

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED
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SC SUPREME COURT

SETH A. STEARNS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001681

APPENDIX

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1 SERGEANT BURRIS WAS THERE, AND THE CONFIDENTIAL
2 INFORMANT WAS THERE.

3 Q. WHO WAS THE CONFIDENTIAL INFORMANT?

4 A. KENNY LAVENDER.

5 Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED AS STATE'S
6 EXHIBIT NUMBER SEVEN FOR IDENTIFICATION PURPOSES. CAN
7 YOU IDENTIFY THAT?

8 A. YES, MA'AM.

9 Q. AND WHOSE SIGNATURE IS THAT ON THE BOTTOM?

10 A. IT'S MINE.

11 (COUNSEL CONFER.)

12 MR. KAPPEL: SAME OBJECTION, JUDGE.

13 THE COURT: ALL RIGHT. OVERRULED. STATE'S
14 EXHIBITS 6 AND 7 ARE ADMITTED INTO EVIDENCE OVER THE
15 OBJECTION OF THE DEFENDANT.

16 (STATE'S EXHIBIT # 6 WAS RECEIVED IN
17 EVIDENCE.)

18 (STATE'S EXHIBIT # 7 WAS RECEIVED IN
19 EVIDENCE.)

20 MS. EVANS: ALL RIGHT.

21 BY MS. EVANS:

22 Q. TELL THE JURY WHAT THAT IS.

23 A. IT'S A CHAIN OF CUSTODY, FORM C.

24 Q. AND WHAT DID YOU -- WHAT DOES IT SAY ON THAT FORM
25 THAT YOU RECEIVED?

1 A. ONE CLEAR PLASTIC BAG CONTAINING CRYSTAL
2 SUBSTANCE.

3 Q. AND WHO DID YOU RECEIVE THAT FROM?

4 A. NEYSA CARON.

5 Q. AND HOW LONG -- WHAT DID YOU DO WITH IT ONCE YOU
6 GOT IT?

7 A. I FILLED OUT THE PAPERWORK THAT GOES WITH THE
8 B.E.S.T. KIT AND I SEALED IT IN THE B.E.S.T. KIT.

9 Q. OKAY. AND THAT IS THE B.E.S.T. KIT THAT YOU
10 DESCRIBED BEFORE?

11 A. YES, MA'AM, WITH THE PLASTIC BAG.

12 Q. DO YOU WRITE ANYTHING ON THAT ONCE YOU SEALED THE
13 B.E.S.T. KIT?

14 A. YES, MA'AM. ON THE OUTSIDE OF THE PLASTIC BAG
15 THAT WE'RE GIVEN, IT HAS A PLACE FOR YOU TO PRINT AND
16 SIGN YOUR NAME, THE PERSON WHO ACTUALLY SEALED THE BAG.
17 THERE'S OTHER PAPERWORK THAT GOES ALONG WITH IT.

18 Q. AFTER YOU SEAL IT, DO YOU INITIAL IT?

19 A. YES, MA'AM.

20 Q. AND WHAT DID YOU DO ONCE YOU SEALED THAT IN THAT
21 B.E.S.T. EVIDENCE BAG?

22 A. I RETAINED CUSTODY OF IT UNTIL I TURNED IT IN TO
23 THE S.L.E.D. NARCOTICS DROP-OFF BOX.

24 Q. BEFORE YOU PUT IT IN THE B.E.S.T. EVIDENCE BAG,
25 DID YOU PUT ANYTHING INTO IT, THE BAG YOU GOT FROM THE

1 PICKENS COUNTY OFFICER?

2 A. NO, NO.

3 Q. DID YOU TAKE ANYTHING OUT OF IT?

4 A. NO.

5 Q. WAS IT IN THE SAME CONDITION WHEN YOU PUT IT IN
6 THE B.E.S.T. EVIDENCE BAG AS WHEN YOU RECEIVED IT?

7 A. YES, MA'AM. I PUT IT INTO ANOTHER PLASTIC BAG
8 AND WROTE STUFF ON THE OUTSIDE OF IT, YES, MA'AM.

9 Q. WHAT DID YOU DO WITH THAT B.E.S.T. EVIDENCE BAG
10 AFTER YOU HAD IT?

11 A. I TURNED IT IN TO THE NARCOTICS DROP BOX AT
12 S.L.E.D. HEADQUARTERS.

13 Q. THE SAME DROP BOX THAT YOU DESCRIBED EARLIER?

14 A. YES, MA'AM.

15 Q. WAS IT UNDER YOUR CONSTANT CARE AND CONTROL THE
16 WHOLE TIME BEFORE YOU PUT IT INTO THAT NARCOTICS DROP
17 BOX?

18 A. YES, MA'AM.

19 Q. DID YOU GO BY S.L.E.D. AND PICK UP TWO B.E.S.T.
20 EVIDENCE BAGS TO COME HERE FOR TRIAL?

21 A. I BROUGHT THREE, YES, MA'AM.

22 Q. EXCUSE ME, THREE?

23 A. YES, MA'AM.

24 Q. WHEN DID YOU PICK THOSE UP?

25 A. YESTERDAY MORNING.

1 Q. AND WHERE DID YOU GET THOSE FROM?

2 A. I GOT THEM FROM NATHAN MCCOY AT S.L.E.D.
3 HEADQUARTERS.

4 Q. AND ARE ALL THREE OF THEM IN YOUR POSSESSION?

5 A. YES, MA'AM.

6 Q. AND ARE ALL THREE OF THEM IN THE B.E.S.T.

7 EVIDENCE BAG THAT YOU DESCRIBED?

8 A. THE B.E.S.T. EVIDENCE BAG IS IN THERE, BUT IT HAS
9 BEEN PUT INTO ANOTHER PLASTIC BAG.

10 Q. OKAY. AND IS THAT OTHER PLASTIC BAG SEALED?

11 A. YES, MA'AM.

12 Q. AND SINCE YOU PICKED THEM UP FROM S.L.E.D.

13 HEADQUARTERS, HAVE THEY BEEN IN YOUR CONSTANT CARE AND
14 CONTROL?

15 A. YES, MA'AM.

16 Q. HAVE THEY BEEN TAMPERED WITH IN ANY MANNER
17 WHATSOEVER?

18 A. NO, MA'AM.

19 MS. EVANS: I BEG THE COURT'S INDULGENCE.

20 BY MS. EVANS:

21 Q. SPECIAL AGENT SONNEFELD, CAN I PLEASE SEE THOSE
22 BAGS RIGHT NOW?

23 A. (COMPLIES.)

24 Q. AND THE PACKAGES THAT YOU PICKED THEM UP IN, ARE
25 THEY SEALED AND WERE THEY INITIALED?

1 A. YES, MA'AM.

2 **MS. EVANS:** YOUR HONOR, AT THIS TIME WE
3 WOULD LIKE TO MARK THESE THREE BAGS JUST FOR
4 IDENTIFICATION PURPOSES.

5 **THE COURT:** SEPARATELY OR COLLECTIVELY?

6 **MS. EVANS:** SEPARATELY, SIR.

7 **THE COURT:** VERY GOOD. WE'LL GO OFF THE
8 RECORD WHILE THE REPORTER DOES IT.

9 (STATE'S EX. # 8, DRUGS, WAS MARKED FOR
10 IDENTIFICATION.)

11 (STATE'S EX. # 9, DRUGS, WAS MARKED FOR
12 IDENTIFICATION.)

13 (STATE'S EX. # 10, DRUGS, WAS MARKED FOR
14 IDENTIFICATION.)

15 **THE COURT:** LET'S IDENTIFY THE EXHIBITS.

16 **MR. KAPPEL:** I'LL DO IT, JUDGE. I'M GONNA
17 ASK HER A COUPLE QUESTIONS ABOUT IT.

18 **THE COURT:** WELL, SOMETIME SOMEBODY WILL
19 HAVE TO SAY WHAT THE NUMBERS ARE.

20 **MS. EVANS:** OH. EIGHT, NINE AND TEN.

21 **THE COURT:** VERY GOOD. ALL RIGHT. THANK
22 YOU.

23 **MS. EVANS:** I HAVE NO FURTHER QUESTIONS.
24 PLEASE ANSWER ANY QUESTIONS MR. KAPPEL HAS FOR YOU.

25 **THE COURT:** THANK YOU, MA'AM.

1 **CROSS-EXAMINATION BY MR. KAPPEL:**

2 Q. GOOD AFTERNOON. I WANT YOU TO LOOK AT WHAT'S
3 BEEN MARKED FOR IDENTIFICATION NUMBER TEN, NUMBER EIGHT,
4 AND NUMBER NINE, AND I WANT YOU TO TELL ME, FROM WHOM
5 DID THESE COME FROM, WHERE YOU RECEIVED THEM, EACH ONE?

6 A. I ONLY RECEIVED ONE AND THAT WAS THIS ONE.

7 Q. SO YOU RECEIVED NUMBER NINE FOR IDENTIFICATION
8 FROM WHOM?

9 A. I ACTUALLY RECEIVED IT FROM NEYSA, NEYSA CARON AT
10 THE PICKENS COUNTY SHERIFF'S DEPARTMENT.

11 Q. ALL RIGHT. WHAT ABOUT NUMBER TEN?

12 A. MAX DORSEY.

13 Q. AND NUMBER EIGHT?

14 A. MAX DORSEY.

15 Q. SO YOU RECEIVED NUMBER TEN AND NUMBER EIGHT FROM
16 MAX DORSEY?

17 A. OKAY.

18 Q. AND NUMBER NINE FROM NEYSA CARON. IS THAT
19 CORRECT? I'M SORRY. I DON'T MEAN TO GO SO QUICK. I
20 JUST AM TRYING TO GET YOU OUT OF HERE.

21 A. YES, SIR, I BELIEVE THAT'S CORRECT.

22 Q. ALL RIGHT. SO EIGHT AND TEN FROM MAX DORSEY AND
23 NUMBER NINE FROM NEYSA CARON?

24 A. YES, SIR.

25 **MR. KAPPEL:** ALL RIGHT. THAT'S ALL I HAVE.

1 THANK YOU, JUDGE.

2 **THE COURT:** ANY REDIRECT?

3 **MS. EVANS:** I DON'T HAVE ANYTHING FURTHER.

4 **THE COURT:** VERY GOOD. MAY THE WITNESS BE
5 EXCUSED?

6 **MS. EVANS:** YES, SIR.

7 **THE COURT:** ANY OBJECTION?

8 **MR. KAPPEL:** NO, SIR.

9 **THE COURT:** WITHOUT OBJECTION, YOU MAY BE
10 EXCUSED. THANK YOU VERY MUCH, MA'AM.

11 (WHEREUPON, THE WITNESS WAS EXCUSED.)

12 **THE COURT:** MADAM FORELADY, LADIES AND
13 GENTLEMEN OF THE JURY, I THINK THAT WOULD BE A GOOD
14 PLACE TO BREAK FOR THE LUNCH. DO YOU THINK AN HOUR,
15 1:30 WOULD BE ALL RIGHT?

16 (JURY CONFERS.)

17 **THE COURT:** ALL RIGHT. THAT SEEMS THE
18 CONSENSUS. VERY GOOD. SO IF YOU WOULD PLEASE COME BACK
19 TO THE JURY ROOM AT 1:30 AND WE'LL CONTINUE THE TRIAL AT
20 THAT TIME. PLEASE DO NOT DISCUSS THE CASE AMONG
21 YOURSELVES IN ANY WAY.

22 EVERYONE ELSE REMAIN SEATED WHILE THE JURY
23 RETIRES FROM THE COURTROOM.

24 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
25 12:33 P.M.)

1 THE COURT: ANYTHING FROM THE STATE?

2 MS. PORTER: NO, YOUR HONOR.

3 THE COURT: FROM THE DEFENDANT?

4 MR. KAPPEL: JUDGE, I DON'T KNOW IF WE NEED
5 TO GO ON THE RECORD ON THIS OR NOT, BUT JUST FOR
6 SCHEDULING PURPOSES?

7 THE COURT: YES, SIR.

8 MR. KAPPEL: I'M CURIOUS TO KNOW WHEN THE
9 COURT MIGHT THINK IT WILL DO CLOSING ARGUMENTS. IT'S
10 LOOKING LIKE TOMORROW MORNING. THERE'S A COUPLE THINGS
11 I NEED TO DO DURING IN PREPARATION FOR CLOSING, AND I'M
12 NOT SURE IF I NEED TO SCRAMBLE DURING LUNCH TO TRY TO DO
13 THAT OR ---

14 THE COURT: HOW LONG DO YOU THINK YOUR
15 WITNESSES WILL BE? YOU'VE GOT THREE NOW?

16 MS. PORTER: YES, SIR. TWO ARE SIMPLE CHAIN
17 WITNESSES, SO NO LONGER THAN THE HALF HOUR THAT WE TOOK
18 ON THE OTHER TWO. I MEAN, I DON'T KNOW HOW LONG MATT
19 WILL CROSS-EXAMINE THE CHEMIST, BUT MY QUESTIONS FOR OUR
20 CHEMIST ARE TEN MINUTES. AND THEN THE LAST ONE IS
21 AMANDA FORDHAM, I WOULD IMAGINE SHE WOULD BE AT LEAST AN
22 HOUR.

23 THE COURT: WELL, WHAT WOULD THE -- SINCE
24 YOU HAVE ANOTHER CASE, WHAT WOULD BE YOUR PREFERENCE?

25 MS. PORTER: YOUR HONOR, I BELIEVE THAT WE

1 ARE WORKING VERY HARD TO COME TO AN AGREEMENT ON THAT
2 OTHER CASE. MR. PHILLIPS HAS MET WITH HIS CLIENT THIS
3 MORNING.

4 THE COURT: LET'S DO THIS. I'M JUST
5 THINKING ABOUT -- AND IT'S A SHORT CASE ANYWAY, IS IT
6 NOT?

7 MS. PORTER: ONLY FIVE WITNESSES, YOUR
8 HONOR, TWO OF WHOM ARE CHAIN WITNESSES.

9 THE COURT: ALL RIGHT.

10 MS. PORTER: IF HE'LL STIPULATE TO THE
11 CHAIN, I'LL DO IT IN THREE.

12 THE COURT: ALL RIGHT. WE COULD PROBABLY
13 BEGIN, AND IF WE HAVE TO, TRY IT TOMORROW AFTERNOON.

14 MS. PORTER: YES, SIR.

15 THE COURT: WHY DON'T WE DO THIS SO THE
16 PRESSURE IS NOT SO GREAT ON EVERYBODY. WE'LL TRY TO
17 COMPLETE THE TESTIMONY AND EVIDENCE THIS AFTERNOON AND
18 THEN GET RID OF ALL OF THE CHARGES AND EVERYTHING ELSE
19 SO THAT WE CAN GO TO THE JURY AT 9:00 IN THE MORNING,
20 AND THEN HAVE THE OTHER JURY, THE REMAINDER OF THE PANEL
21 COME IN AT 2:00.

22 THE CLERK: YES, SIR.

23 THE COURT: DO WE HAVE ENOUGH TO DRAW A
24 JURY?

25 THE CLERK: YES, SIR.

1 **THE COURT:** 35, OR 32 I THINK YOU SAID. ALL
2 RIGHT.

3 **MS. PORTER:** YOUR HONOR?

4 **THE COURT:** YES, MA'AM.

5 **MS. PORTER:** IF THE COURT SO WISHES, WE
6 WOULD BE AVAILABLE AFTER THE CONCLUSION OF THE TESTIMONY
7 TODAY AND THE CONCLUSION OF THE CHARGING CONFERENCE TO
8 SENTENCE SOME OF THESE INDIVIDUALS.

9 **THE COURT:** THAT WOULD BE FINE. IF YOU'RE
10 READY. YOU DON'T THINK THERE'S GOING TO BE A RETRIAL?
11 WELL, WE'RE GONNA HAVE SOME TIME WHEN -- WELL, STILL WE
12 WON'T KNOW. I'VE HEARD NOISES ABOUT MISTRIAL. ALL
13 RIGHT. LET'S TAKE A BREAK NOW AND THEN COME BACK BY
14 1:30.

15 COULD I SEE COUNSEL FOR A SECOND?

16 (WHEREUPON, COUNSEL APPROACHED THE BENCH AND
17 CONFERRED WITH THE COURT OUT OF THE PRESENCE
18 OF THE COURT REPORTER.)

19 (A LUNCHEON RECESS OCCURRED.)
20
21
22
23
24
25

1 **AFTERNOON PROCEEDINGS**

2 **THE COURT:** IS THERE ANYTHING FROM THE STATE
3 BEFORE I BRING THE JURY BACK?

4 **MS. PORTER:** THE STATE IS READY.

5 **THE COURT:** DEFENSE?

6 **MR. KAPPEL:** YES, SIR, JUDGE.

7 **THE COURT:** ASK THE JURY TO JOIN US.

8 **THE BAILIFF:** YES, SIR.

9 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
10 1:50 P.M.)

11 **THE COURT:** LET THE RECORD REFLECT THAT THE
12 JURY AND ALTERNATE ARE IN THE JURY-BOX.

13 I APOLOGIZE, MADAM FORELADY, AND LADIES AND
14 GENTLEMEN OF THE JURY; BUT UNFORTUNATELY, TIME SORT OF
15 GOT AWAY FROM ME. BUT WE WILL NOW CONTINUE WITH THE
16 STATE'S CASE.

17 YOU MAY CALL YOUR NEXT WITNESS.

18 **MS. PORTER:** THANK YOU, YOUR HONOR. AT THIS
19 TIME THE STATE CALLS OFFICER COWAN TO THE STAND.

20 (WHEREUPON, THE WITNESS WAS SWORN BY THE
21 CLERK.)

22 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND
23 SPELL YOUR LAST NAME FOR THE RECORD.

24 **THE WITNESS:** ROBERT BRIAN COWAN, LAST NAME
25 IS SPELLED C-O-W-A-N.

1 WHEREUPON,

2 ROBERT BRIAN COWAN,

3 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
4 FOLLOWS:

5 DIRECT EXAMINATION BY MS. PORTER:

6 Q. OFFICER COWAN, BY WHOM ARE YOU EMPLOYED?

7 A. I WORK FOR THE EASLEY POLICE DEPARTMENT.

8 Q. AND WHAT TYPE OF EDUCATION AND TRAINING DO YOU
9 HAVE THAT ALLOWS YOU TO WORK FOR THE EASLEY POLICE
10 DEPARTMENT?

11 A. I FINISHED HIGH SCHOOL AND WENT THROUGH THE SOUTH
12 CAROLINA POLICE ACADEMY, AND I'VE HAD SPECIFIC TRAINING
13 IN CRIME SCENES THROUGH THE ACADEMY, ALSO.

14 Q. WHAT IS YOUR SPECIFIC POSITION AT THE EASLEY
15 POLICE DEPARTMENT?

16 A. MY SPECIFIC POSITION CURRENTLY IS THE FORENSIC
17 SERVICE OFFICER.

18 Q. AND HOW LONG HAVE YOU BEEN WORKING IN LAW
19 ENFORCEMENT?

20 A. THIRTEEN YEARS.

21 Q. AS A PART OF YOUR DUTIES AS A FORENSIC SCENE
22 OFFICER, DO YOU COLLECT EVIDENCE?

23 A. YES, I DO.

24 Q. AND HAVE YOU BEEN TRAINED ON HOW TO COLLECT
25 EVIDENCE?

1 A. YES, I HAVE.

2 Q. SPECIFICALLY HAVE YOU BEEN TRAINED ON HOW TO
3 COLLECT WHAT WE CALL FUNGIBLE EVIDENCE, EVIDENCE THAT
4 CAN BE DESTROYED, TAMPERED WITH?

5 A. YES, I HAVE, YES.

6 Q. WERE YOU WORKING ON APRIL 7TH, 2005?

7 A. YES, I WAS.

8 Q. AND IN WHAT CAPACITY WERE YOU WORKING?

9 A. I WAS THE FORENSIC SERVICE OFFICER AT THAT TIME.

10 Q. DID YOU AID IN THE EXECUTION OF A SEARCH WARRANT
11 ON A TRUCK THAT WAS IMPOUNDED BY THE EASLEY POLICE
12 DEPARTMENT THE DAY BEFORE?

13 A. YES, I WAS. YES, I DID.

14 Q. AND WHO ELSE AIDED YOU IN THAT, OR WHO ELSE WAS
15 PRESENT WHEN THE SEARCH WARRANT WAS EXECUTED ON THAT
16 TRUCK?

17 A. AGENT LOVELL WITH THE EASLEY POLICE DEPARTMENT,
18 DETECTIVE HUNTER, IF I REMEMBER CORRECTLY; AND DETECTIVE
19 PATTERSON, IF I REMEMBER CORRECTLY.

20 Q. DO YOU KNOW WHOSE TRUCK IT WAS?

21 A. IF I REMEMBER CORRECTLY, IT WAS A TRUCK BELONGING
22 TO A SEXTON SUBJECT.

23 Q. DO YOU REMEMBER WHEN IT WAS TAKEN INTO CUSTODY BY
24 THE EASLEY POLICE DEPARTMENT?

25 A. THE NIGHT BEFORE. YES, THE NIGHT BEFORE.

1 Q. AND WHAT WERE YOU ALL SEARCHING FOR?

2 A. AT THAT TIME IT WAS MY UNDERSTANDING WE WERE
3 SEARCHING FOR NARCOTICS IN THE VEHICLE.

4 Q. DID YOU EMPLOY ANY TYPE OF SPECIFIC TECHNIQUE TO
5 LOCATE THOSE DRUGS?

6 A. IF I REMEMBER CORRECTLY, THEY USED A CANINE UNIT
7 TO DO A SEARCH AROUND THE VEHICLE.

8 Q. AND SPECIFICALLY WHAT WAS YOUR ROLE THAT DAY IN
9 EXECUTING THE SEARCH WARRANT ON THAT TRUCK?

10 A. THE COLLECTION OF EVIDENCE.

11 Q. OKAY. DID THAT CANINE INDICATE THAT THERE WERE
12 ILLEGAL NARCOTICS IN THAT TRUCK?

13 A. YES, IT DID.

14 Q. AND ONCE IT INDICATED, WHAT DID YOU ALL DO?

15 A. ONCE IT INDICATED THAT THERE WAS NARCOTICS IN THE
16 VEHICLE, WE BEGAN TO SYSTEMATICALLY PULL STUFF FROM THE
17 VEHICLE AND SEARCH IT, AT WHICH TIME WE PULLED A SPEAKER
18 BOX FROM THE VEHICLE AND HEARD SOMETHING MOVE INSIDE IT.
19 WE LAID THE SPEAKER BOX BACK AND YOU COULD SEE DOWN
20 INSIDE OF A GROOVE, IT WAS PROBABLY ABOUT THAT BIG
21 (INDICATING), AND YOU COULD SEE SOMETHING LAYING IN THE
22 BACK OF THAT SPEAKER BOX.

23 Q. ONCE Y'ALL LOCATED THAT SPEAKER BOX AND LOOKED
24 INTO IT, WHAT HAPPENED?

25 A. WE PHOTOGRAPHED IT, I DOCUMENTED IT, AND THEN

1 REMOVED THE SPEAKER FACE SO WE COULD GET AT THE ITEM.
2 AND ONCE WE GOT THE SPEAKER OUT OF IT, I REACHED IN AND
3 OBTAINED THE ITEM AND THEN DID THE PROPER PAPERWORK THAT
4 GOES ALONG WITH WHEN I TAKE ANYTHING INTO EVIDENCE.

5 Q. WHAT PROPER PAPERWORK ARE YOU SPEAKING OF?

6 A. WE HAVE AN EASLEY POLICE DEPARTMENT PROPERTY FORM
7 WHICH I FILL OUT. ALSO THE EVIDENCE IS BAGGED AND THEN
8 SEALED SO IT CANNOT BE TAMPERED WITH.

9 MS. PORTER: I GUESS CAN I MARK THIS FOR
10 IDENTIFICATION PURPOSES ONLY?

11 (STATE'S EX. # 11, PROPERTY REPORT, WAS
12 MARKED FOR IDENTIFICATION.)

13 BY MS. PORTER:

14 Q. I HAND YOU STATE'S EXHIBIT 11 AND JUST ASK YOU IF
15 YOU CAN RECOGNIZE THAT.

16 A. YES. THIS IS THE ---

17 Q. DON'T SAY WHAT IT IS. JUST CAN YOU RECOGNIZE IT?

18 A. YES, MA'AM, I'M SORRY.

19 Q. HOW DO YOU RECOGNIZE IT?

20 A. FROM MY SIGNATURE ON IT AND MY HANDWRITING.

21 MS. PORTER: AT THIS TIME, YOUR HONOR, I
22 WOULD ASK THAT STATE'S NUMBER ELEVEN BE ENTERED INTO
23 EVIDENCE.

24 MR. KAPPEL: SAME OBJECTION.

25 THE COURT: ALL RIGHT. SUBJECT TO THE

1 OBJECTION BY THE DEFENDANT, STATE'S EXHIBIT ELEVEN IS
2 ADMITTED INTO EVIDENCE.

3 (STATE'S EXHIBIT # 11 WAS RECEIVED IN
4 EVIDENCE.)

5 BY MS. PORTER:

6 Q. PLEASE STATE WHAT STATE'S EXHIBIT NUMBER 11 IS.

7 A. THIS IS THE EASLEY POLICE DEPARTMENT PROPERTY
8 REPORT.

9 Q. AND WHO FILLED THAT OUT?

10 A. THIS IS A COMBINATION OF HANDWRITING BETWEEN
11 MYSELF AND AGENT LOVELL WITH THE EASLEY POLICE
12 DEPARTMENT.

13 Q. OKAY. I'M GONNA ALSO HAND YOU WHAT HAS BEEN
14 MARKED FOR IDENTIFICATION PURPOSES AS STATE'S EXHIBIT
15 NUMBER TEN AND ASK YOU IF YOU RECOGNIZE THAT.

16 A. IT APPEARS TO BE THE ITEM THAT WE TOOK OUT OF
17 THE, OUT OF THE SPEAKER BOX.

18 Q. ONCE YOU TOOK THAT ITEM OUT OF THE SPEAKER BOX,
19 WHAT DID YOU DO WITH IT?

20 A. I HELD IT UNTIL I WAS INSTRUCTED TO TURN IT OVER
21 TO ANOTHER AGENT.

22 Q. AND DO YOU REMEMBER WHO THAT AGENT WAS?

23 A. MAX DORSEY, I THINK THAT'S CORRECT.

24 Q. IS HE PRESENT HERE IN THE COURTROOM TODAY?

25 A. YES, HE IS.

1 Q. AND WHERE IS HE SITTING?

2 A. HE'S SITTING RIGHT THERE WITH THE GREEN AND BLUE
3 TIE ON.

4 Q. AND UNTIL IT WAS HANDED OVER TO AGENT DORSEY, WAS
5 IT IN YOUR CARE, CUSTODY AND CONTROL?

6 A. YES, IT WAS.

7 Q. WAS IT TAMPERED WITH OR ALTERED IN ANY WAY, SHAPE
8 OR FORM BETWEEN THE TIME THAT YOU SEIZED IT AND HANDED
9 IT OVER TO AGENT DORSEY?

