

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Brooks P. Goldsmith, Circuit Court Judge

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S.C. SUPREME COURT

LORETTA GALLOWAY BRANYON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001143

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

COURT OF GENERAL SESSIONS

1

State of South Carolina,)
Plaintiff,)
vs.)
Loretta Galloway Branyon,)
Defendant.)

Case No. 11-GS-04-0604

TRANSCRIPT OF JURY TRIAL

The within jury trial was held in above-captioned action on August 13-14, 2012, before The Honorable R. Lawton McIntosh in the Court of General Sessions, in Anderson, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Lauren S. Hogan, Assistant Solicitor
Al Means
SOLICITOR'S OFFICE
Anderson, South Carolina
Appearing for State of South Carolina

Charles W. Whiten, Jr., Esq.
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Appearing for Defendant

TRANSCRIBED FOR VIVIAN CROSS - COURT REPORTER

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(NONE)

1 (DEFENDANT PRESENT)

2 THE COURT: Ms. Hogan, are you ready
3 to call your first case?

4 SOLICITOR HOGAN: Yes, sir, Your
5 Honor. Your Honor, may I approach?

6 THE COURT: Yes, ma'am.

7 (OFF RECORD BENCH CONFERENCE)

8 SOLICITOR HOGAN: Your Honor, if it
9 pleases the court, the State calls the case
10 of Indictment 2011-GS-04-604 against Loretta
11 Galloway Branyon for possession with intent to
12 distribute methamphetamine.

13 THE COURT: Counsel, does everybody
14 agree it's five and five strikes?

15 SOLICITOR HOGAN: Yes, sir, Your
16 Honor.

17 MR. WHITEN: Yes, Your Honor.

18 THE COURT: All right, Ladies and
19 Gentlemen of the jury, we're about to start
20 the case of the State versus Loretta Galloway
21 Branyon, who has been indicted for possession
22 with intent to distribute methamphetamine.

23 Let me, before we go forward with this,
24 tell you that the fact that this defendant has
25 been charged, arrested and indicted is not

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1 evidence of her guilt, nor does it raise an
2 inference or any type of presumption of her
3 guilt. It is simply a mechanism by which the
4 State of South Carolina brings citizens before
5 juries such as yourselves for a determination
6 of guilt or innocence.

7 That being said, what I am going to do
8 is go through a few more particular questions
9 involving this case. Unlike before, if you need
10 to respond to the questions being imposed, would
11 you stand up, give us your juror number and your
12 response. We won't have any coming forward and
13 speaking in a confidential setting as far as
14 these questions are concerned.

15 The first question that I have is, has
16 anyone on the jury panel ever been related by
17 blood or marriage to Loretta Galloway Branyon?
18 If so, would you please stand? (No response).

19 Has anyone on the jury panel ever had
20 a close, social or personal, relationship with
21 Loretta Branyon? If so, would you please stand?
22 (No response).

23 All right. Ladies and Gentlemen, these
24 are possible witnesses who may be called in this
25 case. You have:

1 Officer Marty Robinson of the Anderson
2 County Sheriff's Office.

3 Belinda Lee, Anderson County Sheriff's
4 Office.

5 Meredith Lanford, Anderson-Oconee
6 Regional Forensic Lab.

7 Has anyone on the jury panel ever been
8 related, by blood or marriage, to any of these
9 potential witnesses? If so, would you please
10 stand? (No response).

11 Has any member on the jury panel ever
12 had a close personal or social relationship with
13 any of these potential witnesses? Okay. Ma'am,
14 would you please give me your juror number?

15 JUROR NUMBER 180: Number 180.

16 THE COURT: Ms. Thomas?

17 JUROR NUMBER 180: Yes.

18 THE COURT: Do you mind stating the
19 relationship and with whom, please?

20 JUROR NUMBER 180: Meredith Lee.
21 She was married to a close relative of mine.
22 Her sister and I have a close relationship, we
23 are together a lot.

24 THE COURT: And the fact that you
25 have that relationship with Ms. Lee, would

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1 that prevent you from being fair and impartial
2 to both the defendant in this matter and to
3 the State, by listening to the evidence
4 presented and making your decision based only
5 on that evidence and the law as I give it to
6 you at the end of this case?

7 JUROR NUMBER 180: No, it would not
8 affect my decision.

9 THE COURT: Now, Counsel, if any-
10 body would request any additional voir dire,
11 just let me know. Otherwise I'm going to
12 proceed. Okay? All right. Thank you, ma'am.
13 Anyone else? (No response).

14 All right. Mr. Whiten, would you
15 stand up and introduce yourself and your
16 client, please, sir.

17 MR. WHITEN: Yes, Your Honor. My
18 name is Charles Whiten. I've practiced law in
19 Anderson County for going on almost thirty-
20 seven years. My office is on Benson, just
21 down the street. I represent Loretta Branyon
22 in this case.

23 THE COURT: Ms. Hogan?

24 SOLICITOR HOGAN: I am Lauren Hogan.
25 I'm an assistant solicitor here. This is

1 Officer Marty Robinson with the Sheriff's
2 Office, and Al Means also.

3 THE COURT: Has any member of the
4 jury panel ever been represented by any of
5 these attorneys or any other attorneys in
6 their firms? If so, would you please stand?
7 (No response).

8 Has any member of the jury panel ever
9 been related by blood or marriage to any of
10 these attorneys, any members of their firms,
11 or have you ever had a close personal or
12 social relationship with these attorneys or
13 any members of their firm? If so, would you
14 please stand?

15 Has any member of the jury panel
16 heard of the case of the State versus Loretta
17 Galloway Branyon prior to today? If so, would
18 you please stand? (No response).

19 Is there any member of the jury panel
20 aware of any bias or prejudice that they may
21 have towards the State of South Carolina or
22 towards this particular defendant in this
23 case. If so, would you please stand? (No
24 response).

25 Has any member of the jury panel

1 formed or expressed an opinion about any issue
2 or matter involved in the State versus Loretta
3 Galloway Branyon? If so, would you please
4 stand? (No response). I've always wondered
5 how you could have an opinion if you didn't
6 know about the case, but that's one of the
7 questions.

8 Is there any member of the jury panel
9 who was a member of the Grand Jury that issued
10 the indictment in this matter against Loretta
11 Galloway Branyon. If so, would you please
12 stand? (No response).

13 Is there any member of the jury panel
14 that is a member of or a contributor to a
15 group that has as its primary purpose the
16 promotion of law enforcement or victims
17 rights? Examples of those groups would be
18 MADD, SADD or CAVE. Those certain wouldn't
19 be the only groups. Those would be examples.
20 If you are a member of or a contributor to
21 any group that has as its primary function
22 promotion of law enforcement or victims
23 rights, would you please stand? (No
24 response).

25 Does any member of the jury panel

1 know of any reason whatsoever why he or she
2 should not be selected to serve as a juror in
3 this matter, with particular emphasis being
4 placed on your ability to be fair and
5 impartial to both the defendant and to the
6 State of South Carolina? If you know of any
7 reason(s) why you should not be selected to
8 serve as a juror in this matter, would you
9 please stand? (No response).

10 Is there any member of the jury panel
11 that is related to or who are close friends
12 with any member of law enforcement, or any
13 member of the Solicitor's office? If so,
14 would you please stand. Give me your juror
15 number, please. Over here on the right?

16 JUROR NUMBER 183: 183.

17 THE COURT: Ms. Turner?

18 JUROR NUMBER 183: Yes.

19 THE COURT: And whom are you
20 related to?

21 JUROR NUMBER 183: My husband is
22 a police officer in Belton.

23 THE COURT: That's right, I recall
24 that. Would the fact that your husband is in
25 law enforcement prevent you from listening to

1 the evidence that is presented in this case
2 or from being fair and impartial to both the
3 defendant and the State?

4 JUROR NUMBER 184: No, sir.

5 THE COURT: Again, Counsel, if
6 anybody has any request for additional voir
7 dire, just let me know.

8 SOLICITOR HOGAN: Yes, sir.

9 THE COURT: All right. What is
10 your juror number?

11 JUROR NUMBER 102: 102.

12 THE COURT: You're Ms. King?

13 JUROR NUMBER 102: Yes.

14 THE COURT: Okay.

15 JUROR NUMBER 102: I know several
16 of the people working in here.

17 THE COURT: The bailiffs, some of
18 the security in here?

19 JUROR NUMBER 102: (No verbal
20 response).

21 THE COURT: Would the fact you are
22 friends with some of the bailiffs or security
23 personnel here in the courtroom, would that
24 prevent you from listening to the evidence and
25 being fair and impartial to both the State and

1 to the defendant?

2 JUROR NUMBER 102: No, sir.

3 THE COURT: Thank you, ma'am.

4 Yes, ma'am?

5 JUROR NUMBER 190: 190.

6 THE COURT: 190? For some reason I
7 don't have that. Do you have that, Mr. Clerk?

8 CLERK: No, sir.

9 THE COURT: Would you double check
10 and make sure that that's your number?

11 CLERK: Donna Freeman, Your Honor.
12 For some reason it went alphabetically.

13 THE COURT: So you are Ms. Freeman?

14 JUROR NUMBER 190: Yes, sir.

15 THE COURT: He does have 190. All
16 right, Ms. Freeman?

17 JUROR NUMBER 190: My sister is
18 a correctional officer and my cousin did work
19 there.

20 THE COURT: Works or worked?

21 JUROR NUMBER 190: Worked.

22 THE COURT: The fact that you have
23 those family members involved in law
24 enforcement, would that prevent you from being
25 fair and impartial to both parties in this

1 matter?

2 JUROR NUMBER 190: No, sir.

3 THE COURT: Can you listen to the
4 evidence and base your decision based on the
5 evidence and the law as I charge it to you at
6 the end of the case?

7 JUROR NUMBER 190: Yes, sir.

8 THE COURT: Thank you, ma'am.

9 Yes, ma'am?

10 JUROR NUMBER 4: Number 4.

11 THE COURT: Ms. Allison?

12 JUROR NUMBER 4: My son is a deputy
13 with Anderson County.

14 THE COURT: Would that fact that
15 your son is a deputy with Anderson County,
16 would that prevent you from being fair and
17 impartial in this matter?

18 JUROR NUMBER 4: No.

19 THE COURT: It would not?

20 JUROR NUMBER 4: No.

21 THE COURT: Can you listen to the
22 evidence presented in this case and make your
23 decision based on the evidence and the law as
24 I give it to you?

25 JUROR NUMBER 4: Yes, sir.

1 THE COURT: Would you tend to
2 believe law enforcement just because your
3 -- law enforcement over somebody else?

4 JUROR NUMBER 4: No, sir.

5 THE COURT: Thank you, ma'am.
6 Yes, ma'am?

7 JUROR NUMBER 137: Ms. Pandolfino?

8 MR. WHITEN: Your Honor, I have an
9 additional question for the last one.

10 THE COURT: Okay. Ms. Allison,
11 would you mind standing?

12 JUROR NUMBER 4: No, sir.

13 MR. WHITEN: The question is does
14 your husband (sic) work in the ---

15 JUROR NUMBER 4: My son.

16 MR. WHITEN: Your son.

17 JUROR NUMBER 4: I don't know.

18 MR. WHITEN: Does he work in the
19 narcotics division?

20 JUROR NUMBER 4: No, sir.

21 THE COURT: What does he do for
22 them?

23 JUROR NUMBER 4: He is the resource
24 officer at Wrenn High School.

25 THE COURT: Any other questions,

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1 from the State?

2 SOLICITOR HOGAN: Nothing further.

3 THE COURT: Thank you, Ms. Allison.

4 All right. Ms. Pandolfino, I -- I know that I
5 am butchering your name, but ---

6 JUROR NUMBER 137: No, you're not.

7 THE COURT: Okay. What is your
8 relationship.

9 JUROR NUMBER 137: My daughter
10 just got engaged to a police officer in
11 Columbia.

12 THE COURT: Okay. Would the fact
13 that your daughter is engaged to a law
14 enforcement officer prevent you from listening
15 to the evidence in this matter and giving your
16 decision based on that evidence and the law
17 that is applicable in this case?

18 JUROR NUMBER 137: No, sir.

19 THE COURT: Okay. Thank you very
20 much. Yes, ma'am. Would you give me your
21 juror number?

22 JUROR NUMBER 111: 111.

23 THE COURT: You are Ms. Long?

24 JUROR NUMBER 111: Yes, sir.

25 THE COURT: Okay?

1 JUROR NUMBER 111: My sister
2 works with the solicitor's office in Aiken
3 County.

4 THE COURT: Well, would the fact
5 that your sister is a member of the
6 solicitor's team in Aiken County prevent you
7 from being fair and impartial to everyone
8 involved in this case?

9 JUROR NUMBER 111: No.

10 THE COURT: Okay. Thank you very
11 much. Yes, ma'am?

12 JUROR NUMBER 28: 28.

13 THE COURT: You are Ms. Browning?

14 JUROR NUMBER 28: My husband is a
15 correctional officer in Spartanburg.

16 THE COURT: And would the fact that
17 your husband is a corrections officer in
18 Spartanburg prevent you from listening to the
19 evidence and making your decision based on
20 that evidence solely and not -- unaffected by
21 your husband's position?

22 JUROR NUMBER 28: It would not.

23 THE COURT: You're okay with that?

24 JUROR NUMBER 28: Yes, sir.

25 THE COURT: Thank you. Anyone

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1 else? Yes, sir?

2 JUROR NUMBER 132: My juror
3 number is 132.

4 THE COURT: 132, Mr. Owens?

5 JUROR NUMBER 132: Yes, sir.

6 I have a friend that works with Anderson
7 County.

8 THE COURT: You said that you're
9 friends with somebody that works with the
10 Anderson County Sheriff's Office?

11 JUROR NUMBER 132: Yes, sir.

12 THE COURT: How long have you been
13 friends with him?

14 JUROR NUMBER 132: Years.

15 THE COURT: Do you socialize with
16 them currently?

17 JUROR NUMBER 132: No, sir. I
18 just see him around now and then.

19 THE COURT: Would the fact that
20 you have this relationship with a member of
21 the Anderson County Sheriff's Office prevent
22 you from listening to the evidence if you're
23 selected to serve, or prevent you from being
24 fair and impartial to both the defendant and
25 to the State of South Carolina?

1 JUROR NUMBER 132: No, sir.

2 THE COURT: All right. Thank you,
3 sir. Anyone else? (No response). Very good.

4 The next question, does any member of
5 the jury panel believe -- would any member of
6 the jury panel believe a police officer's
7 testimony just because they are a police
8 officer as opposed to any other witness that
9 may appear in this case? (No response).

10 If you would believe a police officer
11 just because of their position as a police
12 officer over any other witness, would you
13 please stand? (No response).

14 And finally, Ladies and Gentlemen,
15 has any member of the jury panel purchased a
16 magazine such as Jailbird, displaying arrested
17 persons or wanted persons? If you've ever
18 purchased that magazine, would you please
19 stand? Or any similar type magazine. (Jurors
20 stand).

21 All right. I am going to ask this to
22 the group. If everybody -- if this -- if the
23 fact that you've purchased this magazine or a
24 similar magazine in the past prevent anyone
25 who is standing from being fair and impartial

1 in this case, in making their decision based
2 solely on the facts and evidence presented her
3 in this courtroom and the law as I charge it
4 at the end of this case? If anyone could not
5 do that, would you please remain standing.
6 Otherwise, sit down. (All jurors sit down.)

7 THE COURT: Any further *voir dire*
8 from the State?

9 SOLICITOR HOGAN: Nothing further,
10 Your Honor.

11 THE COURT: From the defense?

12 MR. WHITEN: No, Your Honor.

13 THE COURT: Let me do this. The
14 ones that just stood up, let me get you stand
15 up. I'm not going to ask you any other
16 questions but just give me your juror number
17 for my record keeping. Sorry, I should have
18 done that before I let you sit.

19 JUROR NUMBER 104: 104.

20 THE COURT: Thank you.

21 JUROR NUMBER 79: 79.

22 THE COURT: Number 79.

23 JUROR NUMBER 38: 38.

24 JUROR NUMBER 180: 180

25 JUROR NUMBER 141: 141.

1 JUROR NUMBER 46: All right.

2 THE COURT: Thank you guys. I'm
3 sorry for doing that to you.

4 All right. Ladies and Gentlemen,
5 here's the process that you're getting ready
6 to go through.

7 Back before I had gray hair, the way
8 that we used to pick juries was that we'd have
9 a spindle (sic). Somebody who couldn't read
10 or write would come in and reach their hand in
11 to the spindle and pull out a name. Then the
12 clerk would read their name out.

13 Now we have a computer that goes
14 through and randomly selects folks from the
15 list of a qualified jury panel. I've found
16 that this whole panel is qualified.

17 If your name is called, what I am
18 going to ask that you do is pick up any
19 personal belongings that you have with you,
20 come through the turnstile and stand between
21 the clerk and the court reporter, face the
22 State and face the defendant.

23 They will then look at you and decide
24 whether or not they want to select you on this
25 jury. Okay?

1 If they do not, then you'll go back
2 and have a seat in the audience. Then you'll
3 be subject to being picked on the next go-
4 round.

5 With that being said, are you ready
6 to run your list, Mr. Clerk?

7 CLERK: Yes, sir. How many
8 alternates?

9 THE COURT: Does the State want an
10 alternate?

11 SOLICITOR HOGAN: Just one.

12 THE COURT: One. Do you agree with
13 that?

14 MR. WHITEN: Yes, sir.

15 THE COURT: One alternate. Defense
16 gets two and the State gets one as far as
17 strikes on alternates.

18 CLERK: May it please the court?

19 THE COURT: Yes, sir.

20 CLERK: When I call your name, come
21 here and stand in front of me and then turn to
22 face the audience, please. Nancy A. King,
23 Juror 103.

24 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

25 CLERK: What say you for the

1 prosecution?

2 SOLICITOR HOGAN: Please seat this
3 juror.

4 CLERK: What say you for the
5 defense?

6 MR. WHITEN: Swear Ms. King.

7 (JUROR NUMBER 103 SEATED)

8 CLERK: Juror Angela T. McGowan,
9 122.

10 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

11 CLERK: What say you for the
12 prosecution?

13 SOLICITOR HOGAN: Please seat this
14 juror.

15 CLERK: What say you for the
16 defense?

17 MR. WHITEN: Swear Ms. McGowan.

18 (JUROR NUMBER 122 SEATED)

19 CLERK: Next is Juror 190, Donna L.
20 Freeman.

21 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

22 CLERK: What say you for the
23 prosecution?

24 SOLICITOR HOGAN: Please present this
25 juror.

1 MR. WHITEN: Please excuse this
2 juror.

3 (JUROR NUMBER 190 EXCUSED)

4 CLERK: Next is Juror 85, David R.
5 Hendricks.

6 (JUROR, WHITE MALE, BEFORE COUNSEL)

7 CLERK: What say you for the
8 prosecution?

9 SOLICITOR HOGAN: Please present this
10 juror.

11 MR. WHITEN: Please excuse the juror
12 in this case.

13 CLERK: Have a seat.

14 (JUROR NUMBER 85 EXCUSED)

15 CLERK: Juror Number 81, Jeremy D.
16 Hall.

17 (JUROR, WHITE MALE, BEFORE COUNSEL)

18 CLERK: What say you for the
19 prosecution?

20 SOLICITOR HOGAN: Please present
21 this juror.

22 CLERK: What say you for the
23 defense?

24 MR. WHITEN: Swear Mr. Hall.

25 (JUROR NUMBER 81 SEATED)

1 CLERK: Juror Number 114, Anthony

2 J. Macioce.

3 (JUROR, WHITE MALE, BEFORE COUNSEL)

4 CLERK: What say you for the
5 prosecution?

6 SOLICITOR HOGAN: Please excuse this
7 juror.

8 CLERK: You may take your seat.

9 (JUROR NUMBER 114 EXCUSED)

10 CLERK: Next is Juror Number 16,
11 Mertrude B. Blackwell.

12 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

13 CLERK: What say you for the
14 prosecution?

15 SOLICITOR HOGAN: Please present this
16 juror.

17 CLERK: What say you for the
18 defense?

19 MR. WHITEN: Swear Ms. Blackwell.

20 (JUROR NUMBER 16 SEATED)

21 CLERK: Next is Juror Number 46,
22 Franklin S. Crawford.

23 (JUROR, WHITE MALE, BEFORE COUNSEL)

24 CLERK: What say you for the
25 prosecution?

1 SOLICITOR HOGAN: Please present this
2 juror.

3 CLERK: What say you for the
4 defense?

5 MR. WHITEN: Please excuse Mr.
6 Crawford in this case.

7 CLERK: Have a seat.

8 (JUROR NUMBER 46 EXCUSED)

9 CLERK: Juror Number 80, Deborah J.
10 Hales.

11 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

12 CLERK: What say you for the
13 prosecution?

14 SOLICITOR HOGAN: Please present this
15 juror.

16 CLERK: What say you for the
17 defense?

18 MR. WHITEN: Swear Ms. Hales.

19 (JUROR NUMBER 80 SEATED)

20 CLERK: Juror Number 34, Melanie
21 A. Bush.

22 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

23 CLERK: What say you for the
24 prosecution?

25 SOLICITOR HOGAN: Please present this

1 juror.

2 CLERK: What say you for the
3 defense?

4 MR. WHITEN: Swear Mr. Bush.

5 (JUROR NUMBER 34 SEATED)

6 CLERK: Next is Number 132, Gareth
7 F. Owens.

8 (JUROR, BLACK MALE, BEFORE COUNSEL)

9 CLERK: What say you for the
10 prosecution?

11 SOLICITOR HOGAN: Please present this
12 juror.

13 CLERK: What say you for the
14 defense?

15 MR. WHITEN: Please swear Mr. Owens.

16 (JUROR NUMBER 132 SEATED)

17 CLERK: Next is 136, Lisa M.
18 Padgett.

19 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

20 CLERK: What say you for the
21 prosecution?

22 SOLICITOR HOGAN: Please present this
23 juror.

24 CLERK: What say you for the
25 defense?

1 MR. WHITEN: Swear Ms. Padgett.

2 (JUROR NUMBER 136 SEATED)

3 CLERK: Juror Number 141, Dorothy L.
4 Payton.

5 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

6 CLERK: What say you for the
7 prosecution?

8 SOLICITOR HOGAN: Please excuse this
9 juror.

10 CLERK: Have a seat.

11 (JUROR NUMBER 141 EXCUSED)

12 CLERK: Next is Juror Number 188,
13 Tina R. Watt.

14 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

15 CLERK: What say you for the
16 prosecution?

17 SOLICITOR HOGAN: Please present this
18 juror.

19 CLERK: What say you for the
20 defense?

21 MR. WHITEN: Swear Ms. Watt.

22 (JUROR NUMBER 188 SEATED)

23 CLERK: Juror Number 88, James L.
24 Hindman.

25 (JUROR, WHITE MALE, BEFORE COUNSEL)

1 CLERK: What say you for the
2 prosecution?

3 SOLICITOR HOGAN: Please excuse this
4 juror.

5 CLERK: Have a seat.

6 (JUROR NUMBER 88 EXCUSED)

7 CLERK: Next is Juror Number 183,
8 Stacie L. Turner.

9 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

10 CLERK: What say you for the
11 prosecution?

12 SOLICITOR HOGAN: Please present
13 this juror.

14 CLERK: What say you for the
15 defense?

16 MR. WHITEN: May we approach,
17 Your Honor? May we approach on this?

18 THE COURT: Yes, sir.

19 SIDEBAR:

20 MR. WHITEN: Your Honor, this
21 juror's husband is a police officer in Belton.
22 I'm challenging for cause.

23 THE COURT: I can't do it for
24 cause. I asked her that additional question
25 if she could be fair and impartial, so --

1 unless you want me to strike her for cause?

2 SOLICITOR HOGAN: I don't
3 object.

4 THE COURT: If everybody
5 agrees, I will.

6 MR. WHITEN: Thank you.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Ms. Turner, I am going
9 to ask that you be seated, please. Thank you
10 very much.

11 (JURY NUMBER 183 EXCUSED)

12 CLERK: Juror Number 139, William A.
13 Patterson.

14 (JUROR, WHITE MALE, BEFORE COUNSEL)

15 CLERK: What say you for the
16 prosecution?

17 SOLICITOR HOGAN: Please present this
18 juror.

19 CLERK: What say you for the
20 defense?

21 MR. WHITEN: Swear Mr. Patterson.

22 (JUROR NUMBER 139 SEATED)

23 CLERK: Next is Juror 36, David R.
24 Campbell.

25 (JUROR, WHITE MALE, BEFORE COUNSEL)

1 CLERK: What say you for the
2 prosecution?

3 SOLICITOR HOGAN: Please present this
4 juror.

5 CLERK: What say you for the
6 defense?

7 MR. WHITEN: Excuse Mr. Campbell in
8 this case, please.

9 CLERK: Have a seat.

10 (JUROR NUMBER 36 EXCUSED)

11 CLERK: Juror Number 102, Elizabeth
12 I. King.

13 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

14 CLERK: What say you for the
15 prosecution?

16 SOLICITOR HOGAN: Please present this
17 juror.

18 CLERK: What say you for the
19 defense?

20 MR. WHITEN: Excuse Ms. King from
21 the trial in this case. Yes, excuse her.

22 (JUROR NUMBER 102 EXCUSED)

23 CLERK: Juror Number 87, Daniel G.
24 Hill.

25 (JUROR WHITE MALE, BEFORE COUNSEL)

1 CLERK: What say you for the
2 prosecution?

3 SOLICITOR HOGAN: Please present this
4 juror.

5 CLERK: What say you for the
6 defense?

7 MR. WHITEN: Swear Mr. Hill.
8 (JUROR NUMBER 87 SEATED)

9 CLERK: Juror Number 156, Stephen A.
10 Roswell.

11 (JUROR, WHITE MALE, BEFORE COUNSEL)

12 CLERK: What say you for the
13 prosecution?

14 SOLICITOR HOGAN: Please present this
15 juror.

16 CLERK: What say you for the
17 defense?

18 MR. WHITEN: Swear Mr. Roswell.
19 (JUROR NUMBER 156 SEATED)

20 CLERK: Your Honor, I have that that
21 is twelve jurors. We're now moving to the
22 alternate. How many strikes?

23 THE COURT: Two for the defense,
24 one for the State.

25 CLERK: All right. I will go the

1 bottom or are you ---

2 THE COURT: Start with number
3 twenty-two.

4 CLERK: Start with twenty-two.
5 Number 51, Russell A. Deangelis.

6 (JUROR, WHITE MALE, BEFORE COUNSEL)

7 CLERK: What say you for the
8 prosecution?

9 SOLICITOR HOGAN: Please excuse this
10 juror.

11 CLERK: Take your seat.

12 (JUROR NUMBER 51 EXCUSED)

13 CLERK: Juror Number 124, David A.
14 McKee.

15 (JUROR, WHITE MALE, BEFORE COUNSEL)

16 CLERK: What say you for the
17 defense? She had her strike.

18 MR. WHITEN: Swear Mr. McKee.

19 CLERK: Mr. McKee, please take a
20 seat. You will be our alternate.

21 (JUROR NUMBER 124 SEATED)

22 CLERK: Your Honor, if it please
23 the court, I would like to review.

24 THE COURT: Yes, sir.

25 CLERK: I have that the plaintiff

1 struck Juror 114, Anthony J. Macioce; struck
2 Juror 141, Dorothy L. Payton; struck Juror 88,
3 James R. Hindman; and on the alternate struck
4 Juror 51, Russell A. Deangelis.

5 I have that the defense struck Juror
6 190, Donna L. Freeman; struck Juror 185, David
7 R. Hendricks; Juror 46, Franklin S. Crawford;
8 Juror 36, David R. Campbell; and Juror 102,
9 Elizabeth I. King.

10 The court struck Juror 183, Stacie L.
11 Turner.

12 THE COURT: Being the alternate,
13 if you would sit there throughout the course
14 of the trial it would help me to do some
15 administrative functions. Okay, sir?

16 JUROR NUMBER 124: Yes, sir.

17 THE COURT: Otherwise, what I am
18 going to do is get the jury to go back to the
19 jury room right now. I want you to pick the
20 person that you want to be your foreperson in
21 this trial. The foreperson will be the one
22 presiding over the deliberations in this case.
23 Also they will be responsible for communicat-
24 ing with the court anytime that you may need
25 to communicate, for any reason, during the

1 course of this case.

2 I don't anticipate that this case
3 will go more than today or tomorrow. It is
4 not going to be very long, but we need to have
5 a foreperson.

6 The only prohibition is that our
7 alternate may not serve in that position.
8 But he certainly has the right to vote on it.
9 It doesn't have to be unanimous, just by a
10 simple majority. Whoever you want to be your
11 foreperson.

12 Once the foreperson is determined, I
13 am going to ask that you write their name and
14 juror number down on a piece of paper that the
15 bailiff will give to you.

16 Then I want the foreperson to turn
17 around and tally the remaining members of the
18 panel and find out who, if anyone, would like
19 to have pads and pens to use during the course
20 of this trial. If you would like to have
21 that, just write down the number of folks who
22 would like to have a pad and pen so that they
23 can take notes. Knock on the door and we will
24 then receive you back in the courtroom.

25 If you would, go back at this point,

1 please.

2 (JURY OUT @ 11:38 A.M.)

3 (ALTERNATE REMAINED IN COURTROOM)

4 THE COURT: Sir, you will need to
5 go back with them as well.

6 (ALTERNATE EXITS COURTROOM)

7 THE COURT: For the rest of you out
8 there, I can see the disappointment on your
9 faces from not having been selected this
10 morning. Don't give up yet. You still may
11 have the opportunity to serve before the week
12 is out. But what I am going to do is to
13 excuse you for the remainder of the day.
14 Everyone should have a sheet, or will be given
15 a sheet, that has the phone number of a jury
16 call-in line that we have.

17 CLERK: (Holds up papers).

18 THE COURT: You've got that? Okay.
19 I forget every time. Every county has a
20 different method of explaining to the jurors
21 and I always forget. The clerk will hand out
22 a sheet today that will have a number. After
23 6:00 o'clock, if you will call into that
24 number there will be a message advising you
25 whether or not we need you to come back; and,

1 if so, when.

2 That being said, let me just tell you
3 that I anticipate that what we will be doing
4 will be picking this jury, starting this case
5 today, completing this case tomorrow, then
6 start a new case on Wednesday. But do not --
7 do not take that as gospel. That's just kind
8 of letting you know what I think is going to
9 happen.

10 But if you'd call in tonight, after
11 6:00, and again tomorrow night after 6:00,
12 each day until there is a message from our
13 illustrious clerk saying that you don't need
14 to call back anymore.

15 With that being said, I am going to
16 excuse you for the day once Mr. Shirley
17 (Clerk) gives out that number. Thank you for
18 being here.

19 (JURY PANEL EXCUSED)

20 THE COURT: Let me see the
21 attorneys up here right quick, before I
22 get everybody out of here.

23 BENCH CONFERENCE:

24 THE COURT: Is there any
25 objection to the jury selection?

1 SOLICITOR HOGAN: No, sir.

2 THE COURT: I meant to ask
3 that before and I forgot. Do you have any
4 objections?

5 MR. WHITEN: No.

6 THE COURT: Do y'all want to
7 take about a ten-minute break?

8 SOLICITOR HOGAN: Yes, I need to
9 mark some evidence.

10 THE COURT: Okay, just let me
11 know when you are ready.

12 MR. WHITEN: Yes, sir.

13 (BENCH CONFERENCE CONCLUDED)

14 THE COURT: Madame Court Reporter,
15 both the State and the Defense say that there
16 are no objections to the jury selection.

17 Okay, we will be in recess until you
18 all let me know that you're ready to go.

19 SOLICITOR HOGAN: Yes, sir.

20 (BRIEF RECESS 11:38 - 12:04)

21 (DEFENDANT PRESENT)

22 (PREMARKED STATE'S EXHIBITS 1 THRU 5)

23 THE COURT: I think that there were
24 a couple of stipulations that need to be
25 placed on the record. Is that right, Mr.

1 Whiten?

2 MR. WHITEN: Yes, sir.

3 THE COURT: Can you place those on
4 the record for me, please, sir.

5 MR. WHITEN: Your Honor, I make a
6 Motion to limit testimony of ---

7 THE COURT: I am going to need you
8 to speak a little bit louder for me.

9 MR. WHITEN: Yes, sir. I am moving
10 ~~in limine~~, make a Motion to limit the
11 testimony of the State's witnesses to the
12 actual event that took place at the house and
13 the affidavit for the search warrant that has
14 been presented to the court. Also limit the
15 prior reasonableness of the search. All of
16 that has been testified to. As I understand,
17 the only reasonableness is that they were --
18 for searching is that they were searching for
19 evidence in that house.

20 THE COURT: I'm sorry. Just for
21 the record, you had a Motion *in limine* which
22 Ms. Hogan has stipulated to?

23 MR. WHITEN: Yes, sir.

24 THE COURT: And you are just
25 placing the stipulation on the record, which

1 says that you are not going to get into the
2 other facts alleged in the affidavit for the
3 search warrant, any other matters that
4 happened to be located at the residence; is
5 that correct?

6 SOLICITOR HOGAN: Yes, sir. The only
7 thing that we are going to speak about in
8 regards to the search warrant is that the
9 purpose of search warrant was to search for
10 methamphetamine and any related items. We are
11 not going to bring up the guns that were found
12 at the house, or the pills, or the marijuana
13 that Marty found at the house that day.

14 THE COURT: Is that the understand-
15 ing that you have with the State?

16 MR. WHITEN: Yes, Your Honor.

17 THE COURT: Okay. Now, also there
18 was a question -- all of a sudden I'm drawing
19 a blank -- that you came up and that you were
20 asking me, uh, ---

21 SOLICITOR HOGAN: Yes, sir, I was
22 asking about the bags that the drugs were in.

23 THE COURT: That's right.

24 SOLICITOR HOGAN: Yes, sir. They are
25 technically in the custody of Marty Robinson

1 with the Sheriff's office. I was asking about
2 opening the bag on the stand. He can't
3 testify to the baggies of drugs because the
4 lab actually put the drugs in these particular
5 baggies. So I was asking if it would be okay
6 if the chemist, now that the drugs are in the
7 custody of the court, if it was okay if the
8 chemist actually opened the bag while she is
9 on the stand.

10 THE COURT: And my understanding --
11 I don't mean to put words in your mouth, but
12 my understanding was that as long as they can
13 properly identify the bag as coming from the
14 chemist, that you had no objection to that.

15 MR. WHITEN: No, Your Honor. I
16 assume that they will stipulate to the chain.

17 THE COURT: Right. Okay. Very
18 good. Any other matters that we need to put
19 on the record before we get started?

20 MR. WHITEN: I am not aware of any.

21 THE COURT: Okay. Now, let me --
22 I plan on breaking around 1:00 for lunch. I
23 figured that it very well may be that I could
24 give them the opening charge, you do your
25 opening statement and then, depending on what

1 time it is, we may just break there.

