plea puts the burden
24 on the State to prove the defendant guilty. A person
25 charged with committing a criminal offense in South

1 Carolina is never required to prove himself innocent. It
2 is an important rule of the law that and a defendant in a
3 criminal trial, no matter what the seriousness of the
4 charge may be, will always be presumed to be innocent of
5 the crime for which the indictment was issued unless guilt
6 has been proven by evidence satisfying you of that guilt
7 beyond a reasonable doubt. The presumption of innocence
8 does not end when you begin your deliberations, but it
9 accompanies the defendant throughout the trial until you
10 reach a verdict of guilt based on evidence satisfying you
11 of that guilt beyond a reasonable doubt. The presumption
12 of innocence has been said to be like a robe of
13 righteousness draped about the shoulders of the defendant
14 which remains with the defendant until it has been stripped
15 from the defendant by evidence satisfying you of the
16 defendant's guilt beyond a reasonable doubt.

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

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

1 a reasonable doubt. Some of you in the past may have
2 served as jurors in civil cases where you were told that it
3 is only necessary to prove that a fact is more likely true
4 than not true, such as by the greater weight or
5 preponderance of the evidence. In criminal cases, the
6 State's proof must be more powerful than that. It must be
7 beyond a reasonable doubt. Proof beyond a reasonable doubt
8 is proof that leaves you firmly convinced of the
9 defendant's guilt.

10 There are very few things we know in this world
11 with absolute certainty and in criminal cases, the law does
12 not require proof that overcomes every possible doubt. If
13 based on your consideration of the evidence, you are firmly
14 convinced that the defendant is guilty of the crime
15 charged, you must find the defendant guilty. If, on the
16 other hand, you think there is a real possibility that the
17 defendant is not guilty, you must give the defendant the
18 benefit of the doubt and find him not guilty.

19 Direct and circumstantial evidence: There are two
20 types of evidence that are generally presented during the
21 trial; direct evidence and circumstantial evidence. Direct
22 evidence is the testimony of the person who claims to have
23 actual knowledge of the facts such as an eyewitness or an
24 ear witness. It is evidence which immediately establishes
25 the main fact to be proven. Circumstantial evidence is

1 proof of a chain of facts and circumstances indicating the
2 existence of facts. It is evidence which immediately
3 establishes collateral facts from which the main fact may
4 be inferred. Circumstantial evidence is based on inference
5 and not on personal knowledge or observation. The law, our
6 law makes absolutely no distinction between the weight and
7 the value of either direct or circumstantial evidence, nor
8 is a greater degree of certainty required of circumstantial
9 evidence than of direct evidence.

10 You should weigh all of the evidence in the case.
11 After weighing all the evidence if you are not convinced of
12 the guilt of the defendant beyond a reasonable doubt, you
13 must find the defendant not guilty. If after weighing all
14 the evidence you are convinced of the guilt of the
15 defendant beyond a reasonable doubt, you must find the
16 defendant guilty.

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

1 the remaining part of the testimony of that same witness.
2 You may believe the testimony of a witness in its entirety
3 or reject the testimony of a witness in its entirety. You
4 may consider whether a witness has exhibited to you any
5 interest, bias, prejudice or other motive in this case.
6 You may also consider the appearance and manner of the
7 witness while on the witness stand. You may consider
8 whether the witness's testimony was corroborated or made
9 stronger by other testimony or not corroborated,
10 uncorroborated or made weaker by other testimony in the
11 case.

12 You may consider anything that is in the record
13 that will help you make a determination of the
14 believability of the witnesses who have testified in this
15 case. You may also consider the appearance, the manner,
16 the demeanor of the witness while on the witness stand.

17 A person who has a past criminal record is
18 competent to testify during a trial. A past record does
19 not affect the ability of that witness to testify. A past
20 record may only be considered by you, if at all, in
21 determining the witness's believability. Remember, again,
22 you are the sole judges of the facts in this case and of
23 the believability of all -- any of the witnesses who have
24 testified.