10 A. NO, IT WAS NOT.

11 MS. PORTER: I HAVE NO FURTHER QUESTIONS FOR
12 YOU. IF YOU WILL ANSWER ANY QUESTIONS MR. KAPPEL HAS.

13 CROSS-EXAMINATION BY MR. KAPPEL:

14 Q. YOU ARE THE ONE THAT SEIZED WHAT'S BEEN MARKED
15 FOR IDENTIFICATION AS NUMBER TEN; IS THAT RIGHT?

16 A. I TOOK IT OUT OF THE SPEAKER BOX, YES.

17 Q. YOU ARE THE ONE THAT TOOK IT OUT OF THE VEHICLE;
18 IS THAT RIGHT?

19 A. YES, I AM.

20 Q. ALL RIGHT. DID YOU PACKAGE IT IN ANY OF THESE
21 PACKAGES INSIDE?

22 A. NO, I DID NOT.

23 Q. YOU LEFT IT IN ITS ORIGINAL PACKAGING; IS THAT
24 CORRECT?

25 A. YES, SIR, IT IS.

1 Q. AND IT WAS IN ITS ORIGINAL PACKAGING ALL THE WAY
2 UNTIL YOU TURNED IT OVER TO MAX DORSEY FROM S.L.E.D.; IS
3 THAT CORRECT?

4 A. THAT IS CORRECT.

5 MR. KAPPEL: THAT'S ALL I HAVE, JUDGE,
6 THANKS.

7 THE COURT: REDIRECT?

8 MS. PORTER: NO FURTHER QUESTIONS, YOUR
9 HONOR.

10 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

11 MS. PORTER: WE ASK THAT THIS WITNESS BE
12 RELEASED IF IT SUITS THE COURT AND IF THERE IS NO
13 OBJECTION.

14 MR. KAPPEL: NO OBJECTION.

15 THE COURT: WITHOUT OBJECTION, THE WITNESS
16 WILL BE RELEASED. THANK YOU VERY MUCH.

17 (WHEREUPON, THE WITNESS WAS EXCUSED.)

18 THE COURT: ALL RIGHT. YOU MAY CALL YOUR
19 NEXT WITNESS.

20 MS. PORTER: THANK YOU, YOUR HONOR. THE
21 STATE CALLS NATHAN MCCOY TO THE STAND.

22 (WHEREUPON, THE WITNESS WAS SWORN BY THE
23 CLERK.)

24 THE CLERK: PLEASE STATE YOUR FULL NAME AND
25 SPELL YOUR LAST NAME FOR THE RECORD.

1 **THE WITNESS:** MY NAME IS NATHAN MCCOY, LAST
2 NAME IS M-C-C-O-Y.
3 WHEREUPON,

4 **NATHAN MCCOY,**
5 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
6 FOLLOWS:

7 **DIRECT EXAMINATION BY MS. PORTER:**

8 Q. MR. MCCOY, WHAT DO YOU DO FOR A LIVING?

9 A. I'M A FORENSIC CHEMIST AT THE SOUTH CAROLINA LAW
10 ENFORCEMENT DIVISION, OTHERWISE KNOWN AS S.L.E.D.

11 Q. HOW LONG HAVE YOU BEEN WORKING FOR S.L.E.D.?

12 A. FOUR YEARS AND SEVEN MONTHS.

13 Q. WHAT TYPE OF EDUCATION AND TRAINING HAVE YOU HAD
14 THAT ALLOWS YOU TO BE A FORENSIC CHEMIST ANALYST?

15 A. I RECEIVED A BACHELOR OF SCIENCE IN BIOCHEMISTRY
16 FROM THE COLLEGE OF CHARLESTON, AND ALSO A BACHELOR OF
17 ARTS DEGREE IN CHEMISTRY FROM THE COLLEGE OF CHARLESTON
18 IN 2002. ALSO AT S.L.E.D. I RECEIVED ON-THE-JOB
19 TRAINING IN FORENSIC CHEMISTRY AT S.L.E.D.

20 Q. YOU ALSO ATTEND CONTINUING EDUCATION CLASSES?

21 A. WE DO PERIODICALLY HAVE TRAINING AT S.L.E.D. OR
22 OTHER ORGANIZATIONS SUCH AS D.E.A., SOME CONFERENCES
23 THAT WE CAN ATTEND TO.

24 Q. WHAT ARE YOUR DUTIES?

25 A. MY DUTIES ARE TO EXAMINE UNKNOWN SUBSTANCES FOR

1 THE PRESENCE OF ANY CONTROLLED SUBSTANCE.

2 Q. HAVE YOU HAD OCCASION TO CHEMICALLY ANALYZE TO
3 DETERMINE WHETHER THE SUBSTANCE IS OR CONTAINS A
4 NARCOTIC OR NARCOTIC-TYPE DRUG?

5 A. YES, I HAVE.

6 Q. HOW MANY TIMES?

7 A. APPROXIMATELY AT LEAST A THOUSAND CASES.

8 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT PRIOR
9 TO TODAY?

10 A. YES, I HAVE.

11 Q. APPROXIMATELY HOW MANY TIMES?

12 A. 15 TIMES.

13 Q. ALL IN THE STATE OF SOUTH CAROLINA?

14 A. YES, ALL IN THE STATE OF SOUTH CAROLINA.

15 MS. PORTER: AT THIS TIME, YOUR HONOR, I
16 WOULD LIKE TO OFFER NATHAN MCCOY AS AN EXPERT IN THE
17 FIELD OF CHEMISTRY AND THE ANALYSIS OF NARCOTICS.

18 MR. KAPPEL: NO OBJECTION.

19 THE COURT: ALL RIGHT. WITHOUT OBJECTION
20 THE WITNESS WILL BE QUALIFIED AS AN EXPERT IN THE FIELD
21 OF CHEMISTRY -- CHEMICAL ANALYSIS, I GUESS, FOR
22 NARCOTICS OR CONTROLLED SUBSTANCES.

23 AGAIN, MADAM FORELADY, LADIES AND GENTLEMEN
24 OF THE JURY, THIS WITNESS WILL BE PERMITTED BY REASON OF
25 HIS BACKGROUND, TRAINING AND EXPERIENCE TO GIVE HIS

1 OPINION AS TO MATTERS RELATIVE TO THAT AREA OF
2 EXPERTISE. OF COURSE, ANY WITNESS'S TESTIMONY IS FOR
3 YOUR EVALUATION AS TO THE WEIGHT TO BE GIVEN TO IT.

4 YOU MAY PROCEED.

5 MS. PORTER: THANK YOU, YOUR HONOR.

6 BY MS. PORTER:

7 Q. WHEN YOUR LAB RECEIVES A SUBSTANCE FOR
8 DETERMINING IF IT CONTAINS NARCOTICS OR NARCOTIC-TYPE
9 DRUGS, WHAT STEPS ARE TAKEN TO ENSURE THAT THAT
10 SUBSTANCE HAS NOT BEEN TAMPERED WITH?

11 A. WHEN AN AGENCY OR AN OFFICER FROM AN AGENCY
12 BRINGS IN EVIDENCE THAT'S TESTED FOR A CONTROLLED
13 SUBSTANCE, THEY TYPICALLY, BEFORE THEY COME TO THE LAB
14 THEY PUT IT IN A B.E.S.T. ENVELOPE IS WHAT WE CALL IT.
15 IT'S A TAMPER-EVIDENT BAG. THEY SEAL IT AND THEY PUT
16 THEIR PERTINENT INFORMATION ON THAT AND THEY'LL BRING IT
17 IN, YOU KNOW, TO OUR LOG-IN, AND OUR LOG-IN WILL STORE
18 IT UNTIL THE CHEMIST IS READY TO ANALYZE THE EVIDENCE
19 INSIDE THAT BAG.

20 IT'S TAMPER-EVIDENT. THAT MEANS IF SOMEBODY WERE
21 TO -- ATTEMPTED TO OPEN IT UP, WE WOULD KNOW THAT. IT'S
22 NOT TAMPERPROOF, SOMEBODY CAN GET INTO IT, BUT WE WOULD
23 KNOW THAT SOMEBODY ATTEMPTED TO GET INTO THAT BAG, AND
24 AT THAT POINT WE WOULD NOT ANALYZE THE SUBSTANCE AND
25 CALL THE AGENCY.

1 Q. HOW WOULD YOU KNOW IF SOMEONE HAD ATTEMPTED TO
2 GET INTO THE BAG?

3 A. YOU CAN SEE THAT THERE'S BLUE MARKINGS ON THE
4 BAG. I CAN SHOW YOU AN EXAMPLE. BUT THERE'S A A BLUE
5 MARKING ON THE BAG AND THE STICKY PORTION WHERE THE BAG
6 IS SEALED. IF THAT PORTION WAS RIPPED UP, THAT BLUE
7 MARKING WOULD BE DISTORTED OR COME OFF THE BAG, IT WILL
8 MAINTAIN ON THE ADHESIVE. AND ALSO YOU CAN TELL IF
9 SOMEONE HAD ATTEMPTED TO CUT INTO THE BAG.

10 Q. AND IF YOU RECEIVE A SUBSTANCE THAT IS NOT
11 PROPERLY PACKAGED OR SEALED, OR APPEARS TO HAVE BEEN
12 TAMPERED WITH, WHAT DO YOU DO?

13 A. OUR NORMAL POLICY IS NOT TO -- FIRST OUR LOG-IN
14 SHOULDN'T ACCEPT THE EVIDENCE. BUT IF SOMEHOW IT GOT
15 THROUGH AND I GOT TO IT, I WOULD NOT ANALYZE THE
16 EVIDENCE. I WOULD CALL THE AGENCY FOR THEM TO COME BACK
17 AND PICK UP THAT EVIDENCE AND LET THEM DETERMINE WHAT
18 THEY WANT TO DO WITH IT.

19 Q. WHAT IS THE S.L.E.D. DROP BOX?

20 A. THE S.L.E.D. DROP BOX, WE CURRENTLY DON'T USE
21 THAT NOW, BUT IN THE PAST WHAT IT WAS, IT LOOKS LIKE A
22 MAILBOX THAT YOU SEE ON THE SIDE OF THE STREET, IT'S A
23 MAILBOX, IT'S GOT A REVOLVING DOOR ON THE TOP. THE
24 OFFICER FROM THE AGENCY WOULD TAKE THAT EVIDENCE AND
25 DROP IT INTO THAT REVOLVING DOOR AND SHUT IT. ONCE THEY

1 SHUT IT, AND THEY TRY TO OPEN THAT DOOR, YOU CAN'T PUT
2 YOUR HAND DOWN IN THERE TO GET IT. IT'S SECURED BY A
3 LOCK, AND AT THE TIME ONLY CHEMISTS FROM THE DRUG LAB
4 HAD ACCESS TO THAT BOX.

5 Q. SORT OF LIKE A MAILBOX OUT ON THE STREET?

6 A. THAT'S CORRECT.

7 Q. I AM GOING TO HAND YOU WHAT HAS BEEN MARKED FOR
8 IDENTIFICATION PURPOSES AS STATE'S EXHIBIT NUMBER EIGHT
9 AND ASK YOU IF YOU CAN RECOGNIZE THAT. PLEASE DON'T
10 STATE WHAT IT IS, JUST IF YOU CAN RECOGNIZE IT.

11 A. YEAH, I CAN RECOGNIZE THIS BAG.

12 Q. AND HOW DO YOU RECOGNIZE IT?

13 A. I RECOGNIZE THIS BAG PRIMARILY BECAUSE I PUT MY
14 INITIALS AND THE DATE THAT I ANALYZE THE EVIDENCE ON
15 EVERY PIECE OF EVIDENCE THAT'S INSIDE THIS BAG, BAGGIES,
16 THE B.E.S.T. ENVELOPE ITSELF; MOST OF THEM HAVE LAB
17 NUMBERS AND MY INITIALS AND THE DATE THAT I HANDLE THAT
18 EVIDENCE.

19 Q. AND CAN YOU TELL WHERE YOU RECEIVED THAT EVIDENCE
20 FROM?

21 A. THIS, THIS EVIDENCE CAME FROM, WELL, IN THE VICE
22 UNIT, THAT'S WHERE THEY HAVE THE NARCOTICS DRUG BOX,
23 VERY SIMILAR TO WHAT I EXPLAINED TO YOU A FEW MINUTES
24 AGO, IT CAME FROM THEIR BOX THEY HAD IN THEIR OFFICE.
25 AGAIN, THAT BOX, I WAS -- AT THAT TIME I WAS THE ONLY

1 ONE THAT HAD ACCESS TO THE BOX, NO ONE ELSE.

2 Q. WHAT DID YOU DO WITH THE SUBSTANCE ONCE YOU
3 RECEIVED IT?

4 A. I WOULD PICK UP THE EVIDENCE, TAKE IT BACK TO MY
5 LAB, PUT IT INTO OUR COMPUTER SYSTEM AND LOG IT IN AND
6 I'D PLACE IT IN OUR DRUG VAULT IN THE LAB IN THE DRUG
7 I.D. DEPARTMENT, AND THEN PLACE IT THERE UNTIL A LATER
8 DATE THAT I WOULD ANALYZE THE SUBSTANCE.

9 Q. WERE THERE SEVERAL SUBSTANCES WITHIN THAT ONE
10 B.E.S.T. BAG?

11 A. YES, THERE WAS.

12 Q. DID YOU ANALYZE THOSE SUBSTANCES?

13 A. YES, I HAVE.

14 Q. AND DID YOU DETERMINE IF THEY WERE NARCOTICS, IF
15 THEY WERE NARCOTIC SUBSTANCES?

16 MR. KAPPEL: OBJECTION, JUDGE. THIS ITEM
17 HAS NOT BEEN ENTERED INTO EVIDENCE YET, AND I THINK
18 SHE'S TRYING TO ELICIT HIS CONCLUSION AS TO WHAT HE
19 DISCOVERED. IT'S NOT IN EVIDENCE, SO I OBJECT ON THAT
20 GROUND.

21 MS. PORTER: AT THIS TIME I WOULD LIKE TO
22 ENTER STATE'S EXHIBIT EIGHT INTO EVIDENCE.

23 MR. KAPPEL: I OBJECT, JUDGE, ON A COUPLE
24 DIFFERENT GROUNDS AT THIS POINT. I BELIEVE WHAT WE ARE
25 TALKING ABOUT IS STATE'S I.D. NUMBER EIGHT AT THIS POINT

1 IN TIME.

2 MY INDICATION IS THAT THIS ITEM WAS
3 DISCOVERED BY MAX DORSEY. MAX DORSEY HAS NEVER
4 IDENTIFIED STATE'S I.D. NUMBER EIGHT. THEREFORE, IT'S
5 AN IMPROPER CHAIN. MY SECOND OBJECTION IS ON THE
6 GROUNDS OF RELEVANCE.

7 THE COURT: WELL, THE RELEVANCE IS
8 OVERRULED. I'M GOING TO PERMIT THE WITNESS TO TESTIFY
9 AS TO WHAT HE EXAMINED WHEN HE EXAMINED WHAT HAS BEEN
10 MARKED AS STATE'S EXHIBIT EIGHT FOR IDENTIFICATION, AND
11 THE STATE WILL HAVE THE DUTY, OR RESPONSIBILITY, RATHER,
12 OF PERFECTING THE CHAIN. OVERRULED ON YOUR OBJECTION.
13 BY MS. PORTER:

14 Q. WHEN YOU RECEIVED THE SUBSTANCE FROM THE VICE
15 NARCOTICS BOX, DID IT HAVE ANY PAPERWORK WITH IT?

16 A. YES, IT DID.

17 Q. WHAT TYPE OF PAPERWORK DID IT HAVE WITH IT?

18 A. WITH THE CASES AT THAT TIME THEY HAD PAPERWORK,
19 WHAT WE CALL A FORM B AND FORM C-TYPE PAPERWORK. FORM B
20 WOULD BE THE PAPERWORK THAT THE ORIGINAL SEIZING AGENT
21 OR SEIZING OFFICER WHEN HE SEIZED THE EVIDENCE FROM A
22 SUSPECT, THAT'S HIS RESPONSIBILITY TO FILL THAT OUT AND
23 DATE WHEN HE DID THAT.

24 THE FORM C IS A FORM THAT IS PART OF THE, YOU
25 KNOW, PART OF THE CHAIN OF CUSTODY, THAT IF HE PASSED

1 THAT, HE OR SHE PASSED THAT PIECE OF EVIDENCE OFF TO
2 ANOTHER OFFICER OR ANOTHER PERSONNEL, THEY ARE
3 RESPONSIBLE FOR FILLING OUT THAT FORM, WHO HE GAVE IT
4 TO.

5 AND AGAIN, THE FORM C COULD CONTINUE ON. HE
6 COULD HAVE SEVERAL PEOPLE HANDLE A PIECE OF EVIDENCE
7 BEFORE THEY COULD GET IT INTO THE DRUG BOX. EACH PERSON
8 THAT TOUCHES THAT PIECE OF EVIDENCE BEFORE IT GETS INTO
9 THAT BOX IS SUPPOSED TO FILL OUT A FORM C SAYING WHO
10 THEY GOT IT FROM AND WHERE THEY PLACED IT.

11 Q. I'M GONNA SHOW YOU WHAT HAS BEEN MARKED AS
12 STATE'S EXHIBIT NUMBER TWO AND STATE'S EXHIBIT NUMBER
13 SIX, AND THAT ARE IN EVIDENCE. IF YOU DON'T MIND
14 READING THE CONTROL NUMBER -- FIRST OF ALL, WHAT ARE
15 THOSE?

16 A. THESE TWO PIECES OF PAPER THAT YOU JUST GAVE ME,
17 ONE IS A FORM B AND ONE OF THEM IS A FORM C WHICH WAS
18 PART OF THE PAPERWORK.

19 Q. DOES IT HAVE A CONTROL NUMBER AT THE TOP?

20 A. YES, THEY DO.

21 Q. AND WITH REGARDS TO STATE'S EXHIBIT NUMBER EIGHT
22 FOR IDENTIFICATION PURPOSES ONLY, DOES THE CONTROL
23 NUMBER MATCH THAT ON THE STATE'S EXHIBIT NUMBER EIGHT?

24 A. YES, THEY DO.

25 THE COURT: LET'S DO THIS. WHY DON'T WE

1 REFER TO THE -- WHICH FORM IS B AND WHICH ONE IS C AND
2 WHAT THE CONTROL NUMBER IS.

3 BY MS. PORTER:

4 Q. OKAY. ON STATE'S EXHIBIT NUMBER TWO, IF YOU WILL
5 PLEASE STATE WHAT FORM THAT IS.

6 A. STATE'S EXHIBIT NUMBER TWO IS A FORM B.

7 Q. AND WHAT'S THE CONTROL NUMBER ON THE TOP?

8 A. THE CONTROL NUMBER THAT WRITTEN ON THE TOP IS B
9 AS IN BOY, 158735.

10 Q. OKAY. AND CAN YOU STATE WHAT THAT, WHAT
11 INFORMATION IS CONTAINED IN THAT?

12 A. ON FORM B IT CONTAINS THE SEIZING OFFICER WHO
13 SEIZED THIS EVIDENCE FROM THE SUSPECT AND THE DATE THAT
14 HE SEIZED IT FROM. THEY ALSO PUT THE LOCATION, POSSIBLY
15 WHY THEY SEIZED IT; AND ALSO THEY PLACE AN ITEM
16 DESCRIPTION, WHAT ITEMS ARE INSIDE THE B.E.S.T. BAG WHEN
17 THEY PLACED IT INTO THERE.

18 ON THE BOTTOM THE DATE THEY ALSO -- ON A
19 DIFFERENT DAY OR SAME DAY, THEY PUT THE DATE WHEN THEY
20 PLACED THAT PIECE OF EVIDENCE, OR WHO THEY GAVE IT TO IF
21 THEY GAVE IT TO ANOTHER PERSON.

22 Q. WHO RECEIVED THE EVIDENCE?

23 A. THE RECEIVING OFFICER?

24 Q. THE RECEIVING OFFICER.

25 A. THE RECEIVING OFFICER WAS MAX DORSEY.

1 Q. AND WHO DID HE RECEIVE IT FROM?

2 A. HE RECEIVED IT FROM AN INDIVIDUAL BY THE NAME OF
3 KENNETH LAVENDER.

4 Q. AND IS THAT CONTROL NUMBER THE SAME AS ON STATE'S
5 EXHIBIT NUMBER EIGHT?

6 A. YES, IT IS.

7 Q. OKAY. I'M GONNA HAND YOU WHAT IS STATE'S EXHIBIT
8 NUMBER SIX. WHAT TYPE OF FORM IS THAT?

9 A. THIS IS A FORM C.

10 Q. OKAY. AND WHAT IS THE CONTROL NUMBER ON THAT
11 FORM?

12 A. THE CONTROL NUMBER WRITTEN ON THIS FORM IS B AS
13 IN BOY, 158735.

14 Q. AND DOES THAT MATCH THE CONTROL NUMBER ON STATE'S
15 EXHIBIT NUMBER EIGHT?

16 A. YES, IT DOES.

17 Q. AND WHAT DOES THAT FORM B TELL YOU?

18 A. THIS, THIS IS A FORM C.

19 Q. I'M SORRY, FORM C.

20 A. THE FORM C TELLS US THE INDIVIDUAL PREVIOUSLY ON
21 FORM B, THE RECEIVING OFFICER GAVE IT TO ANOTHER
22 INDIVIDUAL, THEN THEY PUT THAT NAME, HIS OR HER NAME, ON
23 THAT FORM.

24 ON THIS FORM THE SAME INDIVIDUAL THAT RECEIVED
25 THAT EVIDENCE PRETTY MUCH DID THE SAME THING: I,

1 SO-AND-SO, RECEIVED THE EVIDENCE ON SUCH DATE AND PLACED
2 THE ITEMS THAT WERE LISTED ON THE ORIGINAL FORM B AND
3 THE ITEMS THAT WERE LISTED IN THE B.E.S.T. BAG. AND
4 THEN HE OR SHE WILL PUT THE DATE THAT THEY PLACED IT
5 INTO ANOTHER BOX OR TO ANOTHER PERSON, AND THIS PERSON
6 PLACED IT INTO A BOX.

7 Q. ALL RIGHT. WHO RECEIVED -- ACCORDING TO THAT,
8 WHO RECEIVED THE STATE'S EXHIBIT NUMBER EIGHT?

9 A. THIS INDIVIDUAL WHO RECEIVED IT WAS CONIE
10 SONNEFELD.

11 Q. AND WHO DID SHE RECEIVE IS IT FROM?

12 A. SHE RECEIVED IT FROM MAX DORSEY.

13 Q. AND WHERE DID SHE PLACE IT?

14 A. AND THEN SHE PLACED IT INTO THE NARCOTICS DROP
15 BOX.

16 Q. AND WAS IT YOUR TESTIMONY EARLIER HERE TODAY THAT
17 YOU THEN RETRIEVED THOSE ITEMS FROM THE NARCOTICS DROP
18 BOX?

19 A. THAT'S CORRECT.

20 MS. PORTER: AT THIS TIME, YOUR HONOR, I
21 WOULD LIKE TO ENTER IN STATE'S EXHIBIT NUMBER EIGHT INTO
22 EVIDENCE.

23 MR. KAPPEL: OBJECTION, JUDGE, ON THE
24 GROUNDS OF THE CHAIN. THOSE TWO ITEMS OR THAT
25 PARTICULAR ITEM HAS NOT BEEN IDENTIFIED BY MEMBERS OF

1 PEOPLE THAT ARE IN THE CHAIN OF CUSTODY.

2 THE COURT: MY NOTES SHOW THAT OFFICER
3 SONNEFELD TESTIFIED THAT SHE RECEIVED STATE'S EXHIBIT
4 NUMBER SIX FROM LIEUTENANT MAX DORSEY AND THAT SHE
5 DROPPED IT INTO THE DROP BOX.

6 MR. KAPPEL: THAT'S CORRECT, JUDGE. BUT MY
7 RECOLLECTION IS THAT MR. DORSEY HAS NOT TESTIFIED AS TO
8 THE IDENTITY OF THOSE ITEMS.

9 THE COURT: VERY WELL. MY NOTES REFLECT
10 THAT STATE'S EXHIBIT NUMBER TWO WAS ADMITTED INTO
11 EVIDENCE, BEING FORM B, CHAIN OF CUSTODY. IT WAS SIGNED
12 BY DONALD MAX DORSEY, II, AND PLACED IN THE B.E.S.T.
13 EVIDENCE KIT.

14 MR. KAPPEL: THAT'S CORRECT, JUDGE. IT'S MY
15 RECOLLECTION THAT HE AUTHENTICATED THE DOCUMENT BUT HAS
16 NEVER AUTHENTICATED THE ACTUAL SUBSTANCE. THIS EXHIBIT
17 I DON'T BELIEVE WAS EVEN IN THE COURTROOM.

18 THE COURT: NO, SIR. BUT HE IDENTIFIED THE
19 FORM B CHAIN OF CUSTODY THAT IT WAS FOR THE B.E.S.T.
20 EVIDENCE KIT AND IT WAS OUT OF HIS POSSESSION AFTER HE
21 GAVE IT TO MS. SONNEFELD. OVERRULED.

22 MS. PORTER: THANK YOU, YOUR HONOR.

23 THE COURT: SO THAT WOULD PUT IN -- STATE'S
24 EXHIBIT TWO IS ALREADY IN, SO THAT WOULD BE STATE'S
25 EXHIBIT EIGHT IS ADMITTED OVER THE OBJECTION OF THE

1 DEFENDANT.

2 MS. PORTER: THANK YOU, YOUR HONOR.

3 (STATE'S EXHIBIT # 8 WAS RECEIVED IN
4 EVIDENCE.)

5 BY MS. PORTER:

6 Q. MR. MCCOY, WITH REGARDS TO STATE'S EXHIBIT NUMBER
7 EIGHT, AFTER TESTING THE SUBSTANCE, DID YOU DETERMINE IF
8 IT WAS A NARCOTIC?

9 A. YES. THERE WERE, THERE WERE SEVERAL, SEVERAL
10 ITEMS THAT HAD CONTROLLED SUBSTANCES FOUND.

11 Q. SPECIFICALLY WAS THERE METHAMPHETAMINE FOUND?

12 A. YES, THERE WAS.

13 Q. AND HOW MUCH?

14 A. IN ONE ITEM IT HAD METHAMPHETAMINE FOUND, IT WAS
15 69.57 GRAMS. ANOTHER ITEM -- THAT WAS ITEM NUMBER ONE.

16 ANOTHER ITEM, ITEM 2.2, METHAMPHETAMINE WAS
17 FOUND, 30.21 GRAMS.

18 Q. AND WAS THERE A THIRD ITEM, OR NO?

19 A. NO, THERE'S NOT, NOT ON THIS CASE.

20 Q. SO THERE WAS -- WHY DID YOU TEST THEM SEPARATELY?

21 A. THEY ARE PACKAGED DIFFERENTLY, PACKAGED
22 SEPARATELY WHEN THEY'RE PLACED IN THE BAG. IF THEY'RE
23 PACKAGED SEPARATELY, WE ALWAYS TEST THEM SEPARATELY.

24 Q. AT THIS TIME I'M GONNA HAND YOU WHAT HAS BEEN
25 MARKED AS STATE'S EXHIBIT NUMBER FIVE. IF YOU COULD

1 PLEASE IDENTIFY -- IT'S IN EVIDENCE. IF YOU CAN
2 IDENTIFY WHAT THAT IS?

3 A. STATE'S EXHIBIT NUMBER FIVE WOULD BE A FORM C.

4 Q. AND AGAIN, IT RELATES TO THE SPECIFIC SUBSTANCE.
5 WHAT SUBSTANCE WOULD THAT BE?

6 A. THIS FORM C IS IDENTIFIED THROUGH CERTAIN
7 EVIDENCE BASICALLY SAYING THAT AN OFFICER FROM SOMEWHERE
8 PICKED UP THIS PIECE OF EVIDENCE ON SUCH AND SUCH DATE
9 AND GAVE THIS PIECE OF EVIDENCE TO ANOTHER PERSON.