2 SOLICITOR HOGAN: Yes, sir. My first
3 witness is the officer and he is probably the
4 most lengthy.

5 THE COURT: Okay. So that makes
6 more sense from a logistics standpoint to do
7 that?

8 SOLICITOR HOGAN: Yes, sir. Do the
9 openings, then break and start back with him
10 this afternoon.

11 THE COURT: Is that all right with
12 you?

13 MR. WHITEN: Yes, sir.

14 THE COURT: Very, very good.
15 Anything else that I need to deal with?

16 MR. WHITEN: No, sir, I can't think
17 of anything.

18 SOLICITOR HOGAN: Nothing further,
19 Your Honor.

20 THE COURT: Bring the jury in,
21 please.

22 (JURY IN @ 12:08 P.M.)

23 THE COURT: You are the forelady?

24 JUROR: Yes, sir.

25 THE COURT: Each time you come in

1 and out of the courtroom, would you take that
2 seat?

3 JUROR: Yes, sir.

4 THE COURT: And our alternate, I am
5 going to ask you, sir, if you would sit in the
6 back right corner. I am going to ask you to
7 go ahead and swap now, if you don't mind. I
8 don't mean to embarrass you, I'm just trying
9 to -- it helps me to keep up with some
10 administrative matters. Sir, if you will just
11 come around.

12 ALTERNATE: (Relocates).

13 THE COURT: All right. Thank you,
14 sir. That will be the last time that I do
15 musical chairs with you. Okay?

16 Now, Mr. Clerk, are you ready to
17 swear the jury?

18 CLERK: I am, Your Honor.

19 THE COURT: Would you please do so?

20 (WHEREUPON JURY SWORN)

21 THE COURT: Ladies and Gentlemen of
22 the jury, -- first, Madame Forelady, if at any
23 time I ask you as the jury to come on back out
24 and you're not ready, just tell the clerk,
25 'Look we need some more time.' Or, 'we need

1 this', 'we need that.' This is not to be an
2 endurance contest. We want you to comfortable
3 so that you can listen to the evidence and
4 make good decisions. Okay?

5 JUROR: Yes, sir.

6 THE COURT: I have a tendency -- as
7 my court reporter can tell you -- to go long.
8 I get involved and all of a sudden I realize
9 that I've gone a couple of hours without
10 letting anyone take a break. If at any time
11 anyone needs to take a break, raise your hand.
12 We'll get you in the jury room and you can do
13 what you need to do.

14 Also if any of you on the jury panel
15 cannot hear at any time, raise your hand and
16 we will make sure that any testimony will be
17 accessible to you. It is important that you
18 hear all the testimony that is presented here
19 in the courtroom today.

20 With that being said, let me just
21 give you a few opening remarks before we get
22 started. I don't know if any of you have ever
23 sat on a jury before, if you've ever been
24 involved in any legal matter in a courtroom;
25 civil court or in this court, criminal court.

1 I would suspect at the same time that
2 each and every one of you have watched what
3 purports to be a trial on TV or in movies.
4 Let me dispel you right now that what you're
5 about to engage in is totally different from
6 anything you have ever seen on TV. Trials are
7 very often extremely slow, they are often very
8 deliberate, they are very methodical. Trials
9 are not intended to be, nor are they,
10 entertainment. They are a search for the
11 truth, to make sure that justice is done and
12 that justice is served.

13 Now, the attorneys that you have in
14 the courtroom, they have by their oath an
15 obligation to their clients. That means that
16 they have sworn to be zealous activists for
17 their clients and they will do that in this
18 case. But at the same time they are also
19 officers of this court. What that means is
20 that you can expect them to be professional,
21 to be competent and to be ethical to one
22 another and to the other participants in this
23 case.

24 Now, you have just taken an oath that
25 you will be fair and impartial in this matter

1 and apply the facts as you find them to be to
2 the law as I give it to you at the end of this
3 case. That means that the parties, the
4 attorneys and this court have a right to
5 expect you to be fair, impartial and ethical
6 in your dealings in this matter.

7 Now, what I'm about to tell you is
8 just an introduction. It is not the law that
9 you will apply. I will instruct you on the
10 law at the end of this case. You will take
11 that back to the jury room with you, in your
12 minds, and apply it to the facts as you find
13 them to be.

14 I noticed that four of you wanted to
15 take notes during this trial. That is
16 certainly fine. Let me warn everyone who is
17 taking notes, and everybody else on the jury,
18 that when you begin your deliberations, which
19 will occur at the end of this case, that just
20 because somebody's notes say one thing but
21 somebody's memory says something else, the
22 notes do not necessarily trump somebody's
23 memory. In other words, just because it is
24 in your notes, it doesn't prevail over what
25 happened in the courtroom. That is not

1 something for you all to deliberate about
2 when you get back into the jury room for
3 your deliberations.

4 Also in performing your function
5 as jurors, it's important that you make
6 credibility assessments as to the credibility
7 of the witnesses and the evidence. Sometimes
8 if you're involved, particularly with taking
9 notes, you may miss the nuance of somebody's
10 body mechanics or body reaction on the witness
11 stand. A lot of times the way that they react
12 on the stand will be important indicators as
13 to their credibility. I'll tell you a little
14 bit more about that at the end of this case.
15 I just want to put that thought/notion in your
16 mind now so that as we go through the case
17 you'll try not to get yourself too involved
18 with the notes and miss some very important
19 aspects of this case.

20 Again, Ladies and Gentlemen, the fact
21 that this defendant has been charged, arrested
22 and indicted is not evidence of guilt. I does
23 not raise an inference of her guilt nor any
24 type of presumption of her guilt. It's not in
25 any sense a matter of her guilt. That is the

1 mechanism the State uses to bring people
2 before juries such as yourselves for a
3 determination of guilt or innocence.

4 In fact, in this case the defendant
5 has pled not guilty. That places the burden
6 on the State of South Carolina to prove each
7 and every element of the charge pending
8 against this defendant beyond a reasonable
9 doubt. It will be your decision or your
10 burden at the end of this case to determine
11 whether or not the State has met its burden
12 of proof.

13 So the question is, what is a
14 reasonable doubt? I am going to give you a
15 very brief charge on what it is. Keep this
16 in mind as you're going through this case.
17 A reasonable doubt is a reasonable doubt is
18 a doubt that would make a conscientious and
19 reasonable person to hesitate to act. It
20 is the kind of doubt that would cause a
21 reasonable person to hesitate to act.

22 Again, the State has the burden of
23 proving this defendant guilty beyond a
24 reasonable doubt. Now, some of you may have
25 served on civil cases in the case where the

1 burden of prove is by the preponderance or the
2 greater weight of the evidence. In criminal
3 cases, the State's burden of proof is much
4 more powerful than by the preponderance of the
5 evidence. It is by proof beyond a reasonable
6 doubt. Proof beyond a reasonable doubt is
7 proof that leaves you firmly convinced of the
8 defendant's guilt.

9 Now, Ladies and Gentlemen, there are
10 very few things in life that we know with
11 absolute certainty. In criminal cases it is
12 no different. The law does not require the
13 State must disprove every possible doubt that
14 may be.

15 But at the end of the case, if based
16 on your consideration of all the evidence
17 you're firmly convinced that the defendant
18 is guilty of the charge with which she is
19 charged, the crime with which she is charged,
20 then it will be your burden and your duty to
21 find her guilty.

22 On the other hand, if you think that
23 there is a real possibility that she did not
24 commit this crime, then you must give her the
25 benefit of the doubt and find her Not Guilty.

1 Now, your purpose as jurors is to
2 find facts. In fact, in the vernacular of the
3 attorneys, we say that you are the sole judges
4 of the facts. If at any time during this case
5 I do anything, say anything or make some type
6 of gesture to you that indicates to you that I
7 have a feeling one way or the other as to how
8 you are to find facts, I'm going to ask you
9 and I'm also going to tell you to disregard
10 them.

11 I can tell you that I have absolutely
12 no feeling one way or the other as to how you
13 find the facts, or as to how this case is
14 supposed to end up. That is purely up to you.

15 The state of South Carolina's
16 Constitution does not allow any trial judge to
17 have an opinion on the facts. We are referees
18 in the sense that we make sure the process is
19 followed. We are also instructors. We will
20 instruct you on the law at the end of this
21 case.

22 That being said, the law that makes
23 you the finders of the facts makes me the
24 instructor of the law. If in this case when
25 I charge you what the law is, you may not

1 like it. You may say, 'I think it should
2 be something else' or 'I wish that it was
3 something else.' It would be improper for you
4 to try to change the law as I ultimately give
5 it to you. You must apply the law, as I
6 charge it to you in this case, to the facts as
7 you find them to be. When you do that, you
8 will have performed your duties as jurors.

9 Now, throughout this case, as in
10 every single case that I've been involved with
11 as an attorney or a judge, there'll be breaks.
12 Either because there are objections, or are
13 lunch breaks, overnight breaks, there will be
14 breaks. During those breaks when you are not
15 in the courtroom, you may not begin your
16 deliberations. During court, you may not
17 begin your deliberations. In other words,
18 at the end of this case, after I charge you
19 on what the law is, I will give you notice
20 and give you all the exhibits that have been
21 submitted and say, 'Now is the time to begin
22 your deliberations.' Up until that point,
23 you're not to talk about this case amongst
24 yourselves or any else. That means face to
25 face conversations, e-mails, Twitters, any

1 other form of communication that I'm not
2 thinking about. Just don't do it. The reason
3 being, it's quite obvious. That is that until
4 you've heard all the testimony, all the
5 exhibits have been admitted and I charge you
6 on the law, you do not want to be premature in
7 coming to a conclusion in determining what the
8 facts are. So wait until the end of this
9 case.

10 Also, Ladies and Gentlemen, our Chief
11 Justice has instructed all charges -- excuse
12 me -- all trial judges to instruct jurors that
13 they are not to engage in what they call
14 independent juror research. What that simply
15 means is that if you hear an issue in this
16 case that you think is interesting and you'd
17 like to research more about, or if you think
18 researching an issue may be helpful, or you
19 want to research more about the defendant,
20 any of these attorneys, or the court -- that
21 includes me -- you're not to do that until you
22 end this case and your jury verdict has been
23 rendered. That is, of course, the same basis
24 as before. We don't want you to get involved
25 in any kind of predetermination until you hear

1 all the evidence and the law. When the
2 verdict is in, you can research to your
3 heart's desire but until that time, if
4 you would, do not engage in research.

5 Now, in small towns like Anderson,
6 there is a possibility that you may bump into
7 some of these attorneys or some of these
8 witnesses, or the defendant, coming to and
9 from the courthouse. They know that they are
10 not allowed to talk to you. If that happens,
11 it's okay for you to nod your head but do not
12 engage in any conversation with any party, any
13 witness, including attorneys or court
14 officials until the end of this case and your
15 verdict has been rendered. Because if one
16 side or the other happens to essentially see
17 that, they are naturally going to think that
18 there is an *exparte* or one-sided communication
19 going on, and it is going to affect their --
20 the unbiased nature of these proceedings.

21 Now, in every single solitary case,
22 lawyers have to object anytime that they feel
23 that there is something improper going on.
24 I tried cases for about twenty-five years and
25 in every single one of those cases that I

1 tried, there was always objections. I've been
2 on the bench for about four years and every
3 single case that I've tried there have been
4 objections. That is just part of the process.

5 The fact that a party may raise an
6 objection, to the extent that I allow you to
7 stay in the courtroom and listen to my
8 response to that objection, is not to be
9 considered by you at all. You're not to
10 discuss it in your deliberations or before-
11 hand. That simply is part of the process.
12 In fact, there may be occasions when you
13 haven't quite gotten your seat warm yet and
14 you're asked to step out of the courtroom
15 again because an objection rises. That is
16 simply part of the process. I ask you and
17 also charge you that you are to disregard
18 that in all respects.

19 Now, in every single case in this
20 state there are five phases. Just -- I'll
21 tell you these so that you'll know where you
22 are.

23 In just a minute the State is going
24 to give what is called an opening statement.
25 The defendant may, though he is not required

1 to give an opening statement.

2 The next phase will be the pre-
3 sentation of the evidence, which is the
4 longest part of any case.

5 The third part will be the closing
6 arguments by the attorneys.

7 I will then charge you on the law
8 that is applicable to the case.

9 The fifth phase would be when you
10 begin your deliberations.

11 I will tell you that so that you
12 will know generally where you are in the
13 process.

14 I have met with these attorneys and
15 they tell me that this case is not going to be
16 very long. We might wind up this case
17 sometime tomorrow. I don't know that that is
18 going to be, but that's a good possibility.

19 With that being said, before we get
20 into openings statements, Madame Forelady, I
21 am going to ask that you go back to your jury
22 room for one second. If you need anything,
23 grab it. If you want to have a drink in here,
24 that's certainly fine. You can bring water or
25 coffee in the courtroom with you. Please

1 don't bring any food products in here, if you
2 don't mind.

3 I am going to check with these
4 attorneys to find out if I have stated
5 something that I shouldn't have or neglected
6 to say something that I should have said.

7 Please go back to your jury room
8 right now, and we'll begin the trial in just
9 a few minutes.

10 (JURY OUT @ 12:25 P.M.)

11 THE COURT: Any additions or
12 objections from the State?

13 SOLICITOR HOGAN: No, sir, Your
14 Honor.

15 THE COURT: From the defense?

16 MR. WHITEN: No, Your Honor.

17 THE COURT: All right. You want
18 a minute or two before you start or are you
19 ready to crank it up? You want a minute?

20 SOLICITOR HOGAN: Okay.

21 THE COURT: Let's give the jurors
22 a minute or two.

23 (BRIEF RECESS)

24 (DEFENDANT PRESENT)

25 THE COURT: Ask them if they are

1 ready. You can bring them in if they are.

2 (JURY IN @ 12:29 P.M.)

3 THE COURT: Ms. Hogan, are you
4 ready?

5 SOLICITOR HOGAN: Yes, sir, if it
6 pleases the court.

7 THE COURT: Yes, ma'am.

8 SOLICITOR HOGAN: On January 13th,
9 2011, officers with the Anderson County
10 Sheriff's office went to the home of this
11 defendant. While they were there, officers
12 found Ms. Branyon in possession of more than
13 one gram of methamphetamine. She was charged
14 with possession with intent to distribute
15 methamphetamine, commonly called "meth", based
16 on the weight of the methamphetamine that she
17 had in her possession. What that means is
18 that because she was found in possession of
19 more than one gram of methamphetamine, the law
20 requires the assumption that she intended to
21 sell it.

22 There are three elements that must be
23 met. The first is that the controlled
24 substance that she had was indeed meth.
25 You are going to hear from the chemist in

1 this case that the substance was in fact
2 methamphetamine.

3 Secondly, that she actually possessed
4 the methamphetamine. You are going to hear
5 testimony from the officer about where the
6 methamphetamine found.

7 Thirdly, that she possessed the
8 methamphetamine with the intent to distribute
9 it.

10 I am also going to present additional
11 evidence to you that in fact she did in fact
12 possess the methamphetamine with the intent to
13 distribute it.

14 Now, the judge told you that it will
15 not be a very long case. That does not mean
16 that it is not an important case. It is
17 important to the State, it's important to the
18 law enforcement officers, and it is also
19 important to this community.

20 I am confident that after you've
21 heard the testimony in this case, that you
22 will find Loretta Galloway Branyon guilty
23 of the charge of possession with intent to
24 distribute methamphetamine.

25 MR. WHITEN: May it please the

1 court?

2 THE COURT: Yes, sir, certainly.

3 MR. WHITEN: Ladies and Gentlemen,
4 my name is Charles Whiten. I introduced
5 myself earlier.

6 In 1967, our government issued a
7 proclamation that they were declaring a war
8 on drugs. That was thirty-seven years ago.
9 Thirty-seven years ago and we are still at
10 war on drugs. During that time first it was
11 marijuana, then it was quaaludes, then heroin,
12 then cocaine, and now methamphetamine.

13 But I want to tell you something
14 about the law. The law says that if someone
15 has one gram -- no bigger than my fingertip,
16 -- you can consider that they are intending to
17 distribute that drug. One gram.

18 What happened is that the law, over
19 the course of thirty-seven years, is that they
20 first started to say that you actually had to
21 sell it, distribute or give it to somebody.
22 Now recent law says that if you have that much
23 on your person, then you can be considered
24 under the law to have -- as prima facia
25 evidence that that is intended to distribute.

1 In this case, methamphetamine. The law says
2 that you first must possess the drugs --
3 methamphetamine in this case -- and that it
4 has to be more than one gram. Remember, one
5 gram is not considered to be possession with
6 intent to distribute.

7 So -- just so that you know what's
8 happened in the last thirty-seven years, is
9 that every addict, every addict, that has had
10 methamphetamine in their possession, that
11 much, every addict is going to be -- can be --
12 if they're caught with it in their possession,
13 they can be charged and it's considered as
14 prima facia evidence, one gram, that they
15 intended to distribute it. So our jails are
16 filled with addicts. We build a new jail to
17 put addicts in jail.

18 Your duty is to hold the State to
19 their burden of proving beyond a reasonable
20 doubt that Loretta Branyon, Loretta Galloway
21 Branyon, possessed more than one gram.

22 But even if she did possess more than
23 one gram, you also -- they also must prove
24 beyond a reasonable doubt that she intended to
25 distribute it. Not that she intended to use

1 it, not that she was going to use it herself,
2 but that she intended to distribute it.

3 They are going to show you approxi-
4 mately seven grams that they found in this
5 house. That's what happened.

6 So if you decide that an addict
7 should go to prison for a long, long, long,
8 long period of time because she had this in
9 her possession, then you find her guilty.

10 If you find that there -- that she
11 is an addict and there no intent to distri-
12 bute, then she is not guilty.

13 This is the face of a methamphetamine
14 addict. An addict. This will be in evidence.

15 I submit that you will find that
16 there is no reason to find somebody guilty of
17 possession of intent to distribute drugs, and
18 that you will find her not guilty. Thank you.

19 THE COURT: All right. Ladies and
20 Gentlemen of the jury, I have taken the
21 executive privilege of scheduling. The next
22 witness, I anticipate, as told me by these
23 attorneys, is going to take a little while.
24 So I am going to go ahead and let's break for
25 lunch right now. I am going to ask that you

1 be back in your jury room about five minutes
2 until 2:00 o'clock. Then we will resume
3 testimony at that point. Then we will go
4 forward.

5 Remember, do not talk amongst
6 yourselves about this case, or with anybody
7 else.

8 For those of you who may be wondering
9 why we are taking an hour and a half, the
10 reason is because the bailiffs and everybody
11 else has to eat too. If I only give you an
12 hour for a lunch break, that means that they
13 don't get a chance to get a bite to eat. So
14 we will go to lunch now. I'll see you back at
15 2:00 o'clock.

16 (JURY OUT @ 12:38 P.M.)

17 THE COURT: All right, any
18 additions or exceptions from the State?

19 SOLICITOR HOGAN: No, sir, Your
20 Honor.

21 THE COURT: From the defense?

22 MR. WHITEN: No, Your Honor.

23 THE COURT: All right. Let's come
24 back at 2:00 o'clock and get started with the
25 testimony.

1 MR. WHITEN: Yes, sir.

2 THE COURT: Is your client out on
3 bond?

4 MR. WHITEN: Yes, sir.

5 (LUNCH RECESS)

6 (DEFENDANT PRESENT)

7 THE COURT: Let me ask you all
8 something. Come here for a second.

9 (OFF RECORD SIDEBAR)

10 THE COURT: Ms. Hogan, is the State
11 ready to proceed?

12 SOLICITOR HOGAN: Yes, sir, Your
13 Honor.

14 THE COURT: Mr. Whiten, is the
15 defense ready to proceed?

16 MR. WHITEN: Yes, Your Honor.

17 THE COURT: Very good. Bring the
18 jury in, please.

19 (JURY IN @ 2:09 P.M.)

20 THE COURT: Ms. Hogan, are you
21 ready to call your first witness?

22 SOLICITOR HOGAN: Yes, Your Honor.

23 THE COURT: Call your first
24 witness, please.

25 SOLICITOR HOGAN: Yes, sir. If it

1 please the court, the State calls Officer
2 Marty Robinson to the stand.

3 (WITNESS TAKES STAND)

4 MARTY ROBINSON, being duly sworn to
5 tell the truth, the whole truth and nothing
6 but the truth, testified, as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR HOGAN:

9 Q. Officer Robinson, where are you currently
10 employed?

11 A. I am currently employed as a narcotics and
12 vice investigator at the Anderson County
13 Sheriff's Office.

14 Q. How long have you worked at the Sheriff's
15 Office?

16 A. A little over eight years.

17 Q. How long have you been in law enforcement?

18 A. Seventeen years.

19 Q. What is your position with the Sheriff's
20 Office?

21 A. I am currently employed in the vice and
22 narcotics division.

23 Q. How long have you worked in that capacity?

24 A. Currently I've been in the vice and
25 narcotics unit for three years. Prior to that

1 I was with the Sheriff's Office ACE Team,
2 which is also a street level drug enforcement
3 unit, for five years. Prior to that I was a
4 drug investigator for about three years, in
5 the late '90s.

6 Q. Okay. As a narcotics investigator, what
7 are your duties?

8 A. We investigate -- as narcotic
9 investigators at the Sheriff's Office, our
10 duties are to investigate long-term, larger
11 level drug dealers -- people who sell and
12 traffic in large amount of drugs into this
13 county.

14 Q. What else do you do as a narcotics
15 investigator?

16 A. My routine duties are surveillance,
17 execution of search warrants, controlled
18 buys, surveillance.

19 Q. What kind of training and experience do
20 you have as a narcotics officer?

21 A. I was -- I began law enforcement in 1995
22 as a jailer/dispatcher, became an officer in
23 '96. I went to the police academy in '97.
24 I've had twenty-four hours of training through
25 the South Carolina Department of Public Safety

1 in Advanced Criminal Enforcement.

2 Forty hours of training through the
3 Department of Public Safety, uh, in intro-
4 duction to investigative techniques for
5 drugs and narcotics.

6 Forty hours of training through the
7 Department of Public Safety as a basic drug
8 investigator.

9 I attended forty hours of training at
10 the regional counterdrug training academy
11 in Meridian, Mississippi to investigate
12 methamphetamine and other clandestine labs.

13 I attended the network environmental
14 systems clandestine laboratory basic and
15 safety site officer, which basically is a
16 Federal level of certification for the
17 investigation of methamphetamine and other
18 clandestine labs.

19 I have a hundred and sixty hours of
20 training through the International Association
21 of Chiefs of Police in Phoenix, Arizona.

22 I attended a drug evaluation and classifi-
23 cation drug recognition expert training.

24 Twenty-four hours of training at St.
25 Petersburg College in drug conspiracy

1 investigations.

2 Forty hours of training through Desert
3 Snow, which is a criminal interdiction school.

4 Twenty-four hours of training with the
5 U.S. Department of Justice and the United
6 States Department of Transportation in
7 commercial motor vehicle criminal
8 interdiction.

9 Eight hours of training through the
10 U.S. Department of Justice, Basic Narcotics
11 Investigator school.

12 Sixteen hours of training for the Carolina
13 Institute for community policing and
14 investigation of Mexican drug trafficking
15 organizations.

16 Q. Do you continue to train and educate
17 yourself through your ---

18 A. I do.

19 Q. Over the years, can you give a ballpark
20 figure of how many investigations you
21 personally have been involved in?

22 A. I can't exactly put a number on it.

23 I've been in law enforcement a number of
24 years. At any one time as a vice and
25 narcotics investigator, I may have two to

1 twenty investigations going at one time.

2 In a year, twenty to thirty to forty at a
3 time.

4 Q. Were you employed as a narcotics officer
5 on January 13th, 2011?

6 A. I was.

7 Q. Were you involved with serving a search
8 warrant at [REDACTED] here in
9 Anderson County?

10 A. I was.

11 Q. Is serving a search warrant something that
12 you do routinely?

13 A. It is.

14 Q. As part of your ---

15 A. --- daily activities.

16 Q. --- narcotics investigative activities?

17 A. It is.

18 Q. Thank you. What happens when you go in to
19 serve a search warrant?

20 A. When we first enter a premises, we
21 announce that law enforcement is present.

22 We immediately detain any suspects in
23 the house to make sure that they don't have
24 weapons.

25 We do a protective sweep of the residence,

1 if it is a residence that we are searching, to
2 make sure that there are no other suspects
3 hiding or anywhere in the house.

4 Then we will usually identify persons
5 there and isolate them from the target of
6 investigation. Let's say that the search
7 warrant is for a certain house and there is
8 one certain person that we believe to be the
9 suspect. We typically isolate that person,
10 read and give them a copy of the search
11 warrant to make sure that they understand that
12 we are there on a search warrant and what we
13 are there looking for.

14 Q. Were you involved in obtaining a search
15 warrant for [REDACTED]?

16 A. I was. I was the affiant. I obtained
17 that search warrant from ---

18 Q. Who resided at [REDACTED]?

19 A. The defendant. She's in the courtroom,
20 Loretta Branyon.

21 Q. What was the purpose of the search
22 warrant?

23 A. We were there looking for methamphetamines
24 and meth-related materials.

25 Q. Based on your training and experience and

1 observations, describe what a typical meth
2 user would have around them.

3 A. A typical meth user normally would have
4 pipes or needles or some facilitation of
5 ingesting the drug. Normally they may have a
6 small amount of drugs on them, a quarter gram,
7 half a gram, usually no more than a gram.
8 Usually no bulk money, no large amount of
9 methamphetamine or whatever drug we're
10 investigating.

11 Q. Based on your training, experience and
12 observations, how much would a gram of meth-
13 amphetamine cost?

14 A. It depends on the region and what is
15 going on in the drug trends right then. It
16 currently goes up and down. Usually a half
17 gram would be fifty dollars, twenty -- a
18 quarter gram twenty-five dollars, and a gram
19 would be roughly a hundred dollars.

20 Q. Based on your training, experience and
21 observations how much would a typical meth
22 dealer have?

23 A. A typical meth dealer usually has multiple
24 baggies, scales ---

25 MR. WHITEN: Your Honor, there's

1 been no foundation laid for that.

2 THE COURT: One second. Madame
3 Forelady, would you take the jury back to your
4 jury room, please, ma'am?

5 (JURY OUT @ 2:16 P.M.)

6 THE COURT: Would you state your
7 objection, please?

8 MR. WHITEN: Yes, Your Honor. The
9 question was 'based on your experience' --
10 something about how much would a, quote, "meth
11 dealer" have. We have no charges for dealing.
12 This is a possession with intent to
13 distribute. So I object to that question as
14 it was asked. In addition, there's been no
15 foundation laid for the question. It's too
16 much of a bias to ask it that way, indicating
17 that this is a dealer and not an intent to
18 distribute.

19 THE COURT: Ms. Hogan?

20 SOLICITOR HOGAN: Your Honor, if it
21 pleases the court, I believe that I have laid
22 a foundation of his experience, seventeen
23 years in law enforcement, all the training and
24 education that he has had over the years. One
25 of the parts of the charges of possession with

1 intent to distribute were -- they made the
2 claim that she just using, that she wasn't
3 intending to distribute. I am just asking a
4 generic question as to what the difference
5 between what a user and a dealer would have
6 around them.

7 THE COURT: Let's do this, if you
8 would. I am going to sustain the objection as
9 raised. I'll ask you to rephrase the question
10 for me. Okay?

11 SOLICITOR HOGAN: Yes, sir.

12 THE COURT: Okay. Would you bring
13 the jury back in, please.

14 SOLICITOR HOGAN: Your Honor, one
15 moment please -- (pause). I would like to
16 proffer the question just to make sure that
17 I don't ---

18 THE COURT: Okay.

19 SOLICITOR HOGAN: If you don't mind.
20 Uh, -- I'm trying to think how to rephrase the
21 question: 'What would someone who is going
22 to do more than use the drug, what would they
23 have around them?'

24 THE COURT: I would certainly -- I
25 was thinking that his objection was that you

1 said "drug dealer."

2 SOLICITOR HOGAN: Right. So I'm
3 trying not to say drug dealer.

4 THE COURT: Right. And it seems
5 to me that certainly you could say, 'In your
6 experience have you seen a difference between
7 people who are recreational users versus
8 people who might be doing more than that?'

9 Just don't say "dealer."

10 Would you have an objection to it
11 phrased that way?

12 MR. WHITEN: Would you state it one
13 more time?

14 SOLICITOR HOGAN: 'Based on your
15 training and experience, have you noticed a
16 difference between someone who uses the drug
17 versus someone who does more than use the
18 drugs?'

19 MR. WHITEN: It's lesser than it
20 was before, Your Honor, but I still think
21 that that's calling for an opinion from the
22 witness, who is not really qualified to answer
23 that particular question.

24 That is a psychological question.
25 It's based on -- what she is asking is based

1 on going to the amount. I don't think -- at
2 least until the amount comes into evidence,
3 that that is the foundation that's been laid
4 on that. We don't know at this point how much
5 is coming in. He's going to say that based on
6 his opinion such and such an amount or such
7 and such a situation is more than just
8 possession. I haven't heard any evidence of
9 that at all -- other than his experience. I
10 am not questioning his experience. I am
11 questioning the underlying foundation of this
12 particular arrest.

13 THE COURT: What I'm -- I'm going
14 to note your objection. I am going to over-
15 rule it and I am going to allow her to get
16 into, based on this officer's experience, what
17 he's found that users have versus people who
18 were dealers. I think that is a fair
19 question. I think that comes out of his
20 background.

21 Now, you don't have to get into
22 opinion testimony. Then I would sustain the
23 objection, because he's not been qualified as
24 an expert. Okay?

25 SOLICITOR HOGAN: Yes, sir.

1 THE COURT: Is everybody okay on
2 the record at this point?

3 SOLICITOR HOGAN: If I could have one
4 more minute, Your Honor?

5 THE COURT: Yes, ma'am.

6 SOLICITOR HOGAN: Thank you.

7 MR. WHITEN: May I state one other
8 additional basis for this objection, Your
9 Honor?

10 THE COURT: Yes, sir?

11 MR. WHITEN: The way that the
12 question is phrased is taking the decision
13 of the amount as it applies to the case out
14 of the hands of the jury. It's asking for a
15 factual statement that's in the jury's
16 province to decide, not the witness'.

17 THE COURT: All right.

18 MR. WHITEN: I object on that basis.

19 THE COURT: I note your objection.
20 Would you bring the jury in, please?

21 (JURY IN @ 2:23 P.M.)

22 THE COURT: Ms. Hogan.

23 SOLICITOR HOGAN: Yes, Your Honor, if
24 it pleases the court.

25 THE COURT: Yes, ma'am.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR HOGAN:

Q. Officer Robinson, based on your training and experience and your observations, do you notice a difference when you see someone who is a user as opposed to someone who would be doing more than that?

A. Yes. Like I said earlier, ---

MR. WHITEN: I still raise my objection, Your Honor.

THE COURT: So noted. Go ahead.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR HOGAN:

Q. Continue.

A. Like I stated earlier, typically a user is going to have just the amount on them that they are going to use right then. You usually find no more methamphetamine. You usually don't find any money. Usually what money that they had they used to buy drugs. You may find paraphernalia, a needle or smoking pipe or whatever they are going to use to ingest the drugs.

Whereas somebody who possesses, I guess with the intent to distribute or sale, they

1 usually are going to have bulk baggies,
2 usually quantities of whatever drug that
3 you're talking about -- in this case
4 methamphetamine -- in different baggies, bulk
5 currency, scales, usually multiple scales and
6 things of that sort.

7 Q. Can you describe what scales are?

8 A. Digital scales. They are usually just
9 battery operated. They are just a small
10 digital set of scales that you'd weigh
11 jewelry, drugs or any small quantity of items
12 on to get up to a gram weight, ounce weight, a
13 pound weight.

14 Q. Can you describe what you found at 905
15 Shirley Store Road?

16 A. Yes. We executed the search warrant on
17 January 13th, 2011, at about 2:20 p.m.

18 When we entered the residence, we
19 encountered Ms. Branyon sitting on a couch.
20 There was another male in the residence.

21 We read the search warrant to Ms. Branyon.
22 She was detained.

23 We searched for other persons. No one
24 else was found inside the house.

25 Immediately upon entering the house there

1 was a coffee table right inside the front
2 door. There was a larger set of digital
3 scales in plain view right there on the coffee
4 table that had what appeared to be drug
5 residue on it. The scales were open. They
6 were folding type of scales, they were laid
7 open.

8 There was two pocketbooks on the couch
9 to the side of Ms. Branyon. Inside the
10 pocketbooks we found a folding type purse or
11 notebook holder, which inside of it had -- I
12 guess you'd call it a white container. Inside
13 that container it had numerous pink baggies,
14 had some red baggies.

15 A smaller black and pink woman's wallet
16 was located and inside that we found even more
17 empty pink baggies, one white baggie and two
18 pink baggies that contained a quantity of
19 methamphetamine. There was also a set of
20 scales in there.

21 Also in that pocketbook which was on the
22 couch beside Ms. Branyon there was a wallet,
23 inside that wallet we found bulk U.S. currency
24 -- about Four Thousand Thirty-three dollars
25 (\$4,033) -- with her South Carolina ID. Her

1 ID and the currency was in the pocketbook that
2 we found the meth on, sitting beside her on
3 the couch.

4 Q. Okay. You keep talking about methampheta-
5 mine, how do you know what you saw was
6 methamphetamine or what you believed to be
7 methamphetamine?

8 A. We have field test kits. First we found,
9 located -- it was an off-white glass looking
10 substance, which in my experience and training
11 -- I've seen it before -- it appeared to be
12 methamphetamine. We did field test a small
13 amount there on the scene and it field tested
14 positive for methamphetamine. Once it did, we
15 sealed it in a secure evidence bag that we
16 would later submit to our evidence technician.

17 Q. Was there anything else found around the
18 house at that point?

19 A. In the back bedroom we also found another
20 set of scales and some smoking pipes, pipes
21 that would normally or typically be used to
22 facilitate the ingestion of methamphetamine.

23 Q. Okay. What did you do with the evidence
24 that you collected that day?

25 A. It was labeled as evidence on the scene,

1 placed in a bag that we call a Best kit. It's
2 a formalized bag that we use to submit drug
3 evidence to the Anderson-Oconee Regional Lab
4 through our Evidence department. We sealed
5 the bag, labeled it with a case number; put
6 the item number on it. We have a P&E sheet,
7 property and evidence sheet. We fill that
8 out. The evidence sheet matches the drugs
9 that were found, labeled and sealed in a bag.
10 Then we submit that to a secure drop box at
11 our Sheriff's Office, Evidence building.

12 Q. I am going to hand you what has been
13 marked as State's Exhibit 5.

14 SOLICITOR HOGAN: May I approach,
15 Your Honor?

16 THE COURT: Yes, ma'am.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR HOGAN:

19 Q. Do you recognize that?

20 A. I do. This is the Best -- sealed Best kit
21 that I filled out on the scene, that is listed
22 in my report, that had the methamphetamine
23 inside.

24 Q. How do you recognize it?

25 A. It has a control number on it. That's the

1 control number that I documented in my notes.
2 It also bears the case number, the case number
3 for this incident. Also that's my signature,
4 my writing.

5 Q. Now does it look the same as it did when
6 you turned it in?

7 A. The bag itself does, yes.

8 Q. But the rest? It looks different to you?

9 A. There are some bags in here that have been
10 labeled by somebody other than myself, at the
11 Evidence department; not myself.

