

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Honorable Frank R. Addy, Circuit Court Judge

JOSHUA BROOKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001592

APPENDIX

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S.C. SUPREME COURT

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¹ Petitioner's counsel obtained copies of the PCR application from both the lower court's file and PCR counsel, both of which included a page 6 of the application with no text, as reflected on page 246 of this Appendix.

State of South Carolina.,)
)
)
 County of York.)

In the General Sessions
 Court of York

Case No.: 2014-GS-46-02999

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-)
)
 Joshua Kenneth Brookins.,)
)
 Defendant.)

Transcript of Record

December 2, 4, 2014
 York, South Carolina

B E F O R E:

The Honorable Alexander MacCaulay., judge, and a jury

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ORIGINAL

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 Official Court Reporter
 To the Honorable John C. Hayes, III

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

Detective Walter Beck

Solicitor Colton P.124-129

Ms. Inzerillo P.129-135

Charles Bowker, III

Solicitor Colton P.135-142

Ms. Inzerillo P.143-146

Investigator Vincent Holland

Solicitor Colton P.154-159

Ms. Inzerillo P.160-166

Investigator David Vaughn

Solicitor Colton P.167-173

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Court Reporter's Certificate Page.

Jury Voir Dire/Batson Sheet.

I-N-D-E-XE-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD.</u>
Ct.1	None entered.		
Ct.2	Six-pack photo lineup	P.126	
Ct.3	Copy of Miranda Warning and waiver	P.153	
Ct.4	Booking photo	P.229	

Reporter's Note: All Exhibits were filed with the Clerk
of Court's Office of York County.

1 (COURT IN SESSION TUESDAY, DECEMBER 2, 2014 AT 10:05
2 A.M..)

3 THE COURT: All right, thank you very much.

4 You may take your seats, please. Good morning.

5 Good morning. All right, we're about to start the
6 case of State versus Joshua Kenneth Brookins.

7 Ms. Colton's here on behalf of the State and Ms.
8 Inzerillo on behalf of the defendant 2014-GS-46-3002.

9 I understand a panel has been selected to be - from
10 which we would draw the trial jury but there's some matters
11 that might need to be taken up before we do ask the jury
12 panel to join us.

13 SOLICITOR COLTON: Yes, Your Honor. And just for
14 purposes of the record, Misti Shelton will be second
15 chairing this case.

16 THE COURT: Very well. Thank you.

17 Yes, ma'am.

18 MS. INZERILLO: Thank you, Your Honor, may it please
19 the court. Your Honor, for the purposes of the record I
20 wish to place on the record that Mr. Brookins is not
21 present today. I did call him and kept him continuously
22 informed of the court's and the state's request to choose a
23 jury panel for today in anticipation of starting the trial
24 tomorrow. He is well aware that that I had agreed to that
25 and that was the intention and the business before the

1 court today and matters of this trial as well as the motion
2 I'm getting ready to make.

3 I received a voice message from him this morning.

4 THE COURT: Just one? Is there any objection from the
5 state as to the defendant not being present during the jury
6 selection?

7 SOLICITOR COLTON: No, Your Honor. The state's really
8 concerned. I think its his right to waive that presence,
9 but the state's main concern is whether or not he'll show
10 up. He certainly was docketed for this term. My concern
11 is that he's required to be here until released by the
12 state so I would just be concerned about whether or not he
13 would show up tomorrow and proceed as TIA.

14 THE COURT: Well was he advised of his right to waive
15 his or at least to be tried - he would be tried in his
16 absence if he did not appear?

17 SOLICITOR COLTON: I do not recall if he was
18 specifically advised of that when he - put an offer of
19 rejection on the record but it is in the bond paper work.

20 MS. INZERILLO: I can answer that question, Your
21 Honor.

22 I have advised him of that several times. I told him
23 that the trial would continue in his absence. I advised
24 him of that prior to today. My conversation with him this
25 morning I told him that the business before the court would

1 continue without him being present.

2 He did report for docket yesterday as required and
3 signed in and was released after our discussion about this
4 trial.

5 THE COURT: And he is on bond?

6 MS. INZERILLO: He is on bond, Your Honor.

7 THE COURT: And y'all use the standard state bond
8 form?

9 SOLICITOR COLTON: Yes, sir.

10 THE COURT: In other words the one approved by the
11 Court Administration?

12 SOLICITOR COLTON: Yes, sir. And he was advised and I
13 documented ---

14 THE COURT: And that has the - he initialed the ---

15 SOLICITOR COLTON: Yes, sir.

16 THE COURT: --- his right to waive and also that he
17 would be tried in his absence?

18 SOLICITOR COLTON: Yes, sir.

19 THE COURT: All right. Very good. Thank you.

20 All right, you may proceed.

21 MS. INZERILLO: Thank you, Your Honor. So I just wish
22 to place on the record that he is knowingly waiving his
23 presence today. And I place it on the record one because
24 he's not here. Two, because prior to the drawing of the
25 jury I did have a matter before the court, a pretrial

1 matter, and I did wish the court to know that I was making
2 that matter with his full consent and knowledge that I
3 would be doing that without his presence.

4 THE COURT: Very good.

5 MS. INZERILLO: The matter I have before the court,
6 Your Honor, prior to the drawing of the jury is this, Your
7 Honor. Your Honor, Mr. Brookins is before the court on one
8 indictment which is 2014-0-3-0-0-2 which is an indictment
9 for distribution of methamphetamine on February 28th, 2014.

10 Mr. Brookins has three other indictments, distribution
11 of methamphetamine arising from allegations of March 21st
12 and two indictments of trafficking in methamphetamine and
13 PWID methamphetamine, both arising from dates of March
14 27th, 2014. Those indictments have all been True Billed.

15 Your Honor, today we are asking that those indictments
16 be joined before the court. Essentially as the court would
17 hear in this case Mr. Brookins was the subject of an
18 ongoing investigation by the Drug Enforcement Unit.

19 The Drug Enforcement Unit is our belief sent out the
20 same CI's who have now been disclosed to us in order to
21 target Mr. Brookins they did it over a period of about six
22 weeks. There was essentially three buys made where that
23 would be an allegation made between the CI's and Mr.
24 Brookins. The third being of a trafficking weight which is
25 the trafficking indictment against Mr. Brookins.

1 THE COURT: That's the 27th?

2 MS. INZERILLO: That's on the 27th yes, Your Honor.

3 Your Honor, it's the defense's position that because
4 it is an ongoing investigation it is all the same. It's
5 the same agency, it would be all the same witnesses,
6 essentially the same CI, it would be the same officers, the
7 same chain, and the same chemist. It would be essentially
8 because it was an investigation that continued and Mr.
9 Brookins was not arrested until the end of the
10 investigation. Any statements that were taken by Mr.
11 Brookins it is my belief reference the entire investigation
12 and why he did or did not make actions throughout the
13 investigation which was the totality of all the
14 distributions and not just one for which he was ultimately
15 arrested.

16 There is some evidence ultimately taken into evidence
17 at the conclusion of the case at the trafficking that the -
18 may or may not have some relevance back to the original
19 charges that we have here today.

20 Your Honor, essentially in this case it has been
21 provided to the defense in the discovery it is essentially
22 the same facts. It's in the same incident reports and the
23 same General Session's case summary. The only difference
24 is it's different dates and different locations so it's
25 ultimately the same case.

1 I am not - do not wish to speculate as to what the
2 state wishes to put forward before the jury but it is my
3 anticipation that there in the video if the state wishes to
4 enter the video through any of it's witnesses there are
5 statements on that video subject to admissibility of Mr.
6 Brookins intimating that he can get more drugs at a later
7 date. Certainly that does go to future drug dealings in
8 the subject of today's --

9 THE COURT: Excuse me. The video that you have, is
10 that for this indictment, the first indictment?

11 SOLICITOR COLTON: Yes, sir.

12 THE COURT: And I understand it was on February the
13 28th?

14 SOLICITOR COLTON: Yes, sir, specifically for this
15 indictment.

16 MS. INZERILLO: Which is the first of the three deals,
17 Your Honor, so it would be relevant to any of the later
18 distributions and ultimately the trafficking, Your Honor.

19 The - Your Honor, also at this point we have the drug
20 reports, all the drugs have been tested. I would note for
21 the record, Your Honor, I am making this motion with the
22 consent of my client. I note that, Your Honor, because at
23 this point all the discovery on the remaining two charges
24 have not been turned over by the state to the defense.

25 I spoke with Mr. Brookins at lunch about this and I

1 understand what we're doing today is picking the jury with
2 the anticipation of starting this trial tomorrow. It would
3 be my anticipation that because the officers on the witness
4 list are substantially the same officers in all the cases.
5 The CI's, it is my understanding are the same CI's in all
6 the cases, that it would be very easy for the state to get
7 us that information and I would certainly work very hard to
8 get the remainder of the trial put together so that there
9 will be no undue delay in starting the trial as scheduled
10 tomorrow.

11 Mr. Brookins understands that will be my position
12 before the Court so I do not foresee this motion creating
13 any undue delay but I did wish to make this motion before
14 the court. We drew the jury because I wasn't aware if the
15 court read any or all of the indictments before the jury
16 and I wish to have this matter settled -

17 THE COURT: I'll tell you what I might do in this case
18 because I understand - I want to hear not only from the
19 state but also if I have any questions I'd like to do my
20 own research - but normally I do cite the indictment. Of
21 course I did that when I called this hearing this morning,
22 the proceeding this morning.

23 But what I could do is just cite the caption *State*
24 *versus Brookins* charged with the violations of the drug law
25 and leave it at that and as far as the qualifying of the

1 jury. Now of course when we start the trial of course it
2 would be to note which indictments we are proceeding on
3 that that time I would call on the solicitor to call the
4 case or cases depending on what your --

5 SOLICITOR COLTON: Yes, sir.

6 THE COURT: Would that be satisfactory to the
7 defendant? I mean just for the purposes of qualifying the
8 jury I think that rather than have them - normally I would
9 indicate which indictment you would be proceeding on but as
10 far as qualifying the jury we just need to note on what
11 their thoughts might be about any such charges.

12 MS. INZERILLO: And, Your Honor, that would be
13 satisfactory to the defense. I would actually have no
14 objection if the court would wish to say that the drug at
15 issue is methamphetamine in case --

16 THE COURT: I beg your pardon?

17 MS. INZERILLO: If the court would wish to even
18 indicate with specificity that the drug at issue is
19 methamphetamine.

20 THE COURT: It isn't the same?

21 SOLICITOR COLTON: They're all the same, Your Honor.

22 THE COURT: Well that might be even better.

23 MS. INZERILLO: Yes, Your Honor.

24 SOLICITOR COLTON: And, Your Honor, I think the only
25 impediment to going forward with qualifying the jury is

1 from the State's position and the evidence that we would use
2 we put on our witness list all the officers that we need
3 for this particular case. However those officers are not
4 all involved in the subsequent distributions.

5 THE COURT: Right.

6 SOLICITOR COLTON: Nor are they involved in the
7 trafficking so the jury wouldn't have an opportunity with
8 that problem or not they had any connection with those
9 individuals.

10 THE COURT: How many do we have?

11 SOLICITOR COLTON: The additional officers or the
12 current ones that I have on the witness list, Your Honor?

13 THE COURT: I mean in addition to the ones that I have
14 in this case.

15 SOLICITOR COLTON: And, Your Honor, that put a crimp
16 in the state's case because I haven't confirmed the
17 availability of those officers. I was just made aware of
18 this motion in court right now. I did talk to confirm
19 whether or not they are available for trial. I know some
20 of the officers do have training but I've not confirmed
21 their availability - schedule as far as vacation or family
22 obligations at this point.

23 THE COURT: Well do you have their names.

24 SOLICITOR COLTON: Yes, sir, if you would bear with me
25 one moment, please.

1 THE COURT: I call the names of potential witnesses.

2 Are these the witnesses' who may be called or do not
3 have to be called so if we get them all in there and then
4 we can sort them out as it comes.

5 SOLICITOR COLTON: The additional officers would be
6 Rayford Ervin.

7 THE COURT: I think he's on that list.

8 SOLICITOR COLTON: He may be, Your Honor.

9 THE COURT: I think Rayford Ervin is - Yes,
10 Investigator Ratfor Ervin is on here.

11 SOLICITOR COLTON: Allen Cantey, that's C-a-n-t --

12 THE COURT: A-l-l-e or --

13 SOLICITOR COLTON: A-l-l-e-n.

14 THE COURT: And the last name?

15 SOLICITOR COLTON: Cantey, C-a-n-t-e-y.

16 THE COURT: All right.

17 SOLICITOR COLTON: Leland.

18 THE COURT: L-e-l-a-n-d?

19 SOLICITOR COLTON: Yes, sir. Harrelson.

20 THE COURT: H-a-r-r-e-l-s-o-n?

21 SOLICITOR COLTON: Yes, sir.

22 THE COURT: Any others?

23 SOLICITOR COLTON: Jamie Faulkenberry.

24 THE COURT: J-a-m-I-e?

25 SOLICITOR COLTON: Yes, sir.

1 THE COURT: F-a-u-l-k-e-n-b-e-r-r-y?

2 SOLICITOR COLTON: Yes, sir. And the remaining
3 officers, Officer Robin Gander.

4 THE COURT: All right. R-o-b-I-n?

5 SOLICITOR COLTON: Yes, sir.

6 THE COURT: The last name?

7 SOLICITOR COLTON: G-a-n-d-e-r?

8 THE COURT: G-a-n?

9 SOLICITOR COLTON: D-e-r.

10 THE COURT: Gander. D-e-r.

11 SOLICITOR COLTON: I can say that Officer Gander will
12 not be able to attend trial, Your Honor. She's receiving
13 medical care in Charleston, South Carolina. She's
14 recovering from severe burns to her body, second and third
15 degree burns, so I know for a fact. I don't know off hand,
16 your Honor, since this is being presented the first time
17 how much of an inner play she had. She was involved in the
18 trafficking, she was an officer present, she was a material
19 witness.

20 I don't know how much connection she has to the
21 defendant. There were three other co-defendants that were
22 arrested at the same time but I can say with certainty that
23 she will not - the state will not be able to call her for
24 trial.

25 THE COURT: And that's on the actually the fourth

1 indictment?

2 SOLICITOR COLTON: Yes, sir. The trafficking, Your
3 Honor. And then there are two other co-defendant's, three
4 other co-defendant's. I'm sorry, Your Honor, that - whose
5 names may appear if they're all joined and the state may or
6 may not wish to call them at this point. I'll give you
7 those three names. The first is Tonya.

8 THE COURT: T-a?

9 SOLICITOR COLTON: T-o-n.

10 THE COURT: T-o-n.

11 SOLICITOR COLTON: Y-a.

12 THE COURT: Y-a.

13 SOLICITOR COLTON: B-o-u-l-e-r.

14 THE COURT: Douler.

15 SOLICITOR COLTON: Excuse me?

16 THE COURT: Fouler?

17 SOLICITOR COLTON: Bouler. B, Bouler, B as in Bouler.

18 THE COURT: B as in Bouler.

19 SOLICITOR COLTON: Sorry, Your Honor.

20 THE COURT: All right. B-o-u-l-e-r. Is that right?

21 SOLICITOR COLTON: Yes, sir.

22 THE COURT: Okay.

23 SOLICITOR COLTON: Jamie Hallman. It's Hall-man.

24 THE COURT: H-a-l-l?

25 SOLICITOR COLTON: M-a-n, yes, sir.

1 THE COURT: And the third co-defendant?

2 SOLICITOR COLTON: The third name that may appear is
3 Chad, C-h-a-d. Hyatt, H-y-a-t-t.

4 THE COURT: All right. Is that it?

5 SOLICITOR COLTON: Yes, sir.

6 THE COURT: So the additional names would be Allen
7 Cantey, Leland Harrelson, Jamie Faulkenberry, Robin Gander.
8 And the co-defendant's Tonya Bouler, Jamie Hallman and Chad
9 Hyatt.

10 SOLICITOR COLTON: Yes, sir.

11 THE COURT: Very good. And of course one that you
12 know that would not be available would be Robin Gander?

13 SOLICITOR COLTON: Yes, sir.

14 THE COURT: All right. Anything further?

15 MS. INZERILLO: No, Your Honor.

16 THE COURT: All right. What does the State say about
17 consolidation?

18 SOLICITOR COLTON: Your Honor, obviously we have a key
19 witness or other witnesses unavailable, we would be
20 prejudiced. I understand with the joinder several factors
21 to look at and one is arising out of the same chain of
22 circumstances. I think that each one of these
23 distributions is a separate distribution. The first one
24 occurred on February 28th.

25 THE COURT: March the 21st and March the 22nd.

1 SOLICITOR COLTON: March the 21st and then the final
2 distribution - trafficking by distribution the 27th.

3 I understand there are several factors to look at is
4 the same change in circumstances that each one of these is
5 precipitated by separate phone calls setting up the deal
6 involving different officers, different witnesses, a
7 different set of evidence. For example one statement - one
8 of the witness's statements - I believe the last statement
9 taken in the interview would only be applicable to the
10 trafficking and not the other three distributions because
11 it is very specific in nature.

12 Although the charges involve all the same amount of
13 drugs they are of different quantities. I don't know -

14 And, Judge, I think each of the distributions
15 including the trafficking by distribution carries a
16 different - has different witnesses, has different factors,
17 has separate elements to prove it but, Your Honor, this is
18 just a way for the defense to end around the state's - The
19 State's ready to try these as individual incidents.
20 They're not connected and one is not a series of robberies.

21 It's not an on-going crime by a defendant. He's
22 making a distribution, he's setting up another
23 distribution, setting up the third distribution, and so -

24 THE COURT: So you oppose the motion?

25 SOLICITOR COLTON: Absolutely, Your Honor.

1 THE COURT: Okay. All right, Ms. Inzerillo.

2 MS. INZERILLO: Your Honor, it's standard practice in
3 this county for the DEU to work with a confidential
4 informant, for either the DEU and an officer and the
5 confident informant to isolate one person and take multiple
6 buys from that one person. Its an on-going investigation
7 and then once that person is - either the officer or the
8 confidential informant decides they can't make any more
9 buys then that person is arrested.

10 What ultimately happened in this case was there were
11 two buys made allegedly from Mr. Brookins and then there
12 was a third buy done, thirteen grams were in exchange for
13 twelve hundred dollars and that was a result of the buy
14 bust from which usually everybody else was then arrested
15 including the CI's. And so the on-going investigation at
16 that point was completed.

17 It is the defense's position that it is an on-going
18 investigation, that it is the same standard across the
19 board for all of the distributions and ultimately the
20 trafficking because the trafficking is in the context of a
21 distribution. It is not for the search warrant. There as
22 a search warrant or the result of pulling the car over and
23 finding drugs or something that would be so materially
24 different factually that would set it separate from the two
25 distributions.

1 I think that it is a linear story in these cases. It
2 happened all within a six week period. The DEU works all
3 very closely together and officers are often interchanged.
4 And so perhaps one officer deals with the CI one day and
5 then a second officer does on the second buy and that is
6 very routine practice. It's very common in drug cases in
7 this county that multiple officers are called to testify
8 because multiple officers work with CI's and so seeing
9 multiple names for different buys that is extremely common.

10 As of right now because of Mr. Brookins prior record
11 which the defense contest, he is charged across the board
12 with just - with the second offenses so at the time of that
13 standard as well as the same it wasn't done with stand
14 alone and convictions in order to where it would be
15 anything different from the state to have to prove any
16 additional prior convictions. Anything like that where
17 each distribution or each crime would have to acquire an
18 additional element or additional piece of evidence by the
19 state put forward.

20 And so it's the defense's position that it is the same
21 as an on-going - it's an on-going crime, there are actually
22 two statements given by allegedly given by Mr. Brookins.
23 One is in specific detail of the trafficking. Another one
24 is where he allegedly speaks to two officers, Officer Ervin
25 and Officer Vaughan of the DEU and indicates that he was

1 unemployed and was selling methamphetamine to pay his child
2 support.

3 That of course statement was given at his arrest which
4 was at the conclusion of the investigation.

5 THE COURT: Is that the one that the solicitor was
6 referring to that was part of the trafficking

7 MS. INZERILLO: No, Your Honor. That's the second
8 statement, Your Honor. But --

9 SOLICITOR COLTON: You want me to clarify?

10 THE COURT: Please.

11 SOLICITOR COLTON: When Mr. Brookins was interviewed
12 twice and one instance he was interviewed right after he
13 was arrested he said I been selling drugs or selling
14 methamphetamine to pay for my child support. Officers went
15 back and did a more formal interview of him and
16 memorialized that.

17 THE COURT: Now that was the trafficking charge?

18 SOLICITOR COLTON: And that's the trafficking charge.
19 He alludes to the trafficking specific what happened in
20 that trafficking.

21 MS. INZERILLO: And, Your Honor, --

22 THE COURT: Which one is - Which statement are you
23 going to use

24 SOLICITOR COLTON: The one that said he was selling
25 methamphetamine to provide child support for his child.

1 THE COURT: But that was as a result of the
2 trafficking charge?

3 SOLICITOR COLTON: Yes, sir.

4 THE COURT: And that's the trafficking charge on the
5 March the 27th?

6 SOLICITOR COLTON: Yes. He was not arrested until the
7 trafficking charge. After his arrest he gave one statement
8 about his general intent to distribute to pay for child
9 support. The second interview specifically dealt with what
10 he did during that trafficking incident and how much he was
11 selling, what he was gonna do with the money, now much he
12 was gonna get as a result of that deal.

13 So the state's position would be that if he's tried
14 just for the distribution that trafficking statement I
15 don't believe I would be permitted to Lyle that in.

16 THE COURT: And you're talking about --

17 SOLICITOR COLTON: Yes, sir.

18 MS. INZERILLO: Your Honor.

19 THE COURT: But you do think that the first one would
20 be the one that was given after his arrest on - because he
21 referred to the trafficking charge at that time or suggest
22 sales?

23 SOLICITOR COLTON: Just his general intent to sell
24 methamphetamine yes, sir.

25 MS. INZERILLO: And, Your Honor, ---

1 THE COURT: Yes, ma'am.

2 MS. INZERILLO: --- I did wish to make a few more
3 points if I could. The first being the state didn't
4 mention that the trafficking charge does have what she
5 calls co-defendants. I did wish to clarify, and this might
6 be parsing words for co-defendants, but essentially the
7 factual allegations of the case are the CI and for the DEU
8 to set up a deal with Mr. Brookins and that Mr. Brookins
9 showed up in a car with three other people. And Mr.
10 Brookins was the one who did the deal.

11 Allegedly the factual allegations are did the deal
12 with the CI that was the bust and that result in the
13 trafficking and then as a result of that the DEU
14 investigated the other three people that were in the car
15 with him and they did ultimately charge those other three
16 people with unrelated charges. So none --

17 THE COURT: Not related to any of the --

18 MS. INZERILLO: Not related to the trafficking. And
19 so they were not charged with aiding and abetting, or --

20 THE COURT: But they were charged with being present
21 during the trafficking?

22 MS. INZERILLO: They were charged with the drugs and
23 other paraphernalia found on their person unrelated to Mr.
24 Brookins' charge. So I certainly will concede that the
25 state may want to interview them and perhaps see if they

1 maybe can be a witness in that vein but I didn't want the
2 court to think that they were co-defendant's in the sense
3 of the word that they were similarly charged or charged
4 with accessory or aiding and abetting or anything along
5 that vein.

6 SOLICITOR COLTON: They've not been indicted for that,
7 your Honor, but Mr. Brookins in his statement specifically
8 references Chad Hyatt and says I was selling these drugs to
9 give the money to Chad Hyatt who is the co-defendant and I
10 was gonna get two hundred dollars worth of methamphetamine
11 from Mr. Hyatt. So in that case and I think the state
12 would argue at this point that deciding Mr. Hyatt would
13 want to cooperate but if he did that would be a conspiracy
14 and that would an entirely different set of evidence that
15 the state could use to prove conspiracy completely
16 unrelated to these individual distributions.

17 THE COURT: Well let me ask you, how do you intend to
18 get the quote co-defendant's Ms. Bouler, Mr. Hallman and
19 Mr. Hyatt to testify?

20 SOLICITOR COLTON: Mr. Hyatt's facing PWID third
21 methamphetamine charge to -

22 THE COURT: Well I understand. How would you do that?
23 He some sort of compromises the *Fifth Amendment*
24 wouldn't he?

25 SOLICITOR COLTON: I'd ask his attorney and I'm pretty

1 sure he'd be willing to do that to avoid a ten to thirty
2 year sentence, Your Honor.

3 THE COURT: I'm just curious, one is, I'm not sure
4 that would have to be something that -

5 SOLICITOR COLTON: Your Honor, I've been in
6 negotiations with the majority of the co-defendant's in
7 this case and --

8 THE COURT: I mean if they volunteered if ask but even
9 then I'm not sure ---

10 SOLICITOR COLTON: They may not.

11 THE COURT: --- if they have pending charges
12 particular charges growing out of these transactions.

13 SOLICITOR COLTON: Well, Your Honor, Mr. Pope was the
14 co-defendant in this particular distribution, he's willing
15 to testify against her client. He was not present at these
16 other distributions or the trafficking.

17 THE COURT: Is there a charge pending against -

18 SOLICITOR COLTON: No, sir, not - No, he was not with
19 Mr. Brookins at this time. That would be a different
20 series of evidence to be used against his client to prove
21 the case. He has no tie whatsoever to the trafficking's or
22 the other distributions. There is nothing pending. As far
23 as I know there is no relation, it didn't occur at his
24 home. He isn't tied to those individual distributions so
25 that would be a different entirely set of evidence that

1 makes this unique from this other distributions including
2 the trafficking. I believe that I could have those other
3 co-defendant's testify against Mr. Brookins in the
4 trafficking. I don't think that would be a very difficult
5 thing to do, Your Honor.

6 THE COURT: All right.

7 MS. INZERILLO: Your Honor, the only other thing I
8 would note is for purposes of today I have not
9 intentionally handed up to the state or to the court any
10 pretrial motions pending out from this motion. And part of
11 my reasoning on that is that there's a *Neil v. Biggers* or
12 *Jackson v. Denno* and I would point specifically to *Neil v.*
13 *Biggers* as an example.

14 Each time the CI did a deal and then that with an
15 officer he looked at a photographic lineup and I believe
16 made statements to the officers about how he knew Mr.
17 Brookins, how long he knew, all of the things that would be
18 relevant of course in questioning of a *Neil v. Biggers* and
19 of course the court's factual findings for a *Neil v.*
20 *Biggers* hearing and so, your Honor, I would point that out
21 in terms of taking these piece meal would require some
22 parsing in those pretrial hearings as well it may require
23 the defense to be compromising its ability to question the
24 - especially in front of the jury pending on the outcome of
25 those motions to fully question that witness or those

1 witnesses and the CI or the officers about how they got the
2 knowledge. Mr. Brookins now long they've known him
3 especially if they were to implicate any prior deals,
4 future deals, anything like that. This joinder motion was
5 I believe to take care of those issues because it would
6 allow full questioning of any witnesses in regard to all of
7 the statements, all of the identification issues because
8 the entire case would be put in front of a jury at one
9 time.

10 THE COURT: All right.

11 SOLICITOR COLTON: Your Honor, I think that the four
12 factors that the state has - that the court is required
13 under *State versus Tucker* which is 324 --

14 THE COURT: Just a second.

15 SOLICITOR COLTON: I'm sorry. Your Honor.

16 THE COURT: The *State versus Tucker*?

17 SOLICITOR COLTON: Yes, sir.

18 THE COURT: Very well.

19 SOLICITOR COLTON: And that's 324 S.C. 155. It
20 states that charges can be joined and tried together if
21 they arise out of the same chain of circumstances which is
22 the state's position would be that they do not.

23 They are proven by the same evidence, are of the same
24 general nature, and that no real right of the defendant has
25 been prejudiced.

1 Your Honor, my position with that would be the main
2 reason why the defense wants to join these is to get around
3 sentencing and enhancement. I don't think that's a
4 legitimate reason, certainly not articulated in Tucker to
5 join cases. If the state has wished to go forward on one
6 of these charges and was gonna make the same argument as to
7 Lyle this evidence then to be allowed to talk about the
8 distribution and the trafficking I don't believe the state
9 would not even attempt to bring that in under Lyle evidence
10 cause it would be improper.

11 So I think the state - the defense has to acquiescent
12 at the very least that by allowing the sentence would be
13 prejudicial therefore the right of the defendant will be
14 prejudiced by allowing that in even if they're asking for
15 you not to do it under that fourth factor.

16 Your Honor, and I will go back to say that even if you
17 could find it was met the three other factors certainly are
18 not. They do not arise out of a single chain of
19 circumstances, they are four separate incidences, they are
20 not proven by the same evidence because other different
21 officers are involved, there is a potential conspiracy,
22 there's different video, there are different audio for each
23 one, different officers played ---

24 THE COURT: There is a video and statements from each
25 one?

1 SOLICITOR COLTON: There's two more - There's three
2 videos, Your Honor, and a video/audio recording of the
3 trafficking.

4 THE COURT: Okay.

5 SOLICITOR COLTON: And of the same general nature.

6 Arguably they're not, Your Honor. There are three
7 distributions and a trafficking by distribution but
8 arguably the state should be allowed to pursue whether or
9 not that was a conspiracy, whether there was aiding and
10 abetting or any of those issues that by Mr. Brookins own
11 confession acquiescence to the existence of a conspiracy.

12 If we went forward under trafficking and under
13 conspiracy I think the state could do that even if they
14 were joined. That would really defeat her argument. He
15 was indicted for distribution but the language of
16 conspiracy is in that indictment. And the state can prove
17 that distribution because the notice document we can go
18 forward and argue conspiracy to the jury because we
19 included that in the final indictment for trafficking.

20 So at that point I think we're dealing with an
21 entirely different set of circumstances. And not only
22 would the state be allowed to talk about that conspiracy,
23 we would be able to talk about any involvement at predates
24 that involving Mr. Hyatt and Mr. Brookin and that certainly
25 would be a different sent of evidence.

1 THE COURT: So you're relying on the language in the
2 distribution of methamphetamine -

3 SOLICITOR COLTON: I am not.

4 THE COURT: --- if that we have here that does have
5 the aiding abetting attempting to - or conspire to
6 manufacture.

7 SOLICITOR COLTON: Yes, sir.

8 THE COURT: All right. Anything else?

9 MS. INZERILLO: No, Your Honor.

10 THE COURT: No, as to this motion for joinder?

11 MS. INZERILLO: No, Your Honor, I think that covers
12 it.

13 THE COURT: As far as the prejudice to the defendant,
14 wouldn't it be prejudicial if you - after we acknowledge
15 the on-going enterprise?

16 MS. INZERILLO: I took that into consideration in
17 making this motion, Your Honor, but I think what I have
18 also more taken into consideration is one, his statement.
19 Right now my client is considering whether to testify and
20 he wished - and in that consideration he relied heavily on
21 the statements that he made at the conclusion of the
22 investigation and so we felt like he may be prejudiced in
23 that decision.

24 Secondly, Your Honor, the state has mentioned her
25 allegation that we are taking into consideration sentencing

1 and we feel like our position is as stated breaking up an
2 on-going investigation in order to artificially enhance his
3 - Mr. Brookins exposure under the drug laws. Right now Mr.
4 Brookins is charged as a second, he's only prior is a
5 simple possession of marijuana. We feel that it's not
6 properly enhanced under the statutes that would be the
7 motion before the court.

8 In breaking up this case which our position is it is
9 an on-going investigation but in allowing the state to
10 break it up and make it piece meal then the prejudice
11 against Mr. Brookins is because they are all distributions
12 he is - if he is convicted on one charge then it allows the
13 state to get not only three bits at the apple, but he also
14 is exposed to higher penalties and eight-five percent and
15 so in considering that we determined that that was a higher
16 prejudice. We've considered the arguments --

17 THE COURT: But you do consider that it would be
18 prejudicial to have to meet all four indictments or charges
19 at once?

20 MS. INZERILLO: I have considered that, Your Honor,
21 but we do feel like we have an argument in front of the
22 jury to address that. And so I don't - I understand that
23 is a concern. I know the state would consider that
24 prejudicial but I feel like we have a way to address that
25 and that that would be more of a factual argument before

1 the jury.

2 THE COURT: Well what do you say about the enhancement
3 argument, Madam Solicitor?

4 SOLICITOR COLTON: Your Honor, I believe the state has
5 the right to an answer. They are separate incidents even
6 if we had went under over whelming conspiracy we would
7 still be able to prosecute for the under lying offenses
8 because they are separate and distinct from the conspiracy
9 but I believe it's the state's right to do that.

10 The officers are under no obligation to arrest
11 everyone in the distribution as to why he's continuing to
12 commit crimes. That's his choice to continue to commit
13 crimes but I don' know of any case that says that a
14 determination by law enforcement to arrest somebody effects
15 the enhancments in fact to the contrary.

16 I believe that each individual transaction it
17 specifically states that's separate and distinct and it's
18 not the date of conviction - Excuse me, it's the date of
19 conviction that makes it that not date of arrest not having
20 to have everything done beforehand.

21 I can try them in succession and, Your Honor, if I was
22 prepared for this I believe there is case law - Well I know
23 there is case law, I just don't have the citation that
24 prevents a defendant from coming in and saying I want to
25 plead to everything as a first offense because the state

1 does have that right to treat these as separate incidents.

2 I know this is a little bit different from what Ms.
3 Inzerillo's arguing but I believe the state is permitted to
4 do it.

5 THE COURT: Well you did it on the three strikes -
6 under the three strikes statute.

7 SOLICITOR COLTON: Theoretically I think I can, Your
8 Honor, theoretically.

9 THE COURT: All right. As I mentioned in chambers
10 while there is not precedent experience that would permit
11 the court to take a novel issue such as this, this motion,
12 denote it heard and reserve judgment for a later time which
13 would permit us to go ahead and strike a jury today.

14 Again, I will use the - Let's see, just so there is no
15 question then, the violation of our laws concerning
16 methamphetamine.

17 All right. Now, anything else?

18 MS. INZERILLO: No, Your Honor.

19 SOLICITOR COLTON: Nothing from the state, Your Honor.

20 THE COURT: All right, this motion will be taken under
21 advisement. Now, any further motions need to be made, Ms.
22 Inzerillo?

23 MS. INZERILLO: No, Your Honor, thank you.

24 THE COURT: Very good. All right, anything further
25 from the state?

1 SOLICITOR COLTON: No, Your Honor.

2 THE COURT: I will add the names of - to the state's
3 list of potential witnesses. All right, take a short break
4 before we bring the jury back? Let's do take a short
5 break.

6 MADAM CLERK: I have one question. Strikes five and
7 five?

8 THE COURT: Five and five.

9 MADAM CLERK: And one alternate or two?

10 THE COURT: How long do you think this case would last
11 if its only one indictment?

12 SOLICITOR COLTON: If it's one indictment, Your Honor,
13 I believe if we start tomorrow day, maybe a day and a half.
14 The witnesses will go relatively quickly.

15 THE COURT: Two alternates.

16 MADAM CLERK: Two alternates.

17 THE COURT: So you will have a larger panel.

18 MADAM CLERK: Our panel is thirty-four. You can still
19 get 'em out of that.

20 THE COURT: You think so?

21 MADAM CLERK: Yeah. We usually have a greater panel
22 of thirty-five.

23 THE COURT: How often do you have calls?

24 MADAM CLERK: Like if we have an issue and we have to
25 start over? It's not very often.

1 THE COURT: Okay. All right. We can look at it. I
2 tell you what, we'll leave it to have one and two when we
3 get down to the --

4 MADAM CLERK: Okay. You want to take a break and
5 then come back on the bench and then let's call 'em?

6 THE COURT: I'll qualify 'em, just as soon as they can
7 get there.

8 MADAM CLERK: Okay.

9 (COURT IN RECESS AT 10:50 A.M..)

10 (COURT BACK IN SESSION AT 11:02 P.M..)

11 THE COURT: Take your seats please.

12 All right, we're gonna have a panel of thirty-four
13 brought up and we have five and five strikes and one
14 alternate.

15 MADAM CLERK: Have you changed your mind? We're back
16 down to one?

17 THE COURT: Pardon? Oh.

18 MADAM CLERK: You told me two a while ago.

19 THE COURT: Well no, I mean if we got to we'll get
20 two.

21 MADAM CLERK: You'll probably have to.

22 THE COURT: If you have enough to have two otherwise
23 we'll have one alternate. Anything from the state on that?

24 SOLICITOR COLTON: No, Your Honor.

25 THE COURT: From the defense?

1 MS. INZERILLO: No, Your Honor.

2 THE COURT: Very good.

3 MADAM CLERK: Do we need to wait on Misti?

4 SOLICITOR COLTON: No. I think she's working on
5 something for the other courtroom unless the judge requires
6 her here then she --

7 THE COURT: Madam?

8 SOLICITOR COLTON: Ms. Shelyon had to step out.

9 THE COURT: No, the only thing that you would though I
10 ask is this the investigating officer?

11 SOLICITOR COLTON: Yes, David Vaughan.

12 THE COURT: I'll ask who and call on you then
13 introduce yourselves.

14 SOLICITOR COLTON: Yes, sir.

15 THE COURT: I'll ask you to not only introduce
16 yourself but anybody else assisting you in the trial of the
17 case.

18 SOLICITOR COLTON: Yes, sir.

19 THE COURT: And your second chair.

20 SOLICITOR COLTON: Yes. Ms. Shelton yes, sir.

21 THE COURT: All right. And the investigating officer.

22 SOLICITOR COLTON: Yes, sir.

23 THE COURT: And do you want me to say - explain that
24 the defendant is not here or would you cause I normally
25 would ask and you introduce your client.

1 MS. INZERILLO: I'll defer to Your Honor however you
2 want to --

3 THE COURT: I think it would be better that you do
4 that if you would.

5 MS. INZERILLO: Okay.

6 THE COURT: And just say that by agreement then your
7 client is not here for the selection of the jury.

8 MS. INZERILLO: Okay.

9 THE COURT: Or something of that effect.

10 MS. INZERILLO: Yes, Your Honor.

11 THE COURT: All right.

12 MADAM CLERK: Are you ready?

13 THE COURT: Yes, ma'am, summons the jury.

14 SOLICITOR COLTON: Your Honor, if I may before the
15 jury steps in. Ms. Inzerillo she just to make sure this is
16 clear before you issue your ruling on the joinder. She
17 referenced the March 21st and the 27th trafficking in
18 addition to this February 28th one that the state plans to
19 try today. There is also an arrest for distribution of
20 methamphetamine on December 6th, 2013 and I don't believe
21 that I've indicted that yet because I don't believe we have
22 the drug report. I would have gone ahead and indicted
23 that. So the state would be unable to try that December
24 6th.

25 THE COURT: What is it?

1 SOLICITOR COLTON: There is no indictment for that
2 yet.

3 THE COURT: What date?

4 SOLICITOR COLTON: December 6th, 2013.

5 THE COURT: All right. So there is actually then a
6 fifth --

7 SOLICITOR COLTON: Yes, sir, charge.

8 THE COURT: Do you understand that, Ms. Inzerillo?

9 MS. INZERILLO: I saw that there was one referenced,
10 Your Honor, but as Ms. Colton has indicted everything else
11 in the case I thought that was the entirety of the
12 indictments and as she's called -

13 THE COURT: Well of course if she hadn't gotten the
14 analysis that would be necessary for the indictment.

15 MS. INZERILLO: Your Honor, --

16 THE COURT: But you do understand there was another
17 arrest on December the 6th, 2013?

18 MS. INZERILLO: There was another deal yes, Your
19 Honor.

20 But I would still ask the court to consider the motion
21 as --

22 THE COURT: Yes, ma'am, I will.

23 (JURY ENTERS COURTROOM AT 11:09 A.M..)

24 All right, is the state ready to proceed?

25 SOLICITOR COLTON: Yes, Your Honor.

1 THE COURT: Is the defense ready to proceed?

2 MS. INZERILLO: Yes, Your Honor.

3 THE COURT: Good morning, ladies and gentlemen of the
4 jury. As I mentioned yesterday when I qualified the jury
5 panel, this is a term of General Sessions court sometimes
6 called criminal court. It's purpose is to resolve
7 questions of alleged criminal conduct arising between the
8 State of South Carolina and the defendant in a fashion
9 which will ensure that justice under the law is
10 accomplished. The trial of a case begins with the
11 selection of a jury. Both the state and the defendant are
12 entitled to jurors who approach the case with an open mind.

13 The trial jury must be free as humanly possible from
14 any bias, prejudices or sympathy for each side and free
15 from any preconceived ideas on the facts of the case or the
16 law of the case. Therefore certain questions will be ask
17 of you the petit jury panel.

18 Now these questions that will be are designed to
19 assure each side a fair and impartial jury. I make note
20 further if any person should talk with you or attempt to
21 talk with you about any case scheduled for this term of
22 court, it would be your solemn duty to immediately report
23 that matter to the court. You have now been sworn as
24 jurors for the court of General - Circuit Court of York
25 County in the Court of General Sessions.

1 All right, you're in a different courtroom today and
2 if you - if anyone cannot hear me please raise your hand?

3 Now of course that's an interesting question because
4 if you couldn't hear me you wouldn't know to raise your
5 hand but if you cannot understand what I'm saying or you
6 want me to repeat myself, please say so and I'll try to be
7 more clear.

8 Now, ladies and gentlemen of the jury panel, we are
9 about to begin a trial in the case of the *State of South*
10 *Carolina versus Joshua Kenneth Brookins* Indictment Number
11 2014-GS-46-3002. Mr. Brookins is charged in the indictment
12 with the violation of the drug laws of South Carolina
13 dealing with methamphetamine.

14 Now the state is represented in this case by Ms.
15 Colton.

16 Ms. Colton, if you would please stand introduce
17 yourself and anyone who will be assisting you with the
18 trial of the case.

19 SOLICITOR COLTON: Jennifer Colton Senior Solicitor.
20 This is Ms. Shelton, Senior Assistant Solicitor. This is
21 Investigator David Vaughan.

22 THE COURT: Very good. And if any of the witnesses
23 are in the courtroom when I mention their name if they
24 would also stand and face the jury. The reason I ask them
25 to do that is it's my understanding you might say that we

1 might know somebody by their face but we do not recognize
2 their names so therefore I would ask anybody whose name is
3 being or who is being introduced to the jury panel if they
4 are in the courtroom to please stand at that time and look
5 upon the jury.

6 Now the defendant Mr. Brookins is represented by Ms.
7 Inzerillo.

8 Ms. Inzerillo, if you would please stand and introduce
9 yourself.

10 MS. INZERILLO: Good morning. My name is Melissa
11 Inzerillo, I'm a senior assistant public defender with the
12 Sixteenth Circuit Public Defender's Office. Mr. Brookins
13 who by consent is not here today.