10 Q. DOES IT HAVE A CONTROL NUMBER ON IT?

11 A. YES, IT DOES.

12 Q. AND WHAT IS THAT CONTROL NUMBER?

13 A. IT'S CONTROL NUMBER B AS IN BOY, 168205.

14 Q. I'M GONNA HAND YOU WHAT'S BEEN MARKED FOR STATE'S
15 EXHIBIT -- STATE'S EXHIBIT NUMBER NINE FOR

16 IDENTIFICATION PURPOSES ONLY. DO YOU RECOGNIZE THAT?

17 A. YES, I DO.

18 Q. AND HOW DO YOU RECOGNIZE IT?

19 A. I RECOGNIZE THIS BY MY INITIALS AND DATE THAT I
20 ANALYZED THE EVIDENCE AND THE LAB NUMBER ON THERE.

21 Q. DOES IT HAVE A CONTROL NUMBER ON IT?

22 A. YES, IT DOES.

23 Q. AND DOES IT MATCH THE CONTROL NUMBER YOU JUST
24 READ OUT?

25 A. YES, IT DOES.

1 Q. ON THAT FORM C WHO RECEIVED THAT SUBSTANCE?

2 A. THE FINAL PERSON? I'LL JUST GO DOWN THE LIST.

3 THE PERSON THAT HAD IT PREVIOUSLY WAS, IT LOOKS LIKE THE
4 NAME NEYSA CARON, AND THIS INDIVIDUAL GAVE IT TO CONIE
5 SONNEFELD.

6 Q. I HAND YOU WHAT HAS BEEN MARKED -- WHAT IS IN
7 EVIDENCE AS STATE'S EXHIBIT NUMBER SEVEN. CAN YOU TELL
8 THE JURY WHAT THAT IS?

9 A. THIS IS ANOTHER FORM C.

10 Q. AND DOES IT HAVE A CONTROL NUMBER AT THE TOP?

11 A. YES, IT DOES.

12 Q. AND DOES THAT CONTROL NUMBER MATCH THE CONTROL
13 NUMBER ON STATE'S EXHIBIT NUMBER NINE?

14 A. YES, IT DOES.

15 Q. AND WHAT DOES THAT CHAIN FORM TELL YOU WHO
16 RECEIVED IT AND WHERE IT WENT?

17 A. THIS, THIS FORM HERE SAYS THAT CONIE SONNEFELD
18 RECEIVED IT FROM NEYSA CARON AND CONIE SONNEFELD DROPPED
19 IT INTO THE NARCOTICS DROP BOX.

20 Q. AT THIS TIME WHO HAD A KEY TO THE NARCOTICS DROP
21 BOX?

22 A. I WAS THE ONLY ONE AT THE TIME.

23 Q. OKAY. AND IF YOU WILL GO BACK TO STATE'S EXHIBIT
24 NUMBER NINE FOR IDENTIFICATION PURPOSES ONLY, WHERE DID
25 YOU RECEIVE THAT FROM?

1 A. I RECEIVED THIS EVIDENCE FROM THE NARCOTICS DROP
2 BOX.

3 Q. HAD IT BEEN TAMPERED WITH IN ANY WAY, SHAPE OR
4 FORM WHEN YOU RECEIVED IT?

5 A. NO, IT HASN'T.

6 **MS. PORTER:** AT THIS TIME, YOUR HONOR, I
7 WOULD LIKE TO ENTER IN STATE'S EXHIBIT NUMBER NINE INTO
8 EVIDENCE.

9 **MR. KAPPEL:** SAME OBJECTIONS, JUDGE;
10 RELEVANCY AND ---

11 **THE COURT:** WELL, THE RELEVANCY I OVERRULE.
12 I DON'T FIND -- NOW, MADAM ATTORNEY GENERAL,
13 WOULD YOU LIKE TO HELP ME TO FIND OUT WHERE YOU HAD
14 STATE'S EXHIBIT NUMBER FIVE?

15 **MS. PORTER:** YES, SIR, YOUR HONOR. WHERE I
16 ENTERED IT? IT WAS ENTERED INTO EVIDENCE THROUGH NEYSA
17 CARON.

18 **THE COURT:** ALL RIGHT. NOW, SHE'S THE
19 OFFICER THAT TESTIFIED SHE HAD TAKEN IT FROM KENNY
20 LAVENDER, PUT IT IN A PLASTIC BAG, AND IN THE SAME
21 CONDITION DELIVERED IT TO CONIE SONNEFELD. PLAINTIFF'S
22 EXHIBIT NUMBER FIVE WAS ADMITTED.

23 **MS. PORTER:** YES, SIR, YOUR HONOR.

24 **THE COURT:** ALL RIGHT.

25 **MR. KAPPEL:** JUDGE, MY OBJECTION RELATES TO

1 THE PRECISE EXHIBIT, I BELIEVE IT'S NUMBER NINE. SHE
2 NEVER PHYSICALLY LOOKED AT ---

3 THE COURT: WELL ---

4 MR. KAPPEL: IF I COULD JUST PUT THIS IN THE
5 RECORD? I'M SORRY TO INTERRUPT THE COURT.

6 THE COURT: NO, GO AHEAD.

7 MR. KAPPEL: THAT SHE NEVER ACTUALLY
8 IDENTIFIED STATE'S I.D. NUMBER NINE AND ACTUALLY SAID IT
9 WAS, IN FACT, THE SAME ITEM THAT SHE HAD SEIZED.

10 THE COURT: WELL, IT'S NOT, BECAUSE
11 OBVIOUSLY IT'S BEEN EXAMINED.

12 MR. KAPPEL: YES, SIR, JUDGE.

13 THE COURT: THAT'S WHY WE HAVE THE
14 CHAIN-OF-CUSTODY PROVISION. I OVERRULE YOUR OBJECTION,
15 BECAUSE AGAIN, SHE COULDN'T TESTIFY IT WAS THE SAME.
16 SHE COULD TESTIFY AS SHE DID, THAT AT THE TIME SHE GAVE
17 IT TO MS. SONNEFELD, IT WAS IN THE SAME CONDITION AS SHE
18 RECEIVED IT FROM MR. LAVENDER, WHICH SHE DID, SO I
19 OVERRULE YOUR OBJECTION.

20 NOW, YOU'RE GOING TO HAVE THIS WITNESS -- SO
21 GO AHEAD YOU MAY PROCEED.

22 MS. PORTER: THANK YOU, YOUR HONOR.
23 BY MS. PORTER:

24 Q. ONCE YOU RECEIVED STATE'S EXHIBIT NUMBER NINE,
25 THAT SUBSTANCE, WHAT DID YOU DO WITH IT?

1 A. WHEN I PICKED THIS PIECE OF EVIDENCE ---

2 THE COURT: WELL, YOU NEED TO GO AHEAD AND
3 BE SURE THAT IT'S -- WHEN YOU RECEIVED IT, NUMBER NINE,
4 HAD THE PACKAGE, THE B.E.S.T. EVIDENCE PACKAGE BEEN
5 TAMPERED WITH?

6 THE WITNESS: NO, IT HADN'T -- WHEN I PICKED
7 IT UP, IT HADN'T BEEN TAMPERED WITH.

8 THE COURT: ALL RIGHT. VERY GOOD. SO
9 NUMBER NINE WILL COME IN, TOO.

10 (STATE'S EXHIBIT # 9 WAS RECEIVED IN
11 EVIDENCE.)

12 MS. PORTER: THANK YOU, YOUR HONOR.

13 BY MS. PORTER:

14 Q. WHAT DID YOU DO WITH IT ONCE YOU RECEIVED IT?

15 A. WHEN I PICKED IT UP AGAIN, I LOGGED IT INTO THE
16 COMPUTER, I PLACED IT IN THE VAULT TO BE ANALYZED AT A
17 LATER DATE, AND AT A LATER DATE I ANALYZED THIS
18 EVIDENCE.

19 Q. AND DID YOU DETERMINE WHAT TYPE OF NARCOTIC IT
20 WAS?

21 A. I DID FIND A CONTROLLED SUBSTANCE AND IT WAS
22 METHAMPHETAMINE WAS FOUND.

23 Q. HOW MUCH?

24 A. 83.18 GRAMS.

25 Q. I'M GOING TO HAND YOU WHAT HAS BEEN MARKED AS

1 STATE'S EXHIBIT NUMBER TEN FOR IDENTIFICATION PURPOSES
2 AND ASK YOU IF YOU CAN RECOGNIZE THAT.

3 A. YES. I RECOGNIZE THIS PIECE OF EVIDENCE. IT'S
4 MY INITIALS AND DATE THAT I ANALYZED THE EVIDENCE, AS
5 WELL AS THE LAB NUMBER.

6 Q. I HAND YOU WHAT HAS BEEN, WHAT IS STATE'S EXHIBIT
7 NUMBER ONE AND ASK YOU IF YOU CAN TELL THE JURY WHAT
8 THAT IS.

9 A. STATE'S EXHIBIT NUMBER ONE IS A COPY OF A FORM C.

10 Q. AND DOES IT HAVE A CONTROL NUMBER ON THE TOP OF
11 THAT FORM?

12 A. YES, IT DOES.

13 Q. AND WILL YOU PLEASE READ THE NUMBER OUT?

14 A. B AS IN BOY, 168413.

15 Q. AND DOES IT MATCH THE CONTROL NUMBER ON STATE'S
16 EXHIBIT NUMBER TEN?

17 A. YES, IT DOES.

18 Q. CAN YOU PLEASE READ ON THAT FORM C WHO RECEIVED
19 IT AND WHAT HAPPENED TO IT ONCE IT WAS RECEIVED?

20 A. ON THIS FORM C MAX DORSEY RECEIVED THIS EVIDENCE
21 FROM AN R.B. COWAN FROM EASLEY POLICE DEPARTMENT, AND
22 MAX DORSEY PLACED THIS EVIDENCE IN THE DRUG BOX AT
23 S.L.E.D.

24 Q. AND THE DRUG BOX AT S.L.E.D., WHO RECEIVED IT
25 FROM THE DRUG BOX AT S.L.E.D.?

1 A. THEY RECEIVED IT FROM THE DRUG BOX AT S.L.E.D.,
2 IT WAS RECEIVED BY AN INDIVIDUAL BY THE NAME OF QUINCY
3 FORD, ANOTHER CHEMIST AT S.L.E.D. SINCE THEN HE'S LEFT
4 THE DEPARTMENT AND WENT ON TO ANOTHER DEPARTMENT AT
5 S.L.E.D., AND I RECEIVED THE EVIDENCE FROM THE DRUG
6 VAULT WHEN HE PLACED IT IN THERE.

7 Q. WHEN YOU RECEIVED THE EVIDENCE, WAS IT, HAD IT
8 BEEN TAMPERED WITH IN ANY WAY, SHAPE OR FORM?

9 A. NO, IT HAD NOT.

10 Q. WOULD YOU HAVE TESTED IT OTHERWISE?

11 A. IF IT HAD BEEN TAMPERED WITH, I WOULD NOT HAVE
12 TESTED IT.

13 MS. PORTER: I WOULD LIKE TO MOVE STATE'S
14 EXHIBIT TEN INTO EVIDENCE.

15 MR. KAPPEL: SAME OBJECTION.

16 THE COURT: AGAIN, I FIND THAT THE RECORD
17 REFLECTS THAT STATE'S EXHIBIT NUMBER TEN WAS RECEIVED
18 FROM THE SPEAKER BOX AND GIVEN TO AGENT DORSEY BY A
19 ROBERT BRIAN COWAN, WHICH IS REFLECTED BY STATE'S
20 EXHIBIT NUMBER ONE WHICH HAS BEEN ADMITTED INTO
21 EVIDENCE. STATE'S EXHIBIT TEN IS ADMITTED OVER THE
22 OBJECTION OF THE DEFENDANT.

23 (STATE'S EXHIBIT # 10 WAS RECEIVED IN
24 EVIDENCE.)

25 MS. PORTER: THANK YOU, YOUR HONOR.

1 BY MS. PORTER:

2 Q. AGAIN, HAD IT BEEN TAMPERED WITH IN ANY WAY,
3 SHAPE OR FORM?

4 A. NO, IT HAD NOT.

5 Q. AND WHAT DID YOU DO WITH IT ONCE YOU RECEIVED IT?

6 A. WHEN I RECEIVED IT FROM THE VAULT, I ANALYZED
7 THOSE ITEMS INSIDE THE BAG.

8 Q. AND WHAT WAS THE RESULT OF YOUR ANALYSIS?

9 A. I HAD THREE ITEMS INSIDE THIS BAG: ITEM 1.1,
10 METHAMPHETAMINE WAS FOUND AT 2.78 GRAMS; ITEM 1.2,
11 METHAMPHETAMINE WAS FOUND, 95.67 GRAMS; ITEM 1.3,
12 METHAMPHETAMINE FOUND, 113.28 GRAMS.

13 MS. PORTER: THANK YOU, MR. MCCOY. PLEASE
14 ANSWER ANY QUESTIONS MR. KAPPEL HAS FOR YOU.

15 CROSS-EXAMINATION BY MR. KAPPEL:

16 Q. HOW DID YOU WEIGH THESE ITEMS?

17 A. I WEIGHED THESE ITEMS, WE HAVE BALANCES AT
18 S.L.E.D. WHICH I CALIBRATED EVERY MORNING.

19 Q. JUST LIKE A SCALE KIND OF THING?

20 A. NO. THEY ARE DIGITAL BALANCES, JUST, YOU KNOW,
21 SCIENTIFIC-TYPE BALANCES. YOU JUST PLACE A PIECE OF
22 EVIDENCE ON TO IT AND YOU WOULD GET A WEIGHT FROM THE
23 EVIDENCE.

24 MR. KAPPEL: THAT'S ALL I HAVE. THANK YOU.

25 THE COURT: VERY WELL.

1 **MS. PORTER:** YOUR HONOR, AT THIS TIME WE ASK
2 THAT MR. MCCOY BE EXCUSED.

3 **THE COURT:** ANY OBJECTION?

4 **MR. KAPPEL:** NO, SIR.

5 **THE COURT:** ALL RIGHT. WITHOUT OBJECTION,
6 YOU MAY BE EXCUSED.

7 (WHEREUPON, THE WITNESS WAS EXCUSED.)

8 **MR. KAPPEL:** JUDGE, I THINK WE'RE GOING TO
9 HAVE A MATTER BEFORE THE NEXT WITNESS.

10 **THE COURT:** LADIES AND GENTLEMEN OF THE
11 JURY, PLEASE RETIRE TO THE JURY ROOM. I NEED TO TAKE UP
12 A MATTER OF LAW WITH THE ATTORNEYS. AGAIN, DO NOT
13 DISCUSS THE CASE AMONG YOURSELVES AT ALL IN ANY WAY.

14 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
15 3:31 P.M.)

16 **MR. KAPPEL:** I BELIEVE THE NEXT WITNESS
17 WOULD BE AMANDA FORDHAM. I WANT TO ADDRESS BRIEFLY THE
18 DOCUMENT THAT I WAS FURNISHED WITH YESTERDAY EVENING.

19 **THE COURT:** WE ARE TALKING ABOUT THE PHONE
20 RECORDS?

21 **MR. KAPPEL:** IT'S NOT A PHONE RECORD, SIR,
22 IT'S A D.E.A. 6, WHICH IS THEIR STANDARD FORM FOR
23 REPORTING. IT'S BASICALLY A REPORT FROM AN AGENT FROM
24 THE D.E.A. THAT I WAS FURNISHED WITH YESTERDAY. I'M NOT
25 SURE IF THE STATE INTENDS TO PUT IT INTO EVIDENCE. I

1 WOULD CERTAINLY OBJECT TO THAT. FURTHER, IF THE STATE
2 DOESN'T INTEND TO PUT IT INTO EVIDENCE AND WISHES TO USE
3 IT TO REFRESH THE WITNESS'S RECOLLECTION, THE ONLY ISSUE
4 I WOULD HAVE WITH THAT IS IF THIS DOCUMENT IS IDENTIFIED
5 IN ANY FASHION BEFORE OR AFTER SHE REFRESHES HER MEMORY.
6 SO IN A SENSE I'M OBJECTING TO SOMETHING ANTICIPATORY,
7 SO I'M NOT QUITE SURE WHAT'S GOING TO HAPPEN, SO I'LL DO
8 IT OUTSIDE THE PRESENCE OF THE JURY.

9 THE COURT: DO YOU WANT TO TELL US WHAT'S
10 GOING TO HAPPEN, MS. PORTER?

11 MS. EVANS: YES, YOUR HONOR. AS WE TOLD YOU
12 LAST NIGHT, WE CAME INTO CUSTODY OF THIS, IT WAS NOT IN
13 THE STATE'S CONTROL OR CUSTODY. WE SIMPLY, JUST AS
14 MR. KAPPEL DID, ASKED ROBBY -- EXCUSE ME -- CHAD SEXTON
15 ABOUT CERTAIN PEOPLE'S PHONE NUMBERS, AND WE DID. WE
16 ARE NOT PLANNING ON PUTTING THIS INTO EVIDENCE. IF WE
17 HAD KNOWN ABOUT IT, WE PROBABLY WOULD HAVE PUT THE
18 D.E.A. AGENT ON HERE THAT DID THAT INTERVIEW. WE DIDN'T
19 KNOW ABOUT THIS UNTIL WE FOUND OUT ABOUT IT.

20 BUT I CERTAINLY WOULD BE ASKING AMANDA
21 FORDHAM IF, WHAT HER PHONE NUMBER WAS, THAT WOULD
22 CORROBORATE THE TESTIMONY OF CHAD SEXTON WHO SAID FROM
23 HIS INITIAL INTERVIEW THAT HE WAS GIVING TO SPECIAL
24 AGENT DORSEY OF WHAT AMANDA FORDHAM'S NUMBER WAS.

25 AND, IN FACT, THE EXACT NUMBER THAT CHAD

1 SEXTON TESTIFIED TO IS THE EXACT PHONE NUMBER FROM THESE
2 RECORDS, ([REDACTED] [REDACTED] THAT'S WHAT CHAD SEXTON
3 TESTIFIED TO AS BEING AMANDA FORDHAM'S PHONE NUMBER,
4 THAT'S EXACTLY WHAT THE PHONE NUMBER WAS WHEN SHE WAS
5 ARRESTED AND TURNED OVER HER PHONE TO THE D.E.A.

6 ADDITIONALLY, CHAD SEXTON IDENTIFIED TWO
7 NUMBERS THAT WERE SETH STEARNS' NUMBERS, ONE BEING [REDACTED]

8 [REDACTED] ---

9 THE COURT: JUST A MOMENT. DO THE NUMBERS
10 AGAIN, PLEASE. I'VE GOT. WELL, YOU CAN DO AMANDA.
11 I'VE GOT THE SECOND ONE. WHAT'S THE FIRST ONE?

12 MS. EVANS: AMANDA'S CELL PHONE NUMBER THAT
13 CHAD TESTIFIED TO WAS ([REDACTED] [REDACTED])

14 THE COURT: ALL RIGHT. WHAT'S THE ONE
15 BEFORE THAT?

16 MS. EVANS: THAT'S THE FIRST NUMBER I GAVE
17 YOU, SIR.

18 THE COURT: AND I WANT THE ONE HE GAVE US
19 FIRST BEFORE THAT.

20 MS. EVANS: HE GAVE TWO NUMBERS.

21 THE COURT: I WANT THE FIRST ONE.

22 MS. EVANS: I'M SORRY, I APOLOGIZE. [REDACTED]

23 [REDACTED]

24 THE COURT: AND THEN AS FAR AS THE THREE I
25 HAVE FOR SETH STEARNS OF [REDACTED]

1 MS. EVANS: [REDACTED] YES, SIR.

2 THE COURT: AND THEN [REDACTED]

3 MS. EVANS: YES, SIR.

4 THE COURT: AND FOR SUPERMAN, [REDACTED] --

5 MS. EVANS: YES, SIR, [REDACTED].

6 THE COURT: [REDACTED]

7 MS. EVANS: 2 [REDACTED].

8 THE COURT: [REDACTED], ALL RIGHT.

9 MS. EVANS: AND OF THOSE THREE NUMBERS THE
10 FIRST ONE, WHICH IS ([REDACTED] [REDACTED] -- NO, I APOLOGIZE --
11 IT'S ([REDACTED] [REDACTED] WHEN THEY RAN AMANDA'S, I GUESS
12 IT'S A LISTING OF NUMBERS YOU HAVE PROGRAMMED INTO YOUR
13 PHONE, THAT CAME UP AND THAT SAID SETH, AND IT'S THE
14 EXACT SAME NUMBER THAT CHAD SEXTON ---

15 THE COURT: WELL, LET ME ASK YOU: ARE YOU
16 GOING TO USE THIS DOCUMENT FOR ANYTHING OTHER THAN TO
17 REFRESH HER MEMORY?

18 MS. EVANS: TO REFRESH HER MEMORY IF SHE
19 DOES NOT DO THAT ON THE STAND.

20 THE COURT: WELL, YOU CAN DO THAT UNDER 612.

21 MR. KAPPEL: I HAVE NO PROBLEM WITH THAT.

22 BUT WHAT I DO, WHAT I WOULD OBJECT TO WOULD BE ANY
23 IDENTIFICATION OF THIS DOCUMENT FOR THE JURY. CLEARLY
24 SHE CAN REFRESH HER MEMORY WITH IT, BUT ---

25 MS. EVANS: CERTAINLY. I WAS JUST GOING TO

1 ASK HER WHAT HAPPENED WHEN SHE WAS ARRESTED, THAT SHE
2 TURNED OVER HER PHONE CALLS, AND IF I SHOWED YOU A
3 DOCUMENT, WOULD THAT -- SHE MIGHT REMEMBER THE NUMBERS
4 OFF THE TOP OF HER HEAD. I DON'T KNOW. IF SHE DOES,
5 WE'RE FINE.

6 THE COURT: OKAY. VERY WELL. BUT THE POINT
7 IS THAT I DON'T SEE ANY PROBATIVE VALUE AS TO WHO IT
8 CAME FROM IF IT'S THE INFORMATION SHE PROVIDED.

9 MR. KAPPEL: THANK YOU, JUDGE.

10 MS. EVANS: FOR CLARIFICATION PURPOSES --
11 WELL, ACTUALLY, I WOULD THINK IT IS IMPORTANT THAT IT
12 WAS TURNED OVER TO THE D.E.A. BECAUSE MR. KAPPEL IN HIS
13 OPENING IS POINTING THE FINGER AT S.L.E.D. AND WHAT
14 S.L.E.D. IN SOUTH CAROLINA DIDN'T DO. WE NEVER HAD
15 BRIAN MUELLER AND WE NEVER HAD AMANDA WHEN THEY WERE
16 ARRESTED. THEY WERE ARRESTED BY DIFFERENT AGENCIES.

17 THE COURT: THEY ARE NOT ON TRIAL HERE. I
18 KNOW THEY ARE CONSPIRATORS, BUT THEY ARE NOT ON TRIAL.

19 MS. EVANS: I UNDERSTAND THAT, BUT I DO
20 THINK ---

21 THE COURT: WHY DON'T WE GO ALONG WITH WHAT
22 WE'VE GOT. WHAT WE NEED TO DO IS ESTABLISH, IF YOU CAN,
23 HER TELEPHONE NUMBERS FROM THE OTHER EVIDENCE. IT COULD
24 BE WRITTEN ON A WALL.

25 MS. EVANS: AND THAT'S FINE, SIR. AND

1 AGAIN, AS MS. PORTER POINTED OUT, SHE ---

2 THE COURT: LET'S DO THIS. YOU ADMITTED
3 THAT YOU DIDN'T GET IT UNTIL LAST NIGHT.

4 MS. EVANS: LAST NIGHT OR THE NIGHT BEFORE.

5 MR. KAPPEL: IT WAS LAST NIGHT.

6 THE COURT: WHICH IS AFTER HIS OPENING
7 STATEMENT, SO HIS OPENING STATEMENT IS STILL CORRECT.
8 ALL RIGHT. LET'S MOVE ON, PLEASE.

9 MS. EVANS: I'LL DO MY BEST. BUT AMANDA
10 FELT THAT SHE HAD BEEN TREATED VERY BADLY BY THE FEDERAL
11 GOVERNMENT, AND IT MAY COME OUT OF HER MOUTH. AND I'LL
12 DO MY BEST, IF YOU DON'T OBJECT TO ME LEADING AT THAT
13 POINT TO TRY TO NOT GET HER TO SAY ---

14 THE COURT: WELL, THE ONLY THING YOU HAVE TO
15 GET HER TO SAY IF SHE CAN REMEMBER HER TELEPHONE
16 NUMBERS, OR THE NUMBERS, AND THEN YOU CAN LET HER LOOK
17 AT IT.

18 MS. EVANS: I CERTAINLY WILL, SIR.

19 THE COURT: WELL, I THANK YOU. ALL RIGHT.
20 DO YOU-ALL WANT TO TAKE A LITTLE BREAK BEFORE WE START
21 BACK?

22 MR. KAPPEL: SURE.

23 MS. EVANS: SURE.

24 (WHEREUPON, A RECESS WAS TAKEN.)

25 THE COURT: ANYTHING FROM THE STATE BEFORE I

1 BRING THE JURY BACK?

2 MS. EVANS: NO, YOUR HONOR.

3 THE COURT: DEFENSE?

4 MR. KAPPEL: NO, YOUR HONOR.

5 THE COURT: ASK THE JURY TO JOIN US.

6 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
7 3:00 P.M.)

8 THE COURT: ALL RIGHT. YOU MAY CALL YOUR
9 NEXT WITNESS.

10 MS. EVANS: THANK YOU, YOUR HONOR, IF IT
11 PLEASES THE COURT, THE STATE CALLS AMANDA FORDHAM.

12 (WHEREUPON, THE WITNESS WAS SWORN BY THE
13 CLERK.)

14 THE CLERK: PLEASE STATE YOUR FULL NAME AND
15 SPELL YOUR LAST NAME FOR THE RECORD.

16 THE WITNESS: AMANDA FORDHAM, A-M-A-N-D-A,
17 F-O-R-D-H-A-M.

18 WHEREUPON,

19 AMANDA FORDHAM,

20 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
21 FOLLOWS:

22 DIRECT EXAMINATION BY MS. EVANS:

23 Q. MS. FORDHAM, CAN YOU PLEASE TELL THE JURY A
24 LITTLE BIT ABOUT YOURSELF? WHERE ARE YOU FROM?

25 A. ATLANTA, GEORGIA.

1 Q. AND HOW LONG HAVE YOU LIVED IN ATLANTA, GEORGIA?

2 A. MY WHOLE LIFE.

3 Q. DID YOU GO TO SCHOOL DOWN THERE?

4 A. YES, MA'AM.

5 Q. HOW FAR DID YOU GO IN SCHOOL?

6 A. TO ALMOST 11TH, FINISHED 11TH, I GOT A G.E.D.

7 Q. OKAY. ARE YOU CURRENTLY INCARCERATED?

8 A. YES, MA'AM.

9 Q. AND PLEASE TELL THE JURY WHY YOU ARE
10 INCARCERATED.

11 A. I WAS TRAFFICKING METH.

12 Q. AND WHERE ARE YOU CURRENTLY INCARCERATED?

13 A. DEKALB COUNTY RIGHT NOW AND GREENVILLE.

14 Q. WERE YOU TRANSFERRED UP HERE TO GREENVILLE FOR
15 YOUR TRIAL?

16 A. YES, MA'AM.

17 Q. AND ARE YOUR CHARGES OUT OF GEORGIA?

18 A. NO. IT HAS SOUTH CAROLINA, BUT I HAVE CHARGES IN
19 GEORGIA, TOO.

20 Q. IS IT THE STATE OF SOUTH CAROLINA THAT'S CHARGED
21 YOU OR THE FEDERAL GOVERNMENT?

22 A. THE FEDERAL GOVERNMENT.

23 Q. OKAY. AND WHAT HAVE YOU BEEN -- HAVE YOU BEEN
24 CONVICTED FEDERALLY?

25 A. YES, MA'AM.

1 Q. PLEASE TELL THE JURY WHAT YOU HAVE BEEN CONVICTED
2 FOR FEDERALLY?

3 A. CONSPIRACY TO TRAFFIC METHAMPHETAMINES.

4 Q. AND HAVE YOU BEEN SENTENCED FOR THAT?

5 A. YES, MA'AM.

6 Q. HOW MUCH TIME DID YOU GET?

7 A. 20 YEARS.

8 Q. ARE THERE ANY STATE CHARGES AGAINST YOU?

9 A. NO, MA'AM.

10 Q. AND DO YOU HAVE ANY DEAL FOR TESTIFYING HERE
11 TODAY?

12 A. NO, MA'AM. I'M HOPING TO RECEIVE A SENTENCE
13 REDUCTION, BUT NOTHING IS PROMISED TO ME.

14 Q. AND WHAT DO YOU MEAN BY A SENTENCE REDUCTION?

15 A. WHERE THEY TAKE IN CONSIDERATION EVERYTHING
16 THAT'S HAPPENED AND REDUCE MY SENTENCE.

17 Q. IN OTHER WORDS, TELL THE COURT THAT YOU
18 COOPERATED?

19 A. RIGHT.

20 Q. ULTIMATELY WHO WILL DECIDE HOW LONG YOU WILL STAY
21 IN PRISON?

22 A. THE FEDERAL GOVERNMENT.

23 Q. AND HAS THE STATE, BESIDES TELLING YOU ABOUT YOUR
24 COOPERATION, PROMISED YOU ANYTHING ELSE FOR YOU TO COME
25 UP HERE TODAY?