25 This next charge you heard during the course of the

1 trial: Expert witnesses. Normally a person cannot give
2 opinion testimony. Normally when a person testifies, they
3 must testify as to either what they saw, heard or sensed by
4 smell or something of that nature. However, there is that
5 exception when someone is qualified because of education
6 and experience. They are permitted to give their opinion
7 in certain areas if the Court qualifies them that way. To
8 give opinion testimony in that area, that does not mean
9 that you must accept the opinion; but it is evidence for
10 you, the jury, to use in any way you see fit and give the
11 weight and credibility you believe is appropriate. You do
12 not have to accept the credibility -- excuse me, the
13 testimony of an expert witness even though it may be
14 uncontroverted.

15 I said I had 22 pages; I'm now at 15. I'll give
16 y'all kind of guidepost or benchmark of where we're at. So
17 if you'll please continue to give me your complete and
18 undivided attention.

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

1 to remain silent and the assertion of that right must not
2 be considered by you in your deliberations.

3 Again I repeat, under your oath, you are to draw no
4 conclusions whatsoever from the fact that the defendant in
5 this case did not testify. The fact that this defendant
6 did not testify should not even be discussed in the jury
7 room. The burden of proof, as I have stated to you, is on
8 the State. The defendant is not required to prove himself
9 innocent. The burden of proof remains on the State to
10 prove guilt beyond a reasonable doubt.

11 Intent: In order to establish criminal liability,
12 criminal intent is required. For example, in some cases,
13 the mental state required to be proven by the State for a
14 particular crime might be purpose. A person purposely
15 intently committed a crime or intentionally or knowingly or
16 sometime it could be recklessly committed a crime or
17 criminally negligently committed a crime. Criminal intent
18 must be proved by the State beyond a reasonable doubt.
19 Criminal intent is always a matter that must be determined
20 by the jury from the circumstances surrounding the
21 situation. There is no way to prove intent to a
22 mathematical certainty. There is no way medical science
23 can dissect a person's brain and determine what the person
24 had in mind. So our law says that criminal intent may be
25 inferred, circumstantially inferred, from the circumstances

1 to have existed. This is how you make your determination
2 of whether or not the element requiring intent was present.
3 It is not necessary to establish intent by direct positive
4 evidence, but intent may be established by inference in the
5 same way as any other fact by taking into consideration the
6 acts of the parties and all the facts and circumstances of
7 the case. Criminal intent is a mental state, a conscious
8 wrongdoing. It is up to you to determine what the
9 defendant intended to do based on the circumstances to have
10 existed.

11 Next, ladies and gentlemen, is -- that concludes
12 the general criminal law for all cases in South Carolina.

13 Now the particular charge in the indictment,
14 distribution of methamphetamine: The defendant is charged
15 with distribution of methamphetamine. The State must prove
16 beyond a reasonable doubt that the defendant did distribute
17 methamphetamine. Distribution means to deliver. Deliver
18 means to actively transfer a drug. A transfer can involve
19 an exchange of money, a barter, or a gift. There does not
20 have to be anything given in exchange for the drugs for a
21 transfer of drugs to constitute distribution. In fact,
22 entrapment is shown if the crime was conceived and planned
23 by an officer or someone acting as an agent of law
24 enforcement. If the officer or agent induced, solicited,
25 proposed, initiated, suggested or persuaded the defendant

1 to commit a crime and the defendant would not have
2 committed the crime without the trickery, persuasion or
3 fraud of the officer or agent.

4 The State is required to prove beyond a reasonable
5 doubt that the defendant was predisposed to commit the
6 crime without the inducement of the officer or agent.
7 Predisposed to commit the crime means that the Defendant
8 had the intent -- which we discussed previously -- purpose,
9 readiness or willingness to commit the crime without an
10 inducement or persuasion of the officer or agent. The fact
11 the officer or agent merely presented opportunity or
12 facility for the commission of the crime, is not
13 entrapment.

14 If you find that the defendant had any
15 predisposition without any government inducement or
16 influence to commit the crime, the defense of entrapment
17 would not apply. In deciding whether the defendant had any
18 predisposition to commit the crime, you may consider
19 evidence such as an existing course of criminal conduct by
20 the defendant similar to the crime charged and a
21 willingness to commit a crime charged as shown by the
22 defendant's ready response. If you find that the defendant
23 was entrapped into committing the crime, you must find the
24 defendant not guilty. However, if you find the other
25 elements, the distribution of the methamphetamine and you

1. find that the defendant was not entrapped into committing
2. the crime, you must find the defendant guilty.