12 Q. What did you do with everything else that
13 was collected that day, other than what you
14 believed to be methamphetamine in the Best
15 kit?

16 A. Everything that is drug related or has
17 residue on it goes into the Best kit.
18 Everything else would go into an evidence bag,
19 sealed. Other than being submitted to the lab
20 for testing, it's handled the same way. It is
21 labeled with the case number, I seal it and
22 then put my signature on it. That's mine,
23 and it lists the case number on it.

24 Q. I now hand you what has been marked as
25 State's Exhibits 1 through ---

1 SOLICITOR HOGAN: May I approach?

2 THE COURT: Yes, ma'am.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR HOGAN:

5 Q. Do you recognize those?

6 A. Yes, ma'am. As we -- after we do our
7 initial protective sweep of the residence and
8 detain any suspects there, and explain fully
9 the reason we are there, we go back out and
10 start from the outside in just like we
11 approached and we photograph the residence,
12 anybody that we find and any evidence that
13 we locate inside.

14 This top photo that you handed me is the
15 exterior view of [REDACTED], the
16 residence of Loretta Branyon.

17 Q. Who took these pictures?

18 A. I took these pictures.

19 SOLICITOR HOGAN: Your Honor, if it
20 pleases the court, I would like for Officer
21 Robinson to be able to put the picture up so
22 that the jury can see more clearly what he's
23 speaking of.

24 THE COURT: All right. Sir, do you
25 mind stepping around, please, sir?

1 THE WITNESS: (Complies)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR HOGAN:

4 Q. We will just take these one by one and you
5 can tell the jury exactly what you are talking
6 about. Can you describe what this picture
7 depicts?

8 A. This is a view of the residence on Shirley
9 Store Road, from Shirley Store Road. This is
10 just inside the front door, looking inside the
11 residence.

12 Q. All right, the next picture, can you
13 explain what that is a picture of?

14 A. Yes, I took this photo. It was found
15 inside the living room area of the house.
16 This is a fuel -- it listed the address of
17 [REDACTED] and it's in the name
18 of Loretta Branyon. It's a water bill for
19 services, water and sewer, for the residence.

20 Q. In her name?

21 A. Yes.

22 Q. At her address?

23 A. Yes.

24 Q. And ---

25 A. This is a photocopy of Ms. Branyon's South

1 Carolina driver's license that was found
2 inside her wallet, in the bag that was on the
3 couch beside her.

4 Q. In the pocketbook on the couch beside her?

5 A. Yes.

6 Q. Can you describe ---

7 A. This was the couch that Ms. Branyon was
8 sitting on. There was a bag/pocketbook that
9 was sitting beside her and this was -- this is
10 the bag here. This is some kind of game.

11 This is the pocketbook that we found that had
12 the other containers inside of that pocket-
13 book, including her ID.

14 Q. And?

15 A. This is the pocketbook laid out on the
16 couch, you can see all the contents as they
17 were before we started searching. You can
18 see the pocketbook there, the wallet, there's
19 another one there. This is the pink and white
20 baggies that we found inside. This is another
21 picture of that.

22 Q. Can you describe what this is?

23 A. This is a shot of her wallet that was
24 found inside the pocketbook. It has bulk
25 currency in two different flaps inside the

1 wallet.

2 Q. Okay.

3 A. This is the wallet that was found in the
4 bag with her ID.

5 Q. And?

6 A. That is both sides of the wallet. It
7 shows bulk currency in both sides.

8 Q. So the prior picture is the one that shows
9 the two different sides?

10 A. When we initially opened it, we could only
11 see one side.

12 Q. All right.

13 A. Then when we opened it further we found
14 currency on both sides.

15 Q. And this?

16 A. That is the ~~currency~~ on both sides, the
17 U.S. currency.

18 Q. And you testified earlier that it was
19 about four thousand dollars?

20 A. Four thousand thirty-three dollars,
21 (\$4,033).

22 Q. And it's a little hard to tell what that
23 is, but can you describe what's ---

24 A. This is the pocketbook with the items
25 found inside. You can see by the stitching,

1 you can see that it is the outside of the
2 pocketbook because you can see the stitching
3 around.

4 This picture is kind of confusing. That's
5 a side flap pocket. We just held it open for
6 the photograph before we took the items out.
7 You can see several bags in that. Typically
8 you find drugs in small flaps like that.

9 Q. Okay. And ---

10 A. This is the white bag. There were two
11 pink bags and one white bag that contained a
12 quantity of methamphetamine, that field tested
13 positive for meth. This is the white bag that
14 contained the white glassy-looking shard
15 substance. That's what was field tested and
16 found to be presumptive for methamphetamine.

17 Q. Is it common for drugs to look like that?

18 A. Yes. It is what is commonly referred to
19 as crystal meth or "ice". It's glassy
20 looking. Sometimes it is shorter shards,
21 sometimes longer. It looks like broken pieces
22 of glass.

23 These are little baggies that we located
24 inside of those bags.

25 Q. Okay. And was there anything in any of

1 those bags?

2 A. There's several small pieces of meth in
3 this bag here. And you can see in this pink
4 bag, along the bottom that there is meth
5 inside there.

6 This picture is -- this at the top is the
7 pink and black bags that had meth inside.
8 This is the two pink baggies that were in
9 there along with the other bags. Also there
10 were two straws here, common drinking straws.
11 Some people use that for ingesting the meth.

12 This is just the inside of that pink and
13 white bag. You can see that inside the bottom
14 of that zip baggie that the drugs -- you can
15 see how this picture looks. There were
16 multiple bags.

17 Q. Is that typically what you'd find, the
18 smaller bag.

19 A. Just as what we commonly find, one bag and
20 inside are smaller similar bags?

21 Q. Okay.

22 A. And you can see that there are multiple
23 bags.

24 Q. And you spoke of a coffee table right as
25 you walked in the door?

) 1 A. (Indicating in photograph), this was the
2 coffee table that was just inside. You open
3 the front door and the coffee table was right
4 in the center of the couch. This was the
5 coffee table.

6 That is the larger set of ~~drug scales~~ that
7 were open, laying there. You can see on the
8 scales that this -- this little tray here,
9 there's some white specks of powder right
10 there. That appeared to be residue of meth-
11 amphetamine that had been weighed on the
12 scales.

) 13 That's a closer up picture of the same,
14 of the digital scales. As you can see, that
15 there is residue.

16 Q. Residue of?

17 A. It appears to be residue of drugs.

18 This is an ashtray on the same coffee
19 table.

20 And there were some more of those smaller
21 pink baggies that were found inside.

22 Q. Let's go back to the picture of the coffee
23 table.

24 A. Here's the scales, here's the ashtray, and
25 you can see the bags -- baggies.

1 Q. So that is a picture of the ---

2 A. Correct, that's what we saw when we
3 entered the residence.

4 Q. And this?

5 A. This is another bag that was located in
6 the bedroom part of the house, the back part
7 of the house. Inside this bag there are
8 several pipes that are commonly used to ingest
9 the drug.

10 There is actually a corner of another pink
11 bag right there (indicating), but you can just
12 barely see it.

13 Q. Thank you. Are those a true and accurate
14 representation of what you saw that day and
15 night? Is that correct?

16 A. They are.

17 SOLICITOR HOGAN: Your Honor, at this
18 time I would like to move State's Exhibit 1
19 into evidence consisting of pictures numbered
20 one through sixteen.

21 THE COURT: Any objection?

22 MR. WHITEN: No objection.

23 THE COURT: Admitted without
24 objection.

25 SOLICITOR HOGAN: Thank you, Your

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1 Honor.

2 (SO ENTERED AS STATE'S EXHIBIT 1)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR HOGAN:

5 Q. Officer, I also hand you what has been
6 marked as State's Exhibits 2 and 3. Do you
7 recognize these items?

8 A. Yes, these are both sets of scales that
9 were located at the residence.

10 This one here, the one that is marked --
11 that I marked "C" has the case number on it.
12 Well, it actually has the date. This was
13 found in the residence. This is the one that
14 has -- this set of scales was found in this
15 pink pouch here.

16 Then this is another set of black scales
17 that were located in the residence. I marked
18 them Item "B." It has the case number and
19 that's my handwriting on that.

20 Q. Okay. And what are those?

21 A. These are sets of digital scales commonly
22 used -- we commonly find them with -- usually
23 in proximity to drugs.

24 Q. And where were they found?

25 A. These were found in the living room. Both

1 of these sets were found in the living room.

2 Q. Which is where her purse was on the couch?

3 A. That's where Ms. Branyon was located,
4 that's where her purse was. It's where we
5 found the multiple empty baggies and the purse
6 that had baggies inside that did have meth in
7 them.

8 Q. Okay. So in the purse, what'all was in
9 the purse when you -- exactly?

10 A. ~~Inside the purse, we found multiple empty~~
11 ~~baggies.~~ We found ---

12 MR. WHITEN: Your Honor, this has
13 been asked and answered.

14 THE COURT: I would sustain that
15 objection.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR HOGAN:

18 Q. I am going to show you what has been
19 marked as State's Exhibit 4. Do you recognize
20 those items?

21 A. Yes, this is my handwriting on here. I
22 labeled these as Item "F." I photographed
23 them in the back bedroom. They bear the case
24 number for this incident. The -- this was the
25 bag that contained three separate smoking --

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1 it's actually three separate smoking pipes and
2 a portion of maybe another one that's broken.
3 Those were located in the bedroom, in that
4 photograph that I testified to. These are
5 commonly used to ingest methamphetamines.

6 Q. So these were not found with the purse?

7 A. No, these were in a separate part of the
8 residence. The purse was inside the living
9 room with Ms. Branyon, inside the living room.
10 These were found at the back left of the
11 residence, in a bedroom.

12 SOLICITOR HOGAN: Your Honor, if it
13 please the court, I would like to introduce
14 State's Exhibits 2, 3 and 4 into evidence.

15 THE COURT: Any objection?

16 MR. WHITEN: If I could look at them
17 just briefly, Your Honor?

18 THE COURT: Yes, sir.

19 MR. WHITEN: (Upon review), no
20 objection.

21 THE COURT: Exhibits 2, 3 and 4
22 will be admitted without objection.

23 (SO ENTERED AS STATE'S EXHIBIT 2)

24 (SO ENTERED AS STATE'S EXHIBIT 3)

25 (SO ENTERED AS STATE'S EXHIBIT 4)

1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR HOGAN:

3 Q. Let's go back a minute to what you were
4 talking about with the Best kit. After you
5 gathered those, what did you do with them
6 next?

7 A. They're bagged, collected as evidence.
8 We take them back to our office, label them
9 and then -- the office is right beside the
10 Evidence drop box where we place them into --
11 it's a secure evidence storage where they are
12 later submitted to the regional drug lab for
13 analyses and testing.

14 Q. Okay. Before you put them into the Best
15 kit, do you do anything else with them other
16 than field test them?

17 A. We just label them, isolate the drug
18 evidence in bags, and then the nondrug
19 evidence in separate type bags.

20 SOLICITOR HOGAN: If you would allow
21 me just a moment, Your Honor.

22 THE COURT: Okay.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR HOGAN:

25 Q. Do you -- before you turn the drugs in,

1 put them into the Best kit, do you weigh them?

2 A. Typically that's part of putting them in

3 the P&E, property and evidence, sheet. We

4 identify them either by a description of the

5 bag or the substance that they are contained

6 in. Sometimes by weight. In this case we

7 totaled three bags that had methamphetamine in

8 them, that contained methamphetamine. Those

9 three bags, they were put in the Best kit that

10 is there that identified -- the first item

11 that you handed me. They contained -- we

12 weighed it and it contained 7.5 grams of

13 methamphetamine. That's including the bag

14 weight.

15 Q. So the bag and the substance?

16 A. Correct.

17 SOLICITOR HOGAN: Your Honor, I

18 believe that at this time we need to take

19 something up outside the presence of the jury.

20 THE COURT: Okay. Madame Forelady,

21 if you would, take your jury back to your jury

22 room. We will get you back out in just a few

23 minutes.

24 (JURY OUT @ 2:43 P.M.)

25 THE COURT: Yes, ma'am?

1 SOLICITOR HOGAN: Your Honor, at this
2 time I would like to be able to introduce
3 Officer Robinson as an expert witness based
4 on his training and experience as a law
5 enforcement officer -- seventeen years in law
6 enforcement -- as well as the numerous
7 trainings that he has had in narcotics.
8 I believe that he is qualified to be an expert
9 and give his opinion as to what was found, as
10 far as it being ---

11 THE COURT: What would be the field
12 of expertise?

13 SOLICITOR HOGAN: I would say
14 narcotics evaluation.

15 THE COURT: All right.

16 MR. WHITEN: I would object to that,
17 Your Honor. The officer testified about his
18 training, what he did, what his experience
19 showed it to be. That is not an expert
20 opinion at all. Cannot be an expert opinion
21 because, as far as I know, there is no
22 criteria for establishing a narcotics officer
23 as an expert witness. I have never seen that.

24 THE COURT: Well, I have a tendency
25 to agree. You've got to have at least some

1 type of area that you find him -- to be
2 subject to expertise. I understand that his
3 education and experience in the field enables
4 him to recognize certain things. But what
5 area -- just drug? Tell me again what it is
6 that you're ---

7 SOLICITOR HOGAN: I can title it
8 differently. Drug packaging and distribution.
9 I know that I have used a narcotics officer in
10 a separate trial as an expert in dealing with
11 street values, specifically. In this one it
12 would be more to the packaging of narcotics,
13 being able ---

14 THE COURT: Well, let's do this.
15 If you would, how about give me some more
16 background questioning about background and
17 the packaging so that I can hear a little bit
18 more about it. Please.

19 SOLICITOR HOGAN: Okay. Officer
20 Robinson, can you explain a little bit the
21 difference between someone who -- the
22 packaging of a drug and what that would mean
23 to you? How a drug would be packaged, what
24 that tells you.

25 THE WITNESS: Typically when we

1 -- whether it's at a house, a search warrant,
2 or we encounter somebody on the street, or on
3 a drug buy, uh, somebody who is either
4 trafficking or distributing large amounts of
5 methamphetamine, whether you find drugs on
6 them or not, if they're commonly selling or
7 packaging for resell drugs, you're going to
8 find bulk packaging.

9 If this person typically sells drugs
10 in grams and half-gram weights, you are going
11 to find bulk packaging that matches those
12 amounts. Like, you're not going to find
13 gallon Ziploc bags if somebody is selling
14 grams.

15 However, if it is dealers that are
16 selling -- if we have dealers that are going
17 to sell ounces or pounds, you're not going to
18 find gram weight packaging on them.

19 And, also, typically a user is going
20 to have the bag that their drug came in right
21 then. Usually you are not going to find a lot
22 of packaging at all. Most of time any money
23 or packaging that they have, the money is gone
24 and the packaging is gone and -- if you find
25 those on them, it's very small amounts. It is

1 usually either already ingested or already
2 loaded to a pipe, so there is no packaging.

3 Like I say, specifically packaging
4 of any kind of drug -- whether it is meth-
5 amphetamine, marijuana, cocaine -- the larger
6 the dealer, the more or larger packages that
7 they have. And it is always relevant to the
8 quantities that these persons may be packaging
9 for resale or actually distributing.

10 So like I said, a person who is
11 selling small amounts, grams, quarter grams,
12 you're going to find bulk or usually a large
13 quantity of small bags. Small bags, either
14 corners of tie bags or sealable bags.

15 SOLICITOR HOGAN: I believe that
16 would be his testimony.

17 MR. WHITEN: Your Honor, I object
18 to qualifying the officer as an expert and
19 allowing him to testify.

20 First of all, the first thing that
21 he said when he was testifying just now is
22 "typically." That doesn't mean that that
23 passes the test.

24 Secondly, he's trying to say who
25 was a user based on what was found out there.

1 That's a jury question to decide, not the
2 officer's. He can't say that this person
3 is a user because 'I found this.'

4 THE COURT: Just because it's an
5 issue to be determined by the jury is not
6 necessarily a basis to an objection. But I
7 agree, Mr. Whiten. I don't think that is
8 subject to expertise. I know it's the party's
9 experience. But ultimately what you are
10 trying to say is that she is a user versus a
11 dealer. I am going to sustain that objection.

12 SOLICITOR HOGAN: Is he allowed to
13 testify, based on his training and experience,
14 how drugs are packaged?

15 THE COURT: Well, he has said that
16 already. He's already testified that in his
17 experience that users only have a little
18 baggie with the drugs in it and no money.
19 That dealers have multiple bags, money and
20 scales. He's got that in. So he's already
21 got that out.

22 SOLICITOR HOGAN: Okay.

23 THE COURT: Okay?

24 SOLICITOR HOGAN: Yes, sir.

25 THE COURT: Let's take about a

1 five-minute break.

2 SOLICITOR HOGAN: Thank you.

3 THE COURT: Be right back.

4 (BRIEF RECESS 2:51 - 2:54 P.M.)

5 (DEFENDANT PRESENT)

6 (OFF RECORD DISCUSSION ABOUT

7 UNPLUGGED MICROPHONE)

8 THE COURT: Ms. Hogan, are you

9 ready to proceed?

10 SOLICITOR HOGAN: Yes, sir, Your

11 Honor.

12 THE COURT: Mr. Whiten, are you

13 ready to proceed?

14 MR. WHITEN: Yes, Your Honor.

15 THE COURT: Thank you. Bring the

16 jury in, please, sir.

17 (JURY IN @ 2:55 P.M.)

18 THE COURT: Ladies and Gentlemen,

19 my understanding is that there has been a

20 request to get the air-conditioning cut up a

21 little bit. We are handling that. Let me

22 just tell you -- the Clerk has called it in.

23 But I believe, if I am not mistaken, that the

24 AC is controlled in Columbia or Charlotte, so

25 it's going to take a little time. So if you

1 can figure the wisdom of that -- (laughter).
2 Anyway, he has no control over that. He's
3 looking into getting that taken care of.
4 Ms. Hogan.

5 SOLICITOR HOGAN: Thank you, Your
6 Honor.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR HOGAN:

9 Q. Officer Robinson, other than turning in
10 the evidence and the Best kit with what you
11 believed to be methamphetamine, other than
12 that did you have any other involvement in
13 this?

14 A. Other than documenting my report of the
15 findings at the residence, no.

16 SOLICITOR HOGAN: I have nothing
17 further at this time, Your Honor.

18 THE COURT: Mr. Whiten.

19 MR. WHITEN: May it please the
20 court?

21 THE COURT: Yes, sir.

22 CROSS EXAMINATION

23 BY MR. WHITEN:

24 Q. Officer Robinson, the house, was it 95
25 Shirley Store Road?

1 A. [REDACTED].

2 Q. Are you sure that it was Shirley Store
3 Road?

4 A. Yes, sir.

5 Q. What time of day or night did you go out
6 there?

7 A. 2:20 p.m.

8 Q. In the afternoon?

9 A. Yes, sir, 2:20.

10 Q. And were you alone or did someone else go
11 with you to that address?

12 A. No, sir. There was a group of us, about
13 five of us.

14 Q. How many people, how many officers went
15 into the residence -- into the house?

16 A. Four, that I know of.

17 Q. Four?

18 A. Yes, sir.

19 Q. Let me make sure that I get the right --
20 can you see that?

21 A. I can't see that screen. It's facing the
22 jury box.

23 Q. Let me see if I can get it back on ---

24 A. Yes, sir.

25 Q. Is that the house?

1 A. Yes, sir.

2 Q. Or -- trailer?

3 A. It's a trailer/house. Yes, sir.

4 Q. And the door to this trailer is not even
5 really a door, is it? It's a piece of wood?

6 A. It's a door, it opens and closes.

7 Q. But it not exactly a quality door, is it?

8 A. In my opinion, no.

9 Q. And it's got a little porch on it, a
10 little pine porch on it?

11 A. Yes, sir.

12 Q. There was nobody outside on this
13 particular -- was there anybody outside when
14 y'all arrived?

15 A. Yes, sir.

16 Q. Were they near the trailer or were they
17 backed away from the trailer?

18 A. They were over to the side. They were
19 doing construction on some kind of outbuild-
20 ing.

21 Q. Somebody was working there?

22 A. Yes, sir. Two males.

23 Q. Who was first in the house, in the
24 residence as y'all went in?

25 A. There were four of us on the entry team.

) 1 Corporal Rusty Scoggins was the first in the
2 door, I was the second in the door, then two
3 other officers followed me in.

4 Q. When y'all got into this mobile home, was
5 there anybody in there other than Loretta
6 Branyon?

7 A. Yes, sir, there was a -- like I testified
8 to earlier, there was a Simpson male inside
9 the residence.

10 Q. A male named Simpson?

11 A. Yes, sir.

12 Q. Charles Simpson, is that right?

) 13 A. Yes, sir. They called him Chuck, I
14 believe.

15 Q. Chuck Simpson?

16 A. (No verbal response).

17 Q. And when you entered the trailer, where
18 was he?

19 A. Just inside the front door, just to the
20 left of the front door in a small chair.

21 Q. In a small chair?

22 A. Yes, sir.

23 Q. Was he seated?

24 A. Yes, sir.

) 25 Q. He was seated?

1 A. He was originally seated. We had him go
2 to the ground when we went in.

3 Q. But when you went in, he was seated in
4 that small chair?

5 A. Yes, sir.

6 Q. And this mobile home that we are talking
7 about, the room that you went into first, how
8 large was that room?

9 A. It's not a large room. It's a single-wide
10 trailer. I think the common -- I don't know
11 the dimensions but they are commonly like
12 fourteen foot.

13 Q. So very small?

14 A. It's a small area.

15 Q. From where Mr. Simpson seated, if he stood
16 up would he be able to reach over there to the
17 coffee table?

18 A. To the coffee table, he would.

19 Q. Okay. And the coffee table is beside the
20 couch, right?

21 A. It's in front of the couch.

22 Q. Okay. And, uh, was any restraining taking
23 place when you went in?

24 A. Yes, both were detained with cuffs.

25 Q. Okay. Right away?

1 A. Right away, as were the two outside until
2 we identified them and made sure the evidence
3 ---

4 Q. Did you knock on the door to go in or ---

5 A. We announced our law enforcement presence,
6 as we were pulling up. Also, one of our
7 vehicles activated the blue lights and also
8 bumped the siren. Somebody on the PA says,
9 "Sheriff's Office, law enforcement, search
10 warrant."

11 Q. So whoever was in the mobile home would
12 have heard you coming?

13 A. In my opinion they would have heard us.

14 Q. Okay. Weren't you going there in the
15 first place to arrest Mr. Simpson?

16 A. No.

17 Q. You weren't?

18 A. No, sir.

19 Q. But he was there?

20 A. Yes, sir, he was there.

21 Q. And siren was blowing?

22 A. (No verbal response).

23 Q. And he was right there in the same area
24 as Ms. Branyon when y'all went in?

25 A. Yes, sir, they were both in the living

1 room.

2 Q. And the pocketbook that you're talking
3 about that was found was found -- or you saw
4 it right beside the couch, as I understand;
5 is that right?

6 A. Yes, sir. Right where she was seated.

7 Q. Okay. Let me show you this again, is
8 this the couch that the pocketbook was found
9 beside?

10 A. Yes, this was the couch.

11 Q. And the chair that Mr. Simpson was in is
12 directly across from that?

13 A. Yes, it's not in that picture but it's
14 across ---

15 Q. --- the room?

16 A. Yes, sir.

17 Q. About how far would you say that the couch
18 was from the chair where he was seated?

19 A. When you open the front door, the chair
20 that he was seated in was immediately to the
21 left against the wall. There's a coffee table
22 approximately in the middle of the room. The
23 couch that Ms. Branyon was seated on was along
24 the back wall, however much room that is.

25 Q. How much time passed from the time that

1 y'all blew the siren -- when you made noise

2 outside -- until you went in the trailer?

3 About how much time?

4 Q. I can't say but it was almost

5 instantaneous. We don't want to give them a

6 lot of notice but we want them to know that it

7 is law enforcement coming in, not somebody

8 coming to rob them.

9 Q. Some notice was given?

10 A. Some notice was given. As well, somebody

11 on the PA is announcing law enforcement

12 presence and when we come in the door we're

13 announcing "search warrant, law enforcement."

14 Q. All right. I think -- before I forget to

15 ask this question -- you said that you

16 weighed, that you did weigh what you took out

17 of there?

18 A. Yeah. Yes, sir.

19 Q. And it weighed 7.2 grams with the

20 envelopes it was in, is that correct?

21 A. To the best of recollection, 7.5 grams

22 with the envelopes.

23 Q. With the packaging?

24 A. Yes, sir.

25 Q. So it weighed less than that when the lab

1 weighed it?

2 A. They'd have to testify to that. It was
3 weighed with the packaging weight.

4 Q. All right. On the coffee table, you said
5 -- this is a picture of the coffee table?

6 A. Yes, sir.

7 Q. Did you testify that there was some
8 residue on there or some use of that coffee
9 table for drugs?

10 A. I testified that it appeared to have drug
11 residue on the scales.

12 Q. On the scales?

13 A. Yes, sir.

14 Q. What about on the coffee table itself?

15 A. You can tell by that picture that there
16 was so much stuff on that coffee table -- I
17 testified that there was an ashtray offset in
18 the corner, as I testified earlier, that has
19 two of those pink baggies in it that were the
20 same as we found drugs in that were in the
21 pocketbook.

22 Q. Same as the ones in the pocketbook?

23 A. Yes, sir.

24 Q. So if somebody was using meth on the
25 coffee table, it obviously would have come

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1 from -- could have come from that pink bag?

2 A. Could have.

3 Q. If Ms. Branyon was using, it could have
4 come from that pink bag?

5 A. Yes, sir, it could have.

6 Q. On the scale itself, you said that there
7 was what appeared to be residue on the scale.

8 Was that spot of residue analyzed by the lab?

9 A. No.

10 Q. It was not?

11 A. No.

12 Q. So we don't know for sure that that was
13 residue on the scales?

14 A. I can't say for sure.

15 Q. You said that as far as the scales that
16 there might have been a spot on there, but we
17 don't know for sure -- you can't say that it
18 was.

19 A. Right.

20 Q. ~~The rest of the meth that you found, as I~~
21 ~~understand it, was in the bags inside the pink~~
22 bag, is that correct? If that is not correct,
23 tell me.

24 A. Inside a pink and black bag inside the
25 pocketbook. Yes, sir.

1 Q. It was all in there?

2 A. Yes, sir.

3 Q. Nothing -- no other residue evident in
4 the apartment, the trailer, that you know of?

5 A. No, sir.

6 Q. But you did find a pink bag on the table
7 -- on the coffee table, as you said?

8 A. On the coffee table, in the ashtray, as
9 well as in other spots on the couch and in the
10 bedroom, as I just testified.

11 Q. Let's talk about this picture. If you
12 could just look at it for a minute.

13 A. Okay.

14 Q. How far is the bedroom from the living
15 room?

16 A. Like I said, I don't know the exact
17 dimensions of that trailer. It's an older
18 single-wide trailer. The living room when you
19 come in the front door, that was in that first
20 picture that we put up there, the living room
21 is immediately inside that door. The bedroom
22 is all the way at the end of -- the very last
23 thing in the trailer, on the left. I mean,
24 you have to go through a kitchen, down a small
25 hallway and then into that bedroom, on the

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1 left.

2 Q. So several feet?

3 A. Yes, more than ten.

4 Q. The pipes that we are looking at here were
5 found in the bedroom?

6 A. Yes, sir.

7 Q. Not in the living room? In the bedroom?

8 A. Yes, sir.

9 Q. Okay. Did you determine whose bedroom
10 that was?

11 A. Not exactly. I mean, Loretta Branyon's
12 stuff was in there, that had her name listed
13 on it, that's in some of those photographs.

14 Q. Okay.

15 A. There were personal clothes in there and
16 other items.

17 Q. So that was her bedroom?

18 A. I feel that that was her bedroom.

19 Q. And that's where the pipes were that
20 smoke, uh, -- that you smokes meth from?

21 A. Yes, sir.

22 Q. Laying on her bed?

23 A. (No verbal response).

24 Q. Did you move them off the bed? Or was
25 that where they were?

1 A. No, there's a chest-of-drawers in it. We
2 searched through all of those and that bag was
3 located on top of that chest-of-drawers. There
4 is not that much room -- there was a lot of
5 stuff in the house, there was stuff piled
6 everywhere, and there was a path about that
7 wide between the bed and the chest-of-drawers.

8 Q. ~~So the pipes were in there and one or two~~
9 ~~of these pink baggies were in there too?~~

10 A. ~~That one pink bag.~~ Yes, sir.

11 Q. One?

12 A. Yes, sir.

13 Q. Other than Loretta Branyon's clothing and
14 items in that bedroom, did you find any other
15 items? Any mail or -- anybody else's things
16 that might have been in that bedroom?

17 A. Not in that bedroom; no, sir.

18 Q. Okay. What about the other bedroom? Was
19 there another bedroom?

20 A. I was just going to say that we found some
21 mail attached (sic) to her. We photographed
22 some of the bills in the living room that were
23 attached (sic) to her, but not in the bedroom.

24 Q. Okay. Is there a photograph?

25 A. There's a photograph there in front of you

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) 1 that's a bill for water and sewer service,
2 addressed to that address with her name.

3 Q. That's where the bill was found?

4 A. In the living room; yes, sir.

5 Q. Was there anything addressed to her in her
6 bedroom?

7 A. Not of evidentiary value; no, sir.

8 Q. It's fair to say, Officer Robinson, that
9 if somebody did do meth that they could have
10 used it from this package that was open; would
11 that be a fair statement?

12 A. Yes, sir.

) 13 Q. You found that in the living room?

14 A. Yes, sir.

15 Q. Did you bring the meth up here with you?
16 Is it somewhere?

17 A. The evidence technician brought it here
18 today.

19 Q. Is this it?

20 A. Yes, sir.

21 Q. State's Exhibit 5, is that ---

22 A. Yes, sir.

23 Q. Is that all of it?

24 A. Yes, sir.

) 25 Q. This is all that you took from the house?

1 A. Yes, sir.

2 Q. And how many bags were there, little bags?

3 Do you know?

4 A. We took ~~five bags, total, that had meth~~

5 ~~residue in them.~~ I can't say how many bags

6 are in there now. It looks like some bags are

7 labeled ---

8 Q. And in the bags -- one of the bags

9 contained some blocks?

10 A. Sorry?

11 Q. One of the bags contained meth in block

12 form, is that right?

13 A. I would call it crystal or shard form.

14 Q. Like glass, crystal?

15 A. Yes, sir.

16 Q. Do you know how much that weighed by

17 itself?

18 A. No, sir, not separately by itself.

19 Q. The other bags, did they have any kinds of

20 shards in them or was it powder or residue?

21 A. There was a pink bag that I pointed out

22 earlier, that along the bottom edge of the bag

23 -- it's in that stack of photos, and I could

24 find it for you if you like. It does have a

25 quantity of methamphetamine in it.

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1 Q. Does ---

2 A. There are actually two of them that have
3 test kits. These are two separate pink bags.
4 As you can see, they both have shards of
5 product in those. Of course, I say that they
6 were all found together and tested for
7 methamphetamine. This back bag has a little
8 bit more in it than the front bag. So that's
9 three bags, total.

10 Q. Three bags, total?

11 A. (No verbal response).

12 Q. Crystal meth?

13 A. Yes, sir.

14 Q. Glass shards meth?

15 A. Yes, sir.

16 Q. Was there any other bag that contained
17 this kind of meth?

18 A. We had those two others that just had a
19 residue, tiny particles of that amount; yes,
20 sir. There was a total of five bags.

21 Q. And they're all in that package right
22 there?

23 A. Yes, sir, it should be.

24 Q. When you got into the mobile home, Officer
25 Robinson, was that pocketbook open, the black

1 one?

2 A. No, sir, it was not open.

3 Q. Not open?

4 A. No, sir. There's a photograph of it in
5 the state that we found it, and then there is
6 a photograph of it when it is opened and the
7 contents are laid out; in the individual
8 photos that we laid out.

9 Q. So you opened it?

10 A. Yes, sir.

11 Q. The one that I'm talking about is the one
12 that's beside the couch.

13 A. Yes, sir.

14 Q. You opened it?

15 A. Yes, sir.

16 A. Yes, sir, I opened that. As you can see,
17 some of the side pockets of the bag, you can
18 see my hand in the photo when I'm opening the
19 bag and taking pictures -- from inside, from
20 the outside looking in.

21 Q. Did Mr. Simpson -- did someone question
22 him about why he was there?

23 A. Yeah. We separated him and Ms. Branyon
24 and discussed, talked to both of them. I
25 wasn't personally present for that. He was

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1 taken outside and I remained inside.

2 Q. Did you determine if he stayed there,
3 actually lived there with Ms. Branyon?

4 A. I believe that there was an understanding
5 that he -- that he stayed at the residence.

6 Q. With Ms. Branyon?

7 A. Yes.

8 Q. He wasn't charged with anything that day?

9 A. No, sir.

10 Q. Though he was staying with her?

11 A. Yes, sir.

12 Q. How old was Mr. Simpson, if you know?

13 A. I don't recall his date of birth but he's
14 -- he's a little younger than her.

15 Q. He's younger than Ms. Branyon?

16 A. Yes, sir.

17 Q. I suppose that he denied owning the meth?

18 A. I didn't specifically question him.

19 Q. Okay. But he was not arrested?

20 A. He was not arrested, was not charged.

21 Q. But he lived there, in this small mobile
22 home?

23 A. Exactly.

24 Q. Seated in that room where the methampheta-
25 mine was found?

1 A. Exactly.

2 Q. Who was the target of the investigation.

3 SOLICITOR HOGAN: Your Honor, may we
4 approach?

5 THE COURT: Yes, ma'am.

6 SIDEBAR:

7 SOLICITOR HOGAN: I think that
8 we need to take up a couple of things outside
9 the presence of the jury. I mean, he's opened
10 the door as to the target of the investiga-
11 tion. That's not what the affidavit was
12 about, or the search warrant. He's putting
13 in that there was this other person when the
14 target of the investigation was the defendant.

15 THE COURT: What did he said?

16 SOLICITOR HOGAN: He talked
17 about Charles Simpson. He was not the target
18 of the investigation.

19 THE COURT: All right.

20 (SIDEBAR CONCLUDED)

21 THE COURT: Madame Forelady, Ladies
22 and Gentlemen of the jury, this actually is a
23 good time to take our afternoon break. We
24 have some matters to take up out of your
25 presence. If you would, go back and relax a

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) 1 couple of minutes. If you need anything, just
2 ask one of the bailiffs. We'll have you back
3 in just a little bit.

4 (JURY OUT @ 3:19 P.M.)

5 THE COURT: I will be glad to hear
6 from you.

7 SOLICITOR HOGAN: Your Honor, if it
8 pleases the court, Mr. Whiten specifically
9 asked Officer Robinson who the target of the
10 investigation was. We'd agreed that we
11 weren't going to go into that. I believe that
12 the basis of the search warrant was the
) 13 investigation of Ms. Branyon as far they used
14 a CI to buy from her.

15 I wasn't planning on going into that,
16 but I do think that he opened the door as to
17 who the actual target of the investigation
18 was.