1 A. NO, MA'AM.

2 Q. LET ME JUST START OFF WITH SOMETHING. IS YOUR
3 HAIR A DIFFERENT COLOR THAN IT HAS BEEN IN THE PAST?

4 A. YES, MA'AM.

5 Q. WOULD YOU PLEASE TELL THE JURY ABOUT WHAT COLOR
6 HAIR YOU USED TO HAVE?

7 A. IT WAS ALL COLORS OF THE RAINBOW. IT WAS
8 SYNTHETIC DRED LOCKS.

9 Q. AND WHAT COLORS?

10 A. EVERY COLOR IN THE RAINBOW. LIKE RAINBOW BRIGHT.

11 Q. OKAY. AND WAS THERE ANY SIGNIFICANCE TO THE
12 COLOR OF YOUR HAIR?

13 A. NO, IT WAS A FASHION STATEMENT.

14 Q. HAVE YOU EVER DONE DRUGS BEFORE?

15 A. YES, MA'AM.

16 Q. PLEASE TELL THE JURY HOW YOU FIRST GOT INVOLVED
17 IN DRUGS.

18 A. COULD YOU EXPLAIN?

19 Q. WHEN'S THE FIRST TIME YOU'VE USED DRUGS?

20 A. I WAS PROBABLY 21.

21 Q. OKAY. AND WHAT DID YOU USE?

22 A. METH AND COCAINE AND ECSTASY.

23 Q. AND DID YOU BECOME ADDICTED TO ANY OF THOSE
24 DRUGS?

25 A. AT A LATER TIME I DID.

1 Q. OKAY. BECAUSE OF YOUR DRUG HABIT DID SOMETHING
2 HAPPEN TO YOU?

3 A. I GOT KICKED OUT OF MY MOM'S HOUSE.

4 Q. AND WHERE DID YOU LIVE AFTER YOU GOT KICKED OUT
5 OF YOUR MOM'S HOUSE?

6 A. IN MY CAR.

7 Q. AND WHAT DID YOU DO -- DID YOU HAVE A JOB AT THE
8 TIME?

9 A. NO, MA'AM.

10 Q. WHAT DID YOU DO TO I GUESS MAKE A LIVING?

11 A. I BEGAN SELLING METH.

12 Q. AND WHY DID YOU ORIGINALLY START SELLING METH?

13 A. BECAUSE I WAS LIVING IN MY CAR TO SUPPORT MY
14 HABIT AND SUPPORT MYSELF.

15 Q. LET'S START WHEN YOU FIRST STARTED USING METH,
16 APPROXIMATELY HOW MUCH WERE YOU GETTING WHEN YOU USED IT
17 FOR YOUR OWN USE?

18 A. A QUARTER GRAM AT A TIME.

19 Q. AND HOW MUCH WOULD THAT COST YOU?

20 A. \$50.00.

21 Q. AND WHEN DID YOU START SELLING METH?

22 A. I'M NOT SURE OF THE EXACT DAY. IT WAS RIGHT
23 AROUND MY 26TH BIRTHDAY.

24 Q. AND HOW OLD ARE YOU RIGHT NOW?

25 A. 29.

1 Q. SO...

2 A. SO THREE YEARS AGO.

3 Q. ALL RIGHT. AND HOW MUCH -- LET'S SAY PER WEEK --
4 HOW MUCH PER WEEK WERE YOU USING?

5 A. PROBABLY AN EIGHT BALL.

6 Q. HOW MUCH WOULD THAT COST YOU?

7 A. \$150.00.

8 Q. EXCUSE ME?

9 A. \$150.00?

10 Q. \$150.00. IS METH CHEAPER IN ATLANTA THAN IN
11 SOUTH CAROLINA?

12 A. YES, MA'AM.

13 Q. AND DID YOU -- HOW MUCH DID YOU START SELLING?

14 A. I SOLD IT BY EIGHT BALLS AND I WOULD GET IT BY
15 OUNCES AT A TIME.

16 Q. AND HOW MANY -- WHERE DID YOU START GETTING YOUR
17 OUNCES FROM?

18 A. FROM A FRIEND NAMED ANTHONY, AND HE GOT IT FROM
19 ONE OF HIS FRIENDS NAMED MARONGO (PHONETIC).

20 Q. OKAY. DO YOU KNOW ANTHONY'S LAST NAME?

21 A. NO, MA'AM.

22 Q. HOW DID YOU KNOW ANTHONY?

23 A. I USED TO GAMBLE WITH HIM AT A GAS STATION.

24 Q. AND WHERE WAS THAT?

25 A. IN ATLANTA.

1 Q. OKAY. AND HOW MUCH WERE YOU GETTING FROM
2 ANTHONY?

3 A. ABOUT AN OUNCE AT TIME.

4 Q. HOW MUCH WOULD YOU PAY FOR THAT OUNCE?

5 A. \$800.00.

6 Q. OKAY. AND HOW MUCH OF THAT OUNCE WOULD YOU USE?

7 A. MAYBE A HALF AN EIGHT BALL.

8 Q. ALL RIGHT. HOW MUCH OF THAT WOULD YOU SELL?

9 A. THE REST.

10 Q. AND WHO WERE YOU SELLING TO ABOUT DURING THE TIME
11 FRAME?

12 A. MY FRIENDS.

13 Q. CAN YOU GIVE THE JURORS SOME NAMES OF THE PEOPLE
14 YOU WERE SELLING TO?

15 A. POLLY, MIKEY, CRAIG.

16 Q. DO YOU KNOW ANY OF THEIR LAST NAMES?

17 A. YEAH. MIKEY KIMBALL, PAUL HARTMAN; AND CRAIG, I
18 DON'T KNOW HIS LAST NAME.

19 Q. OKAY. AND LET ME MAKE SURE I CLARIFY THIS. WHAT
20 TYPE OF METH WERE YOU GETTING?

21 A. ICE.

22 Q. DO YOU KNOW THE DIFFERENCE BETWEEN CRANK AND ICE?

23 A. ICE IS IN A CLEANER FORM.

24 Q. OKAY. HOW LONG DID YOU CONTINUE TO GET FROM THAT
25 INDIVIDUAL?

1 A. PROBABLY A MONTH OR TWO.

2 Q. AND ALL TOTALLED, HOW MUCH DID YOU GET FROM
3 ANTHONY?

4 A. I PROBABLY GOT AN OUNCE AT LEAST ONCE A WEEK,
5 SOMETIMES TWICE A WEEK, SO BETWEEN FOUR AND TEN TIMES,
6 PROBABLY.

7 Q. ALL RIGHT. DID YOU LATER DEVELOP ANOTHER SOURCE
8 FOR YOUR METH?

9 A. YES, MA'AM.

10 Q. AND PLEASE TELL THE JURY WHO THAT IS, WAS.

11 A. ROLANDO (PHONETIC).

12 Q. AND HOW DID YOU MEET ROLANDO?

13 A. ANTHONY LIVED WITH HIM.

14 Q. ALL RIGHT. WHEN YOU WERE BUYING FROM ANTHONY,
15 WAS ANTHONY GETTING A CUT FROM GETTING IT FROM ROLANDO
16 FROM HIM TO YOU?

17 A. YES.

18 Q. WHY WOULD ANTHONY TURN OVER HIS SOURCE TO YOU?

19 A. HE DIDN'T. HE, ROLANDO HAD CALLED ME LOOKING FOR
20 ANTHONY BECAUSE ANTHONY HAD TAKEN OFF WITH ONE OF HIS
21 CARS, AND I TOLD HIM I DIDN'T KNOW WHERE HE WAS, AND WE
22 DISCUSSED ABOUT DOING BUSINESS AT THAT TIME.

23 Q. OKAY. SO ABOUT WHEN WAS THAT THAT YOU STARTED
24 GETTING FROM ROLANDO?

25 A. IT'S PROBABLY MAY OR JUNE OF THE SAME YEAR.

1 Q. 2004, APPROXIMATELY?

2 A. YEAH.

3 Q. ALL RIGHT. HOW MUCH DID YOU START BUYING WHEN
4 YOU STARTED BUYING FROM ROLANDO?

5 A. BETWEEN FOUR AND EIGHT OUNCES AT A TIME.

6 Q. AND HOW OFTEN WOULD YOU GET THAT?

7 A. AS QUICK AS IT RAN OUT. THERE WAS NO CERTAIN
8 TIME.

9 Q. WHAT'S THE SHORTEST PERIOD OF TIME IT WOULD TAKE
10 YOU TO GET RID OF FOUR TO EIGHT OUNCES?

11 A. A DAY.

12 Q. WHAT'S THE LONGEST PERIOD OF TIME?

13 A. PROBABLY A WEEK.

14 Q. WHEN YOU FIRST STARTED DEALING WITH ROLANDO, WERE
15 YOU PURCHASING THE DRUG OR WAS ROLANDO FRONTING THOSE
16 DRUGS TO YOU?

17 A. FRONTING THEM.

18 Q. AND PLEASE EXPLAIN TO THE JURY WHAT THAT MEANS.

19 A. HE WOULD LEAVE THEM WITH ME, AND WHEN I HAD THE
20 MONEY I WOULD CALL AND HE WOULD PICK THE MONEY UP.

21 Q. HOW MUCH WAS HE CHARGING YOU FOR AN OUNCE?

22 A. \$800.00.

23 Q. AND WHO WERE THE PEOPLE YOU WERE SELLING THAT TO,
24 TO BE ABLE TO GET RID OF FOUR TO EIGHT OUNCES IN A DAY,
25 WHO WERE SOME OF THOSE PEOPLE YOU WERE SELLING TO?

1 A. MIKEY AND ALEX HATZIDAKIS.

2 Q. AND EXPLAIN TO THE JURY HOW YOU WOULD GO -- HOW
3 THE DEALS WOULD BASICALLY GO DOWN. YOU WOULD GO,
4 WHETHER IT WOULD BE ONCE OR TWICE A WEEK, HOWEVER?

5 A. I WOULD CALL HIM AND TELL HIM WHAT I NEEDED AND
6 WE WOULD MAKE ARRANGEMENTS TO MEET AT MY HOUSE OR AT
7 ANOTHER LOCATION.

8 Q. AND HOW DID YOU HAVE HIS PHONE NUMBER?

9 A. HE GAVE IT TO ME.

10 Q. AND TELL THE JURORS SOME OF THE LOCATIONS THAT
11 YOU WOULD MEET HIM AT.

12 A. THERE WAS A MEXICAN RESTAURANT ON BEAUFORT
13 HIGHWAY, HIS HOUSE, MY HOUSE, AND THEN ANOTHER BAR, OR
14 MOTELS.

15 Q. OKAY. WHERE WAS YOUR HOUSE LOCATED?

16 A. OFF OF LINDBERGH DRIVE IN ATLANTA.

17 Q. WHERE WAS HIS HOUSE?

18 A. IN GWINNETT COUNTY.

19 Q. HOW FAR AWAY WAS THAT FROM YOUR HOUSE?

20 A. THIRTY MINUTES.

21 Q. OKAY. AND THEN SO WHAT WAS THE NAME OF THE BAR
22 THAT YOU WOULD MEET AT?

23 A. LA LOLITA (PHONETIC) ON BEAUFORT (PHONETIC)
24 HIGHWAY.

25 Q. DID THE AMOUNT YOU GOT FROM ROLANDO, DID THAT

1 INCREASE FROM OUNCE AMOUNTS?

2 A. YES, MA'AM.

3 Q. PLEASE TELL THE JURY HOW THAT STARTED TO
4 INCREASE.

5 A. IT STARTED BECOMING POUNDS AT A TIME.

6 Q. AND ABOUT BETWEEN THE TIME THAT YOU FIRST STARTED
7 DEALING WITH ROLANDO, WHEN YOU WERE GETTING FOUR TO
8 EIGHT OUNCES, TO WHERE YOU STARTED GETTING POUND
9 AMOUNTS, WHAT TIME PERIOD WAS THAT?

10 A. PROBABLY AROUND A MONTH.

11 Q. A MONTH? AND HOW MUCH WOULD HE CHARGE YOU FOR A
12 POUND?

13 A. BETWEEN FOURTEEN AND FIFTEEN THOUSAND.

14 Q. AND HOW WOULD YOU GET THE MONEY, HOW WOULD YOU
15 GET 14,000 -- DID YOU HAVE ANY OTHER JOB AT THIS TIME?

16 A. NO, MA'AM.

17 Q. HOW WOULD YOU GET THE MONEY TO BUY A POUND OF ICE
18 FROM ROLANDO?

19 A. HE WOULD BRING THE DRUGS TO ME AND THEN I WOULD
20 TAKE THEM TO WHOEVER WAS BUYING THEM.

21 Q. OUT OF A POUND THAT YOU WOULD GET FROM ROLANDO,
22 HOW MUCH WOULD YOU SAY THAT YOU PERSONALLY USED OUT OF
23 THAT POUND ON AVERAGE?

24 A. NOT MUCH. MAYBE A QUARTER IN THAT AMOUNT OF
25 TIME.

1 Q. WOULD IT BE FAIR TO SAY THAT THE MAJORITY OF THE
2 DRUGS THAT YOU GOT YOU WERE SELLING?

3 A. YES, MA'AM.

4 Q. WERE YOU MAKING GOOD MONEY OFF OF DOING THIS?

5 A. YES, MA'AM.

6 Q. WERE YOU STILL LIVING OUT OF YOUR CAR?

7 A. NO, MA'AM.

8 Q. DID YOU HAVE A CAR?

9 A. YES, MA'AM.

10 Q. YOU WERE PAYING THE BILLS?

11 A. YES, MA'AM.

12 Q. YOU HAD A PLACE TO LIVE?

13 A. YES. I HAD AN APARTMENT AND A HOUSE I LIVE IN,
14 TOO.

15 Q. WERE YOU ABLE TO BUY GROCERIES?

16 A. YES, MA'AM.

17 Q. WAS THAT ALL DRUG MONEY?

18 A. YES, MA'AM.

19 Q. LET'S MOVE ON. I THINK YOU HAVE ALREADY
20 MENTIONED DO YOU KNOW A MIKEY KIMBALL?

21 A. YES, MA'AM.

22 Q. PLEASE TELL THE JURY WHO THAT IS.

23 A. HE WAS A FRIEND THAT HE INTRODUCED ME TO
24 EVERYBODY I KNEW, AND WE WORKED TOGETHER MAINLY.

25 Q. AND WHEN YOU MEAN WORKED TOGETHER, PLEASE TELL

1 THE JURY ---

2 A. SOLD DRUGS TOGETHER.

3 Q. AND WHAT'S HIS REAL NAME?

4 A. MICHAEL WALLACE KIMBALL.

5 Q. ALL RIGHT. AND WHERE DID HE LIVE?

6 A. ATLANTA, GEORGIA.

7 Q. AND BRIEFLY DESCRIBE YOUR DRUG DEALING BUSINESS
8 RELATIONSHIP WITH HIM.

9 A. HE WOULD CALL AND TELL ME HOW MUCH HE NEEDED AND
10 I WOULD CALL AND GET IT FOR HIM AND WOULD TAKE TO HIM
11 AND THEN I WOULD WAIT THERE UNTIL HE GOT THE MONEY
12 TOGETHER.

13 Q. AND LET ME MAKE SURE. DID HE HAVE ROLANDO, THE
14 MEXICAN, MEXICAN SOURCE, OR DID HE KNOW THAT YOU HAD
15 THAT SOURCE?

16 A. I HAD THE SOURCE.

17 Q. OKAY. SO HE WOULD CALL YOU BECAUSE HE KNEW YOU
18 HAD THE SOURCE?

19 A. YES, MA'AM.

20 Q. DID HE KNOW ROLANDO?

21 A. NO, MA'AM.

22 Q. HOW OFTEN DID YOU START SELLING TO HIM?

23 A. I MEAN, WE SEEN EACH OTHER JUST ABOUT EVERY DAY.

24 Q. AND HOW MUCH WAS HE GETTING FROM YOU?

25 A. MAYBE A POUND OR TWO A WEEK.

1 Q. DO YOU KNOW WHO HE WAS SELLING IT TO?

2 A. VARIOUS PEOPLE.

3 Q. ALL RIGHT. WHO ARE SOME OF THOSE VARIOUS PEOPLE
4 THAT HE WAS SELLING TO?

5 A. ALEX AND SETH AND ---

6 Q. DO YOU KNOW ALEX'S LAST NAME?

7 A. HATZIDAKIS.

8 Q. WHERE DOES HE LIVE?

9 A. GREENVILLE, SOUTH CAROLINA.

10 Q. AND THE NEXT PERSON?

11 A. SETH STEARNS.

12 Q. AND WHERE DID HE LIVE?

13 A. GREENVILLE, SOUTH CAROLINA.

14 Q. AND DID HE EVER INTRODUCE YOU TO ANY OF THOSE,
15 EITHER ONE OF THOSE SOUTH CAROLINA CUSTOMERS?

16 A. YES. HE INTRODUCED ME TO BOTH OF THEM.

17 Q. ALL RIGHT. LET'S TALK ABOUT SETH STEARNS. WHEN
18 DID HE INTRODUCE YOU TO SETH STEARNS?

19 A. IT WAS PROBABLY AROUND JUNE OF THE SAME YEAR.

20 Q. ALL RIGHT. WHO WAS SETH STEARNS AT THAT TIME,
21 HOW DID YOU KNOW HIM?

22 A. HE WAS JUST A CUSTOMER OF MIKEY'S.

23 Q. WHERE DID YOU FIRST MEET HIM?

24 A. AT A HOTEL ROOM.

25 Q. WHY?

1 A. I WAS BRINGING METH THERE FOR THEM.

2 Q. SO WERE YOU GOING THERE TO SELL DIRECTLY TO SETH
3 OR WERE YOU ---

4 A. NO, I WAS SELLING IT TO MIKEY.

5 Q. ALL RIGHT. DO YOU KNOW HOW MUCH SETH WAS THERE
6 TO BUY THAT TIME?

7 A. A POUND.

8 Q. ALL RIGHT. AND HOW DID YOU GET THAT METH?

9 A. FROM ROLANDO.

10 Q. AND PLEASE TELL THE JURY JUST HOW THAT DEAL WENT
11 DOWN.

12 A. I WOULD CALL HIM AND HE WOULD HAVE IT BROUGHT TO
13 MY HOUSE AND THEN I WOULD TAKE IT WHERE I NEEDED TO MEET
14 THEM.

15 Q. THAT FIRST TIME YOU MET SETH STEARNS, WHERE DID
16 YOU GO WITH THAT METH?

17 A. IT WAS AT A HOTEL ROOM IN COBB ^ COUNTY.

18 Q. DO YOU REMEMBER THE NAME OF THE HOTEL?

19 A. I THINK IT WAS A DOUBLETREE.

20 Q. OKAY. AND WHAT DID YOU OBSERVE WHEN YOU GOT
21 THERE WITH THE METH?

22 A. WELL, I WENT IN THE BATHROOM AND MIKEY BROUGHT
23 THE MONEY IN THERE AND HE TOOK IT OUT TO THEM. I DIDN'T
24 SEE ANYTHING AT THAT TIME.

25 Q. OKAY. SO HOW MUCH MONEY DID YOU GET FOR BRINGING

1 THAT POUND OF METH TO MIKEY?

2 A. WE SPLIT THE PROFIT. I BELIEVE IT WAS BETWEEN
3 FIVE AND SEVEN HUNDRED DOLLARS. YOU MEAN FOR THE TOTAL?

4 Q. TOTAL.

5 A. FOURTEEN TO FIFTEEN THOUSAND.

6 Q. OKAY. AND DID YOU EVER SEE SETH STEARNS TAKE THE
7 METH?

8 A. YES, MA'AM.

9 Q. AND WHERE DID YOU SEE THAT OCCUR?

10 A. AT THAT HOTEL, BUT I SEEN IT AT A LATER TIME,
11 TOO.

12 Q. ALL RIGHT. WE'LL GET TO THAT. AT SOME POINT --
13 AND I'M SORRY -- YOU AND MIKEY WERE SPLITTING THE
14 PROFITS OFF OF THOSE TRANSACTIONS?

15 A. YES, MA'AM.

16 Q. AT SOME POINT DID YOU START DEALING, AFTER YOU
17 HAD SETH THAT TIME, START DEALING DIRECTLY WITH SETH
18 STEARNS SELLING METH?

19 A. YES, MA'AM.

20 Q. PLEASE TELL THE JURY WHEN THAT WAS.

21 A. IT WAS AROUND JULY 4TH WEEKEND OF THE SAME YEAR.
22 MIKEY WAS IN JAIL AND SETH CALLED ME LOOKING FOR HIM,
23 AND I KNEW HE WAS IN JAIL AND HE ASKED IF I COULD MEET
24 WITH HIM AND GET HIM A POUND OF METH.

25 Q. OKAY. YOU SAY JULY 4TH OF THAT SAME YEAR. WE'RE

1 STILL TALKING 2004?

2 A. YES, MA'AM.

3 Q. WHAT WAS MIKEY IN JAIL FOR?

4 A. TRAFFICKING METH, TRAFFICKING KETAMINE; AND HE
5 HAD A LOT OF CHARGES.

6 Q. ALL RIGHT. SO DID YOU AGREE TO START SELLING TO
7 SETH DIRECTLY SINCE MIKEY WAS IN JAIL?

8 A. YES, MA'AM.

9 Q. PLEASE TELL THE JURY ABOUT THE FIRST TIME YOU
10 SOLD TO SETH.

11 A. I WENT TO THE W MOTEL AND TOOK A POUND OF METH TO
12 HIM.

13 Q. OKAY. AND WHO WAS PRESENT?

14 A. HIM AND HIS GIRLFRIEND AT THE TIME, NINA.

15 Q. AND DID YOU KNOW NINA'S LAST NAME?

16 A. BISHOP.

17 Q. YOU SAY GIRLFRIEND AT THE TIME?

18 A. THEY GOT MARRIED AFTER THAT.

19 Q. DID YOU KNOW NINA BEFORE YOU WENT TO THAT HOTEL
20 THAT DAY?

21 A. I HAD MET THEM A COUPLE TIMES BEFORE AT MIKEY'S
22 HOTEL ROOMS.

23 Q. SO BEFORE -- HOW MANY DRUG TRANSACTIONS BEFORE
24 YOU STARTED SELLING DIRECTLY TO SETH DID YOU SEE SETH
25 AND MIKEY DO WITH NINA?

1 A. PROBABLY TWO OR THREE TIMES.

2 Q. OKAY. SO THAT ONE TIME THAT YOU WERE TALKING
3 ABOUT WAS THE ONE TIME THAT YOU BROUGHT IT DIRECTLY,
4 THAT YOU HAD SEEN PREVIOUS TRANSACTIONS BETWEEN SETH AND
5 MIKEY?

6 A. UH-HUH.

7 Q. AND HOW OFTEN WAS NINA THERE?

8 A. SHE WAS USUALLY THERE WHEN SETH WAS THERE.

9 Q. OKAY. AND HOW MUCH METH DID HE PURCHASE FROM YOU
10 THE FIRST TIME HE PURCHASED DIRECTLY FROM YOU?

11 A. A POUND.

12 Q. AND WHAT WAS THE PRICE?

13 A. I BELIEVE IT WAS BETWEEN FOURTEEN AND FIFTEEN
14 THOUSAND.

15 Q. OKAY. AND WHAT WOULD YOU DO WITH THE PROFIT?
16 OR, EXCUSE ME. HOW MUCH DID IT COST YOU TO BUY FROM
17 ROLANDO?

18 A. IT WAS A THOUSAND DOLLARS LESS THAN WHAT I REALLY
19 PAID FOR IT.

20 Q. OKAY. SO SAY FIFTEEN?

21 A. THEN I WOULD PAY FOURTEEN.

22 Q. AND WHAT WOULD YOU DO WITH THE THOUSAND DOLLAR
23 PROFIT?

24 A. PAY MY BILLS.

25 Q. WERE YOU ALSO STILL SPLITTING SOME WITH MIKEY?

1 A. YES.

2 Q. AND WHAT WERE YOU DOING WITH THE MONEY FROM
3 MIKEY?

4 A. TAKING IT OFF THE TOTAL OF THE MONEY THAT HE OWED
5 ME.

6 Q. OKAY. AND AFTER THAT FIRST DEAL, DID YOU
7 CONTINUE TO DEAL WITH SETH STEARNS?

8 A. YES, MA'AM.

9 Q. AND HOW OFTEN?

10 A. USUALLY ONCE A WEEK.

11 Q. ALL RIGHT. AND HOW LONG WERE YOU DEALING
12 DIRECTLY WITH SETH STEARNS?

13 A. FOR TWO OR THREE MONTHS, PROBABLY.

14 Q. OKAY. AND HOW MUCH WOULD HE GET EACH TIME HE
15 CAME TO BUY ICE FROM YOU?

16 A. BETWEEN EIGHT OUNCES AND A POUND.

17 Q. OKAY. AND WAS, DID THE PRICE REMAIN THE SAME?

18 A. YES, MA'AM.

19 Q. AND WERE YOU STILL -- WHEN I SAY SPLITTING THE
20 PROFIT, I GUESS WERE YOU DEDUCTING FROM MIKEY WHAT HE
21 OWED YOU?

22 A. YES, MA'AM.

23 Q. SO IF HE OWED YOU \$10,000.00, EACH TIME YOU SOLD
24 A POUND OF ICE TO SETH, HE WOULD THEN OWE YOU \$9,500.00?

25 A. YES.

1 Q. OKAY. EXPLAIN TO THE JURORS ONCE A WEEK HOW THE
2 DEALS FOR ICE WOULD GO DOWN WITH SETH STEARNS.

3 A. THEY WOULD CALL THE NIGHT BEFORE THEY WERE COMING
4 TO ATLANTA AND WE WOULD AGREE ON WHAT TIME THEY WOULD BE
5 THERE. THEY WOULD EITHER COME TO MY HOUSE OR I WOULD
6 MEET THEM IN A HOTEL ROOM, AND I WOULD EITHER HAVE IT
7 WITH ME OR ROLANDO WOULD BRING IT THERE.