3. That includes the charge both as to the general
4. criminal law and distribution of methamphetamine. So
5. finally, ladies and gentlemen, the jury verdict. As to the
6. charge of distribution of meth, there are two possible
7. verdicts which you find in this case; guilty of
8. distribution of meth or not guilty. There's no
9. significance whatsoever in the order in which I stated
10. these possible verdicts; it is simply that once must be
11. stated first.

12. Ladies and gentlemen, your verdict must be a
13. unanimous one. All twelve of you must agree. It may not
14. be based on passion or prejudice, emotion or any other
15. consideration not in evidence in this case.

16. Mr. Foreman, you will have with you in addition to
17. the various exhibits that have been offered into evidence,
18. a document entitled Verdict Form. It's very
19. self-explanatory. It has the caption of the case up at the
20. top and it lists: Please mark the appropriate verdict
21. below and follow the accompanied instructions carefully.
22. It's so simple. There are no accompanied instructions.
23. It's a one page document. If after your determination of
24. the facts as you find them to be, comparing them to the law
25. as I have told you the law is, if you find the State has

1 met its burden of proof in this case beyond a reasonable
2 doubt, I would ask you to please check to the left of the
3 words guilty of distribution of methamphetamine; check
4 that, circle both your check mark and all of those words,
5 sign as the presiding juror and today's date.

6 If after the jury's deliberations and determination
7 of the facts in the case, you've applied that to the law as
8 I've told you the law is, you find the State has not met
9 its burden of proof beyond a reasonable doubt, I would ask
10 you to check to the left of the two words not guilty;
11 circle your check mark, circle the two words, sign as
12 presiding juror and date of the appropriate date.

13 I must meet with the attorneys one final time
14 outside of your presence. What will happen if I do not
15 have to bring you out for any further instructions -- if I
16 do not have to bring you out for any further instructions,
17 everybody looks great, I will bring our alternate out; the,
18 the verdict form and the items of evidence will be
19 delivered to you and you will instructed by the clerk to
20 begin your deliberations.

21 If you have any questions for me that you think I
22 can help with during the course of your deliberations,
23 please write me a note. I cannot respond and will not
24 respond to any factual questions whatsoever. That's in
25 y'all's range, totally and completely, but if you have a

1 question on the law or anything about in that respect,
2 please write me a note. The bailiff will be outside the
3 door.

4 When you've reached that unanimous verdict, after
5 you've signed it, if you'll knock on the jury room door and
6 inform the bailiff you've reached a verdict, at that time,
7 we will receive you back into the court.

8 Again, you may now return to your jury room. Do
9 not begin your deliberations until you are directed to do
10 so by Madam Clerk.

11 Thank you. Thank you very much. You may now go
12 with the bailiff.

13 (The jury left the courtroom at 4:40 p.m.)

14 THE COURT: All right. Any objections, additions
15 or exceptions from the State.

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

17 THE COURT: Ms. Zmroczek?

18 MS. ZMROCZEK: None from the defense, Your Honor.

19 THE COURT: All right. Here is the form of verdict
20 and check with the court reporter as far as exhibits are
21 concerned.

22 MS. ZMROCZEK: Your Honor, will they have a -- I
23 know we've been through this before. Do y'all have a
24 computer that they can watch the video if they need to?

25 MR. MAYE: We also have to go back there and play

1 it for them.

2 MS. ZMROCZEK: Okay.

3 THE COURT: Madam Clerk, are you going to tell them
4 to deliberate?

5 THE CLERK: I will.

6 THE COURT: Tell them if they need the video just
7 advise the bailiff, okay?

8 THE CLERK: Is this everything? And I'm going to
9 bring the alternate out.

10 (The jury began deliberations at 4:41 p.m.)