19 Ms. Branyon was the actual target
20 of the investigation, based on that search
21 warrant.

22 So I believe that I should be allowed
23 to ask that question of Officer Robinson since
24 he opened the door.

) 25 THE COURT: Well, is your intent to

1 ask the question as to the target as opposed
2 to bringing in the language that you were --
3 that he was concerned about in the affidavit?

4 SOLICITOR HOGAN: Right. I am not
5 going to bring in the affidavit. Just to the
6 actual part about -- I think that he opened
7 the door. I did not ask that question but I
8 specifically would like to be allowed to ask
9 that specific question.

10 THE COURT: Mr. Whiten?

11 MR. WHITEN: The search warrant does
12 not mention who it is for. It mentions an
13 address only. This is the search warrant,
14 (tendering). It does not say that the search
15 warrant was for Loretta Branyon. It says the
16 address, and that's -- both of them lived
17 there.

18 THE COURT: I'm not -- say that
19 again, please?

20 MR. WHITEN: The search warrant
21 affidavit does not mention any names. It
22 mentions/states the address only.

23 THE COURT: Oh, I see what you're
24 saying. Who was the one that got the search
25 warrant? This officer?

1 MR. WHITEN: Both of them lived
2 there.

3 THE COURT: I am going to allow you
4 to ask the question of the identity of the
5 target.

6 I think that the door is opened up
7 for you to ask that question, but I don't want
8 you going into the language in the affidavit.

9 SOLICITOR HOGAN: No, sir, I have no
10 intent of doing that, Judge. Just asking him
11 who the target of the investigation was.

12 THE COURT: What I am saying, Mr.
13 Whiten, is that she can ask the question as to
14 the identity of the person that they were
15 targeting with their search, but that's all
16 that she can do.

17 MR. WHITEN: I have to object ---

18 THE COURT: I understand.

19 MR. WHITEN: --- to that because the
20 search warrant only gives the address, and
21 does not mention the name.

22 THE COURT: Right.

23 MR. WHITEN: I don't think that it
24 could allow for anything other than why they
25 were searching the residence, whoever lived

1 there; according to the search warrant.

2 THE COURT: I note your objection.

3 The thing is that you did ask the question, so

4 I think that it is an appropriate response.

5 SOLICITOR HOGAN: Thank you, Your
6 Honor.

7 THE COURT: Anything further?

8 SOLICITOR HOGAN: Are we going to
9 take a ten-minute break?

10 THE COURT: Yeah. Anything further
11 from the State?

12 SOLICITOR HOGAN: Nothing further,
13 Your Honor.

14 THE COURT: Anything further, Mr.
15 Whiten?

16 MR. WHITEN: Nothing other than my
17 objection to the question.

18 THE COURT: I know. You're
19 protected on the record. All right, we will
20 take about a ten-minute break. You can't talk
21 to anybody.

22 THE WITNESS: Yes, sir.

23 (BRIEF RECESS 2:51 - 2:54 P.M.)

24 (DEFENDANT PRESENT)

25 THE COURT: All right, is the State

1 ready to proceed?

2 SOLICITOR HOGAN: Yes, sir, Your
3 Honor.

4 THE COURT: Mr. Whiten, is the
5 defense ready to proceed?

6 MR. WHITEN: Your Honor, I renew my
7 objection about the question about the target.

8 THE COURT: I'm sorry, I missed
9 what you were saying.

10 MR. WHITEN: I renew my objection
11 about the ---

12 THE COURT: I don't believe that
13 you need to do that. You're protected on the
14 record. I understand the basis of it. But
15 you are protected.

16 MR. WHITEN: Yes, sir.

17 THE COURT: Would you bring the
18 jury in, please?

19 (JURY IN @ 2:55 P.M.)

20 THE COURT: Ms. Hogan.

21 SOLICITOR HOGAN: Your Honor, if it
22 may please the court, ---

23 THE COURT: Yes, ma'am.

24 REDIRECT EXAMINATION

25 BY SOLICITOR HOGAN:

1 Q. Officer Robinson, I'm going to show you --
2 do you recognize this picture?

3 A. I do.

4 Q. Is the purse in that picture open or
5 closed?

6 Q. The main top part is closed. There is a
7 zipper right here on the side that is open.

8 Q. Is that how you found the purse when you
9 walked into the house?

10 A. The photograph in that picture of that
11 pocketbook is before I physically picked it
12 up and laid it on the couch.

13 Q. So the main part was zipped closed?

14 A. Yes.

15 Q. Did it appear when you walked in that
16 anyone was currently using any type of drug,
17 when you walked in?

18 A. You mean currently using it?

19 Q. Right.

20 A. No, ma'am.

21 Q. And all the pipes that were used to smoke
22 methamphetamine were found in the back
23 bedroom?

24 A. Yes, ma'am.

25 Q. Not in the living room?

1 A. Correct.

2 Q. With the purse that had the drugs, the
3 scales and the money in it?

4 A. And her ID, correct.

5 Q. And last question, who was the actual
6 target of your investigation that day?

7 A. During this case the known actual target,
8 on the basis of our investigation, was Loretta
9 Branyon. However, we were armed with
10 information that there was a white male living
11 there. But we did not have him positively
12 identified at the time that I obtained the
13 search warrant.

14 SOLICITOR HOGAN: Nothing further,
15 Your Honor.

16 THE COURT: Any recross?

17 RECROSS EXAMINATION

18 BY MR. WHITEN:

19 Q. Could you just repeat that last answer?

20 A. The target of the investigation at the
21 time that I obtained the search warrant all
22 the way up to the -- I obtained the search
23 warrant on January 6th, 2011. We executed the
24 search warrant on January 13th.

25 From the time the search warrant was

1 obtained and the investigation was officially
2 underway, the specific target was Loretta
3 Branyon, who is seated here in the courtroom.

4 However, we did have information through
5 our investigation that there was a younger
6 white male living there. We did not have him
7 positively identified. We had rode by there
8 several times and ran tags. We couldn't find
9 anything that we thought may match him. We
10 also did not know his capacity at the
11 residence. We did not know if he was a
12 brother, a son, a boyfriend, a spouse,
13 whatever.

14 Q. So you just knew that he was a younger
15 white male and he was suspicious?

16 A. I knew that he resided at the residence.

17 MR. WHITEN: That's all. Thank you.

18 THE COURT: May this officer be
19 excused?

20 SOLICITOR HOGAN: Yes, sir, Your
21 Honor.

22 THE COURT: Any objections? Mr.
23 White, any objection?

24 MR. WHITEN: No objection, Your
25 Honor.

1 THE COURT: Thank you, sir. You
2 may step down.

3 THE WITNESS: Thank you.
4 (WITNESS TAKES STAND)

5 THE COURT: Call your next witness,
6 please.

7 SOLICITOR HOGAN: Your Honor, if it
8 pleases the court, the State calls Belinda Lee
9 to the stand.

10 (WITNESS TAKES STAND)

11 BELINDA LEE, being duly sworn to tell
12 the truth, the whole truth and nothing but the
13 truth, testified, as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR HOGAN:

16 Q. Ms. Lee, where are you currently employed?

17 A. The Anderson County Sheriff's Office.

18 Q. How long have you been working at the
19 Sheriff's Office?

20 A. Thirty years.

21 Q. What is your current position?

22 A. Evidence technician.

23 Q. And how long have you worked in that
24 capacity?

25 A. Five years.

1 Q. What are your duties as an evidence
2 custodian? What do you do?

3 A. I take in all the evidence that the
4 officers have taken in, I store it in the
5 proper places.

6 Q. Were you working in that capacity in
7 January of 2011?

8 A. I was.

9 Q. Did you come into contact with any
10 evidence in the case of the State against
11 this defendant, Loretta Branyon?

12 A. I did.

13 Q. What kind of evidence did you receive?

14 A. The Best kit, the scales, and the -- let
15 me look at this. (Upon review), the pipes.
16 And, uh, -- like I said, the glass pipes, the
17 Best kit and all the evidence that Officer
18 Robinson turned in.

19 Q. How did you match the evidence that was
20 turned in to Ms. Branyon?

21 A. Her name and information and everything
22 was on the evidence property sheet.

23 Q. Who did you receive the evidence from?

24 A. Marty Robinson.

25 Q. On what date did you receive the evidence?

1 A. January 13th, 2011.

2 Q. Where did you receive the evidence?

3 A. From the evidence lock box at the Anderson
4 County Sheriff's Office.

5 Q. And what did you do with the packages that
6 were turned into you?

7 A. I stored them in the proper location, and
8 then I took the Best kit to the Anderson-
9 Oconee Forensic Lab on -- let's see what day
10 was that. (Upon review), on January 27th.

11 Q. Okay. Did the packaging that you received
12 seemed to have been altered in any way?

13 A. No, ma'am.

14 Q. Did you alter it in any way?

15 A. Did I what?

16 Q. Alter or change any ---

17 A. No.

18 Q. I want to show you what has been marked as
19 State's Exhibit 5. Do you recognize this?

20 A. Yes, ma'am. I do.

21 Q. How do you recognize it?

22 A. By the case number and this is the
23 information that I put in the computer.

24 Q. Can you tell what those items were, by the
25 packaging? Or what they were alleged to be?

1 A. All I know is that they were supposed to
2 be drugs. What, I don't know.

3 Q. Okay. How can you tell that they were
4 supposed to be drugs?

5 A. Because I have the paperwork that the
6 officer turned in.

7 Q. Is that your signature on the sticker on
8 the envelope?

9 A. Yes, it is.

10 Q. Okay. What did your signature indicate?

11 A. (No verbal response).

12 Q. What did you do with those drugs once you
13 received them into the evidence locker?

14 A. Well, I stored them in the proper place
15 until they were transferred to the Anderson-
16 Oconee Forensic Lab.

17 Q. And you said that you, yourself, took them
18 to the Anderson-Oconee Forensic Lab?

19 A. I did.

20 Q. On what day?

21 A. On January 27th, 2011.

22 SOLICITOR HOGAN: Thank you. No
23 further questions.

24 THE COURT: Cross examination.

25 MR. WHITEN: If it may please the

1 court.

2 CROSS EXAMINATION

3 BY MR. WHITEN:

4 Q. Did you testify that you received the
5 drugs from Marty Robinson?

6 A. I got it out of the drop box that he left
7 it in. I didn't personally take it from him.

8 Q. Under this form -- if we could have it
9 marked for identification, for identification,
10 or I thought that I had. I'll show you what
11 has been marked as Defendant's Exhibit 1 for
12 identification, Ms. Lee. If you could look at
13 that, please, for a moment.

14 A. (Upon review), Um-humm.

15 Q. According to this document, you did take
16 it from the evidence locker but did you not
17 state that the "following substance and
18 containers were originally seized by..." --
19 then underneath that, what did you say?

20 A. They "are unknown to me."

21 Q. So you didn't know at the time that you
22 took it out of the evidence locker who took
23 it?

24 A. No, it says that the person who originally
25 sent it was unknown to me, but the officer's

1 name is on the evidence sheet here that he
2 turns the property in on.

3 Q. But you don't know who seized it?

4 A. No, I don't.

5 Q. Then you delivered it to Anderson-Ocone
6 Forensics Lab for analysis?

7 A. I did.

8 MR. WHITEN: That's all the
9 questions.

10 THE COURT: Redirect?

11 SOLICITOR HOGAN: Nothing further,
12 Your Honor.

13 THE COURT: May this witness be
14 excused?

15 SOLICITOR HOGAN: Yes, Your Honor.

16 THE COURT: Any objection, Mr.
17 Whiten?

18 MR. WHITEN: No, Your Honor.

19 THE COURT: Thank you, you may be
20 excused.

21 (WITNESS STEPS DOWN)

22 THE COURT: Would you call your
23 next witness, please, ma'am?

24 SOLICITOR HOGAN: Your Honor, if it
25 please the court, the State would call

1 Meredith Lanford to the stand.

2 (WITNESS TAKES STAND)

3 MEREDITH LANFORD, being duly sworn
4 to tell the truth, the whole truth and nothing
5 but the truth, testified, as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR HOGAN:

8 Q. Ms. Lanford, what is your occupation?

9 A. I am a forensic chemist with the Anderson
10 Oconee Regional Forensics Laboratory.

11 Q. How long have you been a forensic chemist
12 in the forensics lab?

13 A. A little over six and a half years.

14 Q. And what position do you hold?

15 A. I am a forensic chemist.

16 Q. How long have you worked in that position?

17 A. Six and a half years.

18 Q. And what are your duties with the Anderson-
19 Oconee Regional Forensics Lab?

20 A. My primary job function is analyze
21 evidence that is brought to our laboratory
22 for controlled substances.

23 Q. What type of training did you have to
24 qualify for your position as a forensic
25 chemist?

1 MR. WHITEN: We will stipulate her
2 qualifications, Your Honor.

3 THE COURT: Qualifications in what
4 field? Forensic examination of drugs?

5 SOLICITOR HOGAN: Yes, sir.

6 THE COURT: Is that?

7 MR. WHITEN: Yes, sir.

8 THE COURT: Okay. Just one second.
9 Ladies and Gentlemen of the jury, normally a
10 witness is not allowed to give their opinion.
11 They are limited to testifying about things
12 that they've seen, that they've heard, they've
13 smelled -- basically your senses. However,
14 because of her education and experience, the
15 combination, a person may become certified in
16 a certain area. If their expertise may help
17 you, the finder of fact, you may listen to the
18 evidence and they'll be allowed to give their
19 opinion. In this case it's been stipulated to
20 that Ms. Lanford is an expert in the field of
21 forensic chemical analyses. She will be
22 allowed to give her opinion in that area. Her
23 opinion is like any other testimony in this
24 case. You may accept it, you may reject it,
25 or you may do with it what you think is

1 appropriate. Ms. Hogan.

2 SOLICITOR HOGAN: Your Honor, if it
3 may please the court.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR HOGAN:

6 Q. Ms. Lanford, have you had the occasion to
7 chemically analyze substances to determine
8 whether a substance is or contains a narcotic
9 type drug?

10 A. Yes, I have.

11 Q. Okay. How many times?

12 A. Well over five thousand.

13 Q. And have you had an occasion to analyze
14 substances to determine whether it is or is
15 not methamphetamine?

16 A. Yes, I have.

17 Q. How many times would you say?

18 A. I believe well over a thousand.

19 Q. How many methamphetamine cases do you get
20 in a week?

21 A. In any given week, probably about --
22 between twenty and thirty.

23 Q. Based on your past experience and
24 education, do you have an opinion as to what
25 -- well, let me show you what has been marked

1 as State's Exhibit 5. Based on your training
2 and experience, do you have an opinion as to
3 what that substance is?

4 A. Yes, I do.

5 Q. How can you identify it?

6 A. This actually has -- this is what's known
7 as our Best kit system. This bag inside is
8 what the officers put any kind of controlled
9 substance in. They put it in, then sealed it.

10 The evidence department brings this sealed
11 bag to us. Then this outer bag right here is
12 what I repackage it in. I put our lab
13 stickers identifying with our lab number and
14 case number.

15 Q. When did you mark that into evidence?

16 A. This exhibit was marked on January 27th,
17 2011.

18 Q. Is that the date that y'all would have
19 received that exhibit?

20 A. Yes, it is.

21 Q. And where did you receive the exhibit
22 from?

23 A. I received it from Belinda Lee in our
24 laboratory.

25 Q. Is this exhibit in the same or

1 substantially the same condition now that it
2 was when it first was received by your office,
3 other than being analyzed?

4 A. Yes, it is.

5 Q. For what purpose did the exhibit come into
6 your possession?

7 A. In order to determine if any controlled
8 substances were present.

9 Q. And when did you contact the analyses of
10 the contents?

11 A. I conducted the analysis on February 24th,
12 2011.

13 SOLICITOR HOGAN: At this time the
14 State would like to enter Court's Exhibit 5
15 into evidence, Your Honor.

16 THE COURT: Any objection?

17 MR. WHITEN: ~~No objection.~~

18 THE COURT: Admitted without
19 objection.

20 (SO ENTERED AS STATE'S EXHIBIT 5)

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR HOGAN:

23 Q. Ms. Lanford, what tests did you conduct
24 when you were testing this substance?

25 A. The first part of my analysis is to remove

1 the substance from any packaging and take the
2 initial weight of the substance itself. I
3 then perform two screening tests to help me
4 narrow down what type of controlled substance
5 that may be present. Then I perform two
6 confirmatory tests in order to identify what
7 controlled substance is present, if any is
8 present at all.

9 Q. From this evidence, were you able to form
10 any opinion as to what the evidence that was
11 provided to you contained?

12 A. Yes, I was able to.

13 Q. What is your opinion as to what the
14 substance was?

15 A. There were five baggies in this particular
16 evidence. All of them were found to have
17 methamphetamine.

18 Q. If you don't mind, I'm going to ask you
19 to open this bag and take out each individual
20 baggie for me.

21 A. (Complies).

22 Q. If you could, describe those individual
23 baggies, the weight of what each individual
24 baggie was and how you received it.

25 A. These first two bags, the officer had

) 1 placed these two bags in the sealed evidence
2 bag, labeled A and B.

3 This pink bag was the first item that I
4 tested and it contained 1.43 grams of meth-
5 amphetamine. I always label what the lab
6 number and the item number is that I give it
7 with my initials.

8 This second bag was the second item that
9 I tested. It was found to have 4.42 grams of
10 methamphetamine in it.

11 Then I actually placed these two bags in
12 this outer bag, our bag, just to keep them
13 separate.

14 All right, this was -- this was the second
15 item that I tested, which was in this sealed
16 evidence bag labeled "C" by the officer. It
17 contained this small pink Ziploc baggie, which
18 I found to be 2.4 grams of methamphetamine.
19 Again, I placed it in my own clear plastic
20 bag.

21 Then the last two items were actually
22 sealed up in this bag by the officer, labeled
23 "D." It was a small amount. This bag was said
24 to have 0.02 grams of methamphetamine.

) 25 Then this last bag here contained 0.07

1 grams of methamphetamine.

2 So the total weight of all of these was
3 6.18 grams of methamphetamine.

4 SOLICITOR HOGAN: No further
5 questions from the State at this time.

6 THE COURT: Cross-examination?

7 MR. WHITEN: If it please the court.

8 CROSS EXAMINATION

9 BY MR. WHITEN:

10 Q. Could you show me that 4.42 gram bag,
11 please? Not me -- show it to the jury.

12 A. (Displaying before jury).

13 Q. Okay. And just show them the other four,
14 too, one at a time.

15 A. Okay.

16 THE COURT: Do you need her to step
17 down?

18 MR. WHITEN: Yes.

19 THE COURT: Okay.

20 CROSS EXAMINATION CONTINUED

21 BY MR. WHITEN:

22 Q. Just take them all out and show them all.

23 A. (Displaying before jury).

24 Q. Thank you.

25 MR. WHITEN: That's all the

1 questions that I have.

2 THE COURT: Any redirect?

3 SOLICITOR HOGAN: No, sir, Your
4 Honor.

5 THE COURT: May Ms. Lanford be
6 excused?

7 SOLICITOR HOGAN: Yes, sir.

8 THE COURT: Any objection?

9 MR. WHITEN: Yes, Your Honor.
10 No objection.

11 THE COURT: You may be excused.

12 (WITNESS STEPS DOWN)

13 THE COURT: Would you call your
14 next witness, please, ma'am?

15 SOLICITOR HOGAN: Your Honor, if it
16 pleases the court, may we approach?

17 THE COURT: Yes, ma'am.

18 (OFF RECORD BENCH CONFERENCE)

19 SOLICITOR HOGAN: Your Honor, at this
20 point the State rests.

21 THE COURT: All right. Ladies and
22 Gentlemen, the State has indicated that it
23 rests. What that means is, in layman's terms,
24 that they have presented all that they are
25 going to present in their case in chief.

1 That means that I have several
2 administrative matters that I need to deal
3 with for the remainder of the day. I don't
4 see any benefit in us trying to go much
5 further as far as testimony is concerned.
6 So what I am going to do is I'm going to
7 excuse you for the remainder of the day and
8 ask that you come back, be in your jury room,
9 at 9:30 in the morning. We will resume
10 testimony at that point.

11 I remind you to, please, don't speak
12 amongst yourselves or with anybody else over
13 the break. You're excused.

14 (JURY OUT @ 4:03 P.M.)

15 THE COURT: Any Motions?

16 MR. WHITEN: Your Honor, I just want
17 to make sure that the Motions that I have
18 already made -- I know you are supposed to
19 repeat the basis for them and, though they are
20 in the record, I raise them again on the same
21 basis that I made before.

22 THE COURT: I deny your Motions.
23 That being said, Ms. Branyon, would you please
24 stand up, please?

25 DEFENDANT: (Complies).

1 THE COURT: Would you raise your
2 right hand?

3 DEFENDANT: (Complies)

4 THE COURT: Do you swear or affirm
5 to tell the truth, the whole truth and nothing
6 but the truth?

7 DEFENDANT: Yes, sir.

8 THE COURT: Okay. I am going to
9 need you to speak loud enough for me to hear
10 you, because it is hard to hear you. Okay?

11 DEFENDANT: Yes, sir.

12 THE COURT: Now, Ms. Branyon, you
13 may be seated.

14 DEFENDANT: (Complies).

15 THE COURT: At this point, I want
16 to explain to you, Ms. Branyon, certain of
17 your rights. Okay? If you do not understand
18 anything that I tell you or say to you, please
19 let me know because I want you to understand
20 everything that I go over with you. Okay?

21 DEFENDANT: Okay.

22 THE COURT: Now, we've really
23 reached that point in the case where you may
24 present a defense to the State's case against
25 you. You have a right to claim protections

1 of the Fifth Amendment to the United States
2 Constitution, which is commonly referred to as
3 the right against self-incrimination. Let me
4 read to you what that says, -- okay?

5 DEFENDANT: Yes, sir.

6 THE COURT: In pertinent part, the
7 Fifth Amendment says this, "No person shall be
8 compelled in any criminal case to be a witness
9 against himself..." -- or, in your case,
10 herself. What that means is that you can't be
11 forced to testify or testify against yourself.
12 Do you understand that?

13 DEFENDANT: (Affirmative nod).

14 THE COURT: Okay. Now, you have
15 to give me a verbal response. Okay?

16 DEFENDANT: Yes, sir.

17 THE COURT: Okay. Now, Ms.
18 Branyon, you do have the right, like any other
19 person, to testify in the case if you decide
20 that you want to. If you do decide that you
21 want to waive your Fifth Amendment right and
22 testify, that will be a decision that you must
23 make on your own. You can make it with the
24 assistance of your attorney, you can make it
25 with the assistance of any other friend or

1 family member that you think would be helpful
2 to you. But ultimately it is a personal
3 decision that only you can invoke or that only
4 you can waive. Do you understand that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Now, if you were to
7 testify in this case, you'll be subject to
8 the same rules of examination and cross-
9 examination as any other witness who may come
10 and testify in this courtroom. Do you
11 understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: Also, Ms. Branyon, if
14 you have any convictions involving dishonesty
15 or for crimes that are punishable by imprison-
16 ment for more than one year, and I find that
17 the probative value of those crimes outweighs
18 the prejudicial impact upon you, then the
19 State will be allowed to cross examine you
20 about those prior records. The obvious
21 purpose would be to impeach your credibility
22 as a witness. Do you understand that?

23 DEFENDANT: Yes, sir.

24 THE COURT: Now, if you decide that
25 you do want to testify or that you want to

1 exercise your right, you have to make either
2 one of those decisions knowingly,
3 intelligently and voluntarily knowing the
4 rights of the Fifth Amendment accorded to you
5 and the consequences of you going forward to
6 testify. Do you understand that?

7 DEFENDANT: Yes, sir.

8 THE COURT: Okay. Now, if you in
9 the end result decide that you do not want to
10 testify, in my charge on the law to the jury
11 I will instruct them that they cannot and that
12 they shall not discuss or even refer to the
13 fact that you did not testify, because that is
14 your right under the Fifth Amendment to the
15 Constitution. Do you understand that

16 DEFENDANT: Yes, sir.

17 THE COURT: And I would instruct
18 them that if they were to consider it or refer
19 to it, that it would be improper and that the
20 burden at all times remains on the State to
21 prove you guilty beyond a reasonable doubt.
22 Do you understand that?

23 DEFENDANT: Yes, sir.

24 THE COURT: Do you have any
25 questions of me, of anything that I have gone

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1 over with you thus far?

2 DEFENDANT: No, sir.

3 THE COURT: Have you understood
4 everything that I've gone over with you thus
5 far?

6 DEFENDANT: Yes, sir.

7 THE COURT: Do you have any ques-
8 tions of your attorney?

9 DEFENDANT: Do I?

10 THE COURT: Do you have any ques-
11 tions of your attorney at this stage?

12 DEFENDANT: No, sir.

13 THE COURT: Well, uh, -- have you
14 decided or discussed with your attorney
15 whether or not you do or do not want to
16 testify in this case?

17 DEFENDANT: We have some.

18 THE COURT: Now, then I am going
19 to ---

20 MR. WHITEN: Your Honor, we've
21 talked about it but I need to go into it a
22 little deeper before we can make that
23 decision.

24 THE COURT: Okay.

25 MR. WHITEN: So that she understands

1 why she makes the decision she'll make.

2 THE COURT: That's a good point.

3 I am not going to make you make that decision
4 now, Ms. Branyon. I am going to let you think
5 about it. You can make that decision
6 tomorrow, because we're done with the
7 testimony as far as today goes and you'll have
8 time to speak with your attorney or anyone
9 else that you want to speak with in making
10 that decision. But at the beginning of the
11 hearing tomorrow, before we resume the
12 testimony, you will have to make that
13 decision. Okay?

14 DEFENDANT: Yes, sir.

15 THE COURT: Anything further for me
16 as far as the Fifth Amendment charge to your
17 client?

18 MR. WHITEN: Nothing from us, Your
19 Honor.

20 THE COURT: All right. I want
21 y'all to hang on for just a second. Do you
22 have any proposed charges that you want me to
23 look at?

24 SOLICITOR HOGAN: Your standard
25 charge is okay with me, Your Honor. Also

1 to include the possession charge, as long as
2 the ---

3 THE COURT: Right. I have what I
4 thought was the charge on possession with
5 intent. In looking at it a second ago it
6 looks like she just did the possession part of
7 that. If you will bear with me for one second
8 -- you can take a minute and look at this part
9 of it. I'll be right back with the other.

10 (BRIEF RECESS 4:11 - 4:13 P.M.)

11 (DEFENDANT REMAINS IN COURTROOM)

12 THE COURT: I told you guys wrong.
13 That's the lesser included for trafficking.
14 This is the possession right here. I'm sorry.

15 The verdict form, I have except for
16 adding the defendant's name.

17 SOLICITOR HOGAN: Yes, sir.

18 (COUNSEL REVIEWING CHARGES)

19 SOLICITOR HOGAN: I think that there
20 are a couple of places in there.

21 THE COURT: Okay.

22 SOLICITOR HOGAN: May we address you
23 from right here?

24 THE COURT: Sure. Yeah, abso-
25 lutely. Are you looking on the possession

1 with intent or are you looking at the simple
2 possession charge?

3 SOLICITOR HOGAN: The possession with
4 intent charge.

5 THE COURT: Okay.

6 MR. WHITEN: It says ---

7 COURT REPORTER: I'm sorry, could
8 you speak up just a little bit?

9 THE COURT: Go ahead.

10 MR. WHITEN: The one that I am
11 looking at, *"the actual knowledge of the*
12 *presence of methamphetamine would be strong*
13 *evidence of the defendant's..."* -- then the
14 next part of it -- I don't have -- I have a
15 problem with the "actual knowledge." They
16 never got anyone to testify that she had
17 actual knowledge, such as "I know", "it's
18 mine."

19 THE COURT: So you are saying that
20 the facts of the case, as charged, should not
21 be ---

22 MR. WHITEN: Not actual knowledge.
23 There's been no actual knowledge testimony.
24 There's circumstantial evidence.

25 SOLICITOR HOGAN: Your Honor, I would

1 argue that the way that the charge reads to me
2 is that you're just describing the two types
3 of possession, actual and constructive. You
4 are not saying which one is pertaining to this
5 defendant. You are just saying that there are
6 two different types, so I would argue that
7 should remain in there. And I would argue
8 that the drugs were found in her purse with
9 her ID in it. To me, that would mean -- the
10 jury could take that to mean actual knowledge.
11 I think that's an appropriate charge.

12 MR. WHITEN: The next sentence ---

13 THE COURT: Show me exactly where
14 in this. I was trying to get to that -- I saw
15 it.

16 SOLICITOR HOGAN: Towards the bottom.
17 Actual possession.

18 THE COURT: Okay.

19 SOLICITOR HOGAN: Yours looks a
20 little bit different than ours.

21 THE COURT: It does, doesn't it?

22 SOLICITOR HOGAN: Yeah. Actually ---

23 THE COURT: That's because -- my
24 law clerk is not here, obviously he's tran-
25 sitioning out, so -- it has that actual

1 knowledge can be inferred from dominion and
2 control of that trailer.

3 SOLICITOR HOGAN: Right.

4 MR. WHITEN: That sentence says
5 "actual knowledge" and intent. There's been
6 no evidence of actual knowledge in the record
7 at all.

8 THE COURT: Just one second.
9 So your objection is the inference of actual
10 knowledge?

11 MR. WHITEN: Yes, sir.

12 THE COURT: So then if you excise
13 that out, then you would literally make the
14 "defendant's knowledge and possession may be
15 inferred when a substance is found in property
16 under its control" meaningless, would you not?

17 MR. WHITEN: Could you say that one
18 more time?

19 THE COURT: Okay. What I am saying
20 is that you have that language, you have that
21 inference. Then you go out here (indicating),
22 evidence, and then that the defendant's
23 knowledge may be inferred if it is found in
24 their control. So you don't have to have
25 evidence of actual knowledge.

1 MR. WHITEN: This part is ---

2 THE COURT: I tell you what. Y'all
3 are more than welcome to have them with you to
4 look at tonight and then I will be glad to
5 hear any concerns that you have.

6 SOLICITOR HOGAN: Your Honor, I
7 wouldn't want to ---

8 THE COURT: Well, it's just a
9 statement about proposition of law -- of
10 knowledge. My inclination is that I am going
11 to charge it. I don't think that the law
12 requires that you have to establish actual
13 knowledge.

14 MR. WHITEN: Actual knowledge.

15 THE COURT: How you could ever do
16 that would be really -- limited.

17 MR. WHITEN: All right, let's ---

18 SOLICITOR HOGAN: Is this a different
19 one?

20 THE COURT: No, I think that it is
21 just spaced -- she typed it in, filled it in.

22 SOLICITOR HOGAN: Because there was
23 another section.

24 MR. WHITEN: It's not in this one.

25 THE COURT: Okay.

1 MR. WHITEN: Well, no -- it's not in
2 here.

3 SOLICITOR HOGAN: Something about
4 that she did not intend to distribute. There
5 was a line in that one that's not in this one.

6 THE COURT: Okay.

7 SOLICITOR HOGAN: It just seemed out
8 of place, didn't seem appropriate.

9 THE COURT: Oh, okay.

10 SOLICITOR HOGAN: Can I make a copy
11 of that?

12 THE COURT: Absolutely. Sure.
13 Both of you can.

14 SOLICITOR HOGAN: You want a copy?

15 MR. WHITEN: Yes, just so that we
16 can make sure that we are on the same page.

17 THE COURT: I would much rather be
18 on the same page. We're looking at possession
19 of one or more grams, right?

20 SOLICITOR HOGAN: Yes, sir.

21 THE COURT: Creates an inference
22 that the defendant possessed to ---

23 MR. WHITEN: Yeah, that's what she
24 said.

25 THE COURT: --- distribute.

1 SOLICITOR HOGAN: He doesn't like
2 that word.

3 MR. WHITEN: I don't like it but I
4 guess it sticks, if that's what the law says.

5 THE COURT: This is what I am
6 looking at. Start here (indicating) and --
7 the other has to do with PWID lesser-included
8 offense. Start there and go on through.

9 SOLICITOR HOGAN: Then possession.

10 THE COURT: Possession.

11 MR. WHITEN: Yeah, let's get some
12 copies.

13 THE COURT: Did you show him -- the
14 only thing on the verdict form, and I'll show
15 it to you tomorrow, the only thing that I
16 would add to that -- on the simple possession.

17 SOLICITOR HOGAN: Okay.

18 MR. WHITEN: That's fine.

19 THE COURT: Make copies and let me
20 get that back.

21 SOLICITOR HOGAN: Yes, sir.

22 THE COURT: We can get our gray-
23 haired clerk to make them.

24 SOLICITOR HOGAN: Could we have two
25 copies each, please?

1 CLERK: Yes, ma'am.

2 (OFF RECORD SIDEBAR BETWEEN COUNSEL)

3 THE COURT: Let me do this. I know
4 that I've had probably you and you with my
5 standard charge. But just to go over with --
6 I know that I've had you, and I know that I've
7 had you here for just my regular part.

8 MR. WHITEN: Yes, sir.

9 THE COURT: Just my regular -- my
10 standard charge, I do it in three parts. The
11 first part defines and controls the duties as
12 jurors; then obviously the second aspect would
13 be the substantive law, what we have just gone
14 over; and the third aspect of it would be some
15 rules and ideas about their deliberations.
16 Other than that, it won't be anything
17 different.

18 I am more than glad to put all that
19 other stuff on the record but -- I think
20 you're both similarly familiar with it.

21 SOLICITOR HOGAN: Yes, sir.

22 MR. WHITEN: I understand. This one
23 has to be clarified and I think that we are
24 pretty close on doing that.

25 THE COURT: We are going to bring

1 the jury back at 9:30. Let's try to be here
2 at 9:15. That way if we have any debates
3 about the charge, we can hopefully get that
4 out of the way.

5 SOLICITOR HOGAN: Yes, sir.

6 THE COURT: And we will go over
7 with Ms. Branyon whether or not she wants to
8 testify.

9 MR. WHITEN: Yes, sir.

10 THE COURT: Now, has she been out
11 on bond?

12 MR. WHITEN: Yes, sir. Your Honor,
13 I do need to discuss the matter of that
14 decision, so I'd like to keep her where she is
15 until I go through that.

16 THE COURT: Okay. All right, Ms.
17 Branyon, I am going to allow you to continue
18 (to remain) out. I will advise you, however,
19 that if you don't show up tomorrow that the
20 trial is not going to stop. It would continue
21 in your absence. Do you understand?

22 DEFENDANT: Yes, Your Honor.

23 THE COURT: Okay. So be here at
24 least by 9:15, or preferably sooner than that
25 -- or however early your attorney says to be

1 here. Okay?

2 DEFENDANT: Yes, sir.

3 SOLICITOR HOGAN: Anything additional
4 from the State?

5 SOLICITOR HOGAN: Nothing further,
6 Your Honor.

7 THE COURT: From the defense?

8 MR. WHITEN: No, Your Honor.

9 THE COURT: All right. Thank you
10 to the attorneys. I appreciate it. See you
11 in the morning. We are in recess.

12 (COURT IN RECESS @ 4:29 P.M.)