14 THE COURT: Now is any member of the jury panel
15 related by blood or marriage to the defendant, or, a close
16 personal friend or business associate of the defendant
17 Joshua Kenneth Brookins; if so, please stand?

18 (NO ONE STANDS.)

19 THE COURT: Now I'm also going to read out a name, a
20 list of names of potential witnesses. Now these are
21 witnesses who may be called but does not have to be called.
22 And as I said earlier if any of them are in the courtroom
23 at the time their names are called if they would please
24 stand and look upon the jury.

25 Patrick Patterson, Cynthia Mitcham, Detective Walter

1 Beck, Investigator Rayford Ervin, Lieutenant Mike Ligon,
2 Investigator Logan McGarity, Investigator David Vaughan,
3 Investigator Mike Doty, Investigator Vince Holland,
4 Investigator Josh Todd, Jesse Cannupp, Charles Booker?

5 SOLICITOR COLTON: Bowker.

6 THE COURT: Bowker. Charles Bowker, the III.

7 Travis Pope, Allen Cantey, Leland Harrelson, Jamie
8 Faulkenberry, Robin Gander, Tonya Bouler, Jamie Hallman and
9 Chad Hyatt.

10 Is any member of the jury panel related by blood or
11 marriage, close personal friends or business associate of
12 any of the potential witnesses in this case, Patrick
13 Patterson, Cynthia Mitcham, Detective Walter Beck,
14 Investigator Rayford Ervin, Lieutenant Mike Ligon,
15 Investigator Logan McGarity, Investigator David Vaughan,
16 Investigator Mike Doty, Investigator Vince Holland,
17 Investigator Josh Todd, Jesse Cannupp, Charles Bowker, the
18 III; Travis Pope, Allen Cantey, Leland Harrelson, Jamie
19 Faulkenberry, Robin Gander, Tonya Bouler, Jamie Hallman and
20 Chad Hyatt, if so, please stand?

21 (NO ONE STANDS.)

22 THE COURT: Is any member of the jury panel a member
23 of the Grand Jury of York County of 2014 that returned the
24 indictment in this case, if so, please stand?

25 (NO ONE STANDS.)

1 THE COURT: Now is any member of the jury panel or
2 members of their immediate family either related by blood
3 or marriage ever been or is presently or in the past ever
4 been employed or volunteered with any city, county, state,
5 or federal law enforcement agency or law enforcement's
6 victim witness - victim or witness assistance programs?

7 Now this would include any contact with the York
8 County Drug Enforcement Unit. Any member of the jury panel
9 or members of their immediate family related by blood or
10 marriage even now or formerly either presently or in the
11 past ever been employed by or volunteered with any county,
12 state, or federal law enforcement agency, or law
13 enforcement's Victim Witness Assistance programs to include
14 the York County Drug Enforcement Unit, would you please
15 stand at this time?

16 A. Does that include federal law enforcement?

17 (WHITE FEMALE STANDS.)

18 THE COURT: Yes, ma'am.

19 A. My husband is a federal law enforcement.

20 THE COURT: Very good. Your name please?

21 A. Kimberly Perry.

22 THE COURT: Yes, ma'am, your husband I know is with
23 the Secret Service?

24 MS. PERRY: He's with immigration.

25 THE COURT: Immigration. Is he currently with

1 Immigration?

2 MS. PERRY: Yes.

3 THE COURT: All right. Would that in any way affect
4 your ability to be fair and impartial to both the state and
5 the defendant?

6 MS. PERRY: I would think so.

7 THE COURT: Well now that's one of the reasons I ask
8 that question is not only because the jury needs to be or
9 the parties need to have a fair and impartial jury but also
10 none of you ask to be here and I want to be sure that you
11 will feel comfortable in what you're doing therefore you do
12 not have to have any reservations that would compromise any
13 principles or any other relationships you might have so
14 therefore I'm gonna ask you again, could you be fair and
15 impartial to both the state and - or would that affect the
16 fact that your husband's employment affect your ability to
17 be both fair and impartial to both the state and the
18 defendant?

19 MS. PERRY: Probably not.

20 THE COURT: Well -

21 MS. PERRY: Probably no.

22 THE COURT: Well the thing is I'm going to excuse you
23 from the trial of this case but do stay with us if you
24 would please. Thank you, ma'am.

25 All right. Yes, sir, your name please.

1 (WHITE MALE STANDS.)

2 A. Arthur Bowker.

3 THE COURT: Yes, sir.

4 MR. BOWKER: I share a last name with one of the
5 witnesses you just named off.

6 THE COURT: All right. And do you know it?

7 MR. BOWKER: He might be my cousin but I never heard
8 the third.

9 THE COURT: All right. Well let's do this and that
10 would be Mr. Bowker? All right, would that if he was our
11 cousin, would that affect - and he was a witness in this
12 case - would that affect your ability to be a fair and
13 impartial to both the state and the defendant?

14 (JUROR AFFIRMED.)

15 THE COURT: It would? All right, we'll excuse you on
16 the trial of this case but do stay with us. Thank you,
17 sir.

18 Yes, ma'am. Your name please.

19 (WHITE FEMALE STANDS.)

20 A. Pamela Armstrong, Number Seven.

21 THE COURT: Yes, ma'am.

22 MS. ARMSTRONG: My husband is in the secret service.

23 THE COURT: Pardon?

24 MS. ARMSTRONG: My husband was in the secret service.

25 THE COURT: Oh, you are the one I knew that came up

1 yesterday. All right, would that in any way affect your
2 ability to give both the state and the defendant a fair and
3 impartial trial?

4 MS. ARMSTRONG: I don't think so.

5 THE COURT: No. I'm gonna ask you again.

6 MS. ARMSTRONG: Okay.

7 THE COURT: Would that in any way affect your ability
8 to give both the state and the defense a fair and impartial
9 trial?

10 MS. ARMSTRONG: Uh - No.

11 THE COURT: I'm going to excuse you on the trial of
12 this case. But I do want to thank you for your candor, all
13 right. Thank you very much. So that will be three that
14 will be excused from the trial of the case.

15 All right. Is any member of the jury panel ever
16 either presently or in the past - and this would include
17 the members of their immediate family, those related by
18 blood or marriage, close personal friends - is employed now
19 or ever been employed by or volunteered with any city,
20 county, state, or federal prosecutor's office, or
21 prosecutor's Victim Witness Assistance Program, if so,
22 please stand?

23 (NO ONE STANDS.)

24 THE COURT: Is any member of the panel ever
25 contributed money to the Fraternal Order of Police, South

1 Carolina Law Enforcement Officer's Association, or any
2 other law enforcement organization or an organization which
3 supports the police or law enforcement, if so, please
4 stand?

5 Is any member of the jury panel ever contributed money
6 to the Fraternal Order of Police, or the South Carolina Law
7 Enforcement Officer's Association, or any law enforcement
8 organization, or organizations that supports the police or
9 law enforcement, please stand at this time.

10 All right, let's start on the front. Yes, ma'am, your
11 name please.

12 A. Betty Jennings.

13 ((BLACK FEMALE STANDS.))

14 THE COURT: Yes, ma'am.

15 MS. JENNINGS: I mean you know when they send those
16 things out in your mail donate X amount of dollars or
17 something?

18 THE COURT: Yes, ma'am.

19 MS. JENNINGS: I have sent 'em back some money.

20 THE COURT: All right. Would that in any way affect
21 your ability to be fair and impartial to both the state and
22 the defendant?

23 MS. JENNINGS: No, sir.

24 THE COURT: Very good. Thank you, Madam.

25 Yes, sir.

1 (WHITE MALE STANDS.)

2 A. Daniel Patterson, One seventy-seven. Yes we have
3 supported through and sent in a check.

4 THE COURT: All right. And would that in any way
5 affect your ability to give - fair impartial to both the
6 state and the defendant?

7 MR. PATTERSON: No.

8 THE COURT: Very good. Thank you, sir.

9 Yes, sir.

10 (WHITE MALE STANDS.)

11 A. John Childers, Thirty-eight. Given money by phone,
12 by check or just made donations to certain law enforcement.

13 THE COURT: All right. Would that in any way affect
14 your ability to give both the state and the defendant a
15 fair and impartial trail?

16 MR. PATTERSON: No, sir.

17 THE COURT: Very good. Thank you, sir.

18 Let's start on the end. Yes, sir.

19 (WHITE MALE STANDS.)

20 A. Donnie Vaughan, Two twenty-five. And I have donated
21 money to the law enforcement.

22 THE COURT: All right. Would that in any way affect
23 your ability to give both the state and the defendant a
24 fair and impartial trial?

25 MR. VAUGHAN: No, sir.

1 THE COURT: Very good. Thank you, sir.

2 Yes, sir.

3 (WHITE MALE STANDS.)

4 A. Troy Kelly, One twenty-eight. Participate in Rock
5 Hill Drug Enforcement donation. Donated to Trooper
6 Cusack's family when he was killed.

7 THE COURT: All right. Would that affect your ability
8 to give both the state and the defendant a fair and
9 impartial trial?

10 MR. KELLY: No.

11 THE COURT: Very good. Thank you, sir.

12 Yes, sir.

13 (WHITE MALE STANDS.)

14 A. William Layton, One thirty-four and we both donated
15 to solicitation by phone and through the mail as well.

16 THE COURT: All right. Would that affect your ability
17 to give both the state and the defendant a fair and
18 impartial trial?

19 MR. LAYTON: No, sir.

20 THE COURT: Very good. Thank you, sir.

21 Yes, ma'am.

22 (WHITE FEMALE STANDS.)

23 A. Mary Virginia Ballard, Juror Number nine and my
24 husband is a retired police officer in the state of Florida
25 and currently --

1 THE COURT: All right. Would that affect your ability
2 to give both the state and the defendant a fair and
3 impartial trial?

4 MS. BALLARD: No.

5 THE COURT: Very good. Thank you, Madam.

6 Anyone else?

7 (NO ONE RESPONDS.)

8 THE COURT: All right, the next four questions are
9 rather sensitive and I'm going to go through them as I did
10 yesterday with the questions on your general
11 qualifications. I'm going to read all four questions the
12 first time then I'm gonna read them the second time. It's
13 only after I've read and gone through them the second time
14 will ask anybody that may think those questions might apply
15 to them or have any questions about the questions
16 themselves stand and I'll ask you to come forward
17 individually so I might discuss your thoughts about the
18 questions with the Clerk, but do not respond until I ask
19 you to do so.

20 Has any member of the jury panel or their immediate
21 family ever had a substance abuse problem?

22 Has any member of the jury panel or their immediate
23 family ever been arrested for a drug offense?

24 Does any member of the jury panel believe that the use
25 of any illegal drug should be legalized?

1 Does any member of the jury panel have any beliefs
2 religious or otherwise that would prevent you from
3 rendering a judgment against another person?

4 Again, I'm going through those four questions together
5 the second time and until all four questions and ask you to
6 do so please do not stand or respond.

7 Has any member of the jury panel or their immediate
8 family ever had a substance abuse problem?

9 Has any member of the jury panel or their immediate
10 family ever been arrested for a drug offense?

11 Does any member of the jury panel believe that the use
12 of any illegal drug should be legalized?

13 Does any member of the jury panel have any beliefs,
14 religious or otherwise, that would prevent you from
15 rendering a judgment against another person?

16 Now if any of those questions might apply to you or
17 even if you have a question about the questions themselves
18 if you would please stand at this time?

19 (SEVERAL JURORS STOOD.)

20 (COURT LEFT THE BENCH.)

21 THE COURT: Yes, sir, your name please.

22 (WHITE MALE COMES FORWARD.)

23 A. Daniel Patterson, One seventy-seven. My sister has a
24 substance abuse problem.

25 THE COURT: Now would that affect your ability to give

1 both the plaintiff - the state and the defendant a fair and
2 impartial trial?

3 MR. PATTERSON: No, sir.

4 THE COURT: Very good. Thank you, sir.

5 Good morning, sir.

6 (WHITE MALE COMES FORWARD.)

7 A. Keith Beyer, Juror sixteen. My sister lives in
8 Florida and has some sons that have been in trouble with
9 the law. I think they were possession of something. I'm
10 not really clear.

11 THE COURT: Would that affect your ability to give
12 both the state and the defendant a fair and impartial
13 trial?

14 MR. BEYER: No, sir.

15 THE COURT: Thank you, sir.

16 Good morning.

17 (WHITE FEMALE COMES FORWARD.)

18 A. Joyce White, Two thirty-six.

19 THE COURT: Yes, ma'am.

20 MS. WHITE: My son was arrested for a drug problem.

21 THE COURT: And would that affect your ability ---

22 MS. WHITE: No.

23 THE COURT: --- to give both the state and the
24 defendant a fair and impartial trial?

25 MS. WHITE: No, sir.

1 THE COURT: Thank you, ma'am.

2 Good morning.

3 (HISPANIC FEMALE COMES FORWARD.)

4 A. Good morning.

5 THE COURT: Your name please.

6 A. Nilka Rivera.

7 THE COURT: Yes, ma'am.

8 MS. RIVERA: I have both a - I have both been
9 arrested.

10 THE COURT: Would that affect your ability to give
11 both the state and the defendant a fair and impartial
12 trial?

13 MS. RIVERA: No, sir.

14 THE COURT: Very good. Thank you, ma'am.
15 Your name please.

16 A. Steven Dining, number Fifty-nine. Both my sister and
17 my niece, her daughter, have been in and out of rehab
18 programs for years.

19 THE COURT: Would that affect your ability to give
20 both the state and the defendant a fair and impartial
21 trial?

22 MR. DINING: No.

23 THE COURT: Very good. Thank you, sir.

24 Good morning, sir.

25 (WHITE MALE COMES FORWARD.)

1 A. Yes, sir.

2 THE COURT: Your name please.

3 A. Donnie Vaughan.

4 THE COURT: Yes, sir.

5 MR. VAUGHAN: My thoughts this, if it's already come
6 to trial been tried for meth, I believe in my opinion I'm
7 gonna say he's guilty.

8 THE COURT: I'm gonna excuse you in the trial of this
9 case. Thank you for your candor and being here.

10 MR. VAUGHN: Thank you, sir.

11 THE COURT: Good morning, sir.

12 (WHITE MALE COMES FORWARD.)

13 A. John Tierney, number 2-2-1. I think that marijuana
14 should be legalized.

15 THE COURT: All right. Would that affect your ability
16 to give both the state and the defendant a fair and
17 impartial trail?

18 MR. TIERNEY: No.

19 THE COURT: Very good. Thank you, sir.

20 Good morning.

21 (WHITE FEMALE COMES FORWARD.)

22 A. Good morning. Pamela Walters, two thirty-one.

23 THE COURT: Yes, ma'am.

24 MS. WALTERS: Growing up as a teenager my brother had
25 some issues with alcohol and drugs.

1 THE COURT: All right. Would that affect your ability
2 to give both the state and the defendant a fair and
3 impartial trial?

4 MS. WALTERS: No it won't.

5 THE COURT: Very good.

6 MS. WALTERS: I also want you to know I have two
7 nephews who are policemen who serves in other states.

8 THE COURT: Would that affect your ability to give
9 both the state and the defendant a fair and impartial
10 trial?

11 MS. WALTERS: No it would not.

12 THE COURT: Thank you for bringing that to my
13 attention. Thank you.

14 All right, anyone else?

15 (NO RESPONSE, COURT RETURNS TO THE BENCH.)

16 THE COURT: All right, is any member of the jury panel
17 formed or expressed an opinion about this case, if so,
18 please stand?

19 (NO RESPONSE.)

20 THE COURT: Is any member of the panel aware of any
21 bias or prejudice towards either the defendant or the state
22 of South Carolina, if so, please stand?

23 (NO RESPONSE.)

24 THE COURT: Does any member of the panel know of any
25 reason why he or she could not give both the state of South

1 Carolina and the defendant a fair and impartial trial, if
2 so, please stand?

3 (NO RESPONSE.)

4 THE COURT: All right, any further questions from the
5 state?

6 SOLICITOR COLTON: No, Your Honor.

7 THE COURT: From the defense?

8 MS. INZERILLO: Your Honor, the defense would
9 respectfully ask the court to inquire as to the defendant's
10 request number nine.

11 THE COURT: All right, I included that in the first
12 question as to include - when I combined the first one and
13 two, is any member of the jury panel either presently or in
14 the past ever been employed by or volunteered within the
15 city, county, state, or federal law enforcement agency or
16 law enforcement victim witness assistance program to
17 include contact with the York County Drug Enforcement Unit,
18 and that would be any member of the jury panel or members
19 of their immediate family, or close personal friends.

20 MS. INZERILLO: Your Honor, may I approach?

21 THE COURT: Certainly.

22 (BENCH CONFERENCE OFF THE RECORD AT 11:34 A.M..)

23 THE COURT: Yes, ma'am, your name please.

24 ((WHITE FEMALE STANDS.))

25 A. Judy Adams, number two.

1 THE COURT: Yes, ma'am.

2 MS. ADAMS: I heard the question but I wasn't sure if
3 it included being employed by the court system.

4 THE COURT: No, ma'am, I didn't ask that. You were
5 with North Carolina?

6 MS. ADAMS: Twenty-sixth Judicial Court in Charlotte.

7 THE COURT: All right. Well let me just ask you,
8 would that affect your ability to give both the state and
9 the defendant a fair and impartial trial?

10 MS. ADAMS: No, sir.

11 THE COURT: Very good. Thank you, ma'am. But thank
12 you for bringing that to my attention.

13 (SIDE BAR BETWEEN THE CLERK AND THE COURT.)

14 THE COURT: All right, Madam Clerk, if you would
15 please give us a jury. And the way we draw a jury today is
16 that there is a random list of the random names that is
17 being prepared by the computers here from the Clerk's
18 office and so as your name is called if you would come
19 forward and stand in front of the bench here where the
20 clerk is and look back towards the back of the room.

21 Madam Clerk, if you would please. By the way, also
22 each side has five strikes and so the state will have the
23 first consideration and they will either say present the
24 juror, or excuse the juror, and then the defense will have
25 the opportunity to say either seat the juror or excuse the

1 juror. So, Madam Clerk, if you would please give us a
2 jury.

3 MS. INZERILLO: I'm sorry, Your Honor, may I approach?

4 THE COURT: Certainly.

5 (BENCH CONFERENCE OFF THE RECORD AT 11:37 A.M..)

6 SOLICITOR COLTON: Your Honor, if I may have one
7 second to confer with my co-counsel?

8 THE COURT: Certainly.

9 (PAUSE.)

10 SOLICITOR COLTON: Your Honor, the state ask to
11 approach.

12 THE COURT: Certainly.

13 (BENCH CONFERENCE OFF THE RECORD AT 11:38 A.M..)

14 THE COURT: All right, give us a jury please.

15 MADAM CLERK: Number one ninety-three, Nilka Rivera.

16 (HISPANIC FEMALE COMES FORWARD.)

17 MADAM CLERK: What say you for the State?

18 SOLICITOR SHELTON: Madam, can we get the number
19 again, please?

20 MADAM CLERK: One ninety-three.

21 THE COURT: By the way it's five and five.

22 SOLICITOR SHELTON: Thank you, Your Honor.

23 SOLICITOR COLTON: Please excuse this juror.

24 MADAM CLERK: You are excused in this case.

25 Number two thirty-six, Joyce White.

1 (WHITE FEMALE COMES FORWARD.)

2 MADAM CLERK: What say you for the State?

3 SOLICITOR COLTON: Please present this juror.

4 MADAM CLERK: Defense?

5 MS. INZERILLO: Please swear the juror.

6 MADAM CLERK: Have a seat in the jury box.

7 THE COURT: Well that is true, if you would when you
8 come forward bring anything you have with you at that time.

9 Thank you, Madam.

10 MADAM CLERK: Number one ninety-nine, Mario Sanders.

11 (BLACK MALE COMES FORWARD.)

12 MADAM CLERK: What say you for the State?

13 SOLICITOR COLTON: Please excuse this juror.

14 MADAM CLERK: You're excused in this case.

15 Number one fifty-one, Matthew McNinch.

16 (WHITE MALE COMES FORWARD.)

17 MADAM CLERK: What say you for the State?

18 SOLICITOR COLTON: Please present this juror.

19 MADAM CLERK: Defense?

20 MS. INZERILLO: Please swear the juror.

21 MADAM CLERK: Have a seat in the jury box.

22 Number ninety-five, Bruce Harris.

23 (WHITE MALE COMES FORWARD.)

24 MADAM CLERK: What say you for the State?

25 SOLICITOR COLTON: Please present this juror.

1 MADAM CLERK: Defense?
2 MS. INZERILLO: Please swear the juror.
3 MADAM CLERK: Have a seat in the jury box.
4 Number two twenty-nine, Danny Wallace.
5 (WHITE MALE COMES FORWARD.)
6 MADAM CLERK: What say you for the State?
7 SOLICITOR COLTON: Please present this juror.
8 MADAM CLERK: Defense?
9 MS. INZERILLO: Please swear the juror.
10 MADAM CLERK: Have a seat in the jury box.
11 Number one twenty-eight, Troy Kelley.
12 (WHITE MALE COMES FORWARD.)
13 MADAM CLERK: What say you for the State?
14 SOLICITOR COLTON: Please present this juror.
15 MADAM CLERK: Defense?
16 MS. INZERILLO: Please excuse the juror.
17 MADAM CLERK: You are excused in this case.
18 Number one forty-five, Brittany McCrorey.
19 (BLACK FEMALE COMES FORWARD.)
20 MADAM CLERK: What say you for the State?
21 SOLICITOR COLTON: Please present this juror.
22 MADAM CLERK: Defense?
23 MS. INZERILLO: Please swear the juror.
24 MADAM CLERK: Have a seat in the jury box.
25 Number two twenty-one, John Tierney.

1 (WHITE MALE COMES FORWARD.)
2 MADAM CLERK: What say you for the State?
3 SOLICITOR COLTON: Please present this juror.
4 MADAM CLERK: Defense?
5 MS. INZERILLO: Please swear the juror.
6 MADAM CLERK: Have a seat in the jury box.
7 Number thirty-eight, John Childers.
8 (WHITE MALE COMES FORWARD.)
9 MADAM CLERK: What say you for the State?
10 SOLICITOR COLTON: Please present this juror.
11 MADAM CLERK: Defense?
12 MS. INZERILLO: Please excuse the juror.
13 MADAM CLERK: You are excused in this case.
14 Number one thirty-one, Connie Latham.
15 (WHITE FEMALE COMES FORWARD.)
16 MADAM CLERK: What say you for the State?
17 SOLICITOR COLTON: Please present this juror.
18 MADAM CLERK: Defense?
19 MS. INZERILLO: Please swear the juror.
20 MADAM CLERK: Have a seat in the jury box.
21 Number sixteen, Keith Beyer.
22 (WHITE MALE COMES FORWARD.)
23 MADAM CLERK: What say you for the State?
24 SOLICITOR COLTON: Please excuse this juror.
25 MADAM CLERK: You're excused in this case.

1 Number two forty-eight, Jimmie Yost.

2 (WHITE MALE COMES FORWARD.)

3 MADAM CLERK: What say you for the State?

4 SOLICITOR COLTON: Please present this juror.

5 MADAM CLERK: Defense?

6 MS. INZERILLO: Please swear the juror.

7 MADAM CLERK: Have a seat in the jury box.

8 Number one thirty-four, William Layton.

9 (WHITE MALE COMES FORWARD.)

10 MADAM CLERK: What say you for the State?

11 SOLICITOR COLTON: Please present this juror.

12 MADAM CLERK: Defense?

13 MS. INZERILLO: Please swear the juror.

14 MADAM CLERK: Have a seat in the jury box.

15 Number ninety-seven, Allison Henderson.

16 (WHITE FEMALE COMES FORWARD.)

17 MADAM CLERK: What say you for the State?

18 SOLICITOR COLTON: Please present this juror.

19 MADAM CLERK: Defense?

20 MS. INZERILLO: Please swear the juror.

21 MADAM CLERK: Have a seat in the jury box.

22 Number 1-0-6, William Hooper.

23 (WHITE MALE COMES FORWARD.)

24 MADAM CLERK: What say you for the State?

25 SOLICITOR COLTON: Please excuse this juror.

1 MADAM CLERK: You are excused in this case.
2 MADAM CLERK: Number sixty-three, James Ernest.

3 (WHITE MALE COMES FORWARD.)

4 MADAM CLERK: What say you for the State?

5 SOLICITOR COLTON: Please present this juror.

6 MADAM CLERK: Defense?

7 MS. INZERILLO: Please swear the juror.

8 MADAM CLERK: Have a seat in the jury box.

9 Number one sixty-one, Ted Mullinax.

10 (WHITE MALE COMES FORWARD.)

11 MADAM CLERK: What say you for the State?

12 SOLICITOR COLTON: Please present this juror.

13 MADAM CLERK: Defense?

14 MS. INZERILLO: Please excuse this juror.

15 MADAM CLERK: You are excused in this case.

16 Number one ten, Kelvin Hughes.

17 (BLACK MALE COMES FORWARD.)

18 MADAM CLERK: What say you for the State?

19 SOLICITOR COLTON: Please present this juror.

20 MADAM CLERK: Defense?

21 MS. INZERILLO: Please swear the juror.

22 MADAM CLERK: Have a seat in the jury box.

23 This is for the alternate.

24 THE COURT: We got two. I think so. Two and one on
25 alternates.

1 MADAM CLERK: One seventy-seven, Daniel Patterson.

2 (WHITE MALE COMES FORWARD.)

3 MADAM CLERK: What say you for the State?

4 SOLICITOR COLTON: Please present this juror.

5 MADAM CLERK: Defense?

6 MS. INZERILLO: Please swear the juror.

7 MADAM CLERK: Have a seat in the jury box.

8 Number one eighteen, Betty Jennings.

9 (BLACK FEMALE COMES FORWARD.)

10 MADAM CLERK: What say you for the State?

11 SOLICITOR COLTON: Please present this juror.

12 MADAM CLERK: Defense?

13 MS. INZERILLO: Please swear the juror.

14 MADAM CLERK: Have a seat in the jury box.

15 THE COURT: All right, is there any reason this jury
16 cannot be sworn before the trial of the case from the
17 State?

18 SOLICITOR COLTON: Yes, Your Honor. The motion that
19 we previously discussed that Your Honor I think under
20 advisement the state would ask for a ruling on that motion
21 before swearing the jury.

22 THE COURT: Well I'm not gonna swear the jury. I'm
23 just asking you is there any reason they cannot be sworn
24 for the trial of the case. Not to swear them until ---

25 SOLICITOR COLTON: Oh, I'm sorry, Your Honor.

1 THE COURT: --- we start the trial of the case.

2 SOLICITOR COLTON: I misunderstood your question. No,
3 Your Honor.

4 THE COURT: All right. Very good.
5 From the Defense?

6 MS. INZERILLO: No, Your Honor.

7 THE COURT: Very good.

8 All right, Mr. Morris - or Harris, Mr. Harris. I'm
9 going to ask you to serve as the foreman of this jury. And
10 this will be the courtroom we will be using?

11 SOLICITOR COLTON: Yes, Your Honor.

12 THE COURT: All right. When we come back to the jury
13 room if you would please sit in the first seat on the first
14 row. And alternates I'm gonna ask you to - Is that where
15 the alternates sit?

16 All right, so you will sit in the same seats that
17 you're sitting in now. And those are the only three
18 reserved seats. The back row, the first and last seat next
19 to the last and the last seat. Those are the only three
20 reserved seats in the jury box. Everybody else can sit
21 wherever they want to within the jury box of course and so
22 you can see the witness stand.

23 Let's see, the bailiff will take you to the jury room
24 that they will be using, if you would please. All right,
25 my instructions throughout the trial of this case is that

1 you are not to undertake the case or discuss the case among
2 yourselves in any way or permit anybody to discuss it with
3 you. I will have more instructions on that in a moment,
4 but if you'll go with the bailiff I need to take up some
5 matters with the attorneys and the balance of the jury.

6 It will be just a few minutes.

7 (PETIT JURY EXITS COURTROOM AT 11:56 A.M..)

8 THE COURT: Very good. Ladies and gentlemen of the
9 jury panel, who were not drawn on the trial of this case
10 I'm gonna excuse you for the balance of the day. However
11 I'm gonna ask you to call in again --

12 Tomorrow night or tonight?

13 MADAM CLERK: Tonight.

14 THE COURT: Tonight. If you will - I think you all
15 were given a telephone number to call. Does everybody have
16 that telephone number? All right, if you would call that
17 number after seven o'clock this evening. There will be a
18 message on the machine there and it is an answering machine
19 so if you don't get through with it the first time - get
20 through to it the first time, continue calling until you do
21 get through and it will have a message on what to do either
22 come in in the morning or call back tomorrow or might even
23 say your work has been completed for the week.

24 But the main thing is whatever the message is do
25 comply with that and I'd ask that unfortunately if you

1 don't get the message from the machine you will have to get
2 it from me in the morning at nine thirty. So therefore I
3 think you might - you would prefer getting from the
4 machine. So with that I will excuse you for the balance of
5 the day.

6 Now does everybody understand what to do? If anybody
7 has any questions about what to do raise your hand?

8 (NO RESPONSE.)

9 THE COURT: All right. Very good. I do look forward
10 to working with you and I thank you for your patience with
11 the court today. You all are excused. Thank you. And
12 service.

13 (JURY DISMISSED AT 11:58 A.M..)

14 THE COURT: All the jurors are out of the courtroom.
15 Where did the ten come from?

16 MS. INZERILLO: I - Your Honor, I would apologize to
17 the court again on that. I double checked Mr. - for any in
18 16-1-60. You know what, I apologize, Your Honor, that was
19 --

20 THE COURT: 14-7-1110.

21 MS. INZERILLO: I think Your Honor corrected me on
22 that. I think I looked in the wrong section so I apologize
23 again on that and I do apologize --

24 THE COURT: Listen, no qualm but the only thing is
25 please understand that's why I always ask because I never

1 can keep them straight and so therefore and not only do I
2 make mistakes sometimes attorneys do to so that's why I
3 didn't limit it to five cause I couldn't find ten.

4 MS. INZERILLO: Yes, Your Honor. And I do again
5 apologize.

6 THE COURT: No, no qualm at all. As I say I thought a
7 good bit. All right, so with that I'll call the jury back
8 and give them final preliminary instructions as to not
9 discuss the case again and dismiss them without swearing
10 them.

11 SOLICITOR COLTON: No, sir, Your Honor. With the
12 Court's permission may I be excused. I had a private
13 attorney waiting for on me to do a plea.

14 THE COURT: Certainly. No, gracious no. I'll tell
15 you she is second chair. She is a joy for you ask her, ask
16 the teacher or the mother, you know.

17 SOLICITOR COLTON: I need the brains, Judge. I told
18 her I need the brains of the thing.

19 THE COURT: All right. Ask the jury to join us
20 please.

21 (PETIT JURY REENTERS COURTROOM AT 12:02 P.M..)

22 THE COURT: All right, let the record reflect the jury
23 and the alternates are in the jury box.

24 Mr. Foreman, ladies and gentlemen of the jury, we will
25 not start this trial until we complete the trial that we

1 will be starting this afternoon at one o'clock I think it
2 is. But the fact is that once we do complete that then you
3 will be next up.

4 You want them to call in too or?

5 MADAM CLERK: No, sir.

6 THE COURT: Just report and on Thursday or tomorrow
7 afternoon?

8 SOLICITOR COLTON: I think it would be better to be
9 safe it better be Thursday. I don't know if - -

10 THE COURT: Thursday morning?

11 SOLICITOR COLTON: Yes, sir.

12 THE COURT: All right. Very good. Thursday morning
13 at what time, ten o'clock?

14 SOLICITOR COLTON: If that's all right with Your
15 Honor.

16 THE COURT: Well that's fine with me. I don't know
17 what's your custom is.

18 SOLICITOR COLTON: We would be prepared to go at nine
19 thirty, Your Honor.

20 THE COURT: Nine thirty. All right. Is that all
21 right, Mr. Foreman, ladies and gentlemen of the jury? Nine
22 thirty, Thursday morning.

23 Very good, we'll start the trial at that time.

24 Now, this is - Yes, sir.

25 A. Do we report at the jury room?

1 THE COURT: No, sir, you'll come back to the jury room
2 that you were in today and they will - I guess.

3 MADAM CLERK: No.

4 THE COURT: That's the problem with forty-six
5 counties.

6 MADAM CLERK: They will report to the jury assembly
7 room where they were this morning.

8 THE COURT: All right.

9 MADAM CLERK: Then a bailiff will bring them up here
10 cause they have to bring them up through a secured door.

11 THE COURT: Gotcha. All right. See you all will have
12 to forgive me. There are forty-six counties and I've been
13 to all forty-six and sometimes they don't invite me back.
14 A good idea, I don't know. But the fact is no, that I have
15 to do what the - Cause each courthouse is different as well
16 as the customs and all.

17 But the main thing is, this is probably and I tell all
18 juries this regardless of the county that once they are
19 selected even though you don't start the trial you will go
20 home and this is gonna be the most important and the most
21 difficult time of your whole service as jurors because
22 somebody's gonna ask you well what are you doing? And
23 you're gonna say well I've been drawn on a case. And
24 they're gonna say well what's the case about? And you're
25 gonna have to tell 'em that I can't discuss it with you.

1 And they're gonna say well why not? And you're gonna
2 say because the judge told me so that I cannot discuss it
3 with you. And then they'll say something to the effect
4 well that's ridiculous. Well the thing is, I hope you
5 understand that any case that's tried in court is an
6 important case to everybody that's involved and it should
7 be and it only can be resolved in a proper fashion.

8 No one who is not sitting in the jury box where you
9 are right now will be in that jury room when you finally
10 receive all of the testimony and the evidence, the argument
11 by counsel, the charge on the law, and heard all of the
12 testimony and evidence can help you because you are the
13 only ones that will make the decision in this case and you
14 will make the decision solely on what you hear from the
15 witness stand and the evidence and the other exhibits
16 that's introduced into the courtroom during the trial of
17 the case and also the charge on the law.

18 And the only thing that anybody can do who has not had
19 that opportunity the only thing they can do is confuse it.
20 So therefore you do need to be very careful and say I'm
21 sorry I cannot discuss it with you. And of course this
22 applies to you when you're back in the jury room cause you
23 never know what part of the case is going to be the most
24 important whether it be opening arguments or the statements
25 - Excuse me - by the attorneys, the first witness or the

1 last witness, or the first exhibit, the last exhibit, the
2 closing arguments by the attorneys or the charge on the
3 law. So you may until you get everything in the whole case
4 you need to keep an open mind so that you can make a proper
5 decision.

6 All of those things considered you are not to discuss
7 it among yourselves or as I say more importantly you are
8 not permit anybody to discuss it with you or attempt to
9 discuss it with you. If they do so and they refuse or they
10 insist on doing that, tell them that I will be here at nine
11 thirty in the morning and I will be glad to explain to
12 them. But I think you understand how important this is for
13 all parties that are involved and I thank you for your
14 service.

15 Now with that I will excuse you and return with the
16 bailiff. Again I look forward to working with you and I'll
17 see you at nine thirty Thursday morning. Very good.

18 Everyone else remain seated while the jury retires
19 from the courtroom.

20 (JURY EXITS COURTROOM AT 12:07 P.M..)

21 THE COURT: All right, is there anything else on this
22 case?

23 SOLICITOR COLTON: Nothing from the state, Your Honor.

24 THE COURT: All right.

25 MS. INZERILLO: Your Honor, just briefly, while the

1 court is taking the motion under advisement, we would just
2 if we could go ahead and request the discovery on the
3 remaining two cases just to sort of expedite matters. As I
4 indicated -

5 THE COURT: Well I tell you what, I've looked at a
6 little bit of the law on the case and from my reading I
7 think I am going to deny your motion to joinder.

8 All right. In looking for the mostly partial case to
9 rely on is one where the judge granted the motion to join
10 the cases and the Court of Appeals reversed him. I'm
11 sorry, the case I stated the joinder that had the joinder
12 and the defendant there of course wisely moved to sever the
13 cases and that motion was denied. That's - we are still
14 trying to get that. The court was reversed and not severed
15 the cases but they use the same law. The Supreme Court has
16 held different. Misdemeanors can be joined in the same
17 indictment and tried together where one they arise out of
18 the same chain of circumstances approved by the same
19 evidence under the same general nature and no real right of
20 the defendant has been jeopardized.

21 In this case the defenses are of the same nature but
22 they are not misdemeanors and they do not arise out of a
23 single chain of circumstances and are not provable by the
24 same evidence. I think the attorney's request for the
25 other evidence supports that. There the Court of Appeals

1 ruled that a joinder in the case would be improper. And
2 that is *State versus Tate* and reversed the trial court and
3 remanded it to trial, 296 S.C. 462 Court of Appeals, 1985,
4 so the motion to joinder is denied. Noted for the record.

5 MS. INZERILLO: Thank you, Your Honor.

6 THE COURT: All right.

7 SOLICITOR COLTON: Thank you, Your Honor.

8 THE COURT: Yes, ma'am.

9 SOLICITOR COLTON: And, Your Honor, if the court would
10 allow when we finish up, the second trial or the first
11 trial relative to early tomorrow would the court be amiable
12 to doing a Denno hearing and a Jackson, Neil v. Biggers.

13 THE COURT: Certainly.

14 SOLICITOR COLTON: So we can --

15 THE COURT: Jackson v. Denno and do we have a argument
16 - I mean motions as to identification?

17 SOLICITOR COLTON: I believe it becomes --

18 THE COURT: All right. So all of those motions. Any
19 other motions? Since we don't have the other cases being
20 joinder we'll have to go to the defendant's statements
21 then. Like I said for impeachment.

22 SOLICITOR COLTON: Yes, sir.

23 THE COURT: I mean you're not - All right. Very good.

24 All right, so we'll have the motions tomorrow at the
25 first opportunity.

1 SOLICITOR COLTON: Yes, sir. Thank you, Your Honor.

2 MS. INZERILLO: Thank you.

3 THE COURT: Very good. Thank you.

4 (COURT BACK IN SESSION DECEMBER 3RD, 2014 AT 02:20
5 P.M..)

6 SOLICITOR HAMILTON: Okay, Your Honor. I think
7 they're gonna take this matter up after lunch on the
8 record.

9 Melissa, is that okay with you?

10 MS. INZERILLO: If that's the preference --

11 THE COURT: Well what's the motion? Or what's the
12 matter?

13 SOLICITOR COLTON: Judge, I just want to put something
14 on the record.

15 THE COURT: Oh, you want something on the record.

16 SOLICITOR COLTON: Yeah, I want something on the
17 record and I'm gonna request a bench warrant for the
18 defendant cause he was not here as a condition of his bond.
19 And that would entail putting in the bond paperwork a
20 couple of things on the record to establish --

21 THE COURT: All right. And you oppose the motion?

22 MS. INZERILLO: I do oppose the motion, Your Honor.

23 My only concern on that was - I do wish to place some
24 things on the record about that before --

25 THE COURT: All right. So we'll wait until after ---

1 MS. INZERILLO: Okay.

2 THE COURT: --- and we've had a chance to have lunch.

3 MS. INZERILLO: Okay.

4 THE COURT: It will be an hour.

5 MS. INZERILLO: Thank you, Your Honor.

6 (COURT IN LUNCH RECESS AT 02:25 P.M..)

7 (COURT BACK IN SESSION AT 03:35 P.M..)

8 THE COURT: Take your seats please.

9 All right, are we ready to proceed?

10 Are we ready to proceed from the State?

11 SOLICITOR COLTON: Yes, Your Honor.

12 THE COURT: And this is the case of *State versus*
13 *Joshua Kenneth Brookins?*

14 SOLICITOR COLTON: Yes, sir, Your Honor.

15 THE COURT: 2014-GS-46-3002. Ms. Colton and Ms.
16 Shelton for the State and Ms. Inzerillo for the defendant.
17 Ms. Colton.

18 SOLICITOR COLTON: Yes, Your Honor. Before we begin
19 with the pretrial, Your Honor, the State is gonna make a
20 motion for a bench warrant on Mr. Brookins and ask the
21 Court to issue one. I have a copy of the certified bail
22 form signed by Mr. Brookins on May 29th of 2014. And a
23 condition of his bond Mr. Brookins is required to and did
24 initial - it is the form approved by the Supreme Court,
25 Your Honor - initialed that if no final disposition is made

1 by during his bond returnable date that he is - shall
2 appear at all other times and places as ordered by the
3 Court.

4 Mr. Brookins was docketed to be here in court today.
5 He also acknowledged in the acknowledgment section on the
6 back side of this, Your Honor, that I understand that I've
7 been informed that I a right and obligation to be present
8 at trial. If I fail to attend the court the trial will
9 proceed in my absence. I draw attention to Mr. Brookins'
10 acknowledging that he has a right and obligation to be
11 present at trial.

12 I know Ms. Inzerillo has conveyed that he was waiving
13 his right to be here as part of the jury selection. She's
14 conveyed to me he's waiving his right to be here for
15 pretrial. The State's issue is not necessarily that he's
16 waiving this right to be a party to any of those
17 proceedings. My issue with this is he was docketed to be
18 here by the court. Ms. Inzerillo mentioned during voir
19 dire I didn't make an issue of it before the jury being the
20 entire jury panel being here, however, when she introduced
21 her client she said that Mr. Brookins is not here. And
22 that's his right, he's not here by consent and I didn't
23 want to record to reflect the State has consented to Mr.
24 Brookins not being here for his trial.

25 Number one, because he's failed to comply with his

1 bond conditions. And Number Two, because this has a larger
2 implications for the State beyond this trial if Mr.
3 Brookins failed to appear for his trial then of course the
4 state has the option of going forward and entreating the
5 bond. If we get the entreatment process and the bondsman
6 adheres on the record at some point the State acquiesce to
7 Ms. Inzerillo's assertions that we have some how consented
8 to Mr. Brookin's not being here I think that would have
9 negative ramifications for the state on the entreatment
10 process.

11 So for those reasons, the failure to comply with the
12 conditions of his bond and his requirement to be present
13 for docket and because of the negative aspects of the
14 entreatment process I believe that Mr. Brookins is required
15 to be here and until he was released by the Court.

16 And I did not agree to it and the State and neither
17 has my co-counsel to him being released. We did not
18 consent to this and there has been no hearing with the
19 Court permitting Mr. Brookins to not attend the docket
20 date. So whether he actually come into the courtroom or
21 not is up to him but I believe he is required to be here
22 and he's in violation of bond condition.

23 THE COURT: All right. Ms. Inzerillo, what do you
24 say?

25 MS. INZERILLO: Your Honor, the defense would oppose

1 this motion on several grounds. As the Court is aware
2 essentially the defense position is the docketing and trial
3 at this stage of the proceedings are two different things.