11 THE COURT: Thank you. Anything further,
12 Solicitor?

13 MR. MAYE: No, sir, Your Honor. Thank you.

14 THE COURT: Thank you. Thank you very much. Court
15 will be awaiting our verdict.

16 (Deliberations began at 4:42 p.m.)

17 THE COURT: All right. Thank you. I understand we
18 have a verdict.

19 Bring us our jury, please.

20 (The jury entered the courtroom at 5:26 p.m.)

21 **VERDICT**

22 THE COURT: All right. Madam Clerk.

23 THE CLERK: Mr. Foreman, have you reached a
24 verdict.

25 THE FOREPERSON: Yes, ma'am.

1 THE CLERK: If you would, please pass it to the
2 bailiff.

3 THE COURT: All right. The verdict form is in
4 proper form. It is signed by the juror dated 21, January,
5 '15.

6 Madam Clerk, if you would, please publish the
7 verdict.

8 THE CLERK: The State of South Carolina versus Leon
9 Alvin Lilly, Indictment No. 2013-GS-19-570, as to the
10 charge of distribution of methamphetamine, We, the jury,
11 unanimously find the defendant guilty of distribution of
12 methamphetamine.

13 Signed by the foreperson, James A. Turner, dated
14 January the 21st, 2015.

15 Mr. Foreman, ladies and gentlemen of the jury, if
16 that is your verdict, please raise your hands?

17 All hands are raised.

18 THE COURT: Thank you. Thank you very much, Madam
19 Clerk.

20 Anything further from the jury from the State,
21 Solicitor.

22 MR. MAYE: Nothing from the State, Your Honor,
23 thank you.

24 THE COURT: Defense?

25 MS. ZMROCZEK: We would ask for an individual poll

1 of the jurors.

2 POLLING OF THE JURY

3 THE COURT: Madam Clerk, will you explain that
4 procedure to our jury panel and conduct a polling of the
5 jury.

6 THE CLERK: Yes, sir.

7 The State, the defense -- I mean the defense has
8 requested polling of the jury. I will ask you individually
9 if that was your verdict.

10 THE COURT: And if it's still your verdict.

11 THE CLERK: And if it's still your verdict.

12 The verdict of the jury reported to the Court is
13 guilty of distribution of methamphetamine. Was this your
14 verdict in the jury room and is it still your verdict;
15 please answer yes or no when I call your names.

16 James A. Turner.

17 THE FOREPERSON: Yes.

18 THE CLERK: Daniel Robinson.

19 THE JUROR: Yes.

20 THE CLERK: Karen N. Bledsoe?

21 THE JUROR: Yes.

22 THE CLERK: Devin L. Lacey.

23 THE JUROR: Yes.

24 THE CLERK: Jennifer M. Ross?

25 THE JUROR: Yes.

1 THE CLERK: Perry W. Bussey?
2 THE JUROR: Yes.
3 THE CLERK: Debra Bradham?
4 THE JUROR: Yes.
5 THE CLERK: Corrine Wilson?
6 THE JUROR: Yes.
7 THE CLERK: Walter H. Morgan, Jr.?
8 THE JUROR: Yes.
9 THE CLERK: Deborah J. Morgan?
10 THE JUROR: Yes.
11 THE CLERK: John A. Johnson?
12 THE JUROR: Yes.
13 THE CLERK: Tiffany N. Creasy?
14 THE JUROR: Yes.
15 THE CLERK: Those are our twelve.
16 THE COURT: All the jurors been polled?
17 THE CLERK: Yes, sir.
18 THE COURT: And all answered both questions in the
19 affirmative?
20 THE CLERK: Yes, sir.
21 THE COURT: Thank you. Thank you very much, Madam
22 Clerk.
23 Anything further from the jury from the defense?
24 MS. ZMROCZEK: Nothing further, Your Honor.
25 THE COURT: All right. Mr. Foreman, ladies and

1 gentlemen of the jury, I never criticize or commend a jury
2 for its verdict, but I will say you have shown very great
3 work ethic, patience, focus, attention to all the parties
4 and to the Court during this last two days. I know that it
5 can be a burden on both your professional and personal
6 lives taking you out of the comfortable environments that
7 you may live in and work in and put you in these unfamiliar
8 surroundings.