13 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 AUGUST 14, 2012 9:15 A.M.

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3 (DEFENDANT PRESENT)

4 THE COURT: We are on the record in
5 the Branyon matter. Mr. Whiten, have you had
6 an opportunity to look at those charges
7 further since yesterday afternoon?

8 MR. WHITEN: Yes, Your Honor. I do
9 have some requests for changes. I didn't type
10 them out but I did write them in.

11 THE COURT: You know, you -- y'all
12 don't do me very much justice when you don't
13 type them out for me, because I don't have a
14 law clerk. I don't have the ability to type
15 them out very easily, so you need to do that
16 in the future.

17 MR. WHITEN: Yes, sir. Your Honor,
18 the first objection that I have is on page
19 one. I've numbered ---

20 THE COURT: Did you look at the
21 case of Soloman (phonetic) versus State, and
22 State versus Kimbrell?

23 MR. WHITEN: Yes, sir. On this
24 page, at the top of the page.

25 THE COURT: You're looking at --

1 one is the "strong", and one is that the
2 defendant intended to control the disposition
3 and use of ---

4 MR. WHITEN: Yes, sir.

5 THE COURT: Those cases cited under
6 that cite are *Soloman v. State* and *State v.*
7 *Kimbrell*. Did you look those up?

8 MR. WHITEN: Yes, sir, but my
9 difference is that that case was in 1994.
10 A '94 case. My objection to it is the word
11 "strong", because that shifts the burden to --
12 away from the jurors to determine the weight
13 of the evidence. I don't have any objection
14 to saying that there was evidence of it, but
15 "strong evidence" is a term that could be
16 anything from, you know, way up here to way
17 down here. It really takes it away from the
18 jury's province, the way -- whether it's
19 strong, weak or inbetween. I object to that
20 word, "strong."

21 THE COURT: All right. I will
22 double check. I did not read those cases.
23 Do they say that is an appropriate charge?

24 MR. WHITEN: That's what it says.
25 I don't -- I disagree with that case. I think

1 that it should be -- if that's the -- I
2 disagree with that case.

3 THE COURT: Well, it may be that
4 you disagree with it but it's still the
5 pronouncement from the Supreme Court. If
6 that's the case, then that's case. Right?

7 MR. WHITEN: That's what the case is
8 but I just don't agree with that. I don't
9 know whether they overlooked it or not, Your
10 Honor, but to say that it is "strong" takes
11 away the jury's determination of the weight of
12 the evidence.

13 THE COURT: Well, let -- excuse me.

14 MR. WHITEN: That's my objection.

15 THE COURT: But did you -- in those
16 cases, did you -- I have not looked them up
17 but I will right quickly. Did you look them
18 up to see whether they approved the charge of
19 it being a strong inference of ---

20 MR. WHITEN: Strong evidence.

21 THE COURT: (Affirmative nod),
22 strong evidence. Excuse me.

23 MR. WHITEN: That's the case but I
24 think the case should be overturned and that
25 that language should not be used. Like I

1 said, it still shifts the burden.

2 THE COURT: Well, and you very well
3 may be right. But I think that the proper
4 forum for that to be done would not be in a
5 trial. That'd be at the appellate level.

6 But let -- I'm going to look at those
7 cases about that and double check them.

8 MR. WHITEN: We do object to that,
9 Your Honor.

10 THE COURT: Okay. What else ---

11 MR. WHITEN: On the next page --
12 I've labeled these one through four. That was
13 my first one.

14 THE COURT: Okay.

15 MR. WHITEN: The second one, on the
16 second page, that I have is that -- you've
17 already -- you stated this before, but at the
18 bottom of the first paragraph it states that
19 the, (reading): *"Defendant's knowledge and*
20 *possession may be inferred from the substances*
21 *found on the property and under the*
22 *defendant's control. However, this inference*
23 *is simply an evidentiary fact to be taken into*
24 *consideration by you along with the other*
25 *evidence in the case and to be given the*

1 *weight you decide that it should have."*
2 But it -- it takes -- it dilutes the statement
3 that as previously stated, that "Mere presence
4 at the site where the drugs were found is not
5 enough to prove possession."

6 THE COURT: Well, you know, one
7 thing that I did note -- I looked through
8 these charges again this morning. In the
9 charge on possession with intent and also the
10 simple possession charge, it is -- mere
11 presence is stated twice. Okay? So I am not
12 going to ---

13 MR. WHITEN: I just want to make
14 sure that the jury clearly understands that.
15 I think ---

16 THE COURT: Yes, I agree that could
17 be something you could argue but I'm not going
18 to add an additional statement. Okay.

19 MR. WHITEN: The third one, the
20 third objection. We ask that, on the next
21 page it says about the amount of the substance
22 possessed, that these are things to be
23 considered -- the manner in which it was
24 allegedly possessed, the place where it was
25 alleged possessed, and other factors that you

1 consider to be important. I object to the
2 last phrase, "...and other factors that you
3 consider to be important." Because, Your
4 Honor, that provides the jury with the
5 opportunity to speculate on what the other
6 factors are that may not be in evidence.
7 Such as where she lived, the trailer, the
8 neighborhood. All of that can be speculated
9 if you say "and other factors" without
10 specifying the factors.

11 THE COURT: Just a second.
12 Solicitor Hogan?

13 SOLICITOR HOGAN: Your Honor, I was
14 just going to add that I don't have a problem
15 with adding "and other factors in evidence."
16 I think that would take care of -- I mean, her
17 trailer and her residence are in evidence.
18 That is where the search warrant happened.
19 So -- but as far as the neighborhood and
20 things like that, I don't have a problem with
21 just adding -- I think that if we added "other
22 factors in evidence", I think that would clear
23 up what Mr. ---

24 THE COURT: Would that satisfy your
25 concerns?

1 MR. WHITEN: I can't object to that,
2 Your Honor, if it's in evidence and they
3 consider it in evidence, then it takes it out
4 of speculation. I just don't believe that the
5 jury should speculate on other ---

6 THE COURT: I have a tendency to
7 agree with you on that. I think that could
8 be worded differently.

9 MR. WHITEN: And the final objection
10 is, Your Honor, number four which I listed
11 right below that, uh, that "*You must find the*
12 *defendant did not intend to have...*" -- I
13 think the standard there, the standard to be
14 used is that you must find beyond a reasonable
15 doubt that the defendant did not intend to
16 distribute but that it was solely for her own
17 use. It just says "find" and I want to add
18 that "you must find beyond a reasonable doubt"
19 that the defendant did not (sic) intend have
20 the methamphetamine solely for her own use.

21 THE COURT: What is your position
22 on that, Ms. Hogan?

23 SOLICITOR HOGAN: Your Honor, I
24 believe that you're going to give a charge on
25 what reasonable doubt is, which will apply to

1 all of the elements throughout the charge. I
2 don't know why adding "beyond a reasonable
3 doubt" specifically in that section would ---

4 THE COURT: Well, we do it in other
5 areas. Like, going back, we do it -- uh, --
6 (reviewing) -- no. Okay. I note your
7 objection. If we keep pointing out one or the
8 other, I -- I overrule your objection to that.

9 MR. WHITEN: One more issue. I
10 haven't reviewed the lesser-included offense
11 charge ---

12 THE COURT: You have not looked --
13 okay, here it is, (tendering). You can review
14 it. While you are doing that, I am going to
15 check the two cases that I cited on the first
16 proposition.

17 SOLICITOR HOGAN: Your Honor, I
18 wanted to -- there was one thing that I wanted
19 to add, as well. On the second page, the ---

20 THE COURT: Under which charge?

21 SOLICITOR HOGAN: Under the PWID
22 charge, Your Honor. It starts -- it is just
23 two lines, "Distribute means to deliver other
24 than by administering or dispensing a drug."

25 THE COURT: Say that again.

1 SOLICITOR HOGAN: "Distribute means
2 to deliver other than by administering or
3 dispensing a drug."

4 THE COURT: Uh-huh?

5 SOLICITOR HOGAN: I believe that an
6 attempted transfer could be added in there.
7 We've got case law ---

8 THE COURT: There's no evidence of
9 that in this case, though.

10 SOLICITOR HOGAN: Well, there is no
11 evidence that she delivered either. I mean,
12 it's just kind of a confusing sentence if
13 you're not going to add -- what it all could
14 be. I mean, there's no evidence that she
15 distributed, or that she delivered it either.
16 So I was just trying to clarify for the jury.
17 It's just kind of a confusing sentence to me.

18 THE COURT: I agree that it is not
19 the clearest of all sentences, but -- what's
20 your feeling about it?

21 MR. WHITEN: As you said, it's not
22 in evidence. If we put something in the
23 charge that is not in evidence, I think that
24 it would be grounds for appeal.

25 THE COURT: Let me just say this.

1 I note your objection. I agree with you that
2 it is not the nicest or the best of wording
3 out there. But certainly there is no evidence
4 in this case. I understand what your argument
5 is, but I am going to note your objection.

6 SOLICITOR HOGAN: Yes, sir.

7 THE COURT: I am going to check one
8 thing about the *Soloman* case and the other
9 case, make sure that I feel comfortable with
10 that. Y'all look at the other two.

11 The one thought that I do have is
12 that in my standard charge I have the charge
13 on intent, which again is one of those charges
14 that has a tendency to roll people's eyes back
15 in their head. We have sufficient intent in
16 both of these charges, or in the PWID charge,
17 that I think it would be sufficient for this
18 case. But if you do not -- if you want the
19 general intent charge that I do, it's up here.
20 Just let me know.

21 SOLICITOR HOGAN: Yes, sir.

22 THE COURT: If y'all will look at
23 that. Now, before I leave, Mr. Whiten, have
24 you had a sufficient opportunity to speak with
25 your client about whether or not she wishes to

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1 testify?

2 MR. WHITEN: Yes, Your Honor.

3 THE COURT: Now, Ms. Branyon, would
4 you raise your right hand?

5 DEFENDANT: (Complies)

6 THE COURT: Do you swear or affirm
7 to tell the truth, the whole truth and nothing
8 but the truth?

9 DEFENDANT: Yes, sir.

10 THE COURT: Now, Ms. Branyon, have
11 you had sufficient time to speak with whomever
12 you wish to, to determine whether or not you
13 want to exercise your fifth amendment rights
14 and not testify or if you wish to waive those
15 rights and testify in this case?

16 DEFENDANT: Yes, sir.

17 THE COURT: What way do you want to
18 do?

19 DEFENDANT: I do not want to
20 testify.

21 THE COURT: You do not wish to
22 testify?

23 DEFENDANT: That's right.

24 THE COURT: Have you had sufficient
25 time to confer with whomever?

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1 DEFENDANT: Yes, sir.

2 THE COURT: Thank you, ma'am.

3 Do you have any other witnesses that you
4 intend to produce?

5 MR. WHITEN: No, Your Honor.

6 THE COURT: So we are going to the
7 jury now?

8 MR. WHITEN: We are ready. Yes,
9 sir.

10 THE COURT: All right. The
11 question that I would have then would be the
12 order of closing. I know that you marked for
13 identification, but did not introduce, a form.

14 MR. WHITEN: I didn't intend to,
15 Your Honor.

16 THE COURT: So that leaves the
17 final closing to Mr. Whiten?

18 SOLICITOR HOGAN: Yes, sir, I believe
19 so.

20 THE COURT: Do you agree with that?

21 SOLICITOR HOGAN: Yes, sir.

22 THE COURT: Okay.

23 MR. WHITEN: One more question about
24 the lesser-included offense. This is under
25 *Blackmon, Blackmon v. State*. It states -- and

1 this is just clarification so that we know
2 that we are on the same page, Your Honor, that
3 "...lesser-included offense should be that the
4 jury may infer that the defendant intended to
5 possess the controlled substance for his
6 personal use rather than for distribution,
7 even when the amount possessed by the
8 defendant exceeded the statutory amount."
9 In other words, if it is over a gram, it could
10 still be possession under this case.

11 THE COURT: Yeah, I think -- if you
12 look at it, it says -- I think it's in the
13 PWID charge that it says that this is just an
14 evidentiary fact to take along with all the
15 other circumstances. One of which, you're
16 saying that she didn't -- that you didn't like
17 because it introduced speculation to the
18 equation.

19 I'll be right back. Look at that
20 and then we will address that final issue
21 and, I guess, get on with the closing.

22 The final issue, I guess, would be
23 that -- I always give the attorneys the
24 opportunity to close after I charge the jury
25 or do the standard way that we've always done

1 it, argue first and charge later. Either way
2 that you want to do it. If everybody is
3 aboard, then I will charge first. If not, if
4 you want to do it just the standard way then
5 we can ---

6 SOLICITOR HOGAN: We'll talk about
7 it.

8 THE COURT: Okay, I'll be back.

9 MR. WHITEN: One point of clarifi-
10 cation on the lesser-included. I think
11 according to this case that you must charge
12 that regardless of the -- regardless of the
13 statutory amount. Otherwise, it's an error.

14 THE COURT: Well, let me tell you
15 something. If you want me to charge
16 something, you draft it out and I will look
17 at it. Don't come in here and just tell me
18 verbally what you want me to do. Okay?

19 MR. WHITEN: Okay.

20 (BRIEF RECESS 9:30 - 9:44 A.M.)

21 (DEFENDANT REMAINS IN COURTROOM)

22 THE COURT: Is that my charge that
23 you're writing on?

24 MR. WHITEN: I'm sorry?

25 THE COURT: Is that my charge that

1 you're writing on? Please don't. Do you have
2 the verdict form?

3 MR. WHITEN: Yes, sir.

4 THE COURT: With regard to the
5 objection of the State under *State v. Solomon*,
6 the strong evidence, I am going to deny your
7 Motion. These cases say that is a proper
8 charge, so I am going to deny your Motion on
9 that.

10 Does the State have any objection to
11 the proposed verdict form?

12 SOLICITOR HOGAN: No, sir, Your
13 Honor.

14 THE COURT: Does the defense have
15 an objection?

16 MR. WHITEN: No objection.

17 THE COURT: Okay. Now, Mr. Whiten,
18 as to the simple possession of -- the simple
19 possession charge, do you have objections
20 where you said that you wanted to add
21 something?

22 MR. WHITEN: Yes, Your Honor.

23 THE COURT: That is why I gave you
24 these charges last night, guys, instead of
25 waiting for an hour this morning to go over

1 this stuff. But go ahead.

2 MR. WHITEN: I can pass up the case
3 where my objection is.

4 THE COURT: Again, that's why we
5 went over this last night. So tell me what it
6 is that you want.

7 MR. WHITEN: The only addition,
8 obviously, ---

9 THE COURT: Show me what it is that
10 you want me to charge, please.

11 MR. WHITEN: Yes, sir. I want you
12 to charge, Your Honor, that the lesser-
13 included offense of possession -- regardless
14 of the statutory amount, that the defendant.
15 Let me, (reading): *"It requires the judge to*
16 *give a jury instruction on PWID and the*
17 *lesser-included offense of possession*
18 *regardless of statutory amount."* So ---

19 THE COURT: That says that you give
20 the charge on the lesser-included. It doesn't
21 say that the amounts have to be charged. I
22 don't think.

23 MR. WHITEN: Well, that would be my
24 --- they include it down here, *"...regardless*
25 *of the statutory amount."*

1 THE COURT: Ms. Hogan, what is your
2 position on that, please?

3 SOLICITOR HOGAN: Your Honor, I
4 believe that I read what he is talking about
5 the way that you read it. It says that you
6 have to charge the lesser-included, not
7 the ---

8 THE COURT: I don't have to say
9 that you can find simple possession regardless
10 of the amount ---

11 SOLICITOR HOGAN: Correct. I think
12 that that is -- what he is citing is saying
13 that the permissive inference is that you have
14 to charge the lesser-included of possession,
15 not that you have to word it the way that he
16 is saying.

17 THE COURT: Just one second, let
18 me look -- I don't know where this is from.
19 Whose book is this from, Mr. Whiten?

20 MR. WHITEN: It's from ---

21 SOLICITOR HOGAN: Actually I gave
22 that to him, Your Honor. Drug Litigation in
23 South Carolina.

24 THE COURT: I am looking at Page
25 175 of the Drug Litigation book, note two, and

1 the way that goes, that goes into Page 176,
2 that the State Court is required to give the
3 lesser-included charge of simple possession,
4 but it doesn't indicate that I have to give
5 the clarification 'exceed the statutory
6 amount.' Certainly that is your argument to
7 make to the jury. It's an unobjectionable
8 argument to the jury. But I -- I don't think
9 that it is necessary that I charge it. I
10 think the charge in and of itself clearly
11 indicates that even though they have more than
12 the statutory amount that they don't have to
13 find guilt of intent to distribute. They just
14 take the totality of the circumstances in
15 evidence and make their decision.

16 MR. WHITEN: But I am free to argue
17 it?

18 THE COURT: Sure. Absolutely.

19 SOLICITOR HOGAN: Your Honor, if it
20 pleases the court, I have -- I wanted to pass,
21 and I've already shown this to Mr. Whiten, and
22 he didn't have a problem. I was going to put
23 these two things up on the board, on the
24 overhead machine while I was giving my
25 closings. I just wanted you to see them.

1 This is just the elements -- what he put in.

2 THE COURT: You don't have an
3 objection to that?

4 MR. WHITEN: No, sir, Your Honor.
5 I've reviewed those documents and I have no
6 objection to the use of them.

7 THE COURT: If you don't have an
8 objection, then I am fine with them.

9 SOLICITOR HOGAN: Your Honor,
10 also I wanted to mention -- I don't know
11 really what type of Motion that this, other
12 than during Mr. Whiten's opening remarks he
13 talked about them, the jury, not sending the
14 defendant away for a long, long, long time.
15 That is not -- they are not doing that part.
16 That would be up to you. They have no idea
17 what she is looking like. I just think that
18 was ---

19 THE COURT: I understand. I do
20 understand that. That does require an
21 objection, but at the same time it is improper
22 to argue the length of a sentence.

23 MR. WHITEN: I will not argue that,
24 Your Honor.

25 THE COURT: All right. All things

1 said and done, now have y'all thought about
2 how you want to proceed as far as order?

3 MR. WHITEN: Yes, sir, we've agreed
4 to a charge first ---

5 THE COURT: Let me charge and then
6 y'all go do closings?

7 MR. WHITEN: Yes, sir.

8 THE COURT: I think in the long run
9 that it is easier for the jury to understand
10 what you're doing that way. That being done
11 and said, let me get my stuff together.

12 Did y'all look at the intent charge
13 up here at all?

14 SOLICITOR HOGAN: Your Honor, I
15 believe that I've heard it before and I don't
16 have a problem with it.

17 THE COURT: It's my thought that
18 the intent that's included in the PWID is
19 sufficient intent of proving to the jury the
20 burden.

21 SOLICITOR HOGAN: Oh, I'm sorry. I
22 misunderstood.

23 THE COURT: What's your feeling on
24 that?

25 MR. WHITEN: No objection to that,

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1 Your Honor.

2 THE COURT: Are you ready to
3 proceed?

4 SOLICITOR HOGAN: Yes, sir.

5 MR. WHITEN: Yes, Your Honor.

6 THE COURT: Bring in the jury,
7 please, if you would.

8 (JURY IN @ 9:52 A.M.)

9 THE COURT: Good morning. Bailiff,
10 if you would, don't let anybody leave or enter
11 the courtroom during my charge or the closing
12 arguments by the attorneys.

13 Ladies and Gentlemen of the jury,
14 thank you for your patience. I know that
15 sometimes when you're sitting back there in
16 that back room -- and, believe it or not,
17 I've done it myself -- you wonder what is
18 going on here. Let me just rest you assured
19 that we have been working, have been since
20 earlier this morning.

21 At this point where we are in the
22 stage of the trial -- remember, I told you
23 that there were five phases in all cases:
24 opening statement, presentation of the
25 evidence, and -- and we've finished the

1 presentation of the evidence phase. Okay?

2 Normally what we would be doing is having

3 closing statements by the attorneys.

4 I've given the attorneys the option

5 -- and I'm going to inverse that. What I am

6 going to do is, I'm going to charge you on the

7 law and then the attorneys will come back and

8 give you their closing statement.

9 Then we will have a quick meeting

10 with the attorneys and litigants, and then you

11 will be allowed to begin your deliberations.

12 Okay?

13 Just to let you know where we are.

14 Now, Ladies and Gentlemen, before

15 we go any further with my charge of the law,

16 let me just tell you that I am not nearly as

17 eloquent as these attorneys are; so

18 unfortunately, portions of it will be read to

19 you. I put people to sleep on a regular

20 basis. I apologize to you in advance. But

21 it's important that I go over all these

22 elements because they are very critical.

23 I am going to give you a break after

24 my charge to stand up and move around, so

25 hopefully I won't bore you too bad.

1 That being said, my instructions will
2 be in three phases. The first part are the
3 rules that define and control your duties as
4 jurors. The second aspect will be the
5 substantive law that you will apply to the
6 charges in this case. The third will be some
7 rules that define and control your delibera-
8 tions. I will give you a clear indication
9 where we are in those charges.

10 Now, as I told you at the beginning
11 of this case, it is your duty to find the
12 facts. You are the finders of the facts. You
13 do that from the evidence that has been
14 presented here in the courtroom, and no other.

15 Those facts as you find them to be,
16 it is your job to apply the law as I give it
17 to you now. You should not be concerned and
18 you shall not be concerned with what you want
19 the law to be or what you think that it should
20 be. It is your duty to apply the law as I
21 give it to you.

22 Also, in performing your duties as
23 fact finders, you should not be influenced by
24 any personal likes or dislikes, any opinions
25 or any undue sympathy that you may have for

1 one side of this case or the other. That
2 means that you decide this case solely on the
3 facts presented here in this courtroom and
4 from the law as I give it to you, uninfluenced
5 by any other factors. Now, that is the oath
6 that you took at the beginning of this case to
7 do just that.

8 Now, in following my instructions
9 this morning, you can't do what so many people
10 like to do, to pick out some of the
11 instructions that you like and follow those
12 but disregard some of the other instructions
13 that you may not like as much. They are all
14 equally important.

15 Also, Ladies and Gentlemen, if I've
16 said anything during the course of this trial
17 to indicate to you that I have feelings one
18 way or the other of how you're to find the
19 facts in this case, I am going to ask that you
20 disregard that. I can assure you that I have
21 no feelings the one way or the other. That is
22 entirely your prerogative as to how you want
23 to find the facts in this matter. You and you
24 alone are the judges of the facts.

25 Now, in determining what the facts

1 are, you must evaluate and weigh the evidence
2 that you've heard during this case. I can't
3 give you a set of scales to place the evidence
4 on so that it would weigh up. Weighing the
5 evidence is entirely a mental process that you
6 use, that you follow using your good sense,
7 your sense of logic and the common sense that
8 you brought into the courtroom with you today.

9 That being said, there are certain
10 things that are going to consider as evidence,
11 that you can consider as evidence, and other
12 things that you consider as helpful but which
13 is not technically evidence.

14 Number one, the sworn testimony of
15 witnesses here in this courtroom is evidence.
16 It doesn't matter whether it was on direct
17 examination or the cross examination. That
18 is evidence. If they got up on the witness
19 stand, raised their hand, they were sworn,
20 they took an oath and they testified, that
21 is evidence.

22 Also exhibits that I allowed into
23 evidence is evidence.

24 So far, Ladies and Gentlemen, in this
25 case that is the only legal evidence that is

1 before you in this matter. So that leads us
2 to the consideration of what is not evidence.

3 Now, what these attorneys say -- they
4 are fine attorneys. What they say in their
5 arguments and their comments to you is
6 designed to help you understand the case, it
7 is designed to help you understand the issues
8 involved in this matter, and to help guide you
9 through these facts. But they are not up on
10 the stand, they have not taken the oath, they
11 are not witnesses. So what they said in their
12 opening statements, what they said during
13 their comments in this trial and what they are
14 about to say to you in a few minutes is not
15 legal evidence. It is designed to help you
16 understand the case but if your memory of what
17 transpired in this courtroom, by way of
18 evidence, differs from what they tell you that
19 it is, then your memory will control over
20 that.

21 Also, again Ladies and Gentlemen,
22 objections are made in every single case.
23 Sometimes that can be maddening where a jury
24 has to get up and walk out, get up and walk
25 out. But the fact that someone objected, or

1 to the extent that I let you stay in here and
2 listen to my ruling on the objection, is not
3 to be considered by you. It would be improper
4 for you to even discuss or consider the fact
5 that either one of these lawyers objected or
6 that I ruled on that objection in your
7 presence. That is just not simply for you to
8 consider. That is part of the process.

9 Finally, Ladies and Gentlemen, what
10 is not evidence is things that you may have
11 heard when court is not in session. Things in
12 the hallway, things at home, or heard during
13 lunch is not evidence. Only evidence produced
14 here in this courtroom is something that you
15 may consider.

16 In South Carolina we have two types
17 of evidence that is recognized. They are very
18 straightforward. We have direct evidence and
19 we have circumstantial evidence.

20 Direct evidence is pretty much what
21 is says. It's the testimony of a person who
22 asserts to have actual knowledge or direct
23 knowledge of a fact, such as an eyewitness.

24 Circumstantial evidence is a little
25 more difficult. It's proof of a chain of

1 facts and circumstances from which you can
2 find that another fact exists, although that
3 fact has not been proved directly.

4 So that that doesn't confuse you, let
5 me give you examples. If all of you go to bed
6 at night and you had snow in your front yard,
7 if you wake up in the morning and there would
8 tracks in that snow, you may reasonably infer
9 that someone or some thing walked through your
10 yard in the night and made tracks in the snow,
11 although you did not see that person or thing
12 walk through your yard. That is circumstantial
13 evidence.

14 Now, in South Carolina we make
15 absolutely no distinction between the weight
16 or the value that you can give either direct
17 or circumstantial evidence. You are entitled
18 and you may consider both types of evidence.
19 The only thing that you are not allowed to do
20 when you're considering circumstantial
21 evidence is to engage in speculative facts;
22 i.e., that the inferences would lead you to
23 only mere speculation. If you were to do
24 that, that would be improper.

25 But if after weighing all the

1 evidence in this case, whether direct or
2 circumstantial evidence, if you are not
3 convinced of this defendant's guilt beyond a
4 reasonable doubt, it will be your duty to find
5 her not guilty.

6 Now, in every single case, when
7 deciding what the facts are, all juries must
8 consider which testimony that they want to
9 believe and which testimony that they don't
10 want to believe. We call that the credibility
11 of the witnesses. You as the jury have the
12 right to disbelieve all or part of any
13 witness' testimony, you have a right to
14 believe all of any witness' testimony.

15 Now, in making this decision a
16 witness' credibility, you can -- but you are
17 not required -- to take into accounts several
18 factors, and let me indicate those to you:

19 You can determine for yourself
20 whether the witness was able to see or hear
21 or know about the things about which they
22 testified.

23 How well that witness was able to
24 recall and describe the things about which
25 they testified?

1 What was the witness' manner on the
2 witness stand while they were testifying, or
3 what we commonly refer to as what was their
4 demeanor?

5 Is there some reason that a witness
6 would want to give testimony that would help
7 or hurt one side or the other, and did that
8 witness have an interest in the outcome of
9 this case or do they have any bias or
10 prejudice for one party or matter in this
11 matter, against the other, -- excuse me. Do
12 they have any bias or prejudice concerning any
13 party or any matter or issue involved in this
14 case?

15 You may ask yourselves how reasonable
16 that witness' testimony was considered in the
17 light of all the evidence that's been
18 presented.

19 You can consider whether their
20 testimony had been contradicted by what they
21 said or had done at another time, or by other
22 evidence that's been presented in this case,
23 or other testimony that has been presented.

24 Now, Ladies and Gentlemen, those are
25 some but not all of the factors that you may

1 consider when you go through the analysis of
2 witness credibility.

3 As a jury, you do not check your
4 common sense at the door when you're sworn in,
5 and you should not in this case. So when
6 you're going through your evaluation of
7 witness credibility, you should use those
8 things that in your day to day lives are
9 indicative of truthfulness and indicative of
10 lack of truthfulness when you make this
11 decision of the credibility of witnesses.

12 One thing that you do not do,
13 however, is add up the number of witnesses
14 that may have testified for one side or the
15 other in making a determination of
16 credibility. It doesn't matter to you if a
17 witness was for the State or for the defense.
18 It doesn't matter if the information came from
19 direct examination or from cross examination.
20 All you are concerned about is making sure
21 that justice is served and that justice is
22 done.

23 Now, Ladies and Gentlemen, in this
24 case you've heard testimony from persons who
25 are described as experts. As I told you

1 earlier in this case, normally people are not
2 allowed to give their opinions in the
3 courtroom. However, because somebody's
4 education or experience, or a combination of
5 those, they may be qualified in a particular
6 field and be allowed to give their opinion in
7 that particular field. Expert testimony is no
8 different from any other testimony that you
9 hear in this case. You may accept it, you may
10 reject it, give it as much weight as you think
11 that it deserves considering the witness'
12 education, their experience and their reasons
13 given for their opinion as well as all the
14 other evidence presented in this case.

15 Now, Ladies and Gentlemen, I remind
16 you again that the fact that this defendant
17 has been indicted on that sheet of paper, has
18 been arrested and charged, is not evidence of
19 her guilt. It does not raise the inference or
20 any type of presumption of her guilt. This is
21 simply the charging mechanism by which the
22 State of South Carolina brings defendants
23 before juries such as yourselves for a
24 determination of whether or not they are
25 guilty or innocent.

1 In this case the defendant has pled
2 Not Guilty to this indictment. What that
3 means is that it puts the burden on the State
4 of South Carolina to prove the defendant
5 guilty.

6 Now, I charge you that a person
7 charged in this state with committing a
8 criminal offense is never ever required to
9 prove themselves innocent. It is an important
10 rule of law that a defendant in a criminal
11 case, no matter what the seriousness of what
12 the charge may be, will always be presumed
13 innocent of the crime for which the indictment
14 was issued unless there has been guilt (sic)
15 established proving that person guilty beyond
16 a reasonable doubt.

17 Now, this presumption of innocence
18 does not end when you go back to your jury
19 room and begin your deliberations. It
20 accompanies this defendant throughout this
21 trial until you reach a verdict of guilty
22 based on evidence of guilt satisfying you of
23 guilt beyond a reasonable doubt.

24 It has been said in the vernacular of
25 the law that the presumption of innocence is

1 like a robe of righteousness that is placed
2 about the shoulder of a defendant, and it
3 remains there throughout a case until it is
4 stripped from their shoulders by evidence
5 satisfying you, the jury, of their guilt
6 beyond a reasonable doubt. That is not,
7 Ladies and Gentlemen, just a mere legal
8 theory. It is not just a legal phrase. It is
9 a substantial right to which every defendant
10 in this case is entitled unless you, the jury,
11 are satisfied of guilt beyond a reasonable
12 doubt.

13 So that leads us to, what is a
14 reasonable doubt. I gave you a brief charge
15 on that in this case. I will reiterate that
16 again. This is what a reasonable doubt is,
17 a reasonable doubt is the kind of doubt that
18 would make a reasonable, sincere, honest and
19 conscientious person hesitate to act in the
20 matter or in their own affairs.

21 Proof beyond a reasonable doubt is
22 proof that leaves you firmly convinced of the
23 defendant's guilt.

24 Now, Ladies and Gentlemen, there are
25 very few things in this world that we know

1 with absolute certainty. In criminal cases,
2 the law does not require proof that overcomes
3 every possible doubt. If based on your
4 consideration of the evidence you are firmly
5 convinced that the defendant is guilty of the
6 crime for which she has been charged, it will
7 be your duty to find her guilty.

8 If, on the other hand, you think that
9 there is a real possibility that the defendant
10 is not guilty, you must give her the benefit
11 of the doubt and find her not guilty.

12 A reasonable doubt may arise from the
13 evidence or from the lack of evidence.

14 I further instruct you, Ladies and
15 Gentlemen, that a defendant is entitled to
16 every reasonable doubt that may arise in the
17 case. Now, what that simply means is that if
18 upon an issue of fact essential to a
19 conviction of the crime for which she has been
20 charged, if you have a doubt as to how that
21 issue should be resolved, it would be your
22 duty to resolve that doubt in favor of this
23 defendant.

24 Finally, Ladies and Gentlemen, I will
25 instruct you and I will charge you that the

1 fact that a defendant has not testified in
2 this case shall not -- shall not -- be
3 considered by you in your deliberations.
4 The burden remains on the State of South
5 Carolina, in every criminal case, to establish
6 a defendant guilty beyond a reasonable doubt.
7 The exercise of your Fifth Amendment rights
8 shall not be considered or even spoken of by
9 you in your jury room. It would be improper
10 for you to do so.

11 With that being said, that is the end
12 of the first phase of my deliberations (sic).
13 I am going to give you a minute and then I am
14 going to go into the substantive law that you
15 must apply to the charges in this case. So if
16 you'd like to stand up for a minute and move
17 about, then we will go to the substantive law.
18 If you don't want to, you don't have to.

19 Madame Forelady, does everybody have
20 what they need as far as drinks?

21 FORELADY: Yes, sir.

22 THE COURT: Then I take it that
23 everybody is okay? (No response). Then I
24 will go forward with the second aspect of my
25 charge.

1 Ladies and Gentlemen, this is the
2 law of possession with intent to distribute
3 methamphetamines and the law of simple
4 possession of methamphetamines.

5 In this case the defendant has been
6 charged with possession with intent to
7 distribute methamphetamine. The State must
8 prove beyond a reasonable doubt that the
9 defendant possessed methamphetamine with the
10 intent to distribute it.

11 To prove possession the State must
12 prove beyond a reasonable doubt that the
13 defendant had both the power and the intent
14 to control the disposition or use of the
15 methamphetamine. Possession may be either
16 actual or constructive.

17 Actual possession means that the
18 methamphetamine was in the actual physical
19 custody of the defendant.

20 Constructive possession means that
21 the defendant had dominion and control or the
22 right to exercise dominion or control over
23 either the methamphetamine itself or property
24 on which the methamphetamine was found.

25 Mere presence at the scene where the

1 drugs were found is not enough to prove
2 possession. Actual knowledge of the presence
3 of the methamphetamine is strong evidence
4 of the defendant's intent to control its
5 disposition or use. The defendant's knowledge
6 and possession may be inferred when a
7 substance is found on the property under the
8 defendant's control. However, this inference
9 is simply an evidentiary fact to be taken into
10 consideration by you along with the other
11 evidence in this case and is to be given the
12 weight you decide that it should have.

13 Further, Ladies and Gentlemen, two or
14 more persons may have joint possession of the
15 drug. In this case the State must also prove
16 beyond a reasonable doubt that the defendant
17 intended to distribute the methamphetamine.
18 "Distribute" means to deliver other than by
19 administering or dispensing a drug.

20 Intent may be shown by acts and
21 conduct of the defendant and other
22 circumstances from which you may naturally
23 and reasonably infer intent.

24 In determining whether the defendant
25 had the intent to distribute the methampheta-

1 mine, you may consider the circumstances
2 surrounding the defendant's alleged
3 possession. You may consider the amount of
4 substance alleged to have been possessed, the
5 manner in which it was allegedly possessed,
6 the place where it was allegedly possessed,
7 and other factors in evidence which you
8 consider to be important. You must find that
9 the defendant did not intend to have the
10 methamphetamine solely for her own use.