8 Q. OKAY. YOU DIDN'T HAVE POUNDS AND POUNDS OF METH
9 WAITING AT YOUR HOUSE?

10 A. NO.

11 Q. WHEN YOU NEEDED IT, YOU WOULD CALL ROLANDO?

12 A. YES, MA'AM.

13 Q. ALL RIGHT. NAME SOME OF THE HOTELS THAT YOU
14 REMEMBER FROM EACH CONNECT?

15 A. THE HILTON GARDEN INNS, THE W HOTEL, THE
16 DOUBLE TREE THE MARRIOTT; JUST ABOUT ANY HOTEL AROUND
17 ATLANTA.

18 Q. WOULD YOU ALL GET HOTEL ROOMS THERE ---

19 A. YES, MA'AM.

20 Q. -- OR WOULD YOU MEET IN THE LOBBY -- OKAY. WOULD
21 YOU JUST EXPLAIN TO THE JURY HOW THE TRANSACTIONS
22 OCCURRED?

23 A. THEY WOULD USUALLY GET A MOTEL ROOM IF THEY HAD
24 PEOPLE WITH THEM I WOULD GET MY OWN MOTEL ROOM WHERE I
25 WOULDN'T HAVE TO MEET ANYBODY, AND THEN I WOULD CALL

1 THEM WHEN I GOT TO MY ROOM AND THEY WOULD COME TO MY
2 ROOM; AND IF THEY DIDN'T HAVE ANYBODY WITH THEM, I WOULD
3 GO TO THEIR ROOM.

4 Q. DO YOU REMEMBER HAVING A CONVERSATION WITH SETH
5 STEARNS ABOUT Y'ALL'S DRUG BUSINESS LATER ON IN 2004?

6 A. YES, MA'AM.

7 Q. PLEASE TELL THE JURY ABOUT THAT CONVERSATION AND
8 WHAT IT WAS ABOUT.

9 A. HE WAS GETTING MARRIED AND HE DIDN'T WANT TO SELL
10 NO MORE DRUGS, SO HE WAS GETTING SOMEONE TO TAKE ALL HIS
11 BUSINESS OVER.

12 Q. OKAY. AND DID HE TELL YOU WHO HE WAS GONNA GET
13 TO TAKE OVER HIS BUSINESS?

14 A. BRIAN MUELLER.

15 Q. OKAY. AND WHEN HE SAID HE DIDN'T TO WANT SELL
16 DRUGS ANYMORE, DID HE SAY HE WAS GETTING OUT OF THE DRUG
17 BUSINESS OR DIDN'T TO WANT COME TO ATLANTA ANYMORE?

18 A. HE DIDN'T WANT TO COME DOWN TO ATLANTA ANYMORE,
19 IT WASN'T WORTH THE RISK.

20 Q. OKAY. HOW DID YOU MEET BRIAN MUELLER?

21 A. SETH BROUGHT HIM DOWN TO MEET ME.

22 Q. AND WHAT DID SETH TELL YOU WHO BRIAN MUELLER WAS?

23 A. THAT HE WOULD BE TAKING OVER HIS CUSTOMERS AND
24 SELLING FOR HIM.

25 Q. AND WHAT DID SETH TELL YOU ABOUT NOT WANTING TO

1 DEAL WITH YOU DIRECTLY AND GOING TO ATLANTA?

2 A. THAT BRIAN WOULD PAY HIM A THOUSAND DOLLARS EVERY
3 TIME HE WOULD COME TO SEE ME AND HE WOULD GET FREE DRUGS
4 FROM IT.

5 Q. AND DID HE TELL YOU WHY HE WAS SENDING BRIAN
6 RATHER THAN COMING HIMSELF?

7 A. BECAUSE HE WAS GETTING MARRIED AND NINA DIDN'T
8 WANT HIM INVOLVED WITH IT ANYMORE.

9 Q. BUT HE WAS STILL GOING TO BE GETTING ---

10 A. YES, MA'AM.

11 Q. TELL US ABOUT THIS DAY THAT YOU MET BRIAN
12 MUELLER. WAS SETH STEARNS WITH HIM?

13 A. YES, MA'AM.

14 Q. WAS THAT THE FIRST TIME YOU MET HIM?

15 A. YES, MA'AM. AT THE HILTON GARDEN INN ON SUGAR
16 LOAF PARKWAY.

17 Q. ALL RIGHT. AND TELL THE JURY HOW THAT DEAL WENT
18 DOWN.

19 A. I MET THEM AT A HOTEL ROOM AND HE INTRODUCED ME
20 TO BRIAN, AND THEN THEY WERE GETTING A POUND AT THAT
21 TIME AND THEN AFTER THAT SETH NEVER CAME TO ATLANTA FOR
22 IT ANYMORE, HE WOULD SEND BRIAN.

23 Q. BEFORE WE MOVE ON TO BRIAN MUELLER TAKING OVER
24 SETH'S BUSINESS, WHEN SETH AND NINA WOULD COME DOWN,
25 WOULD YOU ALL USE DRUGS?

1 A. YES, MA'AM.

2 Q. TELL THE JURY ABOUT THAT. WHAT WOULD YOU ALL DO?

3 A. THEY SMOKED METH. I NEVER SMOKED IT, BUT THEY
4 SMOKED IT.

5 Q. BUT YOU DID SAY YOU USED METH. HOW DID YOU USE
6 IT?

7 A. I SNORTED IT.

8 Q. YOU SNORTED IT? AND DURING THIS TIME WHEN YOU
9 ARE DOING POUNDS AND POUNDS WITH SETH STEARNS, ABOUT HOW
10 MUCH ARE YOU USING LET'S SAY ON A WEEKLY BASIS?

11 A. NO MORE THAN HALF AN EIGHT BALL TO AN EIGHT BALL.

12 Q. AND HOW OFTEN, WHEN SETH AND NINA WOULD COME
13 DOWN, WOULD THEY SMOKE METH?

14 A. WHAT DO YOU MEAN BY THAT?

15 Q. WELL, YOU SAID FOR THREE MONTHS THEY WOULD COME
16 DOWN ONCE A WEEK. OF THOSE TIMES HOW MANY OF THOSE
17 TIMES WOULD THEY SMOKE METH WITH YOU?

18 A. ANYTIME THEY WERE THERE.

19 Q. WHEN SETH WAS GETTING THIS POUND OF ICE FROM YOU
20 WHEN YOU FIRST STARTED DEALING DIRECTLY WITH SETH, WHAT
21 WOULD, WHAT DID SETH TELL YOU HE WAS DOING WITH THE
22 METH, THE POUND OF METH HE WAS BUYING FROM YOU EVERY
23 WEEK?

24 A. SELLING IT.

25 Q. DID HE EVER TELL YOU WHERE HE WAS GOING TO GO

1 SELL IT?

2 A. I KNEW IT WAS GOING TO GREENVILLE, BUT THAT'S ALL
3 I KNEW.

4 Q. DID HE EVER TELL YOU ANY OF HIS CUSTOMERS OR
5 ANYTHING LIKE THAT?

6 A. NO, NOT REALLY.

7 Q. SO ALTHOUGH HE WAS SMOKING, HE WAS GOING UP THERE
8 TO SELL IT?

9 A. YES, MA'AM.

10 Q. ALL RIGHT. LET'S GO ON TO BRIAN MUELLER. TELL
11 THE JURY ABOUT HOW YOU FIRST MET HIM AND EXACTLY WHAT
12 SETH TOLD YOU AND WHAT BRIAN TOLD YOU ABOUT WHAT WAS
13 GONNA HAPPEN.

14 A. SETH INTRODUCED ME TO HIM AND SAID THAT'S WHO
15 WILL BE TAKING OVER HIS CUSTOMERS AND HE WOULD COME IN
16 PLACE OF SETH, AND THAT WAS PRETTY MUCH IT. AND THEN
17 AFTER THAT BRIAN STARTED COMING ONCE A WEEK.

18 Q. OKAY. THAT FIRST TIME YOU MET BRIAN MUELLER, DID
19 YOU ACTUALLY SELL TO BRIAN MUELLER OR DID YOU SELL TO
20 SETH STEARNS? EXPLAIN THE DETAILS OF THAT, AMANDA.

21 A. WE WERE ALL THREE IN THE HOTEL ROOM TOGETHER, AND
22 WHEN ROLANDO CAME, HE BROUGHT IT INTO THE BATHROOM AND I
23 BROUGHT THE MONEY OUT OF THE BATHROOM AND SET IT OUT IN
24 THE MIDDLE OF THE BED.

25 Q. HOW WOULD YOU PACKAGE THE ICE WHEN YOU GAVE IT TO

1 SETH?

2 A. IT WAS, USUALLY CAME IN TUPPERWARE OR PLASTIC
3 BAGGIES.

4 Q. AND AFTER THAT FIRST TIME SETH INTRODUCED YOU,
5 WHO WERE YOU DEALING WITH THEN FROM SOUTH CAROLINA?

6 A. BRIAN.

7 Q. ALL RIGHT. AND HOW MUCH WOULD HE GET WHEN HE
8 WOULD COME DOWN FOR A TRANSACTION?

9 A. IT WAS USUALLY A POUND TO START OFF WITH, AND
10 THEN HE PURCHASED LARGER AMOUNTS.

11 Q. WHAT WAS YOUR UNDERSTANDING -- WELL, AGAIN, DID
12 YOU FRONT THE METH TO BRIAN ---

13 A. NO, MA'AM.

14 Q. --- OR WOULD HE COME WITH MONEY?

15 A. HE CAME WITH THE MONEY.

16 Q. SO HE WOULD BUY IT UP FRONT?

17 A. YES, MA'AM.

18 Q. WHAT WAS YOUR UNDERSTANDING OR WHAT DID BRIAN
19 TELL YOU ABOUT THE DEAL HE HAD WITH SETH ABOUT EITHER
20 THE POUND THAT HE GOT OR ONCE HE STARTED INCREASING THE
21 POUNDS THAT HE GOT FROM YOU?

22 A. WHAT DID BRIAN SAY ABOUT IT?

23 Q. UH-HUH.

24 A. HE WAS MAD AT SETH, BECAUSE IF HE WAS GETTING
25 MORE THAN A POUND, SETH WANTED MORE THAN A THOUSAND

1 DOLLARS EVERY TIME HE CAME TO SEE ME.

2 Q. OKAY. BUT IT WAS YOUR UNDERSTANDING IF HE GOT A
3 POUND, HE GOT A THOUSAND DOLLARS AN OUNCE. AND HE
4 STARTED GETTING MORE. WHAT DID BRIAN SAY SETH WANTED?

5 A. HE WANTED MORE MONEY AND MORE DRUGS.

6 Q. AND DID BRIAN LIKE SETH'S NEW AGREEMENT?

7 A. NO.

8 Q. ALL RIGHT. AND WAS IT STILL BEING PACKAGED THE
9 SAME WAY?

10 A. YES, MA'AM.

11 Q. WERE YOU STILL GETTING IT FROM THE SAME SOURCE?

12 A. YES, MA'AM.

13 Q. DID YOUR SOURCE STAY THE SAME FROM THE BEGINNING
14 TO THE END?

15 A. YES, MA'AM, IT WAS THE SAME FAMILY.

16 Q. BEFORE WE CONTINUE ON WITH BRIAN MUELLER, LET'S
17 TALK ABOUT THE FAMILY THAT YOU WERE GETTING THESE DRUGS
18 FROM. WHO WERE SOME OF THE PEOPLE IN THIS FAMILY? WE
19 TALKED ABOUT ROLANDO. WHO WAS HE?

20 A. HE WAS THE GUY THAT I FIRST MET, AND THEN HE GOT
21 SHOT AND WAS IN THE HOSPITAL FOR A MONTH OR TWO, AND
22 THEN HIS WIFE TOOK OVER HIS BUSINESS AND THEN ---

23 Q. WHAT WAS HIS WIFE'S NAME?

24 A. JOVITA (PHONETIC).

25 Q. EXCUSE ME?

1 A. JOVITA.

2 Q. JOVITA?

3 A. YES, MA'AM.

4 Q. AND THEN WHAT HAPPENED?

5 A. THEN SHE KIND OF TOOK OVER, AND WHEN HE CAME OUT
6 OF THE HOSPITAL, HE GOT IT, I GUESS I WOULD SAY HE TOOK
7 BACK OVER IT. AND THEN JOVITA'S BROTHER GOT MAD AND
8 SAID THAT WHENEVER YOU NEEDED SOMETHING, YOU HAD TO CALL
9 HIM.

10 Q. AND WHO WAS JOVITA'S BROTHER?

11 A. RAPHAEL.

12 Q. RAPHAEL. ARE THOSE, THROUGHOUT THIS TIME PERIOD
13 WERE THOSE THE THREE PEOPLE THAT ARE YOUR SOURCE FOR
14 ICE?

15 A. YES, MA'AM.

16 Q. I GUESS IT WAS KIND OF UP TO THEM; YOU WOULDN'T
17 KNOW WHO WOULD BE SHOWING UP?

18 A. RIGHT.

19 Q. ALL RIGHT. SO MOVING ON WITH BRIAN,
20 APPROXIMATELY WHEN DID BRIAN START COMING DOWN ON BEHALF
21 OF SETH?

22 A. IT WAS AROUND AUGUST OR SEPTEMBER OF THAT SAME
23 YEAR.

24 Q. AND AGAIN, WE'RE TALKING 2004?

25 A. YES, MA'AM.

1 Q. WHAT WAS YOUR UNDERSTANDING OR WHAT DID BRIAN
2 TELL YOU HE WAS DOING WITH THE METH WHEN HE RETURNED TO
3 SOUTH CAROLINA?

4 A. SELLING IT.

5 Q. WAS HE SELLING IT JUST TO HIS CUSTOMERS OR DID HE
6 HAVE TO TAKE OVER A NEW CUSTOMER BASE?

7 A. WHAT DO YOU MEAN BY THAT?

8 Q. WELL, DID HE TELL YOU ANYTHING ABOUT SETH'S
9 CUSTOMERS?

10 A. HE WAS SELLING TO HIS CUSTOMERS AND SETH'S
11 CUSTOMERS.

12 Q. DO YOU KNOW SOME OF THE NAMES THAT HE TOLD YOU
13 ABOUT WHO SETH'S CUSTOMERS WERE THAT HE HAD TO START
14 SELLING TO?

15 A. NOT REALLY.

16 Q. OKAY. AND HOW MUCH -- YOU SAID THAT WHEN BRIAN
17 CAME DOWN, HE STARTED GETTING MORE METH. WOULD HE GET A
18 BETTER DEAL, LET'S SAY IF HE BOUGHT ONE POUND OF METH,
19 WOULD HE GET A BETTER DEAL IF HE BOUGHT TWO POUNDS OF
20 METH OR WAS THE PRICE THE SAME?

21 A. HE WOULD GET A BETTER DEAL THE MORE HE BOUGHT AT
22 A TIME.

23 Q. ALL RIGHT. WHEN BRIAN CAME DOWN, WAS THERE
24 ANYBODY ELSE PRESENT WITH BRIAN?

25 A. HE HAD SOMEONE NAMED YOUNG'UN WITH HIM A LOT OF

1 TIMES.

2 Q. DO YOU KNOW WHERE YOUNG'UN WAS FROM?

3 A. GREENVILLE, SOUTH CAROLINA.

4 Q. DID YOU EVER DEAL DIRECTLY WITH YOUNG'UN WITHOUT
5 BRIAN BEING THERE?

6 A. A LONG TIME AFTER THAT, YES.

7 Q. OKAY. WE'LL GET TO THAT THEN. AT SOME POINT DID
8 YOU STOP SELLING TO BRIAN?

9 A. YES.

10 Q. EXCUSE ME?

11 A. YES.

12 Q. AND PLEASE TELL THE JURY WHY AND HOW YOU QUIT
13 SELLING TO BRIAN.

14 A. BECAUSE HE WAS INCARCERATED.

15 Q. DO YOU KNOW WHERE?

16 A. IN NORTH CAROLINA, I BELIEVE.

17 Q. ALL RIGHT. WHAT HAPPENED AFTER BRIAN WAS
18 INCARCERATED? DID YOU GET A PHONE CALL OR DID YOU GET A
19 VISIT FROM SOMEBODY ELSE?

20 A. YES, I DID.

21 Q. WHO WAS THAT?

22 A. CHAD SEXTON.

23 Q. ALL RIGHT. HOW DID YOU MEET CHAD SEXTON?

24 A. SETH HAD CAME TO MY HOUSE, IT WAS ACTUALLY AROUND
25 CHRISTMASTIME, TO DO CHRISTMAS SHOPPING, AND HE SAID HE

1 HAD SOMEONE ELSE COMING HE WANTED ME TO MEET.

2 Q. AND THIS IS CHRISTMASTIME 2004?

3 A. YES, MA'AM.

4 Q. PLEASE TELL THE JURY, WAS THIS JUST A FRIEND THAT
5 SETH WANTED YOU TO MEET OR WHAT DID HE TELL YOU ABOUT
6 WHY HE WANTED YOU TO MEET CHAD SEXTON?

7 A. HE WANTED ME TO MET CHAD SEXTON BECAUSE BRIAN
8 WASN'T KEEPING HIS END OF THE BARGAIN, SO SETH WANTED
9 CHAD TO DO THE SAME THING THAT BRIAN HAD BEEN DOING.

10 Q. AND WHAT DID SETH TELL YOU WHAT WAS GONNA BE THE
11 DEAL OF YOU SELLING ICE TO CHAD?

12 A. THAT CHAD WOULD PAY HIM MONEY AND DRUGS, THE SAME
13 AS BRIAN HAD.

14 Q. ALL RIGHT. AND SO CAN YOU JUST PLEASE TELL THE
15 JURY ABOUT THE DRUG WORLD? IF CHAD SEXTON HAD SHOWED UP
16 AT YOUR DOOR AND KNOCKED ON YOUR DOOR, WOULD YOU HAVE
17 SOLD HIM A POUND OF METH?

18 A. NO.

19 Q. PLEASE TELL THE JURY WHY IT DOESN'T WORK THAT
20 WAY.

21 A. BECAUSE YOU USUALLY DEAL WITH PEOPLE THAT YOU
22 TRUST.

23 Q. AND WHY IS THAT?

24 A. BECAUSE YOU DON'T WANT TO END UP IN JAIL SO...

25 Q. ALL RIGHT. SO SETH PERSONALLY CAME DOWN AND

1 INTRODUCED TO YOU CHAD SEXTON?

2 A. YES, MA'AM.

3 Q. AND IN THE DRUG WORLD WHAT DOES THAT MEAN WHEN
4 SOMEONE SAYS, 'HERE, YOU CAN DEAL WITH THIS PERSON?

5 A. THAT YOU USUALLY CAN TRUST THEM AND THEY ARE
6 USUALLY RELIABLE.

7 Q. OKAY. AND SO YOU SAID THAT SETH WAS DOWN
8 CHRISTMAS SHOPPING. WAS HIS WIFE THERE WITH HIM THEN
9 TOO?

10 A. YES, MA'AM.

11 Q. TELL ME ABOUT THAT FIRST MEETING WITH CHAD. WHAT
12 WAS -- WITH SETH -- WHAT DRUG TRANSACTION WENT DOWN?

13 A. I BELIEVE CHAD GOT BETWEEN FOUR AND EIGHT OUNCES
14 OF METH.

15 Q. OKAY. AND DID SETH GET ANY AT THAT TIME?

16 A. I DON'T THINK SO.

17 Q. DID HE SMOKE ANY AT THAT TIME?

18 A. YES.

19 Q. WHERE WAS THIS MEETING?

20 A. AT MY HOUSE.

21 Q. OKAY. AND DID CHAD SMOKE ANY?

22 A. YES.

23 Q. DID YOU DO ANY AT THAT TIME?

24 A. YES.

25 Q. AND DID YOU SNORT IT, NOT SMOKE IT?

1 A. SNORT IT.

2 Q. ALL RIGHT. DO YOU REMEMBER AFTER THAT DID CHAD
3 COME BY HIMSELF?

4 A. YES, HE DID.

5 Q. TELL THE JURY ABOUT CHAD'S FIRST SOLO TRIP TO
6 ATLANTA.

7 A. HE CALLED THE NIGHT BEFORE HE WAS GONNA COME TO
8 TELL ME WHAT TIME HE WOULD BE THERE THE NEXT DAY AND
9 CAME TO MY HOUSE.

10 Q. OKAY. AND WAS ANYONE ELSE PRESENT?

11 A. NO.

12 Q. DO YOU HAVE A ROOMMATE?

13 A. I DID AT THE TIME. THERE WAS USUALLY ALWAYS
14 SOMEONE AT MY HOUSE.

15 Q. OKAY. SO WHEN YOU ARE SAYING NO ONE ELSE WAS
16 PRESENT, YOU MEAN CHAD CAME BY HIMSELF?

17 A. CHAD CAME BY HIMSELF, BUT THERE WAS ALMOST ALWAYS
18 SOMEONE ELSE AT MY HOUSE.

19 Q. AND HOW MUCH DID HE BUY FROM YOU THE FIRST TIME?

20 A. IT WAS BETWEEN FOUR AND EIGHT OUNCES, I BELIEVE.

21 Q. DO YOU KNOW APPROXIMATELY HOW MUCH WOULD THAT
22 COST?

23 A. IT DEPENDED. IT WOULD PROBABLY BE AROUND 7,000.

24 Q. OKAY. AND DO YOU KNOW WHAT CHAD WAS DOING WITH
25 THE METH THAT HE WAS PURCHASING FROM YOU?

1 A. TAKING IT BACK TO GREENVILLE TO SELL.

2 Q. AND DO YOU KNOW WHAT HIS DEAL WAS WITH -- WAS HE
3 STILL HAVING TO GIVE SOME TO SETH?

4 A. YES, MA'AM.

5 Q. DO YOU KNOW WHO ELSE CHAD WAS SELLING TO IN AND
6 AROUND GREENVILLE?

7 A. NO, MA'AM.

8 Q. HOW OFTEN AFTER THAT FIRST SOLO VISIT DID CHAD
9 COME AND BUY METH FROM YOU?

10 A. IT JUST VARIED. HE WOULD USUALLY TRY TO COME
11 ONCE A WEEK.

12 Q. AND I'M SORRY. I MOVED ON TOO QUICKLY. ALL
13 TOTALLED, BEFORE BRIAN GOT ARRESTED IN NORTH CAROLINA,
14 WHEN HE WAS COMING DOWN FOR SETH, HOW MUCH DID YOU SELL
15 TO BRIAN MUELLER?

16 A. PROBABLY AROUND 20 POUNDS.

17 Q. OKAY. AND I FORGOT TO ASK YOU THIS, TOO. WHEN
18 YOU WERE DEALING WITH SETH STEARNS DIRECTLY, ABOUT HOW
19 MANY POUNDS DID YOU SELL DIRECTLY TO SETH STEARNS?

20 A. PROBABLY BETWEEN FIVE AND TEN.

21 Q. MOVING ON WITH CHAD. SO CHAD, YOU MEET HIM
22 SOMEWHERE AROUND CHRISTMASTIME 2004, SO PROBABLY THE
23 FIRST SOLO TRIP IS JANUARY 2005?

24 A. UH-HUH.

25 Q. HOW OFTEN WOULD HE COME -- I THINK I ASKED YOU

1 THAT -- HE CAME DOWN ABOUT ONCE A WEEK?

2 A. YES, HE WOULD TRY TO.

3 Q. AND HOW MUCH WOULD HE GET APPROXIMATELY EACH TIME
4 HE CAME DOWN?

5 A. IT WOULD JUST VARY ON HOW MUCH MONEY HE HAD
6 USUALLY.

7 Q. OKAY. DID CHAD ALWAYS HAVE ENOUGH MONEY TO GET A
8 POUND?

9 A. NO.

10 Q. DID CHAD OWE YOU SOME MONEY?

11 A. YES.

12 Q. HOW QUICKLY DID IT TAKE CHAD TO WORK UP A DEBT
13 WITH YOU?

14 A. REALLY QUICK, PROBABLY TWO TO THREE WEEKS.

15 Q. ALL RIGHT. AND EXPLAIN WHAT WOULD HAPPEN IF HE
16 ALREADY OWED YOU FOR THE METH HE GOT THE PREVIOUS WEEK,
17 WHAT WOULD HAPPEN THE NEXT WEEK WHEN HE WOULD COME DOWN
18 AND WANT MORE METH?

19 A. HE WOULD HAVE TO PAY FOR EVERYTHING HE WAS
20 GETTING AT THAT TIME.

21 Q. SO HE MIGHT NOT HAVE TO PAY BACK HIS PAST DEBT,
22 BUT HE WAS NOT GOING TO INCREASE THE DEBT?

23 A. RIGHT.

24 Q. AND AGAIN, TELL THE JURY HOW THE DEALS WITH CHAD
25 WOULD GO DOWN, WHERE THEY WOULD OCCUR.

1 A. HE WOULD USUALLY CALL THE NIGHT BEFORE AND TELL
2 ME WHAT HE WANTED AND WHAT TIME HE WOULD BE THERE THE
3 NEXT DAY, AND THEN IT USUALLY HAPPENED AT MY HOUSE.

4 Q. ALL RIGHT. DO YOU REMEMBER CHAD COMING TO YOUR
5 HOUSE IN EARLY APRIL 2005, ABOUT APRIL MAYBE 4TH OR 5TH?

6 A. YES, MA'AM.

7 Q. AND WHAT DID HE COME DOWN THERE FOR?

8 A. A POUND OF METH.

9 Q. AND DID YOU HAVE IT RIGHT THEN?

10 A. NO, MA'AM. HE HAD TO STAY OVERNIGHT TO GET IT.

11 Q. ALL RIGHT. DID IT TAKE A WHILE FOR YOU TO GET
12 IT?

13 A. YES.

14 Q. HE STAYED THERE CONSTANTLY OR ---

15 A. YEAH. HE SPENT THE NIGHT AND THEN HE LEFT LIKE
16 6:00 THE NEXT MORNING AND IT STILL WASN'T THERE, AND
17 THEN HE CAME BACK AROUND 9:00 THAT MORNING.

18 Q. DID YOU CALL HIM TO COME BACK?

19 A. YES, MA'AM.

20 Q. ALL RIGHT. AND HOW MUCH DID HE GET THEN?

21 A. I BELIEVE IT WAS A POUND.

22 Q. WHO BROUGHT IT TO YOUR HOUSE?

23 A. ROLANDO.

24 Q. WHAT HAPPENED AFTER YOU GOT THE METH? DID HE
25 SMOKE SOME?

1 A. YES, MA'AM.

2 Q. DO YOU KNOW APPROXIMATELY ABOUT WHAT TIME IT WAS
3 WHEN HE FINALLY LEFT YOUR HOUSE?

4 A. IT'S PROBABLY AROUND 12:00 IN THE AFTERNOON.

5 Q. 12:00 IN THE AFTERNOON?

6 A. UH-HUH.

7 Q. ALL RIGHT. AND DO YOU KNOW WHAT HAPPENED TO CHAD
8 AFTER HE LEFT YOUR HOUSE AND GOT BACK TO GREENVILLE,
9 SOUTH CAROLINA?