4 The state read from the state's standardized bond form
5 which as the state read out the language is that Mr.
6 Brookins was placed on notice that he did fail to appear
7 for his trial and would proceed in his absence.

8 I made - As I made aware prior to jury selection I had
9 extensive conversations with Mr. Brookins not only prior to
10 pulling the jury but in conversations prior to that that he
11 could be tried in his absence should he fail to appear. I
12 spoke with him about that. He rejected his offer on the
13 record prior to that happening. I had spoke with him and
14 had a extensive conversation about the fact that it is his
15 trial and he could waive his presence at his trial.

16 He understood I was making a substantive motion but
17 also selecting a jury. He was aware of that and he's been
18 knowledgeable of all aspects of what's been going on and
19 has affirmed to me verbally and I would also by his conduct
20 by his absence that he is knowingly waiving his right to a
21 trial.

22 Your Honor, as you can see he is not here today. I
23 will further comment Mr. Brookins came to my office this
24 morning as I requested. I spoke with him about the events
25 that would take place today as well as tomorrow, the

1 proposed pretrial motions that I plan to make, the
2 substantive motions, the rights he has in connection with
3 those motions in terms of any testimony. Mr. Brookins
4 again wished to exercise his right to not be present at his
5 trial.

6 Your Honor, in reviewing some case law in preparation
7 for this motion it would appear there are three issues
8 which could be taken into consideration in determining
9 whether to issue a bench warrant. The first issue is
10 notice. The state - The defense is conceding he did get
11 notice. Mr. Brookins was issued a docket letter by my
12 office. The docket call was handled on Monday of this week
13 due to last week being the Thanksgiving holiday.

14 Mr. Brookins reported as required under that docket
15 and I have the sign in sheet from the court, and the State
16 should have a copy of it as well, because he signed in.
17 Mr. Brookins also secondarily stopped back into my office
18 to meet with me about the case on Monday and signed in a
19 second time with our office sheet. I have a copy of that
20 sheet as well. When he spoke to me this morning he signed
21 in a third time December 3rd so I have all three of those
22 sheets for the Court and I can hand that up and I can also
23 give a copy to the state.

24 SOLICITOR COLTON: Your Honor, I'll agree to that.
25 I'm not contesting that - I won't contest that he signed

1 in.

2 THE COURT: Let's do this. Let me have copies of -
3 Can I see a copy of the bond too?

4 SOLICITOR COLTON: Yes, sir.

5 THE COURT: I know the form you're talking about, I
6 just want to be sure what it says about when the initial
7 appearance is. Thank you.

8 Is this a copy for me or for the Court?

9 SOLICITOR COLTON: Exactly. Yeah, make it a Court
10 Exhibit, Your Honor.

11 MS. INZERILLO: Your Honor, the defense would
12 acknowledge Mr. Brookins had notice.

13 THE COURT: All right, well just one moment.

14 MS. INZERILLO: I'm sorry, Your Honor.

15 THE COURT: Go ahead then and that will save the
16 court some time.

17 MS. INZERILLO: Your Honor, the second consideration
18 by the court in the defense's view is that whether the
19 defendant by his conduct knowingly understanding the
20 implications waives his presence at trial. This is where I
21 think the difference comes in between a docket and a trial.

22 THE COURT: Well again, that's - The reason I wanted
23 to look at the bond because obviously the first appearance
24 was a term of Court of General Sessions begin June the 24th
25 2014 and remain there throughout that time of court if no

1 disposition is made during that term the defendant shall
2 appear and remain throughout each succeeding term of court
3 until final disposition is made of his case unless ordered
4 by the court.

5 MS. INZERILLO: Your Honor, I will state to that that
6 the common practice in York County is that clients will
7 report on docket day or bond returnable. As you can see
8 the sign in sheet I handed up for the court is captioned
9 for both. They sign in, they speak to their attorneys and
10 then they are released by their attorneys.

11 The only exception to that may be if someone comes in
12 late and misses the sign in sheet or if the state has a
13 question about whether someone signed in or not then there
14 may be a special request to have someone report to the
15 solicitor's office. But the standard practice here is that
16 once a person reports to their attorney they are then
17 released. So I did wish to make the court aware of that.
18 That is the practice that we routinely follow, that's the
19 practice I follow with Mr. Brookins and that's the practice
20 that was followed on all the sign in sheets that was handed
21 up to the court.

22 Your Honor, I would further note for the record that I
23 addressed this issue specifically before the jury and Ms.
24 Colton did place on the record that she acknowledged that
25 the TIA rights were given via that bond certification on

1 the bond sheet. I try to be as thorough as possible with
2 my as an officer of the court with my representations to my
3 client to put on the record that he did give a knowing
4 waiver. In my view jury selection and making a substantive
5 motion is a part of the trial for which he would have to
6 knowingly waive his presence so I will say that she has
7 waived her right to make this motion at this time.

8 Your Honor, I did wish to further note for the record
9 on this motion at this stage, Your Honor, I know this trial
10 has been broken up into scheduling issues but it is our
11 position that at this point we are in at least substantive
12 trial posture. We have chose a jury at least on one
13 substantive trial motion in preparation --

14 THE COURT: You say substantive or procedural?

15 MS. INZERILLO: Well procedural. At least one major
16 trial motion that he was aware of.

17 THE COURT: I mean the motion really if I understand
18 your waiver is still in effect would be a procedural
19 motions which would not be - that would not affect the
20 outcome of a trial but only the time of the trial.

21 MS. INZERILLO: Yes, Your Honor. Those would be the
22 motions I would make. Certainly with the Court's input.

23 THE COURT: All right. Anything further from the
24 State?

25 SOLICITOR COLTON: Your Honor, I would just contest

1 the fact that - I understand what Ms. Inzerillo is saying
2 the common practice is that defendant's show up -

3 THE COURT: I'm not concerned with common practice.

4 SOLICITOR COLTON: Yes, sir.

5 THE COURT: I read the code of laws of South Carolina.

6 SOLICITOR COLTON: Yes, sir.

7 THE COURT: And abide with what whether its ---

8 SOLICITOR COLTON: Thank you, Your Honor.

9 THE COURT: --- only the federal courts has local
10 rules.

11 SOLICITOR COLTON: Yes, sir.

12 THE COURT: The rest of us in the state we still have
13 to abide by the state rules.

14 SOLICITOR COLTON: Yes, sir.

15 THE COURT: All right.

16 SOLICITOR COLTON: And the only other matter that
17 concerns me with this and him not being here, the
18 conditions of the bond aside which I don't think have been
19 waived and I do think he's required to be here and nothing
20 I've heard has changed my position in regard to that.

21 My other concern is that this is information coming
22 from Ms. Inzerillo previous to trial and I understand. I
23 don't have any doubt that she's being accurate and fair as
24 to conversations with her client, however, I think it would
25 be a better procedural matter is if her client was actually

1 here to waive those so he cannot waive --

2 THE COURT: Well let's do this. Obviously he not
3 here, he was noticed to be here for this week, he is
4 checked in with his attorney from everything that has been
5 shown to the court which I understand is not refuted or
6 controverted, and the trial is scheduled for tomorrow
7 morning by agreement of counsel.

8 SOLICITOR COLTON: Yes, sir.

9 THE COURT: And again that's usually agreed to trial
10 so let's just honestly have the control of the docket but
11 to a degree and the defense can wisely move for a
12 continuance or something. None of that has been done. In
13 other words the trial is still scheduled for tomorrow
14 morning.

15 And according to the written terms of the bond and
16 signed by the defendant on May the 29th, 2014 I understand
17 if I violate any condition of this order a warrant for my
18 arrest will be issued. I initialed I understand and have
19 been informed that I have the right and obligation to be
20 present at trial and should I fail to attend the court the
21 trial will proceed in my absence. It has been explained to
22 me that if I fail to appear before the court as required a
23 warrant for my arrest will be issued. And as I say it's
24 signed by Josh Brookins on 2000 - 05, 29, 2015.

25 And one of the conditions of the bond is that the

1 defendant shall appear at the term of General Sessions
2 Court beginning January 24th, 2014, eight o'clock, eight-
3 thirty o'clock p.m., at York County General Sessions, et
4 cetera, and remain throughout that term of court. If no
5 disposition is made during that term of court the defendant
6 shall appear and remain throughout each succeeding term of
7 court until final disposition is made of this case - his
8 case unless other wise ordered by the Court.

9 It's the court's understanding that by agreement of
10 the defendant and my understanding of the parties have not
11 consented by the counsel that his actual appearance on the
12 day - first day of the term of - subsequent term of court
13 he was noticed to be here. His actual appearance was
14 waived until trial.

15 Therefore I find that conditions of the bond will be
16 violated if he failed to appear in court. What's the time
17 has been agreed to?

18 SOLICITOR COLTON: Nine thirty, Your Honor.

19 THE COURT: Nine thirty on December the 4th, 2014.
20 And if he fails to proceed - to attend at that time the
21 trial will proceed in his absence and a warrant for his
22 arrest will be issued at such time. If he appears then the
23 trial will proceed in his presence.

24 All right. Now, we have - the court's been furnished
25 with a list of motions in limine. Do we want to start with

1 those?

2 SOLICITOR COLTON: Yes, Your Honor.

3 THE COURT: Is the State ready to proceed?

4 SOLICITOR COLTON: Yes, Your Honor.

5 THE COURT: The defendant is ready to proceed?

6 MS. INZERILLO: Yes, Your Honor.

7 THE COURT: All right. The first motion is that if
8 the state has complied with Rule 5 and Brady. Discovery?

9 SOLICITOR COLTON: Yes, Your Honor, we have. We've
10 turned over everything in both our confidential files, the
11 videos, any stills including any stills from those videos
12 we intend to offer and as well as the incident reports and
13 any Brady material that has come to light.

14 THE COURT: All right. And is that satisfactory to
15 you, Ms. Inzerillo?

16 MS. INZERILLO: Your Honor, as I - I would only
17 inquire, Your Honor, as the State has now indicated that
18 they intend to enter the statements that were acquired
19 after the arrest of the trafficking I would like to -
20 Again, I've requested this of the state and -

21 THE COURT: Well let me ask you something. We had a
22 motion to joinder by the defendant, and does the state
23 intend to oppose the motion of the joinder or do you agree
24 to the motion of joinder?

25 SOLICITOR COLTON: We oppose it, Your Honor.

1 THE COURT: All right. So it's still up to the Court
2 to decide whether or not the joinder will be.

3 I might as well go ahead and take that matter up
4 because that would concern me whether or not statements or
5 other evidence might be relevant to the trial of the case.

6 SOLICITOR COLTON: Yes, sir.

7 THE COURT: All right. Anything further on your
8 motion to Joinder, Ms. Inzerillo? We pretty well discussed
9 it - I would argued it yesterday between you and Ms.
10 Colton.

11 MS. INZERILLO: No, Your Honor, not -

12 THE COURT: All right. Ms. Colton, anything else?

13 SOLICITOR COLTON: No, Your Honor.

14 THE COURT: All right. As far as the Motion to
15 Joinder and as I understand it there were three events
16 which resulted in four separate indictments. The first
17 indictment was for the incident occurring on December the
18 12th - I mean December the 28th, 2000 - Excuse me.

19 The first indictment was for February the 28th, 2014.
20 Is that the one you wish to proceed on?

21 SOLICITOR COLTON: Yes, Your Honor.

22 THE COURT: And then the second resulting in the
23 indictment was March the 21st, 2014. And is that also a
24 distribution case?

25 SOLICITOR COLTON: Yes, Your Honor.

1 THE COURT: And then the third was the indictment on
2 March resulting in an indictment on for the event occurred
3 on March the 27th, 2014 which is a trafficking events.

4 SOLICITOR COLTON: He's trafficking. Yeah, possession
5 with intent to distribute.

6 THE COURT: All right. The Court is ruling that this
7 would not be a proper case for joinder in as much as it did
8 not arise out of the same transaction. Each one is
9 separate even though it involved the same investigating
10 agency. And I don't know, was it the same CI?

11 SOLICITOR COLTON: Yes, Your Honor.

12 THE COURT: But each one would be a in a separate
13 transaction in as much as one was not required of the
14 other. So it was not a chain of circumstances but separate
15 circumstances and obviously would not be proven by the same
16 evidence because I think you said there were different
17 investigating officers. Is that not correct?

18 SOLICITOR COLTON: There was, Your Honor, and they
19 involved different co-defendant's as well.

20 THE COURT: All right. I mean that's on the fourth
21 one is it not, the last on the trafficking offense
22 incident?

23 SOLICITOR COLTON: Yes, Your Honor.

24 THE COURT: The incident resulted in the trafficking
25 charge had the co-defendants?

1 SOLICITOR COLTON: Yes, Your Honor, three of them as
2 did the one the 28th.

3 THE COURT: And the concern that the court has of
4 course that although they involved the same type of
5 violations of the law they did not as far as the quantity
6 and the amounts and all they are not the same general
7 nature. Each one would have a different - not each - but
8 they are different enhancements dealing with each of the
9 events either by quantity or prior record.

10 And normally in State versus Tucker would relate on
11 the joinder, it is usually by the State, here it's by the
12 defendant and not to be - in no wise is pun intended I do
13 feel that it would be prejudicial to the defendant if
14 otherwise it had to meet all three charges with different
15 and also be punitive as to the co-defendant's in the third
16 case and different advisements and statements and things of
17 that nature and the second and third as - unless it relates
18 to the first offense.

19 All right, so the motion to joinder is denied; it is
20 noted for the record.

21 MS. INZERILLO: Thank you, Your Honor, I appreciate
22 that. Your Honor, the Motion to Rule 5 and Brady motion I
23 would make a request separately to the Motion to Join the
24 statement that Mr. Brookins gave that the state intends to
25 introduce was made at his arrest for the trafficking. I do

1 not know if there was anything Miranda wise or anything
2 related to this case that would be contained on those
3 videos or any statements --

4 THE COURT: Now is Miranda a case specific?

5 MS. INZERILLO: Well the --

6 THE COURT: If I remember my old ones at Scotland Yard
7 advises from the black and white movies that we first
8 learned of the *Miranda* requirements you of course are not
9 to say anything because it may and will be used against you
10 in a court of law. Not necessarily about any particular
11 case.

12 MS. INZERILLO: Yes, Your Honor, but in this --

13 THE COURT: In other words I wouldn't volunteer
14 something in a matter of *Miranda* matter after being
15 marandized it can be used as a basis for the subsequent
16 indictment.

17 MS. INZERILLO: Yes, Your Honor. The timing of this
18 case however is that the statements were given in that case
19 and that discovery has not been provided to the defense.

20 THE COURT: Well again if it hadn't been provided then
21 of course that's the one thing that is said about the not
22 opposing joinder unless it's relevant to this case.

23 MS. INZERILLO: Right. And so we would --

24 THE COURT: And if it hadn't been provided obviously
25 it's not relevant.

1 MS. INZERILLO: Well that's what I'm inquiring as to
2 whether it is relevant because the statement given at that
3 time period is now being entered into this case. And so I
4 just want to inquire as --

5 THE COURT: All right, what do you say about that, Ms.
6 Colton?

7 SOLICITOR COLTON: Your Honor, the --

8 THE COURT: Are you gonna use the statement from the
9 trafficking case?

10 SOLICITOR COLTON: We - Yes I am. There's two
11 statements, I'm gonna use one of the statements, not both
12 of the statements.

13 THE COURT: What's the one that you're gonna use?

14 SOLICITOR COLTON: The one that officers inquired
15 right after the arrest - Excuse me. Mr. Brookins wanted to
16 speak to officers and he told officers that he was selling
17 methamphetamine because he was unemployed and he needed to
18 provide for his child support. That's the only one. It
19 was a general statement about his involvement with selling
20 methamphetamine.

21 THE COURT: Well see had he already been - He had not
22 been arrested on the first incidents?

23 SOLICITOR COLTON: He had not, Your Honor. And that
24 is included in the discovery packet we gave to Ms.
25 Inzerillo. That statement is.

1 THE COURT: What do you say about that, Ms. Inzerillo?

2 MS. INZERILLO: Your Honor, the trafficking bust it
3 was a buy bust so it was all recorded and my understanding
4 - My understanding is it is recorded, I'm not sure how long
5 the recording goes. My client's recollection of that is
6 not that it was a voluntary statement, that he was in
7 custody, and so I believe that that tape --

8 THE COURT: Well if it's going to be used obviously
9 it would be subject to a Jackson v. Denno to begin with.

10 MS. INZERILLO: Absolutely. And so I'm inquiring as
11 to whether those statements were made on that recording or
12 whether the state is going to allege, the officers are
13 going to allege he was in the back of a police car for
14 example and that recording would dispute that, I would
15 believe that the defense would be entitled to that in
16 relation to this case.

17 THE COURT: All right, Ms. Colton.

18 SOLICITOR COLTON: May I, Your Honor. I think it's
19 very clear from the incident report that and what I've told
20 Ms. Inzerillo about the tape at the time. There's not a
21 lot of audio to be heard. There was certainly no video but
22 that audio caught or was supposed to catch what was going
23 on between her client and the confidential informant.

24 When the arrest occurs her client is taken away from
25 the confidential informant so it can't contain no other

1 information or any of his voice on there. The incident
2 report of what we will present in the Denno hearing is that
3 her client was marandized on scene by Officer Vince
4 Hallman, that is not -

5 THE COURT: But not before he had his discussion with
6 the CI.

7 SOLICITOR COLTON: Excuse me, Your Honor.

8 THE COURT: Not before he had his conference with the
9 CI.

10 SOLICITOR COLTON: No, Your Honor. And that the
11 statement was made approximately fifteen to twenty minutes
12 later at the Rock Hill Police Department.

13 THE COURT: The statement that you want to use?

14 SOLICITOR COLTON: Yes, sir. But neither the *Miranda*
15 nor the statement is recorded on that audio tape.

16 THE COURT: I'm not exactly sure how you're gonna get
17 it in and if he wasn't marandized.

18 THE COURT: He was, Your Honor. He was marandized and
19 it wasn't recorded though on the video or audio. Her
20 client was arrested, the officer took him to the side, read
21 him his Miranda rights and --

22 THE COURT: Is this the trafficking event?

23 SOLICITOR COLTON: Yes, sir. And then ---

24 THE COURT: Okay. I understand. All right.

25 SOLICITOR COLTON: --- he was transported to the

1 police department.

2 THE COURT: What do you say, Ms. Inzerillo?

3 MS. INZERILLO: Your Honor, I would still make the
4 request to get the discovery. I would make the request
5 of that case and the subsequent case mainly because I don't
6 know if there's anything else perhaps the state doesn't
7 know that I'm looking into that could affect this case in
8 the statements by the CI's. Also the statement that would
9 go to Miranda or any identification.

10 THE COURT: Well let me ask you. The CI is gonna
11 testify?

12 SOLICITOR COLTON: Yes, Your Honor. And he is the
13 same CI in the - all three cases?

14 SOLICITOR COLTON: Yes, Your Honor.

15 THE COURT: Now if it's limited to what his intent or
16 purpose was in engaging in selling meth, is that what the
17 rest of the statement is?

18 SOLICITOR COLTON: Yes, Your Honor. His knowledge and
19 intent - the knowledge and intent of the defendant.

20 THE COURT: And he doesn't talk about trafficking
21 quantities in there?

22 SOLICITOR COLTON: No, Your Honor.

23 THE COURT: What do you say, Ms. Inzerillo?

24 SOLICITOR COLTON: That's not true. On one of the
25 tapes --

1 THE COURT: Well I'm talking about the statement that
2 you want to get in.

3 SOLICITOR COLTON: No it's not.

4 THE COURT: In other words if it's an oral statement
5 that is done not in the course of interrogation. In other
6 words voluntary statement by the defendant, I think that
7 would probably come in.

8 SOLICITOR COLTON: Yes, sir.

9 THE COURT: It really is a statement against interest
10 without - unless he - it was something that was gonna used
11 against him in that particular trafficking charge.

12 SOLICITOR COLTON: I believe that it would have been
13 used. I think it would fall under a Denno analysis.

14 THE COURT: Well we'll go ahead and do it. But I do
15 think it has to be limited to that.

16 SOLICITOR COLTON: Yes, sir.

17 THE COURT: The thing that concerns me though is you
18 are gonna confront with Lyle eventually in there. One is
19 if you're gonna using the other events.

20 SOLICITOR COLTON: I'm not, Your Honor. The way the
21 state would propose to limit it would be to discuss the
22 distribution that occurred and then ultimately he was
23 arrested and say had he - ask the officers was he arrested
24 on the distribution from February 28th, was he read Miranda
25 and did he agree to speak with you and what did he say

1 about - what did he say about him selling methamphetamine.
2 I will exclude any reference --

3 THE COURT: Or did he say anything about -

4 SOLICITOR COLTON: Yes. And I will exclude anything
5 in reference to the trafficking, any other distributions or
6 anything else.

7 THE COURT: All right. What do you say?

8 MS. INZERILLO: I would have an objection to that
9 because my potential cross examination goes to - I won't
10 call them threats but some very harsh words said to Mr.
11 Brookins that goes to the potential penalties for
12 trafficking which makes more sense ---

13 THE COURT: No.

14 MS. INZERILLO: --- when you know what's in the
15 context he was just arrested on for a trafficking deal.
16 And so the issue with that is the reason he makes the
17 statement --

18 THE COURT: Well let me ask you this. Admittedly what
19 is a quantity has to do with punishment but as far as
20 violation of the laws dealing with controlled substances
21 that's applicable throughout as far as the intent to
22 violate the law and any - what the intent is and why.

23 MS. INZERILLO: Well - And this might be walking a
24 fine line but I certainly am very cognizant in not mis-
25 trying this case certainly at any point but we know in this

1 room he was arrested as a result of a trafficking deal.
2 And, you know, our position is that the statements were a
3 result of several statements made by the DEU officer in the
4 room as a result of an interrogation as a result of the
5 fact that he was just --

6 THE COURT: Well he hadn't been interrogated until he
7 was arrested for the trafficking.

8 MS. INZERILLO: Absolutely.

9 THE COURT: So, I mean he was marandized as a result
10 of the trafficking, his first *Miranda* warning, and it would
11 apply to anything, any actions or statements dealing with
12 criminal offense.

13 MS. INZERILLO: Yes, Your Honor, but I certainly don't
14 want any questioning on that to be misperceive by the state
15 ---

16 THE COURT: Well the thing is, as I say if it all --

17 MS. INZERILLO: --- before the jury - what he's
18 looking at. Sorry.

19 THE COURT: If it all took place after he was
20 marandized then was it - I think it would be admissible if
21 it is applicable to - Does he in any way limited to
22 trafficking?

23 SOLICITOR COLTON: Not in this statement that I intend
24 to use.

25 THE COURT: All right.

1 SOLICITOR COLTON: The second statement he does limit
2 it to trafficking and I've agreed not to use that second
3 one.

4 THE COURT: All right. Now I'm going to over rule
5 your objection and deny your Motion in Liming as far as the
6 statement that was obtained after being marandized. And of
7 course that will be covered - all of your statements will
8 be covered when we do have the Jackson v. Denno limiting it
9 solely to the intent.

10 SOLICITOR COLTON: Yes, sir.

11 THE COURT: For all transactions in that sort of
12 contraband.

13 SOLICITOR COLTON: Yes, sir.

14 THE COURT: Now, I do remember that Motions in Liming
15 are not final and can be renewed in the course of the trial
16 based on the record at that time.

17 MS. INZERILLO: Yes, Your Honor.

18 THE COURT: All right. Next.

19 MS. INZERILLO: Your Honor, my - the next motion goes
20 to the prior record of the defendant. It's my
21 understanding in discussions with the state that the only
22 prior record of Mr. Brookins is a DUS and a simple
23 possession of marijuana. I just wanted to put that --

24 THE COURT: All right.

25 SOLICITOR COLTON: That's correct, Your Honor.

1 THE COURT: Well neither one of those would be
2 habitual would it?

3 SOLICITOR COLTON: No, Your Honor.

4 THE COURT: All right. So you do not have any -
5 You're not gonna rely on any impeach able offenses?

6 SOLICITOR COLTON: No, sir.

7 THE COURT: Okay. And that's going to whether or not
8 he would testify?

9 MS. INZERILLO: Yes, Your Honor.

10 THE COURT: All right.

11 MS. INZERILLO: Your Honor, number three is a motion
12 for the list of witnesses as well as criminal histories. I
13 have received from the state criminal histories of three
14 potential non-law enforcement witnesses. Mr. Bowler, Mr.
15 Cannupp, and Mr. Pope. And I believe in looking over the
16 witness list that is the only non-law enforcement
17 witnesses. I just wanted to make sure I was correct on
18 that.

19 SOLICITOR COLTON: That is correct, Your Honor.

20 THE COURT: Okay.

21 MS. INZERILLO: Your Honor, the next motion is a
22 request --

23 THE COURT: And you have been - as the state just - I
24 was right at the time. You have been provided with their
25 records?

1 MS. INZERILLO: Yes, Your Honor.

2 THE COURT: Okay. Very good.

3 MS. INZERILLO: Your Honor, the --

4 THE COURT: Now number four is motion to sequester the
5 witness for the state. Of course that would apply to both
6 state and defendant.

7 MS. INZERILLO: Yes, Your Honor.

8 SOLICITOR COLTON: Yes, Your Honor.

9 THE COURT: All right. And since we're proceeding on
10 one trial then you're going to have one investigating
11 officer sitting with you?

12 SOLICITOR COLTON: Yes, Your Honor, and that would be
13 --

14 THE COURT: And that would be on the - in the first
15 indictment?

16 SOLICITOR COLTON: Yes, Your Honor.

17 THE COURT: All right.

18 SOLICITOR COLTON: And that would be David Vaughn.

19 THE COURT: Who?

20 SOLICITOR COLTON: David Vaughn.

21 THE COURT: All right. Very good. Investigator
22 Vaughn. Very good. You may proceed.

23 MS. INZERILLO: Thank you, Your Honor.

24 Your Honor, the next two motions are evidentiary
25 hearings requesting Jackson v. Denno and Neil v. Biggers.

1 I with the court's permission can skip over those and do
2 the remaining three; eight, nine and ten since I believe
3 those can be handled through argument. Oh, I'm sorry, Your
4 Honor. I'll start with number five then. I would just
5 inquire as to the - the state intends go into any prior bad
6 acts under Lyle.

7 SOLICITOR COLTON: Your Honor, the state doesn't
8 intend to go into any prior bad acts. Obviously we're
9 reserving the right if the door's opened by defense
10 counsel, if the door's opened that --

11 THE COURT: That's when you make your notice to the
12 court that you don't intend to go into something that might
13 be was that --

14 SOLICITOR COLTON: Yes, Your Honor. And, Your Honor,
15 I think there may come a time and I will bring this as an
16 in-camera motion, there is a co-defendant involved with Mr.
17 Brookins; he was present during the deal. That defendant
18 was allowing Mr. Brookins to use his home to distribute
19 drugs out of. And as included in the indictment part of
20 the charges against Mr. Brookins are aiding abetting or
21 conspiring. The state would - The state believes that we
22 would be able to go into a little bit of that information.
23 Not months and months and months under the theory of
24 conspiracy. That by case law is not Lyle evidence but I -
25 We have --

1 THE COURT: What's the purpose of - What's the thrust
2 of the testimony you're seeking?

3 SOLICITOR COLTON: That Mr. Pope would testify that he
4 and Mr. Brookins conspired to distribute methamphetamine
5 from that residence. Not just to these informants but to
6 others.

7 MS. INZERILLO: Your Honor, I would object to any of
8 that testimony. And that's not in the indictment for --

9 SOLICITOR COLTON: It is.

10 THE COURT: Well no it's ---

11 MS. INZERILLO: I mean --

12 THE COURT: --- in the language to the indictment as
13 far as conspiracy aiding and abetting. But did Mr. Pope,
14 was he involved in this first transaction?

15 SOLICITOR COLTON: He's involved solely with this
16 transaction.

17 THE COURT: Well I think then that would probably be
18 admissible if he wants to testify.

19 MS. INZERILLO: Your Honor, we've had no notice that
20 that would be his testimony, that there were any other
21 deals or that there was any other dates outside the date --

22 THE COURT: No. No, I think you would be limited to
23 this transaction.

24 SOLICITOR COLTON: Your Honor.

25 THE COURT: Otherwise I'd find that one is more

1 prejudicial than approbative.

2 SOLICITOR COLTON: Your Honor, I did print out a few
3 cases and as I said I know this is late notice for Your
4 Honor so I will - I'm not gonna address it now until it
5 becomes an issue. But I think there is a jitney of cases
6 that permits even if uncharged other conspiratory acts and
7 the evidence of those acts to come in. State versus
8 Sullivan, and there's a whole line of cases that permits
9 that.

10 THE COURT: But as to any - any actions?

11 SOLICITOR COLTON: Yes, Your Honor.

12 THE COURT: Or is a conspiracy to commit the action
13 which the person is charged?

14 SOLICITOR COLTON: It's the conspiracy to agree to the
15 agreement to distribute drugs. Once that conspiracy is
16 established any other distributions, purchases, acts --

17 THE COURT: Well let me see your cases.

18 SOLICITOR COLTON: Yes, sir. Our evidence - Their
19 evidence of a conspiracy, evidence of the crime.

20 THE COURT: Well, no. The reason you get the evidence
21 of a co-defendant or was it a un-indicted co-defendant?

22 SOLICITOR COLTON: He was indicted, Your Honor.

23 THE COURT: Well I'm giving you the benefit. In other
24 words a person who is not indicated. In other words when a
25 reason you would get that testimony is because it's

1 relevant to the particular crime charged not a conspiracy
2 to have a general lawless series of events.

3 SOLICITOR COLTON: Your Honor, I think the keynote
4 case is gonna be *State versus Sullivan* 277 S.C. 35. And
5 unfortunately I do not have a copy for Ms. Inzerillo but
6 I've handed Ms. Inzerillo a copy of a summary, the state's
7 motion in support of this. There may be some factual
8 inaccuracies because - but the law is applicable and up to
9 date but it was cut and pasted from another case identical.

10 (PAUSE.)

11 THE COURT: Let me ask you, the statements you want to
12 get in is what?

13 SOLICITOR COLTON: Your Honor, anything related to the
14 conspiracy related between Mr. Brookins and Mr. Pope that
15 they were - that they were in agreement to sell drugs out
16 of Mr. Pope's home. Where this particular distribution
17 occurred Mr. Pope will testify that he and Mr. Brookins had
18 an agreement where Mr. Brookins could sell drugs -
19 methamphetamine - out of his home, did so on several
20 occasions out of the home in exchange Mr. Pope would get
21 free drugs from Mr. Brookins.

22 The state's position with regard to that is that
23 agreement whether expressed or implied is a conspiracy.
24 And that the state according to *State versus High tower* and
25 *Sullivan* once we can establish that conspiracy that is the

1 crime, and that any other distributions involving these two
2 co-conspirators are circumstantial evidence of the
3 agreement. Not separate and distinct crimes, but they're
4 evidence of the agreement between Mr. Brookins and Mr. Pope
5 to distribute methamphetamine out of that home which
6 included a distribution to this informant. And I think the
7 state has a great latitude according to case law in proving
8 the evidence of that agreement as well as how it involved
9 we would not involve any other individuals besides these
10 two individuals, the co-conspirators Brookins and Pope, and
11 discussed their agreement to sell drugs. And in that vein
12 this distribution by being a distribution by conspiracy --

13 THE COURT: Well nobody's charged with a conspiracy?

14 SOLICITOR COLTON: I'm sorry.

15 THE COURT: No one is charged with conspiracy in this
16 case?

17 SOLICITOR COLTON: He is, Your Honor. He's charged
18 with conspiring to distribute.

19 THE COURT: No, I mean that's the element. That's not
20 the charge.

21 SOLICITOR COLTON: I think it includes distribution by
22 conspiracy. Just as under trafficking it is a distribution
23 by conspiracy. You don't have to be charged with a
24 separate conspiracy under 44-53-420 or under the general
25 conspiracy statute because it's encompassed by that. And I

1 think if you look at these cases all those cases do not
2 involve conspiracy, they involve the statutory language -

3 THE COURT: Yes, but in all at least in the Sullivan
4 case I've looked at then - And what was the other one?

5 Gilchrist. In both of those cases the co-conspirator
6 was indicted.

7 SOLICITOR COLTON: Yes, Your Honor. In this case the
8 co-conspirator is indicted with the same charge. I'm just
9 opting not to try him with Ms. Inzerillo's case. But Mr.
10 Brookins and Mr. Pope are both charged with distribution of
11 methamphetamine including all the statutory language
12 contained therein. Most of the trafficking cases that are
13 involved with case laws that have been involved in dealing
14 with conspiracy are indicted under the general trafficking
15 statute 44- --

16 THE COURT: What I'm saying, that's a separate
17 offense.

18 SOLICITOR COLTON: No. With all due respect, Your
19 Honor, I --

20 THE COURT: Well I'm just reading the cases and the
21 parties in these cases where they say to use the co-
22 conspirator's statement against the principle that one is
23 that they were indicted and they were parties to the
24 action.

25 SOLICITOR COLTON: And Mr. Pope is, Your Honor. He's

1 indicated but he - -

2 THE COURT: But he's not in this trial.

3 SOLICITOR COLTON: He's not being tried but he is - -

4 THE COURT: No, I mean that's just it. In other words
5 he might never be tried.

6 SOLICITOR COLTON: Your Honor, I don't - -

7 THE COURT: I can understand if you have the co-
8 conspirator that's in the same indictment.

9 SOLICITOR COLTON: That's not required, Your Honor.

10 THE COURT: Oh, I know you say it's not but I - the
11 cases all relate to that.

12 SOLICITOR COLTON: I don't think that any of those
13 challenges under - were under the indictment language.

14 THE COURT: Well I didn't say you did believe it. I'm
15 just saying then that's a fact.

16 SOLICITOR COLTON: Well I'm not gonna disagree with
17 Your Honor on that but I -

18 THE COURT: Well the thing is, I have a certain
19 reservation -

20 SOLICITOR COLTON: Yes, sir.

21 THE COURT: --- about what is having an un-indicted
22 co-conspirator. And again, until he is indicted in the
23 case being tried he is un-indicted in this particular case.

24 SOLICITOR COLTON: Yes, sir, I understand your
25 reservation on that, Your Honor.

1 THE COURT: Well do you have something that says you
2 can't have an un-indicted co-conspirator's statement?

3 SOLICITOR COLTON: I --

4 THE COURT: All right. That's the one I want.

5 SOLICITOR COLTON: I can find that, Your Honor.

6 THE COURT: Very good. All right, well let's go on
7 until we do that because it's getting late.

8 All right, what's the next one?

9 MS. INZERILLO: Your Honor, I would like to make
10 statements on that one but I will wait.

11 THE COURT: Go ahead then and then let's have it for
12 the record.

13 MS. INZERILLO: I mean I don't want to drag anything
14 out due to the lateness of the hour, Your Honor, but I did
15 wish to be heard on that just at the proper time.

16 THE COURT: Well the proper time is now.

17 MS. INZERILLO: Is now. Okay. Your Honor,

18 THE COURT: I'm four hours from home so this is a good
19 time for me to hear it.

20 MS. INZERILLO: Absolutely, Your Honor. I would
21 certainly defer to Your Honor's comments on the conspiracy.
22 I would also point out -

23 THE COURT: Well I'm just curious because always when
24 we'er dealing with conspiracy we first of all have to deal
25 with the hearsay and other elements that provide for the

1 admission of a co-conspirator's statement against another.

2 MS. INZERILLO: I would point out, Your Honor, as the
3 attorney that's been working with this case for months
4 since the day of arrest March 28th of the case that Ms.
5 Colton just described to the court as well as the case -.
6 The indictment and I don't know if the court's seen the
7 language in the indictment but the indictment lays out a
8 particular date February 28th that the defendant did and it
9 lays out the statutory language "manufacture, distribute,
10 dispense, deliver, purchase, otherwise aid" so it lays out
11 statutorily what's required in the statute methamphetamine
12 in violation of the provisions of 370 and then 375. That
13 is the notice that the defense got.

14 Supporting that has been a case the paperwork that we
15 got, the video's that we got and the information I received
16 from Ms. Colton prior to the recitation she just gave to
17 the court was Mr. Brookins allegedly did a deal with
18 confidential informants. They drove to a house owned by
19 Travis Pope, did the deal, and the confidential informants
20 left; that that was the distribution done on February 28th.

21 That is the date on the tape, that is stated by the
22 DEU officer, that is the nature of the indictments, so that
23 was the factual basis we had in the indictment. Nothing
24 about conspiracy with Mr. Pope. Mr. Pope is not listed in
25 the indictment so the factual description and if that is

1 her intention of presenting we've had absolutely no notice
2 of that. So I - I would object to any of that coming out.
3 I read the brief that she just handed me in terms of that
4 is not coming under Lyle but I do think it needs to be
5 noticed that Mr. Pope is gonna take the stand and indicate
6 that there is a prior history of drug dealing and I believe
7 that that's one outside the scope of the indictment because
8 that's outside the date of February 28th if he's gonna go
9 into prior arrangements and other deals that would have
10 been done. We have no witnesses on the list indicating any
11 deals and any people he may mention in his testimony that
12 we could have investigated. We had no notice of that. The
13 jury has already been drawn in this case so any potential
14 witnesses that the defense could have put up to combat that
15 the jury would not have been apprised of that. The - That
16 whole - The case that he would testify in terms of on-going
17 drug dealing as cumulative essentially it makes it
18 secondary to the conspiracy what is listed in this
19 indictment that this distribution is just proof of a
20 broader conspiracy. And that is certainly not the case
21 that we have been presented by the state.

22 Mr. - I would go to point out that the CI to my
23 understanding not ever been indicted as well as any sort of
24 conspirators in any other conspiracy and under the theory
25 that Ms. Colton has just put forward and my knowledge of

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1 conspiracy law anyone who does a distribution or anything
2 within a conspiracy could also be a conspirator and that is
3 also not present in this case. If they do anything to get
4 involved in this case and further a conspiracy they're not
5 listed as well so I would object to that.

6 If I understand an indictment is just a notice
7 document and I understand that that is the status of the
8 case law, but certainly that has to be read in conjunction
9 with the information that has been provided to the defense.
10 And none of that has been provided to the defense prior to
11 and certainly waive it. If the court would allow the state
12 to go into any of that testimony, any prior arrangements
13 prior to February 28th we would inquire as to any
14 additional information that Mr. Pope would testify to, any
15 of the names in any of the deals - -

16 THE COURT: As I understand it - Excuse me for
17 interrupting - but as I understand the only thing Mr.
18 Pope's gonna testify to is that his house was used for the
19 purposes of distributing?

20 SOLICITOR COLTON: Yes and he was paid in
21 methamphetamine.

22 THE COURT: Why do you have to go into a conspiracy?
23 Why can't you just say that that's why the defendant was
24 there?

25 SOLICITOR COLTON: Your Honor, I --

1 THE COURT: I have a problem with it when you do not -
2 you do not have - You're proceeding on the conspiracy
3 language in the statute.

4 SOLICITOR COLTON: Yes, sir.

5 THE COURT: And you don't have a charge of conspiracy.
6 The same thing is you're not charging him with
7 manufacturing. It's in the statute as well.

8 SOLICITOR COLTON: Yes, sir.

9 THE COURT: You're not charging him with purchase but
10 that's in the statute too.

11 SOLICITOR COLTON: Yes, sir.

12 THE COURT: So I mean in other words the statute is
13 based on not just one royal violation but it's talking
14 about the various elements of a violation.

15 SOLICITOR COLTON: Yes, sir. And the state's position
16 with regard to that is it's a notice document and because
17 they could be aid abet or conspiracy or actual
18 participation in distribution but that's why I put her on
19 notice of that. I understand her position - -

20 THE COURT: I mean if he was joined in the indictment
21 I can understand that.

22 SOLICITOR COLTON: And I understand the court's
23 concern.

24 THE COURT: It's just - I mean otherwise you could
25 bring somebody in all together you know unrelated to the

1 indictment and say well you know I was gonna be there and
2 do this for - with him but I wasn't there.

3 SOLICITOR COLTON: Yes, sir. And I --

4 THE COURT: And therefore he doesn't know anything
5 about the crime.

6 SOLICITOR COLTON: I understand. That's why I believe
7 there needs to be a preliminary finding of the existence of
8 a conspiracy. And, Your Honor, -- -

9 THE COURT: You perhaps are making it too complicated.

10 SOLICITOR COLTON: I am, Your Honor.

11 THE COURT: I mean all you want to do is to say why
12 the transaction took place, alleged transaction took place
13 at this particular location.

14 SOLICITOR COLTON: Yes, sir.

15 THE COURT: Because he had my permission to be there.

16 SOLICITOR COLTON: Yes, sir.

17 THE COURT: And do you know what he was doing? Yeah.

18 SOLICITOR COLTON: Yes, sir. And the state - And to
19 be candid with the court -

20 THE COURT: And I don't know of any reason why he
21 couldn't testify to that.

22 SOLICITOR COLTON: Yes, sir. The state - To be
23 candid, Your Honor, the state is trying aggregate as much
24 evidence against the defendant as we can and we believe
25 that we can do that under conspiracy. I'll stand down on

1 this issue for now, Your Honor, and find any -

2 THE COURT: Well what I'm worried about the trial of
3 this case.

4 SOLICITOR COLTON: Yes, sir.

5 THE COURT: Cause I got - We need to move it and if
6 I'm gonna have to carry these things over until tomorrow
7 before we start we got a jury coming in at what?

8 Madam Clerk?

9 MADAM CLERK: Yes, sir.

10 THE COURT: Nine thirty?

11 MADAM CLERK: You got it. My paperwork says ten.

12 THE COURT: Ten. Ten o'clock. But I want to try the
13 case at ten o'clock tomorrow morning.

14 SOLICITOR COLTON: Yes, sir. I'll stand down.

15 THE COURT: Either that or I'm gonna issue a bench
16 warrant for all of y'all because you're absence as far as a
17 trial is concerned.

18 SOLICITOR COLTON: Yes, sir. And I'll stand down on
19 that issue. If I could just make one point about it ---

20 THE COURT: Please.

21 SOLICITOR COLTON: --- and that's that these
22 confidential informants cannot be parties. I think that is
23 an incorrect statement of law. Confidential informants
24 can't be parties to a conspiracy and be indicted as such
25 because they're agents of the state just like police are.

1 THE COURT: Well that's - And that's why they
2 otherwise that any statement made to them is the subject of
3 *Miranda*.