11 Possession of one or more grams of
12 methamphetamine creates an inference that the
13 defendant possessed the methamphetamine with
14 intent to distribute. This inference does not
15 relieve the State from proving beyond a
16 reasonable doubt that the defendant had the
17 intent to distribute drugs. It is simply an
18 evidentiary fact to be taken in consideration
19 by you along with the other evidence in this
20 case and to be given the weight that you
21 decide that it should have.

22 Ladies and Gentlemen, if you find
23 that the State has failed to prove beyond a
24 reasonable doubt that the defendant is guilty
25 of possession with intent to distribute

1 methamphetamine, you may then consider whether
2 the State has proved beyond a reasonable doubt
3 that the defendant is guilty of simple
4 possession of methamphetamine.

5 Simple possession does not require an
6 intent to distribute the methamphetamine. The
7 State must prove beyond a reasonable doubt
8 that the defendant knowingly or intentionally
9 possessed methamphetamine.

10 "Knowingly" means knowledge,
11 consciously, not accidentally.

12 "Intentionally" means willfully,
13 intending the result which actually occurs,
14 not accidentally or involuntarily.

15 Intent may be shown by acts and
16 conduct of the defendant and of the circum-
17 stances from which you may naturally and
18 reasonably infer intent.

19 To prove possession, the State must
20 prove beyond a reasonable doubt that the
21 defendant had both the power and intent to
22 control the disposition or use of the
23 methamphetamine.

24 Possession may be either actual or
25 constructive. This is the same law that

1 I just gave you on actual or constructive
2 possession, and I'm going to go over it one
3 more time. Actual possession means that the
4 methamphetamine was in the actual physical
5 custody of the defendant. Constructive
6 possession means that the defendant had
7 dominion and control or the right to exercise
8 dominion or control over either the
9 methamphetamine itself or the property on
10 which the methamphetamine was found.

11 Mere presence at the scene where the
12 drugs were found is not enough to prove
13 possession.

14 Actual knowledge of the presence of
15 the methamphetamine is strong evidence of the
16 defendant's intent to control its disposition
17 or use. The defendant's knowledge and
18 possession may be inferred when a substance
19 is found on property under the defendant's
20 control. However, this inference is simply an
21 evidentiary fact to be taken into
22 consideration by you along with the other
23 evidence in the case and to be given the
24 weight which you decide that it may have.

25 Again, two or more persons may have

1 joint possession of the drug.

2 In closing on the substantive law,
3 Ladies and Gentlemen, you may not find the
4 defendant guilty of both of these charges.
5 You look at the first charge and make a
6 determination as to whether or not you feel
7 that the defendant is guilty of possession
8 with intent to distribute. If you find that
9 she is not, then you may next go and consider
10 the lesser-included charge of simple
11 possession of methamphetamine.

12 That leads me up to the last part of
13 my charge, and that is some ideas or some
14 thoughts about your deliberations. Number
15 one, you don't serve as jurors to be partisans
16 or advocates for one side of the case or the
17 other. You are the judges of the facts in
18 this case. You, and you alone, decide what
19 the facts are. But you were chosen by the
20 State and the defense in this matter because
21 both sides felt that you could be fair and
22 impartial and make your decision based solely
23 on the evidence presented and in accordance
24 with the law as I give it to you today.

25 In making your decision, again, you

1 should use your good common sense, your sense
2 of logic and your experience in life in making
3 your decisions on what the findings of facts
4 are and what inferences that you give to those
5 facts.

6 When you are doing something
7 deliberately, that means that you are not in
8 a big hurry. In preparing my charges, I
9 looked up the meaning of deliberation. This
10 is what the definition is: it is a careful
11 consideration weighed with a view to a
12 decision.

13 Now, regardless of what you may feel
14 about our judicial system, I would submit to
15 you that one of the geniuses about our system
16 is that it allows twelve men and women like
17 yourselves to come together from different
18 walks of life, come together with different
19 perspectives, from different backgrounds, to
20 listen to the evidence, to listen to the law,
21 to the arguments, and to ultimately consider
22 all of the evidence, all of the arguments and
23 law, and ultimately reach a unanimous
24 decision. We call them deliberations. Again,
25 if you are doing something deliberately,

1 you're not in a big hurry. This is the
2 State's and the defendant's only day in court.

3 Now, when you go back to begin your
4 deliberations in just a few minutes, again we
5 will send you word when it is appropriate for
6 you to do so. I am going to ask, also charge,
7 that you listen to everybody's points of view,
8 thoroughly go through all the evidence that is
9 presented in this case, discuss the different
10 points of view thoroughly and courteously and
11 go through all the points. If somebody raises
12 an issue, discuss it thoroughly.

13 Madame Forelady, your job is to
14 deliberate (sic) over these -- or preside over
15 these deliberations.

16 But with that being said, you have to
17 decide this case on your own. In order for
18 your verdict to stand, it has to be unanimous.
19 But you can only reach a verdict that is
20 unanimous with your fellow jurors after you've
21 made your own decision as to the facts that
22 you're going to find in this case.

23 Don't be afraid to change your
24 opinion if in your conversation and your
25 deliberations with your fellow jurors you are

1 convinced that it is the right thing for you
2 to do. On the other hand, don't change your
3 opinion just to reach an unanimous decision in
4 this case.

5 Now, Madame Forelady, when you begin
6 your deliberations, if at any time you have
7 any questions that we need to consider here in
8 the courtroom, I am going to ask that you
9 write down that question, that you sign your
10 name, knock on the door and the bailiffs will
11 receive it. We will get the communication,
12 receive it here in the courtroom and we'll
13 take appropriate reactions in response to
14 that.

15 If you need anything for your
16 personal benefit -- drinks, food, -- knock on
17 the door and they'll make sure that you have
18 it. Okay?

19 Now, finally, this verdict form is
20 pretty much straightforward. The options, let
21 me just tell you, you and your fellow jurors,
22 they had to be in some order. So the order in
23 which they appear has no meaning. But your
24 first option would be on the charge of
25 possession with intent to distribute meth-

1 amphetamine, "We, the jury, unanimously find
2 that the Defendant, Loretta Branyon, is ..."
3 -- number one, not guilty of possession with
4 intent to distribute methamphetamine; or, two,
5 guilty of possession with intent to distribute
6 methamphetamine.

7 If you find that the defendant is
8 guilty, you'll stop your deliberations there,
9 sign the form, knock on the door and we will
10 receive it.

11 If you find that the defendant is not
12 guilty, then you'll go down and consider the
13 lesser-included charge of simple possession of
14 methamphetamine. Your options there would be
15 that, 'we find on the charge of simple
16 possession' -- "We, the jury unanimously find
17 the Defendant, Loretta Branyon is ..." -- not
18 guilty of simple possession of methamphetamine
19 or is guilty of simple possession of meth-
20 amphetamine.

21 Once the jury has reached a unanimous
22 verdict, you sign it, date it, knock on the
23 door and we will receive your verdict back
24 here in the courtroom.

25 I remind you that the defendant

1 cannot be found guilty to both of these
2 charges. Okay?

3 With that being said, before we get
4 into closing arguments let me go over with
5 these attorneys whether I have misstated
6 something or that I have neglected to do
7 something that I should have. It will not
8 take long. So I am going to ask you to go
9 back to your jury room very briefly, and then
10 we will bring you back out here for closing
11 arguments.

12 (JURY OUT @ 10:22 A.M.)

13 THE COURT: Any additions or
14 exceptions from the State?

15 SOLICITOR HOGAN: No, sir, Your Honor

16 THE COURT: From the defense?

17 MR. WHITEN: I just have one
18 exception. It's the same one that I raised
19 before, and that is that the charge of actual
20 presence of the methamphetamine is strong
21 evidence of the defendant's intent to control
22 the disposition or use. I object to that,
23 Your Honor.

24 THE COURT: And just for the record
25 so that you are protected, too, Mr. Whiten,

1 you don't need to move again as to all your
2 objections to the charge. I think that you
3 are duly protected on those, as well is the
4 State.

5 MR. WHITEN: Thank you, Your Honor.

6 THE COURT: That being said, let's
7 go ahead and get it set up. We'll take a
8 couple minutes break so that you can get
9 yourselves ready to go, then we'll do the
10 closing arguments.

11 (BRIEF RECESS 10:25 - 10:32 A.M.)

12 (DEFENDANT PRESENT)

13 THE COURT: Ms. Hogan, are you
14 ready to proceed?

15 SOLICITOR HOGAN: Yes, Your Honor.

16 THE COURT: You are all set up and
17 technically ready?

18 SOLICITOR HOGAN: Yes, sir.

19 THE COURT: Mr. Whiten, are you
20 ready?

21 MR. WHITEN: Yes, Your Honor.

22 THE COURT: All right. Bring the
23 jury in.

24 (JURY IN @ 10:33 A.M.)

25 THE COURT: Is the State ready for

1 closing arguments?

2 SOLICITOR HOGAN: Yes, Your Honor.

3 THE COURT: Is the defense ready?

4 MR. WHITEN: Yes, Your Honor.

5 SOLICITOR HOGAN: Your Honor, if it
6 pleases the court?

7 THE COURT: Yes, ma'am.

8 SOLICITOR HOGAN: Good morning.

9 Thank you for your service on the jury this
10 week. We appreciate all of your patience and
11 your participation.

12 We are here today because the
13 defendant, Loretta Galloway Branyon, has been
14 charged with the offense of possession with
15 intent to distribute methamphetamine. It is
16 the my responsibility to prove that charge
17 beyond a reasonable doubt.

18 I would like to talk a little bit
19 about reasonable doubt; though the judge has
20 given you a definition, I would like to talk
21 about it a little bit as well. Reasonable
22 doubt is the kind of doubt that would cause a
23 reasonable person to hesitate to act. So
24 please don't have a hesitation to act when
25 carefully considering the evidence during your

1 deliberation of the evidence.

2 If after reviewing all the evidence
3 in this case your are firmly convinced of the
4 defendant's guilt, then you should find her
5 guilty.

6 Let's start with going over the
7 elements of possession with intent to
8 distribute methamphetamine. I am going to
9 put this up for you to view.

10 The first element involved with PWID
11 meth is that the substance involved is in fact
12 methamphetamine.

13 You heard testimony yesterday from
14 Officer Robinson, who was at the scene at the
15 time that the search warrant was served, and
16 that he collected what he believed to be
17 methamphetamine from the residence. He put
18 the evidence in a Best kit and turned it in
19 the Evidence locker at the Sheriff's Office.

20 You also heard from Ms. Belinda Lee,
21 who testified that she got it out of the
22 Evidence locker and turned it into a chemist
23 at the Anderson-Oconee Regional Forensic Labs
24 for testing.

25 The reason that we had to go through

1 all that testimony is that we had to create a
2 chain of custody so that you'd know exactly
3 where those drugs were at every single point
4 during this case.

5 When Ms. Lanford got the drugs, she
6 was able to give her opinion as to what the
7 substances that were turned in actually were.
8 She pulled these out of this bag and showed
9 you -- and I'm not going to pull them out of
10 the bigger bag, which she placed them in.
11 But you can see that there were two bigger
12 baggies. There was one that had some bigger
13 pieces, what they call shards or ice, and then
14 another one that has a smaller amount in that.
15 She testified that this bigger bag has 4.42
16 grams of methamphetamine in it. Then she had
17 the second bag, which also tested positive, of
18 1.43 grams. Then we have another baggie that
19 had .24 and then two smaller baggies with much
20 smaller -- about .07 and .02 grams of meth.
21 So she had five separate baggies of substance
22 that she was testing. She found that the
23 total of those drugs was 6.18 grams.

24 Now, Officer Robinson testified that
25 when he weighed them that he weighed them with

1 all the packaging. So there was testimony
2 that they initially weighed 7.5 grams. But
3 that was -- he testified that he weighed it
4 in the bags. When she tests them, she takes
5 them out of the bag and weighs them without
6 the bag, so the official weight of the meth
7 was 6.18 grams of methamphetamine. So that
8 is the first element. We've got that the
9 substance involved is in fact methamphetamine.
10 We have expert testimony that the substance in
11 the bags was in fact methamphetamine.

12 The second element is that the
13 defendant is in possession of the methamph-
14 etamine. So let's start with talking about the
15 search warrant.

16 Officer Robinson testified that he
17 got the search warrant, that he obtained the
18 search warrant for [REDACTED] here
19 in Anderson County, which was the defendant's
20 residence. We have a picture that shows that
21 Ms. Branyon receives mail at that residence.
22 (Displaying), that is her name, Loretta
23 Branyon, at [REDACTED] here in
24 Anderson County. That was the address that
25 was used for the search warrant.

1 He also testified that the purpose
2 of the search warrant was to look for
3 methamphetamine and any related materials,
4 related to methamphetamine. So he gets the
5 search warrant, goes to the house Ms. Branyon
6 resides at. He walks in the front door -- he
7 also testified that the target of the
8 investigation was in fact Ms. Branyon. He
9 was going to her house, she was the target.

10 So they go to the house, and they
11 walk in. As soon as they go in the house, Ms.
12 Branyon is seated right inside the door, on
13 the couch with her purse beside her. That's
14 the purse, with her identification, and they
15 find every single one of these baggies in the
16 purse which is beside her, as she is sitting
17 on the couch.

18 Now, Mr. Whiten would like you to
19 believe that the other person in the house,
20 I believe that his name was Chuck Simpson,
21 that he was in the house as well and he would
22 lead you to believe that somehow Mr. Simpson
23 had time to put the methamphetamine from his
24 possession into the bag that was found beside
25 Ms. Branyon.

1 Mr. Robinson testified that there was
2 -- that it was impossible for that to have
3 happened, that they announced that they were
4 there, did their notification, and their entry
5 was almost simultaneous. There was no way
6 that he could have taken the drugs off him,
7 put them in her purse and zipped up the bag.

8 We also had testimony that the
9 pocketbook was zipped up when they went in.
10 Officer Robinson testified that they take
11 pictures before they move any items of
12 evidence. This (photograph) is how they found
13 the purse when they went in. You can tell
14 that the top of the purse is zipped up. It
15 looks like a couple of the pockets are open,
16 but the top is zipped up. He testified that
17 is as he found it when they first went in.

18 The judge also noted that there can
19 be joint possession of drugs. So even if
20 somehow they were Mr. Simpson's, it seems
21 highly unlikely that both of them could
22 possess the drugs at the same time.

23 So, again, to reiterate, she was the
24 target of the investigation, it was her house,
25 the drugs were found in her purse that was

1 beside her as she was sitting on the couch as
2 the officers came in. Common sense would tell
3 us that these drugs in her purse belonged to
4 Ms. Branyon.

5 Now, in Mr. Whiten's opening state-
6 ment, he as much as admitted that Ms. Branyon
7 is a meth addict and that these drugs weren't
8 intended for sale, that they were intended for
9 use. So in a way, he's admitted that the meth
10 was here, that she continued to use drugs. I
11 would disagree with that. I think that we
12 have ample evidence that she intended to sell
13 the drugs, which we will go into.

14 The defendant possessed the meth-
15 amphetamine with the intent to distribute.
16 So let's go into that. First of all, as I
17 talked about earlier in my opening statement,
18 the law allows permissive inference that the
19 weight of the drugs, in and of itself, is
20 evidence that she intended to distribute the
21 drugs. So you have this permissive inference
22 that -- in other words, it's saying that you
23 are allowed but that you are not required to
24 assume that because she had six grams of meth
25 on her that she intended to sell them. That's

1 real important, so I will say it again. You
2 are allowed to assume that simply based on the
3 weight of the drugs, based on the fact that
4 she had 6.18 grams of meth, you are allowed to
5 assume that she intended to sell those drugs.

6 Not only do you have this permissive
7 inference under the law, but you've got other
8 evidence that Officer Robinson spoke of in his
9 testimony. So let's talk about that. Officer
10 Robinson testified that he had seventeen years
11 of experience and he listed out several
12 trainings that he had been to every year, a
13 lot of them specifically related to narcotics
14 investigations. So he was testifying based on
15 his training and his experience and
16 observations specifically as a narcotics
17 investigator for over eight years, then more
18 specifically in the last three years he was on
19 the narcotics vice team that specifically
20 focuses on targets who are distributing and
21 trafficking drugs here in Anderson County.
22 So we have his testimony about what a person
23 who was possessing something with the intent
24 to distribute it would have.

25 So we've got that somebody who is

1 possessing drugs with the intent to distribute
2 them typically has large amounts of cash on
3 them; which would make sense, they're selling
4 drugs, they have a lot of money on them from
5 selling the drugs.

6 They typically have larger quantities
7 of drugs present around them, which makes
8 sense. They're not -- he testified that a
9 user would typically not have very much on
10 them because they're using what they have.
11 They're addicts, they use what they have.

12 That typically a user would have
13 somewhere between .25 and .5 grams of
14 methamphetamine on their person. Rarely do
15 they have any larger amount because they are
16 using it as soon as they get it. They're
17 addicts.

18 That the drugs would be packaged in
19 several bags with smaller quantities for sale.
20 Here you can clearly see that you've got three
21 bags with smaller amounts and two bags with
22 bigger amounts, especially the one with 4.42
23 grams. That's a large chunk. But he said
24 that's typical, that you have smaller bags
25 measured out for sale. So if somebody comes

1 to buy it, the bag is ready to sell.

2 He also said that it was typical to
3 find several sets of scales around to weigh
4 the drugs on before they are sold.

5 So that's what he spoke of in
6 reference to what typically someone who
7 possesses the drug with intent to distribute
8 have on them.

9 We then go into Ms. Branyon and what
10 officers found -- what officers found on Ms.
11 Branyon. They found specifically four
12 thousand thirty-three dollars (\$4,033) in cash
13 in her wallet in her purse; consistent with
14 someone who has a large amount of drugs -- I
15 mean a large amount of cash, as well as a
16 large amount of drugs.

17 She had over six grams of meth-
18 amphetamine on her, and they were packaged in
19 a way that would be easy to sell. You've got
20 these little bags to sell and then you also
21 had several/numerous empty baggies that were
22 around. There are several pictures that
23 showed that there were baggies all over the
24 place. Some just have residue but then some
25 -- there was one particular picture that she

1 had these baggies, and this picture is blurry
2 a little bit, but there are all these empty
3 baggies in there, that she could easily use to
4 place more meth in to sell where she'd broke
5 it off of bigger pieces.

6 She also had -- I believe that there
7 was testimony that she had several sets of
8 scales around. There were two that were
9 within arm's length reach of her. You've got
10 that one that was on the coffee table, this
11 one, and then this one that was in her purse.
12 She's got two within easy access of her to
13 sell these drugs -- to weigh these drugs to
14 sell. So that was typical of someone who --
15 would be typical of someone who is going to
16 sell drugs.

17 I believe on the scales that there
18 was testimony that there was some residue on
19 the scales. I think that's important to show
20 that she probably had reason to have scales.
21 I don't believe that it's typical for a user
22 to weigh their drugs before they smoke or use
23 them. There would be no reason to do that, to
24 weigh the drugs if you're going to use them
25 for your own use.

1 Let's go into talking about what Mr.
2 Whiten has -- what they might argue. They
3 want you to believe that she simply possessed
4 these drugs for her own use, not to sell them.
5 That the pipes that were found -- and there
6 were some smoking devices that were found in
7 the back bedroom. He argues that she was
8 going to smoke the drugs. That's what she had
9 the meth for, was for her own personal use.

10 But if the defendant was only going to use
11 the drugs, why was it packaged in separate
12 baggies like this?

13 Why are they like this? Why did she
14 have them separated out in smaller baggies
15 from this one bag?

16 Why does she have over six grams of
17 meth when the testimony was that a gram of
18 meth was roughly a hundred dollars, give or
19 take? So a hundred dollars, give or take, and
20 she's got over six grams, so she's got
21 arguable six hundred (600) grains worth on
22 meth on her. If she is such an addict, how
23 could she afford to have that stash of drugs?
24 A typical user has between a quarter gram and
25 a half gram. Here she is with six grams.

1 And we heard that they weren't
2 currently using the drugs. The pipes weren't
3 even in the purse, they were locked up in her
4 -- whoever's custody that they were, they
5 weren't with the grams that she had in her
6 purse.

7 I think that the reason that that
8 makes sense is because -- she may have been
9 a user. She was selling drugs to support her
10 habit. Maybe she was an addict and she was
11 selling drugs to support her habit. I think
12 that's a more common sense answer as to the
13 pipes and their argument that maybe she was --
14 the argument that -- (pause).

15 Maybe she wasn't using. Maybe she
16 was only selling. That would explain the over
17 four thousand dollars in cash and the over six
18 grams of meth on her.

19 Officer Robinson explained that
20 usually users don't have that kind of meth
21 around them, because they smoke it; as soon
22 as they get it, they smoke it, they're looking
23 for that high, they smoke it right away,
24 they're looking for a way to go out and buy
25 more. Here she is with over four thousand

1 dollars in cash and she's got six hundred
2 grains that she could smoke.

3 The State would argue that all of
4 that evidence proves beyond a reasonable doubt
5 and would lead you to believe that Ms. Branyon
6 possessed the drugs with the intent to
7 distribute.

8 Just to recap:

9 You've got over six hundred dollars
10 worth of meth that she's got.

11 You've got the way that it is
12 packaged.

13 You've got the fact that she's got a
14 large amount of money that's she got in her
15 purse.

16 You've got the multiple scales that
17 she has around the house. He just collected
18 the two that were within reach of her.

19 You've got the purse with her ID.

20 All of this stuff, other than the
21 scales and the pipes, was in her purse which
22 was beside her when officers walked into the
23 room.

24 You've got that the search warrant
25 was for [REDACTED], which was Ms.

1 Branyon's residence. That she was the target
2 of the investigation.

3 You've got that -- importantly you've
4 also got the inference that you're allow to
5 presume that solely based on that weight she
6 was intending the sell the drugs, the
7 methamphetamine.

8 Altogether, we believe that we've
9 proved beyond a reasonable doubt that Ms.
10 Branyon intended to sell the drugs that she
11 had in her possession.

12 THE COURT: Mr. Whiten, are you
13 ready?

14 MR. WHITEN: Yes, Your Honor, may
15 it please the court?

16 THE COURT: Yes, sir.

17 MR. WHITEN: I want to point out
18 to you a couple of things before I discuss
19 the law. The testimony of Officer Robinson
20 was that there were two people in that home
21 and that Mr. Simpson had been living there for
22 a considerable amount of time. He was there
23 at the time that this took place.

24 He also stated that when they came
25 into the mobile home that Mr. Simpson was

1 standing right across from where the drugs
2 were found. If you look at the evidence,
3 the pictures, particularly the coffee table
4 picture showing all kinds of stuff on the
5 table, there is a scale right there on the
6 table.

7 Can you tell me that this man who
8 lived there in that house, in that trailer,
9 for a presumable amount of time did not have
10 anything to do with this? Did not have any
11 power or control over these drugs?

12 He wasn't arrested. He could have
13 been arrested from the fact that he was there
14 and could have had control and dominion. I
15 suggest that he would have had more control
16 than Ms. Branyon because Lorette Branyon is an
17 addict. No doubt about it, she is an addict.
18 Yet they set this guy aside and arrested
19 Loretta Branyon, the addict. What happened to
20 him? Nothing.

21 You are going to find that -- you
22 were told that possession of one gram or more,
23 that there is an inference that if a person
24 has that much or possesses that much that it
25 can be assumed they had an intent to

1 distribute. Look at this, look at this, this
2 in evidence. The chemist said that this is an
3 amount that you could smoke right away, she
4 was using.

5 The Solicitor stated that there was a
6 large quantity of drugs. Look at this. Tell
7 me that's a large quantity of drugs. You can
8 hardly see it. It's certainly not a large
9 amount. It's 6.85 (sic) grams -- not ounces,
10 grams. A very, very small amount. These are
11 the amounts that drug addicts use.

12 She stated that they are packaged in
13 several packages. That the inference is that
14 because they're in several packages that they
15 were to be sold. No, the inference is because
16 that's how they were brought into the house,
17 either by Ms. Branyon buying them from
18 somebody else or this mysterious Mr. Simpson
19 -- who nobody even touched -- brought them
20 into the house. He walked away.

21 There's scales in there. Yes.
22 There was scales sitting on the coffee table.
23 Mr. Simpson lived in that house. He was right
24 there when this arrest was made. 'Are they
25 saying that it was his scales? No, no, it

1 wasn't his scales. It was Loretta Branyon's
2 scales.' That's one circumstance where you
3 can find reasonable doubt.

4 She states that there was cash in the
5 pocketbook. Doesn't say where it came from.
6 Let's assume that it was drug money. The fact
7 that this man lived there with her, -- if I
8 was in the drug business, I'd want somebody
9 else to have the drugs and the money on them,
10 not me. Whether it was there before or after
11 the cops got there doesn't matter. He
12 controlled it.

13 The man was standing right here.
14 When the police come in, Loretta is over here
15 on the couch sitting down. He controlled that
16 ---

17 SOLICITOR HOGAN: Your Honor, I
18 object. I believe that we're bringing in some
19 third-party guilt that the foundation hasn't
20 been laid for.

21 THE COURT: Just one second.
22 Madame Forelady, would you take the jury back
23 to the jury room, please?

24 (JURY OUT @ 10:57 A.M.)

25 SOLICITOR HOGAN: Your Honor, if it

1 pleases the court, I understand that there are
2 going to be some issues that there was
3 somebody in the house. But to go as far as to
4 say that she -- that he was the one that had
5 control over the drugs, I think is going a
6 step farther than maybe saying that he -- he's
7 actually saying that he had control and that's
8 not part of the record, nor has he created a
9 foundation for third-party guilt as far as I
10 am concerned.

11 THE COURT: Mr. Whiten, isn't the
12 rule that third-party, that's it's got to
13 exclude your client's guilt before it comes
14 in; right? Third-party guilt? Doesn't it
15 have to exclude. Don't you think that crosses
16 over the line?

17 MR. WHITEN: Well, I could continue
18 to say "could be", because he was standing
19 right there in the room where the stuff was.
20 That's all that I am trying to say.

21 THE COURT: Tell me what you said,
22 again. Quite frankly, I was looking something
23 up and was ---

24 MR. WHITEN: I said that he was
25 standing right there across from -- that he

1 was standing, when they came in, across from
2 where Loretta was seated. That he controlled
3 the circumstances.

4 THE COURT: I am going to sustain
5 the objection. I think that is evidence of
6 third-party guilt. There certainly is not
7 evidence of that in this case. All right.
8 Even though it is a close question, control
9 is a factor in this case.

10 SOLICITOR HOGAN: Yes, sir.

11 THE COURT: Go ahead and -- I'm
12 going to instruct the jury that they are to
13 find the evidence as they -- well, do you
14 think a curative instruction needs to be made?

15 MR. WHITEN: I am not going to go
16 back into that issue, other to say that he was
17 there.

18 SOLICITOR HOGAN: I think that
19 continuing on with something else will ---

20 THE COURT: That will be sufficient
21 without a curative?

22 SOLICITOR HOGAN: Yes, sir.

23 THE COURT: Fine. I'll sustain
24 the objection and will not give a curative
25 instruction. Are you ready to proceed?

1 MR. WHITEN: Yes, sir.

2 SOLICITOR HOGAN: Thank you, Your
3 Honor.

4 THE COURT: Yes, ma'am. Bring in
5 the jury, please.

6 (JURY IN @ 11:01 A.M.)

7 THE COURT: Mr. Whiten.

8 MR. WHITEN: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. WHITEN: I placed a picture on
11 the screen of these pipes, the evidence.
12 These pipes were found in the house. I
13 believe that the testimony was that they were
14 found on her bed or in her bedroom. It was
15 indicated -- I asked if there was anybody else
16 in that bedroom. 'No.' Indicating that Ms.
17 Branyon used the drugs in the bedroom, that
18 she was using the drugs in the bedroom. The
19 packages were from the front.

20 The question is, -- look at this
21 little piece right here that I held up. I
22 can't see it, but it looks to me that -- it's
23 .002 grams. That was -- was it something that
24 she had used out of this package? If you look
25 at it, and we have two here, there's hardly

1 any in it at all. Hardly any at all. She
2 uses, she admitted that she used what was in
3 these packages. We have evidence that she
4 was using meth in the back room, that this was
5 for her own use.

6 I don't even think that the State
7 would dispute that at least, at least some of
8 this was for her own use. I mean, I think the
9 State said that she bought it for her own use,
10 was selling it to support her own use. She is
11 an addict. She uses methamphetamine. It's
12 sad, but she is.

13 The judge is going to charge you, as
14 I said before, that one gram gives an
15 inference, what you could say is an inference,
16 use it as an inference, that she had this to
17 sell. However, you can also say that one gram
18 or any amount that she had would show not that
19 she intended to distribute it but that she was
20 going to use it. So you have to show -- or
21 you have to find in your deliberations that
22 there is no real possibility that she used the
23 drugs for her own use. No real possibility.
24 There is a real possibility. The scales, the
25 pipes, that shows that there is a very real

1 possibility that she was using the drugs or
2 had the drugs for her own use.

3 So if you find, based on this that
4 there is a real possibility, and there is,
5 that she had it for her own use -- of course
6 they're going to say that if she was using it,
7 then she must have had possession of it. You
8 can't have it both ways, we know that. If she
9 was using it for her own use, she had
10 possession of it. But again the question is,
11 did she have dominion and control of the drugs
12 that she was using herself? She had them but
13 the question was really whether she had total
14 dominion and use over the drugs, because there
15 was others in that house. I'm not talking
16 about criminal responsibility.

17 I don't know how many of you have
18 ever been around an addict, near an addict,
19 had an addict in your family or know an
20 addict. But addicts get their drugs however
21 they can.

22 So you must find that beyond a
23 reasonable doubt that she did not have those
24 drugs for her own use, that she did not intend
25 them to be for her own use. You have

1 reasonable doubt. You have doubt, you have
2 evidence of doubt because she did have them
3 for her own use and that's a reasonable doubt
4 that she possessed them with intent to
5 distribute.

6 The sad part is that she is an
7 addict. I'm asking the court, this jury,
8 to consider her addiction as evidenced by
9 what you see here, as a real possibility of
10 innocence of these charges. Addicts use drugs
11 -- especially methamphetamine. If you know
12 anything about methamphetamine, it is very,
13 very addictive. She couldn't have stopped
14 even if she wanted to.

15 If you find her guilty of possession,
16 I can understand that because she had it. But
17 there was no intent to distribute that drug.
18 She had this for her own use and she was going
19 to use it. She had used it before, she had
20 used it in her own bedroom. But possession
21 itself is -- it has to be under her dominion
22 and control. If you find that to be the case,
23 so be it but you'd have to find under the
24 circumstances, beyond a reasonable doubt, that
25 there was no other reason to have these drugs.

1 Thank you.

2 THE COURT: Ladies and Gentlemen of
3 the jury, Madame Forelady, what I am going to
4 do is ask y'all to go back to your jury room
5 now. I need to have a brief/quick meeting
6 with these attorneys to make sure that we have
7 all the evidence, the jury forms, the verdict
8 form for you to consider. Then we'll send
9 back the verdict form and the evidence after
10 we have our meeting if we don't have any
11 further information that we need to relate to
12 you.

13 I am going to ask the alternate at
14 that point to come back out. We'll send word
15 for when you can begin your deliberations.
16 But at this stage, don't begin yet. We need
17 just a couple more minutes. We have finished
18 all the phases of the trial except the last
19 phase and that will be when you deliberate
20 this case. Go back to your jury room right
21 now and we'll send word back in just a few
22 minutes.

23 (JURY OUT @ 11:16 A.M.)

24 THE COURT: Any additions or
25 exceptions from the State, anything before

1 we send the evidence back to the jury?

2 SOLICITOR HOGAN: Nothing further,
3 Your Honor.

4 THE COURT: From the defense?

5 MR. WHITEN: No, Your Honor.

6 SOLICITOR HOGAN: Your Honor, I did
7 want to bring up the drugs. Because we have
8 taken them out of the Best kit, I want to make
9 sure -- the court reporter mentioned a case
10 where the bags came back but the drugs didn't
11 come back, so I want to make sure -- I don't
12 know if there is a way to address how they --
13 I mean, -- I don't know how you want to ---

14 THE COURT: I think what we do is
15 count them going in, count them going out. If
16 not consistent, we'd have a problem.

17 SOLICITOR HOGAN: I think right now,
18 Your Honor, that they are sealed. So maybe
19 you could instruct them not to take them out
20 of these bags, because the little baggies are
21 in the bigger bag. Maybe you could instruct
22 them not to open the little bags, because they
23 can see it through these bags pretty clear. I
24 don't believe that they need to pull out each
25 individual little baggie.

1 THE COURT: Do you think it would
2 be appropriate for me to charge them not to
3 take them out?

4 SOLICITOR HOGAN: Do you want them to
5 look at them?

6 MR. WHITEN: Your Honor, I think
7 that -- why would they take it out?

8 THE COURT: I don't know.

9 SOLICITOR HOGAN: The only reason
10 that I mention is because there are several
11 bags. I don't know if you wanted to address
12 it with them or -- however, you want to handle
13 it.

14 THE COURT: Bring the jury back in
15 real quick and I will do that.

16 SOLICITOR HOGAN: That should be all.

17 THE COURT: There is also the
18 danger of them getting it on their fingers.

19 (JURY IN @ 11:18 A.M.)

20 THE COURT: Madame Forelady and
21 Ladies and Gentlemen, one matter was brought
22 to my attention. It's a very appropriate
23 point for housekeeping matters. When you got
24 back in deliberations, we are going to send
25 these exhibits back with you, which will

1 include the baggies of drugs. What I would
2 instruct you is -- that unless you feel it to
3 be absolutely critical, -- they are in a big
4 baggie, what they call a Best baggie. You can
5 take those smaller bags out but do not open
6 the smaller bags. I don't think that there
7 is any need to. [Just remember that's meth-
8 amphetamine and you don't need to have it on
9 your fingers. It's accounted for going in,
10 it's accounted for coming back out. So just
11 don't handle it that way. Other than that, we
12 are going to send this evidence back with you,
13 and the verdict form. Once that gets back in
14 there with you, you may begin your
15 deliberations.

16 Mr. Alternate, if you will, stay here
17 in the courtroom with us.

18 Go to your jury room now and they
19 will be bringing back the evidence to you.

20 (JURY OUT @ 11:20 A.M.)

21 THE COURT: Any objection from
22 the State or the defense as to my final
23 instruction on handling the product?

24 SOLICITOR HOGAN: No, sir, Your
25 Honor.

1 THE COURT: From the defense?

2 MR. WHITEN: No, Your Honor.

3 THE COURT: If you would, tell the
4 jury they can commence their deliberations.

5 (JURY IN DELIBERATION @ 11:22 A.M.)

6 (NOTIFIED OF VERDICT @ 11:35 A.M.)

7 THE COURT: I understand that we
8 have a verdict. Is the plaintiff ready to
9 receive the verdict?

10 SOLICITOR HOGAN: Yes, sir, Your
11 Honor.

12 THE COURT: Is the defense ready,
13 Mr. Whiten?

14 MR. WHITEN: Yes, Your Honor.

15 (JURY IN @ 11:39 A.M.)