10 A. THAT HE WAS ARRESTED.

11 Q. DO YOU KNOW WHAT HE WAS ARRESTED FOR?

12 A. TRAFFICKING METH, I BELIEVE.

13 Q. HOW DID YOU FIND OUT THAT CHAD HAD BEEN ARRESTED
14 FOR TRAFFICKING METH?

15 A. SETH AND NINA CALLED ME AND TOLD ME.

16 MR. KAPPEL: OBJECTION, JUDGE, HEARSAY.

17 THE COURT: WELL, LET'S JUST ASK IT ---

18 MR. KAPPEL: NO, SIR. HE IS NOT A
19 CO-CONSPIRATOR. I OBJECT ON HEARSAY.

20 MS. EVANS: YOUR HONOR, HER ANSWER WAS SETH
21 AND NINA CALLED HER. SETH IS A CO-CONSPIRATOR.

22 THE COURT: WELL, NOT ONLY IS SETH A
23 CO-CONSPIRATOR, HE'S A PARTY IN INTEREST, SO I OVERRULE
24 YOUR OBJECTION.

25 BY MS. EVANS:

1 Q. HOW DID YOU FIND OUT THAT CHAD WAS ARRESTED?

2 A. FROM SETH AND NINA.

3 Q. AND WHAT DID SETH TELL YOU?

4 A. THAT HE WAS SET UP IN THE DRIVETHROUGH AT
5 MCDONALD'S, I BELIEVE.

6 Q. DID SETH TELL YOU HOW HE KNEW THAT?

7 A. I'M NOT SURE EXACTLY HOW HE KNEW IT. I THINK IT
8 WAS FROM CHAD'S BROTHER, THOUGH.

9 Q. OKAY. AFTER YOU HEARD THAT, DID CHAD TRY TO MAKE
10 PHONE CALLS TO YOU?

11 A. MONTHS LATER, YES.

12 Q. DID YOU DEAL WITH CHAD?

13 A. NO, MA'AM.

14 Q. WHY NOT?

15 A. BECAUSE I WAS AFRAID THAT HE WAS WORKING FOR THE
16 POLICE.

17 Q. APPROXIMATELY FROM DECEMBER 2004 TO APRIL -- I
18 GUESS YOU DIDN'T SELL AFTER THAT APRIL TO CHAD AT ALL?

19 A. NO, MA'AM.

20 Q. -- HOW MUCH DO YOU THINK YOU SOLD TO CHAD SEXTON?

21 A. A TOTAL?

22 Q. (NODDED HEAD.)

23 A. PROBABLY BETWEEN MAYBE FIVE POUNDS, MAYBE A
24 LITTLE MORE.

25 Q. OKAY. AND WE'VE ALREADY TALKED ABOUT THIS,

1 TALKING ABOUT BRIAN GETTING ARRESTED IN NORTH CAROLINA?

2 A. UH-HUH.

3 Q. AFTER BRIAN GOT OUT, DID YOU CONTINUE TO SELL TO
4 BRIAN MUELLER?

5 A. YES, MA'AM.

6 Q. WERE THOSE SALES IN ANY WAY RELATED TO SETH
7 STEARNS?

8 A. NOT AT THAT TIME.

9 Q. FROM YOUR UNDERSTANDING?

10 A. I DIDN'T THINK THAT HIM AND SETH WERE ON SPEAKING
11 TERMS REALLY ANYMORE.

12 Q. OKAY. AND DID SETH TELL YOU THAT HE AND, EARLIER
13 ON THAT HE AND BRIAN HAD CUT OFF THEIR BUSINESS DEAL?

14 A. SETH WAS JUST MAD AT BRIAN, AND I THINK BRIAN
15 QUIT ANSWERING HIS PHONE CALLS.

16 Q. AND, AMANDA, DID YOU HAVE A CELL PHONE DURING
17 THIS TIME FRAME?

18 A. YES, MA'AM.

19 Q. DO YOU KNOW, DO YOU REMEMBER YOUR CELL PHONE
20 NUMBER THAT YOU HAD?

21 A. YES, MA'AM.

22 Q. PLEASE TELL THE JURY WHAT YOUR CELL PHONE NUMBER
23 WAS.

24 A. [REDACTED] [REDACTED]

25 Q. ALL RIGHT. AND DID YOU HAVE PEOPLE'S NAMES

1 PROGRAMMED INTO THAT CELL PHONE?

2 A. YES, MA'AM.

3 Q. WAS SETH STEARNS ONE OF THE PEOPLE THAT YOU HAD
4 PROGRAMMED INTO THAT CELL PHONE?

5 A. YES, MA'AM.

6 Q. DO YOU REMEMBER SETH STEARNS' CELL PHONE NUMBER?

7 A. NO, MA'AM.

8 Q. I'M GOING TO SHOW YOU SOMETHING, AND DON'T READ
9 FROM IT, BUT I'M GOING TO SHOW YOU SOMETHING TO REFRESH
10 YOUR MEMORY, AND PLEASE LET ME KNOW IF THIS REFRESHES
11 YOUR MEMORY.

12 A. YES. (NODDED HEAD.)

13 Q. OKAY. LOOKING AT THOSE TWO NUMBERS, DO YOU KNOW
14 IF YOU HAD SETH STEARNS' PHONE NUMBER PROGRAMMED INTO
15 YOUR PHONE?

16 A. YES, I DID.

17 Q. DID YOU ALSO HAVE HIS WIFE'S CELL PHONE NUMBER
18 PROGRAMMED INTO YOUR PHONE?

19 A. YES.

20 Q. AND WHAT WERE THOSE CELL PHONE NUMBERS?

21 A. ([REDACTED] [REDACTED] AND [REDACTED] [REDACTED] AND [REDACTED]
22 [REDACTED])

23 Q. AND WHEN YOU WERE ARRESTED, WHERE WERE YOU
24 LIVING?

25 A. WHICH TIME? IN 2005?

1 Q. THE LAST TIME.

2 A. THIS ---

3 Q. FOR THE CHARGES THAT YOU ARE INCARCERATED, WHERE
4 IN ATLANTA WERE YOU LIVING?

5 A. IN A RENTAL HOUSE.

6 Q. WHAT'S THE NAME OF THE ROAD?

7 A. ON JENKINS (PHONETIC) DRIVE.

8 Q. SINCE YOU HAVE BEEN ARRESTED -- WHEN'S THE LAST
9 TIME YOU TALKED TO SETH STEARNS?

10 A. IT WAS BEFORE I WAS ARRESTED IN 2005.

11 Q. DID YOU ALSO HAVE OTHER PEOPLE'S CELL PHONE
12 NUMBERS PROGRAMMED INTO YOUR PHONE?

13 A. YES, MA'AM.

14 Q. DID YOU HAVE ROLANDO'S ---

15 A. YES, MA'AM.

16 Q. --- CELL PHONE NUMBER PROGRAMMED INTO YOUR PHONE?

17 A. YES, MA'AM, I DID.

18 Q. DO YOU REMEMBER ROLANDO'S NUMBER?

19 A. NO, MA'AM.

20 Q. IF I SHOWED YOU SOMETHING, WOULD THAT REFRESH
21 YOUR MEMORY AS TO ROLANDO'S NUMBER?

22 A. IF IT HAS A NAME BY IT, THEN THAT HAS TO BE IT.

23 Q. (HANDING.)

24 A. YES.

25 Q. OKAY. AND YOU BRIEFLY TALKED ABOUT SOMEBODY ELSE

1 THAT YOU DEALT WITH FROM SOUTH CAROLINA, AND I'M SORRY,
2 I WROTE DOWN HIS NAME, SOMEONE THAT WOULD COME WITH
3 BRIAN MUELLER, YOUNG'UN.

4 A. UH-HUH.

5 Q. DO YOU KNOW IF YOU HAD YOUNG'UN'S CELL PHONE
6 NUMBER?

7 A. I DID.

8 Q. AND WAS THAT NUMBER PROGRAMMED INTO YOUR PHONE?

9 A. YES, MA'AM.

10 Q. OKAY. AND IN GENERAL TERMS YOU TALKED ABOUT CHAD
11 OWING YOU A LOT OF MONEY. DID YOU, WHEN CHAD WOULD COME
12 DOWN AND YOU WOULD FRONT HIM DRUGS, WOULD YOU WRITE A
13 RECEIPT, ONE POUND OF METH, YOU OWE ME \$15,000.00?

14 A. NO, MA'AM. YOU DON'T KEEP PAPER TRAILS.

15 Q. WHY DON'T YOU KEEP PAPER TRAILS? HE OWED YOU
16 \$15,000.00.

17 A. THAT'S INCRIMINATING. USUALLY IT'S A MUTUAL
18 UNDERSTANDING. YOU WOULDN'T WANT SOMETHING WROTE DOWN
19 BECAUSE THAT WOULD LEAD TO THIS.

20 Q. THERE'S A CODE OUT THERE? WHAT HAPPENS IF YOU
21 DON'T PAY YOUR DEBTS TO YOUR DRUG SUPPLIER?

22 A. I THINK THAT DEPENDS. IN MY CASE NOTHING. IF
23 SOMEONE DIDN'T PAY ME, THERE WAS NOTHING I COULD DO
24 ABOUT IT.

25 Q. WELL, WHEN CHAD DIDN'T PAY YOU, HE WOULD ONLY GET

1 DRUGS IF HE CAME WITH THE MONEY.

2 A. RIGHT.

3 Q. SO YOU RUN THE RISK OF LOSING YOUR SUPPLY?

4 A. RIGHT.

5 Q. AND EVEN AFTER YOU SAID YOU FIRST MET SETH
6 STEARNS THROUGH MIKEY, DID YOU EVER HAVE ANY DEALINGS
7 WITH MIKEY AND SETH TOGETHER AFTER MIKEY WAS ARRESTED OR
8 WERE YOU ONLY DEALING DIRECTLY WITH SETH AT THAT POINT?

9 A. I WAS DEALING DIRECTLY WITH SETH AT THAT POINT.

10 MS. EVANS: BEG THE COURT'S INDULGENCE.

11 MS. FORDHAM, I DON'T HAVE ANY FURTHER
12 QUESTIONS. PLEASE ANSWER ANY QUESTIONS MR. KAPPEL MIGHT
13 HAVE FOR YOU.

14 MR. KAPPEL: THANK YOU, YOUR HONOR, MAY IT
15 PLEASE THE COURT.

16 CROSS-EXAMINATION BY MR. KAPPEL:

17 Q. I'LL BE WITH YOU IN JUST A SECOND. EXCUSE ME?

18 THE COURT: WOULD YOU LIKE SOME WATER?

19 THE WITNESS: YES, PLEASE.

20 BY MR. KAPPEL:

21 Q. OKAY. YOU SUPPLIED MR. MUELLER AND MR. SEXTON, I
22 THINK WE ALL CAN AGREE ON THAT; ISN'T THAT CORRECT?

23 A. YES.

24 Q. AND YOU SUPPLIED A VARIETY OF OTHER PEOPLE, TOO,
25 THAT AREN'T FROM SOUTH CAROLINA; ISN'T THAT CORRECT?

1 A. YES, SIR.

2 Q. IN FACT, YOU SUPPLIED PEOPLE IN THE ATLANTA AREA?

3 A. YES, SIR.

4 Q. NORTH CAROLINA?

5 A. MAYBE, YES.

6 Q. OKAY. AND OTHER PARTS OF GEORGIA; ISN'T THAT
7 RIGHT?

8 A. UH-HUH.

9 Q. WHERE ELSE WOULD PEOPLE COME TO SEE YOU?

10 A. THAT WAS IT, REALLY.

11 Q. OKAY. YOU INDICATED THAT YOU SOLD HOW MUCH TO
12 BRIAN MUELLER, DO YOU RECALL? DO YOU REMEMBER HOW MUCH
13 YOU SOLD TO HIM TOTAL?

14 A. PROBABLY TEN TO 20 POUNDS.

15 Q. WASN'T IT MORE LIKE 50?

16 A. NOT AT THE TIME WE'RE TALKING ABOUT BEFORE HE GOT
17 ARRESTED.

18 Q. ALL TOLD, HOW MUCH HAVE YOU SOLD TO BRIAN
19 MUELLER?

20 A. PROBABLY MORE LIKE 50.

21 Q. SO THE ANSWER TO MY QUESTION IS 50; ISN'T THAT
22 RIGHT?

23 A. YES, SIR.

24 Q. AND HOW MUCH TOTAL -- HOW MUCH WOULD 50 POUNDS OF
25 METHAMPHETAMINE BE?

1 A. HOW MUCH TOTAL MONEY?

2 Q. IS THAT THREE QUARTERS OF A MILLION DOLLARS?

3 A. I'M NOT SURE.

4 Q. WELL, YOU ARE SELLING THEM FOR 15,000 A POUND;
5 ISN'T THAT RIGHT?

6 A. YES, SIR.

7 Q. SO IF I WERE TO TELL YOU THAT 50 TIMES 15,000
8 WOULD BE 750,000, WOULD YOU AGREE WITH THAT?

9 A. YES, I WOULD.

10 Q. SO YOU SOLD THREE QUARTERS OF A MILLION DOLLARS
11 OF DRUGS TO ONE PERSON FROM GREENVILLE; ISN'T THAT
12 RIGHT?

13 A. UH-HUH.

14 Q. TAKING ALL OF YOUR CUSTOMERS FROM SOUTH CAROLINA,
15 GEORGIA, NORTH CAROLINA, WHAT IS THE TOTAL AMOUNT THAT
16 YOU SOLD IN YOUR CAREER?

17 A. I'M NOT SURE.

18 Q. CAN YOU GUESS?

19 A. I'VE NEVER TRIED TO.

20 Q. WOULD A THOUSAND POUNDS BE ABOUT CORRECT?

21 A. MAYBE.

22 Q. MORE THAN THAT?

23 A. I'M NOT SURE. I WOULDN'T THINK SO.

24 Q. SO YOU SOLD MULTIPLE MILLIONS OF DOLLARS OF
25 METHAMPHETAMINE?

1 A. YES, SIR.

2 Q. DOES THAT SOUND RIGHT?

3 A. UH-HUH.

4 Q. AND YOUR SUPPLIERS WERE MEXICAN NATIONALS?

5 A. YES, SIR.

6 Q. DO YOU SPEAK SPANISH?

7 A. NO.

8 Q. DO THEY SPEAK ENGLISH?

9 A. NO.

10 Q. HOW WOULD YOU ALL SPEAK?

11 A. I SPEAK BROKEN SPANISH AND THEY SPEAK BROKEN
12 ENGLISH.

13 Q. BUT BETWEEN YOU AND THESE MEXICAN NATIONALS, YOU
14 WERE ABLE TO WORK IT OUT TO WHERE YOU COULD BUY MULTIPLE
15 MILLION DOLLARS WORTH OF DRUGS OVER A PERIOD OF TIME?

16 A. YES, SIR.

17 Q. AND YOU WOULD IN TURN SELL THOSE DRUGS AND MAKE A
18 PROFIT?

19 A. YES, SIR.

20 Q. AND YOU WERE MAKING A PROFIT BECAUSE, AS YOU
21 INDICATED, YOU WEREN'T REALLY USING DRUGS, YOU WEREN'T
22 USING METHAMPHETAMINE WHEN YOU FIRST STARTED SELLING IT?

23 A. YES, SIR.

24 Q. THAT'S WHEN YOU HAD A HOUSE, AN APARTMENT, A CAR?

25 A. UH-HUH.

1 Q. YOU WERE BUYING YOUR GROCERIES; ISN'T THAT
2 CORRECT?

3 A. UH-HUH.

4 Q. HOW MANY DIFFERENT SUPPLIERS OR HOW MANY
5 DIFFERENT -- WELL, LET ME ASK YOU THIS: YOUR SUPPLIER
6 WAS A GUY NAMED ROLANDO; ISN'T THAT RIGHT?

7 A. YES, SIR.

8 Q. AND HE GOT SHOT?

9 A. YES, SIR.

10 Q. SO HE'S UNAVAILABLE TO YOU?

11 A. UH-HUH.

12 Q. AND THAT'S WHEN HIS WIFE TOOK OVER?

13 A. YES, SIR.

14 Q. NOW, HOW LONG DID HIS WIFE SUPPLY YOU WITH
15 METHAMPHETAMINE?

16 A. AS LONG AS HE WAS IN THE HOSPITAL; A MONTH OR
17 TWO.

18 Q. SO WOULD THAT BE DAILY?

19 A. WHENEVER IT WAS NEEDED.

20 Q. HOW OFTEN WOULD THAT HAVE BEEN?

21 A. SOMETIMES DAILY AND SOMETIMES NOT.

22 Q. ON AVERAGE PER WEEK HOW MANY TIMES WOULD JOVITA
23 COME OVER WITH METHAMPHETAMINE?

24 A. PROBABLY THREE.

25 Q. AND HOW MANY POUNDS WOULD SHE BRING YOU AT A

1 TIME?

2 A. NO MORE THAN TWO.

3 Q. SO JOVITA WAS DELIVERING TO YOU AROUND SIX POUNDS
4 OF METHAMPHETAMINE PER WEEK?

5 A. UH-HUH.

6 Q. IS THAT CORRECT?

7 A. UH-HUH.

8 Q. WOULD SHE COME INTO YOUR HOUSE?

9 A. YES, SIR.

10 Q. AND THEN SHE WOULD GIVE YOU THE DRUGS AND I GUESS
11 WOULD SHE GIVE YOU THE DRUGS ON CREDIT?

12 A. YES, SIR.

13 Q. YOU WOULD IN TURN HAVE TO PAY HER BACK?

14 A. YES, SIR.

15 Q. ALL RIGHT. AFTER ROLANDO GOT OUT OF THE
16 HOSPITAL, THEN HE STARTED TO SUPPLY YOU AGAIN; ISN'T
17 THAT RIGHT?

18 A. YES, SIR.

19 Q. AND ONCE ROLANDO STARTED SUPPLYING, THAT'S WHEN
20 YOU HAD THE PROBLEM WITH -- RAPHAEL HAD THE PROBLEM WITH
21 ROLANDO AND YOU STARTED DEALING WITH RAPHAEL?

22 A. YES.

23 Q. HOW MANY DIFFERENT PEOPLE OR CUSTOMERS DID YOU
24 HAVE FROM SOUTH CAROLINA: WAS IT MORE THAN TEN?

25 A. NO, IT WAS NOT MORE THAN TEN.

1 Q. FIVE?

2 A. IT WAS PROBABLY FIVE.

3 Q. AND ONE OF THOSE CUSTOMERS FROM SOUTH CAROLINA
4 WAS THIS ALEX HATZIDAKIS; ISN'T THAT RIGHT?

5 A. YES.

6 Q. AND HE WAS FROM GREENVILLE?

7 A. YES, SIR.

8 MR. KAPPEL: JUST A MOMENT.

9 BY MR. KAPPEL:

10 Q. NOW, YOU INDICATED THAT YOU ACTUALLY MET SETH
11 STEARNS THROUGH A GUY NAMED MIKEY; IS THAT RIGHT?

12 A. YES.

13 Q. MIKEY?

14 A. WALLACE KIMBALL.

15 Q. MIKEY WALLACE KIMBALL?

16 A. UH-HUH.

17 Q. YOU REALIZED THAT MIKEY KIMBALL WAS IN JAIL?

18 A. UH-HUH.

19 Q. IS HE STILL IN JAIL NOW?

20 A. UH-HUH.

21 Q. DO YOU KNOW WHERE HE'S IN JAIL?

22 A. NO.

23 Q. WOULD IT BE IN THE STATE OF GEORGIA?

24 A. YES, IT IS.

25 Q. JUST LIKE YOU ARE IN THE DETENTION CENTER IN

1 GEORGIA ---

2 A. YES, I AM.

3 Q. --- HE ALSO IS IN THE DETENTION CENTER IN
4 GEORGIA?

5 A. YES.

6 Q. WELL, WHAT OTHER PEOPLE FROM -- I SAW YOU
7 COUNTING YOUR FINGERS -- YOU HAD ALEX, YOU HAD MUELLER,
8 YOU HAD SEXTON, YOU STATE YOU HAD STEARNS. WHO ELSE
9 FROM SOUTH CAROLINA?

10 A. A GUY NAMED BRIAN PHILLIPS.

11 Q. WHO ELSE?

12 A. YOUNG'UN, THAT WAS IT.

13 Q. WHO WAS BRIAN PHILLIPS?

14 A. HE WAS THE SAME -- I MEAN, HE CAME DOWN AND
15 BOUGHT METH, TOO.

16 Q. WHERE WAS HE FROM?

17 A. GREENVILLE.

18 Q. WHERE IS YOUNG'UN FROM?

19 A. GREENVILLE.

20 Q. HOW DID YOU MEET BRIAN PHILLIPS?

21 A. THROUGH ALEX HATZIDAKIS.

22 Q. SO YOU MET A NUMBER OF PEOPLE THROUGH ALEX
23 HATZIDAKIS; IS THAT RIGHT?

24 A. YES.

25 Q. DO YOU KNOW WHERE HE IS?

1 A. HE'S IN FEDERAL PRISON.

2 Q. FEDERAL CUSTODY?

3 A. RIGHT.

4 Q. JUST LIKE YOU WILL BE?

5 A. UH-HUH.

6 Q. ISN'T IT TRUE THAT YOU KNEW THE NAME OR KNEW
7 KENNY LAVENDER?

8 A. I'VE HEARD THE NAME.

9 Q. YOU HAVE SPOKEN TO CHAD SEXTON ABOUT KENNY
10 LAVENDER, HAVE YOU NOT?

11 A. I BELIEVE SO.

12 Q. SO WHEN YOU SAID THAT YOU DIDN'T KNOW ANY OF THE
13 CUSTOMERS OR PARTNERS THAT HE HAD IN GREENVILLE, YOU
14 KNEW OF KENNY LAVENDER?

15 A. MAYBE. I'M NOT POSITIVE. I'VE HEARD THE NAME
16 BUT I'VE NEVER MET HIM, NO.

17 Q. I'M NOT ASKING IF YOU EVER MET HIM. YOU KNEW OF
18 HIM THROUGH CHAD?

19 A. YES.

20 Q. AND YOU TALKED TO CHAD ABOUT LAVENDER?

21 A. I TALKED TO CHAD ABOUT HIM ONE TIME WHEN CHAD WAS
22 AT MY HOUSE AND BRIAN WAS IN JAIL AND HE PUT US ON THE
23 PHONE TOGETHER. THAT'S THE ONLY TIME.

24 Q. ALL RIGHT. AND WOULD THAT HAVE BEEN -- WELL, LET
25 ME ASK YOU THIS QUESTION. SORRY ABOUT THAT. LET ME ASK

1 YOU THIS: DID YOU REALIZE OR KNOW WHEN BRIAN MUELLER
2 WAS ARRESTED IN GEORGIA?

3 A. YES.

4 Q. AND HE HAD THE THREE POUNDS OF METHAMPHETAMINES
5 HE WAS GONNA RETURN TO YOU?

6 A. YES.

7 Q. LET ME ASK YOU THIS: IS THAT SOMETHING THAT
8 WOULD HAPPEN ROUTINELY, THEY WOULD BRING IT BACK AND SAY
9 THIS IS REALLY BAD, I CAN'T GET RID OF IT?

10 A. THAT WOULD HAPPEN SOMETIMES, YES.

11 Q. YOU WOULD TAKE IT BACK TO ROLANDO ---

12 A. YES.

13 Q. --- AND YOU'D SAY, I'M SORRY, I CAN'T SELL THIS,
14 GET RID OF IT?

15 A. YES.

16 Q. AND THEY WOULD COMPLY WITH THAT, WOULD THEY NOT?

17 A. YES.

18 Q. WHEN DID YOU FIRST GIVE THIS STATEMENT TO LAW
19 ENFORCEMENT, DO YOU REMEMBER?

20 A. WHEN I WAS ARRESTED IN MARCH.

21 Q. THAT WOULD HAVE BEEN MARCH 2007?

22 A. YES, SIR.

23 Q. OKAY. WERE YOU ADVISED THAT SETH STEARNS' TRIAL
24 WAS IN APRIL OF THIS YEAR?

25 A. NO.

1 Q. YOU WERE NEVER TOLD THAT THIS CASE WAS GOING TO
2 TRIAL?

3 A. I'M NOT SURE. I THINK I WAS SUPPOSED TO, TOO,
4 RIGHT, SHORTLY AFTER I WAS ARRESTED, SO PROBABLY YES.

5 Q. OKAY. NOW, THE ATTORNEY GENERAL'S OFFICE SAID
6 THAT NO ONE HAS PROMISED YOU ANY KIND OF DEALS. ARE YOU
7 FAMILIAR WITH THE FORM IN FEDERAL COURT UNDER RULE 35
8 WHERE YOU RECEIVE 20 YEARS BUT THERE'S STILL A
9 POSSIBILITY YOU CAN GET A TIME CUT?

10 A. YES.

11 Q. AND I'M SURE YOU ARE FAMILIAR WITH THE PROCESS
12 AND GOING BACK BEFORE THE JUDGE AND BEFORE THE U.S.
13 ATTORNEY'S OFFICE TO TRY TO GET YOUR TIME CUT?

14 A. YES.

15 Q. AND THAT'S WHAT YOU WANT, ISN'T IT?

16 A. OF COURSE THAT'S WHAT I WANT. BUT THERE WAS NO
17 GUARANTEE THAT WILL EVER HAPPEN.

18 Q. YOU HOPE THAT IT WILL HAPPEN?

19 A. YEAH.

20 Q. YOU HOPE BY YOUR APPEARANCE HERE TODAY THAT THAT
21 WILL HELP, DO YOU NOT?

22 A. I WOULD HOPE, BUT THERE'S NO GUARANTEE. I'VE
23 BEEN FULLY COOPERATIVE SINCE THE DAY I GOT ARRESTED AND
24 THAT HASN'T HELPED ME IN ANY WAY, SO THIS MIGHT NOT MAKE
25 ANY DIFFERENCE, THE SAME AS THE REST HASN'T.

1 Q. BUT YOU CAN'T SAY ANYTHING DIFFERENT THAN WHAT
2 YOU SAID PREVIOUSLY, CAN YOU?

3 A. NO.

4 Q. EVEN THOUGH YOUR COOPERATION MARCH 13TH, 2007
5 DIDN'T DO ANY GOOD, YOU CAN'T COME HERE TODAY AND TELL A
6 DIFFERENT STORY?

7 A. NO.

8 Q. SO YOU HAVE TO KIND OF STICK WITH WHAT YOU GOT.

9 A. YES.

10 Q. WHEN BRIAN MUELLER WOULD COME DOWN, WHEN YOU
11 WOULD TALK TO CHAD SEXTON AND YOU SAY YOU WOULD TALK
12 WITH SETH STEARNS, THE FORM OF COMMUNICATION TYPICALLY
13 WAS BY TELEPHONE, WAS IT NOT?

14 A. YES, IT WAS.

15 Q. IT WAS BY CELL PHONE?

16 A. YES..

17 Q. AND YOU HAVE LOOKED THROUGH YOUR CELL PHONE BILLS
18 BEFORE, HAVE YOU NOT, WHEN YOU GET THEM?

19 A. YES, I HAVE.

20 Q. DOESN'T IT HAVE A BIG SHEET OF ALL THE PHONE
21 NUMBERS YOU CALLED, ALL THE PHONE NUMBERS YOU RECEIVED?

22 A. THAT WAS INCOMING, YES.

23 Q. THAT WOULD BE A NUMBER OF MONTHS WHERE YOUR CELL
24 PHONE WOULD HAVE A PATTERN OF WHO'S CALLING YOU; ISN'T
25 THAT RIGHT?

1 A. YES.

2 Q. YOU COULD ALMOST LOOK ON YOUR CELL PHONE BILL,
3 COULD YOU NOT, AND LOOK FOR BRIAN MUELLER'S PHONE
4 NUMBER, LOOK FOR CHAD SEXTON'S PHONE NUMBER. IN FACT,
5 YOU COULD EVEN LOOK FOR SETH STEARNS' PHONE NUMBER AND
6 ACTUALLY GO THROUGH ALL YOUR BILLING STATEMENTS THROUGH
7 YOUR COMPANY AND SEE A PATTERN OF WHO IS CALLING YOU AND
8 WHEN, COULD YOU NOT?