4 SOLICITOR COLTON: Yes, sir. Yes, sir. Not to the
5 confidential informants?

6 THE COURT: Hum?

7 SOLICITOR COLTON: Any statement made to the
8 confidential informants is subject to *Miranda*?

9 THE COURT: As far as was it being used. I see what
10 you mean. A confidential informant - Oh, excuse me.
11 You're talking about - I'm talking about *Miranda*. I'm
12 thinking more of entrapment.

13 SOLICITOR COLTON: Yes, sir.

14 THE COURT: Excuse me.

15 SOLICITOR COLTON: Well we'll stand --

16 THE COURT: Let's stay with what --

17 SOLICITOR COLTON: And, Your Honor, I will stand down
18 in the interest --

19 THE COURT: That's my fault on what I was thinking
20 about the agent.

21 MS. INZERILLO: Okay, Your Honor. As I was saying we
22 can skip six and seven because those will be evidentiary.
23 If I could just handle eight, nine and ten I think those
24 can be enough argument.

25 Your Honor, number eight is a motion to - regarding

1 testimony about text messages, communication by Facebook in
2 this case. My understanding in my discussions with Ms.
3 Colton is, and in my review of the case, is the
4 confidential informant - the deal was not set up by the
5 officers, it was set up by the confidential informant.
6 That was not recorded or anything, but that the deal was
7 set up because the confidential informant had some
8 communication with Mr. Brookins via text messages and via
9 Facebook messaging.

10 The officers did not take any pictures of that; did
11 not record that in any way and so my objection would be to
12 the officers being allowed to testify to about anything
13 that they saw in the collection of that based on the fact
14 that that would be one hearsay. They weren't party to that
15 conversation and they can't verify it was Mr. Brookins that
16 made those communications and so I would object to the
17 officers being allowed to testify to that.

18 THE COURT: All right. Ms. Colton, I'm not exactly
19 sure if I understand what the objection is but go ahead.

20 SOLICITOR COLTON: Your Honor, I think Ms. Inzerillo
21 is talking about two separate issues. The one is the
22 destruction of evidence or the non-preservation of evidence
23 that the officers didn't memorialize the Facebook page or
24 text messages. I believe that the officer should be able
25 to testify that he actually saw them. I don't think that

1 this - And I believe that there needs to be a proffer on
2 the *Jackson - State versus Jackson* - the destruction of
3 evidence and it would have to be shown that the officers
4 knew the prejudicial value of this evidence and
5 intentionally destroy the Facebook messages or the text
6 messages and did by doing so knew they would be prejudicial
7 to the defendant. And I don't think that that standard can
8 be met. In any event it would have been the information on
9 the confidential informant's phone and I don't see - I
10 don't understand quite her argument with regard to that.

11 I do understand the hearsay argument that the officer
12 should not be able to testify to what they read because
13 that would be hearsay. And I don't have an issue with the
14 officer not reciting what they saw on the Facebook messages
15 verbatim or what they saw in the text messages.

16 I think that the confidential informant can testify to
17 that because he actually was a participant and saw it.
18 However I would ask the court to allow these officers to
19 say that they did view Facebook messages and they did view
20 text messages without going to the specific verbiage
21 because I think that what they saw and observed is not
22 hearsay, it's their actions and objective reasons.

23 THE COURT: Wouldn't it have to be relevant whatever
24 they saw or viewed?

25 SOLICITOR COLTON: Yes, sir.

1 THE COURT: Well how are they gonna make it relevant
2 if they can't say what they saw?

3 SOLICITOR COLTON: I think it would be relevant - It
4 becomes relevant when the confidential informant testifies
5 to what he wrote but when the confidential informant is
6 crossed-examined on whether or not that really happened I
7 think that the officers were entitled to say we did see
8 that they - He did receive text messages and he indicated
9 that that was setting up the deal.

10 THE COURT: Well that might be getting the cart before
11 the horse isn't it? Is that what you're saying, you're
12 going to put up the officers to testify they saw something
13 that the confidential informant's gonna later testify to?

14 SOLICITOR COLTON: No. Your Honor, I don't put up the
15 confidential informant to say -

16 THE COURT: Okay. Well I think you might be able to
17 do that. Okay. At this time I'm not going to exclude it.

18 Go ahead.

19 MS. INZERILLO: Number nine is a motion to reveal any
20 and all deals made with the informant and the co-
21 defendant's in this case.

22 THE COURT: Are there any?

23 SOLICITOR COLTON: No there are not. No they're not,
24 Your Honor. They've not been promised anything by the
25 state. And I've spoken with the officers, they have not -

1 Obviously they are hopeful that it will effect the outcome
2 but I've not specifically promised them anything.

3 MS. INZERILLO: Your Honor, the last motion, number
4 ten, there is a video in this case and there's just two
5 parts of that I would ask to be redacted. The first thing
6 is in the middle part of the video when the CI and Mr.
7 Brookins are sort of in the house Mr. Brookins is making
8 some statements along the line - and these aren't direct
9 quotes - but sort of along the lines of do you need a half
10 a gram, I can get you another gram, maybe we can trade, and
11 so I would object to those statements coming in. The
12 objection made is relevant to this deal that's the subject
13 of --

14 THE COURT: Well doesn't that go to intent?

15 MS. INZERILLO: It would go to future dealings.

16 THE COURT: No, the intent.

17 MS. INZERILLO: My --

18 THE COURT: I mean that's why they're there.

19 MS. INZERILLO: Well I think the state can put up
20 evidence and certainly the CI's can testify that we did a
21 deal but not to any future dealings or plans. I would
22 argue all this.

23 THE COURT: What would you say, Ms. Colton?

24 SOLICITOR COLTON: Your Honor, I would say that this -
25 it's part of the res gestae and I don't believe that their

1 - The informant and her client are discussing the deal, the
2 price of the deal, the quality of the merchandise, that
3 it's high quality methamphetamine, weighing it out and
4 agreeing that - and agreeing to prices and are engaging in
5 a trade in the future, I don't see how that touches on
6 anything in the future cause none of that would be relevant
7 and I believe it goes to --

8 The state is required to show both intent and
9 knowledge and show his knowledge that he's engaging in this
10 drug deal and engaging in the distribution of
11 methamphetamine by discussing grams and discussing future
12 deals with him that may or may not come to fruition goes
13 directly to his intent and goes to directly to his
14 knowledge of what he's doing, and I think that to cut that
15 out would unfairly prejudice the state because we do have
16 the burden of proof of showing his knowledge and his
17 intent.

18 THE COURT: All right, what do you say, Ms. Inzerillo?

19 MS. INZERILLO: Your Honor, just to be clear, my
20 motion only goes to it's a very short clip but my -

21 THE COURT: Well let me ask you something. How hard
22 would it be to redact that? I mean really -

23 SOLICITOR COLTON: I don't know, Judge, cause I'd have
24 to get my tech guy to do it.

25 THE COURT: No question about that. And what they're

1 talking about is a future transaction?

2 SOLICITOR COLTON: No, Your Honor.

3 THE COURT: I mean in other words they're talking
4 about something that might be done.

5 SOLICITOR COLTON: Yeah. And in the middle of the
6 deal before it's consummated her client says try it out,
7 you know, there's more of this where this came from. And
8 then he says if you can get me a half gram or a gram
9 perhaps we can make a trade and we can make a deal and
10 figure out the math. So it's not we're making a future
11 deal, we're setting up a deal for tomorrow. It's hey we
12 can work out something in trade the next time instead of us
13 doing the seventy dollar deal.

14 But I don't believe it references any specifically -
15 It does not reference any specific date. It does not
16 reference any future transaction. It just proposes that
17 hypothetically her client would be willing to take
18 something and barter instead of cash the next time he sells
19 methamphetamine to the informant.

20 And I think it would be a important in the state's
21 position in this particular occasion that the informant is
22 credible that he's made a trade for seventy dollars. This
23 is a distribution there is a sale. That's another element.
24 It wasn't given to him. And it can't be argument to say
25 that it was, you know, merely doing somebody a favor, an

1 accommodation or anything like that because they're
2 discussing - It becomes relevant because they're discussing
3 the different manners of distribution in this particular
4 occasion for seventy dollars.

5 THE COURT: I don't think accommodation is a defense
6 to alleging meth is it?

7 SOLICITOR COLTON: My concern would be more from a
8 jury nullification. The same point, Your Honor. But not
9 in the legal term but in the nullification set of
10 understanding.

11 THE COURT: Jury nullification is not legal anyway.

12 SOLICITOR COLTON: Yes, Your Honor, I've had the
13 occasion of having it snuck through a little bit though.

14 THE COURT: I've had one of those myself.

15 All right. I'm not exactly sure. You say res gestae.
16 We don't have res gestae. Now of course we just have two,
17 893(1) and (2) may combine. Which one are you relying on
18 present sense impression or excited utterance?

19 SOLICITOR COLTON: No, not under the hearsay
20 exception, Your Honor, but under the theory of law that it
21 completes the picture of the deal, that it puts context to
22 the deal, and to remove it from the deal would number one
23 make the deal choppy.

24 Number two, would be prejudicial to the state because
25 it would call into question whether the deal happened,

1 whether it was for seventy dollars. I think it gets the
2 context to - Context to what is occurring as well as it
3 goes to Mr. Brookins - -

4 THE COURT: I think it does come under the hearsay
5 exception in that there would be the two discussing
6 something that is at the present at the time - during the
7 time of the occurrence.

8 All right, I'm going to permit it. I'm not going to
9 redact it.

10 MS. INZERILLO: And, Your Honor, at the beginning of
11 that video there's a very quick mention by the officer as
12 he running the video equipment with the CI's that he tells
13 them this is the same one used in the last deal. It's a
14 very quick statement - -

15 THE COURT: Any -

16 SOLICITOR COLTON: Yeah. We'll just start it, we'll
17 fast forward it a little bit, Your Honor.

18 THE COURT: That will be good. All right, so that
19 will be taken care of.

20 MS. INZERILLO: And so, Your Honor, that would just
21 leave the *Jackson v. Denno* and *Neil v. Biggers*.

22 THE COURT: All right.

23 SOLICITOR COLTON: At this time the state would call
24 Detective Walter Beck. And this is the Biggers hearing,
25 Your Honor.

DETECTIVE WALTER BECK: DIRECT BY SOLICITOR COLTON - IN CAMERA -124-

1 MS. INZERILLO: Your Honor, we'd ask that any
2 sequestration begin now with the testimony.

3 THE COURT: All right. Any objection to that, Ms.
4 Colton?

5 SOLICITOR COLTON: No, Your Honor, I've already
6 advised all parties involved what that entails.

7 ((WHEREUPON, WALTER BECK, BEING
8 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:))

9 MADAM CLERK: Thank you.

10 THE COURT: You may proceed.

11 Let's see, give us your full name for the record
12 spelling your last name.

13 A. Walter Beck, B-e-c-k.

14 THE COURT: Very good. Thank you, sir.

15 You may proceed.

16 DIRECT EXAMINATION - IN CAMERA

17 DETECTIVE WALTER BECK BY SOLICITOR COLTON:

18 Q. Mr. Beck, can you please state your rank and what you
19 do for a living?

20 A. I'm a detective assigned to the property crimes
21 Division of the York County Sheriff's Office.

22 Q. And previously you had been involved in the Multi-
23 jurisdictional Drug Enforcement Unit?

24 A. Yes I was.

25 Q. And basically narcotics investigation?

DETECTIVE WALTER BECK: DIRECT BY SOLICITOR COLTON - IN CAMERA -125-

1 A. Yes.

2 Q. Okay. And how long have you been involved with that?

3 A. Almost seven years.

4 Q. At one point were you a commander?

5 A. I was.

6 Q. And what's a commander do?

7 A. A commander supervises a group of narcotic
8 investigators. I held that position for two years.

9 Q. And what DEU were you in as far as locality?

10 A. I supervised our North office that covered the Fort
11 Mill and Tega Cay region of the county.

12 Q. And if Ms. Inzerillo doesn't mind, with the Court's
13 consent, if I could kind of breeze him through a little bit
14 and be a little bit just for the sake of brevity of time.

15 While working the Drug Enforcement Unit you were
16 involved with narcotics investigations?

17 A. That's correct.

18 Q. Involved with the use of confidential informants?

19 A. That's correct.

20 Q. And utilized photo lineups?

21 A. That's correct.

22 Q. And you currently still utilize photo lineups?

23 A. I do.

24 Q. And did you prepare a photo line up - or were you
25 involved in the investigation of Josh Brookins?

DETECTIVE WALTER BECK: DIRECT BY SOLICITOR COLTON - IN CAMERA -126-

1 A. I was.

2 Q. And in what capacity were you involved?

3 A. I prepared the photo lineup that was shown to the CI.

4 Q. And was this on February 28th, 2014?

5 A. It was.

6 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO, PREMARKED FOR
7 IDENTIFICATION.)

8 Q. Detective, I'm showing you what's been marked for
9 identification purposes as Court Exhibit Two.

10 Do you recognize that?

11 A. I do.

12 Q. And can you tell the court what that is?

13 A. This is a six-pack photo lineup that I prepared.

14 Q. What is a six-pack photo line up?

15 A. It is a group of six photographs of individuals on
16 one sheet of paper with similar characteristics.

17 Q. Did you put in any names or anything like that?

18 A. No.

19 Q. And how do you go about getting these people to put in
20 this photo lineup?

21 A. I use the sheriff's office records management system
22 that has photographs that are populated through our jail
23 system.

24 Q. And in selecting individuals to be included in this
25 photo lineup, how do you go about doing that?

DETECTIVE WALTER BECK: DIRECT BY SOLICITOR COLTON - IN CAMERA -127-

1 A. I go by race, sex, height perimeters, weight
2 perimeters, hair color.

3 Q. And you try to get six, essentially six people that
4 look just about the same as the target?

5 A. As close as you can get.

6 Q. As close as you can get. And do you put any
7 information there that's suggestive of who the person
8 you're seeking to identify somebody might be?

9 A. Not at all.

10 Q. It does intentional?

11 A. That is.

12 Q. And when you put together this photo lineup was it
13 a colored photo lineup that you showed the informant?

14 A. It was.

15 Q. And what was the informant's name?

16 A. The informant was - last name Bowker, I believe his
17 first name's Charles. Call him Charlie.

18 Q. And how long do you think after the distribution
19 that you all participated in did you show him that photo
20 lineup?

21 A. Within probably a half hour.

22 Q. Okay. Where was the informant when you showed him
23 the photo lineup?

24 A. I believe at the Moss Justice Center.

25 Q. Okay. And can you explain to the court how you

DETECTIVE WALTER BECK: DIRECT BY SOLICITOR COLTON - IN CAMERA -128-

1 showed him the photo lineup?

2 A. I try to do it the same way every single time. I show
3 'em the lineup and tell 'em beforehand though I'm gonna
4 show you some photographs I want you to take a look at
5 these people and see if you recognize any of the people in
6 these photographs. I then put the sheet in front of 'em
7 and I ask do you recognize any of these people.

8 Q. Did you tell him to pick anyone?

9 A. No.

10 Q. Did you point to anybody on the paper?

11 A. No.

12 Q. Did you even indicate that that person - that the
13 target was even on that paper?

14 A. No.

15 Q. And what did Mr. Bowker do when he looked at the
16 paper after your instructions?

17 A. He pointed out person number three and said that was
18 Joshua Brookins.

19 MS. INZERILLO: Objection to what Mr. Bowker said.

20 THE COURT: Over ruled.

21 BY SOLICITOR COLTON:

22 Q. And did you ask Mr. Bowker to do anything after he
23 picked out person number three?

24 A. I ask him to draw a circle around the photo and write
25 his initials inside that circle.

DETECTIVE WALTER BECK: DIRECT BY SOLICITOR COLTON - IN CAMERA -129-
CROSS BY MS. INZERILLO - IN CAMERA

1 Q. And how long after your instructions did it take him
2 to pick out person number three?

3 A. Very quickly. Within just a couple of seconds.

4 Q. Just to confirm, you didn't suggest to Mr. Bowker
5 who this person was or who he needed to pick out?

6 A. No I did not.

7 Q. Okay. Are you familiar with Mr. Brookins? Had you
8 ever seen him before?

9 A. I don't believe so.

10 Q. Okay.

11 SOLICITOR COLTON: Your Honor, the state doesn't have
12 any further questions for Detective Beck.

13 MS. INZERILLO: May it please the court, Your Honor.

14 THE COURT: Please.

15 CROSS-EXAMINATION - IN CAMERA

16 DETECTIVE WALTER BECK BY MS. INZERILLO:

17 Q. Detective Beck, you also took a statement from Mr.
18 Bowker in this case?

19 A. No, ma'am, I don't believe so.

20 Q. A witness statement from him?

21 A. I'm may have witnessed a statement. I did not take
22 a statement from him in this case.

23 MS. INZERILLO: May I approach the witness, Your
24 Honor?

25 THE COURT: Certainly.

1 Q. If I were to show you a statement would that refresh
2 your recollection?

3 A. It would help.

4 Q. Okay.

5 A. Thank you.

6 Q. All right, I'm gonna show you what's been provided
7 to me as a statement signed by Mr. Bowker. Do you
8 recognize that?

9 A. I do.

10 Q. And in that statement he gives a description of Mr.
11 Brookins; is that correct?

12 A. Yes there is a description in the statement.

13 Q. Okay. And the description that he gives is --
14 Sir, let me get that back from you so I don't misstate
15 it. It's a white male; is that right?

16 A. Yes, ma'am.

17 Q. Five, eleven?

18 A. Yes, ma'am.

19 Q. With short brown hair?

20 A. Yes, ma'am.

21 Q. Okay. So that was the description - I'm sorry, and
22 he also said he was wearing a white tee shirt and blue
23 jeans; is that correct?

24 A. Yes, ma'am, that's what's in the statement.

25 Q. Okay. So that was a description that he gave of

DETECTIVE WALTER BECK: CROSS-EXAMINATION BY MS. INZERILLO
IN CAMERA

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1 Mr. Brookins; is that right?

2 A. Yes, ma'am.

3 Q. Okay. He didn't give you any weight?

4 A. I think it's important to point out, I didn't prepare
5 that statement.

6 Q. Okay.

7 A. So saying he didn't give me a weight ---

8 Q. Uh-huh.

9 Q. --- is kind of misleading because I did not actually
10 prepare that statement.

11 Q. Okay. But you did prepare a photo lineup?

12 A. I did.

13 Q. Okay. And so when you prepared the photo lineup
14 you knew to put Josh Brookins in a photo lineup?

15 A. I did.

16 Q. Okay. How did you get that information?

17 A. From Investigator Vaughn from a previous deal they
18 had done with him.

19 Q. And so you knew to pull Mr. - I'm sorry, I'm gonna
20 retrieve this - so you knew to pull picture number three
21 who I believe has been identified as Mr. Brookins; is that
22 correct?

23 A. Yes, ma'am. I knew to put Joshua Brookins' photo in
24 the photo lineup based off the previous deal with him.

25 Q. Okay. And so when you indicated you had to do race

DETECTIVE WALTER BECK: CROSS-EXAMINATION BY MS. INZERILLO
IN CAMERA

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1 and sex and height and weight how did you know what
2 perimeters to put in there?

3 A. Mr. Brookins was already in our system from his
4 previous law enforcement encounters ---

5 Q. Hum-hum.

6 A. --- so I pulled his perimeters which for example
7 if our system shows him at five eleven you would pull
8 people who are between five nine or five ten up to six
9 foot, six one.

10 Q. Okay. So do you recall what the system told you
11 was the perimeters of picture number three?

12 A. I do not recall what our system says his height and
13 weight exactly is.

14 Q. Okay. So you don't recall if it was five eleven?

15 A. No, ma'am, I don't.

16 Q. Okay. And do you happen to recall - Let me ask you
17 this. I'm gonna show you the statement again. That
18 statement was given at 3:49; is that correct?

19 A. Yes, ma'am. It says here signed at 3:49 p.m. That
20 would a been the time that Mr. Bowker - Investigator Doty
21 who took the statement and then myself who notarized the
22 statement.

23 Q. Okay. And that was after the photo lineup was done?

24 A. I believe so. I believe the photo lineup was shown
25 at approximately three thirty.

DETECTIVE WALTER BECK: CROSS-EXAMINATION BY MS. INZERILLO
IN CAMERA

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1 Q. Okay. So the description is given after the photo
2 lineup is given?

3 A. In that particular statement ---

4 Q. Uh-huh.

5 A. --- yes I believe so.

6 Q. Okay. Now you indicated you got the information to
7 put in the lineup from the Vaughn?

8 A. That's correct.

9 Q. Because he had given you the name from a prior dealing
10 is that correct?

11 A. Yes, ma'am, there was a prior deal where Mr. Brookins
12 distributed a quantity of meth to a CI.

13 Q. Okay.

14 A. And they had already had an active case on Mr.
15 Brookins.

16 Q. Okay.

17 A. So I was doing the photo lineup for the second deal
18 using the information from the first deal.

19 Q. Did you use the same picture from the first deal?
20 Was he shown a lineup from the first deal?

21 A. He was not shown a lineup after the first deal. He
22 was - The CI was shown a lineup only once and that was
23 after the second deal.

24 Q. Okay. So this is the only lineup he was ever shown?

25 A. Yes, ma'am.

DETECTIVE WALTER BECK: CROSS-EXAMINATION BY MS. INZERILLO
IN CAMERA

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1 Q. The picture's number - Every picture except number
2 four, are those all booking photos?

3 A. Ma'am, I believe every single one of those are
4 booking photos. Even number four.

5 Q. Number four that Shawn John assured that was standard
6 issue in the jail?

7 A. No, ma'am, that's not standard issue. Out detention
8 center went through a protocol change a few years back
9 about making sure that they did wear the issued orange
10 shirt.

11 Q. Gotha. Okay. So your understanding is all of these
12 are - would be at least jail issued photos if not booking
13 photos?

14 A. Yes, ma'am. Those would have been booking photos.
15 You can tell by the way the shots are done in the back
16 ground.

17 Q. Okay.

18 A. Even though number four is not wearing the orange
19 issued shirt ---

20 Q. Uh-huh.

21 Q. --- that to me to be in our system and to look
22 like that ---

23 Q. Uh-huh.

24 A. --- that would have to be a booking photo out of
25 the jail.

DETECTIVE WALTER BECK: CROSS-EXAMINATION BY MS. INZERILLO
IN CAMERA

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1 Q. Okay. Do you recall if Mr. Bowker made any other
2 statements to you regarding those lineups from that lineup?

3 A. No, ma'am.

4 Q. Did you ever have any dealings with Mr. Brookins?

5 A. No, ma'am, I don't believe I had ever dealt with him
6 before, met him before.

7 Q. Okay. Have you since then?

8 A. No, ma'am, I don't believe I've met him yet.

9 MS. INZERILLO: Your Honor, I have no further
10 questions.

11 THE COURT: Reexamine?

12 SOLICITOR COLTON: No, Your Honor.

13 THE COURT: All right. You may step down, sir.

14 (WITNESS LEAVING WITNESS STAND.)

15 SOLICITOR COLTON: The state would call Charles
16 Bowker.

17 MADAM CLERK: Please raise your right hand, place
18 your left on the Bible.

19 (WHEREUPON, CHARLES BOWKER, BEING
20 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 DIRECT EXAMINATION

22 CHARLES BOWKER BY SOLICITOR COLTON:

23 Q. Mr. Bowker, can you please state your full name for
24 the record?

25 A. Charles Burl Bowker the III.

1 Q. And what county do you live in?

2 A. York County.

3 Q. And were you involved in helping the Drug Enforcement
4 Unit back in February of 2014?

5 A. Yes, ma'am.

6 Q. And on February 28th, 2014 were you - did you inform
7 officers that you could make a controlled purchase?

8 A. Yes, ma'am.

9 Q. And do you recall who that was from?

10 A. Yes, ma'am.

11 Q. Who was that from?

12 A. Mr. Brookins.

13 Q. What's his first name?

14 A. Josh, Josh Brookins.

15 Q. Tell me a little about Mr. Brookins. How did you
16 first meet Mr. Brookins?

17 A. I met him through a mutual acquaintance. A girl that
18 he was talking to at the time and she introduced me to him.
19 She come over.

20 Q. Were you all friends?

21 A. Me and the girl was. I just had met him.

22 Q. Okay. Do you remember when you met him?

23 A. I don't recall the exact day.

24 Q. But how many months do you think if you could
25 approximate how did you know him?

CHARLES BOWKER: DIRECT BY SOLICITOR COLTON - IN CAMERA

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1 A. Maybe four at the most.

2 Q. And during those four months how many times do you
3 think that you'd seen him?

4 A. Three or four at the most.

5 Q. Three or four? Okay. And on this particular occasion
6 do you remember a control buy to buy methamphetamine?

7 A. Yes, ma'am.

8 Q. Okay. You have to answer affirmatively because
9 this lady right here is taking down everything you say.
10 Okay?

11 A. Yes, ma'am.

12 Q. Have you ever purchased methamphetamine from Mr.
13 Brookins before?

14 A. No, ma'am.

15 Q. Now if I can just clarify because

16 Your Honor, I've instructed him not to talk about
17 prior incidents but this is pretrial. I told him not to
18 say anything prejudicial about any of the other incidents
19 he was involved in. I think Mr. Bowker's taking me very
20 literally that I need to clarify for this.

21 THE COURT: You may go ahead and ask the question.

22 SOLICITOR COLTON: Thank you, Your Honor.

23 Q. We discussed before that we just kind of had a limit
24 to what your involvement was with Mr. Brookins.

25 A. Yes.

1 Q. Okay. That's for in front of the jury. The other
2 distribution that you did with Mr. Brookins and any other
3 time you bought from him before you can talk about that.

4 A. Oh.

5 Q. Okay. So had you ever purchased meth from Mr.
6 Brookins before?

7 A. Yes, ma'am.

8 Q. Okay. Do you know about how many times?

9 A. All together I believe it was four.

10 Q. Okay. Had you ever - And you currently have charges
11 on you ---

12 A. Yes, ma'am.

13 Q. --- for distribution? Okay. Had you ever sold
14 him any other on any other quick occasions besides the ones
15 that involved any other time besides transacting
16 methamphetamine deals?

17 A. Just one time.

18 Q. Okay. And how did you get in contact with Mr.
19 Brookins?

20 A. Social media, Facebook and cell phone.

21 Q. Cell. Okay.

22 A. Text message.

23 Q. And after this particular distribution on February
24 28th, 2014 tell the court a little bit about what happened
25 on this time you were ask to go out and purchase?

CHARLES BOWKER: DIRECT BY SOLICITOR COLTON - IN CAMERA

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1 A. I met up with Officer Vaughan here with my brother
2 and we got searched and then they gave me all the
3 equipment, the recording equipment, the camera and they
4 gave me the money. And I made the phone calls and set up a
5 deal.

6 Q. Okay. Do you remember where you went?

7 A. I went to Awana Drive.

8 Q. Okay. And who were you making those phone call deals
9 with?

10 A. Josh Brookins.

11 Q. And you knew his cell phone number?

12 A. Yes, ma'am.

13 Q. And when you got to Awana Drive had you ever been
14 to that house before?

15 A. No, ma'am.

16 Q. Who answered the door?

17 A. Mr. Brookins did.

18 Q. And did you recognize Mr. Brookins immediately?

19 A. Yes, ma'am.

20 Q. And these previous deals that you had with him you had
21 met him face to face?

22 A. Yes, ma'am.

23 Q. And so these other four occasions you had had an
24 opportunity to see him, identify him?

25 A. Yes, ma'am.

1 Q. You also friends with him on Face book?

2 A. I was yes at the time.

3 Q. And had you seen any pictures of him on Face book?

4 A. Yeah.

5 Q. And how many times do you think you've seen pictures
6 of him on Face book?

7 A. Just one.

8 Q. Just one? Okay. When you got back - Well when you
9 went out to the deal and Mr. Brookins opened the door, what
10 happened?

11 A. I walked inside and he introduced me to the person's
12 house that we met at and then I sat down on the couch
13 directly in front of him and he put - he brought out the
14 meth and some scales and set 'em on the table in front of
15 me.

16 Q. And did you take the meth from him?

17 A. Yes, ma'am.

18 Q. Okay. And you paid him for it?

19 A. Paid him yes, ma'am.

20 Q. And did you bring that back to law enforcement?

21 A. Yes, ma'am.

22 Q. And at the conclusion of that you gave law enforcement
23 a statement?

24 A. Yes, ma'am.

25 Q. And did you also - Were you also shown a photo lineup?

CHARLES BOWKER: DIRECT BY SOLICITOR COLTON - IN CAMERA

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1 A. Yes, ma'am.

2 Q. Do you remember who showed that to you?

3 A. I can't recall his name.

4 Q. When he showed you the lineup - And I'll show you
5 what's been marked for identification purposes Court's
6 Exhibit Twelve, do you recognize Court's Exhibit Twelve?

7 A. Yes, ma'am.

8 Q. Okay. Court's Two. I'm sorry, Court's Exhibit Two.
9 And where do you recognize that from?

10 A. The lineup.

11 Q. Okay. That that officer showed you?

12 A. Yes, ma'am.

13 Q. Okay. And when he showed it to you did he tell you
14 to pick out anybody in the lineup?

15 A. No, ma'am.

16 Q. Okay. Did he point to anybody?

17 A. No, ma'am.

18 Q. Did he even tell you that Mr. Brookins was in the
19 lineup?

20 A. No, ma'am.

21 Q. Okay. And what specifically did he tell you to do?

22 A. He ask me if I could point out who Mr. Brookins was,
23 if I recognized him on the lineup.

24 Q. Okay. And were you able to do that?

25 A. Yes, ma'am.

CHARLES BOWKER: DIRECT BY SOLICITOR COLTON - IN CAMERA

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1 Q. Okay. And who did you point out?

2 A. The number three.

3 Q. Okay. And what did you do after you pointed that
4 out?

5 A. I circled the photo and initialed it.

6 Q. And that Court Exhibit Two, that is your - the same
7 signature and the same circle that you did on that day with
8 that officer?

9 A. Yes, ma'am.

10 Q. Okay. One more question. Was anybody else present?

11 A. Yes, ma'am. Travis Pope was at the house.

12 Q. No. Present when you got the - -

13 A. Oh.

14 Q. When they gave you the photo lineup.

15 A. No, ma'am.

16 Q. Okay. There was nobody else present?

17 A. No, ma'am.

18 Q. Nobody else told you who to pick out?

19 A. No, ma'am.

20 Q. Okay. Thank you.

21 SOLICITOR COLTON: Please answer any questions Ms.
22 Inzerillo has for you.

23 MS. INZERILLO: May it please the court, Your Honor.

24 THE COURT: Certainly.

25 CROSS-EXAMINATION - IN CAMERA

CHARLES BOWKER: CROSS BY MS. INZERILLO - IN CAMERA

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1 CHARLES BOWKER BY MS. INZERILLO:

2 Q. Mr. Bowker, you indicated that you met Mr. Brookins
3 about four months prior to this?

4 A. Yes, ma'am.

5 Q. Okay. And you met him through - you called her a
6 mutual acquaintance?

7 A. Yes, ma'am.

8 Q. And that was a girl that you were friends with that
9 had just met him?

10 A. Yeah. They were dating at the time.

11 Q. They were dating? Okay. And was that a girl that you
12 deal heroin to?

13 A. Yes, ma'am.

14 Q. And what's that girl's name?

15 A. Alex Blanton.

16 Q. And then how long do you think it was before you saw
17 Mr. Brookins again after that night?

18 A. It was a couple of months.

19 Q. And did you see him again after you got arrested on
20 your own charges?

21 A. Yes, ma'am.

22 Q. Okay. And that's when you contacted him to try to
23 start setting up deals with him?

24 A. Yes, ma'am.

25 Q. And then - Let me make sure I'm right, so prior to

CHARLES BOWKER: CROSS BY MS. INZERILLO - IN CAMERA

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1 this day you've seen him once, maybe twice, prior to this
2 February date?

3 A. Yes, ma'am.

4 Q. Do you recall giving a statement in this case as well
5 to the officers?

6 A. This case now?

7 Q. Yeah.

8 A. Yes, ma'am.

9 Q. Would it help you if I were to show you your
10 statement?

11 A. Yes, ma'am.

12 Q. Okay.

13 MS. INZERILLO: Your Honor, may I approach the
14 witness?

15 THE COURT: Certainly.

16 Q. I'm gonna show you that statement. Okay? That's the
17 statement that you gave after the February 28th, ---

18 A. Yes, ma'am.

19 Q. --- visit to Travis' house? And at the end of that
20 statement you're describing the guy's house; is that right?

21 A. Yes, ma'am.

22 Q. And you describe Mr. Brookins as five eleven; is that
23 right?

24 A. Yes, ma'am.

25 Q. Okay. And short brown hair?

CHARLES BOWKER: CROSS BY MS. INZERILLO - IN CAMERA

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1 A. It's so short it's like shaved almost.

2 Q. Okay.

3 A. Yes, ma'am.

4 Q. And then a white male; is that right?

5 A. Yes, ma'am.

6 Q. And you give that statement after you gave - you
7 signed the photo lineup; is that right?

8 A. Yes.

9 Q. Okay. And so when you got back from Travis's house
10 with your brother they already had that lineup put together
11 for you?

12 A. Shortly after we - They hadn't already had it picked
13 out. They did after we did that though.

14 Q. Okay. Did they ask you a description before they gave
15 you that lineup or did you have to wait for them to get it?

16 A. I had to wait for them.

17 Q. So you didn't give them any of that information
18 before?

19 A. No, ma'am.

20 Q. You were in - at Awana Drive that day inside the
21 house about ninety seconds; is that right?

22 A. Roughly yes, ma'am.

23 Q. Did you - Is this the only lineup you've done in any
24 of the cases with the DEU with Mr. Brookins?

25 A. Mr. Brookins. And they also had another one that had

CHARLES BOWKER: CROSS BY MS. INZERILLO - IN CAMERA

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1 Mr. Pope in it.

2 Q. Okay. But that's the only one you did?

3 A. That's the only one.

4 Q. Okay. And do you remember making any other statements
5 to the officers on this day regarding Mr. Brookins?

6 A. No not this date.

7 Q. Okay. Do you remember making any other statements to
8 the DEU on any other day about this incident?

9 A. No, ma'am.

10 Q. All right.

11 MS. INZERILLO: I have no further questions, Your
12 Honor.

13 SOLICITOR COLTON: No redirect, Your Honor.

14 THE COURT: Very well. You may step down. Thank you,
15 sir.

16 (WITNESS LEAVING WITNESS STAND.)

17 THE COURT: All right. Anything else?

18 SOLICITOR COLTON: Not from the state, Your Honor.

19 THE COURT: All right, as far as - and this is on the
20 identification?

21 SOLICITOR COLTON: Yes, Your Honor. And, Your Honor,
22 we'd make Court Exhibit - If I may approach the bench I'll
23 hand a copy to Your Honor.

24 THE COURT: Certainly. Anything from the defendant?

25 MS. INZERILLO: Your Honor, at this time we would ask

1 the court to make findings pursuant to *Neil versus Biggers*
2 and the subsequent line of cases. I would ask the court to
3 take note of the fact that Mr. Bowker who is the primary
4 identifier in this case had only met Mr. Brookins I believe
5 by his own testimony one or two times prior to the February
6 28th date. On February 28th he only had ninety seconds to
7 interact with Mr. Brookins; that the one or two times prior
8 to February 28th that that span over a four month period.

9 The photographic lineup was prepared for him before he
10 gave any identification identifying any characteristics.
11 The - Your Honor, I will also point out, this might be
12 ticky tack but Mr. Beck - Officer Beck was unable to
13 identify whether picture number three is in fact Mr.
14 Brookins and so I don't know - I know Mr. Bowker identifies
15 him as Mr. Brookins but I would ask the court to take that
16 into consideration as well.

17 THE COURT: Anything else from the state?

18 SOLICITOR COLTON: Your Honor, I believe under any of
19 the five factors the court's required to consider and we
20 started at the very inception, Mr. Bowker came to law
21 enforcement indicated he knew someone he had purchased
22 methamphetamine, he testified that he was introduced to a
23 mutual friend to the defendant. My recollection and I know
24 he's answered to slightly different cross versus direct but
25 somewhere in the range of two to four times he had

1 interacted.

2 One with face to face with Mr. Brookins. One of which
3 was a controlled purchase by law enforcement, Your Honor.
4 They were friends on Face book, he had seen his picture on
5 Face book, he knew Mr. Brookins on scene, Mr. Brookins
6 immediately let him into the apartment so I think from a
7 preliminary aspect under the first factor the opportunity
8 to view the subject at the time of the crime all be it
9 maybe it was a ninety minute drug deal - ninety second drug
10 deal he was already familiar with this defendant.

11 Obviously his degree of attention would be satisfied and he
12 was familiar with him, they were friends, and under the
13 three ring factors accuracy of the prior description of the
14 criminal level of certainty at the confrontation, the
15 length of time between the crime, the confrontation he was
16 shown a photo lineup within the day of the deal occurring.

17 He was very certain and immediately picked out by
18 based on his testimony and Officer Beck's testimony
19 immediately picked out this defendant. He identified for
20 the court this defendant is Joshua Brookins and he
21 described for the officers who Mr. Brookins was. There had
22 been a previous dealing with Mr. Brookins.

23 And while I don't know if Officer Beck had that
24 specific information or that specific description certainly
25 there was a reason why he put that accurate picture of that

1 person in there and I think under the commonality of the
2 knowledge of the officers and at the direction of Officer
3 Vaughn who was involved in that distribution certainly
4 that's where the information came from. So I don't think
5 under - there's anything in the identification process or
6 the sixth person lineup to indicate it's unduly suggestive
7 or that at any point in time Mr. Bowker was even remotely -
8 had an inference of who he should pick out or had he tend
9 to indicate who he should pick out. And more over he was a
10 friend of this defendant and had the opportunity to see him
11 previously.

12 THE COURT: All right. Anything else?

13 MS. INZERILLO: Not at this time, Your Honor.

14 THE COURT: Well, excuse me, but considering as they
15 say the totality of the circumstances it would appear that
16 the - Mr. Bowker had appears at least four opportunities to
17 recognize the defendant. Was this - This was on the second
18 - prior to the second ---

19 SOLICITOR COLTON: Yes, Your Honor.

20 THE COURT: --- transaction?

21 SOLICITOR COLTON: This is the second distribution.

22 THE COURT: All right. And of course one is that he
23 saw him two more times and he still identified him today
24 but at the time of the identification from the photo lineup
25 I understand is within thirty minutes of the alleged

1 transaction and that each then face to face at least when
2 he opened the door as well. I mean he was dealing with -
3 He even described some of the paraphernalia there, the
4 scales and things of that nature so that he apparently was
5 on alert as to what was occurring at the time and the
6 surroundings.

7 And considering particularly the level of certainty he
8 demonstrated by the witness at the confrontation he - Mr. -
9 Bowker apparently said that he didn't - Excuse me, the
10 officer who had prepared the lineup said that he didn't
11 know Mr. Brookins other than he had been involved in other
12 transactions, so, but he got the information from another
13 officer. Again all of these things would indicate that the
14 likelihood of misidentification was not is great as the
15 likelihood that the defendant and the reliability of the
16 witnesses' identification of the defendant was correct.

17 The accuracy of the description and the accurate time
18 too can be certain as to the identity, so, therefore the
19 identification will come in.

20 SOLICITOR COLTON: Thank you, Your Honor.

21 THE COURT: All right.

22 MS. INZERILLO: Your Honor, I just have a supplemental
23 motion on that. I certainly don't take any exception to
24 the court's ruling but I -

25 THE COURT: I hope you do. And it's noted for the

1 record that you do.

2 MS. INZERILLO: I do but I don't want the court to
3 think that I am piling on because I know the court has
4 ruled it, I have some concern about the lineup. All of the
5 pictures including the one that the state's gonna allege is
6 Mr. Brookins, they're all booking photos, and my concern is
7 that would of course give the impression to the jury that
8 Mr. Brookins has been arrested before.

9 THE COURT: Well I certainly wouldn't. I think that
10 it would have significance if Mr. Brookins was the only
11 booking photo. But since their all - they could very well
12 have been the Clemson basketball team plus one.

13 MS. INZERILLO: But I would - --

14 THE COURT: I mean in other words in as much as they
15 are in the same context as the other criteria for the - at
16 least for what the court was told was the selection process
17 which I think I dealt with race and gender, weight and
18 height; that there was nothing to suggest he was any
19 different from the others - significantly different.

20 MS. INZERILLO: And I just have some concerns because
21 I know some of the jurors indicated they have family that
22 had been arrested before so I don't want them to make that
23 connection with. I think by testimony they can just elicit
24 from the witnesses that Mr. Brookins was picked out of a
25 photo lineup and identified by the witnesses and the photo

1 lineup would not be necessary ---

2 THE COURT: Well --

3 MS. INZERILLO: --- and more prejudicial.

4 THE COURT: I'll have to leave that up to the
5 solicitor because what they would like to do I think that
6 would be sufficient. But of course if the identification
7 is questioned then on cross examination that would
8 certainly open the door to the lineup itself coming in.

9 SOLICITOR COLTON: Your Honor, I think that's part of
10 the burden that we do have to show identification. We want
11 to use all of the evidence at our disposal. If they're
12 willing to stipulate that this is the defendant I don't
13 have an issue. In the picture I don't have an issue not
14 putting the photo in.

15 THE COURT: That's what I'm suggesting.

16 SOLICITOR COLTON: I don't have an issue if they're
17 willing to.

18 THE COURT: In other words the easiest thing to do
19 would be just to ask - This is not an in court
20 identification because he's identified him outside the
21 courtroom so you just ask him for the same. Do you see the
22 gentleman who you allege is the one that sold you the
23 contraband.

24 SOLICITOR COLTON: Yes, sir. I can do that, Your
25 Honor. Or I can black and white the lineup and do it in a

1 black and white photo copy where the orange jump suit is
2 completely not apparent.

3 THE COURT: Well the only problem with that then that
4 would not be the photo that he saw.

5 SOLICITOR COLTON: Your Honor, I can ask him if it was
6 a colored copy of this photograph.

7 THE COURT: I mean I'm just --

8 SOLICITOR COLTON: I can dance around it, Your Honor,
9 but --

10 THE COURT: Well I'm trying to avoid the cotillion and
11 would like to go if we could with what's necessary. And
12 again it's gonna be depended. If the defendant is not
13 satisfied with his identification.

14 SOLICITOR COLTON: Yes, sir.

15 THE COURT: And he challenges the credibility then of
16 course one is that I think he would be entitled to it.

17 SOLICITOR COLTON: Yes, sir.

18 THE COURT: Put in the evidence. Astringent evidence
19 so his identification. All right.

20 Next.

21 SOLICITOR COLTON: Denno hearing. Your Honor, the
22 state would call Vince Holland, Officer Vince Holland.

23 (WHEREUPON, COURT'S EXHIBIT NUMBER THREE, PREMARKED
24 FOR IDENTIFICATION.)