9 We would not be able to able to be about the
10 business, conducting your criminal and civil judicial
11 system, without the system with folks like you and citizens
12 of all the counties throughout the state, week in and week
13 out. The -- it's just -- almost the best part of being a
14 circuit judge is going to different towns and locations and
15 working with the staff in the courthouses and the citizens
16 in the various counties. It's my privilege to preside over
17 court here.

18 Momentarily your jury service will be --

19 Do they have to come back tomorrow?

20 MR. MAYE: No, sir, Your Honor.

21 THE CLERK: No, sir.

22 THE COURT: Momentarily your service will be
23 concluded for the remainder of the day, which is pretty
24 well done and the remainder of the week. It has been my
25 pleasure to be with you during this -- during this trial.

1 And I hope you have found it to be, if not enjoyable, at
2 least an educational experience for you. I try to judge
3 with a cool head and a warm heart. And it will shortly
4 become my duty to sentence Mr. Lilly, but our communities
5 and quite frankly enforcers of -- individuals who have been
6 tragically perpetrated on individuals; and that's their
7 goal and that's their desire and it's a sad state of
8 affairs. I hope Mr. Payne maintains the course he appears
9 to have testified to and does not relapse.

10 With that being said, thank you very much for your
11 service. You are now released for the remainder of the
12 week. You don't have to call or come back. You are
13 certainly welcome to stay with your colleagues. We got so
14 attached to y'all. We want to make sure y'all are well
15 taken care of. Y'all are certainly welcome to stay for the
16 sentencing or you're welcome to leave at this time. Thank
17 you. Thank you very much.

18 (The jury panel stayed to see the sentencing
19 portion.)

20 THE COURT: Y'all are going to remain; they can
21 remain or they can leave, whichever they want to do.

22 THE BAILIFF: They wish to remain.

23 I think most of them want to stay.

24 THE COURT: All right.

25 SENTENCE

1 THE COURT: Any other matters, Solicitor, from the
2 State.

3 MR. MAYE: None from the State, Your Honor, per the
4 sentencing.

5 THE COURT: Sir?

6 MR. MAYE: None per the sentencing.

7 THE COURT: All right. Let me hear from you; thank
8 you.

9 MS. ZMROCZEK: Thank you, Your Honor. At this
10 time, we would move to set aside the verdict primarily
11 based on my previous objections and motions and the short
12 amount of time for deliberation, Your Honor. I just argue
13 that that does not provide a substantial amount of time to
14 view and consider all of the evidence. Thank you.

15 THE COURT: All right. I would respectfully deny
16 your motion. I think there was overwhelming evidence of
17 guilt both from the testimony and relevant to the manner in
18 which they conducted the investigation, the testimony of
19 Mr. Payne and corroboration of Mr. Payne's testimony by the
20 video and audio that was presented during the first part of
21 the trial.

22 As far as time the jury deliberated, there's no
23 hard and fast rule. In fact, I think there was a recent
24 case that Judge Seals allotted a time and supplemented the
25 record in that regard and allowed a written opinion from

1 both the State and the defense. I think they had more than
2 ample opportunity to deliberate. They did not have but
3 three witnesses, I believe, Mr. Payne, Detective Young, and
4 Zivkovich from Columbia. So I respectfully deny that
5 motion.

6 Any other motions?

7 MS. ZMROCZEK: Nothing else, Your Honor.

8 THE COURT: Any reason sentence can not be imposed
9 at this time?

10 MS. ZMROCZEK: No, Your Honor.

11 THE COURT: All right. If you'd come around
12 please, Mr. Lilly.

13 All right, Solicitor, anything additional from
14 the State as far as sentencing is concerned?

15 MR. MAYE: No, sir, Your Honor, I have, I have the
16 prior criminal history.

17 THE COURT: All right. If you'd share that with me
18 please.

19 MR. MAYE: Yes, sir. Looks like in 1973 he was
20 charged with manufacturing marijuana and it appears from
21 the sentencing sheet he pleaded guilty of possession or
22 more than one ounce of marijuana 10/22 of '73. In Aiken
23 County in 1975 was found guilty of receiving stolen goods.
24 In 1983 he was convicted of disorderly conduct and
25 resisting arrest. In 1991 he was found guilty of

1 possession of amphetamines. In 2011 and went in to 2012,
2 he was found guilty of manufacturing methamphetamine. He
3 was given 15 years on that, suspended on 3 years probation.
4 He was still on supervision and probation during the
5 commission of this crime, Your Honor.