16 THE COURT: Madame Forelady, I
17 understand that the jury has reached a
18 verdict. Is that correct?

19 FORELADY: It is.

20 THE COURT: Is it unanimous?

21 FORELADY: It is.

22 THE COURT: Would you pass it to
23 the bailiff, please, ma'am?

24 FORELADY: (Complies)

25 THE COURT: The verdict form has

1 been properly completed. Will the defendant
2 please rise?

3 DEFENDANT: (Complies)

4 THE COURT: Mr. Clerk, will you
5 publish the verdict?

6 CLERK: Yes, sir. If it pleases the
7 Court, this is in the Court of General
8 Sessions, State of South Carolina, County of
9 Anderson. The State of South Carolina,
10 Plaintiff, versus Loretta Galloway Branyon,
11 Defendant, Case Number 2011-GS-04-064,

12 One, on the charge of possession with
13 intent to distribute meth, (reading): "We,
14 the jury unanimously find the Defendant,
15 Loretta Branyon, is guilty of possession with
16 intent to distribute methamphetamine."

17 Two, there's no decision.

18 This is signed by the forelady,
19 Anderson, South Carolina, dated August 14,
20 2012.

21 THE COURT: Madame Forelady, Ladies
22 and Gentlemen of the jury, was that your
23 verdict in the jury room and is that our
24 verdict now? If so, raise your right hand.
25 (Unanimous affirmative response from jurors).

1 Let the record reflect that all
2 twelve jurors raised their right hand.

3 Uh, Ladies and Gentlemen of the jury,
4 the Court is never, ever concerned what your
5 verdict is, just that you paid attention and
6 were engaged during the trial. You were that.
7 For that, we thank you for your services.

8 Uh, Madame Forelady, we do have some
9 paperwork for you to sign. I'm gonna ask that
10 you step back to the jury room.

11 You want to poll the jury again?

12 MR. WHITEN: Yes.

13 THE COURT: Okay. Uh, you want to
14 -- I'm gonna let you poll, Mr. Ferguson
15 (clerk). I mean Mr. Clerk, would you poll the
16 entire jury?

17 CLERK: When I ask you if this is
18 your verdict, would you -- one at a time --
19 say Guilty or Not Guilty. Start over there.

20 (WHEREUPON JURORS POLLED INDIVIDUALLY
21 WITHOUT IDENTIFICATION BY NAME OR NUMBER)

22 Juror 1: Guilty.

23 Juror 2: Guilty.

24 Juror 3: Guilty.

25 Juror 4: Guilty.

1 Juror 5: Guilty.

2 Juror 6: Guilty.

3 Juror 7: Guilty.

4 Juror 8: Guilty.

5 Juror 9: Guilty.

6 Juror 10: Guilty.

7 Juror 11: Guilty.

8 Juror 12: Guilty.

9 THE COURT: Let the record reflect
10 that upon polling, all twelve jurors responded
11 "Guilty".

12 All right. Now, Madame forelady, I
13 do have some paperwork for you to sign. And I
14 want to have a couple of comments from you
15 guys in -- in the jury room. So if you'd step
16 back to your jury room just one second, I'll
17 be back there. Okay?

18 (JURY OUT @ 11:43 A.M.)

19 THE COURT: Y'all stand at-ease.
20 I'm gonna go talk to the jury. Rema's coming
21 in to do the sentencing sheet. We'll be back
22 in just a second.

23 (JUDGE TO JURY ROOM TO DISMISS JURY)

24 THE COURT: Are we ready for
25 sentencing?

1 SOLICITOR HOGAN: Yes, Your Honor.

2 We are getting the sentencing sheet ready.

3 THE COURT: While you're doing
4 that, this is a third offense?

5 SOLICITOR HOGAN: Yes, sir, Your
6 Honor. I have copies of the certified
7 convictions if you'd like to see them.

8 THE COURT: Okay. Range on that
9 is fifteen to thirty and/or fifty thousand?

10 SOLICITOR HOGAN: I believe that it
11 is ten to thirty now, Your Honor.

12 THE COURT: Ten to thirty?

13 SOLICITOR HOGAN: Yeah. Not suspend-
14 able or probation allowed because she has a
15 prior conviction for possession and PWID.

16 THE COURT: Okay. Do you agree
17 with that?

18 MR. WHITEN: Yes, Your Honor.

19 SOLICITOR HOGAN: May I approach?

20 THE COURT: Yes.

21 SOLICITOR HOGAN: (Tenders certified
22 copies of prior convictions), two from 2006
23 and two from 2008. Your Honor, she is
24 currently on probation for PWID Meth 2nd, and
25 Probation is here with a recommendation of

1 revocation.

2 THE COURT: All right. Ms.

3 Branyon, would you come around, please, ma'am?

4 DEFENDANT: (Complies).

5 THE COURT: Ms. Branyon, before I
6 hear from you, I want to hear from the State.

7 I've got passed up before me -- there
8 is a sentencing sheet where on September 12th,
9 2006, Ms. Branyon, you pled guilty to
10 possession of methamphetamine and marijuana.

11 Then in 2008, on October 15th, you
12 pled to distribution of methamphetamine, first
13 offense, and manufacture of some scheduled
14 drug. What was that?

15 SOLICITOR HOGAN: I am not sure.
16 I'd have to look at the indictment, Your
17 Honor.

18 THE COURT: (Upon review), okay.
19 Marijuana. What other drug -- what other
20 record, not drugs necessarily but what other
21 record does she have, please?

22 SOLICITOR HOGAN: That is her only
23 record, Your Honor.

24 THE COURT: Now, reading the
25 statute, it appears to me that I don't have

1 authority to suspend any part of the sentence
2 and impose probation. Is that your under-
3 standing?

4 SOLICITOR HOGAN: That is my
5 understanding, Your Honor, because one of
6 her priors is a PWID. Yes, sir.

7 THE COURT: And my understanding
8 further is that the statute has been amended.
9 I was under the impression that it was fifteen
10 minimum. But it's ten minimum? Is that
11 correct?

12 SOLICITOR HOGAN: Yes, sir. I think
13 that it was changed to ten, Your Honor. (Upon
14 review), yeah. Under the new law it's ten to
15 thirty, Your Honor.

16 THE COURT: Do you agree with that,
17 Mr. Whiten?

18 MR. WHITEN: Yes, Your Honor.

19 THE COURT: And no other criminal
20 record?

21 SOLICITOR HOGAN: No, sir.

22 THE COURT: All right. Mr. Whiten?

23 MR. WHITEN: Your Honor, Loretta is
24 fifty years old. She is -- as stated before,
25 she is an addict, she's been an addict for

1 quite a while. She is on probation now. She
2 got a ten-year sentence on that with a
3 suspended sentence of five years probation to
4 end next year.

5 I'm asking Your Honor to sentence her
6 to the minimum sentence to run concurrent with
7 any probation revocation. We will waive
8 service of notification/warrant from Probation
9 so we can handle that today.

10 Your Honor, I am hoping that she will
11 get some help or assistance where she is going
12 for her drug addiction. She's been doing it
13 for ten years. It's unfortunate. That's
14 about all that I say about it.

15 THE COURT: First, Ms. Branyon,
16 would you raise your right hand?

17 DEFENDANT: (Complies).

18 THE COURT: Do you swear or affirm
19 to tell the truth, the whole truth and nothing
20 but the truth?

21 DEFENDANT: Yes, sir.

22 THE COURT: Now, your attorney has
23 asked that you be allowed to waive presentment
24 of the service of the probation revocation
25 warrant on you and proceed with hearing that

1 at the same time as we are doing the sentence
2 today. Is that what you want to do?

3 DEFENDANT: I don't know what that
4 means.

5 THE COURT: Talk to her real quick,
6 Mr. Whiten. Explain to her what that means.

7 MR. WHITEN: (Sidebar with Defen-
8 dant). Thank you, Your Honor. I believe that
9 she understands.

10 THE COURT: Now, Ms. Branyon, have
11 you had sufficient time -- do you feel like
12 you've talked to him about me hearing the
13 probation matter as well as doing the
14 sentencing right at this time?

15 DEFENDANT: Yes.

16 THE COURT: Do you want me to
17 dispose of the probation matter as well as
18 do the sentencing at this point?

19 DEFENDANT: Yes, sir.

20 THE COURT: You're accepting your
21 attorney's advice to go ahead and get them
22 both done at this point.

23 DEFENDANT: Yes, sir.

24 THE COURT: Do you have any
25 questions of me before I proceed?

1 DEFENDANT: No, sir.

2 THE COURT: Ms. Branyon, when was
3 the last time that you had any type of gainful
4 employment?

5 DEFENDANT: I clean houses.

6 THE COURT: I need you to speak
7 louder, please.

8 DEFENDANT: I clean houses.

9 THE COURT: You clean houses?

10 DEFENDANT: Yes.

11 THE COURT: Is that all under the
12 -- off the books? In other words, you don't
13 pay taxes on that?

14 DEFENDANT: No.

15 THE COURT: When was the last time
16 that you held a job for a period of a year or
17 more, where they withheld taxes from your pay?

18 DEFENDANT: About three years, I
19 guess.

20 THE COURT: Ma'am?

21 DEFENDANT: Three years.

22 THE COURT: Three years?

23 DEFENDANT: Yes, sir.

24 THE COURT: What did you do?

25 DEFENDANT: I was a housekeeper at

1 the, uh, Ramada Inn.

2 THE COURT: How long did you do
3 that?

4 DEFENDANT: For -- I went to two or
5 three different places. I -- for about, I
6 don't know, about five years, I guess.

7 THE COURT: Okay. Do you have any
8 children?

9 DEFENDANT: I've got one son -- one
10 son.

11 THE COURT: How old is he?

12 DEFENDANT: Thirty-three (33).

13 THE COURT: Are you married?

14 DEFENDANT: No, sir.

15 THE COURT: Do you have anything
16 that you would like to say to me before I
17 impose sentence on you?

18 DEFENDANT: No.

19 MR. WHITEN: She does have grand-
20 children also, Your Honor.

21 DEFENDANT: Yeah, I've got two
22 grandchildren.

23 MR. WHITEN: Two grandchildren.

24 DEFENDANT: No, I don't -- I don't
25 know. I -- I wish that there was some way I

1 could do something to change all this, you
2 know.

3 THE COURT: How did you get into
4 using methamphetamine?

5 DEFENDANT: You know, working -- it
6 seems to me that working at Schmer (phonetic)
7 for like fifteen years and raising my son by
8 myself 'cause my husband died in a car
9 accident. I just -- I couldn't do everything.
10 I didn't have time to do everything and-- and,
11 you know, so I -- I done meth to make me stay
12 up longer and all so I could get everything
13 done. That's how I done it.

14 THE COURT: All right. Shelia, as
15 a probationer, how was she? Did she report as
16 required?

17 PROBATION AGENT: I am not sure,
18 Your Honor. I don't have that -- I mean, I
19 don't have that before me. I just have her
20 file. Crystal White is her supervisor.

21 MR. WHITEN: Did you report regular?

22 DEFENDANT: (Sidebar with Mr.
23 Whiten).

24 THE COURT: Have you ever been
25 violated on your probation before?

State of South Carolina v. Lorette G. Branyon
Case No. 11-GS-04-00604
Jury Trial of August 13-14, 2012
before The Honorable R. Lawton McIntosh

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1 MR. WHITEN: No, sir.

2 DEFENDANT: No, sir.

3 THE COURT: No?

4 MR. WHITEN: No, sir. She reported
5 regular, Your Honor. I'm confident of that.

6 THE COURT: I am just curious how
7 she could have made it through probation,
8 sentenced in 2008, and not have tested
9 positive for methamphetamine. Did they not
10 drug test you?

11 DEFENDANT: Yeah, they did.

12 PROBATION AGENT: Excuse me, Your
13 Honor. I do see where she did test positive
14 for drugs on May 31st of last year.

15 THE COURT: She did?

16 PROBATION AGENT: Yes, sir. That's
17 all that I have.

18 THE COURT: All right.

19 MR. WHITEN: That's not surprising,
20 Your Honor.

21 THE COURT: All right. Anything
22 further?

23 MR. WHITEN: No, sir.

24 THE COURT: Anything further from
25 you, Ms. Branyon?

1 DEFENDANT: No, sir.

2 THE COURT: I am going to find by
3 the verdict today that you willfully violated
4 the terms and conditions of your probation,
5 in that you continued to possess, sell and use
6 methamphetamine. So I'm going to revoke the
7 remainder of your probationary sentence which
8 was ten years. I am going to sentence you to
9 ten (10) years and run those concurrent. I am
10 going to terminate probation for any monies
11 owed, reduce it to civil judgment. So it will
12 be a straight, concurrent sentence. Good luck
13 to you.

14 (TRIAL CONCLUDED)

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CERTIFICATE OF REPORTER

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I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the
hearing held before The Honorable R. Lawton
McIntosh on August 13-14, 2012 as prepared
from the audio notes of Vivian Cross, Court
Reporter;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina
September 18, 2013

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

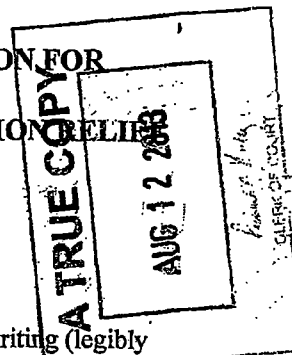
Loretta Galloway Branyon, SCDC#352011)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-04-01843

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - 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 Leath Correctional
2. Name and location of Court which imposed sentence Anderson, South Carolina
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-04-00604 Drugs/Manufacture, distribution, etc. of methamphetamine.
 - 3rd or subq.
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 14, 2012 Ten (10) year ATU

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XX
- (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. SC Supreme Court/Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. unknown
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. unknown
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unknown
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/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 legal counsel.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) No defense witnesses were called.

(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? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

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?

unknown

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) unknown

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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. Charles W. Whiten, Jr., PO BOX 716, Anderson, SC 29622
 - ii. Donald L. Chuck Allen, PO BOX 2861, Anderson, SC 29622
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Whiten for trial and appeal
 - ii. Allen for pcr
 - iii. _____

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

no

2013- CP - 04 - 01843 ²⁵⁷

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

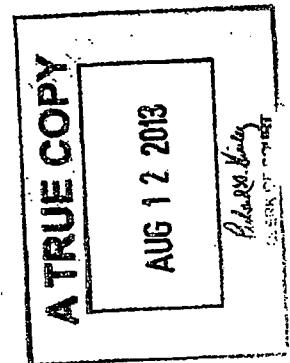
I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Arnetta Braxton

SWORN to and subscribed before me this 8th
day of August, 2013.

John L. McLeod (L.S.)
Notary Public

My Commission Expires: 11-13-17



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
Loretta Galloway Branyon,	)	C.A. No. 2013-CP-04-1843
S.C.D.C. No. 352011,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN¹
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed August 12, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted by the April 2011 term of the Anderson County Grand Jury for possession of methamphetamine with intent to distribute (PWID Meth.) (2011-GS-04-0604). Applicant was represented by Charles W. Whiten, Jr., Esq. On August 14, 2012, the Applicant proceeded to trial before the Honorable R. Lawton McIntosh and a jury. She was found guilty as indicted. Judge McIntosh sentenced Applicant to a term ten (10) years imprisonment and revoked her probation on an unrelated offense.²

A timely notice of appeal was filed and perfected on Applicant's behalf. Charles Whiten, Esq., represented Applicant on appeal. The South Carolina Court of Appeals affirmed

¹ Applicant lists Donald L. Chuck Allen on her PCR application as Counsel retained for PCR.

² Applicant had been sentenced on October 15, 2008, to ten years suspended with probation for five years for PWID Meth and PWID other Substance (2007-GS-04-2060; -2061). These sentences were to run concurrently.

Applicant's conviction and sentence. State v. Branyon, Op. No. 2014-UP-310 (S.C. Ct. App. filed August 6, 2014). The Remittitur was issued on August 22, 2014.

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In her current Application, Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Legal Counsel"
 - a. "No defense witnesses were called"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Respondent submits counsel rendered effective assistance of counsel. In a post-conviction relief action, 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, 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.

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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

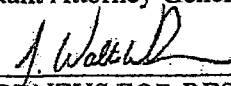
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

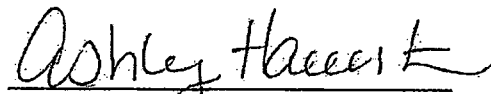
July 30th, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	
	)	2013-CP-04-1843
LORETTA G. BRANYON, #352011,	)	
	)	
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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Donald Leverette Allen, Esquire
 The Allen & Allen Law Firm
 PO Box 2861
 Anderson, SC 29622

DATED this 30th day of July, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

Loretta Galloway Branyon, SCDC#352011)
Full name and prison number (if any) of Applicant.)

2013-CP-04-01843

v.)

AMENDED
APPLICATION FOR

State of South Carolina)

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.

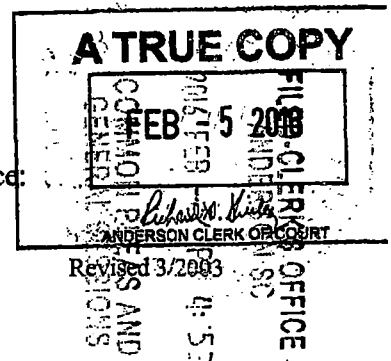
1. Place of detention Goodman Correctional
2. Name and location of Court which imposed sentence Anderson, South Carolina
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2011-GS-04-00604 Drugs/Manufacture, distribution, etc. of methamphetamine, 3rd
of subq.

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 14, 2012 Ten (10) year ATU

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- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XX
- (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. SC Supreme Court/Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal was denied.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 6, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Court of Appeals No.: 2014-UP-310
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/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 legal counsel.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Failure to object to prejudicial commit/argument made by the Solicitor during closing argument.

(b) Failure to object to search warrant and/or motion to suppress the contraband evidence.

(c) Failure to contemporarily object to the trial judge's inadvertent comment on the evidence.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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. _____

266 (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?

Unknown.

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) Unknown.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
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. Charles W. Whiten, Jr., PO BOX 716, Anderson, SC 29622
- ii. Donald L. Chuck Allen, PO BOX 2861, Anderson, SC 29622
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Whiten for trial and appeal
- ii. Allen for PCR
- iii. _____
19. State clearly the relief you seek in filing this application:
- _____
20. Are you now under sentence from any other court that you have not challenged?
No.

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STATE OF SOUTH CAROLINA

County of ANDERSON

VERIFICATION

I, _____, 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.

Loretta Branyon

SWORN to and subscribed before me this 5th
day of February, 2016

Dehl L. Cull (L.S.)
Notary Public

My Commission Expires: November 11, 2017

FILED-CLERKS OFFICE
ANDERSON SC
2016 FEB - 5 PM 4:53
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY

FEB - 5 2016

Richard D. Kiley
ANDERSON CLERK OF COURT

Revised 3/2003

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) COURT OF COMMON PLEAS

Loretta Galloway Branyon,)
Plaintiff,)
v.) Case No. 13-CP-04-1443
State of South Carolina,)
Defendant.)

TRANSCRIPT OF HEARING

The within HEARING in the above-captioned matter was held February 8, 2016, before The Honorable Brooks P. Goldsmith in the Court of Common Pleas for Anderson County, South Carolina;; attended by counsel as follows:

APPEARANCES:

Donald Lewis Allen, Jr., Esq.
....Appearing for Applicant

Patrick Lowell Schmeckpeper, Esq.
OFFICE OF ATTORNEY GENERAL
...Appearing for State of South Carolina

Transcribed for Vivian C. Cross, Assigned Court Reporter

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

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INDEX OF EXHIBITS

- None Entered -

Loretta Galloway Branyon v State of South Carolina
Case No. 13-CP-04-1843
PCR Hearing of February 8, 2016
Before The Honorable Brooks P. Goldsmith

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1 THE COURT: Please be seated.

2 It is my understanding that we have one case
3 and then that'll be it for the day. Is that
4 correct?

5 MR. ALLEN: Yes, Your Honor.

6 THE COURT: Is the state ready to
7 proceed?

8 MR. SCHMECKPEPER: The State is
9 ready, Your Honor.

10 THE COURT: Is the defense ready?

11 MR. ALLEN: Yes, sir, the defense is
12 ready. Or our Petitioner is ready, I
13 should say.

14 THE COURT: Petitioner, right.

15 MR. SCHMECKPEPER: Thank you, Your
16 Honor. May it please the court, my name
17 is Patrick Schmeckpeper here on behalf of
18 the State.

19 We are here on the matter of Loretta
20 Galloway Branyon versus the State of South
21 Carolina, 2013-CP-04-01843.

22 Mrs. Branyon was convicted in 2012
23 for possession with intent to distribute
24 methamphetamine third offense. She was
25 sentenced by Judge McIntosh to ten years,

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1 to run concurrent with a probation
2 revocation for possession with intent to
3 distribute, second offense.

4 Your Honor, this is a pretty simple
5 case, was a pretty simple trial:
6 arresting office, evidence custodian and a
7 forensic chemist. The applicant was
8 caught in her home with 6.8 grams,
9 including, uh, digital scales, baggies,
10 cash. The analysis concluded that the
11 substance was methamphetamine.

12 At this point, uh, I'm going to turn
13 it over to counsel so he can go ahead and
14 put his allegations on the record.

15 MR. ALLEN: May it please the
16 court, Your Honor.

17 THE COURT: Yes, sir.

18 MR. ALLEN: Just for the
19 record, I filed an amended application
20 after a conversation with the Attorney
21 General last week. He inquired about
22 amendment. At the time of our
23 conversation, I had not done that.
24 However, I subsequently did and sent him a
25 copy of it. I don't think that there is

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Case No. 13-CP-04-1843
PCR Hearing of February 8, 2016
Before The Honorable Brooks P. Goldsmith

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1 any objection to it as far as us
2 proceeding on the amended application.

3 THE COURT: Is that correct?

4 MR. SCHMECKPEPER: Your Honor, I
5 have no objection. I mean obviously --
6 the application came in Thursday. I don't
7 anticipate any claims on it, I'm ready to
8 go forward on it. In the event that there
9 is something I'm not prepared for, I'd ask
10 that we leave the record open.

11 THE COURT: You've seen the
12 amended application?

13 MR. SCHMECKPEPER: Yes, Your
14 Honor. Unless there is something, some
15 issue with the warrant, I don't think I'm
16 ready to proceed with allegations on the
17 search warrant but everything else, but
18 everything else I'm prepared for.

19 THE COURT: I don't know.

20 MR. ALLEN: I put that in the
21 amended application. If there is
22 something that he catches, that he
23 objects; I'm not sure what I'm hearing
24 there.

25 THE COURT: I wouldn't think

1 that we'd want to have half the case heard
2 together and another half heard another
3 day.

4 MR. SCHMECKPEPER: Maybe it would
5 them to say what the issues and
6 allegations are for the record so that I
7 can say whether or not I am ready to
8 proceed. They are pretty vague right now.

9 MR. ALLEN: Well, Your Honor,
10 as outlined in the Amended Application,
11 Section 11, and I will just read it in the
12 record, under subsection (a), (reading):

13 *"Failure to object to a*
14 *prejudicial comment..."* -- that should be
15 *"comment",* that's a typographical error
16 here. (Reading) "*...prejudicial*
17 *comment/argument made by the solicitor*
18 *during closing argument that he failed to*
19 *object to."*

20 "(b)", (reading): *"Failure to*
21 *object to search warrant and/or motion to*
22 *suppress contraband and evidence."*

23 "(c)", (reading): *"Failure to*
24 *contemporaneously object to the trial*
25 *judge's inadvertent comment on the*

1 evidence."

2 That is what we plan to proceed on.

3 MR. SCHMECKPEPER: And, Your
4 Honor, with respect to the trial judge's
5 failure to object -- or the failure to
6 object to the trial judge's comment on the
7 evidence and as far as failure to object
8 to the search warrant, uh, -- as far as
9 the search warrant, I don't know that one
10 is, haven't gotten that one. I don't
11 know what the completeness is at this
12 point on that, as to the State. What that
13 obligation actually is on the state.

14 THE COURT: Help me out. Tell
15 me what the issues are.

16 MR. ALLEN: Well, Your Honor,
17 if I could just have a moment to confirm
18 with my client. Maybe I can remedy me
19 that issue.

20 THE COURT: No, I -- sure.

21 MR. ALLEN: (Sidebar with
22 Applicant). Your Honor, we'll go forward
23 with sections (a) and (b) and I will

1 withdraw (c), that's the search
2 warrant issue. Excuse me, I'm sorry.
3 Subsection (b) is the search warrant and
4 I'll withdraw (b).

5 MR. SCHMECKPEPER: That's fine,
6 Your Honor.

7 THE COURT: Okay. You may
8 proceed.

9 MR. ALLEN: May it please the
10 court, Your Honor, the Applicant calls Mr.
11 Charles Whiten.

12 (WITNESS TAKES STAND)

13 CHARLES WHITEN, having been sworn
14 to tell the truth, and nothing but the
15 truth, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ALLEN:

18 Q. You are Charles Whiten, is that
19 correct?

20 A. That's correct.

21 Q. You are currently a lawyer/
22 practitioner here in Anderson County?

23 A. Yes, sir.

24 Q. Let me ask you just a little
25 about your background, sir. What is your

1 educational background?

2 A. I graduated from The Citadel in
3 19966, and I graduated from the University
4 of South Carolina Law School in 1969. I
5 was sworn into the Bar on July 19th, 1969.
6 I have practiced law since then.

7 I was in the JAG for seven years.
8 Represented both in JAG.

9 I've been practicing law here for
10 forty years, forty-two years.

11 Q. You've been practicing law in
12 Anderson County for forty-two years?

13 A. Yes.

14 Q. Has that been exclusively private
15 practice or have you done other things?

16 A. I was a public defender for
17 Anderson County from 1979 to 1984, then
18 I've also practiced every kind of law
19 there is since then.

20 Q. That was my next question. What
21 kind of practice -- over that time, what
22 kind of practice have you had?

23 A. A general practice.

24 Q. And that included what fields of
25 law?

1 A. Civil, Family Court, Criminal,
2 lot of criminal courts appeals, appeals to
3 the Supreme Court in different areas,
4 bankruptcies, Wills, Powers of Attorney,
5 Deeds, Closings, some counseling and other
6 matters related to the laws, nonspecific
7 areas and, uh, even maritime pretty much.

8 Q. Are you currently a member of the
9 South Carolina Board?

10 A. Yes.

11 Q. Is your license in good standing
12 and all that?

13 A. Yes.

14 Q. Your practice, you characterized
15 is as just about everything?

16 A. Yes.

17 Q. As far as your criminal practice
18 that was a pretty good concentration of
19 your practice over the years; criminal
20 defense?

21 A. Yes, pretty much. I represented
22 four death penalty cases and represented
23 approximately eight thousand persons
24 charged with crimes: everything from
25 shoplifting to domestic abuse.

Loretta Galloway Branyon v State of South Carolina
Case No. 13-CP-04-1843
PCR Hearing of February 8, 2016
Testimony of Charles Whiten - Direct Examination

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1 Q. And when was the period of time
2 that you were the public defender?

3 A. 1978 to 1984.

4 Q. Were you the primary or chief
5 Public Defender or were you an assistant?

6 A. I was the Chief Public Defender
7 the whole time.

8 Q. Did you have lawyers under you?

9 A. I had three lawyers under me.

10 Q. Do you -- would you characterize
11 -- this is kinda of same question, but
12 what percentage of your practice was
13 criminal practice?

14 A. Now or then?

15 Q. Let's start with over the course
16 of your forty-two year period?

17 A. I'd say fifty percent.

18 Q. And how about, say, the last five
19 years?

20 A. More likely seventy percent.

21 Q. So for the last five years the
22 primary emphasis of your private practice
23 has been in criminal defense?

24 A. Yes.

25 Q. That includes trials?

Loretta Galloway Branyon v State of South Carolina
Case No. 13-CP-04-1843
PCR Hearing of February 8, 2016
Testimony of Charles Whiten - Direct Examination

1 A. Yes.

2 Q. Guilty pleas?

3 A. Yes.

4 Q. Appeals?

5 A. Yes.

6 Q. All right. Now let me direct
7 your attention to August of 2012. Is that
8 the time that you represented Loretta
9 Branyon, the Applicant in her criminal
10 trial?

11 A. Yes, sir.

12 Q. Have you brought your file with
13 you today?

14 A. I have the trial transcript.

15 Q. You brought all of your work
16 file, everything that this case generated
17 that we are going to talk about, you
18 brought that with you today?

19 A. Yes, sir.

20 Q. Could you tell us, please, sir,
21 when you were engaged to represent Ms.
22 Branyon?

23 A. It was 2011, prior to the trial.

24 Q. You were retained, not appointed?

25 A. Yes, sir.

Loretta Galloway Branyon v State of South Carolina
Case No. 13-CP-04-1843
PCR Hearing of February 8, 2016
Testimony of Charles Whiten - Direct Examination

13
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1 Q. Retained as a private
2 practitioner?

3 A. Yes.

4 Q. You had no order from a court
5 that required you to represent Ms.
6 Branyon?

7 A. No.

8 Q. So you did so voluntarily?

9 A. That's correct.

10 Q. Did you meet with her on a number
11 of occasions?

12 A. I sure did.

13 Q. Do you have a recollection of
14 meeting with her numerous times?

15 A. Yes, I met with her numerous
16 times.

17 Q. How many times would you say, to
18 the best of your recollection?

19 A. Ten, maybe.

20 Q. And it was a case of -- at the
21 allegation or the initial warrant charged
22 possession with intent to distribute
23 methamphetamine?

24 A. Yes, sir.

25 Q. Were there any associated charges

1 with that primary charge?

2 A. There were two other charges.
3 One was for pills and the other one was
4 for marijuana. They were dismissed.

5 Q. And so at the time that the case
6 was tried in August of 2012, there was
7 only one indictment that was presented for
8 prosecution, in August of 2012?

9 A. Yes, sir.

10 Q. And, again, that one indictment
11 was possession with intent to distribute
12 meth?

13 A. Yes, one that I call.

14 Q. And that contraband, I will call
15 it, was taken at some point in time
16 pursuant to a search warrant during the
17 investigation?

18 A. Yes, Your Honor -- yes, sir.

19 Q. And the search warrant was
20 executed at the residence of Ms. Branyon?

21 A. Yes, it was.

22 Q. And this case was tried to a
23 jury, is that right?

24 A. Yes.

25 Q. And the verdict was "Guilty"?

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1 A. I'm sorry?

2 Q. The verdict was Guilty?

3 A. Yes.

4 Q. What sentence did Ms. Branyon
5 receive, based on your recollection?

6 A. The sentence she could have
7 received was ten to thirty years, and she
8 got ten years.

9 Q. At that time the law provided for
10 a mandatory minimum based upon a
11 conviction for possession with intent to
12 distribute methamphetamine, third offense?

13 A. That's correct.

14 Q. So there was no discretion in the
15 judge for PWID meth, third offense? There
16 was no discretion as far as the mandatory
17 sentence?

18 A. There was no discretion. Ten
19 years was the minimum.

20 Q. And that's what she got, was ten
21 years?

22 A. Yes.

23 Q. The trial of the case lasted
24 approximately how long?

25 A. A day.

1 Q. To your knowledge, were there any
2 issues regarding jury selection at the
3 start of the case?

4 A. I seem to remember there was on
5 question about a juror, but I don't
6 remember anything about what it was about.

7 Q. Were there any issues as far as
8 jury selection that interposed an
9 objection to?

10 A. I don't remember but seems like
11 there might have been one juror.

12 Q. There was no *Batson* objection,
13 though, was there?

14 A. No.

15 MR. SCHMECKPEPER: Your
16 Honor, I am going to object to this, to an
17 issue relating to jury selection.

18 MR. ALLEN: I am kind of
19 develop-ing a record, a full record.

20 THE COURT: You're not alleging
21 any error now. Isn't that correct?

22 MR. ALLEN: I'll move on.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. ALLEN:

25 Q. And the trial strategy for the

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1 matter was basically, and you can correct
2 me if I am wrong, but from reading the
3 transcript the trial strategy was or the
4 defense, so to speak, was that Ms. Branyon
5 was not guilty of any intent to
6 distribute, that she was simply guilty of
7 simple possession of meth.

8 A. Yes, and the fact that she was an
9 addict. Yes.

10 Q. In fact, during the opening
11 statement to the jury you basically laid
12 that strategy out in your opening
13 statement?

14 A. Yes, I did.

15 Q. That she was an addict,

16 A. Yes.

17 Q. --- and that whatever contraband
18 she had, whatever small amount of
19 contraband that she had, that that was for
20 personal use.

21 A. Yes.

22 Q. And that was not for any intent
23 or effort to distribution to third
24 parties?

25 A. Yes, that was the issue.

1 Q. And that was probably the
2 complete strategy of defense at that time?

3 A. That was the defense, the only
4 defense.

5 Q. And there were -- and that was --
6 throughout the trial of the case, that
7 remained the theme of the case, that she
8 was a user and did not have any intent to
9 distribute.

10 A. Yes.

11 Q. In fact there were issue
12 regarding instructions to the jury that
13 were somewhat contested between your and
14 the solicitor about possession versus the
15 PWID charge?

16 A. Yes, sir.

17 Q. But ultimately the charge that
18 the judge gave to the jury on PWID meth,
19 you had no objection to at the time that
20 he made the charge?

21 A. I had an objection to the
22 ultimate charge. I think that we
23 discussed the charge prior to his reading
24 the charge.

25 Q. And, again, that was the critical

1 distinction in the case, that Ms. Branyon,
2 as presented in the defense, was only
3 guilty of possession and not PWID meth?

4 A. Yes, sir. However, did the
5 solicitor not make comments during her
6 closing argument about the presuming the
7 intent to distribution from the weight of
8 the meth; do you recall that?

9 A. Yes.

10 Q. In fact she made several comments
11 regarding presumption from the weight or
12 assumption from the weight. Is that
13 correct?

14 A. Yes, presumption rather than --
15 she said there was a presumption and I
16 disagreed with that.

17 Q. Well, the law states presumption
18 that it is -- it's unconstitutionally
19 violates due process for a defendant, is
20 that correct?

21 A. Yes, sir.

22 Q. And that's been the law for a
23 long time?

24 A. Yes, sir.

25 Q. However, in spite of the law, she

1 made those comments?

2 A. Yes, she did.

3 Q. Please take a look at the
4 transcript, Page 215.

5 A. Okay.

6 Q. Page 215, look down to Line 25

7 A. Okay.

8 Q. The very last line of Page 215.
9 Do you recognize that as being a part of
10 the solicitor's closing argument?

11 A. (Upon review), I see where she
12 says that you are not required to assume
13 but that you're allowed to.

14 Q. How about Line 25, last word on
15 the page is "that's..." -- read from there
16 to the last of the next paragraph on the
17 next page. Just read that into the
18 record.

19 A. (Reading): *"That's real*
20 *important, so I want to say it again. You*
21 *are allowed to assume distribution based*
22 *on the weight of the drugs, based on the*
23 *fact that she had 6.18 grams of meth. You*
24 *are allowed to assume that she intended to*
25 *sell those drugs. Not only do you have..."*

1 ---

2 Q. I'm sorry for interrupting but
3 that's as far as I wanted you to read.
4 Would you agree now that was inappropriate
5 argument?