25 (WHEREUPON, VINCENT HOLLAND,

INVESTIGATOR VINCENT HOLLAND: DIRECT BY SOLICITOR HOLLAND
IN CAMERA

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1 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 THE COURT: All right. You may be seated. If you
3 would please, sir, give us your full name for the record
4 spelling your last name.

5 A. Vincent Holland, H-o-l-l-a-n-d.

6 DIRECT EXAMINATION - IN CAMERA

7 OFFICER VINCENT HOLLAND BY SOLICITOR COLTON:

8 Q. And what do you do for a job?

9 A. Narcotics investigator.

10 Q. How long have you been in law enforcement?

11 A. Fifteen years.

12 Q. How long have you been a narc?

13 A. Seven.

14 Q. And were you involved in the arrest of Joshua Brookins
15 in 2014?

16 A. I was.

17 Q. Could you recall the date?

18 A. Not right off hand.

19 Q. March 27th?

20 A. March 27. Sounds about right.

21 Q. And part of the arrest of Mr. Brookins your
22 participation in that was to marandize Mr. Brookins?

23 A. Yes it was.

24 Q. And where was Mr. Brookins when you marandized him?

25 A. I think he was standing outside the vehicle he was in.

INVESTIGATOR VINCENT HOLLAND: DIRECT BY SOLICITOR HOLLAND
IN CAMERA

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1 Q. Okay. And was he in hand --

2 A. In handcuffs.

3 Q. In handcuffs?

4 A. Yes.

5 Q. He was custody?

6 A. Yes he was.

7 Q. I'm gonna show you what's been marked for
8 identification purposes as Court's Exhibit Three.

9 Do you recognize Court's Exhibit Three?

10 A. Yes. This is the copy of the *Miranda* card that I read
11 from.

12 Q. Who did you read - You read that to Mr. Brookins?

13 A. I did.

14 Q. Okay. And what specifically did you read, if you
15 could, off that card to Mr. Brookins?

16 A. "You have the right to remain silent, anything you
17 say can and will be used against you in a court of law.
18 You have the right to talk to a lawyer and have him or her
19 present while you are being questioned. If you can't
20 afford to hire a lawyer one will be appointed to represent
21 you before you're questioned if you wish. You can decide
22 at any time to exercise these rights and not answer
23 questions or make any statements." Then I ask him did he
24 understand it and they verbally acknowledge they understand
25 it.

INVESTIGATOR VINCENT HOLLAND: DIRECT BY SOLICITOR HOLLAND
IN CAMERA

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- 1 Q. Okay. Mr. Brookins did?
- 2 A. He did.
- 3 Q. Okay. And you made a copy of that card?
- 4 A. I did.
- 5 Q. And your name appears on that card?
- 6 A. It does.
- 7 Q. And to memorialize that action?
- 8 A. Right.
- 9 Q. And that was given to Investigator Vaughn in
- 10 preparation of his case file?
- 11 A. It was.
- 12 Q. Okay. Do you recall if anyone else was present when
- 13 you read the rights to Mr. Brookins?
- 14 A. Investigator Todd.
- 15 Q. And you stated you read it verbatim off that card.
- 16 A. I did.
- 17 Q. Okay. Where - I know you mentioned the defendant was
- 18 beside of his car, he was handcuffed?
- 19 A. Yes he was.
- 20 Q. Was there anybody else standing around him besides
- 21 you and Officer Todd?
- 22 A. I don't know if they cleared the other people out or
- 23 not. I just know who was in my general area which was
- 24 myself, the defendant and Officer Todd.
- 25 Q. Where there any other officers around you besides

INVESTIGATOR VINCENT HOLLAND: DIRECT BY SOLICITOR HOLLAND
IN CAMERA

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1 Officer Todd?

2 A. Not that I can recall as well.

3 Q. And he was under arrest and he wasn't free to leave?

4 A. That's correct.

5 Q. And while you read him the *Miranda* rights and ask if
6 he understood and was willing to talk, you read off that
7 card, did you have your gun pulled on him?

8 A. I'm sorry, I didn't hear you.

9 Q. Did you have your gun pulled on him at any time ---

10 A. No I did not.

11 Q. --- during the reading of *Miranda*? Okay. Did you see
12 anybody else do that?

13 A. No, ma'am.

14 Q. Did you threaten him in any way?

15 A. No, ma'am.

16 Q. Did you ask him any questions?

17 A. No I did not.

18 Q. And he knew you were a law enforcement officer?

19 A. He did.

20 Q. Okay. Did you promise him anything if he agreed to
21 talk to you?

22 A. No I did not.

23 Q. Did you witness any other law enforcement officer do
24 so?

25 A. No I did not.

INVESTIGATOR VINCENT HOLLAND: DIRECT BY SOLICITOR HOLLAND
IN CAMERA

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1 Q. Did he appear to be under the influence of drugs or
2 alcohol?

3 A. Not to my knowledge he didn't.

4 Q. And was he coherent?

5 A. Appeared to be.

6 Q. Did he answer your questions?

7 A. He did.

8 Q. Okay. And did he indicate that he understood what
9 you had read to him?

10 A. He did.

11 Q. Did you know anything about his educational level or
12 anything like that?

13 A. I did not.

14 Q. What age do you think he appeared to be to you?

15 A. Twenty, twenty-five, somewhere in there.

16 Q. At any point did he ask you for an attorney?

17 A. No he did not.

18 Q. And did he ask you to not ask him any questions?

19 A. No he did not.

20 Q. Okay. Did he indicate to you that he was willing to
21 answer questions?

22 A. I - Obviously number two is having the right - "your
23 rights in mind do you wish to talk to us now" and to my
24 knowledge I don't think he even acknowledged that question
25 and just stood there.

INVESTIGATOR VINCENT HOLLAND: DIRECT BY SOLICITOR HOLLAND
IN CAMERA

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1 Q. Okay. But he didn't tell you no?

2 A. Right.

3 Q. Okay. And immediately - Well did you ask him any
4 questions about what had transpired yourself?

5 A. No I did not.

6 Q. Okay. And immediately after that, what happened to
7 Mr. Brookins?

8 A. He was placed into one of the narc vehicles to be
9 transported to Rock Hill Police Department.

10 Q. And did you participate in the transport?

11 A. If I'm not mistaken I think I was the one that
12 transported him in my vehicle. I'm not a hundred percent
13 sure on that.

14 Q. Okay. And how long do you think it took to get over
15 there?

16 A. Ten minutes maybe.

17 Q. Okay.

18 A. Considering how far out it was.

19 Q. You didn't ask him any questions?

20 A. No I did not.

21 Q. And he didn't give you any answers and you didn't
22 engage in conversation?

23 A. Correct.

24 Q. Thank you.

25 SOLICITOR COLTON: Please answer any questions Ms.

INVESTIGATOR VINCENT HOLLAND: CROSS BY MS. INZERILLO
IN CAMERA

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1 Inzerillo might have for you.

2 OFFICER HOLLAND: All right.

3 CROSS-EXAMINATION - IN CAMERA

4 OFFICER VINCENT HOLLAND BY MS. INZERILLO:

5 Q. Officer Holland, this - His arrest came in March as
6 a result of a buy bust; is that correct?

7 A. Correct.

8 Q. Okay. And that was essentially - There was multiple
9 officers there on the scene that kind of rushed in as a
10 result of a trafficking buy?

11 A. Correct.

12 Q. And that was by design?

13 A. Yes, ma'am.

14 Q. Okay. So how many of you guys you think were there?

15 A. I couldn't give you an exact number.

16 Q. Okay.

17 A. I mean six, seven.

18 Q. Okay.

19 A. I couldn't give you an exact number.

20 Q. And you guys were all there in un-marked cars?

21 A. That's correct.

22 Q. Okay. And when you guys are on the scene you're in
23 plain clothes?

24 A. Yes we are but we have a raid vest on and announce
25 ourselves as police.

INVESTIGATOR VINCENT HOLLAND: CROSS BY MS. INZERILLO
IN CAMERA

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1 Q. Okay. And this - When you guys kind of come to the
2 scene you stay far enough away because it's a controlled
3 buy ---

4 A. Correct.

5 Q. --- as it starts. Right?

6 A. Uh-huh.

7 Q. So you guys are doing essentially in surveillance
8 mode?

9 A. Correct.

10 Q. And then at the time that you determine that you need
11 to break surveillance mode going to the scene you kind of -
12 and excuse my language, I'm trying to imagine it - kind of
13 rush onto the scene?

14 A. Yes, ma'am.

15 Q. To make sure no one gets away or anything like that?

16 A. Correct.

17 Q. Okay. And so you kind of rush onto the scene and in
18 unmarked cars and kind of get out and get the scene under
19 control. Is that fair?

20 A. Correct.

21 Q. Okay.

22 A. Uh-huh.

23 Q. And so you did that on this day?

24 A. Yeah.

25 Q. And part of getting the scene under control was to

INVESTIGATOR VINCENT HOLLAND: CROSS BY MS. INZERILLO
IN CAMERA

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1 arrest Mr. Brookins?

2 A. Correct.

3 Q. And were you the person that actually cuffed Mr.
4 Brookins?

5 A. I think I did if I recall correctly I was one of the
6 ones who cuffed him.

7 Q. Okay. And when you arrested him was he in a car?

8 A. He was in a vehicle yes he was.

9 Q. Okay.

10 A. I don't know if it's his car but it was a vehicle.

11 Q. And a vehicle with - that he came in or the vehicle
12 with the CI's?

13 A. The CI's.

14 Q. The CI's. Okay. So you guys kind of pulled him out
15 of the vehicle and put him in handcuffs?

16 A. That's correct.

17 Q. And then at that point is he marandized at that point
18 or is there a delay until you MARANDIZED him?

19 A. Could a been a delay in order for the chaos to calm
20 down and then get into the *Miranda*.

21 Q. And so on the scene there's approximately six or
22 seven of you guys and of my recollection in the case is
23 correct there's also - there was another car with three
24 other people in it. Right?

25 A. Right.

INVESTIGATOR VINCENT HOLLAND: CROSS BY MS. INZERILLO
IN CAMERA

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1 Q. So there's two CI's and Mr. Brookins in one car and
2 then three other people in the other car?

3 A. Correct.

4 Q. So you guys are almost evenly matched with the number
5 of them on the scene?

6 A. Uh-huh.

7 Q. So from your perspective you're on the scene and
8 you're trying to control the scene and get everybody in
9 cuffs or calmed down or whatever; is that right?

10 A. Right.

11 Q. Okay. And so sometime after this you MARANDIZED him -
12 - Okay. And I say sometime afterwards because I have a
13 copy of the form but its not time stamped.

14 A. Right. Correct.

15 Q. Okay. The - Is it fair to say in that type of
16 situation would they kind of be evenly matched with the
17 number of guys at the scene and then the number of your
18 team at the scene you're trying to get people off the scene
19 as quickly as possible?

20 A. That's fair to say.

21 Q. Okay. And so you being transport and you know because
22 this is a designed buy bust that he's the target of that
23 buy bust?

24 A. Uh-huh.

25 Q. So from your perspective you're going in targeting

INVESTIGATOR VINCENT HOLLAND: CROSS BY MS. INZERILLO
IN CAMERA

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1 him, getting cuffs on him, getting him off the scene?

2 A. Correct.

3 Q. Is that fair? Okay. So I ask you all of this to
4 say this isn't a lot of - seeing a man with a street
5 officer where they're kind of talking and it takes an hour,
6 do a lot of chit chat.

7 A. Right.

8 Q. There's not a lot of that going on. You're trying to
9 control and keep things moving at a quick pace?

10 A. Correct.

11 Q. Okay. And this arrest happened in the day time or
12 night time?

13 A. During the day.

14 Q. I'm sorry?

15 A. During the day.

16 Q. During the day. Okay. And you indicated that you
17 read all of the Maranda warning one through five as well as
18 the two waiver questions.

19 A. Correct.

20 Q. Is that right? Did you ask for an affirmative
21 answers or you just kind of read it and then put 'em in
22 your car?

23 A. No I read those and then ask him did he understand
24 it and he verbally acknowledged he understood 'em.

25 Q. Okay.

INVESTIGATOR VINCENT HOLLAND: CROSS BY MS. INZERILLO
IN CAMERA

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1 A. And then read number two having the rights in mind do
2 you wish to talk to us now? Like I said he never really
3 acknowledged the fact whether he wanted to talk or not.
4 Just remained silent and I put him in the car.

5 Q. Okay. And then from your perspective at that point
6 you transported him to y'all DEU office?

7 A. Yes, ma'am.

8 Q. And which office did you take him to?

9 A. The Rock Hill Police Department.

10 Q. And during that part of the trip you're driving to get
11 him to - and he's in the back seat and you're in the front?

12 A. No I think - The way I normally transport prisoners
13 when there's two officers in the car I put the prisoner in
14 the front ---

15 Q. Okay.

16 A. --- passenger seat beside me.

17 Q. Who was with you to transport Mr. Brookins?

18 A. I think it was Officer Todd.

19 Q. Did you become - Did he make any - Did Mr. Brookins
20 make any statements to you on the side of - on the scene?

21 A. On the scene? No.

22 Q. Did he make any statements to you in the car?

23 A. No, ma'am.

24 Q. Did he make any statements to Officer Todd that you
25 ---

INVESTIGATOR VINCENT HOLLAND: CROSS BY MS. INZERILLO
IN CAMERA

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1 A. Not that I recall.

2 Q. --- and any in the car?

3 A. Not that I recall.

4 Q. And you indicated I believe under direct that you - He
5 didn't appear to you to be under the influence; is that
6 correct?

7 A. That's correct.

8 Q. Did you ask him if he was under the influence?

9 A. No I did not. Not on the scene I didn't.

10 Q. Okay. Did you ask him in the car?

11 A. No, ma'am.

12 MS. INZERILLO: I have no further questions, Your
13 Honor.

14 THE COURT: Redirect?

15 SOLICITOR COLTON: No, Your Honor.

16 THE COURT: All right, you may step down. Thank you,
17 sir.

18 (WITNESS LEAVING WITNESS STAND.)

19 SOLICITOR COLTON: The state would call Investigator
20 David Vaughn.

21 (WHEREUPON, THE WITNESS BEING
22 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

23 MADAM CLERK: Thank you.

24 DIRECT EXAMINATION- IN CAMERA

25 INVESTIGATOR DAVID VAUGHAN BY SOLICITOR COLTON:

INVESTIGATOR DAVID VAUGHN: DIRECT BY SOLICITOR COLTON
IN CAMERA

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1 Q. Now, Investigator Vaughan, you were the chief
2 investigating officer of the Brookins deal from February
3 28th, 2014?

4 A. Yes I was.

5 Q. And were you also involved in his arrest in March 27
6 of 2014?

7 A. Yes I was.

8 Q. Okay. And were you on scene when he was arrested?

9 A. Yes I was.

10 Q. Okay. And did you participate in the actual arrest of
11 Mr. Brookins?

12 A. No I did not.

13 Q. Did you MARANDIZED him?

14 A. No I did not.

15 Q. Okay. Were you aware that he had been marandized on
16 scene?

17 A. Yes I was.

18 Q. And that would have been by Vince Holland?

19 A. Yes.

20 Q. Another police officer?

21 A. Yes.

22 Q. And ultimately you wrote a considerable case summary
23 report?

24 A. Yes I did.

25 Q. And you included photo copy Court's Exhibit Two of

INVESTIGATOR DAVID VAUGHN: DIRECT BY SOLICITOR COLTON
IN CAMERA

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1 the *Miranda* Waiver that Officer Vaughn said he read to the
2 defendant on the side of the road?

3 A. That Officer Holland read?

4 Q. Officer Holland.

5 A. Yes.

6 Q. And how long - Did you have an opportunity to speak
7 to Mr. Brookins?

8 A. On the roadside?

9 Q. No, sir. At any time.

10 A. Yes I did.

11 Q. And where was that?

12 A. At the Rock Hill Police Department.

13 Q. And how long after the arrest of Mr. Brookins did you
14 go to speak with him?

15 A. Approximately give a few take a few twenty minutes.

16 Q. Okay. And when you met with him again did he - did
17 you MARANDIZED him again?

18 A. No I did not.

19 Q. Can you tell the court what the circumstances were
20 under which you came to talk to him?

21 A. Mr. Brookins wanted to talk to somebody in charge
22 and generally what we do when we have a case agent we let
23 the case agent handle on talking to the individual.

24 Q. And he ask to speak to you?

25 A. Who was handling the case.

INVESTIGATOR DAVID VAUGHN: DIRECT BY SOLICITOR COLTON
IN CAMERA

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1 Q. Who was handling it? And that would have been you?

2 A. Yes.

3 Q. Was anybody else with you?

4 A. Yes.

5 Q. Who was that?

6 A. Commander Ervin.

7 Q. And who is Commander Ervin to you?

8 A. At that time in that particular incident he was my
9 commander when I worked in the Fort Mill office.

10 Q. Okay. So you brought your boss with you?

11 You brought your boss with you?

12 A. Yes.

13 Q. Okay. And did you have a copy of the card at the time
14 that Officer Holland read?

15 A. No I did not.

16 Q. Okay. And it was - It's your testimony that it was
17 Mr. Brookins that approached you all to talk to you?

18 A. Yes.

19 Q. And what happened when you spoke to Mr. Brookins?

20 A. After I advised him of his charges and he actually
21 said he wanted to talk to me he ask that - You know I ask
22 him what he done for a living, he advised me he on
23 unemployed and you know I ask him why he was selling drugs
24 and he stated that he was selling drugs to pay for his
25 child support.

INVESTIGATOR DAVID VAUGHN: DIRECT BY SOLICITOR COLTON
IN CAMERA

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1 Q. Did he specifically say what type of drugs he was
2 selling?

3 A. Methamphetamine.

4 Q. And did you memorialize what he told you in your
5 case summary?

6 A. Rephrase that question.

7 Q. Did you write it down in your case summary?

8 A. Yes I did.

9 Q. Okay. And do you remember specifically what he said
10 to you that you put in that case summary?

11 A. Can I see my case summary?

12 Q. Would that help refresh your recollection?

13 A. Yes.

14 Q. And if you can review your case summary. And I direct
15 you to page 6, second paragraph down.

16 A. Okay. "Brookins stated that he was unemployed and
17 he was selling methamphetamine to pay for his child
18 support."

19 Q. And did you ask him any other questions?

20 A. Not that I recall.

21 Q. About this incident or any other incident?

22 A. No, ma'am.

23 Q. Okay. At any time did he ask for an attorney?

24 A. No he did not.

25 Q. Okay. And did he ask you to stop talking to him?

INVESTIGATOR DAVID VAUGHN: DIRECT BY SOLICITOR COLTON
IN CAMERA

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1 A. No he did not.

2 Q. Okay. Did you - Did you or Officer Ervin or Commander
3 Ervin threaten him in any way to get him to talk to you?

4 A. No we did not.

5 Q. Did you have your weapons pulled?

6 A. No.

7 Q. Did you promise him anything in exchange for talking
8 to you?

9 A. No.

10 Q. Okay. And from your perception of him did he appear
11 to be under the influence of anything?

12 A. No.

13 Q. Was he coherent?

14 A. Yes.

15 Q. Did he appear to understand your questions?

16 A. Yes.

17 Q. Do you have any idea what his educational level was
18 or anything like that?

19 A. No.

20 Q. But he was able to communicate with you like a
21 normal person?

22 A. That's correct.

23 Q. Reasonable level of intelligence?

24 A. Yes.

25 Q. How long do you think your question of him went on?

INVESTIGATOR DAVID VAUGHN: DIRECT BY SOLICITOR COLTON
IN CAMERA

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1 A. It was fairly quick because there was a lot of
2 paperwork and a lot of things going on and they started
3 bringing other people in so it wasn't long.

4 Q. Okay. And so you didn't ask him about any other
5 things he had been involved in or anything like that or
6 specifics?

7 A. Not that I recall.

8 Q. But you all went back at some other time and
9 interviewed him?

10 A. Other investigators did.

11 Q. Okay. In more detail?

12 A. Yes.

13 Q. Okay. And I know we talked about a brief period of
14 twenty minutes and then maybe five. Would five be a safe
15 assumption? Twenty minutes to get there, five minutes
16 after?

17 A. Probably, yeah.

18 Q. But he wasn't deprived of food, sleep?

19 A. No.

20 Q. Water?

21 A. No.

22 Q. You didn't tell him he couldn't use the bathroom or
23 anything like that?

24 A. No, ma'am.

25 Q. He didn't appear to be in any type of physical or

INVESTIGATOR DAVID VAUGHN: DIRECT BY SOLICITOR COLTON - IN CAMERA 173-
CROSS BY MS. INZERILLO - IN CAMERA

1 mental distress?

2 A. No.

3 Q. Obviously he was upset because he had been arrested.

4 A. Right.

5 Q. And besides you and Investigator Ervin were there
6 any other law enforcement officers around there?

7 A. No there was not.

8 Q. And was there any other person around there that you
9 observed threaten him, coerce him, promise him anything?

10 A. No.

11 Q. And it was just y'all?

12 A. That was it.

13 Q. You were at the police department?

14 A. Yes.

15 Q. Thank you.

16 SOLICITOR COLTON: Please answer any questions Ms.
17 Inzerillo has for you.

18 CROSS-EXAMINATION - IN CAMERA

19 INVESTIGATOR DAVID VAUGHN BY MS. INZERILLO:

20 Q. Investigator Vaughan, was your interaction and
21 Investigator Ervin's interaction with Mr. Brookins recorded
22 in any way?

23 A. No it was not.

24 Q. Okay. Not audio or video?

25 A. No.

INVESTIGATOR DAVID VAUGHN: CROSS BY MS. INZERILLO
IN CAMERA

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1 Q. Were - Are you aware or did Mr. Holland tell you of
2 his Miranda readings was recorded at the scene?

3 A. Say again?

4 Q. Do you know if when Investigator Holland read the
5 Miranda that was recorded?

6 A. If that was recorded?

7 Q. Uh-huh.

8 A. I don't know.

9 Q. You don't know. Okay. Did you ask Investigator
10 Holland if he had been marandized before you talked to him?

11 A. Yes.

12 Q. Okay. Did you re-MARANDIZED him?

13 A. No I did not.

14 Q. Okay. So on this particular evening it was you and
15 Investigator Ervin and Mr. Brookins in a room; is that
16 correct?

17 A. Yes, ma'am.

18 Q. Okay. And your testimony is that Mr. Brookins ask
19 to speak to someone?

20 A. Yes.

21 Q. Okay. Do you recall Commander Ervin - Well let me
22 back up. Mr. Brookins is arrested as a result of a
23 trafficking buy bust; is that correct?

24 A. Yes.

25 Q. And you were the case agent chief investigator for

INVESTIGATOR DAVID VAUGHN: CROSS BY MS. INZERILLO
IN CAMERA

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1 the whole case against Mr. Brookins; is that right?

2 A. Yes.

3 Q. So you were aware that the two CI's in this case had
4 gone out on two prior distribution - or three prior
5 distribution buys against Mr. Brookins?

6 A. Yes

7 Q. And so at that point that you interviewed him you
8 were aware there was four possible five charges you could
9 place on Mr. Brookins?

10 A. Yes.

11 Q. Okay. And so do you recall Mr. Ervin - Investigator
12 Ervin at that time telling Mr. Brookins he could be charged
13 and you could insure that he gets twenty to twenty-five
14 years in prison?

15 A. I don't recall that.

16 Q. Okay. Do you recall telling Mr. Brookins that it
17 would be in his best interest to work with the police and
18 turn over any information that he has?

19 A. I don't recall that.

20 Q. Do you recall telling Mr. Brookins that Commander
21 Ervin could be his best friend of his worst enemy?

22 A. I don't recall that.

23 Q. Did you make any of these statements to Mr. Brookins?

24 A. No.

25 Q. Do you routinely make these statements to people when

INVESTIGATOR DAVID VAUGHN: CROSS BY MS. INZERILLO
IN CAMERA

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1 they come in and ---

2 A. Do what?

3 Q. --- give statements? Do you routinely make statements
4 like this to people when they come in?

5 A. No I do not.

6 Q. Do you know if Commander Ervin does?

7 A. No he does not in my dealings with him.

8 Q. Did you wish - Ask Mr. Brookins if he wished to
9 assist the DEU that evening and work for the DEU like the
10 CI's had done?

11 A. I've ask him if he wanted to come back after his
12 arraignment to talk to us he could.

13 Q. Okay. So it's not your recollection that Commander
14 Ervin made those three statements and as a result of
15 threatening Mr. Brookins with twenty to twenty-five years
16 in prison it was at that point that Mr. Brookins lowered
17 his head and said I was just doing this to support my
18 children?

19 A. Not to me.

20 Q. That is not your recollection?

21 A. Recollection? You're confusing me here.

22 Q. That is not your recollection of the events of that
23 evening?

24 A. Right.

25 Q. Okay. But you do remember him telling you that he was

INVESTIGATOR DAVID VAUGHN: CROSS BY MS. INZERILLO
IN CAMERA

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1 just having a conversation with you and he mentioned he
2 sells methamphetamine to support his children?

3 A. We did have a conversation when we went to the room.

4 What I ask him when I come into the room we talk about
5 to break the monotony I do is like well what do you do for
6 a living.

7 Q. Uh-huh.

8 A. And we go on from there.

9 Q. Okay. So you ask him what he does for a living and
10 he said he doesn't work?

11 A. He's unemployed.

12 Q. And then what do you say after that?

13 A. Why are you selling drugs?

14 Q. And then what did he say after that?

15 A. I'm selling - What it says in here he says that he's
16 selling methamphetamine to pay for his child support.

17 Q. Okay. And what did you say in response to that?

18 A. Okay.

19 Q. And then what did he say?

20 A. That's pretty much it.

21 Q. So he called you into a room just to tell you that?

22 A. That's all we talked about.

23 Q. That's the extent of the conversation?

24 A. That's it.

25 Q. And then somewhere in that conversation you made a

INVESTIGATOR DAVID VAUGHN: CROSS BY MS. INZERILLO
IN CAMERA

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1 comment to him about getting in touch with you after his
2 arraignment to possibly work?

3 A. Yes. Yes.

4 Q. Because he was arrested with some other people you
5 might be interested in having him roll on?

6 A. Anybody.

7 Q. Anybody. Did he make any other statements to you at
8 any other time that evening or any other time while he was
9 in custody?

10 A. Not that I recall.

11 Q. You were aware as the case agent that at least from
12 the buys the other alleged cases that Mr. Brookins was
13 around methamphetamine; is that correct?

14 A. Was what?

15 Q. Around methamphetamine ---

16 A. What do you mean?

17 Q. --- at least allegedly to your CI's; is that right?

18 A. Through prior - through this ---

19 Q. Uh-huh.

20 A. --- before this prior incident, for the trafficking
21 incident? I don't know which incident you're talking
22 about.

23 Q. That's right. Because the night - The night he's in
24 the room with you ---

25 A. Okay.

INVESTIGATOR DAVID VAUGHN: CROSS BY MS. INZERILLO
IN CAMERA

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1 Q. --- you're the case agent for the Joshua Brookins
2 case; is that right?

3 A. Yes.

4 Q. And you know you've sent out a couple of CI's at
5 least three times before to buy meth from him; is that
6 right?

7 A. Yes.

8 Q. So you know he's around meth?

9 A. Yes.

10 Q. And you know at the time he's arrested he's got
11 methamphetamine in his pocket?

12 A. Yes.

13 Q. Did you ever ask him if he had done meth that
14 evening?

15 A. I don't recall that.

16 Q. Okay. Did you give him a break in time in case he
17 was on meth so that he could come off meth and give you a
18 more voluntary statement?

19 A. I did at one point because there was a second
20 statement taken later on.

21 Q. Okay. But you did not take that statement?

22 A. I did not take that statement.

23 Q. That was Officer Beck and somebody else; ---

24 A. Yes.

25 Q. --- is that right?

INVESTIGATOR DAVID VAUGHN: CROSS BY MS. INZERILLO
IN CAMERA

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1 A. Yes.

2 Q. But at the time you talked to him you didn't give
3 him that break?

4 A. No.

5 Q. Whatever times they were.

6 MS. INZERILLO: Your Honor, I have no further
7 questions.

8 THE COURT: Redirect?

9 SOLICITOR COLTON: No, Your Honor.

10 THE COURT: All right, you may step down. Thank you,
11 sir.

12 (WITNESS LEAVING WITNESS STAND.)

13 SOLICITOR COLTON: I'm sorry, Your Honor. The state
14 has no further witnesses in regard to this *Denno* issue.

15 THE COURT: All right. Is there anything from the
16 defendant?

17 MS. INZERILLO: I apologize, Your Honor. Your Honor,
18 at this time we would ask the court to make findings of the
19 voluntariness of the statement. I would ask the court to
20 consider - essentially the scene on this evening as it is
21 removed from the case before the court. It isn't in the
22 confines of the distribution and allegation from February
23 28th but in the hurry pace of the buy bust that happened on
24 the trafficking, the evening of the trafficking arrest
25 which was about six weeks later in March.

1 Essentially a two-piece situation. Investigator
2 Vaughan testified that it was - he was only on the scene
3 with mr. Brookins for a short amount of time as he was the
4 target of the investigation; that he did read *Miranda*, but
5 it would be our argument that in terms of any assessing
6 whether Mr. Brookins was under the influence of anything or
7 was incapable of giving a voluntary statement, that it was
8 a fast pace scene, that he did not size him up properly,
9 that you know this was a situation where Mr. Brookins is
10 around meth, that he's got multiple arrest for meth. And
11 that but for Mr. - Investigator Vaughan's perspective he
12 just read him *Miranda* and kind of pushed him along due to
13 the requirements of the scene.

14 And then later once Mr. Brookins is in a room the case
15 agent knowing of the duration of this time that Mr.
16 Brookins is around meth that he actually has meth in his
17 pocket, that he does not inquire any further or does not
18 recall inquiring any further as to whether Mr. Brookins may
19 in fact may be under the influence of any methamphetamine
20 and the collateral effects of that which is the lack of
21 sleep which could affect his cognitive ability and the
22 ability to rationalize any voluntary statements.

23 And certainly from the case agents point of view, Your
24 Honor, having far more knowledge about Mr. Brookins and the
25 case itself that Investigator Vaughan would have that would

1 have been a logical inquiry before being - and having any
2 interaction with Mr. Brookins in terms of voluntariness in
3 his statement.

4 I would also point out neither incident was recorded.
5 Even though Investigator Vaughan was on scene pursuant to
6 the control buy that was not recorded. And of course
7 Investigator Vaughan indicated he did not record his
8 interaction with Mr. Brookins either.

9 I would ask the court to take that all into
10 consideration and especially in terms of drug use and the
11 voluntariness of the statement.

12 THE COURT: All right. Ms. Colton.

13 SOLICITOR COLTON: May it please the court.

14 I don't believe there's any testimony from either
15 officer that this defendant appeared to be under the
16 influence. He appeared to be coherent. He appeared to be
17 able to hold a normal conversation. He wasn't charged with
18 possession. Nothing indicates that he was under the
19 influence or even ingested methamphetamine. I think there
20 are allegations of inferences but there's been no evidence
21 or testimony, in fact everything's been to the contrary.
22 He appeared to be coherent, appeared to understand his
23 rights and was cognizant of them.

24 And we're talking about a thirty minute period of
25 time. Obviously Investigator Vaughan is more familiar with

1 this defendant but within thirty minutes if he hadn't been
2 even under the influence and Officer Holland didn't have
3 the basic knowledge of him to make that determination
4 certainly Investigator Vaughan did and we're talking about
5 a thirty minute period its suspected you're under the
6 influence you would still be under the influence thirty
7 minutes later.

8 But again there is absolutely no evidence to indicate
9 that he had actually ingested the drugs. He was selling.
10 Furthermore he inquired - He ask the officers to talk to
11 them back at the Rock Hill Police Department. And
12 Investigator Vaughan testified that he wanted to talk to
13 the person in charge. They had a brief conversation it was
14 later followed up with another more detailed investigation
15 the state doesn't intend to get into. And then Officer
16 Vaughn said that - And I think that goes to support the
17 voluntariness of the conversations that was initiated by
18 the defendant himself.

19 There has been no indication of any threats, any
20 coercion, any undue extension period of time, any physical
21 or emotional abuse of the defendant or neglect of the
22 defendant and I think based upon the totality of
23 circumstances and the conduct of the defendant himself by
24 requesting to speak to officers everything points to the
25 fact that this interaction was voluntary.

1 THE COURT: Could I see the *Maranda* warnings please?

2 SOLICITOR COLTON: Yes, Your Honor, I'll pass them.

3 THE COURT: I'm looking at Court's Exhibit Number
4 Three which is a abbreviated - I think - *Maranda* Warnings
5 and Waiver. It's my understanding and from the testimony
6 the witnesses that each of these warnings were read to the
7 defendant and he orally responded that he understood, that
8 he had the right to remain silent, anything you say will -
9 can and will be used against you in a court of law. You
10 have a right to talk to a lawyer and have him present while
11 you - him slash her present with you while you are being
12 questioned. If you cannot afford to hire a lawyer one will
13 be appointed to represent you before any questions if you
14 wish. You can decide at any time to exercise these rights
15 and not answer any questions or make any statements.

16 The testimony has been uncontroverted that he
17 acknowledged these and also that he acknowledged the
18 understanding and he did not have any exercise of those
19 rights.

20 Then the waiver after the warning and in order to
21 secure a waiver the following questions should be ask and
22 if in an affirmative to the questions. I understand that
23 those two were also made to the defendant. And he was ask
24 if he would like to talk now. I think at that time he said
25 not and then he was transported evidentially to the police

1 department.

2 And on the testimony of the interviewing officers it
3 seemed that he was in control of his faculties, that he did
4 respond as being wise that under the influence and coherent
5 there was no testimony as such.

6 Moreover he seemed to be involved in the financial
7 transaction for which he according to his statement that he
8 was hoping to get - he intended to get money to satisfy his
9 child support. Obviously he was competent to do business
10 and had been doing business so the court does find that he
11 was competent to testify or to make a statement and to
12 exercise his right or not to exercise his right.

13 Also the court finds that the uncontroverted testimony
14 is that he requested rather than exercise a right not to
15 testify or make a statement he ask to discuss the matter
16 with the officer in charge which the officer did return and
17 their conversation had to with his employment which he said
18 he was unemployed and that he was selling methamphetamine
19 to pay his child support.

20 I find that the defendant knowing intelligently waived
21 his rights in the *Sixth Amendment* - *Sixth Amendment* rights.
22 Also that any statement or confession were freely and
23 voluntarily given without duress, without coercion, with
24 undue influence, without reward or promise of hope or
25 reward, without the promise of leniency, with further

1 injury, without the force of inducement of any kind. As
2 such the defendant's statement or confession was a
3 voluntarily product of the free and unconstrained role of
4 the defendant.

5 I do find these - all of these were drawn from the
6 conclusion of beyond a reasonable doubt. Of course it
7 would be up to the jury to determine whether or not any
8 statement or the statements were made as a result of the
9 interview of the defendant were made beyond a reasonable
10 doubt as well as freely voluntarily made and intelligently.

11 All right. Anything else?

12 SOLICITOR COLTON: Not from the state, Your Honor.

13 THE COURT: Now as far as I understand that that is an
14 oral statement.

15 SOLICITOR COLTON: Yes, sir.

16 THE COURT: Limited to solely to why he was selling
17 methamphetamine?

18 SOLICITOR COLTON: Yes, Your Honor.

19 THE COURT: Or that he was selling methamphetamine for
20 the particular purpose.

21 SOLICITOR COLTON: Yes, Your Honor.

22 THE COURT: Would not - On the case in chief and on
23 direct it would not go any further than that?

24 SOLICITOR COLTON: No, Your Honor.

25 THE COURT: Very good. All right, anything else from

1 the state?

2 SOLICITOR COLTON: No, Your Honor.

3 THE COURT: From the defense?

4 MS. INZERILLO: No, Your Honor.

5 THE COURT: All right. Now are we gonna be ready to
6 go at ten o'clock in the morning?

7 SOLICITOR COLTON: I will be ready, Your Honor.

8 MS. INZERILLO: Yes, Your Honor.

9 THE COURT: All right. Now you do understand that if
10 he is not here at - I'm gonna say nine thirty in the
11 morning.

12 Now you're his agent, you're speaking for him, and you
13 are operating under the authority of the defendant
14 acknowledging that he will be here at nine thirty in the
15 morning in this courtroom?

16 MS. INZERILLO: I will let him know, Your Honor.

17 THE COURT: Very good. If not, a bench warrant will
18 be issued for him but the trial will proceed as called.

19 All right. Very good.

20 MS. INZERILLO: Thank you, Your Honor.

21 (COURT IN RECESS AT 06:05 P.M..)

22 (COURT BACK IN SESSION THURSDAY, DECEMBER 4th, 2014 AT
23 09:55 A.M..)

24 THE COURT: All right, you may take your seats. Good
25 morning.

1 All right, we're back on the case of *State of South*
2 *Carolina versus Joshua Kenneth Brookins*, 2014-GS-46-3002.

3 Is there anything from the state before we proceed?

4 SOLICITOR COLTON: No, Your Honor.

5 THE COURT: From the defense?

6 MS. INZERILLO: Yes, your Honor, just briefly.

7 As you can see Mr. Brookins is here this morning and
8 he did wish for me to convey to the court he is present and
9 prepared for trial, but did wish the court to know he is
10 aware he has four pending charges and he is willing to
11 plead to all four pending charges as first offenses.

12 He is currently charged as seconds. The first defense
13 request is based on our - my discussions with him. A
14 challenge to the enhancability of the - his prior
15 possession of marijuana charge under Section 470. But he
16 did wish the court to know that he would be willing to
17 enter pleas to all four charges today as first offenses.

18 THE COURT: Madam Solicitor.

19 SOLICITOR COLTON: Yes, Your Honor. Your Honor, I
20 think what I conveyed to Ms. Inzerillo about this case once
21 the entire offer was rejected on the record a few terms
22 ago, I did tell - I'm in concurrence with Ms. Inzerillo
23 about the enhancability of the marijuana charge and the
24 state agrees that -

25 THE COURT: Is this gonna be a straight-up plea?

1 MS. INZERILLO: He is willing to plead straight up to
2 all four charges.

3 SOLICITOR COLTON: All four charges.

4 Your Honor, I told Ms. Inzerillo I have no issue with
5 him pleading straight up. I can't have an issue to
6 pleading him straight up to the first charge and that I
7 can't make deals on the other charges because the offer was
8 revoked pursuant to our office policy.

9 THE COURT: I understand.

10 SOLICITOR COLTON: I --

11 THE COURT: But I also understand judicial economy ---

12 SOLICITOR COLTON: Yes, sir.

13 THE COURT: --- and everything else required is that
14 we do not squander the time of the juror's and the judicial
15 system trying a case that could ultimately be lost --

16 SOLICITOR COLTON: Yes, sir.

17 THE COURT: --- and whereas you have a offer for a
18 plea or a full straight up.

19 SOLICITOR COLTON: Yes, sir.

20 THE COURT: There is no reason to put officers or
21 anybody else through all of this.

22 SOLICITOR COLTON: Yes, sir. And that's what I told
23 Ms. Inzerillo that if he pled straight up today that we
24 would be willing to re-open negotiations on the remaining
25 three charges after this contingent on what he receives.

1 THE COURT: Well what would be the difference?

2 SOLICITOR COLTON: The difference is my offer was
3 fifteen years, Your Honor, and if he gets fifteen years
4 then I have no qualms in wrapping everything up. But I
5 don't know what he's gonna receive and even if he is
6 convicted today --

7 THE COURT: Well forgive me, I hope not. I do have
8 something to do in this courtroom.

9 SOLICITOR COLTON: I agree, Your Honor.

10 THE COURT: All right. But do I understand the State
11 of South Carolina is turning down an offer to plead to all
12 pending charges?

13 SOLICITOR COLTON: Yes, sir.

14 THE COURT: Well I'm gonna revisit the question about
15 - what is is, joinder of the charges.

16 SOLICITOR COLTON: Then, Your Honor, the state would
17 respectfully have to withdraw the charges at this point
18 because we would not be able to proceed because there would
19 be a delay.

20 THE COURT: Unfortunately it's too late. As you say
21 you had time to do things and time not to do things.

22 SOLICITOR COLTON: Yes, Your Honor.

23 THE COURT: And if you're not going to accept an offer
24 to the charge I'm gonna grant the motion of joinder on all
25 four charges.

1 SOLICITOR COLTON: Your Honor, at this point the State
2 would appeal that order; Your Honor.

3 THE COURT: Pardon?

4 SOLICITOR COLTON: The state would appeal that order,
5 Your Honor.

6 THE COURT: Very good. Go ahead and file your notice
7 but at the time

8 SOLICITOR COLTON: Your Honor, I believe that this
9 will be one of those issues that we can file pretrial
10 pursuant to *State versus McKnight* because of the serious
11 impediability to the state to go forward.

12 THE COURT: Go ahead. You've won. File your appeal.

13 SOLICITOR COLTON: I will, Your Honor. Thank you.

14 THE COURT: All right. Case continued.

15 Well let's see. No, let's wait until you get your
16 appeal then we're gonna have to continue it because it's
17 under appeal.

18 SOLICITOR COLTON: Yes, Your Honor.

19 THE COURT: All right.

20 SOLICITOR COLTON: May I have a few minutes to be
21 able to file that?

22 THE COURT: Certainly. You just have to notice of
23 appeal that's all you need.

24 SOLICITOR COLTON: Yes, sir.

25 Your Honor, and if I may I --

1 THE COURT: Yes, ma'am.

2 SOLICITOR COLTON: Your Honor, if I may speak to
3 Solicitor Brackett, it's not my rule, I'm only the
4 assistant --

5 THE COURT: I don't care whose rule it is. You just
6 appealed it and so that continues ---

7 SOLICITOR COLTON: If he changes --

8 THE COURT: --- the case.

9 SOLICITOR COLTON: That's fine.

10 THE COURT: So its your appeal. I'll take a break so
11 you can talk to whoever you need to.

12 SOLICITOR COLTON: Than, you, Your Honor.

13 THE COURT: All right. Let's stand at ease.

14 SOLICITOR SHELTON: Your Honor, if I may just to while
15 she goes to do that just to clarify when she said whose
16 rule. It's Mr. Brackett's rule that once the case starts
17 we can't negotiate and that's who she's gonna talk to.

18 THE COURT: Ma'am, I'm sorry, I told you before - not
19 you particularly ---

20 SOLICITOR SHELTON: Yes, sir.

21 THE COURT: --- but in this courtroom that I don't
22 know of any local rules that over rule the rules of court
23 in South Carolina.