6 I only note that I thought it was interesting in
7 this case that a confidential informant detailed Mr.
8 Lilly's conversations with him about his ability to thwart
9 the drug testing that occurred as a result of being on
10 probation, cleaning his system out, and still kept clean
11 and continued to use methamphetamine. He certainly has
12 detailed someone that has been actively pursuing
13 manufacturing and distributing methamphetamine and even
14 apparently, according to his own admission, a continual
15 pattern of him using methamphetamine in this case, Your
16 Honor.

17 The facts speak for themselves. I think his
18 disregard for his previous conviction for manufacturing and
19 his continued to distribute and use methamphetamine speaks
20 volumes as to his regard for this process.

21 THE COURT: All right. And, Solicitor, what is the
22 extent of maximum punishment.

23 MR. MAYE: Your Honor, it would be --

24 THE COURT: Distribution of meth 2nd.

25 MR. MAYE: Yes, I see it is as being, with the

1 change of law no longer utilizing marijuana for
2 enhancement, it would be the manufacturing of
3 methamphetamine, the 15 year, the distribution of meth
4 would be as a second drug offense, Your Honor, and I'd have
5 to look up the penalty for 2nd distribution of
6 methamphetamine. I know it's got a minimum of 5.

7 MS. ZMROCZEK: It's 5/30.

8 THE COURT: 5 and 30?

9 MS. ZMROCZEK: I believe, Your Honor, and the 5 is
10 suspendable.

11 THE COURT: All right. Thank you. Thank you,
12 Solicitor.

13 MR. MAYE: Thank you, Your Honor.

14 THE COURT: Ms. Zmroczek?

15 MS. ZMROCZEK: Thank you, Your Honor. Mr. Lilly is
16 60 years old. Clearly you heard a little bit throughout
17 the course of the trial regarding his health and his
18 problems that he's had. Your Honor, he -- if you've
19 noticed in his record, he has a significant time gap where
20 he was working.

21 THE COURT: From '91 to '11, 20 years.

22 MS. ZMROCZEK: Yes. And -- and he was -- and he
23 was a productive member of society. Your Honor, he does
24 have small children. His wife has been here throughout the
25 trial and like I said, he has significant health problems

1 that -- his heart only pumps at 35 percent capacity. I
2 know that it is not -- I think this is my first trial with
3 Your Honor -- but I know it's not your habit to punish
4 people for asserting their right to go to trial and we do
5 understand that this was a -- this would indicate a
6 probation violation. So he has that as well. I don't know
7 that he's been served that warrant, but we understand that
8 that, of course, would automatically violate his probation.

9 But, Your Honor, given all of those facts and
10 certainly what I would raise is a questionable witness in
11 Mr. Payne, I would ask that the -- the Court consider
12 something on the lower end. I understand that the 5 is
13 suspendable, but Mr. Lilly understands that he will be
14 facing some time. I would ask that the Court just consider
15 all the evidence provided and not provided and just
16 sentence him appropriately.

17 THE COURT: Thank you. Were there ever any plea
18 negotiations in the case?

19 MR. MAYE: Your Honor, we've never got anywhere
20 with any plea negotiations. It's always been a trial and
21 we've been prepared to dispose of it since the 10th of
22 December, numerous times and it's been delayed many times
23 and there is, we didn't get there. We just, you know -- he
24 always asserted he wanted a trial and he's had it.

25 MS. ZMROCZEK: He had -- and Your Honor, he had

1 Greg Seigler for a year before I got on the case and
2 that -- and my schedule has contributed to the delays, but
3 as you know, I can only be in one place at one time.