9 A. I'M SURE YOU COULD.

10 Q. IN FACT, THAT WOULD BE TRUE FOR ALL CUSTOMERS.
11 IT WOULD BE TRUE FOR ROLANDO, JOVITA AND RAPHAEL; IS
12 THAT RIGHT?

13 A. YES.

14 Q. NOW, YOU REMEMBERED YOUR CELL PHONE NUMBER
15 WITHOUT ANY HESITATION. DID YOU HAVE THE SAME CELL
16 PHONE NUMBER FOR ---

17 A. FOR FIVE OR SIX YEARS.

18 Q. OKAY. SO YOU HAD -- SO THERE'S NO QUESTION OR
19 ISSUE AS TO YOUR PHONE NUMBER AND WHO IT BELONGED TO;
20 ISN'T THAT RIGHT?

21 A. RIGHT.

22 Q. AND THERE WAS NO QUESTION THAT THE PHONE NUMBERS
23 OR THE PHONE CALLS THAT WERE COMING INTO THAT TELEPHONE
24 WERE FOR YOU?

25 A. RIGHT.

1 Q. YOU DIDN'T LOAN IT OUT TO ANYBODY?

2 A. NO.

3 Q. YOU DIDN'T LOSE IT?

4 A. NO.

5 Q. YOU DIDN'T REPLACE IT, CHANGE SERVICE?

6 A. NO.

7 Q. WHAT SERVICE DID YOU HAVE?

8 A. NEXTEL.

9 Q. OKAY. SO YOU HAD ONE OF THE REPUTABLE BIG
10 COMPANIES FOR CELL PHONES?

11 A. I HAD IT FROM WHEN I WAS WORKING AT THE AIRPORT
12 AND THAT'S WHAT THEY GAVE US THERE.

13 Q. OKAY. WHEN WAS THE LAST TIME YOU REVIEWED YOUR
14 STATEMENT BEFORE YOU TESTIFIED THIS AFTERNOON?

15 A. I HAVEN'T SEEN IT SINCE MARCH. I READ OVER IT
16 BRIEFLY BEFORE I WAS BROUGHT IN HERE.

17 Q. DIDN'T YOU JUST READ OVER IT A FEW MINUTES AGO?

18 A. THAT'S WHAT I JUST SAID, I READ OVER IT BRIEFLY.

19 Q. OKAY. SO WHILE YOU WERE WAITING TO BE BROUGHT IN
20 HERE, YOU WERE ACTUALLY IN THAT ROOM IN THERE READING
21 YOUR STATEMENT?

22 A. UH-HUH. YES.

23 MR. KAPPEL: JUST A MOMENT, JUDGE.

24 BY MR. KAPPEL:

25 Q. DID YOU DEVELOP ANY KIND OF FRIENDSHIP WITH BRIAN

1 MUELLER, DID YOU ALL BECOME FRIENDS?

2 A. YES, WE DID.

3 Q. AND YOU WOULD TALK ABOUT THINGS JUST LIKE FRIENDS
4 WOULD?

5 A. YES.

6 Q. THAT OCCURRED OVER HOW LONG, OVER ABOUT A YEAR?

7 A. UH-HUH.

8 Q. WHAT ABOUT WITH CHAD SEXTON?

9 A. NO.

10 Q. WAS IT MOSTLY BECAUSE HE OWED YOU MONEY?

11 A. WE WERE JUST NEVER REALLY FRIENDS. THAT WAS JUST
12 BUSINESS.

13 Q. ALL RIGHT. BUT Y'ALL WOULD TALK REGULARLY, WOULD
14 YOU NOT?

15 A. USUALLY ABOUT BUSINESS, NOTHING ELSE.

16 Q. OKAY. THIS PARTICULAR CASE WOULD BE BUSINESS,
17 CORRECT?

18 A. YES.

19 Q. HAVE YOU TALKED TO ANY OF THE OTHER PEOPLE ABOUT
20 THIS PARTICULAR CASE?

21 A. NO, I HAVEN'T TALKED ABOUT THIS CASE.

22 Q. YOU HADN'T TALKED TO ANYBODY ABOUT THIS CASE
23 DOWNSTAIRS?

24 A. NO.

25 Q. HOW ABOUT WHEN Y'ALL HAVE BEEN TRANSPORTED BACK

1 AND FORTH TO THE JAIL ---

2 A. NO.

3 Q. --- IN GREENVILLE?

4 A. I HAVEN'T TALKED ABOUT THIS CASE.

5 Q. WEREN'T YOU ALL IN THE SAME VAN AS YOU ALL WOULD
6 GO BACK AND FORTH TO THE DETENTION CENTER?

7 A. UH-HUH.

8 Q. SO THERE WOULD BE AN OPPORTUNITY FOR YOU ALL TO
9 SPEAK?

10 MS. EVANS: OBJECTION, YOUR HONOR. THE
11 WITNESSES ARE ALL SEQUESTERED. THEY'VE ALL BEEN TOLD.
12 HE KNOWS THAT, HE ASKED FOR IT.

13 THE COURT: WELL, HE CAN ASK THE QUESTION.
14 I MEAN, OVERRULED.

15 GO AHEAD.

16 BY MR. KAPPEL:

17 Q. HAVEN'T Y'ALL BEEN IN THE SAME VAN GOING BACK AND
18 FORTH EACH DAY THIS WEEK?

19 A. THIS IS THE ONLY DAY I'VE BEEN HERE.

20 Q. OKAY. BUT Y'ALL WENT IN THE VAN THIS MORNING,
21 DID YOU NOT?

22 A. ON THE WAY HERE, THAT WAS IT. BUT WE DIDN'T TALK
23 ABOUT THIS CASE.

24 Q. RIGHT.

25 MR. KAPPEL: JUST A MOMENT, JUDGE.

1 BY MR. KAPPEL:

2 Q. HOW MANY PEOPLE DID ALEX HATZIDAKIS INTRODUCE YOU
3 TO? MORE THAN ONE?

4 A. YES.

5 Q. HOW MANY?

6 A. I'M NOT SURE.

7 Q. CAN YOU GUESS?

8 A. ARE YOU SAYING FROM SOUTH CAROLINA OR FROM
9 ATLANTA?

10 Q. EVERYWHERE. GIVE ME BOTH.

11 A. I DON'T KNOW THE TOTAL PEOPLE HE'S INTRODUCED ME
12 TO.

13 Q. CAN YOU GIVE ME AN IDEA?

14 A. NO.

15 Q. YOU CAN'T EVEN SPECULATE? MORE THAN TEN, MORE
16 THAN 15?

17 A. MAYBE MORE THAN TEN. HE INTRODUCED ME TO A LOT
18 OF PEOPLE. HE KNEW A LOT OF PEOPLE IN A LOT OF PLACES.

19 Q. HOW MANY PEOPLE IN SOUTH CAROLINA?

20 A. HE KNEW EVERYBODY FROM SOUTH CAROLINA.

21 Q. ALL RIGHT. HOW MANY PEOPLE ARE WE TALKING ABOUT
22 IN SOUTH CAROLINA? FIVE?

23 A. MOST OF THE PEOPLE THAT I MET IN SOUTH CAROLINA
24 HE KNEW, TOO.

25 Q. ALL RIGHT. AND HOW MANY PEOPLE ARE WE TALKING

1 ABOUT, FIVE?

2 A. ALL THE PEOPLE I KNEW. FIVE OR SIX.

3 Q. ALL RIGHT. AND HOW MANY PEOPLE DID MIKEY KIMBALL
4 INTRODUCE YOU TO?

5 A. JUST SETH AND ALEX.

6 Q. SO BASICALLY MIKEY WAS JUST SIMPLY FINDING
7 CUSTOMERS ON HIS OWN AND NOT INTRODUCING YOU TO HIM?

8 A. RIGHT.

9 Q. EXCEPT FOR THOSE TWO?

10 A. ALEX WASN'T HIS CUSTOMER, WE WERE FRIENDS.

11 Q. OKAY. SO HE INTRODUCED YOU TO ALEX AND SETH BUT
12 NOBODY ELSE; IS THAT RIGHT?

13 A. NO. HE INTRODUCED ME TO A LOT OF PEOPLE FROM
14 ATLANTA TOO.

15 Q. TO BUY DRUGS FROM YOU?

16 A. NO. THEY WOULD BUY DRUGS FROM HIM. HE WOULD BE
17 IN A MOTEL ROOM AND I WOULD COME IN AND HE WOULD HAVE
18 PEOPLE THERE AND WE WOULD JUST MEET THAT WAY.

19 Q. SO YOU WERE PARTNERS OFTEN WITH THIS MIKEY
20 KIMBALL?

21 A. YES.

22 Q. ALL RIGHT. DO YOU KNOW ROBBY SEXTON?

23 A. NO.

24 Q. EVER DEAL WITH HIM?

25 A. NO. NEVER MET HIM.

1 Q. EVER TALK TO HIM ON THE PHONE?

2 A. NO.

3 Q. HOW MUCH TOTAL DID YOU SELL TO CHAD SEXTON: ABOUT
4 TEN POUNDS?

5 A. BETWEEN FIVE AND TEN POUNDS.

6 Q. OKAY.

7 MR. KAPPEL: THAT'S ALL I HAVE, JUDGE.

8 MS. EVANS: JUST A FEW BRIEF QUESTIONS.

9 REDIRECT EXAMINATION MS. EVANS:

10 Q. YOU TESTIFIED THAT YOU SOLD APPROXIMATELY 50
11 POUNDS TO BRIAN MUELLER?

12 A. UH-HUH.

13 Q. AND HE BROUGHT THAT INTO SOUTH CAROLINA?

14 A. YES, MA'AM.

15 Q. HOW DID YOU GET TO KNOW BRIAN MUELLER?

16 A. FROM SETH STEARNS.

17 Q. BUT FOR SETH STEARNS, WOULD YOU HAVE EVER BEEN
18 GIVING 50 POUNDS TO BRIAN MUELLER TO BRING INTO SOUTH
19 CAROLINA?

20 A. NO.

21 Q. WAS THAT HOW MUCH YOU SOLD TO CHAD SEXTON?

22 A. BETWEEN FIVE AND TEN POUNDS.

23 Q. BUT FOR SETH STEARNS, WOULD CHAD SEXTON EVER HAVE
24 THE OPPORTUNITY TO COME TO YOU AND BRING THAT FIVE TO
25 TEN POUNDS INTO GREENVILLE?

1 A. NO.

2 Q. YOU TALKED ABOUT COOPERATION. DID YOU COOPERATE
3 RIGHT AWAY?

4 A. NOT AT FIRST, NO.

5 Q. WITHIN A COUPLE OF HOURS OF YOUR ARREST?

6 A. WITHIN A COUPLE OF HOURS I DID, YES.

7 Q. AND YOU WERE ASKED ABOUT THE PEOPLE THAT WERE
8 SUPPLYING YOU. DID YOU TURN OVER YOUR MEXICAN SUPPLIERS
9 TO THE FEDERAL AUTHORITIES?

10 A. YES, I DID.

11 Q. WHAT DID YOU TELL THEM ABOUT THEM?

12 A. I GAVE THEM THEIR ADDRESS AND EVERYTHING.

13 Q. PHONE NUMBERS?

14 A. PHONE NUMBERS, ADDRESSES, ANY NUMBER I HAD FOR
15 THEM AND ANY ADDRESS I HAD FOR THEM.

16 Q. DID YOU GIVE ALL THESE OTHER NAMES THAT YOU WERE
17 ASKED ABOUT ON CROSS-EXAMINATION, DID YOU TELL THE
18 FEDERAL AUTHORITIES ABOUT THOSE PEOPLE WHEN YOU WERE
19 ARRESTED?

20 A. I DON'T UNDERSTAND THAT QUESTION.

21 Q. DID YOU FULLY COOPERATE AND DID YOU ANSWER ANY
22 QUESTION THAT WAS POSED TO YOU ---

23 A. YES.

24 Q. --- ABOUT YOUR DRUG DEALING?

25 A. YES, I DID.

1 Q. ALL THOSE PHONE NUMBERS AND THOSE PHONE RECORDS
2 THAT I SHOWED YOU, WHO DID YOU GIVE YOUR PHONE TO?

3 A. THE D.E.A.

4 Q. IN ADDITION TO THE PEOPLE YOU WERE COUNTING, WAS
5 ONE OF THOSE PEOPLE YOU WERE SUPPLYING METH TO IN SOUTH
6 CAROLINA SETH STEARNS?

7 A. YES.

8 Q. WHEN YOU WERE COOPERATING WITH LAW ENFORCEMENT,
9 EITHER THE FEDS OR WHEN S.L.E.D. CAME DOWN TO INTERVIEW
10 YOU, DID ANYONE FROM S.L.E.D. TELL YOU ABOUT ANY OTHER
11 PEOPLE'S STATEMENTS THAT WERE MADE?

12 A. NO.

13 Q. THE INFORMATION THAT YOU GAVE EITHER THE FEDERAL
14 AUTHORITIES OR TO THE STATE AUTHORITIES, HOW DID YOU
15 KNOW THAT INFORMATION?

16 A. BECAUSE IT WAS THE TRUTH. EVERYTHING THAT I'VE
17 SAID, IT'S WHAT HAPPENED.

18 Q. AND YOU WERE ASKED A LOT OF QUESTIONS ABOUT ALEX,
19 AND I CAN'T PRONOUNCE HIS LAST NAME ---

20 A. HATZIDAKIS.

21 Q. AND YOU SAID HE KNEW JUST ABOUT EVERYBODY YOU
22 KNOW IN SOUTH CAROLINA?

23 A. YES, HE DID.

24 Q. DID HE ALSO KNOW SETH STEARNS?

25 A. YES, HE DID.

1 Q. AND HAVE YOU TALKED TO ANYBODY, ANY OF THESE
2 PEOPLE INVOLVED IN THIS CONSPIRACY, SINCE YOUR ARREST
3 ABOUT EITHER YOUR TESTIMONY OR WHAT THEY SAID?

4 A. NO.

5 Q. AND ARE YOU UNDER AN ORDER NOT TO TALK TO ANYBODY
6 WHETHER YOU'RE BACK THERE BEING TRANSPORTED OR ROOMING
7 WITH THEM IN THE GREENVILLE COUNTY DETENTION CENTER?

8 A. NOT TO TALK TO THEM, YES.

9 Q. ABOUT ANYTHING THAT ---

10 A. ABOUT ANYTHING THAT GOES ON WITH THE CASE.

11 Q. AND HAVE YOU SAID ANYTHING TO ANYBODY ABOUT YOUR
12 TESTIMONY HERE TODAY?

13 A. NO.

14 MS. EVANS: I HAVE NO FURTHER QUESTIONS.
15 THANK YOU VERY MUCH.

16 MR. KAPPEL: NOTHING FURTHER.

17 THE COURT: YOU MAY STEP DOWN. THANK YOU,
18 MA'AM.

19 MS. EVANS: YOUR HONOR, I WOULD JUST LIKE TO
20 REMIND HER THAT SHE'S STILL UNDER THAT SAME ORDER THAT
21 WE JUST WENT OVER.

22 THE COURT: DO YOU UNDERSTAND THAT, MA'AM?

23 THE WITNESS: YES, SIR.

24 THE COURT: THANK YOU, MA'AM.

25 (WHEREUPON, THE WITNESS WAS EXCUSED.)

1 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

2 MS. PORTER: BEG THE COURT'S INDULGENCE.

3 THE STATE RESTS, YOUR HONOR.

4 THE COURT: MADAM FORELADY, LADIES AND
5 GENTLEMEN OF THE JURY, I NEED TO TAKE UP SOME MATTERS
6 WITH THE ATTORNEYS, IT WILL ONLY TAKE A MINUTE OR SO AND
7 THEN WE'LL COME BACK. BUT I AM GOING TO ASK YOU TO
8 RETIRE TO THE JURY ROOM. AGAIN, DO NOT UNDERTAKE
9 DISCUSSION OF THE CASE IN ANY WAY AMONG YOURSELVES.

10 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
11 4:10 P.M.)

12 THE COURT: ANYTHING ELSE FROM THE STATE?

13 MS. PORTER: NO, YOUR HONOR.

14 THE COURT: ANYTHING FROM THE DEFENSE?

15 DEFENDANT'S MOTION FOR DIRECTED VERDICT:

16 MR. KAPPEL: JUDGE, OF COURSE, JUST MY USUAL
17 MOTIONS, A MOTION FOR DIRECTED VERDICT. VIEWING THE
18 EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE TO
19 SUPPORT A CONVICTION AGAINST MY CLIENT.

20 COURT'S RULING ON DEFENDANT'S MOTION:

21 THE COURT: YOU ARE, OF COURSE, FAMILIAR
22 WITH RULE 19 THAT I'M NOT CONCERNED ABOUT THE WEIGHT OF
23 THE EVIDENCE, ONLY WHETHER OR NOT THERE IS ANY EVIDENCE
24 THAT WOULD SUPPORT THE CHARGE IN THE INDICTMENT, AND I
25 FIND THAT THERE IS SUFFICIENT EVIDENCE TO GO FORWARD TO

1 THE JURY AND DENY YOUR MOTION FOR DIRECTED VERDICT.

2 HOW MANY WITNESSES DO YOU HAVE?

3 MR. KAPPEL: NONE, SIR.

4 THE COURT: ALL RIGHT. THE REASON, I'M
5 GOING TO SAY I THINK IT WOULD PROBABLY BE BETTER THAT WE
6 GO AHEAD AND THE DEFENSE RESTS ON THE RECORD WHEN THE
7 JURY COMES BACK, AND THEN I'LL EXCUSE THEM FOR THE DAY
8 AND WE'LL TAKE UP THE MATTERS OF LAW. BUT I'LL ASK THEM
9 AGAIN WHAT TIME. I WOULD IMAGINE THEY STILL WANT TO DO
10 9:00. BUT IF THEY WANT TO GIVE ME A LITTLE WINK OR TWO,
11 I WON'T COMPLAIN. I WILL TELL THEM THAT THIS WILL BE
12 THE FINAL STAGES AFTER YOU REST, AND WITH THE ARGUMENT
13 BY COUNSEL AND CHARGE ON THE LAW AND THEN IT WILL BE
14 GIVEN TO THEM.

15 ANYTHING ELSE FROM THE STATE BEFORE WE
16 INSTRUCT THE JURY OR RELEASE THE JURY?

17 MS. PORTER: I DON'T KNOW IF HE WANTS TO
18 TALK TO HIS CLIENT ABOUT TESTIFYING, BUT OTHER THAN
19 THAT, NO, SIR.

20 THE COURT: NO. THE CELL PHONE HASN'T GONE
21 OFF.

22 MR. KAPPEL: IT'S ON SILENT.

23 THE COURT: ALL RIGHT. LET'S ASK THE JURY
24 TO JOIN US.

25 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT

1 4:15 P.M.)

2 THE COURT: ALL RIGHT. LET THE RECORD
3 REFLECT THE JURY AND ALTERNATES ARE IN THE JURY-BOX.

4 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
5 JURY, YOU HAVE HEARD THE STATE ANNOUNCE OR STATE THAT
6 THEY HAVE RESTED.

7 DO YOU WISH TO GO FORWARD AT THIS TIME?

8 MR. KAPPEL: THE DEFENSE RESTS, JUDGE.

9 THE COURT: ALL RIGHT, MR. KAPPEL.

10 THAT CONCLUDES, THEN, THE TESTIMONY AND
11 EVIDENCE IN THE CASE. NOW, WE STILL HAVE THE ARGUMENT
12 BY COUNSEL AND THE CHARGE ON THE LAW APPLICABLE TO THIS
13 CASE. I ALSO NEED TO GO OVER WITH THE ATTORNEYS THE
14 CHARGES THAT ARE GOING TO BE GIVEN IN THIS CASE. IT IS
15 SOMEWHAT UNUSUAL.

16 ONE OF THE THINGS I DO TO WANT EMPHASIZE TO
17 YOU, THOUGH, OF COURSE, IS THAT A DEFENDANT HAS A
18 CONSTITUTIONAL RIGHT TO REMAIN SILENT, TO PUT UP NO
19 EVIDENCE AND EVEN NOT TO ATTEND THE TRIAL AND REQUIRE
20 THE STATE TO MEET ITS BURDEN OF PROOF BEYOND A
21 REASONABLE DOUBT. THE ASSERTION OF CONSTITUTIONAL
22 RIGHTS NOT TO TESTIFY OR PRESENT EVIDENCE MUST NOT BE
23 CONSIDERED BY YOU IN ANY OF YOUR DELIBERATIONS. UNDER
24 THE OATH YOU TOOK YOU ARE TO DRAW NO CONCLUSIONS
25 WHATEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE

1 DID NOT TESTIFY OR PUT UP EVIDENCE. AS I STATED, THE
2 DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE, AND
3 THE BURDEN OF PROOF REMAINS UPON THE STATE TO PROVE
4 GUILT BEYOND A REASONABLE DOUBT.

5 NOW, WITH THAT I'M GOING TO EXCUSE YOU FOR
6 THE DAY AND ASK YOU TO COME BACK IN THE MORNING. BY THE
7 WAY, I UNDERSTAND THERE HAS BEEN SOME CONCERN WHETHER OR
8 NOT YOU WILL HAVE ANYTHING ELSE TO DO. THIS WILL BE THE
9 LAST THING THAT YOU WILL HAVE TO DO THIS WEEK, BUT WE
10 WILL NEED TO START IN THE MORNING AND CONCLUDE THE CASE.

11 I WILL ASK YOU WHAT TIME YOU WOULD LIKE TO
12 START.

13 THE FORELADY: 9:00.

14 THE COURT: 9:00, ALL RIGHT, VERY GOOD.

15 A JUROR: 6:00.

16 THE COURT: 6:00, ALL RIGHT.

17 AGAIN, WE WILL CONCLUDE IT TOMORROW WITH
18 YOUR DELIBERATIONS, BUT WE HOPE TO HAVE THE CASE TO YOU
19 IN THE MORNING. SO WITH THAT I AM GOING TO EXCUSE YOU,
20 BUT AGAIN, PLEASE DO NOT UNDERTAKE DISCUSSION OF THE
21 CASE AMONG YOURSELVES OR PERMIT ANYBODY TO DISCUSS IT
22 WITH YOU. THANK YOU VERY MUCH.

23 EVERYONE ELSE REMAIN SEATED WHILE THE JURY
24 RETIRES FROM THE COURTROOM.

25 (WHEREUPON, THE JURY LEFT THE COURTROOM AT

1 4:17 P.M.)

2 THE COURT: LET ME ASK YOU FIRST. WE DON'T
3 NEED A RECORD, I DON'T THINK, FOR THE CHARGE. WE'LL PUT
4 ON THE RECORD WHAT YOU ASKED AND WHETHER I'VE AGREED TO
5 CHARGE OR NOT.

6 (OFF-THE-RECORD CHARGE CONFERENCE.)

7 (COURT ADJOURNED AT 4:20 P.M., TO RESUME ON
8 DECEMBER 13TH, 2007, AT APPROXIMATELY 9:00
9 A.M.)

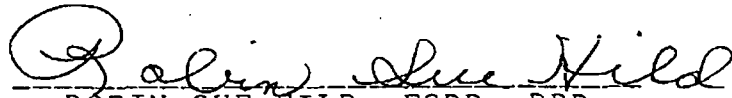
10 ***** END OF REQUESTED TRANSCRIPT *****
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CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE
TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND THE
EVIDENCE INTRODUCED IN THE TRIAL, VOLUME III, DECEMBER
12, 2007, PAGES 349 THROUGH 611, OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE STATE GRAND JURY, COURT OF
GENERAL SESSIONS FOR GREENVILLE COUNTY, SOUTH CAROLINA,
ON THE 10TH DAY, 11TH DAY, 12TH DAY AND 13TH DAY OF
DECEMBER, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

JULY 24, 2006


ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH) IN THE COURT OF GENERAL
CAROLINA) SESSIONS
)
STATE GRAND JURY) INDICTMENT NO: 2005-GS-47-25
COUNTY OF GREENVILLE) COUNT ONE

STATE OF SOUTH)
CAROLINA)
)
PLAINTIFF,) TRANSCRIPT OF RECORD
) TRIAL - VOLUME IV
-VS-)
)
SETH AARON STEARNS,)
)
DEFENDANT.)

DECEMBER 13, 2007
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A
JURY.

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

SUSAN O. PORTER, ESQ.
JENNIFER EVANS, ESQ.
ASSISTANT ATTORNEY GENERALS, STATE GRAND JURY
ATTORNEYS FOR THE STATE

MATT KAPPEL, ESQ.
ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

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WITNESSES

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NO WITNESSES WERE CALLED.

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EXHIBITS

NO.	DESCRIPTION	ID.	EV.

NO EXHIBITS WERE INTRODUCED.

1 ***** START OF REQUESTED TRANSCRIPT *****

2 (THE TRIAL IN THE MATTER OF THE STATE OF
3 SOUTH CAROLINA VERSUS SETH AARON STEARNS
4 RESUMED AT APPROXIMATELY 9:00 A.M.)

5 THE COURT: ALL RIGHT. WE'RE READY TO
6 PROCEED FROM THE STATE?

7 MS. PORTER: YES, YOUR HONOR.

8 THE COURT: FROM THE DEFENSE?

9 MR. KAPPEL: YES, YOUR HONOR.

10 THE COURT: BEFORE WE START, THOUGH, IT'S MY
11 UNDERSTANDING THAT ONE JUROR, NUMBER 142, MS. LELL, HAS
12 PHONED IN THAT SHE HAS THE FLU, AND SO I SUGGESTED THAT
13 SHE NOT COME IN AND I WILL EXCUSE HER AND SEAT THE FIRST
14 ALTERNATE IN HER PLACE.

15 IS THERE ANY OBJECTION OR RECOMMENDATION
16 FROM THE STATE?

17 MS. EVANS: YOUR HONOR, I COULD BE WRONG,
18 BUT I THINK THE NEW RULE THAT WENT INTO EFFECT IS THAT
19 YOU HAVE TO ACTUALLY DRAW THE TWO NAMES, NOT JUST SEAT
20 THE FIRST ALTERNATE. I HAD TO RESEARCH THAT ONCE
21 BECAUSE WE LOST THREE JURORS IN THE HOME GOLD TRIAL, AND
22 JUDGE JOHNSON AND I LOOKED AT THE RULE AND HE HAD TO PUT
23 BOTH NAMES IN AND THEN DRAW THEM OUT. IT'S MY
24 UNDERSTANDING OF THE RULE, AND I CAN'T THINK OF THE
25 STATUTE OFF MY HEAD ---

1 **THE COURT:** I CAN'T TELL YOU THE RULE,
2 EITHER, BECAUSE I'VE BEEN DOING IT UNDER THE OLD LAW.

3 **MS. EVANS:** IT USED TO BE THAT WAY. I DON'T
4 HAVE ANY OBJECTION TO IT; I JUST REMEMBER HAVING TO DO
5 THAT RESEARCH FOR THE HOME GOLD TRIAL.

6 **THE COURT:** ANY OBJECTION TO DOING IT THAT
7 WAY, OR DO YOU OBJECT TO ME RELEASING THE LADY WITH THE
8 FLU? THAT WAY WE WOULDN'T HAVE TO DRAW AN ALTERNATE, WE
9 COULD JUST INFECT THE WHOLE JURY.

10 **MS. PORTER:** I'D PREFER THE FLU NOT COME
11 AROUND.

12 **MR. KAPPEL:** JUST A MOMENT, JUDGE, LET ME
13 TAKE A LOOK AT THIS. I DON'T MIND DRAWING, IF THAT'S
14 THE WAY THE STATE WISHES TO DO IT.