24 SOLICITOR SHELTON: Yes, sir. I think it was -

25 THE COURT: Now so if you want to rely on that put

1 that in your appeal.

2 SOLICITOR SHELTON: No, I think what she's gonna ask
3 him is if we can agree to the plea offer - plea of straight
4 up I think is what she's going to go ask him.

5 THE COURT: I don't know what she's gonna ask him and
6 I really don't care. We've got twelve jurors or what,
7 fourteen jurors out there and they came here to try a case.

8 SOLICITOR SHELTON: Yes, sir.

9 THE COURT: And when I'm told it was that the case
10 would plead not only to this one but everything else
11 pending and then I'm told there is some sort of little - I
12 don't know what you call it. Local rule I guess. Is that
13 how you all entitle it? Is it written down somewhere that
14 says local York County Rule or local Sixteenth Circuit
15 Rule?

16 SOLICITOR SHELTON: It is not in written form, Your
17 Honor.

18 THE COURT: But yet you're controlling the court by
19 it. That to me I find rather unacceptable.

20 SOLICITOR SHELTON: Yes, Your Honor.

21 THE COURT: All right, we'll stand at ease.

22 (COURT AT EASE AT 10:01 A.M..)

23 (COURT BACK IN SESSION AT 11:16 A.M..)

24 THE COURT: All right, thank you very much. You may
25 take your seats please.

1 All right, it's my understanding that this will be a
2 plea - straight up plea?

3 SOLICITOR SHELTON: Yes, Your Honor.

4 THE COURT: Is that what you understand, Ms.
5 Inzerillo?

6 MS. INZERILLO: Yes, Your Honor.

7 THE COURT: And, Mr. Brookins, do you understand, sir?

8 MR. BROOKINS: Yes, sir.

9 THE COURT: All right, so we're back on the case of
10 State versus Joshua Kenneth Brookins. Ms. Sheldon here on
11 behalf of the state and Ms. Inzerillo representing the
12 defendant.

13 You may call your cases, Madam Solicitor.

14 SOLICITOR SHELTON: May it please the court, Your
15 Honor. This is State versus Joshua Brookins. He is
16 pleading guilty to, Your Honor, before Your Honor today to
17 three counts of distribution methamphetamine. That carries
18 up to fifteen years, they are first offenses, and up to a
19 twenty-five thousand dollar fine. He is pleading guilty to
20 one count of possession with intent to distribute
21 methamphetamine.

22 THE COURT: Just a moment. Has he been sworn?

23 MADAM CLERK: No, sir.

24 THE COURT: All right, if you would please, sir, raise
25 your right hand.

1 (WHEREUPON, JOSHUA KENNETH
2 BROOKINS, BEING CALLED AND DULY SWORN, TESTIFIED AS
3 FOLLOWS:)

4 THE COURT: Very good. Now you have heard the
5 sentences on the three distribution sentences on
6 Indictments 2014-GS-46-301, 302 and 2014-GS-46-3819. The
7 maximum sentence is fifteen years and twenty-five thousand
8 dollars on each. Do you understand that?

9 MR. BROOKINS: Yes, sir.

10 THE COURT: All right, and then you say there are two
11 others?

12 SOLICITOR SHELTON: Yes, sir, Your Honor, there's a
13 possession with intent to distribute methamphetamine that
14 carries up to fifteen years and also up to a twenty-five
15 thousand dollar fine. And a trafficking methamphetamine.
16 That is a serious and violent offense. It carries a
17 mandatory minimum sentence up to three years, a maximum
18 sentence of ten years and a maximum of a twenty-five
19 thousand dollar fine.

20 THE COURT: Very good. And I think that 3819 is to be
21 a direct indictment?

22 SOLICITOR SHELTON: It was not true billed, Your
23 Honor.

24 THE COURT: That's what I'm looking at. Oh, I've got
25 the sentencing sheets, excuse me.

1 SOLICITOR SHELTON: There was one that was not true
2 billed and they were all --

3 THE COURT: Is that --

4 SOLICITOR SHELTON: I'm sorry, Your Honor.

5 THE COURT: I just want to be sure that he's waived
6 his presentment.

7 MS. INZERILLO: He has, Your Honor, on that particular
8 indictment.

9 SOLICITOR SHELTON: Your Honor, and all charges were
10 originally charged except for the marijua - methamphetamine
11 first was originally charged as second offenses. He - His
12 prior was for possession of marijuana. That was a un-
13 counseled trial in absence so the state would not seek to
14 use it to enhance these charges.

15 THE COURT: Very good. Thank you.

16 You do understand that, Mr. Brookins?

17 MR. BROOKINS: Yes, sir.

18 THE COURT: Very good. So all are first offenses.

19 And that goes with the sentences that you gave?

20 SOLICITOR SHELTON: Yes, Your Honor.

21 THE COURT: Potential sentences.

22 SOLICITOR SHELTON: Yes, sir.

23 THE COURT: And on Indictment Number 3819 I do find
24 that the defendant has waived his presentment to the Grand
25 Jury and has initialed the sentencing sheet.

1 Is that correct, Mr. Brookins?

2 MR. BROOKINS: Yes, Your Honor.

3 THE COURT: And you are Joshua Kenneth Brookins?

4 MR. BROOKINS: Yes, sir.

5 THE COURT: And you are under oath?

6 MR. BROOKINS: Yes, sir.

7 THE COURT: Ms. Inzerillo, you represent the defendant
8 Joshua Kenneth Brookins?

9 MS. INZERILLO: I do, Your Honor.

10 THE COURT: Have you explained to the defendant the
11 charges contained in each of the indictments, the possible
12 punishments and his constitutional rights to include the
13 right to a trial by jury?

14 MS. INZERILLO: Yes, Your Honor.

15 THE COURT: Have you explained to the defendant the
16 right to have the Grand Jury consider his case?

17 MS. INZERILLO: Yes, Your Honor.

18 THE COURT: And does the defendant wish to waive these
19 rights?

20 MS. INZERILLO: He does, Your Honor.

21 THE COURT: In your opinion does the defendant
22 understand the charges and punishments and his rights?

23 MS. INZERILLO: He does, Your Honor.

24 THE COURT: How does the defendant wish to plead to
25 each of these indictments?

1 MS. INZERILLO: Guilty to each, Your Honor.

2 THE COURT: Do you agree with your decision - client's
3 decision to plead guilty?

4 MS. INZERILLO: I do, Your Honor.

5 THE COURT: In your investigation of the facts and
6 circumstances of these cases do you feel that the state
7 could produce sufficient evidence to convince a jury of the
8 defendant's guilt beyond a reasonable doubt and if the
9 defendant was to stand trial his conviction would be most
10 probable?

11 MS. INZERILLO: I do, Your Honor. The only thing I
12 would state on the record is I have in two of the cases the
13 March cases I have viewed the tape but I've not received a
14 copy but I was gonna show that to Mr. Brookins. The
15 December indictment I believe there is no drug report and
16 there - we have not seen any videos resulting from that. I
17 have explained that to Mr. Brookins and per my discussions
18 with Mr. Brookins it - it's his wishes to plead guilty and
19 I would concur in that. He understands that is the
20 situation to that.

21 THE COURT: Cause that is one of the questions if all
22 the discovery has been made on both Brady as well as Rule
23 Five.

24 SOLICITOR SHELTON: Yes, Your Honor. It's my
25 understanding in my limited involvement in this case up

1 until this moment is that all written discovery had been
2 turned over. But as far as actual hard copies of the buy
3 videos from the distributions and the audio from the
4 trafficking Ms. Inzerillo had been allowed to view those
5 but the physical copies had not been given to her to show
6 her client because those cases had not been scheduled for
7 trial yet.

8 THE COURT: All right. Of course I think the record
9 would reflect in this case that this has been sort of a
10 negotiated - not with the court involved in it cause it's a
11 straight up plea - but between the state and the defendant
12 counsel that it was only scheduled for one trial today.

13 SOLICITOR SHELTON: Yes, sir.

14 THE COURT: And the other three had not - or four
15 rather had not been completed.

16 SOLICITOR SHELTON: Yes, sir.

17 THE COURT: But he is pleading to all four or five
18 indictments.

19 MS. INZERILLO: Yes, Your Honor.

20 THE COURT: All right, has the defendant been ordered
21 to submit to a mental examination to determine his
22 competency to stand trial?

23 MS. INZERILLO: He has not, Your Honor. I've not seen
24 any reason to do so.

25 THE COURT: Well are you aware of any physical

1 emotional or mental condition that might affect the
2 defendant from understanding what he's doing today?

3 MS. INZERILLO: I am not aware of any, Your Honor.

4 THE COURT: All right, based on the representation of
5 counsel and my personal observation of the defendant I find
6 the defendant to be knowledgeable, perceptive and well in
7 control of his faculties and therefore competent to stand
8 trial and enter these pleas.

9 Now, Mr. Brookins, before I can accept a guilty plea
10 its necessary for me to make certain that your plea is made
11 knowingly intelligently freely and voluntarily with a full
12 understanding of the nature of the offenses to which you
13 are pleading guilty and the consequences of your plea
14 therefore I will be asking you certain questions. If you
15 do not understand the questions or the words I use please
16 advise me and I will explain them to you.

17 Also if any time during the questioning you need to
18 talk to your lawyer just tell me and you will be permitted
19 to do so. Now do you understand this?

20 MR. BROOKINS: Yes, sir.

21 THE COURT: How old are you, sir?

22 MR. BROOKINS: Twenty-six, sir.

23 THE COURT: How far did you go in school?

24 MR. BROOKINS: I got my GED in the eleventh grade.

25 THE COURT: All right. What kind of work do you do?

1 MR. BROOKINS: I was a tower technician before all
2 this

3 stuff happened. I lost my job even before this, sir.

4 THE COURT: Are you married?

5 MR. BROOKINS: I have a girlfriend and a baby on the
6 way and six year old.

7 THE COURT: Do you contribute towards your children's
8 support?

9 MR. BROOKINS: Yes, sir.

10 THE COURT: Have you ever been in criminal court
11 before?

12 MR. BROOKINS: No, sir.

13 THE COURT: Have you ever been treated for abuse of
14 alcohol or drugs or mental illness?

15 MR. BROOKINS: No, sir.

16 THE COURT: Are you under the influence of any
17 medication, drugs or alcohol, at this time?

18 MR. BROOKINS: No, sir.

19 THE COURT: Are you aware of any physical emotional or
20 mental condition that might keep you from understanding
21 what you're doing today?

22 MR. BROOKINS: No, sir.

23 THE COURT: Now you've heard your attorney tell me
24 that she's explained to you the charges against you and the
25 possible punishments and your constitutional rights and

1 that you understand these things; is that correct?

2 MR. BROOKINS: Yes, sir.

3 THE COURT: You are pleading guilty to the offense of
4 possession with the intent to distribute them and the
5 maximum sentence is fifteen years and twenty-five thousand
6 dollars. And three indictments of distribution - -

7 All of these are methamphetamine cases. Right?

8 SOLICITOR SHELTON: Yes, sir, Your Honor.

9 THE COURT: Possession with the intent to distribute
10 methamphetamine and then three distribution of
11 methamphetamine first offenses where each sentence would be
12 - the maximum would be fifteen years and twenty-five
13 thousand. And one trafficking between ten and twenty-eight
14 grams where the sentences would be a minimum of - mandatory
15 minimum of three, maximum ten years and twenty-five
16 thousand dollars. And that's is a serious and most - and
17 violent offense and is subject - is not subject to
18 probation. Do you understand?

19 MR. BROOKINS: Yes, sir.

20 THE COURT: You understand that each of these offenses
21 are graduated offenses. In other words if you are convicted
22 of the same set of crimes in the future you're punishment
23 the next time would be greater because you have prior
24 offenses.

25 MR. BROOKINS: Yes, sir.

1 THE COURT: Also if I should sentence you
2 consecutively on each of these five indictments you could
3 be sentenced to a total of seventy years and a hundred and
4 twenty-five thousand dollars. Do you understand that?

5 MR. BROOKINS: Yes, sir.

6 THE COURT: If you are on probation and parole you
7 understand that your probation and parole could be revoked
8 because of this sentence, these sentences today?

9 MR. BROOKINS: Yes, sir.

10 THE COURT: Now do you fully understand the nature of
11 the charges against you?

12 MR. BROOKINS: Yes, sir.

13 THE COURT: And the range of possible punishments?

14 MR. BROOKINS: Yes, sir.

15 THE COURT: And as I said on the trafficking offense
16 that is a violent and a serious offense and that it will
17 affect if you are convicted of the same similar crime in
18 the future, a violent or serious, it could affect your
19 ability to be paroled on a future conviction or plea. Do
20 you understand that?

21 MR. BROOKINS: Yes, sir.

22 THE COURT: Have you fully discussed all aspects of
23 your cases with your lawyer?

24 MR. BROOKINS: Yes, sir.

25 THE COURT: Are you fully satisfied with your

1 attorneys advice and representation of you in this case?

2 MR. BROOKINS: Yes, sir.

3 THE COURT: Do you need any more time to talk to your
4 lawyer?

5 MR. BROOKINS: No, sir.

6 THE COURT: Are you completely satisfied with Ms.
7 Inzerillo's representation of you in this case?

8 MR. BROOKINS: Yes, sir.

9 THE COURT: Have you understood your talks with your
10 lawyer?

11 MR. BROOKINS: Yes, sir.

12 THE COURT: Has your lawyer done everything that you
13 feel that she should have and could have done in this case?

14 MR. BROOKINS: Yes, sir.

15 THE COURT: Or all of these cases?

16 MR. BROOKINS: Yes, sir.

17 THE COURT: But are you completely satisfied with Mr.
18 Inzerillo's services as your attorney?

19 MR. BROOKINS: Yes, sir.

20 THE COURT: Do you have any complaints you want to
21 make about your lawyer?

22 MR. BROOKINS: No, sir.

23 THE COURT: Do you understand when you plead guilty
24 you give up certain important constitutional rights. First
25 you give up your right to remain silent. That is the right

1 to say nothing at all. You cannot be compelled to testify
2 against yourself or offer evidence against yourself. It's
3 called the right against self incrimination. Do you
4 understand that?

5 MR. BROOKINS: Yes, sir.

6 THE COURT: Sir, and you have the right to a jury
7 trial and in a jury trial you would be presumed to be
8 innocent and the jury would be instructed of that
9 presumption that you are innocent and the state would have
10 the burden of proving that you were guilty beyond a
11 reasonable doubt and all twelve members of the jury would
12 have to agree that you are guilty beyond a reasonable
13 doubt. Do you understand that?

14 MR. BROOKINS: Yes, sir.

15 THE COURT: At the trial you would be - you would
16 continue to have the right to remain silent and if you did
17 not testify I would instruct the jury that you could not -
18 that they could not hold the fact that you did not testify
19 against you also you would have the right to present
20 witness - defenses in a charge - on the charges against you
21 in a trial. And if you made incriminating statements about
22 the charges you would have the right to challenge - Well
23 not those rights - those statements were given in
24 accordance with your constitutional rights. Do you
25 understand this?

1 MR. BROOKINS: Yes, sir.

2 THE COURT: Do you understand when you plead guilty
3 you waive and give up these rights?

4 MR. BROOKINS: Yes, sir.

5 THE COURT: Do you understand that you give up your
6 right to confront, that is, the right to see, hear and
7 cross examine any witnesses called against you as well as
8 the right to call and present witnesses on your own behalf.

9 Do you understand?

10 MR. BROOKINS: Yes, sir.

11 THE COURT: Do you understand all of these rights?

12 MR. BROOKINS: Yes, sir.

13 THE COURT: By pleading guilty you are giving up all
14 of these rights. Do you understand that?

15 MR. BROOKINS: Yes, sir.

16 THE COURT: Do you understand you will not get a jury
17 trial?

18 MR. BROOKINS: Yes, sir.

19 THE COURT: Do you understand that you will give up
20 any defenses you may have to the charges?

21 MR. BROOKINS: Yes, sir.

22 THE COURT: Do you understand that you will give up
23 your right to challenge whether or not any statement you
24 had given if given in accordance with your constitutional
25 rights freely and voluntarily, Do you understand that?

1 MR. BROOKINS: Yes, sir.

2 THE COURT: And in pleading guilty do you understand
3 that you admit the charges against you?

4 MR. BROOKINS: Yes, sir.

5 THE COURT: Is that what you want to do?

6 MR. BROOKINS: Yes, sir.

7 THE COURT: All right. Then, Madam Solicitor, has the
8 defendant been allowed access to all Brady and other
9 discovery materials as represented earlier and that there
10 are some some cases that have not been fully presented but
11 the defense has been provided with what you have?

12 SOLICITOR SHIELTON: Yes, sir, Your Honor.

13 THE COURT: And access if you had it that they would
14 have that too?

15 SOLICITOR SHELTON: Yes, Your Honor.

16 THE COURT: All right. Is that correct, Ms.
17 Inzerillo?

18 MS. INZERILLO: Except for the December case, Your
19 Honor, I do not believe I've been provided with the videos
20 of that case. And there is no drug report on that case.
21 Mr. Brookins is aware of that though and does wish to still
22 proceed in entering his plea, Your Honor.

23 SOLICITOR SHELTON: That is the un-indicted case, Your
24 Honor. I'm not sure why there is no drug report back on
25 that one yet but it's - it was a pending charge that if it

1 was not resolved today once the drug report came back we
2 would --

3 THE COURT: But I did his all pending charges is gonna
4 be included in this plea.

5 MS. INZERILLO: And I've advised Mr. Brookins its
6 certainly in his best interest to resolve all pending
7 charges today so just to --

8 THE COURT: And you're relinquishing any rights to
9 discovery that has not been provided in order to dispose of
10 all these cases today?

11 MR. BROOKINS: Yes, sir.

12 THE COURT: You do that knowingly and intelligently?

13 MR. BROOKINS: Yes, sir.

14 THE COURT: All right. Understanding then the nature
15 of the offenses and the consequences of a guilty plea how
16 do you wish to plead to each of these charges?

17 MR. BROOKINS: Guilty, sir.

18 THE COURT: And that's to all five indictments; is
19 that correct?

20 MR. BROOKINS: Yes, sir.

21 THE COURT: Are you in fact are you guilty of the
22 charges?

23 MR. BROOKINS: Yes, sir.

24 THE COURT: Do you want to tell me what you did?

25 MR. BROOKINS: I made the biggest mistake of my life.

1 THE COURT: And that was?

2 MR. BROOKINS: Selling dope.

3 THE COURT: And the dope was methamphetamine?

4 MR. BROOKINS: Yes, sir.

5 THE COURT: And it was at least on four or five
6 occasions?

7 MR. BROOKINS: I was only caught one time but I mean I
8 learn my lesson after I got busted this past time. And
9 then the indictments came it was like three on 'em on top
10 of me like I been doing it all my life and I've never had a
11 rap sheet in my life except for simple possession.

12 THE COURT: All right. But this was a series of --

13 MR. BROOKINS: This is - Yeah.

14 THE COURT: That was a series of buys.

15 MR. BROOKINS: Yeah, it happened like two or three
16 times and then they tried to indict me on it. I just
17 really want to be there for my kid and my family.

18 THE COURT: But the fact is that you know what you did
19 was wrong?

20 MR. BROOKINS: Yes, sir.

21 THE COURT: And you do believe you would be convicted
22 if you stood trial on each of these indictments?

23 MR. BROOKINS: Yes, sir.

24 THE COURT: And as I understand it this is a straight
25 up plea and there have been no negotiations as to the plea.

1 Is that correct, Madam Solicitor?

2 SOLICITOR SHELTON: Yes, sir, Your Honor.

3 THE COURT: Is that correct, Ms. Inzerillo?

4 MS. INZERILLO: It is, Your Honor.

5 THE COURT: Is that correct, Mr. Brookins?

6 MR. BROOKINS: Yes, sir.

7 THE COURT: Has anyone suggested or represented to you
8 any sentence or conditional sentence or other matter
9 affecting your plea and sentence of the court today?

10 MR. BROOKINS: No, sir.

11 THE COURT: Are you pleading guilty because you are
12 guilty?

13 MR. BROOKINS: Yes, sir.

14 THE COURT: Has anyone promised you anything or held
15 out any hope or reward to get you to plead guilty?

16 MR. BROOKINS: No, sir.

17 THE COURT: Has anyone used any - threatened you or
18 used any force to get you to plead guilty?

19 Has anyone threatened you or used force to get you to
20 plead guilty?

21 MR. BROOKINS: Oh, no, sir.

22 THE COURT: Has anyone used any pressure or
23 intimidation to get you to plead guilty?

24 MR. BROOKINS: No, sir.

25 THE COURT: Do you have any complaint about how you

1 have been treated by anyone connected with this case
2 including the solicitor and the police officers? In other
3 words have you been mistreated in any way?

4 MR. BROOKINS: I feel like I have.

5 THE COURT: In what regard?

6 MR. BROOKINS: I just want a chance to show that I've
7 changed.

8 THE COURT: But the fact is that no one has done
9 anything that has affected your plea today?

10 MR. BROOKINS: No, sir.

11 THE COURT: Have you had enough time to make up your
12 mind as to whether or not you want to plead guilty?

13 MR. BROOKINS: Yes, sir.

14 THE COURT: Are you pleading guilty of your own free
15 will?

16 MR. BROOKINS: Yes, sir.

17 THE COURT: Have you understood my questions?

18 MR. BROOKINS: Yes, sir.

19 THE COURT: Is there anything you would like to ask me
20 about what we've been over so far?

21 MR. BROOKINS: No, sir.

22 THE COURT: Has anyone suggested to you how to answer
23 my questions?

24 MR. BROOKINS: No, sir.

25 THE COURT: Now you may have discussed parole or

1 parole eligibility with your lawyer or other people but no
2 one can tell you when if ever under what conditions you may
3 be eligible for parole. You should assume that you will
4 serve the entire time in jail that I sentence you to. Do
5 you understand this?

6 MR. BROOKINS: Yes, sir.

7 THE COURT: Do you understand that you have the right
8 to appeal the guilty pleas and the sentences of this court
9 but that you must do so within ten days?

10 MR. BROOKINS: Yes, sir.

11 THE COURT: All right. Madam Solicitor, what are the
12 facts of the cases and any prior record.

13 SOLICITOR SHELTON: Your Honor, the three
14 distributions and the trafficking all occurred as buys set
15 up from the same confidential informant who was working
16 with the York County Multi-jurisdictional Drug Enforcement
17 Unit. That informant per the Unit calls he was searched
18 and wired prior to the buys. The buys were set up with the
19 defendant. The informant had prior contact with the
20 defendant, knew him before setting up the buys.

21 The buys were monitored, all four buys were monitored
22 through the Drug Unit. The first one occurred on December
23 6th of 2013. The informant met with the defendant at
24 Sutton Ridge Road which is Fort Mill and at that time
25 purchased a quantity of methamphetamine from him.

1 The second buy occurred on February 28th of 2014.
2 This was for a seventy dollar buy. The informant met with
3 the defendant at - on Awana Drive which is in York - which
4 is in Rock Hill in York County. That was for a seventy
5 dollar quantity of meth.

6 The third buy occurred on February - I'm sorry, March
7 21st of 2-14. The informant met with the defendant at
8 Dave Lyle Boulevard, purchased a quantity of
9 methamphetamine from him at that time.

10 And then the fourth buy occurred on March 27th of
11 2014. The informant met with the defendant at
12 McConnell's Highway which is also in York County. This was
13 for the trafficking deal. He purchased approximately
14 fourteen grams of methamphetamine for twelve hundred
15 dollars from the defendant. This was a buy bust. The
16 defendant was arrested immediately after the buy and an
17 additional quantity of methamphetamine was found in his
18 pocket. That was the PWID charge.

19 His prior record consist of a driving under suspension
20 and a possession of marijuana. And the state would like to
21 be heard on sentencing at the appropriate time.

22 THE COURT: Of course.

23 All right, do you agree with the facts stated by the
24 solicitor?

25 MR. BROOKINS: Yes, sir.

1 THE COURT: And your prior record?

2 MR. BROOKINS: Yes, sir.

3 THE COURT: Finally is each and every answer you've
4 give the court today have been absolutely true?

5 MR. BROOKINS: Yes, sir.

6 THE COURT: All right, I find that there is a
7 substantial factual basis for each of these pleas and that
8 the defendant's decision to plead guilty to each indictment
9 is freely voluntarily knowingly and intelligently made with
10 the advice and counsel of an attorney with whom the
11 defendant says he is satisfied. The defendant's pleas of
12 guilty to each indictment are accepted.

13 Comes now the defendant Joshua Kenneth Brookins who in
14 open court in his own proper person pleads guilty to
15 Indictment Number 2014-GS-46-2999, 2014-GS-46-3000, 2014-
16 GS-46-3001, 2014-GS-46-3002 and 2014-GS-46-3819 and submits
17 the sentence of the court.

18 All right, now I would like to hear from the state on
19 --

20 SOLICITOR SHELTON: Your Honor, we are asking the
21 court to sentence Mr. Brookins to a fifteen year sentence.
22 We are aware that his prior record is not significant, that
23 he only has the one prior drug charge. However the state's
24 position is that Mr. Brookins although he's pleading guilty
25 today up until today has not really taken responsibility

1 for his actions or even today acknowledged the full
2 responsibility of his actions by his own words.

3 He said, Your Honor, he only got caught once and that
4 the indictments kept coming and we tried to make him look
5 like a drug dealer. The state's position is we didn't try
6 to make him look like a drug dealer, he is a drug dealer.
7 Even though he only got arrested once he was caught on
8 video multi times and these were not little sales. One was
9 a seventy dollar sell, and one was for fourteen grams of
10 marijuana and a twelve hundred dollar sell. That's not
11 somebody who is not a drug dealer. That is someone who is
12 making the business of making their money by selling drugs.

13 And the position of the state is that had we gone
14 forward with the trial today, we could have tried him again
15 and tried him again and he would have been looking at
16 mandatory minimum of twenty-five years so we feel that a
17 fifteen year sentence is appropriate based on the number of
18 charges in the number of months this - It started in
19 December, he was not arrested until March so this is a
20 period of four months that he is selling drugs to this
21 informant, and I'm sure other people we don't know who are
22 working with this informant, but to this informant and I am
23 sure others. Also the state's original offer was for
24 fifteen. We're not asking for the court to stack sentences
25 to punish him for his opting to go to trial but we are

1 asking you to sentence him to fifteen years even - -

2 I would be inclined to ask for more because we have
3 revealed the informant and we are very protective of
4 informants here in York County. We try not to reveal them
5 until we absolutely have to. But Mr. Brookins by pushing
6 this to the last day of going to trial has learned who -
7 learned that informants identity.

8 Your Honor, and also the state does not believe
9 through the investigation that Mr. Brookins is a meth cook.
10 They do believe that he has connections to a significant
11 supplier in Greenville County and that he was moving major
12 weight into this county through that supplier.

13 THE COURT: And would anybody from law enforcement
14 want to comment on --

15 SOLICITOR SHELTON: Investigators all feel satisfied
16 with the state's presentation, Your Honor, but they are all
17 also present.

18 THE COURT: Very good. All right, Ms. Inzerillo.

19 MS. INZERILLO: Thank you, Your Honor, may it please
20 the court. Your Honor, as Mr. Brookins indicated he's
21 twenty-six years old. He has no significant prior record
22 prior to this and I would point that out because the prior
23 marijuana occurred in 2008 so there was a significant
24 amount of time, about a five year period between that
25 charge and this case arising.

1 In looking into Mr. Brookins case and talking to him
2 and primarily his mom who has ask to speak here in a few
3 minutes, there is a lot of notable things I wish the court
4 to know about Mr. Brookins. During this time, Your Honor,
5 Mr. Brookins was an addict. He become addicted to
6 methamphetamine. The court has heard a statement that he
7 gave indicating that he was dealing the drugs to support
8 his family. That is true. He works very hard to support a
9 daughter MacKenzie who is six and he unfortunately became
10 addicted to this drug as well.

11 During this time period he got connected to Mr. Pope
12 who you heard is a potential witness in this case. And
13 through - to Mr. Hyatt who also would have been a potential
14 witness on the trafficking case because of that addiction.
15 Essentially what would happen is he would do little deals
16 and then had the court heard multiple trials in this case
17 would have heard that all of the weight that was sold were
18 less than half a gram or around a half a gram which is the
19 weight used by users and he would move a little bit because
20 he would use some of it.

21 His mom indicated that she had been to Mr. Pope's
22 house and she has seen Mr. Brookins under the influence of
23 the drugs and so during this time that was the other - the
24 sort of two prongs of the fork there. There was a little
25 bit of money to be made but mainly for usage.

1 The trafficking resulted through essentially Mr.
2 Hyatt. Mr. Hyatt had a connection in Greenville. Mr.
3 Brookins met him because he was a user. As Mr. Brookins
4 did ultimately explain to the DEU and then the second
5 statement that has constantly been referenced in the course
6 of the pretrial motions in this case the deal was Mr.
7 Brookins does the buy that was ultimately the buy bust and
8 from that buy he would get two hundred dollars which would
9 of course support his habit but would also help support his
10 daughter.

11 So he was essentially the middle man which
12 unfortunately happens a lot to users that sort of get
13 caught up in this. And so even though Mr. Brookins was
14 sort of the target and the named person you know as he
15 indicated very early on to the police the other person that
16 actually did the deal was there. Mr. Hyatt was actually
17 found in the car on scene as well.

18 In all my conversations with Mr. Brookins he has been
19 up-front with me about his addiction, his wish to get drug
20 court. He applied to drug court unfortunately that was
21 stymied by the state. He was introduced in a long term
22 program, he - I will say you know I have several meth cases
23 on my desk and I see a lot of addicts and is see a lot of
24 manufacturers and is see a lot of true sellers.

25 And the one thing I see repeatedly is the how hard it

1 is for people once they are addicted to methamphetamine to
2 break that addiction. And I can tell you I've represented
3 Mr. Brookins since March. His initial appearance with me
4 was in May and Mr. Brookins since that time on his own
5 fought the addiction, has been clean every since then.
6 He's worked tower job, he got a tower job while he was out
7 on bond. He worked very hard to keep that job but had to
8 report to court every other week on Friday's to keep and
9 maintain his docket so he was very serious about
10 maintaining his obligations to the court and as a result of
11 that had lost that job.

12 But it was a very well paying job so he was able to
13 support his family which is of course very dear to him
14 because I know that's sort of his heart. I've been trying
15 to be very diligent this week with the court in terms of
16 maintaining where Mr. Brookins is and the reason in all
17 candor to the court he wished me to move forward and him
18 not be present with me because he wished to spend time with
19 his family this week. He understood the very real
20 possibility he may be sentenced to prison by the end of th
21 is week and he wished to spend time with his family and his
22 girlfriend and his child.

23 And so, Your Honor, he's one of the few people I've
24 ever seen that sort of lucked down the barrel of addiction
25 and broke it and built himself back up and so what Mr.

1 Brookins was trying to say earlier which I believe because
2 I've seen it in past conduct is that if they had busted me
3 the first time I would have changed my ways because that
4 would have broken the addiction. It would have shown him
5 this is not what he needs to do.

6 And I know Your Honor has been on the bench for a very
7 long time and probably sees a lot of people come before him
8 and say that. But when Mr. Brookins got arrested at the
9 tail end of this long investigation that woke him up and he
10 did on his own fix the problem, began working again, and
11 broke that addiction.

12 And so I think that's what he was - He's nervous
13 today, I think that's what he was clumsily trying to
14 explain to the court that the indictments kept coming but
15 you know part of him wishes that he had been arrested
16 perhaps after that December or perhaps even the February
17 deal because that would have been the wake up call he
18 needed to move forward.

19 Your Honor, we are before you understanding Mr.
20 Brookins is gonna be sentenced to some amount of prison
21 time today. That's unavoidable with the trafficking
22 charge. We are asking the court to consider his conduct
23 since his arrest with the investigations that generally
24 happen the same CI that gets sent out you know even though
25 he's pled to a December Indictment and it ended in March

1 that it's still a four month period and a young man's life
2 where the majority of his twenty-six years he spent trying
3 to support his family and doing what he needs to do.

4 He was in the throws of addiction. I understand there
5 are multiple charges from that. We would ask the court to
6 consider something significantly less than a fifteen year
7 sentence. You know I hesitate to ask for the mandatory
8 minimum cause I understand there's more charges than the
9 trafficking but something that would get him home to his
10 family much quicker. That's really what he wants,
11 something the lower end of the range, three to five maybe.

12 He - You know he entered the plea today, you know,
13 he's maintained to me for a long time he wished to plead as
14 we stated. It was the fifteen years that scared him off.
15 Very early on in the case under the state's reference that
16 they had to disclose the CI very early on Mr. Brookins knew
17 that Mr. Bowker was the CI. And I think that's a testament
18 to the limited number of people Mr. Brookins was actually
19 dealing to. I do enough of these cases and have done
20 enough over my years that if you deal a lot there's a lot
21 of confusion about who they're talking about. But Mr.
22 Brookins didn't have that confusion. He came to me very
23 early on and said I think I know this is who the CI is
24 because I don't do this very often. And so I wanted the
25 court to take that into consideration as well.

1 Your Honor, he does have extended family here and
2 they're all across the first row. In particular I would
3 ask the court to hear from his mother. She did wish to
4 address the court with the court's permission.

5 SOLICITOR SHELTON: Your Honor, before you hear from
6 the family can I address one issue?

7 THE COURT: Certainly.

8 SOLICITOR SHELTON: And, Your Honor, I don't
9 personally know Mr Brookins so I obviously can't combat the
10 defense's position that he was under the throws of a
11 methamphetamine addiction and that's the reason why he was
12 doing this, but I have been involved in the criminal law
13 side for twelve years and have seen folks going through
14 methamphetamine addiction. I've seen pictures of them and
15 seen how greatly they improve once they stop using
16 physically. And, Your Honor, I passed up for you his
17 booking photo and his booking report. I would ask Your
18 Honor to look at that. His booking - the height and weight
19 on his booking report is five nine a hundred and eighty
20 pounds.

21 You can look at the picture from the day that he was
22 booked in in March. There is not a substantial change. He
23 does not appear to be a person in that photo as someone who
24 is going through the throws of addiction of methamphetamine
25 which is typically ravaging on a person's physical

1 appearance and usually you can see a significant change in
2 that person's appearance once they stop using that drug.
3 And like I say I have no personal information about Mr.
4 Brookins but I would think - I am offering that to show
5 that it is possible that he was not an addict.

6 THE COURT: All right. Ms. Inzerillo, would you like
7 to see what's been passed up or can you - -

8 MS. INZERILLO: I saw when she handed it up, Your
9 Honor, and I would just - I would just say I've dealt with
10 a lot of meth cases as well and I know the throws of
11 methamphetamine abuse happens over a long period of time.
12 This was a very short amount of time and I know there were
13 I think some of the recreational drugs as well Mr. Brookins
14 was addicted to that would not result in any drastic weight
15 loss but certainly my understanding of methamphetamine in
16 dealing with methamphetamine addicts the ravaging that the
17 state does reference can take place over either high use or
18 long periods of time and certainly I don't think that
19 picture is dispositive of his you know disproving that he's
20 an addict. He's been very up-front with me, that's always
21 what he said and certainly within the letter.

22 And I would say during my investigation and in looking
23 into that potential allegation when we would put that
24 before a jury or before the court I did see some evidence
25 of that in my own investigation, Your Honor. But I would

1 ask the court to hear from Mr. Brookins' mother.

2 THE COURT: Yes, ma'am, if you would please give us
3 your name for the record.

4 A. Tammy Hill. I'm Josh's mother. I've worked for the
5 county, York County Public Safety. I dispatch for the
6 sheriff's office. First of all I didn't get a chance to
7 see the picture but I did witness Josh during this time and
8 he was an addict. This is my child, I know when I saw him
9 I knew he was an addict so I don't need a picture of that.

10 My reason for coming up here is because I'm sure
11 you've seen it as well as I have especially on the law
12 enforcement side we have a revolving door with people that
13 are addicted to meth. They're either distributing meth,
14 they are making it, manufacture all that, and it just seems
15 like every time we lock them up they are right back out on
16 the streets again. And no matter how much time you give
17 them when they come out they still fall back into that
18 category and they get back on the same thing.

19 With this being said, Josh being an addict and like I
20 said I witnessed it. I was at Travis Pope's house before
21 and I saw everyone of 'em. And I know my son, I knew he
22 was an addict right then. Once he got busted which to me
23 was a good thing because it got his attention. And once it
24 got his attention he cleaned up on his own. He never went
25 to Keystone. He fell back on his little girl, his family,

1 he's got another baby on the way it's due in April. And
2 he's held his job. He's done exceptionally well. And I
3 just want you to take under consideration that he fought
4 this battle on his own. When it comes to sentencing just,
5 you know, we want him home as soon as possible.

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

7 MS. HILL: Thank you.

8 MS. INZERILLO: Your Honor, I do wish Mr. Brookins - I
9 do believe Mr. Brookins wishes to address the court.

10 Mr. Brookins wishes to address the court.

11 THE COURT: Yes, ma'am. Well is there anyone else
12 that would like to speak on behalf of the defendant?

13 MS. INZERILLO: No, Your Honor.

14 THE COURT: Very good. All right. Yes, sir.

15 MR. BROOKINS: I just want to say I apologize. If I
16 could take it back I would. I just want to be home. I
17 want one chance. Probation or something. I never had it.
18 Drug court or probation, suspended sentence, give me a
19 chance. One chance. Ten years. Probate twenty years
20 suspended sentence on it. I'm down, I'm begging, man. I'm
21 a family man you know I learned my lesson. This is a big
22 wake up call and I don't go around - hang around - and
23 that's who I hang out with there my family. If I could
24 take it back I would. I apologize from the bottom of my
25 heart. It's the worst mistake of my life and everything's

1 just like a dream. I was an addict. I'm coming to you
2 begging you I'll take ten classes drug court, probation,
3 rehab, I don't care. I just want to be there for my family
4 and my daughter and they need me. That's it, sir.

5 THE COURT: Mr. Brookins, usually I ask parents when
6 they appear before me in such cases as this one today how
7 old they want their children to be before they use their
8 first methamphetamine. And then I ask what would they do
9 to the person that even gave methamphetamine to one of
10 their children. Of course the children are gonna grow up.
11 I don't know who your customers were or who your colleagues
12 were but in today's society young people are out in their
13 teens in high school, even younger, where people can
14 approach them and say would you like a little meth this
15 will really give you a thrill, it will make you feel
16 wonderful and you can handle it, you can handle it.

17 Now if you found somebody doing that to your child, or
18 children now, what would you do to them?

19 MR. BROOKINS: I understand. They would kill me.

20 THE COURT: Pardon?

21 MR. BROOKINS: Kill me. It'd make them real mad.

22 THE COURT: I understand. Well you are very candid
23 there. But see that's the dilemma this court has.

24 MR. BROOKINS: Yes, sir.

25 THE COURT: Even though it was only a five month

1 period, four month, a little more than a four month period
2 that there were a lot of sales and these are the ones that
3 were recorded. And each one of those sales resulted in
4 somebody getting some methamphetamine. And I'm sure you
5 had some in your pocket, and you say you were an addict, so
6 some of them were getting meth by reason of distributing it
7 to other people. That is the danger.

8 MR. BROOKINS: Yes, sir.

9 THE COURT: And unless we do something ourselves and
10 society does something we're going to continue to see
11 methamphetamine and the other. And now you tell me there
12 are synthetic drugs that are being made and shipped into
13 the country. Obviously somebody has more than just a
14 desire to make money for good purposes in doing that. But
15 it's just as dangerous if you do it for a good purpose as
16 you do it for a mean purpose. All right, anything else?

17 Of course you didn't come here for a sermon, but
18 anything else?

19 MR. BROOKINS: No, sir.

20 THE COURT: All right.

21 (PAUSE.)

22 THE COURT: All right, anything else from the state?

23 SOLICITOR SHELTON: No, sir, Your Honor.

24 THE COURT: Anything from the defense?

25 MS. INZERILLO: No, Your Honor.

1 THE COURT: Anything else you would like to say, Mr.
2 Brookins?

3 MR. BROOKINS: No, sir.

4 THE COURT: Indictment Number 2014-GS-46-3000 the
5 sentence of the court the defendant Joshua Kenneth Brookins
6 be committed to the state Department of Corrections for a
7 term of ten years plus pay the cost and acessments as
8 applicable.

9 Indictment Number 2014-GS-46-3002 the sentence of the
10 court the defendant be committed to the state Department of
11 Corrections for a term of fifteen years provided upon the
12 service of ten years and the payment of cost and
13 accessments as applicable. The balance is suspended with
14 probation for five years.

15 Indictment Number 2014-GS-46-2999 the sentence of the
16 court the defendant be committed to the state Department of
17 Corrections for a term of fifteen years provided upon the
18 service of ten years and payment and cost and accessments
19 as applicable. The balance is suspended to probation for
20 five years.

21 Indictment Number 2014-GS-463001 the sentence of the
22 court the defendant be committed to the state Department of
23 Corrections for a term of fifteen years provided upon the
24 service of ten years and payment and cost and accessments
25 as applicable. The balance is suspended to probation for

1 five years.

2 Indictment Number 2014-GS-46-3819 the sentence of the
3 court the defendant be committed to the state Department of
4 Corrections for a term of fifteen years provided upon the
5 service of ten years and payment of cost and assessments as
6 applicable. The balance is suspended with probation for
7 five years.

8 All sentences to run concurrent, the defendant to be
9 given credit for time served. Special conditions to
10 perform five hundred hours of public service probation -
11 public service employment during probation. Also undergo
12 drug and alcohol testing and treatment and substance abuse
13 counseling as directed and pay your five hundred dollars to
14 the Clerk of Court during probation. Public service
15 employment is suspended while gainfully employed.

16 Good luck to you, sir.

17 SOLICITOR SHELTON: Thank you, Your Honor.

18 MS. INZERILLO: Thank you, Your Honor.

19 (DEFENDANT EXITS COURTROOM.)

20 THE COURT: I guess we need to mark this as an
21 exhibit, Court's Exhibit for the trafficking.

22 (COURT'S EXHIBIT NUMBER FOUR, IDENTIFIED AND MARKED,
23 RECEIVED INTO EVIDENCE.)

24 THE COURT: Let me bring the jury in. What is it,
25 after twelve?

1 MADAM CLERK: Yes, sir.

2 (SIDE BAR WITH THE COURT AND SOLICITOR'S OFFICE.)

3 THE COURT: You don't need to put it on the record.

4 You might use your mic or whatever if you want to.

5 All right, anybody else who does not have matters
6 pending before the court this morning can leave at this
7 time but I need to discuss the case with the jury and
8 dismiss them.

9 (JURY REENTERS COURTROOM AT 12:10 P.M..)