4 THE COURT: Tell me a little bit more about his
5 medical condition.

6 MS. ZMROCZEK: Your Honor, I have -- and I can go
7 get them because they're in my car, but I literally have a
8 stack of medical records this big. He is on several
9 medications for his breathing, for his blood. He -- as you
10 heard and you can see, he fell from a roof while working
11 and was literally impaled on an inch and a half pipe, Your
12 Honor, which went through his lungs. And as a result of
13 that, he has had numerous surgeries and has been on -- he
14 goes to the doctor every single month. I know that it's
15 the State's contention that he is running around using meth
16 every day, but Your Honor, I assure you that he, as an
17 officer of the Court, he has been attending, is it Dr.
18 Ward?

19 THE DEFENDANT: Yes.

20 MS. ZMROCZEK: Dr. Ward is his doctor and he sees
21 him monthly. And so I don't think it's quite -- it's not
22 quite the picture being painted that he has a complete
23 disregard for the law and -- and -- and he understands that
24 even though -- he knows meth is illegal and one of the
25 things that he's asked me and I hate to say it because, I

1 hate to say it out loud, but one of the things that's been
2 beneficial of continuing with this trial was quite
3 honestly, we weren't sure if he was going to make it to
4 trial. And certainly we know that it's going to be some --
5 I don't know if he'll go to GEO Care; I assume that it's
6 going to require a high amount of -- of medical
7 documentation because even, Your Honor, at the jail here,
8 they wouldn't -- they weren't able to keep up with his
9 medications and that's -- and that's honestly our -- our
10 biggest concern because he takes so many medications every
11 day and without those, the outlook is very grim.

12 THE COURT: Thank you, Ms. Zmroczek.

13 Anything you'd like to say, Mr. Lilly?

14 THE DEFENDANT: No, sir. I don't think so. I'm
15 sorry. I'm sorry I took everybody's time and I apologize.

16 THE COURT: Tell me about your medical condition.

17 THE DEFENDANT: Sir?

18 THE COURT: Tell me about your medical condition.

19 THE DEFENDANT: My medical?

20 THE COURT: Medical.

21 THE DEFENDANT: I have congestive heart failure and
22 I have one-third of one lung and I can't hardly, I just
23 can't breathe real well. I have to do oxygen sometime at
24 night and, I just -- I just am so tired all the time.
25 Right now I can't hardly stand, my arm -- my armpit.

1 underneath here, it's killing me. It has been all night
2 and all day.

3 THE COURT: Madam Agent --

4 THE DEFENDANT: I'm not trying, I'm not begging --
5 I mean, I'm sorry, Your Honor. I mean, I really am. It
6 just -- I'm sorry.

7 THE COURT: Thank you.

8 Madam Agent, what about the probation violation?

9 PROBATION AGENT: He needs to be served, but his
10 guilty conviction is --

11 THE COURT: Go ahead and serve him.

12 (The officer was serving Mr. Lilly the probation
13 citation.)

14 THE DEFENDANT: Your Honor, I never
15 intentionally -- I didn't want to do anything wrong. I
16 just, it helped me get out of bed. I mean, I was -- I
17 don't know. That's not a very good excuse, but it's the
18 truth.

19 MS. ZMROCZEK: And it's my understanding, Your
20 Honor, that he maybe was a little bit behind on his
21 payments, but that he, and correct me if I'm wrong, but
22 that he reported and did pass his drug test.

23 THE COURT: Solicitor, is this 85 percent?

24 MS. ZMROCZEK: It is, Your Honor.

25 MR. MAYE: Yes, sir, Your Honor.

1 THE COURT: All right. Now, having been served,
2 according to the Department of Probation, says you are
3 guilty of intentionally violating the terms and conditions
4 of your probation particularly for this offense here today.
5 How do you plead to that? Guilty or not guilty?

6 THE DEFENDANT: Guilty.

7 THE COURT: Madam Agent?

8 PROBATION AGENT: Yes, Your Honor. Leon Lilly was
9 sentenced on July 16th, 2012, on Indictment No.
10 11-GS-19-152 to distribution of meth. He reports as
11 instructed. He's had one prior violation, which was just
12 to restructure his accounts and his only violation before
13 the Court at this time is this distribution of meth 2nd.