6 A. I think it was. She could infer.
7 There is a difference between inference
8 and presumption.

9 Q. Now I am going to direct your
10 attention, please, sir, to Page 223. Have
11 you got 223?

12 A. Yes.

13 Q. Line 3, if you'll read from Line
14 3 through Line 7, one paragraph.

15 A. (Reading): "You've got that and
16 you've also got an inference that you're
17 allowing to presume based on that there
18 was an intention to sell drugs based on
19 that weight."

20 Q. So in that paragraph, in that
21 part of the solicitor's argument, she's
22 talking about presumption?

23 A. Sorry?

24 Q. In that part of the solicitor's
25 argument she's used the word "presume" and

1 she's talking about a presumption in her
2 argument?

3 A. Yes. She used it twice there.

4 Q. You would agree that was an
5 inappropriate prejudicial argument o the
6 jury?

7 A. I believe it was. Yes, sir.

8 Q. Just for the record, to your
9 knowledge was there any objection entered
10 at that point by the defense?

11 A. No, I didn't object to the
12 argument.

13 Q. At this point of time, under the
14 law of post-conviction relief do you agree
15 that there an error or ineffective
16 assistance of counsel must be deficient,
17 would you agree with that?

18 A. It would be deficient, yes.

19 Q. And do you agree that the lack of
20 an objection to the solicitor's
21 inappropriate argument to the jury, that
22 that would be a deficiency?

23 A. Yes.

24 Q. Under the legal term of art
25 "deficiency"?

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1 A. Yes.

2 Q. And would you agree at this time
3 that would affect -- uh, that that would
4 also result in a prejudice to Ms. Branyon?

5 A. It would be very prejudicial to
6 her.

7 Q. By prejudicial, that means it
8 could very well have affected the outcome
9 of the trial?

10 A. Yes.

11 Q. In other words it made it more
12 likely that there would have been a guilty
13 verdict of PWID was to be found by the
14 jury?

15 A. Yes.

16 Q. So in your opinion, the lack of
17 objection meets both the deficiency
18 requirement and the prejudice requirement?

19 A. Yes.

20 Q. If you would now, Mr. Whiten,
21 turn to Page 236 in the transcript.

22 A. Okay, (complies).

23 Q. At the conclusion of this trial,
24 did you file an appeal on behalf of Ms.
25 Branyon?

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1 A. Yes, I did.

2 Q. And the result of that
3 appeal is that the appeal was denied?

4 A. It was denied.

5 Q. Denied in, I think maybe
6 August of 2014.

7 A. Yes.

8 Q. And you took one exception
9 in that appeal?

10 A. Yes.

11 Q. Regarding the case that the
12 grounds for the appeal?

13 A. Yes.

14 Q. One exception.

15 A. One exception.

16 Q. And that exception was, and
17 I'm going to characterize it, is that the
18 judge had inadvertently made a comment on
19 the evidence?

20 A. That's correct.

21 Q. At the trial of the case?

22 A. That's correct.

23 Q. And that exception and
24 comment by the judge was, when he was
25 instructing the jury, just before they

1 left to deliberate he made a comment
2 about contraband.

3 A. He made a comment to the
4 jury that they should not touch the
5 baggies that were in evidence because the
6 might get methamphetamine on their hands
7 and that it was dangerous.

8 Q. And of course one of the
9 things for the jury to find was whether
10 this contraband was actually factually
11 what the State and the solicitor had
12 alleged it to be.

13 A. Well, they would have had to
14 have proven beyond a reasonable doubt
15 that it was methamphetamine and the judge
16 said -- bypassed that and told the jury
17 that was methamphetamine. That was
18 definitely an error in my mind.

19 Q. All right, sir. I want to
20 focus your attention ---

21 A. It was a comment on the
22 evidence. That was the basis for it.

23 Q. I would like to focus your
24 attention to Page 236 of the transcript.

25 A. Okay. 336?

1 Q. Page 236, Line 7, and I
2 represent to you that this is Judge
3 McIntosh's comment that you just
4 discussed in your testimony. Read Line
5 7, at the word "just" down to Line 15,
6 with the last word being "deliberation."
7 If you would read that into the record,
8 please, sir.

9 Q. Yes, sir, (reading): *"Just*
10 *remember that's methamphetamine and you*
11 *don't need to have it on your fingers.*
12 *It's counted going in, counted coming*
13 *back out, so just don't handle it that*
14 *way. Other than that, we are going to*
15 *send this evidence back with you and the*
16 *verdict form. Once it gets back in there*
17 *with you, you may begin your*
18 *deliberations."*

19 Q. So the operative sentence
20 there, as far as your exception and your
21 appeal is *"Just remember that's*
22 *methamphetamine and you don't need to*
23 *have it on your fingers."*

24 A. Yes.

25 Q. And that was stated to the jury

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1 prior to deliberations?

2 A. Yes, it was. Yes.

3 Q. And, again, you file an appeal
4 based on exception to that comment?

5 A. I did.

6 Q. And the outcome of the appeal is
7 that the appeal was dismissed?

8 A. It was denied.

9 Q. Or denied. And it was denied
10 because there was not a contemporaneously
11 objection entered at the time that comment
12 was made.

13 A. The Court of Appeals said -- they
14 didn't really address the issue as to
15 whether it was a comment on the facts or
16 not. Anyway, they said the remorse -- I
17 don't want to call it a sanction but they
18 said that I should have made the objection
19 contemporaneously and that also I should
20 have made a Motion for mistrial, which I
21 did not do.

22 Q. To just be clear for the record,
23 there was no contemporaneous objection
24 interposed at the time the judge made the
25 comment?

1 A. No.

2 Q. And of course with the lack of
3 objection there was no motion for a
4 mistrial because of the comment.

5 A. No.

6 Q. Let me ask you the same legal
7 question that I asked you before on the
8 other matter, do you agree that the lack
9 of a contemporaneous objection would rise
10 to the level of a deficiency?

11 A. In this case, yes.

12 Q. And would you also agree that the
13 deficiency there resulted in prejudice to
14 Mrs. Branyon?

15 A. Yes.

16 Q. And does prejudice again mean
17 that the outcome of the trial was affected
18 by the outcome of the lack of objection or
19 the lack of a motion for mistrial?

20 A. Yes, I believe that it is.

21 Q. All right. And I should ask you
22 as well -- I've ask you about those two
23 things separately and I should ask you
24 about the cumulative effect of the lack of
25 objection to the solicitor's inappropriate

1 or improper argument and the judge's
2 comment on the evidence. Would the
3 cumulative affect on a case being tried as
4 one between possession and PWID meth,
5 would that be more deficiency as a result
6 of the two issues combined?

7 A. I sure it was. The jury was only
8 out ten minutes.

9 Q. The same question I'd ask you
10 again, the cumulative affect of those two
11 issues as far as prejudice to Ms. Branyon?
12 Would that not have been a greater amount
13 of prejudice due to the fact that you had
14 two issues and not just one?

15 A. Yes, if it is cumulative, it
16 would have.

17 Q. So is it your opinion at this
18 time that this case and this application
19 contains sufficient -- has a sufficient
20 amount of -- excuse me -- deficiency and
21 prejudice to warrant a vacation of the
22 conviction?

23 A. Yes.

24 MR. ALLEN: That's all the
25 questions I have of this witness, Your

1 Honor.

2 THE COURT: Thank you. Mr.
3 Schmeckpeper.

4 CROSS EXAMINATION

5 BY MR. SCHMECKPEPER:

6 Q. Good afternoon, Mr. Whiten.

7 A. (No verbal response).

8 Q. How you doing today?

9 A. (No verbal response).

10 Q. I know Ms. Branyon's counsel
11 asked you about your background. I am not
12 going to get too far into that. I am just
13 going to dive right into the details of
14 this case, if that's all right. Okay?

15 A. (No verbal response).

16 Q. It sounds like you have a pretty
17 good recollection of this case, is that
18 correct?

19 A. Yes.

20 Q. You were asked earlier about your
21 strategy in this case. What was your
22 strategy?

23 A. My strategy was she was an
24 addict. She had the meth for her own use.
25 She could be found guilty of having it for

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1 her own use but she shouldn't be found
2 guilty of possession with intent to
3 distribute methamphetamine.

4 Q. Leading up to this case, you said
5 that you met with Ms. Branyon about ten
6 times?

7 A. Yes.

8 Q. What kinds of things did you guys
9 talk about?

10 A. Before the trial?

11 Q. Yes, sir.

12 A. She, uh, -- this was her third
13 trial, third charge for meth. I
14 represented her on all of them.

15 First one was a fine.

16 Second one she was on probation.

17 This was the last one, and she was on
18 probation at the time that this took
19 place.

20 I talked to her many, many times
21 about what she was going to face if she
22 went to trial and lost, and that there was
23 a very good possibility that she would be
24 found guilty if she went to trial.

25 Q. Did you advise her to enter a

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1 guilty plea?

2 A. Humm?

3 Q. Did you advise her to enter a
4 guilty plea or to consider pleading
5 guilty?

6 A. Yes, ---

7 MR. ALLEN: Objection.

8 WITNESS: --- I did.

9 THE COURT: That's all right.

10 If the State had offered her three years,
11 she would have taken it.

12 CROSS EXAMINATION CONTINUED

13 BY MR. SCHMECKPEPER:

14 Q. How strong was the state's case
15 against Ms. Branyon?

16 A. How strong was it against her?

17 Q. Yes, sir.

18 A. The case was no very strong.

19 There were a lot of issues that we tried
20 to break up.

21 The search warrant, we thought had
22 some holes in it.

23 The narcotics officer, Marty
24 Robinson, did not want her to go to prison
25 but he had to testify against her, and he

1 did.

2 There was another individual involved
3 in this case by the name of Mr. Simpson
4 who was in this room when the narcotics
5 officers came in, sitting across on the
6 couch from Loretta and they -- of course,
7 I tried to bring up the fact that he was
8 there, that it was perhaps a joint
9 ownership. But he was never charged. So
10 it would have been a third-party, uh,
11 trying to get a third-party allegation or
12 charge, which we were not capable of
13 doing.

14 Within two or three days or the same
15 day that we went to trial, she was
16 surrounded by a number of friends. They
17 talked her out of -- I talked to her many,
18 many times about just, please, please,
19 please, plead to three years and you'll be
20 out shortly. Her friends talked her into
21 not pleading guilty. I ran them out of
22 the room two or three times. They'd come
23 back in, surrounded her and tell not to do
24 it: don't plea, don't plea, don't plea.
25 So I was trying to control the situation

1 in the room for her sake, even out of the
2 room. But they -- they were alleged
3 friends, I know who they were. I know
4 exactly who they were. But she wouldn't
5 accept my advice, insisted 'I am going to
6 trial.' I asked her three or four times,
7 even when we were drawing the jury, 'do
8 you want to do this?' 'Can't we just go
9 ahead and plead and let you do your time
10 and come home.' She objected to it.

11 Q. Because there was a lot of evidence
12 against Ms. Branyon. Right?

13 A. The evidence against her was pretty
14 solid.

15 Q. What was that evidence, if you don't
16 mind just going through it?

17 A. The evidence was that they had a CI
18 to go into her home on Shirley Road, where
19 she lived, and ---

20 Q. Let's take the evidence actually
21 presented at trial. What was presented at
22 trial by the State?

23 A. That was presented at trial by Marty
24 Robinson and Hay Wynn (phonetic). They
25 had a wire on her. And, uh, and the

1 audiovisual. Based on that, they got a
2 search warrant, Marty did. It's didn't
3 identify her by name, just where she
4 lived, her address. But when they went
5 in the house, they went in three or four,
6 they always do that. Marty was already in
7 there.

8 The methamphetamine was in -- that
9 they found was in her pocketbook,
10 separated into three baggies, three
11 separate baggies. The pocketbook was on
12 the couch where she was seated at the
13 time.

14 Uh, -- Ms. Simpson was seated across
15 the way, not very far but -- within
16 reaching distance of that pocketbook. But
17 it was in her pocketbook -- not Mrs.
18 Simpson's pocketbook but her pocketbook.

19 Q. That had her driver's license in
20 it. Correct?

21 A. Yeah.

22 Q Was there anything else in that
23 pocketbook that was suspicious?

24 A. I'm not sure what ---

25 Q. Did they find a large amount of

1 cash in her purse, in her possession?

2 A. Some, though I don't recall the
3 exact amount; and there were some scales
4 found also.

5 Q. Read from the record, starting at
6 Page 21.

7 A. You talking about the money found
8 in there?

9 Q. Yes.

10 A. Do you want me to read it?

11 Q. If you remember, how much money
12 did they find?

13 A. Four Thousand Thirty-three
14 (\$4,033) dollars.

15 Q. You mentioned scales.

16 A. (Affirmative nod).

17 Q. Is that the only other drug
18 paraphernalia that they found at her
19 house?

20 A. The scales.

21 Q. They found a bunch of baggies
22 around the house, correct?

23 A. Yes. The baggies were in her
24 pocketbook also.

25 Q. As far as that meth they found,

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1 what did they do with that methamphetamine
2 after they collected it from Ms. Branyon's
3 house?

4 A. They sent it to the lab by
5 whatever proper method. I did not
6 challenge the chain of custody. It
7 looked to me like it was a valid chain.

8 They send it to the lab and had it
9 tested.

10 Q. What was the result of that test?

11 A. Six-point-one-eight (6.18) grams
12 of methamphetamine.

13 Q. So it was tested by SLED, is that
14 correct?

15 A. Yes.

16 Q. And they found it was meth-
17 amphetamine?

18 A. Yes.

19 Q. And did someone testify to that
20 at trial?

21 A. Yes.

22 Q. And the witness who testified at
23 trial, were they an expert?

24 A. I'm sorry.

25 Q. Were they an expert or a lay

1 witness?

2 A. I'm sorry. I didn't understand
3 you.

4 Q. I'm sorry, I mumble. I'll try to
5 slow down and speak up.

6 A. Okay.

7 Q. The witness who testified that it
8 was methamphetamine, was that an expert
9 witness?

10 A. Yes. SLED, yes.

11 Q. They testified within a
12 reasonable degree of scientific certainty
13 that the substance found in Ms. Branyon's
14 pocketbook was indeed methamphetamine?

15 A. Yes.

16 Q. Let's go back to your trial
17 strategy a moment.

18 COURT REPORTER: I'm sorry, back to
19 what?

20 MR. SCHMECKPEPER: Trial strategy.

21 CROSS EXAMINATION CONTINUED

22 BY MR. SCHMECKPEPER:

23 Q. You mentioned your strategy was
24 to say, 'Hey, she is not a drug dealer.
25 She's an addict.'

1 A. Yeah.

2 Q. She's got a problem?

3 A. Yes.

4 Q. So at any point did you challenge
5 that the substance found in her apartment
6 was methamphetamine?

7 A. My strategy was that there were
8 three bags, a small amount in each bag.
9 That's the way that you purchase
10 methamphetamine. You usually don't buy it
11 in one bag. Sometimes you buy it in three
12 or four small bags. I tried to show the
13 jury it was about that much and added all
14 together, which she could use in one day.
15 It was in her pocketbook and the way it
16 was around the house it wouldn't be sold
17 or used by anyone but her, it was her
18 meth. So it seems to me that you'd say
19 that this was her meth for her use, that
20 was the whole strategy.

21 I knew Loretta from the past. Loretta
22 had been an addict. She was an addict
23 that day, the year before, the year before
24 that. She used a lot of meth.

25 Q. Let's talk about the weight

1 inference, that if you have a certain
2 amount that there is an inference that you
3 are a dealer. Did you attack that during
4 your closing argument.

5 A. I'm sorry. I'm having a hard
6 time hearing you.

7 Q. That's all right. I'll withdraw
8 the question.

9 A. Just my ears.

10 Q. Just a couple more questions.
11 Turn to Page 199 of your transcript,
12 please. Do you recognize this portion of
13 the transcript?

14 A. Yes.

15 Q. It is the jury charge, right?

16 A. Yes.

17 Q. From the judge?

18 A. Yes.

19 Q. If you could read, start at Line
20 11 and ending around 21.

21 A. Which line?

22 Q. Line 11.

23 A. (Reading): "Possession of one or
24 more grams of methamphetamine creates an
25 inference that the defendant possessed

1 meth/methamphetamine with the intent
2 to distribute. This inference does not
3 relieve the State from proving beyond a
4 reasonable doubt that a defendant had the
5 intent to distribute the drugs and this
6 evidentiary fact should be taken into
7 consideration with you along with such
8 other evidentiary evidence in this case
9 and be given the weight that you decide
10 that it should have."

11 Q. That's a correct statement of the
12 law by the judge, isn't that correct?

13 A. (No verbal response).

14 MR. SCHMECKPEPER: At this time,
15 Your Honor, I have no further questions.

16 THE COURT: Redirect?

17 MR. ALLEN: Yes, I have a few
18 questions on redirect in follow up to
19 that. May it please the court, ----

20 REDIRECT EXAMINATION

21 BY MR. ALLEN:

22 Q. You just read into the record
23 that one paragraph of the judge's
24 directions to the jury on the weight, the
25 time span; however, I'd ask you before and

1 I'll ask you again, the solicitor on
2 at least two occasions talked about the
3 presumption from the weight; correct?

4 A. Yes.

5 Q. And assumption from the weight?

6 A. Correct.

7 MR. ALLEN: Thank you. That's
8 all the questions that I have of the
9 witness, Your Honor.

10 THE COURT: You may step down.

11 (WITNESS STEPS DOWN)

12 THE COURT: Call your next
13 witness.

14 MR. ALLEN: Your Honor, that's
15 the Applicant's case.

16 THE COURT: Mr. Schmeckpeper?

17 MR. SCHMECKPEPER: The State has
18 no witnesses.

19 THE COURT: All right.
20 Argument?

21 MR. ALLEN: Yes, Your Honor.
22 The affiant has presented unrefuted
23 testimony that the issues that we have
24 raised regarding the judge's comment on
25 the evidence and the solicitor's was

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1 improper argument to the jury. We
2 presented unrefuted testimony that it
3 resulted in both that it was deficient and
4 that it resulted, in both cases, prejudice
5 to the Applicant. So under the law, Your
6 Honor, we have met the requirements and
7 the burden for seeking relief and, uh, in
8 an, uh, a post-conviction relief
9 procedure. So at this time we move for a
10 vacation of the conviction.

11 And, Your Honor, at this time I'd
12 just like to point out that as a factual
13 matter that this case -- again, you've
14 heard the testimony. The argument was
15 possession versus possession with intent
16 to distribute. Sometimes that can be a
17 hair-splitter in a case such as this for a
18 jury. It's a critical distinction
19 because, as I am sure the court is well
20 aware, it makes a real difference in the
21 sentence and the mandatory minimum, that a
22 person would receive -- but the jury heard
23 the words "presumption" by the solicitor,
24 which is patently inappropriate. There
25 was no objection made at that time.

1 They heard "presumption" and they
2 heard "assumption", Your Honor. The jury
3 was only out for twelve or thirteen
4 minutes. But the case with the
5 distinction being critical, it was the
6 ultimate issue for the possession and
7 possession with intent to distribute.
8 They're hearing these words, the
9 unconstitutional prejudicial argument that
10 you can presume it, you can presume -- you
11 can presume intent to distribute.

12 Again, that's clearly
13 inappropriate argument by the solicitor.
14 There was no contemporaneous objection
15 made.

16 Again, we presented unrefuted
17 testimony that was deficient performance
18 under the criteria of ineffective
19 assistance of counsel which resulted in
20 prejudice to Ms. Branyon, which means that
21 it very well affected the outcome of the
22 case.

23 We so move for vacation of that
24 conviction, Your Honor.

25 THE COURT: Mr. Schmeckpeper?

Loretta Galloway Branyon v State of South Carolina
Case No. 13-CP-04-1843
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Closing Remarks of Counsel

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1 MR. SCHMECKPEPER: Thank you,
2 Your Honor, may it please the court. The
3 first thing that I would like to point out
4 whether or not counsel was deficit and
5 whether or not any alleged deficiency
6 prejudiced the Applicant, isn't a fact to
7 be determined.

8 The witness (sic) has said that
9 it is a determination of law to be made by
10 the judge, by the court.

11 In this case, I think the record
12 speaks for itself that the Applicant
13 cannot show a deficiency -- even if the
14 Applicant had been able to show ---

15 COURT REPORTER: Repeat?

16 THE COURT: Slow down.

17 MR. SCHMECKPEPER: I'm sorry. I
18 apologize. think the record shows --
19 speaks for itself in this case. Even if
20 the Applicant has been able to show a
21 deficiency in this case, which the State
22 still contests, uh, there has been no
23 showing of prejudice. That's based on
24 *Strickland* and based on a number of cases.
25 The second issue concerning trial

1 counsel's failure to object to the
2 Solicitor's closing argument, you know,
3 the first question is, in looking at those
4 closing arguments is whether or not the
5 judge corrected it, and whether or not it
6 was overwhelming evidence of guilty.

7 In this case, there was
8 substantial amount of guilty against the
9 Applicant. Specifically there were drugs
10 found in the Applicant's pocketbook, along
11 with four thousand dollars worth of cash,
12 numerous baggies, drug paraphernalia,
13 scales, pipes, things to smoke.

14 Yes, the judge said that it was
15 meth, not to touch the meth. He probably
16 shouldn't have said that, but it was the
17 issue in this case.

18 The Applicant pretty much
19 conceded the presence of methamphetamine
20 by setting forth the trial strategy that
21 the methamphetamine was for personal use,
22 that she was an addict.

23 The State also set forth evidence
24 that to within a reasonable degree of
25 scientific certainty the substance was

Loretta Galloway Branyon v State of South Carolina
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1 methamphetamine.

2 Concerning the -- beg the court's
3 indulgence. Your Honor, the State rests
4 on the overall evidence of guilt and on
5 the fact that the trial strategy was the
6 substance was meth because she was an
7 addict, not because she was a drug dealer.

8 I'll be happy to answer any
9 questions.

10 THE COURT: As to the
11 allegation on behalf of the trial
12 attorneys, not the judge's statement, I
13 don't find that to be prejudicial. I
14 don't see how that could have been
15 misinterpreted by the jurors. It has to
16 be a comment on the facts of the case. I
17 took it that they are just saying to them
18 that they don't need to worry about it,
19 that it's not on their hands. That
20 whether or not it was actually
21 methamphetamine or not, it was never
22 contested as part of the trial strategy,
23 so I don't see that the Applicant would be
24 entitled based on that allegation.

25 As to the solicitor's statement, the

1 solicitor as I understand it made varying
2 statements concerning the presumption and
3 inference, at different times. I do see
4 that an objection should have been made.
5 However, the judge ended up -- when he
6 began his opening in the transcript, when
7 they were first selected, he told them
8 that he was the judge of the law and he
9 would tell them what the law was. Then
10 when he gave his closing statement of the
11 law, gave the charge to the jury, he told
12 them what the actual law was.

13 The evidence, it appears, was
14 overwhelming.

15 I don't see it in this case but
16 in lots of cases you will see attorneys
17 tell the jury when they are getting ready
18 to make their closing argument that the
19 judge is going to tell you what the law
20 is. Of course, the judge told the jury
21 that he was the one that had the
22 responsibility of deciding what the law
23 was.

24 The court agrees with the arguments
25 of the State and for all those reasons

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denies the Petitioner's (sic) application.

(HEARING CONCLUDED)

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Loretta Galloway Branyon v State of South Carolina
Case No. 13-CP-04-1843
PCR Hearing of February 8, 2016
Certificate of Court Reporter

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the post-
conviction relief hearing held in the within
action heard on February 8th, 2016, before The
Honorable Brooks P. Goldsmith as prepared from
the audio notes of Vivian C. Cross;

I further certify that I am neither
kin nor counsel to any of the parties and have
no interest in the outcome of this action.

Deborah Garrison

Deborah Garrison

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Loretta Galloway Branyon,
S.C.D.C. No. 352011

Applicant,

v.

State of South Carolina,

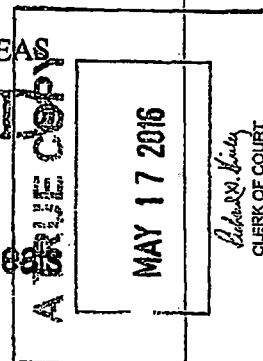
Respondent.

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

C.A. No. 2013-CP-04-1843 1 2016

SC Court of Appeals

ORDER OF DISMISSAL
(with prejudice)

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 12, 2013. Respondent filed its Return on August 3, 2015. An evidentiary hearing into the matter was convened on February 8, 2016, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Donald "Chuck" Allen, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted by the April 2011 term of the Anderson County Grand Jury for possession of methamphetamine with intent to distribute (PWID Meth.) (2011-GS-04-0604). Applicant was represented by Charles W. Whiten, Jr., Esquire. On August 14, 2012, the Applicant proceeded to trial before the Honorable R. Lawton McIntosh and a jury. She was found guilty as indicted. Judge McIntosh sentenced

CLERK OF COURT
ANDERSON COUNTY
COMMON PLEAS AND
GENERAL SESSIONS
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Applicant to a term ten (10) years imprisonment and revoked her probation on an unrelated offense.¹

A timely notice of appeal was filed and perfected on Applicant's behalf. Charles Whiten, Esquire, represented her on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Branyon, Op. No. 2014-UP-310 (S.C. Ct. App. filed August 6, 2014). The Remittitur was issued on August 22, 2014.

Allegations

In her application for post-conviction relief, Applicant alleged she was being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Legal Counsel"
 - a. "No defense witnesses were called"

On February 5, 2015, Applicant filed an amended application, through counsel, raising the following additional allegations:

1. Ineffective assistance of legal counsel.
 - a. Failure to object to prejudicial comment/argument made by the Solicitor during closing argument;
 - b. Failure to object to search warrant and/or motion to suppress the contraband evidence;
 - c. Failure to contemporarily object to the trial judge's inadvertent comment on the evidence.

At the evidentiary hearing, Applicant proceeded only on the failure to object to prejudicial comments and argument by the solicitor, and failure to object to the trial judge's inadvertent comment on the evidence.

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

¹ Applicant had been sentenced on October 15, 2008, to ten years suspended with probation for five years for PWID Meth and PWID other Substance (2007-GS-04-2060; -2061). These sentences were to run concurrently.

accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCF; Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption 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. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's 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.

Failure to Object: Solicitor's Misstatement of the Law

Applicant first alleges counsel was ineffective for failing to object to the solicitor's statements during closing argument. This Court finds Applicant has failed to meet her burden, as any improper comments by the solicitor were adequately cured by the trial judge's instructions, and the evidence of Applicant's guilt was overwhelming.

An alleged impropriety of the solicitor's argument must be viewed in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt. Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the applicant has the burden of proving she did not receive a fair trial because of the alleged improper argument. Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Id.

During opening arguments, the solicitor said to the jury that because Applicant was found in possession of more than one gram of methamphetamine, the law "requires the assumption that she intended to sell it." Tr. p. 58, l. 17-21. Later, during closing arguments, the solicitor told the jury that they had a "permissive inference," and that they were "allowed but not required to assume that because [Applicant] had six grams of meth on her that she intended to sell them." Tr. p. 215, l. 21-25. She subsequently repeated herself. Tr. p. 216, l. 1-5. The solicitor also told

the jury they were allowed to "presume that solely based on [the] weight [Applicant] was intending to sell the drugs. . . ." Tr. p. 223, l. 3-7.

This Court finds that the solicitor's comments were inappropriate, and that counsel should have objected. However, Applicant has failed to meet her burden to prove prejudice. First, the trial judge adequately cured the solicitor's misstatement by accurately stating the law to the jury. During the closing charge to the jury, the trial judge explained that

"[p]ossession of one or more grams of methamphetamine creates an inference that the defendant possessed the methamphetamine with intent to distribute. This inference does not relieve the State from proving beyond a reasonable doubt that the defendant had the intent to distribute drugs. It is simply an evidentiary fact to be taken into consideration by you along with the other evidence in this case and to be given the weight that you decide that it should."

Tr. p. 199, l. 11-21.

Moreover, the judge told the jury multiple times that he was the sole judge of law. In his opening instruction, the judge charged the jury that he was the "instructor of the law," and that they "must apply the law" as he gave it to them in this case. Tr. p. 51, l. 22 - p. 52, l. 7. The judge charged the jury not to "be concerned with what you want to the law to be or what you think that it should be," but to "apply the law as I give it to you." Tr. p. 97, l. 17-21. Accordingly, this Court finds the solicitor's misstatements were adequately cured by the judge's instructions. See State v. Pierce, 289 S.C. 430, 346 S.E.2d 707 (1986) (jury presumed to follow the law as instructed) *overruled in part on other grounds*, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

This Court also finds that the evidence against Applicant was overwhelming. Applicant was caught in her home in close proximity to a large amount of methamphetamine, which had been divided up in a number of small plastic bags; several sets of drug scales; smoking pipes;

and over four thousand dollars' worth of cash. A significant portion of the evidence seized – including the cash – was found in her pocketbook alongside her South Carolina driver's license.

Due to the overwhelming nature of the evidence, as well as the trial judge's correct instructions concerning the law, this Court finds that there is no reasonable probability that counsel's failure to object to the solicitor's improper contributed to the outcome of the proceeding. See Simmons, supra. This allegation is therefore denied and dismissed.

Failure to Object to Trial Judge's Comments on the Facts

Applicant next alleges counsel was ineffective for failing to object to the trial judge's comment on the facts to the jury. This Court finds Applicant has failed to meet her burden with respect to this allegation, based on counsel's valid trial strategy and the overwhelming evidence of guilt.

Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). In addition, "every effort" must be made to "eliminate the distorting effects of hindsight and evaluate counsel's decisions at the time they were made." Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011) (citing Strickland, 466 U.S. at 689, 104 S.Ct. 2052). Reviewing courts must be wary of second-guessing trial counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This allegation stems from comments made by the judge toward the end of Applicant's trial. In the context of informing the jury that they would have access to the evidence during their deliberations, the judge said:

"Just remember that's methamphetamine and you don't need to have it on your fingers. It's accounted for going in, it's accounted for coming back out. So just don't handle it that way."

Tr. p. 236, l. 7-11.

At the evidentiary hearing, counsel testified that he should have objected to the judge's comments, and that his failure to object constituted ineffective assistance. On cross-examination, however, and in light of the state's evidence, counsel acknowledged that his strategy at trial had been to try and convince the jury Applicant was an addict rather than a dealer. He explained that the evidence against Applicant was "pretty solid," and that when searching her home, law enforcement found methamphetamine, roughly four thousand dollars in cash, and her ID inside her pocketbook. He said law enforcement also found three separate baggies on the couch where she was seated, as well as scales in the apartment. Counsel further testified that the drugs seized were sent to a lab and tested positive for methamphetamine. He said an expert witness testified at trial that the substance was, in fact, methamphetamine. Counsel said he did not object to the chain of custody because it "looked valid."

This Court finds counsel's testimony of trying to convince the jury Applicant was an addict, and not a dealer, was objectively reasonable given the circumstances. Additionally, as part of the strategy, this Court finds counsel basically conceded that the substance seized was actually methamphetamine. This was also objectively reasonable in light of the expert testimony presented at trial. This Court would note that even at this point in the proceedings, Applicant has not presented any evidence or testimony which would call into question that the substance was, in fact, methamphetamine, or that challenging the State's expert on this point would have been fruitful. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (ineffective assistance of counsel claim not valid when supported only by mere speculation as to the result. In addition, this Court declines to give any weight to counsel's current claims – based in

hindsight – that he believes he was ineffective in failing to object. See Edwards, supra. Applicant has therefore failed to meet her burden to show counsel's performance was deficient.

Applicant has also failed to show prejudice. As stated above, this is a case involving overwhelming evidence. See Council v. Catoe, 359 S.C. 120, 128, 597 S.E.2d 782, 786 (2004) (finding admission of inappropriate evidence did not prejudicially influence trial's outcome where evidence of guilt was overwhelming). Applicant has therefore failed to meet her burden with respect to this issue.

Alternatively, this Court finds the trial judge's instruction to the jury was not inappropriate. The trial judge specifically charged the jury that they were the "sole judges of facts." Tr. p. 51, l. 2-4. He further emphasized that

"[i]f at any time during this case I do anything, say anything or make some type of gesture to you that indicates to you that I have a feeling one way or another as to how you are to find the facts, I'm going to ask you and I'm also going to tell you to disregard them. I can tell you that I have absolutely no feeling one way or the other as to how you find the facts, or as to how this case is supposed to end up. That is purely up to you.

Tr. p. 51, l. 4-14.

In light of that highly specific instruction, this Court fails to see how the jury could have reasonably interpreted the judge's comments as anything other than a necessary warning to take care in handling a potentially hazardous substance. Accordingly, this allegation is denied and 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

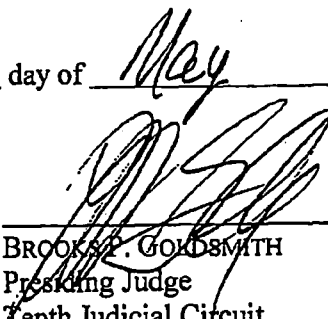
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

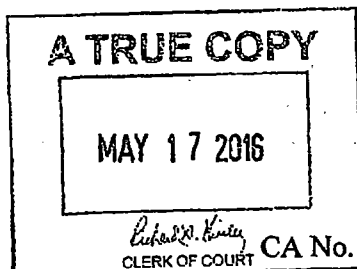
IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 10 day of May, 2016.


BROOKS P. GOLDSMITH
Presiding Judge
Tenth Judicial Circuit

2, South Carolina



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ANDERSON SC
2016 MAY 17 AM 11:13
COMMON PLEAS AND
GENERAL SESSIONS

DOCKET NO. 2011-GS-04-00604

WITNESSES

M L Robinson, Anderson County Sheriff's Dept.

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

4-26-11

Term

ARREST WARRANT NUMBER

J899589

THE STATE

vs.

Loretta Galloway Branyon

ACTION OF GRAND JURY

TRUE BILL

APR 26 2011

Foreperson of Grand Jury
Date:

VERDICT

LSH

Indictment for

**Drugs/ Possession of Methamphetamine with
Intent to Distribute**

SC Code: 44-53-0375(B)(3)
CDR Code: 3200

Foreperson of Petit Jury
Date:

~~STATE OF SOUTH CAROLINA)~~~~INDICTMENT~~

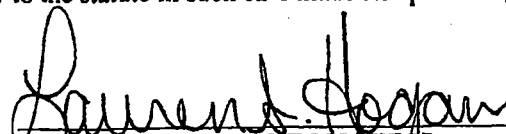
COUNTY OF Anderson)

At a Court of General Sessions, convened on 4-26-11, the Grand Jurors of Anderson County present upon their oath:

Drugs/ Possession of Methamphetamine with Intent to Distribute

That on or about **January 13, 2011**, in Anderson County, South Carolina, the Defendant, **Loretta Galloway Branyon** did possess with intent to distribute, dispense, or deliver Methamphetamine, a schedule II controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such distribution not having been authorized by law, 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