10 (COURT DISMISSES THE JURY, JURY EXITS COURTROOM AT
11 12:16 P.M..)

12 (STEVEN HENSON AND JENNICA MILLAY PLEAS WITH CREIGHTON
13 HAYES AND CEDRIC CHAMBERS ATTORNEY APPOINTMENT.)

14 (COURT IN RECESS AT 12:45 P.M..)

15 (END OF TRANSCRIPT OF RECORD.)

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 2nd and 4th day of November, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: May 31, 2015

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM York COUNTY CERTIFIED TRUE COPY

Court of General Sessions

2014 DEC 29 PM 4:27

Alexander S. Macaulay, Circuit Court Judge

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Case Nos.: 2014-GS-46-2999

2014-GS-46-3000

2014-GS-46-3001

2014-GS-46-3002

2014-GS-46-3819

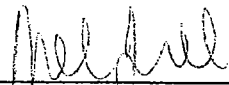
The State of South Carolina, Respondent

v.

Joshua Kenneth Brookins, Appellant

NOTICE OF APPEAL

Joshua Kenneth Brookins appeals his guilty plea and sentence imposed by the Honorable Alexander S. Macaulay, on December 4, 2014, the Appellant pled guilty Possession with Intent to Distribute Methamphetamine, 1st offense; Trafficking in Methamphetamine, 1st offense; Distribution of Methamphetamine, 1st offense, three (3) counts, (Indictment Nos. 2014-GS-46-2999; 2014-GS-46-3000; 2014-GS-46-3001; 2014-GS-3002; and 2014-GS-3819) and received a sentence of Ten (10) years, concurrent.



Melissa A. Inzerillo
Assistant Public Defender
P.O. Box 691
York, SC 29745
(803) 628-3031
Attorney for Appellant

This 9th day of December, 2014
York, South Carolina

Other Counsel of Record:
Misti Horton Shelton
Assistant Solicitor
1675-1A York Highway
York, SC 29745
(803) 628-3020

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SC Court of Appeals

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2014-GS-4603819

2014 DEC -9 PM 4: 26

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

)

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM York COUNTY
Court of General Sessions

Alexander S. Macaulay, Circuit Court Judge

CERTIFIED TRUE COPY

2014 DEC -9th PM 4:27

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Case Nos.: 2014-GS-46-2999

2014-GS-46-3000

2014-GS-46-3001

2014-GS-46-3002

2014-GS-46-3819

The State of South Carolina, Respondent

v.

Joshua Kenneth Brookins, Appellant

Certificate of Service

This is to certify that a copy of the Notice of Appeal in the case of the State vs Joshua Kenneth Brookins was served upon Assistant Solicitor Misti Horton Shelton, on December 9, 2014 by hand-delivering a copy to the Sixteenth Circuit Solicitors Office at 1675-1A York Highway, York, South Carolina.

Debra A. Bartolotta

Debra A. Bartolotta

Legal Secretary for Melissa A. Inzerillo

Attorney for the Defendant

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DEC 12 2014

SC Court of Appeals

**Sixteenth Circuit
Public Defender
Office**

Moss Justice Center
1675-1E York Highway
P.O. Box 691
York, S.C. 29745



Harry A. Dest
Sixteenth Circuit Defender

235
Bryson S. Barrowclough
Deputy Public Defender

Stacey D. Coleman
Juvenile Division

Phillip L. Smith
Melissa A. Inzerillo
Sr. Assistant Public Defenders

Assistant Public Defenders
Mark T. McKinnon
E. Ashley Anderson
Mindy Hervey Lipinski
J. Creighton Hayes
Judah Vansyckel
Nicholas R. McCarley

Magistrate Court Division
Toni L. Johnson
Jessica Russo

Union County Public Defender
Erik D. Delaney
Jenny Williams

December 9, 2014

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: Joshua Kenneth Brookins (Indictment No.: 2014-GS-4602999; 2014-GS-4603000; 2014-GS-4603001;
2014-GS-46003002 and 2014-GS-4603819)

Dear Ms. Kitchings:

Enclosed please find the Notice of Appeal, Rule 203(B) Explanation, and Certified Certificate of Service in the above captioned matter. On December 9, 2014 the Appellant pled guilty to Possession with Intent to distribute Methamphetamine, 1st offense; Trafficking in Methamphetamine, 1st offense; Distribution of Methamphetamine, 1st offense; Distribution Methamphetamine, 1st offense and Distribution of Methamphetamine, 1st offense, and received a sentence of ten (10) years, concurrent. Copies of these documents were sent under separate cover letter to the defendant. A copy of said letter is included in this packet.

Sincerely,

Melissa A. Inzerillo
Assistant Public Defender
Sixteenth Judicial Circuit

MAI/db

Enclosures

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DEC 12 2014

SC Court of Appeals

²³⁶
**Sixteenth Circuit
Public Defender
Office**

Moss Justice Center
1675-1E York Highway
P.O. Box 691
York, S.C. 29745



Harry A. Dest
Sixteenth Circuit Defender

Bryson J. Barrowclough
Deputy Public Defender

Stacey D. Coleman
Juvenile Division

Philip L. Smith
Melissa A. Inzerillo
Sr. Assistant Public Defenders

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Judah Vansyckel
Nicholas R. McCarley

Magistrate Court Division
Toni L. Johnson
Jessica Russo

Union County Public Defender
Erik D. Delaney
Jenny Williams

December 9, 2014

Joshua Kenneth Brookins
6371 Turkey Farm Road
Rock Hill, SC 29732

Dear Mr. Brookins:

Enclosed please find certified copies of the Notice of Appeal, Rule 203(B) Explanation and Certificate of Service regarding your recent guilty plea. Please note that you must inform the South Carolina Court of Appeals in writing, within **twenty (20) days** of the date of this letter, of any arguable basis that there are issues preserved for appeal.

You must send your arguments for your appeal to the following address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Sincerely,

Melissa A. Inzerillo
Assistant Public Defender
Sixteenth Judicial Circuit

MAI/db
Enclosure

cc: South Carolina Court of Appeals

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DEC 12 2014

SC Court of Appeals

**Sixteenth Circuit
Public Defender
Office**

Moss Justice Center
1675-1E York Highway
P.O. Box 691
York, S.C. 29745

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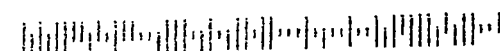


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SC Court of App

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211



The South Carolina Court of Appeals

The State, Respondent,

v.

Joshua Kenneth Brookins, Appellant.

Appellate Case No. 2014-002637

ORDER

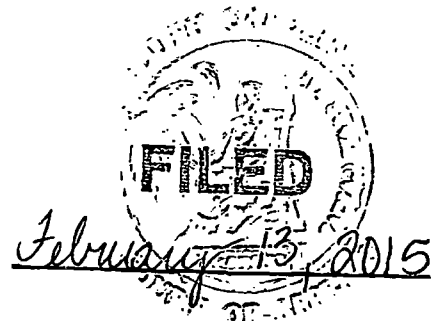
Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.

V. Claire Allen, Deputy C.J.
FOR THE COURT

Columbia, South Carolina

cc:

Joshua Kenneth Brookins
Misti Horton Shelton, Esquire
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
Melissa Anne Inzerillo, Esquire
Robert Michael Dudek, Esquire
The Honorable Alexander S. Macaulay





The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 10, 2015

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The State v. Joshua Kenneth Brookins
Lower Court Case No. 2014GS4602999, 2014GS4603000,
2014GS4603001, 2014GS4603002, 2014GS4603819
Appellate Case No. 2014-002637

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Joshua Kenneth Brookins
Misti Horton Shelton, Esquire
Salley W. Elliott, Esquire

Alan McCrory Wilson, Esquire
Melissa Anne Inzerillo, Esquire
Robert Michael Dudek, Esquire

20150460585

FORM 5
FILED-RECEIVED

STATE OF SOUTH CAROLINA

2015 FEB 24 AM 9:07

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

DAVID HAMILTON

C.C.C.P. & OS

JOSHUA BROOKINS #362351 YORK COUNTY SC

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence York County Court of General Sessions, 2 Congress Street, P.O. Box 649, York, SC 29745
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-46-2999 Possession with Intent to Distribute Meth 1st offense
 - (b) 2014-GS-46-3000 Trafficking in Meth 1st offense
 - (c) 2014-GS-46-3001 Distribution of Meth 1st offense
 - (d) 2014-GS-46-3002 Distribution of Meth 1st offense

Revised 3/2003

(e) 2014-GS-46-3819 Distribution of Meth 1st offense

5. The date upon which sentence was imposed and the terms of the sentence:

(a) December 4, 2014, 15 years suspended to 10 years and 5 years probation
concurrent

(b) December 4, 2014, 10 years concurrent

(c) December 4, 2014, 15 years suspended to 10 years and 5 years probation
concurrent

(d) December 4, 2014, 15 years suspended to 10 years and 5 years probation
concurrent

(e) December 4, 2014, 15 years suspended to 10 years and 5 years probation
concurrent

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty x
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
 - (b) Involuntary guilty plea
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief?
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 - (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? x
- (b) your trial, if any?
- (c) your sentencing? X
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? X
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Melissa A. Inzerillo, Esq., Assistant Public Defender, 1675 -1E York Highway, York, SC 29745
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Guilty plea, sentencing, Appeal
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
- New Trial
20. Are you now under sentence from any other court that you have not challenged?
- No

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Joshua K. Brookins, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Joshua Brookins

SWORN to and subscribed before me this 18th
day of February, 2015.

[Signature]

(L.S.)

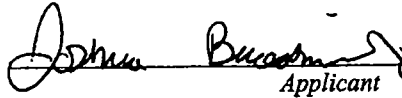
Notary Public

My Commission Expires: 3/17/24

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

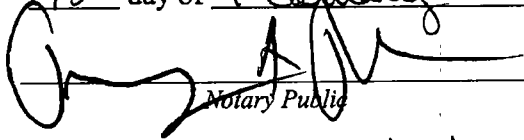
I, Joshua K. Brookins, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

18th day of February, 2015.


Notary Public

My Commission Expires: 3/12/24

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2015-CP-46-585
Joshua Brookins,	)	
S.C.D.C. #362351	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the application for post-conviction relief filed by Joshua Brookins (Applicant) on February 24, 2015, Respondent would show this Court:

I.

Applicant is presently confined with the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the October 2014 term of the York County Grand Jury for Possession With Intent to Distribute Methamphetamine (2014-GS-46-2999), Trafficking in Methamphetamine (2014-GS-46-3000), Distribution of Methamphetamine (2014-GS-46-3001), and Distribution of Methamphetamine (2014-GS-46-3002). Applicant was indicted at the December 2014 term of the York County Grand Jury for Distribution of Methamphetamine (2014-GS-46-3819). Applicant was represented by Melissa Inzerillo, Esquire. On December 4, 2014, Applicant pled guilty before the Honorable Alexander Macaulay as indicted and was sentenced to concurrent terms as follows:

(2014-GS-46-2999) Possession With Intent to Distribute Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years,

(2014-GS-46-3000) Trafficking in Methamphetamine, 1st offense	Ten years imprisonment
(2014-GS-46-3001) Distribution of Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years
(2014-GS-46-3002) Distribution of Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years
(2014-GS-46-3819) Distribution of Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years

Applicant's counsel filed a notice of appeal and notified the Court of Appeals pursuant to Rule 203(B) SCACR that she did not believe there was a good faith basis for the appeal. By Order filed February 13, 2015, the South Carolina Court of Appeals dismissed the appeal. The Remittitur was sent March 10, 2015.

II.

In his application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

Attached herewith and incorporated herein are the York County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant first alleges ineffective assistance of plea counsel. Respondent submits plea counsel rendered effective assistance of counsel. In a Post-Conviction Relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged

errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant further alleges his guilty plea was not voluntarily made. Respondent submits that Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's plea counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

December 22, 2015

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2015-CP-46-0585

JOSHUA BROOKINS, #362351

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

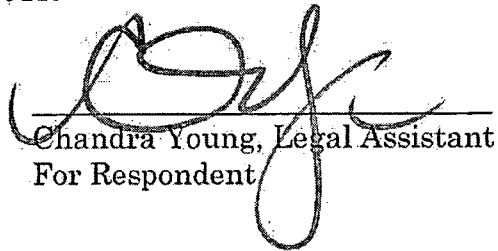
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas
PO Box 88
Irmo, SC 29063

DATED this 22nd day of December, 2015.


Chandra Young, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF YORK

4 2015-CP-46-00585

5 Joshua Brookins

6 vs.

7 State of South Carolina

8

9 York, South Carolina

10 April 19, 2016

11 Before the Honorable Frank R. Addy

12

13 APPEARANCES

14 For the State: Justin Hunter

15 For the Applicant: Tommy A. Thomas

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

19

20

21

22

23

24

25

1	Joshua Brookins:	3
2	Melissa Inzerillo:	35
3	Certificate:	49

4

5

NO EXHIBITS

6

7

8

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JOSHUA BROOKINS - DIRECT

1 THE COURT: This is Joshua Brookins, case number
2 2015-CP-46-585. Your Honor, he was indicted -- actually he
3 waived presentment on one of the charges, he was indicted
4 for possession with intent to distribute methamphetamine,
5 trafficking in methamphetamine and three counts of
6 distribution of methamphetamine, the last one he waived
7 presentment on. He was represented by Ms. Melissa
8 Inzerillo. On December 2nd, 2014 he appeared before Judge
9 Alexander Macaulay to proceed with a jury trial, and after
10 jury qualification and selection and pretrial motions he
11 appeared on December 4, 2014 and pled guilty as indicted.
12 All of the charges he pled guilty to were first offenses.
13 He was sentenced by the Judge to on the trafficking
14 methamphetamine 10 years, and on the other charges 15 years
15 suspended to 10 years and five years of probation to
16 follow. He filed notice of appeal, which was dismissed by
17 the court of appeals, on February 13th, 2015. He filed
18 this current action on March 12, 2015. He is represented
19 by Tommy Thomas and I will turn it over to him.

20 MR. THOMAS: May it please the Court? We call Mr.
21 Brookins to the stand.

22 The witness, JOSHUA BROOKINS, was first duly sworn and
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. THOMAS:

JOSHUA BROOKINS - DIRECT

1 Q Mr. Brookins, you're here today for a post conviction
2 relief action?

3 A Yes, sir.

4 Q You understand that?

5 A Yes, sir.

6 Q You understand that you and I have talked about your
7 potential exposure and what you're asking for is for a new
8 trial?

9 A Yes, sir.

10 Q And if you were granted a new trial then these charges
11 could be reinstated against you and you potentially could
12 go back for a whole new trial on these charges?

13 A Yes, sir.

14 Q You understand that?

15 A Yes, sir.

16 Q And you are willing to accept and take that risk?

17 A Yes, sir.

18 Q Do you wish to proceed today?

19 A Yes, sir.

20 Q Mr. Brookins, you're serving what type of sentence?
21 What sentence are you serving?

22 A Fifteen suspended to ten, five years of probation.

23 Q And you have a possession with intent to distribute
24 methamphetamine?

25 A Yes, sir.

JOSHUA BROOKINS - DIRECT

- 1 Q And you have a trafficking meth?
- 2 A Yes, sir.
- 3 Q And you have a distribution of meth, you have three
- 4 counts of that; is that correct?
- 5 A Yes, sir.
- 6 Q Now, these crimes allegedly involved sales to an
- 7 undercover agent?
- 8 A Yes, sir.
- 9 Q Confidential informant.
- 10 A Yes, sir.
- 11 Q And you actually started your trial?
- 12 A Yes, sir.
- 13 Q And you got through the pretrial stage as far as
- 14 pretrial motions?
- 15 A Yes, sir.
- 16 Q Okay. And then at that point in time you decided not
- 17 to further -- go forth with the trial and accept the plea.
- 18 A Right.
- 19 Q All right. Now, let's kind of build up to that. You
- 20 were arrested, and did you retrain counsel or you had
- 21 counsel appointed to you?
- 22 A I had one appointed to me.
- 23 Q And who was that attorney?
- 24 A Melissa Inzerillo.
- 25 Q And was she -- did you get out on bond?

JOSHUA BROOKINS - DIRECT

- 1 A Yes, sir, I did.
- 2 Q And how long were you out on bond?
- 3 A Approximately about six and a half or seven months.
- 4 Q All right. Now, during the time that you were out on
- 5 bond, were you able to meet with your attorney?
- 6 A A few times.
- 7 Q How many times did you meet with her?
- 8 A Maybe three.
- 9 Q Do you feel like you were able to meet with her enough
- 10 to prepare your case for trial?
- 11 A No, sir, I don't.
- 12 Q And why not?
- 13 A Because I never seen any of the evidence, I never
- 14 seen anything they had against me.
- 15 Q Now, what kind of prior record did you have?
- 16 A Simple possession of marijuana in 2007 and a reckless
- 17 driving, and that's it.
- 18 Q And they originally charged you with all of these
- 19 offenses as second offenses?
- 20 A Yes, sir.
- 21 Q And was it, in fact, a second offense?
- 22 A No, sir, it wasn't.
- 23 Q And why wasn't it?
- 24 A Because I had a simple possession of marijuana. I've
- 25 never had a distribution of marijuana or distribution of

JOSHUA BROOKINS - DIRECT

1 methamphetamine, nor distribution or PWID or
2 methamphetamine or marijuana. So they made a simple
3 possession -- a blue ticket of simple possession of
4 marijuana, they enhanced it to second offense felony drug
5 charge.

6 Q And you did not have an attorney that represented you
7 for the marijuana charge?

8 A No, sir.

9 Q And you just paid a fine?

10 A No, I didn't. Me and my mother, we had moved and my
11 court date got sent to our old address and it got sent
12 back so they tried me in my absence, so I just paid the
13 fine.

14 Q So it turned out that if anything this was a first
15 offense.

16 A Yes, sir.

17 Q And this was an alleged transaction to where they had
18 alleged that you were dealing in methamphetamine?

19 A Yes, sir.

20 Q You admitted that you were using meth, didn't you?

21 A Yes, sir.

22 Q And that you had an addiction to meth problem?

23 A Yes, sir.

24 Q And is that -- they allege that you sold to this
25 confidential informant. And then how did you get a

JOSHUA BROOKINS - DIRECT

1 trafficking charge?

2 A He had contacted me. The PWID and the trafficking
3 came from the same time he contacted me trying to purchase
4 a certain amount of methamphetamine.

5 Q So it was because of the amount of methamphetamine
6 involved.

7 A Yes, sir, it was the amount.

8 Q All right. Now, how many distinct charges, separate
9 charges?

10 A I had three distributions, one PWID and one
11 trafficking, but I was only busted one time.

12 Q So you had five individual drug charges.

13 A Yes, sir.

14 Q And when you met with your attorney, explain to us how
15 would you talk to her as far as developing some sort of
16 defense on your behalf, how did you do that? Did you go
17 through each one specifically?

18 A I didn't. The really only evidence that I seen was
19 the video, which was just me smoking a cigarette, there
20 was no transactions or anything like that that went on.
21 All of the other distributions and the other times that I
22 had met with the informant, none of that was recorded or
23 documented in any way. I don't --

24 Q So was this confusing for you?

25 A What's that?

JOSHUA BROOKINS - DIRECT

1 Q All of the different charges?

2 A Yeah, it was. I wasn't expecting -- I knew that the
3 trafficking was coming just because of the amount, but I
4 didn't think that they were going to be stacked, the
5 indictments were -- three indictments for distribution or
6 an indictment for PWID. That PWID came the same time as
7 trafficking did but I was only busted one time. If I
8 would have been busted for the distribution first offense
9 the first time that I had met with this informant it would
10 have been enough for me just to sit back and think, "This
11 ain't what I need to do." That amount of time was a zero
12 to 15 plea, you know what I mean? I can get probation for
13 it instead of stacking charges on me and hitting me over
14 the head for really the first time I've ever been in any
15 trouble.

16 Q And that's kind of what your position was is that you
17 really were -- although there were numerous charges, that
18 they were all kind of the same transaction.

19 A Yes, sir.

20 Q And that as a result it was breaking all of that stuff
21 out as a first offender, which you called yourself, you got
22 a significant amount of time?

23 A Yes, sir.

24 Q And do you remember whether or not you were able to go
25 through the discovery on each one of those charges?

JOSHUA BROOKINS - DIRECT

1 A We didn't.

2 Q Did you have all of the discovery?

3 A No, sir.

4 Q And which -- do you remember which charges that you
5 didn't have discovery on?

6 A The only charges that we had a discovery on I believe
7 was from the February 28, 2014.

8 Q Is that the one that they were going to try you first
9 on?

10 A Originally it was the December 6th they were going to
11 try me first on but none of them was true billed stamped
12 and there was no one to do up an indictment for it, it
13 wasn't true billed stamped or anything. But the one after
14 that was February 28th from the video, that's where the
15 video and audio came, the only audio and video I seen the
16 entire time.

17 Q And that was -- so in the scheme of the five different
18 charges that was the second in time.

19 A Yes, sir.

20 Q And all five had separate dates?

21 A Yes, sir.

22 Q So we're talking about actually five separate dates.

23 A Yes, sir.

24 Q Okay. Now, how did you -- when you talked with your
25 attorney you wanted a jury trial.

JOSHUA BROOKINS - DIRECT

1 A I was willing to plead from the get-go but I didn't
2 want to plead -- the only plea deal that I had was 15
3 years, and me not -- I had never been on probation, I
4 wasn't trying to plead to a 15 year plea. I was willing
5 to sit back and I was willing to take a plea but I didn't
6 want to take that much time, so we sat back and waited to
7 see if they would come on down, and she told me that the
8 solicitor didn't want to come off of the 15 years. So
9 whenever I spoke with her later she told me that the
10 informant and my codefendant was going to testify against
11 me, and if I did take it to trial and they testified
12 against me I would be found guilty and I would get the
13 maximum and probably would be sentenced separately on each
14 one of these charges.

15 Q How many co-defendants did you have?

16 A Two during this -- well, two during -- it was four
17 during the trafficking and just one during the February
18 28th indictment.

19 Q All right. And they were arrested as well?

20 A Yes, but none of them was charged.

21 Q None of them were charged?

22 A No, sir.

23 Q Just you?

24 A Yes, sir.

25 Q Now, what I'm curious about is, you know, you and I

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1 talked about your plea.

2 A Right.

3 Q And we'll get to that as far as you making the
4 decision to enter this plea. But your plea had to be
5 freely and voluntarily entered into, and probably what's
6 even more important, knowingly and intelligently entered
7 into.

8 A Right.

9 Q And you're saying that you did not have all of the
10 discovery on these -- on all of these cases.

11 A Right.

12 Q Matter of fact, that's even indicated in the
13 transcript; is that right?

14 A Yes, sir. That's the first time that I realized -- I
15 didn't know that I didn't -- I didn't know that none of
16 the other discovery was in there until after I seen the
17 transcript after I was incarcerated already.

18 MR. THOMAS: Your Honor, could I beg the Court's
19 indulgence for just a second?

20 THE COURT: Yes, sir.

21 (Break in proceedings.)

22 THE COURT: And if you're looking for the transcript
23 trying to find that, I think it's page 207 that references
24 that.

25 MR. THOMAS: Yes, sir, it is. May I approach, Your

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1 Honor?

2 THE COURT: Please.

3 Q Let me ask you just to read this to yourself from here
4 and then over on the next page, which is 208 as well, okay?

5 A What's highlighted?

6 Q Yeah, just what's highlighted, if you'll just read
7 that to yourself.

8 A (Witness complies.)

9 Q Your attorney acknowledged that there was -- that she
10 had not received all of the discovery?

11 A I didn't know that. I didn't know that until I read
12 the transcript.

13 Q But you didn't know that she had not received all of
14 it.

15 A No, sir.

16 Q But you knew that you had not seen all of it.

17 A Exactly.

18 Q And did the Court ask you about it, about waiving any
19 right to this discovery?

20 A I don't believe so.

21 Q Let me show you this again on 208.

22 MR. THOMAS: May I approach, Your Honor?

23 Q And I know this is confusing for you. Look at this
24 right here on 208.

25 A Okay.

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1 Q And those are lines on page 208, lines six through
2 ten, actually I guess it goes on down to six through 13.

3 A Right.

4 Q Okay. Do you remember telling the Judge that you were
5 waiving any right that you would have to see this
6 discovery?

7 A Yes, sir.

8 Q But, in fact, the truth of it is you had not seen the
9 discovery.

10 A No, sir.

11 Q And the truth of it was that your attorney didn't even
12 have the discovery.

13 A No, sir. I came here on my own a few times and asked
14 her paralegal if I could see any videos and listen to any
15 audio that they had throughout the time I was out on bond
16 and she kept saying that we have nothing to show you, we
17 have nothing to show you, so I'm thinking, okay. That's
18 the only part of the discovery I seen was the videos and
19 still photo shots. Listened to the audio, that's the only
20 thing I heard through the whole case.

21 Q The discovery that you did see, what did you think of
22 that discovery? Did you think -- well, just tell me what
23 you think.

24 A It's bogus.

25 Q Huh?

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1 A The discovery was bogus. There was nothing in it,
2 just me smoking a cigarette.

3 Q Did it show any transaction?

4 A No transaction, no hand to hand, no scales, no money,
5 no dope, nothing. And from the December 6th indictment
6 that was before this, he wasn't even wired and prepared to
7 come and purchase anything from me with the video or audio
8 on him. He came -- on the first time he came to visit me
9 to purchase methamphetamine he wasn't wired up or anything
10 but he purchased dope from me apparently.

11 Q Was he going to testify against you?

12 A He was supposed to, yes, sir.

13 Q Which would have been his word against yours?

14 A Yes, sir.

15 Q Did you know who the CI was?

16 A Yes, sir.

17 Q Did you discuss with your attorney whether or not the
18 CI had charges against him or had a criminal record?

19 A Yes, sir.

20 Q And to your knowledge did he have charges or a
21 criminal record?

22 A Yes, sir. Two weeks prior to the December 6, 2013
23 indictment, whenever he wore a wire on me the first time,
24 two weeks before that he was caught for distribution of
25 heroine for his second offense, so he had pending charges

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1 when he started working for the York County DEU.

2 Q Do you know what happened to him?

3 A He's on the street right now.

4 Q Is he in prison?

5 A No, sir. He's got a record of giving false info to
6 law enforcement before, I've got his record in my
7 paperwork too.

8 Q And obviously you wished to go to trial because you
9 had started a trial.

10 A Exactly.

11 Q Now, what was -- do you know what the solicitor's
12 intent was in regard to these charges?

13 A She wanted to try me separately for each one of them.
14 She wanted to try me on the first offense distribution,
15 find me guilty on that one and sentence me to 15 years on
16 the first offense, and then come back a couple of weeks
17 later and then sentence (sic) me to the second offense,
18 and then the third offense and fourth, fifth offense until
19 I got the maximum sentence of up to 70 years in prison.

20 Q And you knew that.

21 A Yes, sir.

22 Q And they didn't have any qualms about telling you that
23 that's what you were going to do.

24 A No, sir.

25 Q And that was upsetting?

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1 A Yeah.

2 Q Because you felt like you were a first time offender.

3 A I am a first time offender.

4 Q Now, the process of this had begun with the February
5 28th of 2000 and, was it 14 charge?

6 A Yes, sir.

7 Q So that's the one they were going to try you on first.

8 A Yes, sir.

9 Q Now, after the pretrial motions were made, do you know
10 whether or not they were successful?

11 A I didn't know until after I was incarcerated. I
12 didn't know the pretrial even consisted of anything but
13 the jury selection. I chose not to be here for the
14 pretrial because I had a new born baby on the way and I
15 wanted to spend time with my mom, my newborn and my
16 girlfriend at the time and my seven year old. She said
17 she could represent me in my absence and that it was only
18 jury selection, so I figured the jury don't know me
19 whether it's going to be a day or two days from now so
20 what's the difference, I might as well spend time with my
21 family before I go to prison.

22 Q And you were actually in your attorney's office. You
23 went to your attorney's office during that period of time?

24 A Tuesday, December 2nd I went to her office.

25 Q But you weren't when the case was called for trial.

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1 A No, sir. She contacted me and let me know that I was
2 on the docket for as early as that following week, but it
3 could take up to a few months.

4 Q But you showed up for court.

5 A Yes, sir.

6 Q And your bond was not revoked.

7 A No, sir.

8 Q Why did you decide to take a plea?

9 A I wanted a lesser offense. I didn't want to plead --
10 I knew that -- from what I was told if they testified
11 against me they would find me guilty on each charge, I
12 didn't want to do 15 years. I got two kids, ain't never
13 been in trouble before, I didn't want to plead it out, I
14 didn't want to. I wouldn't have pled to it but I didn't
15 want but one plea of 15 years. And, you know, you're
16 going to court and if you've never been in trouble before
17 and you've got a 15 year plea in front of you and they
18 ain't coming down off the plea, what do you do? She told
19 me it would be in my best interest to plea, and if I pled
20 I would more than likely get a minimum sentence, if not
21 and I took it to trial and they testified, two witnesses
22 against mine I would be found guilty and they would try me
23 separately.

24 Q You'd been offered a plea of 15 years.

25 A Right, that was the only one I was offered.

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1 Q Only offer and you turned it down.

2 A Yes, sir.

3 Q You then were in court for the trial of this case, the
4 jury had been selected.

5 A Yes, sir.

6 Q And a plea was offered to you, a straight-up plea --

7 A Right.

8 Q -- on all of those charges. And you agreed to accept
9 that.

10 A Yes, sir.

11 Q Okay. What was your understanding, if any, as to how
12 much time you were going to receive if you pled before the
13 Judge to all of those charges?

14 A I believe that I was going to get a minimum sentence.

15 Q What do you mean by sentence?

16 A The minimum of the more violent offenses, the three
17 years on the trafficking. Because the other offenses are
18 zero to 15 offenses and you can get probation for those so
19 I figured if I pled to them you get a less offense.
20 That's the point of pleading, ain't it? You plead guilty
21 so you don't have to get --

22 Q So you thought you were getting a plea bargain.

23 A Yeah. I tried to get a plea deal, I wanted a plea.

24 I wanted a plea so that I could say I plead guilty to all
25 of these charges but I want to be able to come home before

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1 too long, that was the point of a plea.

2 Q Okay. And at the plea when you entered into the plea,
3 do you remember the amount of time, if any, that the State
4 and the solicitor was asking for that you be sentenced to?

5 A Fifteen years.

6 Q Right. And that's the same 15 years offer that you
7 had already turned down.

8 A Yes, sir, that was on the second offense. This is
9 before they dropped everything to first offense, because
10 the simple possession of marijuana, they tried to enhance
11 the PWID and the distribution of meth second, so they
12 dropped it to a first offense. And after they dropped it
13 and I was willing to plead to that I was thinking I would
14 get a lesser offense, and then they still gave me -- they
15 still wanted the 15 years after they dropped it from a
16 second to first.

17 Q All right. And you had been prepared to go to trial
18 on the 15 offer.

19 A Yes, sir, I had no choice.

20 Q Now, just a few other questions. So based upon what
21 you thought was going to happen to you, in the transcript
22 you stood in front of the Court and said that you were
23 waiving any right that you had to review that discovery; is
24 that correct?

25 A Right.

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1 Q Did you understand what you were doing?

2 A No, sir. I didn't know the discovery wasn't really
3 in there until really I looked over the case. I was
4 ignorant to the law.

5 Q You didn't know that your attorney didn't even have
6 the discovery.

7 A I had no idea. I would have never pled -- if I would
8 have known -- if I had looked at the discovery that you
9 had in front of you and everything in front of you I would
10 have never pled.

11 Q And one of the charges was not true billed, do you
12 understand what we're talking about not true billed?

13 A Yes, sir.

14 Q So you did actually waive presentment on one of the
15 charges.

16 A Yes, sir.

17 Q Now, do you believe that your plea when you stood in
18 front of the Court was freely and voluntarily entered into?

19 A Do I believe --

20 Q Do you believe that you freely and voluntarily entered
21 into this plea?

22 A I believe I pled because I expected something
23 different.

24 Q Okay. And probably the more important part of it is
25 the knowing and intelligently, which would have some

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1 association with the discovery.

2 A Right.

3 Q All right. Do you believe that you intelligently
4 entered into this plea?

5 A No, sir.

6 Q Do you believe that you knowingly entered into this
7 plea?

8 A No, sir.

9 Q Had you known then what you know today would you have
10 entered into this plea?

11 A I would have insisted on going to trial.

12 Q Okay. I want to ask you this question because I
13 always ask my client this, I am not implying that I have
14 forgotten something or I have left something out, okay? I
15 just want to get -- this is your day and you have been
16 waiting a long time for the opportunity to take that seat
17 and tell the Court, is there anything else that you feel
18 that I may have forgotten or that I have left out that you
19 feel is important to be brought to the attention of the
20 Court?

21 A I would like to know why of everybody that was
22 involved in this stuff, why I'm the only one who caught
23 any time for it and I'm the only one who was a first time
24 offender. I've never been in trouble before in my life
25 besides simple possession of marijuana. My codefendant

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1 had a distribution of methamphetamine fourth while he was
2 on probation, he was willing to testify and got ten months
3 time served, I got 15 years for a first offense dope
4 charge, and there was even no evidence to convict me of it
5 from the get-go, so, I mean, a lot of stuff blows my mind,
6 but I really can't believe that. I trusted her with my
7 freedom, with my life, that's why I pled. I figured put
8 it in a person's hands that's supposed to be taking care
9 of this case for you because you're ignorant to the law.
10 This is her job. Apparently it wasn't.

11 MR. THOMAS: All right, Mr. Brookins, thank you and
12 answer any questions that the attorney general may have for
13 you.

14 MR. HUNTER: May it please the Court, Your Honor?

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. HUNTER:

18 Q Mr. Brookins, just to go over I think the portion that
19 you read over up there of the transcript where you
20 essentially waived your right to look at the discovery, do
21 you remember that part that they were talking about?

22 A Right.

23 Q And you said you hadn't seen all of the discovery at
24 that point and you didn't really know what you were
25 waiving; is that correct?

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1 A Right.

2 Q And I can't remember if you said it or not, you
3 wouldn't have pled guilty knowing that you were waiving
4 your right to discovery?

5 A If I would have knew there was no discovery through
6 any of the cases, no, I would never have pled.

7 Q Well, I mean, when the Judge is talking about it, how
8 come you didn't speak up or tell him, "I don't want to
9 plead guilty because I haven't seen discovery?"

10 A Because I didn't know what I was doing. I've never
11 been in trouble before. Somebody hangs 15 years over your
12 head you don't know what to think, you don't know what to
13 say. You just look to your left at the person who is
14 representing you and shake your head when she shakes her
15 head, you say yes when she shakes her head.

16 Q Is that what she told you to do?

17 A That's what I did.

18 Q So you just went in and just agreed with everything.

19 A I knew there was audio and video for one time, I knew
20 there was nothing on it. But I knew that if I took that
21 to trial with the testimony of an informant and the
22 codefendant, if I was found guilty I could still get the
23 max. So it was in my best interest -- from what she said
24 it was in my best interest to plead to everything and I
25 more than likely get the minimum because he was a visiting

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1 judge and he would more than likely not seek the max, and
2 I got the max. I pled to getting lesser time. I never
3 said I was not guilty.

4 Q So you're just unhappy with the amount of time that
5 you got.

6 A I got slayed.

7 Q Okay. Now, did she ever make any guarantee as to how
8 much time you would receive?

9 A Nothing was promised.

10 Q Okay. Just making sure. And do you remember telling
11 the Judge that you were guilty?

12 A Yes, sir. That's why I said I never said I wasn't
13 guilty.

14 Q Right. And while they were talking about one time, do
15 you remember telling him, "It happened like two or three
16 times and they tried to indict me on it?"

17 A Right.

18 Q So you're admitting that you're guilty to all of those
19 buys, correct?

20 A Right.

21 Q Okay. Just making sure. Now, as far as discovery
22 goes, did you ever complain to the solicitor's office or
23 the investigators that you weren't ready to go?

24 A I never spoke to the solicitor's office, I never even
25 had a preliminary.

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1 Q Okay. Did you ever tell this to your attorney?

2 A I don't recall.

3 Q But you still chose to go forward with this plea,
4 correct?

5 A I had no choice, it was the one plea. That's the
6 only reason that the trial was even mentioned, but it was
7 one plea. I didn't want to take the 15 year plea, so if I
8 didn't want to take the plea Solicitor Coleman threw me in
9 front of a jury. That's why I pled before I went, because
10 I knew that if I pled I would get lesser time.

11 Q So you didn't want a jury trial.

12 A I wanted to plead, that's why I was willing to plead
13 guilty. That's why the jury never even took the seats.

14 Q Now, you said something about a 15 year offer, that
15 was your first offer.

16 A First and only.

17 Q And there was nothing else after that?

18 A No, sir. Not even after they dropped everything to a
19 first offense, still hit me with 15 years.

20 Q Okay. So essentially as far as this plea is concerned
21 you admitted that you committed the crime, you're unhappy
22 with the time you got, am I understanding that?

23 A I'm unhappy with the time I got and the
24 representation that I had. I didn't know nothing that was
25 in the transcript, I didn't see the transcript until

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1 October of this past year, that's whenever I started
2 putting everything together. There's no way that I was
3 represented to her full ability, there's no way. No
4 matter if I was guilty or not, she didn't represent me to
5 her full ability. If it was she would have said "Look, we
6 don't have the motions of discovery on any of these other
7 things, we're going to take it to trial and we're going to
8 see what we can do with it." All you've got to do is look
9 at that discovery and there's no way you would want
10 somebody to plead guilty, there's no way.

11 Q So you think if you had the discovery you would be not
12 guilty?

13 A If I took it to trial with the evidence that was
14 presented, yeah, not guilty.

15 Q Okay. And even though you didn't get the transcript
16 until later, you were standing there during the hearing,
17 you didn't bring anything up, any complaints?

18 A I had just bonded out of jail five and a half months
19 before I went to court, I had never been to court before
20 besides child support and I was looking at 15 years.

21 Q So you just went along with whatever they told you to
22 do?

23 A I went along with what I was suggested to do in my
24 best -- that's why I pled. Because it's not my job to
25 learn the law and build myself around it, it's not my job,

JOSHUA BROOKS - REDIRECT

1 that's what public defenders and attorneys are for. So
2 yeah, if she says it's in your best interest to plea
3 that's what she was supposed to do. She's representing
4 you, she ain't representing the solicitor's office, or not
5 supposed to anyway.

6 Q But now you don't think it was in your best interest?

7 A Yes, sir.

8 Q All because of the amount of time?

9 A The amount of time and what was on the discovery.

10 MR. HUNTER: Okay. I have nothing else, Your Honor.

11 THE COURT: Any redirect?

12 MR. THOMAS: Yes, sir, Your Honor, just briefly.

13 REDIRECT EXAMINATION

14 BY MR. THOMAS:

15 Q Mr. Brookins, I think you said, and I just want to
16 make sure it was clear, at the time that you entered into
17 this plea you didn't know that your attorney, your defense
18 attorney, did not have all of the discovery.

19 A I had no idea.

20 Q Okay. And you said, I think in your testimony, that
21 you're not a lawyer and that you were depending upon your
22 defense attorney.

23 A Yes, sir.

24 Q To advise you.

25 A Yes, sir.

JOSHUA BROOKS - REDIRECT

1 Q Properly. So could you -- well, let me just ask you
2 this way. Did you -- in making that determination to plea
3 you were relying on your defense attorney to have seen all
4 of the discovery.

5 A Yes, sir.

6 Q To be able to advise you.

7 A Yes, sir.

8 Q And you didn't find this out until later.

9 A Yes, sir.

10 Q Now, you said that you weren't a lawyer and you were
11 talking about guilt in this thing. Without seeing the
12 discovery, did you know whether or not the State could
13 convict you?

14 A No, I didn't. I felt I was guilty.

15 Q But you don't know what the legal requirements or the
16 legal ramifications are in regards to these crimes, do you?

17 A No, sir.

18 Q You don't know what the elements are.

19 A No, sir.

20 Q So you would have to rely upon your attorney to be
21 able to advise you as to whether or not he or she thought
22 that you could be convicted of this crime.

23 A Yes, sir.

24 Q And without having that discovery do you believe that
25 she could properly advise you of that?

JOSHUA BROOKS - REDIRECT

1 A She couldn't have.

2 Q Okay. And based upon what you had seen as far as the
3 discovery that you did see, you felt like their discovery
4 was weak.

5 A Very.

6 Q And you were willing to take it to trial.

7 A Yes, sir. If I had a chance to take it back to trial
8 I would right now.

9 MR. THOMAS: Your Honor, no further questions.

10 THE COURT: All right. Thank you, sir, you can step
11 down. Call your next witness, please.

12 MR. THOMAS: Your Honor, can I beg the court's
13 indulgence for a second?

14 (Break in proceedings.)

15 MR. THOMAS: Your Honor, his family had come into the
16 courtroom and I had missed them earlier. I believe that is
17 the applicant's case.

18 THE COURT: Your case.

19 MR. HUNTER: Your Honor, the State calls Ms. Melissa
20 Inzerillo.

21 The witness, MELISSA INZERILLO, was first duly sworn
22 and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. HUNTER:

25 Q Good morning. Would you please state your name for

MELISSA INZERILLO - DIRECT

1 the record?

2 A Melissa Inzerillo.

3 Q And where are you working?

4 A York County Public Defender's Office.

5 Q Is that where you were working in 2014?

6 A Yes.

7 Q Do you recall how you became involved in Mr. Brookins
8 case?

9 A He was appointed to me I believe around April of
10 2014, his initial appearance was May 27th of 2014.

11 Q Okay. Were you his only attorney throughout this
12 process?

13 A I believe so. There were some instances where they
14 were trying to retain private counsel but I don't recall
15 them ever doing it.

16 Q Do you remember when you first met with Mr. Brookins?

17 A Yes, on May 27th.

18 Q And how often did you meet with him, or how many times
19 did you meet with him before this plea?

20 A I met with him 11 times.

21 Q How many was that?

22 A Eleven.

23 Q And he was out on bond. Were those in your office?

24 A Yes, either in the office or on the phone. There was
25 a period of time where he worked out of state and so I

MELISSA INZERILLO - DIRECT

1 would talk with him about his case on the phone.