14 THE COURT: Anything further, Ms. Zmroczek?

15 MS. ZMROCZEK: I do not have anything further at
16 this time, Your Honor.

17 THE COURT: Mr. Lilly? Anything further you'd like
18 to say?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Taking in all the facts and
21 circumstances and considering, additionally your age, your
22 health condition, and taking into account that you pled
23 guilty to receive probation 7/16/12 and about 5 months and
24 1 day later, you were distributing methamphetamine to -- to
25 Mr. Payne --

1 Where's my sentencing sheet? Have I been provided
2 a sentencing sheet?

3 MR. MAYE: Yes, sir, Your Honor. Just one second.

4 THE COURT: Thank you. Thank you, Mr. Maye.

5 MR. MAYE: And, Your Honor, he still does have
6 pending a possession with intent to distribute
7 methamphetamine that was made at the time of his arrest in
8 this case which is still outstanding on July 18th, 2013.
9 He was charged with possession with intent to distribute
10 methamphetamine upon his arrest and that is still
11 outstanding.

12 THE COURT: All right. 2013-GS-19-570, Leon Alvin
13 Lilly having been found guilty of distribution of
14 methamphetamine, taking into account all the facts and
15 circumstances in the case and the circumstances of the
16 defendant, the defendant is committed to the State
17 Department of Corrections for a determinate term of 8
18 years.

19 As to the violation of his probation, I've found
20 that he willfully and intentionally violated the terms of
21 his probation. I'm revoking 8 years on that. I'm
22 terminating. Any fines and fees shall be converted to
23 civil judgements.

24 Good luck to you -- Good luck to you, Mr. Lilly.

25 MS. ZMROCZEK: Thank you, Your Honor. And I'll

1 just note that I'll call the jail to see if we can handle
2 that medication issue this evening.

3 THE COURT: Thank you. Thank you very much.

4 Good luck to you, Mr. Lilly.

5 One further matter, Ms. Zmroczek and Solicitor, I
6 do intend to -- I'm having my court reporter transcribe
7 part of the record and our discussions concerning Mr. Payne
8 and I'm going to write a written supplement to the record.
9 I will allow y'all to respond to that.

10 MS. ZMROCZEK: Okay. Thank you, Your Honor.

11 THE COURT: Okay. Thank you very much.

12 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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I, THE UNDERSIGNED, Brenda J. Sigwald, Official
Court Reporter for the Eleventh Judicial Circuit of the
State of South Carolina, do hereby certify that I reported
the proceedings in the captioned case in the Court of
General Sessions in and for the State of South Carolina on
the 20th and 21st days of January, 2015.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and
seal at Aiken County, this 26th day of May, 2015.

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

WITNESSES

ECSO

MILLER

ARREST WARRANT NUMBER

2013A1910100371

ACTION OF GRAND JURY

FILED

Foreperson of Grand Jury

Date:

OCT 30 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-19- 570

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

THE STATE

vs.

LEON ALVIN LILLY

CDR#3199

Indictment for

**DISTRIBUTION OF
METHAMPHETAMINE**

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
DISTRIBUTION OF METHAMPHETAMINE

At a Court of General Sessions, convened on October 30, 2013 the Grand Jurors of Edgefield County present upon their oath:

That LEON ALVIN LILLY, did in Edgefield County on or about January 17, 2013, knowingly and intentionally, distribute to a confidential informant working with Edgefield County Sheriff's Department, a quantity of Methamphetamine, a controlled substance, in violation of §44-53-375(B)(1), South Carolina Code of Laws, 1976, as amended, such distribution not having been authorized by law, with penalties provided for in §44-53-375(B)(2), South Carolina Code of Laws, 1976, as amended.

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


SOLICITOR

RECEIVED

286

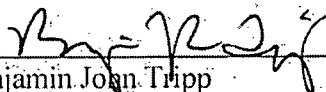
JAN 12 2016

CERTIFICATE OF COUNSEL FOR APPELLANT

SC Court of Appeals

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."

January 12, 2016


Benjamin John Tripp
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

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."

January 12, 2016


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ATTORNEY FOR APPELLANT

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JAN 12 2016
SC Court of Appeals