2 Q Can you give us just a brief background of what y'all
3 talked about in these meetings?

4 A Sure. Mr. Brookins had three CI buys, and then was
5 caught in a car with some additional methamphetamine. His
6 initial offer was a 15 year offer on first, and ten years
7 on trafficking, that was conveyed to him in October. Mr.
8 Brookins had a very minimal prior record and did not like
9 the offer. And over the course of time we discussed the
10 offer, we discussed his wishes to go into drug court,
11 which I eventually applied him into drug court.. And then
12 he was insistent to me over about three meetings that he
13 did wish to plead to everything straight up as first. I
14 had explained to him several times about the enhancement
15 issues in this case both with the possession of marijuana
16 that he had, which is an unsettled question in this
17 county, as well as ability of the State to try the cases
18 individually, which would result in a mandatory minimum,
19 and then eventually looking at a life without parole. So
20 we had several discussions about his case. Mr. Brookins
21 was, I felt, always very up front with me about his
22 involvement in the case, that he was an addict but he
23 dealt drugs to support his habit as well as his family.
24 He felt strongly that he was a first time offender, but I
25 explained to him legally there would be a question about

MELISSA INZERILLO - DIRECT

1 that, and certainly that there would be an implication
2 between a first and second with him. And he was very
3 adamant with me on at least three occasions that if he
4 took a plea he wished to take all the charges as firsts
5 and he would be willing to plead straight-up to those.

6 Q And can you explain your plea negotiations with the
7 State?

8 A Yes. She was unwilling to change her offer. She was
9 unwilling to recommend drug court and so I applied Mr.
10 Brookins to drug court, essentially not without her
11 knowledge but without her permission. Once the State
12 found out about that they called drug court and ended that
13 application. Once we got closer to trial he came into
14 court and rejected the offer on the record. And after
15 that closer to trial he was offered to plead to
16 distribution first for straight-up which would expose him
17 to 15 years, but I explained to him that that would also
18 make -- that would only take care of this case and it
19 would make any subsequent convictions definitely seconds,
20 whereas we may have had an argument about the possession
21 of marijuana on the one that we had. He again rejected
22 that offer and indicated that he wished to plead to
23 everything straight-up as firsts.

24 Q Now, during this time -- and I believe you touched on
25 it a little bit during the plea hearing, but tell us about

MELISSA INZERILLO - DIRECT

1 the discovery, receiving parts, not receiving parts. Can
2 you give us a background on that?

3 A Absolutely. In this county with this particular
4 solicitor, because it dealt with a confidential informant,
5 no videos or discovery was turned over while a plea was --
6 while an offer was pending. The only thing we got were
7 still shots, which in her -- in the explanation that
8 she -- perhaps on the video that she thought would be
9 relevant. I reviewed those with Mr. Brookins, explained
10 that that would be a condition of any offer, that he would
11 not be -- we would not get any additional discovery. Once
12 it was noticed for trial we did get a confidential packet,
13 which included video as well as information regarding the
14 confidential informant. I reviewed that with him. We
15 only got discovery on the one case that was going to
16 trial, and I was very aware of Mr. Brookins' wish to try
17 to take care of everything, but at that point I felt like
18 I was a bit hemmed in. So I spoke to Mr. Brookins about a
19 possible legal motion that we could make of joinder to ask
20 to join all of the charges, which perhaps if it was
21 granted then that would allow us to get the discovery on
22 the remaining charges so that we could proceed and perhaps
23 have one trial and get all of the discovery.

24 Q And you did make that joinder motion, correct?

25 A I did make that joinder motion, yes.

MELISSA INZERILLO - DIRECT

1 Q And it was denied?

2 A It was denied and then reopened by the Judge and
3 granted.

4 Q So during this time did he have any questions about --
5 or concerns about pleading without the rest of the
6 discovery?

7 A No. In fact he was insistent with me that he wanted
8 to take care of everything we had discussed that we were
9 missing some discovery, he was insistent that he wanted to
10 take care of everything all as firsts and did not express
11 any concern to me about missing the discovery.

12 Q Now, in your discussions with him, did he ever give
13 you his version of the facts or alibis, anything to help
14 his defense?

15 A No. Mr. Brookins in this case was very strong on
16 mitigation I felt. Mr. Brookins, he was incarcerated for
17 some amount of time in the county, he got out and he
18 worked, I believe overcame his addiction, everything I
19 explained to Judge Macaulay I absolutely believed. He on
20 his own overcame his addiction, was a family man, had a
21 very good job, I think at one point he worked as a
22 linesman and I felt like he had extremely good mitigation.
23 But he also in our conversations, even from the first
24 conversation, admitted to me that he did deal and then
25 later on was -- did confide in me that he was an addict

MELISSA INZERILLO - DIRECT

1 and he dealt to support his habit.

2 Q So did he ever mention anything that might be
3 exculpatory?

4 A No. In fact, he repeatedly told me that he did it.
5 He always just wanted to work out the case in the
6 parameters which it was ultimately worked out.

7 Q Okay. And do you believe a plea was in his best
8 interest here?

9 A I do. Initially I had some concerns about if the
10 Judge was going to rule that the possession of marijuana
11 was enhanceable, which would keep him as a second. I was
12 concerned about any further trials the State had noted on
13 the record. According to my notes at his offer rejection
14 hearing that it was her intention to repeatedly try Mr.
15 Brookins. I explained to Mr. Brookins that if he was
16 convicted of a distribution in the trial that we had
17 started, that that would not only make the next trial
18 enhanceable but would result in a mandatory minimum time
19 on that charge. And I felt Mr. Brookins essentially
20 taking the case was pretty fair, that he did feel like he
21 was a first offender, he did have a minimal record, it was
22 just how were we going to get there and that's what took
23 awhile.

24 Q No, did you discuss with him the rights he was giving
25 up by pleading guilty?

MELISSA INZERILLO - DIRECT

1 A Yes. Usually -- I always go over that, I go over
2 trial rights with him. We took a little bit different
3 posture in his case in that he decided to waive his
4 presence at pretrial, and so I believe at least two or
5 three times I went TIA rights, rights at trial, if he were
6 to plead the rights that he would have. I'm sometimes a
7 little bit hesitant in case he is to plead straight-up so
8 I expressed that to him as well. I believe he fully
9 understood all of the rights he was giving up.

10 Q Did he ever have any questions before or during the
11 plea about that he didn't understand what was going on?

12 A No.

13 Q And do you feel like you guys were prepared for this
14 plea, that you spent enough time to go forward with this
15 plea?

16 A With the plea, yes. It happened sort of out of the
17 blue but I felt like it was in line with what Mr. Brookins
18 had expressed to me his wish was. Of course, we all had
19 sort of a pretrial or trial posture, but we had reviewed
20 all of the information and implications of a plea.

21 MR. HUNTER: Beg the Court's indulgence one second,
22 Your Honor.

23 THE COURT: Yes, sir.

24 (Break in proceedings.)

25 MR. HUNTER: No further questions.

MELISSA INZERILLO - CROSS

1 MR. THOMAS: May it please the Court?

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. THOMAS:

5 Q Good morning.

6 A Good morning.

7 Q He had like, I guess, kind of a stacking of charges
8 instead of a number of different offenses?

9 A That's right.

10 Q Kind of an odd case. Like you said, I see his point
11 that he considered himself as a first offender, but the
12 solicitor's office took a view that he had these multiple
13 crimes?

14 A They always take that view. They do one long
15 investigation on a person, send out a confidential
16 informant multiple times, and then after about two or
17 three buys depending on the strength of the confidential
18 informant then arrest, and that's what happened to Mr.
19 Brookins. He was arrested, I think, after the second or
20 third one. And in my joinder motion to Judge Macaulay
21 argument was that since it was an ongoing investigation it
22 should be treated as such and everything should be joined,
23 and the State took the opposite position that it was --
24 there were separate investigations, each investigation
25 with the buy. Judge Macaulay initially agreed with the

MELISSA INZERILLO - CROSS

1 State and denied the motion for joinder.

2 Q Is that kind of the rule rather than the exception, I
3 guess, with Mr. Brookins? That's how they transact that
4 business?

5 A It's how it is here.

6 Q Yeah. And so they were prepared to try and convict
7 him, try and convict him and try to enhance it every time?

8 A Yes, sir.

9 Q Did they use that at all in their plea offers to try
10 to enhance those offers, make them more time rather than
11 less?

12 A It's not overt. But the understanding is with the
13 way that the cases are spliced that the offer takes care
14 of everything, it's a packaged deal, that's an offer which
15 is why no discovery was turned offer on any cases, and
16 then once it gets to trial then the case is spliced for
17 trial and each deal is done.

18 Q That's an odd approach. So what they do is that they
19 designate one of the crimes to be tried and they provide
20 you discovery on that crime. At that point in time do they
21 provide you discovery in the other crimes?

22 A No. I think in this case the only additional thing
23 they intended to get into was a statement that he made at
24 the time he was arrested for trafficking.

25 Q Yeah. And the offer, to me it appeared that they kind

MELISSA INZERILLO - CROSS

1 of wanted it both ways, they wanted to try him singly but
2 they wanted to use a statement that he had made in the
3 trafficking offense as an admission.

4 A That's correct, and I think the Judge ruled on --

5 Q And you objected to it. But they wanted then -- at
6 that point they wanted to kind of combine the cases?

7 A Right.

8 Q For the purposes of conviction.

9 A For the purposes of presenting their case to the
10 jury.

11 Q Right. So in essence there was nothing -- I don't
12 know exactly how to say this, there was nothing special
13 about Mr. Brookins in regards that "We want to do this to
14 him," it was more of a just general pattern of behavior.

15 A I would agree to that. I didn't feel he was being
16 singled out.

17 Q Singled out because, "Oh, we think he's dangerous or a
18 he's huge drug dealer," et cetera, it was just more of a
19 "This is the way we do it."

20 A I think it's that. And I think perhaps what
21 Solicitor Shelton put on the record about that their
22 disbelief of his addiction also was part of her reason for
23 asking for the amount of time.

24 Q Does that give you concern in representing clients?

25 Does that hinder you in any manner if you can't have the

MELISSA INZERILLO - CROSS

1 discovery on the other cases?

2 A Well, as a defense attorney I always would like to
3 have the discovery in everything that my client is facing.

4 Q Because you have to advise your client -- they don't
5 have to accept it but you have to advise your client as to
6 whether or not you believe what their chances of being
7 convicted are and what the plea offer is and give them that
8 information so they can balance those -- the exposure
9 versus the risk, the benefit of taking the plea.

10 A That's certainly a defense argument. But the State's
11 argument, as has been tradition here and was at the time
12 with Mr. Brookins, was that if there is an offer on the
13 table the State could withhold the discovery because the
14 defendant is not entitled to an offer.

15 Q Right. Had you seen the discovery in some of the
16 other -- I know there was at least one case and it appears
17 from the record that it might have been two.

18 A In terms of the videos or anything like that?

19 Q Yeah.

20 A No, it was never turned over. And then in the timing
21 of this case when Judge Macaulay reopened the joinder and
22 that happened so quickly and I spoke to Mr. Brookins, it
23 was decided very quickly to enter the plea.

24 Q Because Judge Macaulay revisited that issue because
25 they still wanted to do something with trying to sentence

MELISSA INZERILLO - CROSS

1 him separately.

2 A Yes and no. Mr. Brookins before we started had asked
3 me again to tell the Judge on the record that he was
4 willing to plead to everything as firsts.

5 Q Right.

6 A And I don't normally do that, but out of deference to
7 Mr. Brookins I did do that, and stated to the Judge on the
8 record that it was his wish to do it. Judge Macaulay took
9 that into consideration and I think -- I don't want to get
10 inside his head, but used some conversation with the State
11 as a reason to reopen the motion, which procedurally would
12 allow Mr. Brookins to come in and plead straight-up to
13 firsts as he was wishing.

14 Q Right. Did it give you any concern that he was
15 waiving -- and I guess maybe it's kind of self explanatory
16 because it's in the record -- some concern that he was
17 giving up rights to see this discovery in the plea?

18 A Yes and no, I think. I would always want my clients
19 to see the discovery, but in Mr. Brookins' case I felt
20 like he was getting a good benefit from being allowed to
21 plead and wrap up his entire case as firsts. I think that
22 him being allowed to do that, plus in my conversations
23 with Mr. Brookins, he was always firm with me that he
24 had -- was dealing, it was in the throws of addiction.
25 And so he didn't convey to me any concerns that he had

MELISSA INZERILLO - CROSS

1 that I felt would have been answered by my view of the
2 discovery, if that makes sense.

3 Q Let me ask you a question, and I don't know if you can
4 answer it or not. Do you feel that by the State's activity
5 of multiple charges, multiple trials and their policy of
6 not allowing you to have discovery on the other cases, does
7 that coerce the defendant, or maybe coerced Mr. Brookins,
8 into entering in pleas kind of blindly, in other words it's
9 a take it or leave it deal? "We know we can convict you,
10 you don't know, if you want to roll these dice we'll roll
11 them but this is what we offered you."

12 A You mean during the offer phase when the discovery is
13 withheld?

14 Q Yeah.

15 A I don't want to say the word coercion because I think
16 it has a lot of connotations and --

17 Q I was thinking you might not be able to answer that
18 question, but --

19 A I will go so far as to say as a defense attorney I
20 would like for the State to provide the discovery in a
21 case.

22 Q Right. Because a plea has to be entered freely and
23 voluntarily, and probably in this case the words knowingly
24 and intelligently are the strongest of the issues.

25 A I think so. But I think clients can enter into pleas

MELISSA INZERILLO - CROSS

1 knowingly and intelligently understanding everything about
2 their case, and so I don't always think just the lack of
3 discovery will negate all of that, but I do think --

4 Q Have you ever seen anybody LWOP'd that way?

5 A Trying multiple cases?

6 Q Uh-huh.

7 A I can't recall right offhand if I've seen a LWOP.
8 It's threatened a lot, and it is -- in my experience, Mr.
9 Thomas, what generally happens is they'll try a case or
10 two, they'll get a significant amount of time and then
11 stop.

12 Q And then stop.

13 MR. HUNTER: Your Honor, if I can beg the Court's
14 indulgence for just a second?

15 THE COURT: Yes, sir.

16 (Break in proceedings.)

17 Q The testimony from Mr. Brookins was that he didn't
18 know at the time, I guess until he got a transcript, that
19 you had not seen the discovery. Do you remember -- do you
20 know if you had talked to him about that, that you had not
21 seen it?

22 A I did. I remember him -- we had lots of discussions
23 about the discovery, and because I was trying to think
24 outside the box on his case and do a joinder motion I did
25 speak with him about that. Generally what I do with my

MELISSA INZERILLO - CROSS

1 clients is make sure they understand all the pretrial
2 motions that I'm making so they understand the impact of
3 them. And his case was a little bit unusual in that I did
4 put in the joinder motion because I felt like he had
5 always been up front with me about what his wishes were
6 for the case, and procedurally and legally that was the
7 only way I could think of to join everything together to
8 either get him a chance to plead or --

9 Q I like that motion.

10 A Thank you.

11 Q It was denied, it was revisited but I like that.

12 MR. THOMAS: Your Honor, if I can beg the Court's
13 indulgence.

14 THE COURT: Yes, sir.

15 (Break in proceedings.)

16 MR. THOMAS: Your Honor, I have no further questions.

17 THE COURT: Was the joinder motion handled prior to
18 these proceedings or was it in this transcript somewhere?

19 THE WITNESS: It should be in the transcript.

20 THE COURT: Okay.

21 MR. HUNTER: It's the first issue, Your Honor,
22 pretrial.

23 THE COURT: Okay. I'll start at the back and I'll --
24 very good.

25 MR. HUNTER: I believe it starts on page 87.

MELISSA INZERILLO - CROSS

1 THE COURT: And just so that I am up to speed, you
2 were talking about the discovery and the way things are
3 done typically here, and if you accept the offer do you
4 then get to see the discovery?

5 THE WITNESS: No. Once you accept the offer and plead
6 the case is finished.

7 THE COURT: Okay. But you don't get a chance to view
8 it after accepting the offer but prior to the plea.

9 THE WITNESS: That's correct.

10 THE COURT: Do you get a chance to see the stills or
11 anything?

12 THE WITNESS: Yes. In his case we were given some
13 stills, and then this particular solicitor might note if
14 it's a bad video or the audio is bad or anything like that.

15 THE COURT: So are you given kind of the -- what I'm
16 trying to get a feel for is whether you're apprise or the
17 defendant is apprized of the relative strength of the
18 State's case? Like, "Here are the stills, this is clearly
19 you, this is an incident from January 1st. Here are the
20 stills from incident on January 3rd. And if you take it to
21 trial you're going to get an audio that clearly reflects
22 you dealing." Is that sort of information conveyed prior
23 to --

24 THE WITNESS: It depends on the case.

25 THE COURT: Okay.

MELISSA INZERILLO - CROSS

1 THE WITNESS: Sometimes the stills we get are a bit
2 inadequate, it just shows perhaps the person sitting in the
3 car, my client sitting in the car. Sometimes depending on
4 the clarity of the video a still shot can be pulled showing
5 a transaction or drugs in hand or something like that that
6 might show the strength of the case. There are some
7 instances with some solicitors where they have the defense
8 sign a protective order with the understanding that only
9 certain information will be conveyed and the defense can
10 watch a video, but that is not done across the board and
11 this particular solicitor does not do it. But in terms
12 of -- to be honest with you, Your Honor, I don't know
13 because I don't see the videos. In this case I can't tell
14 if I got all of the information. But I, you know, may get
15 information about it's a blurry video, it's dark, you don't
16 see anything but this is what I hear, but it varies per
17 case.

18 THE COURT: All right. Aside from that general
19 overview as it relates to Mr. Brookins' individual case,
20 again, you do believe that he wanted to -- or he expressed
21 to you a desire to wrap all of this up together to avoid
22 the potential for successive convictions and successive
23 enhancements, and he understood what he was doing --

24 THE WITNESS: Yeah.

25 THE COURT: -- when he waived that discovery, you went

MELISSA INZERILLO - CROSS

1 over that with him?

2 THE WITNESS: Yes, Your Honor. He told me that, I
3 think I counted in my notes, at least three times.

4 THE COURT: All right. Redirect?

5 MR. HUNTER: Nothing else, Your Honor.

6 THE COURT: Recross?

7 MR. HUNTER: No, Your Honor.

8 THE COURT: Thank you, you can step down. Any
9 additional witnesses?

10 MR. HUNTER: No more witnesses, Your Honor.

11 THE COURT: Anything in reply or anything?

12 MR. HUNTER: I could make a closing argument but I
13 don't think it's necessary, Your Honor, I think everything
14 has been presented.

15 THE COURT: Very good. The Court will reflect on this
16 and try and locate that first portion of the transcript
17 that was referenced a moment ago about the joinder motion
18 on page 87, and I'll have it under advisement and hope to
19 have you something in the next day or two.

20 MR. THOMAS: Thank you, Your Honor.

21 MR. HUNTER: Thank you.

22 (End of the hearing.)

23

24

25

1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of Common Pleas
8 for York County, South Carolina, on the 19th day of
9 April, 2016.

10 I do further certify that am neither of kin, counsel,
11 nor interest to any party hereto.

12

13

October 10, 2016

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Michael C. Watkins

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Court Reporter

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304
STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-46-0585

JOSHUA BROOKINS

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: The Court has reviewed the allegations made by the Applicant, as well as all pertinent documents, the applicable law, and considered the testimony at the hearing held this week. The court finds that Applicant is not entitled to post-conviction relief. The Attorney General's office will prepare a formal order to accompany this Form and will submit it to the court within 30 days.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

FILED-RECEIVED

2016 APR 25 PM 4:55

DAVID HAMILTON
S.C.P.C. & G.S.
YORK COUNTY, SC

For Clerk of Court Office Use Only

This judgment was entered on the 25th day of April, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 25th day of April, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Assistant Attorney General Justin Hunter

Tommy Thomas, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
David Hampton
CLERK OF COURT

Court Reporter:

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.**

PAGE 1.
This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK.)

Joshua Brookins,
S.C.D.C. #362351)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-585

ORDER OF DISMISSAL

FILED-RECEIVED
2016 MAY 27 PM 4:18
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 24, 2015. Respondent made its Return on or about December 22, 2015. An evidentiary hearing into the matter was convened on April 19, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Tommy Thomas, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Melissa Inzerillo, Esquire, also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the October 2014 term of the York County Grand Jury for Possession With Intent to Distribute Methamphetamine (2014-GS-46-2999), Trafficking in Methamphetamine (2014-GS-46-3000), Distribution of Methamphetamine (2014-GS-46-3001), and Distribution of Methamphetamine

(2014-GS-46-3002). Applicant was indicted at the December 2014 term of the York County Grand Jury for Distribution of Methamphetamine (2014-GS-46-3819). Applicant was represented by Melissa Inzerillo, Esquire (hereinafter "Counsel"). On December 4, 2014, Applicant pled guilty before the Honorable Alexander Macaulay as indicted and was sentenced to concurrent terms as follows:

(2014-GS-46-2999) Possession With Intent to Distribute Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years;
(2014-GS-46-3000) Trafficking in Methamphetamine, 1st offense	Ten years imprisonment
(2014-GS-46-3001) Distribution of Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years
(2014-GS-46-3002) Distribution of Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years
(2014-GS-46-3819) Distribution of Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years

Applicant's counsel filed a notice of appeal and notified the Court of Appeals pursuant to Rule 203(B) SCACR that she did not believe there was a good faith basis for the appeal. By Order filed February 13, 2015, the South Carolina Court of Appeals dismissed the appeal. The Remittitur was sent March 10, 2015.

Allegations

In his application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

II. SUMMARY AND EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he met with Counsel three times prior to his guilty plea and never saw any of the evidence against him. He testified that he was originally charged with distribution of methamphetamine second offenses but these were later changed to first offenses at the plea. Applicant testified that the only evidence against him was a video of him smoking a cigarette. He further testified that he and Counsel looked at the disc of evidence but this disc only had audio and video from one of the confidential informant's buys.

Applicant testified that he was willing to plead guilty, but not to a fifteen year sentence. He testified that although he waived his right to see discovery on one count of distribution of methamphetamine, he did not fully realize that all of the discovery had not been produced until he later read the transcript. He testified that he did not know what he was doing at the guilty plea but Counsel told him that it was in his best interest to plead guilty. Applicant further testified that he decided to plead guilty because he wanted a lesser offense than his original second offense charges. He testified that he thought he would get a minimum sentence even though the State asked for fifteen years. He testified that he expected a different result from the plea and does not believe that his plea was intelligently and knowingly made. Applicant testified that he felt he was guilty but also questioned why he was the only person involved who got active time.

Counsel's Testimony

Counsel testified that Applicant's charges all stemmed from buys made on Applicant by the State's confidential informant. She testified that the State initially offered a fifteen year plea offer but Applicant did not like the offer. She testified that Applicant wanted to plead guilty if the charges would be first offenses instead of second offenses. Counsel testified that Applicant

was very upfront about his involvement in the crimes from the beginning. She testified that she tried to sign Applicant up for Drug Court but he was rejected.

Concerning the discovery, Counsel testified that video evidence was not initially produced because of the State's rule to protect the identity of the confidential informant, but picture stills of the video were produced. She testified that she received more information as trial approached on one of the buys but Applicant wanted to plead to everything. Counsel testified that the State's plea deal was a package deal and she believed Applicant was benefitting by wrapping up all of his cases at one time even without seeing the full videos. She testified that she had no concerns that would have been answered by more discovery.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was

deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Applicant alleges Counsel was ineffective in her advice surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527

S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

Applicant has failed to meet his burden in proving Counsel was ineffective in any regard. This Court finds that Counsel properly relayed the State's plea negotiations and went over the discovery with Applicant. This Court finds that Counsel was not ineffective for allowing Applicant to waive viewing discovery on one distribution charge because the plea court made sure Applicant was well aware of the consequences of waiving presentment on this charge. This Court also finds that Applicant benefitted from pleading guilty to all of his charges as first offenses at one time, especially when Applicant admitted his involvement to Counsel.

Applicant testified that he wished to plead guilty to all first offense crimes despite being charged with second offense crimes, which is exactly how he pled. This Court finds that Applicant has not shown that he was prejudiced by any of Counsel's actions as he has failed to show that he would not have pled guilty but would have gone to trial but for Counsel's actions. Accordingly this allegation must be dismissed.

Involuntary Guilty Plea

Applicant further argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. To find a guilty

plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims his plea was given involuntarily because he did not get to see all of the discovery against him. This Court finds that the record reflects that Applicant was fully advised of the rights he was giving up by pleading guilty, including challenging the evidence against him. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Counsel's testimony regarding her preparation and advice concerning the case, and that she did not believe any concerns would be resolved by seeing discovery on the last controlled buy. The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86

(2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be dismissed

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

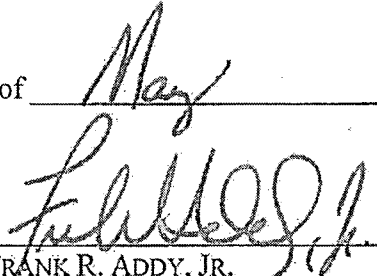
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

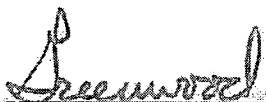
395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23rd day of May, 2016.


FRANK R. ADDY, JR.
Presiding Judge
Sixteenth Judicial Circuit

 Greenwood, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

Joshua Brookins,
S.C.D.C. #362351

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2015-CP-46-585

AMENDED ORDER OF DISMISSAL

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

2016 JUN 22 PM 2:34

FILED-RECEIVED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 24, 2015. Respondent made its Return on or about December 22, 2015. An evidentiary hearing into the matter was convened on April 19, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Tommy Thomas, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Melissa Inzerillo, Esquire, also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the October 2014 term of the York County Grand Jury for Possession With Intent to Distribute Methamphetamine (2014-GS-46-2999), Trafficking in Methamphetamine (2014-GS-46-3000), Distribution of Methamphetamine (2014-GS-46-3001), and Distribution of Methamphetamine

211

(2014-GS-46-3002). Applicant was indicted at the December 2014 term of the York County Grand Jury for Distribution of Methamphetamine (2014-GS-46-3819). Applicant was represented by Melissa Inzerillo, Esquire (hereinafter "Counsel"). On December 4, 2014, Applicant pled guilty before the Honorable Alexander Macaulay as indicted and was sentenced to concurrent terms as follows:

(2014-GS-46-2999) Possession With Intent to Distribute Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years,
(2014-GS-46-3000) Trafficking in Methamphetamine, 1st offense	Ten years imprisonment
(2014-GS-46-3001) Distribution of Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years
(2014-GS-46-3002) Distribution of Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years
(2014-GS-46-3819) Distribution of Methamphetamine, 1st offense	Fifteen years imprisonment provided upon the service of ten years the balance is suspended with probation for five years

Applicant's counsel filed a notice of appeal and notified the Court of Appeals pursuant to Rule 203(B) SCACR that she did not believe there was a good faith basis for the appeal. By Order filed February 13, 2015, the South Carolina Court of Appeals dismissed the appeal. The Remittitur was sent March 10, 2015.

Allegations

In his application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

2/18

II. SUMMARY AND EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he met with Counsel three times prior to his guilty plea and never saw any of the evidence against him. He testified that he was originally charged with distribution of methamphetamine second offenses but these were later changed to first offenses at the plea. Applicant testified that the only evidence against him was a video of him smoking a cigarette. He further testified that he and Counsel looked at the disc of evidence but this disc only had audio and video from one of the confidential informant's buys.

Applicant testified that he was willing to plead guilty, but not to a fifteen year sentence. He testified that although he waived his right to see discovery on one count of distribution of methamphetamine, he did not fully realize that all of the discovery had not been produced until he later read the transcript. Applicant was also made aware from Counsel that she did not receive discovery on one count of distribution of methamphetamine. He testified that he did not know what he was doing at the guilty plea but Counsel told him that it was in his best interest to plead guilty. Applicant further testified that he decided to plead guilty because he wanted a lesser offense than his original second offense charges. He testified that he thought he would get a minimum sentence even though the State asked for fifteen years. He testified that he expected a different result from the plea and does not believe that his plea was intelligently and knowingly made. Applicant testified that he felt he was guilty but also questioned why he was the only person involved who got active time.

Counsel's Testimony

Counsel testified that Applicant's charges all stemmed from buys made on Applicant by the State's confidential informant. She testified that the State initially offered a fifteen year plea

offer but Applicant did not like the offer. She testified that Applicant wanted to plead guilty if the charges would be first offenses instead of second offenses. Counsel testified that Applicant was very upfront about his involvement in the crimes from the beginning. She testified that she tried to sign Applicant up for Drug Court but he was rejected.

Concerning the discovery, Counsel testified that video evidence was not initially produced because of the State's rule to protect the identity of the confidential informant, but picture stills of the video were produced. She testified that she received more information as trial approached on one of the buys but Applicant wanted to plead to everything. Counsel also testified that she did not receive discovery on one of the counts of distribution of methamphetamine. Counsel testified that the State's plea deal was a package deal and she believed Applicant was benefitting by wrapping up all of his cases at one time even without seeing the full videos. She testified that she had no concerns that would have been answered by more discovery.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Applicant alleges Counsel was ineffective in her advice surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

Applicant has failed to meet his burden in proving Counsel was ineffective in any regard. This Court finds that Counsel properly relayed the State's plea negotiations and went over the discovery with Applicant. This Court finds that Counsel was not ineffective for allowing Applicant to waive viewing discovery on one distribution charge because the plea court made sure Applicant was well aware of the consequences of waiving presentment on this charge. This Court also finds that Applicant benefitted from pleading guilty to all of his charges as first offenses at one time, especially when Applicant admitted his involvement to Counsel.

Applicant testified that he wished to plead guilty to all first offense crimes despite being charged with second offense crimes, which is exactly how he pled. This Court finds that Applicant has not shown that he was prejudiced by any of Counsel's actions as he has failed to

show that he would not have pled guilty but would have gone to trial but for Counsel's actions. Accordingly this allegation must be dismissed.

Involuntary Guilty Plea

Applicant further argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims his plea was given involuntarily because he did not get to see all of the discovery against him. This Court finds that the record reflects that Applicant was fully advised of the rights he was giving up by pleading guilty, including challenging the evidence against him. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Counsel's testimony regarding her

preparation and advice concerning the case, and that she did not believe any concerns would be resolved by seeing discovery on the last controlled buy. The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be dismissed

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559,

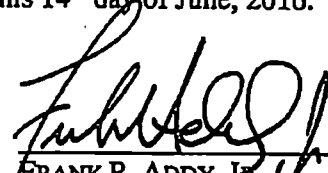
563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14th day of June, 2016.


FRANK R. ADDY, JR.
Presiding Judge
Sixteenth Judicial Circuit

Greenwood, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

2015 FEB 25 AM 9:33

At a Court of General Sessions convened on October 9, 2014, the Grand Jurors of York County present upon their oath

POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE

On or about March 27, 2014, the Defendant, Joshua Kenneth Brookins, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver methamphetamine, in violation of the provisions of Section 44-53-370. Said incident occurred in York County, South Carolina all in violation of Section 44-53-375 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

DOCKET NO. 2014-GS-46-02999

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

October 9, Term 2014

I hereby appear in my own proper person and plead guilty to the within indictment or to

ag

ARREST WARRANT NUMBER

2014A4610200470

THE STATE

vs.

Defendant

ACTION OF GRAND JURY

JOSHUA KENNETH BROOKINS

TRUE BILL

Foreperson of Grand Jury
Date: 10/9/14

VERDICT

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
METHAMPHETAMINE

SC Code: 44-53-375(B)(1)
CDR Code: 3199

Foreperson of Petit Jury
Date:

Witness
C.C.C. PLS. AND G.S. Specialist

OF YORK

VS:

JOSHUA KENNETH BROOKINS

A: Josh Brookins, Joshua K Brookins

Race: White

Sex: M

Age: 26

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

29732

2015 FEB 25 - AM 9:33

DL# [REDACTED]

SID# [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2014GS4602999

A/W: 2014A4610200470

Date of Offense: 03/27/2014

S.C. Code §: 44-53-0375 (B) (2)

CDR Code #: 3199

SENTENCE SHEET

TO: POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE 1st offense

In violation of § 44-53-0375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3199

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(def.'s initials)

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

ATTORNEY:

Misti Shelton, Assistant Solicitor

SC Bar # 09393

Defendant

Attorney for Defendant

69416
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for 6 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____, plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____

\$ _____

§14-1-206 (Assessments 107.5%)

\$ _____

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$100-

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ _____

§56-5-2995 (DUI Assessment)

\$12

\$ _____

§56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso 47.9 (Public Def/Prob)

\$500

\$ _____

§14-1-212 (Law Enforce. Funding)

\$25

\$25-

§14-1-213 (Drug Court Surcharge)

\$150

\$150-

§50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

Proviso 90.5 (SCCA Surcharge)

\$5

\$5-

3% to County (if paid in installments)

\$

\$ _____

TOTAL

\$280-

☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: Wanda Nelson

SCCA/217 (03/2011)

Presiding Judge: [Signature]

Judge Bar ID: [Signature]

Sentence Date: 12-4-14

Judge Code: 2063

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

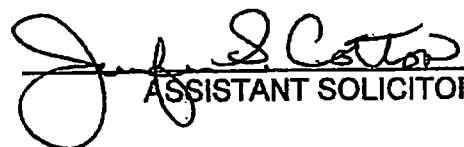
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2015 FEB 25 AM 9:34

At a Court of General Sessions, convened on October 9, 2014, the Grand Jurors of York County present upon their oath

TRAFFICKING IN METHAMPHETAMINE

On or about March 27, 2014, the Defendant, Joshua Kenneth Brookins, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more of methamphetamine, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). Said incident occurred in York County, South Carolina, all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

WITNESSES

DEU / Faulkenberry

ag

ARREST WARRANT NUMBER

2014A4610200471

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 10/9/14

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-46-03000

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 9, Term 2014

THE STATE

vs.

JOSHUA KENNETH BROOKINS

Indictment for

TRAFFICKING IN METHAMPHETAMINE

SC Code: 44-53-375(C)(1)

CDR Code: 0450

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:
C.C. CLERK AND G.S.

Special Agent

~~STATE OF SOUTH CAROLINA~~
~~COUNTY OF YORK~~
STATE VS.

INDICTMENT/CASE#: 2014GS4603000
A/W: 2014A4610200471
Date of Offense: 03/27/2014
S.C. Code §: 44-53-0375(C)(1)
CDR Code #: 0450

JOSHUA KENNETH BROOKINS
AKA: Josh Brookins, Joshua K Brookins
Race: White Sex: M Age: 26
DOB: SS#:
Address:
City, State, Zip: 29732
DL# SID#

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: TRAFFICKING IN METHAMPHETAMINE
In violation of § 44-53-0375(C)(1) of the S.C. Code of Laws, bearing CDR Code # 450

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: 65393 X 69416
Miss Shelton, Assistant Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered ☐ PTUP
Total: \$ _____ plus 20% fee: \$ _____ 500 days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$100 -
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$25 -
§14-1-213 (Drug Court Surcharge)	\$150	\$150 -
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$5 -
3% to County (if paid in installments)	\$	\$
TOTAL		\$280 -

Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☒
Random Drug/Alcohol Testing ☒
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund
Other: PSE suspended while
probation suspended

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

Clerk of Court/Deputy Clerk: Daniel Hamilton
Court Reporter: Wanda Nelson
SCCA/217 (03/2011)

Presiding Judge: C. Mac
Judge Bar ID: _____ Judge Code: 2013
Sentence Date: 12-4-14

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

ORIGINAL FILED COPY
2015 FEB 25 AM 9:34

At a Court of General Sessions, convened on October 9, 2014, the Grand Jurors of York County present upon their oath.

DISTRIBUTION OF METHAMPHETAMINE

On or about March 21, 2014, the Defendant, Joshua Kenneth Brookins, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver methamphetamine, in violation of the provisions of Section 44-53-370. Said incident occurred in York County, South Carolina all in violation of Section 44-53-375 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

DOCKET NO. 2014-GS-46- 03001

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

WITNESSES

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

October 9, Term 2014

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

ag

ARREST WARRANT NUMBER

2014A4610200469

THE STATE

vs.

Defendant

Witness:
C.C.C. RLS. AND G.S.

ACTION OF GRAND JURY

JOSHUA KENNETH BROOKINS

TRUE BILL

Indictment for

DISTRIBUTION OF METHAMPHETAMINE

SC Code: 44-53-375(B)(1)
CDR Code: 3199

VERDICT

Foreperson of Petit Jury
Date:

COUNTY OF YORK
STATE VS.

JOSHUA KENNETH BROOKINS

AKA: Josh Brookins, Joshua K. Brookins

Race: White Sex: M Age: 26

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED] SID# [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was

TO: DISTRIBUTION OF METHAMPHETAMINE

In violation of § 44-53-0375 (B) (a) of the S.C. Code of Laws, bearing CDR Code # 3190

INDICTMENT/CASE#: 2014GS4603001

A/W: 2014A4610200469

Date of Offense: 03/21/2014

S.C. Code §: 44-53-0375 (B) (2)

CDR Code #: 3199

SENTENCE SHEET

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Misti Shelton, Assistant Solicitor

SC Bar # 69393

Defendant

Attorney for Defendant

69416
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$_____; provided that upon the service of 10 days/months/years and/or payment
of \$_____; plus costs and assessments as applicable*; the balance is suspended with probation for 3
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$_____ Beginning _____

\$_____ Paid to Public Defender Fund.

Other: _____

☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(I) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: Wanda Nelson

SCCA/217 (03/2011)

Presiding Judge: [Signature]

Judge Bar ID: _____

Sentence Date: 12-4-14

Judge Code: 2063

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

2015 FEB 25 AM 9:34

At a Court of General Sessions convened on October 9, 2014, the Grand Jurors of York County present upon their oath: COUNTY, SC

DISTRIBUTION OF METHAMPHETAMINE

On or about February 28, 2014, the Defendant, Joshua Kenneth Brookins, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver methamphetamine, in violation of the provisions of Section 44-53-370. Said incident occurred in York County, South Carolina all in violation of Section 44-53-375 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

WITNESSES

DEU / Faulkenberry

ag

ARREST WARRANT NUMBER

2014A4610200472

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 10/9/14

VERDICT

DOCKET NO. 2014-GS-46-03002

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 9, Term 2014

THE STATE

vs.

JOSHUA KENNETH BROOKINS

Indictment for

DISTRIBUTION OF METHAMPHETAMINE

SC Code: 44-53-375(B)(1)
CDR Code: 3199

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

334

Foreperson of Petit Jury

Date:

CITY OF YORK

STATE VS.

JOSHUA KENNETH BROOKINS

AKA: Josh Brookins, Joshua K Brookins

Race: White Sex: M Age: 26

DOB: SS#: 2015 FEB 25

Address: 2015 FEB 25

City, State, Zip: 29732

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: DISTRIBUTION METHAMPHETAMINE 1st offense

In violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3199

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)
The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Misti Shelton, Assistant Solicitor

69393
SC Bar #

Defendant

Attorney for Defendant

69416
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of 10 days/months/years and on payment of \$_____, plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing
Total: \$_____ plus 20% fee: \$_____

Payment Terms: _____

☐ Ordered PTUP _____
days/hours Public Service Employment
Obtain GED ☐☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$_____

§14-1-206 (Assessments 107.5%) \$_____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$100-

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$_____

§56-5-2995 (DUI Assessment) \$12 \$_____

§56-1-286 (DUI Breath Test) \$25 \$_____

Proviso 47.9 (Public Def/Prob) \$500 \$_____

§14-1-212 (Law Enforce. Funding) \$25 \$25-

§14-1-213 (Drug Court Surcharge) \$150 \$150-

§50-21-114 (BUI Breath Test Fee) \$50 \$_____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$_____

Proviso 90.5 (SCCA Surcharge) \$5 \$5-

3% to County (if paid in installments) \$ \$_____

TOTAL \$280-

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$_____ Beginning _____

\$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: [Signature]

Judge Bar ID: _____ Judge Code: 2063

Sentence Date: 12-4-14

Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IDENTIFICATION COPY
INDICTMENT
2015 FEB 25 AM 9:34

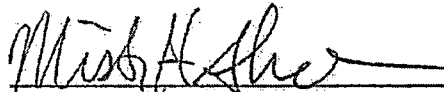
CASSIUS H. SUTTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on December 11, 2014, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF METHAMPHETAMINE

The defendant, Joshua Kenneth Brookins, did on or about December 6, 2013, in York County, South Carolina, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to distribute, dispense, deliver, or purchase, or possess with the intent to distribute, dispense, deliver, or purchase Methamphetamine in violation of the provisions of Section 44-53-370. All in violation of 44-53-0375 (B) (2) of the 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.


ASSISTANT SOLICITOR

337

WITNESSES

DEU / Faulkenberry

ARREST WARRANT NUMBER

2014A4610200468

ACTION OF GRAND JURYForeperson of Grand Jury
Date:**VERDICT**Foreperson of Grand Jury
Date:

DOCKET NO. 2014-GS-46-03819

The State of South Carolina
County of York**COURT OF GENERAL SESSIONS**

DECEMBER 11, TERM 2014

THE STATE

VS.

JOSHUA KENNETH BROOKINS**INDICTMENT FOR****DISTRIBUTION OF METHAMPHETAMINE**SC Code: § 44-53-0375 (B) (2)
CDR Code: 3199

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

X Joshua Brooks
DefendantI
hereby appear in my own proper person and plead guilty to the within indictment or toX Joshua Brooks
Defendant

Witness:

Joshua Brooks
C.C.C./PLS. AND G.S.
Special

COUNTY OF YORK
STATE VS.

JOSHUA KENNETH BROOKINS

AKA: Josh Brookins, Joshua K Brookins

Race: White

Sex: M

Age: 26

DOB: [REDACTED]

SSN: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED]

SID# [REDACTED]

2015 FEB 25 AM 9:34

INDICTMENT/CASE#: 2014GS4603819

A/W: 2014A4610200468

Date of Offense: 12/06/2013

S.C. Code §: 44-53-0375 (B) (2)

COCDR Code #: 3199

SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or

PLEADS

TO: DISTRIBUTION OF METHEMPHETAMINE

In violation of § 44-53-0375 (B) (2) of the S.C. Code of Laws, bearing CDR Code # 3198

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☒ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

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

ATTEST:

Misti Shelton, Assistant Solicitor

69393
SC Bar #

Defendant

Attorney for Defendant 69416
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of 10 days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which

are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives HearingTotal: \$ plus 20% fee: \$ ☐ Ordered PTUP360 days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☒Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: PSI's suspendedwhile suspended, suspended☒ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: E. AlcarazJudge Bar ID: Judge Code: 2063Sentence Date: 12-4-14Clerk of Court/Deputy Clerk: Darrell HamiltonCourt Reporter: Wanda Nelson

SCCA/217 (03/2011)

Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100-§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ 500-§14-1-212 (Law Enforce. Funding) \$25 \$ 25-§14-1-213 (Drug Court Surcharge) \$150 \$ 150-§50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCA Surcharge) \$5 \$ 5-3% to County (if paid in installments) \$ TOTAL \$ 780-