15 **THE COURT:** ALL RIGHT. THAT'S SECTION
16 14-7-1340 THAT -- IT'S NOT THE OLD LAW, BUT IT IS THE
17 OLD LAW BECAUSE APPARENTLY IT WAS ADOPTED IN 1937, THAT
18 WAS A LITTLE BIT BEFORE MY TIME. I DON'T KNOW WHY WE'VE
19 MISSED IT. BUT IT DOES. IT SAYS IT'S DONE BY BALLOT
20 AMONG THE ALTERNATES.

21 ALL RIGHT. OF COURSE, NOW UNDER THE OLD
22 SYSTEM WE HAD BALLOTS, OR WE HAD THE NAMES IN THE LITTLE
23 CAPSULES AND EVERYTHING. NOW WE DO IT BY COMPUTER.

24 LET'S SEE. DO WE HAVE A BLIND PERSON OR A
25 PERSON WHO IS UNABLE TO READ OR WRITE?

1 ALL RIGHT. JUST TAKE TWO NAMES, PUT THEM IN
2 HERE.

3 THE CLERK: I'VE GOT THEM IN HERE.

4 THE COURT: PERFECT. AND LET THE CLERK DRAW
5 THE NAME.

6 WHO IS THE LUCKY ONE?

7 THE CLERK: SARAH HARTWIG, JUROR NUMBER 60.

8 THE COURT: ALL RIGHT. I THINK SHE WAS THE
9 FIRST ALTERNATE.

10 THE CLERK: YES, SIR.

11 THE COURT: ALL RIGHT. ANYTHING ELSE BEFORE
12 WE BRING THE JURY BACK, FROM THE STATE?

13 MS. PORTER: NO, YOUR HONOR.

14 THE COURT: FROM THE DEFENSE?

15 MR. KAPPEL: JUST THE MATTER THAT ---

16 THE COURT: OH, YES, ALL RIGHT. NOW WE ARE
17 AT THE POINT THAT ALL THE EVIDENCE HAS BEEN ENTERED, WE
18 WOULD BE ABOUT READY TO GO TO THE JURY, AND THE DEFENSE
19 ENTERED OR MADE A MOTION FOR DIRECTED VERDICT, BUT I
20 UNDERSTAND IT WANTS TO AMEND THAT MOTION OR CLARIFY IT?

21 MR. KAPPEL: JUDGE, I JUST WANTED TO CLARIFY
22 THAT THAT ALSO INCLUDED ALL THE PRIOR OBJECTIONS I HAD
23 MADE BEFORE, AND OF COURSE, SUBJECT TO THE COURT'S
24 RULING, SO I JUST WANTED TO PRESERVE THAT FOR THE
25 RECORD.

1 **THE COURT:** ALL RIGHT. THE MOTION FOR
2 DIRECTED VERDICT IS DENIED, AND THAT WILL INCLUDE THE
3 COURT'S RULINGS ON ALL THE OBJECTIONS MADE BY THE
4 DEFENDANTS DURING THE COURSE OF THE TRIAL FOR THE RECORD
5 AND RENEWED FOR THE RECORD.

6 ALL RIGHT. ANYTHING ELSE FROM THE STATE?

7 **MS. PORTER:** NO, YOUR HONOR.

8 **THE COURT:** FROM THE DEFENSE?

9 **MR. KAPPEL:** NOTHING, YOUR HONOR.

10 **THE COURT:** ALL RIGHT. LET'S ASK THE JURY
11 TO JOIN US.

12 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
13 9:18 A.M.)

14 **THE COURT:** ALL RIGHT. MS. HARTWIG, JUROR
15 NUMBER 142, MS. LELL, APPARENTLY HAS THE FLU, OR AT
16 LEAST UNDER THE WEATHER, SO I'VE EXCUSED HER AND SO YOU
17 WILL NOW BECOME A MEMBER OF THE JURY AND SIT IN WITH THE
18 JURY.

19 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
20 JURY, AS I MENTIONED YESTERDAY, THIS WILL BE THE FINAL
21 PART OF THE CASE. THE ATTORNEYS WILL ARGUE AND THESE
22 WILL BE TRUE ARGUMENTS, UNLIKE THE OPENING STATEMENTS,
23 WHICH WOULD JUST BE THE STATEMENT OF WHAT THE CHARGES
24 WERE AND WHAT THEY INTENDED TO ESTABLISH, THESE WILL BE
25 TRUE ARGUMENTS AND THE ATTORNEYS WILL TRY TO CONVINCE

1 YOU AS TO THEIR VIEW OF THE FACTS IN THIS CASE. AFTER
2 THAT I WILL GIVE YOU THE CHARGE ON THE LAW AND THE CASE
3 THEN WILL BE GIVEN TO YOU FOR YOUR DETERMINATION.

4 IN A CASE OF THIS NATURE, THE STATE WILL GO
5 FIRST, AND THEN THE DEFENSE WILL CLOSE.

6 IS THAT CORRECT, MADAM ATTORNEY GENERAL?

7 MS. PORTER: YES, SIR, YOUR HONOR.

8 THE COURT: IS THAT CORRECT?

9 MR. KAPPEL: YES, SIR.

10 THE COURT: ALL RIGHT, VERY GOOD. YOU MAY
11 PROCEED. I RECOGNIZE THE ATTORNEY GENERAL FOR HER
12 CLOSING STATEMENTS.

13 MS. PORTER: THANK YOU, YOUR HONOR, MAY IT
14 PLEASE THE COURT.

15 CLOSING ARGUMENT ON BEHALF OF THE STATE BY MS. PORTER:

16 MS. PORTER: GOOD MORNING.

17 JURORS: GOOD MORNING.

18 MS. PORTER: FIRST AND FOREMOST, I WANT TO
19 THANK YOU. I THINK EVERYONE HERE AGREES THAT JURY
20 SERVICE IS NOT FUN, IT'S INCONVENIENT; BUT EXTREMELY,
21 EXTREMELY IMPORTANT. I KNOW THAT THE STATE DOES NOT
22 TAKE THIS DUTY LIGHTLY, IMPOSING UPON Y'ALL AND YOUR
23 CAREERS AND YOUR FAMILY TIME TO COME HERE AND LISTEN TO
24 US, BUT WE APPRECIATE IT.

25 I KNOW THE DEFENSE APPRECIATES IT, TOO,

1 BECAUSE THIS IS A SERIOUS MATTER AND IT'S AN IMPORTANT
2 MATTER AND IT DESERVES YOUR ATTENTION.

3 IN OPENING STATEMENT MS. EVANS ASKED YOU TO
4 LISTEN TO ALL THE EVIDENCE. AND I'VE BEEN PAYING
5 ATTENTION TO YOU, WATCHING YOU FROM TIME TO TIME. AND
6 EACH AND EVERY ONE OF YOU PAID ATTENTION, AND I WANT TO
7 SERIOUSLY THANK YOU FOR THAT. IT'S VERY IMPORTANT AND I
8 APPRECIATE IT.

9 THERE ARE THREE THINGS AND THREE THINGS ONLY
10 I'VE EVER ASKED A JURY TO DO AND I'M GOING TO ASK YOU TO
11 DO IT TODAY. FIRST AND FOREMOST, COME WITH AN OPEN
12 MIND. THIS IS NOT *LAW & ORDER*, IT IS NOT *CSI NEW YORK*
13 OR *MIAMI*. WE ARE NOT HOLLYWOOD AND WE DO NOT HAVE A
14 MULTI-MILLION DOLLAR BUDGET. IT'S REAL LIFE. IT'S THE
15 STATE OF SOUTH CAROLINA, IT'S THE COUNTY OF GREENVILLE,
16 ANDERSON, PICKENS, AND SPARTANBURG. SO PUT ALL THOSE
17 PRECONCEIVED NOTIONS OF HOW THE LEGAL SYSTEM WORKS FROM
18 T.V. OUT OF YOUR MIND AND COME WITH AN OPEN MIND.

19 SECOND, CONSIDER ALL OF THE EVIDENCE, NOT
20 JUST PHYSICAL EVIDENCE. NOT JUST PHYSICAL EVIDENCE.
21 ALL THE EVIDENCE. ALL THE EVIDENCE THAT CAME FROM THIS
22 WITNESS STAND. EVERY WITNESS. EVERY QUESTION. EVERY
23 ANSWER, WHETHER IT'S FROM THE STATE OR THE DEFENSE, IT'S
24 ALL IMPORTANT AND IT ALL DESERVES YOUR CONSIDERATION.

25 AND THIRD AND MOST IMPORTANTLY, USE YOUR

1 COMMON SENSES. YOU ARE A JURY OF THE DEFENDANT'S PEERS.
2 THIS SYSTEM MAY NOT BE PERFECT, BUT IT'S THE BEST ONE I
3 KNOW OF, AND IT WORKS BECAUSE A JURY OF THE DEFENDANT'S
4 PEERS USE THEIR COMMON SENSE TO JUDGE THE FACTS.

5 THE BURDEN OF PROOF IS ON US, AND THAT
6 BURDEN OF PROOF IS BEYOND A REASONABLE DOUBT. IT'S KIND
7 OF HARD TO DEFINE, BUT IT'S DEFINED LIKE THIS: BEYOND
8 DOUBT, AND THAT DOUBT IS SOMETHING THAT WOULD CAUSE A
9 REASONABLE PERSON TO HESITATE TO ACT. ANOTHER WAY OF
10 SAYING IT IS I'VE PROVEN MY CASE BEYOND A REASONABLE
11 DOUBT IF I HAVE LEFT YOU FIRMLY CONVINCED OF THE
12 DEFENDANT'S GUILT. AND LET ME BE CLEAR HERE. IT IS NOT
13 BEYOND ALL DOUBT. IT IS NOT 100 PERCENT CONVINCED.
14 IT'S BEYOND A REASONABLE DOUBT. IT'S FIRMLY CONVINCED.

15 I CAN'T THINK OF ONE THING IN THIS WORLD
16 THAT I AM 100 PERCENT CONVINCED OF, THAT I HAVE
17 ABSOLUTELY NO DOUBT THEN. THAT IS NOT OUR STANDARD.
18 OUR STANDARD IS REASONABLE DOUBT.

19 YOU'VE BEEN HERE SINCE MONDAY. WHAT IS THIS
20 CASE TRULY ABOUT? WELL, IT BOILS DOWN TO TWO QUESTIONS:
21 FIRST AND FOREMOST, WAS THERE A CONSPIRACY? DID A
22 CONSPIRACY TO TRAFFIC ICE INTO THE STATE OF SOUTH
23 CAROLINA AND AROUND THE UPSTATE EXIST? DID IT EXIST?

24 THE SECOND QUESTION IS: WAS THE DEFENDANT
25 INVOLVED? WAS HE INVOLVED (POINTING TO FACE ON BOARD)?

1 DID HE PARTICIPATE? DID HE JOIN IN THE AGREEMENT AND,
2 A, IN THE BRINGING IN AND DISTRIBUTION OF ICE TO THE
3 STATE OF SOUTH CAROLINA, TO THE COUNTIES OF ANDERSON,
4 SPARTANBURG, GREENVILLE, PICKENS, ALL AROUND THE
5 UPSTATE? THOSE ARE YOUR QUESTIONS THAT YOU NEED TO
6 DECIDE TODAY.

7 THE LAW SAYS THAT A CONSPIRACY EXISTS IF TWO
8 OR MORE PERSONS AGREE OR WORK TOGETHER AND ACCOMPLISH AN
9 UNLAWFUL GOAL. NOW, THE JUDGE IS GONNA INSTRUCT YOU ON
10 THE LAW, AND HE'S THE EXPERT ON THE LAW. IF SOMETHING I
11 SAY OR SOMETHING THE DEFENSE SAYS DISAGREES WITH THE
12 JUDGE, YOU HAVE GOT TO FORGET WHAT WE HAVE SAID AND
13 LISTEN TO THE JUDGE BECAUSE HE'S THE EXPERT. JUST AS
14 Y'ALL ARE THE EXPERTS ON THE FACTS, HE'S THE EXPERT ON
15 THE LAW, SO PLEASE KEEP THAT IN MIND WHEN HE'S TALKING
16 TO YOU.

17 IN A CONSPIRACY THE CRIME IS THE AGREEMENT.
18 THE GOAL IN THIS PARTICULAR CONSPIRACY (POINTING TO
19 BOARD) IS TO TRAFFIC AN ILLEGAL NARCOTIC, SPECIFICALLY
20 ICE, ALSO KNOWN AS METHAMPHETAMINES. THE AGREEMENT
21 DOESN'T HAVE TO BE FORMAL, IT DOESN'T EVEN HAVE TO BE
22 EXPRESSED. I THINK YOU HAVE HEARD FROM EVERYONE FROM
23 THAT STAND IT'S CERTAINLY NOT GONNA BE WRITTEN DOWN.

24 HERE'S ANOTHER IMPORTANT LEGAL FACT ABOUT
25 CONSPIRACIES. THE ACT ONE INDIVIDUAL MEMBER, DONE IN

1 FURTHERANCE OF THAT CONSPIRACY, DURING THE CONSPIRACY,
2 IS ATTRIBUTABLE TO EACH AND EVERY OTHER MEMBER. YOU ARE
3 RESPONSIBLE AS A WHOLE FOR THE ACTIONS OF ONE IN A
4 CONSPIRACY.

5 WHAT DOES THAT MEAN? WELL, IN THE OPENING
6 STATEMENT MS. EVANS COMPARED THIS TO A BUSINESS, TO
7 WAL-MART. AND LADIES AND GENTLEMEN, THAT'S EXACTLY WHAT
8 THIS WAS. WHEREAS WAL-MART IS A LEGITIMATE BUSINESS, A
9 LEGAL BUSINESS, THIS IS NOT A LEGAL BUSINESS AND IT'S
10 NOT LEGITIMATE; AND YOU'RE NOT GONNA FIND THE SAME
11 RECORDS, THEY DON'T PAY TAXES, THEY DON'T PAY EMPLOYEES
12 WITH CHECKS, THEY DON'T TAKE CREDIT CARDS AND THEY DON'T
13 ISSUE RECEIPTS. SO IT'S NOT AS EASY TO PROVE AS IT
14 WOULD BE IF WAL-MART, WE HAD TO PROVE WAL-MART WAS A
15 BUSINESS. IT'S AN ANALOGY. IT'S A COMPARISON TO HELP
16 YOU UNDERSTAND.

17 DON'T MISUNDERSTAND. THIS IS A BUSINESS,
18 AND A LUCRATIVE ONE, ONE IN WHICH PEOPLE MAKE MILLIONS
19 OF DOLLARS. THE DEFENSE IN OPENING STATEMENT TOLD YOU
20 ABOUT HOW BAD THESE PEOPLE ARE. I 100 PERCENT AGREE,
21 AND OKAY, MAYBE THAT'S THE TIME THAT I WILL 100 PERCENT
22 AGREE WITH SOMETHING. THESE PEOPLE ARE AWFUL. THEY
23 SHOOT GUNS, THEY KILL PEOPLE, THEY TURN PEOPLE IN TO
24 COPS; AND THEY DO SOMETHING THAT'S EVEN WORSE: THEY
25 DEAL THIS DRUG TO INDIVIDUALS IN OUR COMMUNITY. THEY

1 GET THEM HOOKED, AND THOSE INDIVIDUALS, ADDICTS, LOSE
2 EVERYTHING THEY HAVE TO GET ONE MORE HIGH. THEY RISK
3 THEIR LIVES FOR IT, AND THEY PUT IN JEOPARDY THE LIVES
4 OF EVERY LAW ENFORCEMENT OFFICER AND INNOCENT PERSON ON
5 THE STREET WHEN THEY'RE DOING IT.

6 BUT WHAT THE DEFENSE DOESN'T WANT YOU TO
7 HEAR IS THAT AS BAD AS ALL THESE PEOPLE ARE, AND THE
8 MILLIONS OF DOLLARS ALL THESE PEOPLE HAVE COME IN
9 CONTACT WITH, WHETHER IN THE FORM OF ICE OR ACTUAL CASH,
10 THIS MAN, SETH STEARNS (POINTING ON BOARD), IS, IF NOT
11 AS CULPABLE, MORE CULPABLE. THAT MAN RIGHT THERE
12 (POINTING ON BOARD). AND LADIES AND GENTLEMEN, THAT'S
13 WHAT THIS TRIAL IS ABOUT: IT IS ABOUT SETH STEARNS AND
14 NOBODY ELSE.

15 EVERYONE ELSE IS IN JAIL. EVERYONE ELSE HAS
16 ACCEPTED RESPONSIBILITY, HAS PLED GUILTY AND IS SERVING
17 TIME, BEING PUNISHED.

18 IT'S NOT ABOUT THEIR TRIALS, IT'S NOT ABOUT
19 THEIR GUILTY PLEAS. IT'S ABOUT SETH STEARNS.

20 EVEN THE DEFENSE ADMITTED THAT THERE IS NO
21 DOUBT THERE WAS A CONSPIRACY, THAT IT EXISTED. I
22 BELIEVE IN ONE OF HIS QUESTIONS TO BRIAN MUELLER HE
23 STATED: YOU WERE PARTNERS WITH KENNY LAVENDER, YOU WERE
24 PARTNERS WITH AMANDA FORDHAM, AND YOU WERE PARTNERS WITH
25 CHAD SEXTON.

1 THERE IS NO EVIDENCE TO DISPUTE THAT A
2 CONSPIRACY DID NOT EXIST. SO WHAT'S THE REAL QUESTION
3 HERE? WAS THE DEFENDANT, SETH STEARNS, INVOLVED?

4 BEYOND A REASONABLE DOUBT, YES.

5 HOW DO WE KNOW? WE KNOW FROM THE WITNESSES
6 THAT GOT UP ON THAT STAND AND TESTIFIED, FIRST AND
7 FOREMOST. THE CREDIBILITY OF THOSE WITNESSES ABSOLUTELY
8 IS IMPORTANT. YOU 12 JURORS ARE THE JUDGES OF THAT
9 CREDIBILITY AND YOU ALONE. THE JUDGE WILL TELL YOU SOME
10 OF THE THINGS THAT YOU WANT TO JUDGE CREDIBILITY WITH OR
11 BIAS OR PREJUDICE.

12 WHETHER THEY WERE HESITANT WHEN ANSWERING
13 QUESTIONS OR FORTHRIGHT. WHAT WAS THEIR DEMEANOR? THE
14 KNOWLEDGE THAT THEY WERE TESTIFYING ABOUT, HOW DID THEY
15 OBTAIN THAT, WAS IT FIRSTHAND OR THROUGH OTHER PEOPLE?
16 AND CAN IT BE CORROBORATED, WHETHER BY ANOTHER WITNESS
17 OR BY PHYSICAL EVIDENCE OR BY INVESTIGATION OF LAW
18 ENFORCEMENT?

19 KEEP IN MIND WHEN YOU ARE PROSECUTING THE
20 DEVIL, YOU GOT TO GO TO HELL TO GET THE WITNESSES. VERY
21 FEW TIMES ARE MINISTERS, DOCTORS, ARCHITECTS, BANKERS
22 WITNESSES IN DRUG CASES. WHY? 'CAUSE THEY'RE NOT DRUG
23 DEALERS, THEY'RE HONEST, HARD-WORKING PEOPLE. YOU GOT
24 TO GO TO HELL TO GET THE WITNESSES.

25 I'M NOT MAKING AN APOLOGY FOR ONE PERSON

1 THAT WAS ON THAT STAND. THEY ALL DESERVED TO BE EXACTLY
2 WHERE THEY ARE.

3 KEEP IN MIND THAT EACH AND EVERY ONE OF THEM
4 IS FACING AT LEAST 25 YEARS IN JAIL, IF NOT MORE. SOME
5 ARE FACING OVER 30. THINK ABOUT WHERE YOU WILL BE IN
6 THE NEXT 25 YEARS. THAT'S A LONG TIME.

7 ALSO KEEP IN MIND THAT EACH AND EVERY PERSON
8 ON THAT STAND, INCLUDING LIEUTENANT MAX DORSEY, TOLD YOU
9 THAT NOT ONE OF THESE CO-CONSPIRATORS KNEW ABOUT ANOTHER
10 ONE TESTIFYING, KNEW ABOUT ANOTHER ONE COOPERATING, AND
11 THEY CERTAINLY WEREN'T INTERVIEWED TOGETHER OR TOLD
12 ABOUT WHAT THE OTHERS WERE SAYING. THEY HAVE
13 INDEPENDENT OF ONE ANOTHER TOLD THEIR STORY SO LAW
14 ENFORCEMENT, WHETHER IT WAS S.L.E.D. OR THE STATE
15 AUTHORITIES OR THE FEDERAL AUTHORITIES OR THE GEORGIA
16 AUTHORITIES. KEEP THAT IN MIND HOW THOSE STORIES MATCH
17 UP. KEEP IN MIND HOW THOSE STORIES TELL THE BUSINESS.

18 LIEUTENANT MAX DORSEY HAS 13 YEARS OF
19 EXPERIENCE, HE'S INVESTIGATED OVER A HUNDRED
20 INVESTIGATIONS, TEN OF WHICH ARE STATE GRAND JURY CASES
21 INVOLVING MULTICOUNTY DRUG CONSPIRACIES. HE APPROACHES
22 SUBJECTS AND HE TOLD YOU HOW AND HE TOLD YOU WHY. KEEP
23 IN MIND LEGALLY HE HAS THE RIGHT TO DECIDE WHEN TO
24 ARREST SOMEONE. AND LET'S TALK ABOUT THAT.

25 WHEN HE APPROACHED KENNY LAVENDER, HAD HE

1 ARRESTED KENNY LAVENDER AT THAT MOMENT AND PUT HIM IN
2 JAIL, NONE OF THIS WOULD HAVE COME TO LIGHT. NONE OF
3 THE SIX PEOPLE ALREADY IN JAIL WOULD BE THERE. AT LEAST
4 NOT FROM THIS CONSPIRACY. IT IS BECAUSE OF KENNY
5 LAVENDER AND HIS COOPERATION THAT LED TO THE ARREST OF
6 CHAD SEXTON AND THE INFORMATION ON EVERYBODY ELSE TO TIE
7 IT ALL TOGETHER. BECAUSE HE USED DISCRETION. BECAUSE
8 HE WORKED THAT INDIVIDUAL, SEVEN PEOPLE ARE OFF THE
9 STREET AND HOPEFULLY SO ARE POUNDS OF ICE.

10 IT IS VERY EASY FOR US TODAY IN THIS
11 COURTROOM TO SIT BACK AND LOOK IN HINDSIGHT UPON HOW
12 THIS INVESTIGATION WAS DEVELOPED AND THE ACTIONS OF LAW
13 ENFORCEMENT. DO I WISH I HAD PAGES AND PAGES OF CELL
14 PHONE RECORDS TO GIVE YOU? YEAH. BUT AT THE SAME TIME,
15 I DON'T WANT TO BE HERE TILL AFTER CHRISTMAS.

16 DO I HAVE 40-SOME ODD OTHER WITNESSES IN
17 THIS INVESTIGATION I POSSIBLY COULD HAVE CALLED IN THIS
18 CASE TO PRESENT EVIDENCE TO YOU? I DON'T WANT TO BE
19 HERE TILL AFTER NEW YEAR'S.

20 WE CALLED THE INDIVIDUALS THAT HAD FIRSTHAND
21 KNOWLEDGE ABOUT THIS BUSINESS, AND LAW ENFORCEMENT DID
22 THEIR BEST TO CORROBORATE WHAT THEY WERE SAYING, AND
23 CELL PHONE RECORDS, LADIES AND GENTLEMEN, SIMPLY
24 CORROBORATE THAT THEY KNEW EACH OTHER.

25 SEVERAL THINGS PREVENTED THIS INVESTIGATION

1 TO BE CONTINUED PROACTIVELY, AND WE TALKED ABOUT THE
2 DIFFERENCE BETWEEN PROACTIVELY AND REACTIVELY. CHAD
3 SEXTON FLEEING FROM THE COPS, TRYING TO RUN OVER THEM,
4 PUTTING THEM IN DANGER AND MAKING A SPECTACLE THAT MADE
5 EVERY NEWS STATION IN THE UPSTATE AND EVERY NEWSPAPER IN
6 THE UPSTATE PREVENTED THIS INVESTIGATION FROM GOING
7 FORWARD PROACTIVELY, IT DEFINITELY WAS NOT A SOFT
8 APPROACH, AS IT HAD BEEN INTENDED.

9 AFTER THAT, THE INVESTIGATION BECAME
10 REACTIVE. AND SEVERAL INDIVIDUALS WERE ALREADY
11 INCARCERATED WHEN THEY WERE APPROACHED AND AGREED TO
12 COOPERATE: KEVIN MOSER, AMANDA FORDHAM, ROBBY SEXTON,
13 AND KEVIN MOSER [SIC]. IT'S HARD TO DO DRUG DEALS WHEN
14 YOU HAVE BEEN ARRESTED.

15 LET'S TALK ABOUT KEVIN MOSER. HE'S AN
16 ADDICT. NO ONE FORCED HIM TO START TAKING
17 METHAMPHETAMINES, NOBODY FORCED HIM TO SMOKE ICE, BUT HE
18 CERTAINLY GOT ADDICTED. AND WHEN YOU ARE ADDICTED TO
19 SOMETHING AS POWERFUL AS THIS, YOU GOT TO HAVE IT. DID
20 HE HAVE LOTS OF SOURCES? YEAH. BUT WHAT SOURCE DID HE
21 HAVE THAT WAS INVOLVED IN THIS CONSPIRACY TO ROBBY
22 SEXTON? AND HE TOLD YOU ABOUT WHEN HE RAN OUT OF MONEY,
23 HE STOLE EVERYTHING AND ANYTHING HE COULD STEAL TO TRADE
24 IT FOR ICE OR METH.

25 HE ALONE PURCHASED APPROXIMATELY TEN OUNCES

1 OF ICE FROM ROBBY SEXTON. THAT'S 280 GRAMS. WHAT WE'VE
2 CHARGED THE DEFENDANT WITH IS TRAFFICKING IN ICE MORE
3 THAN 400 GRAMS, SO WE'RE MORE THAN HALFWAY THERE,
4 BECAUSE THE ACT OF ONE IS ATTRIBUTABLE TO THE ACT OF
5 ALL. WE'RE HALFWAY THERE.

6 DID HE GET OTHER SOURCES? DID A LOT OF
7 NAMES GET THROWN AROUND OUT THERE? YEAH. WE'RE NOT
8 HERE ABOUT THEM, WE'RE HERE ABOUT SETH STEARNS.

9 ROBBY SEXTON -- WAIT -- KEVIN MOSER? HE
10 PLED GUILTY, CONSPIRACY TO TRAFFIC METHAMPHETAMINES
11 BETWEEN 28 AND A HUNDRED GRAMS, IS FACING UP TO 25
12 YEARS. JUDGE MACAULAY WILL SENTENCE HIM. ROBBY SEXTON
13 PLED GUILTY, CONSPIRACY TO TRAFFIC METHAMPHETAMINES, 28
14 TO A HUNDRED GRAMS, FACING UP TO 25 YEARS, JUDGE
15 MACAULAY WILL SENTENCE HIM.

16 HOW DID HE MEET SETH STEARNS? HE MET HIM
17 THROUGH ANOTHER GUY, DUSTY MARTIN. DUSTY SET HIM UP
18 WITH SETH STEARNS TO SELL A TRAILER FULL OF STOLEN
19 EQUIPMENT. WHO DID HE MEET SETH WITH? HE MET SETH WITH
20 BRIAN. AND HE SOLD THAT EQUIPMENT ONCE AGAIN, LADIES
21 AND GENTLEMEN, FOR THIS (PICKS UP DRUGS). ROBBY SEXTON
22 IS ALSO AN ADDICT.

23 THEY STARTED UP A BUSINESS. HE WAS BUYING
24 AN OUNCE EVERY ONE TO TWO DAYS, CASH UP FRONT.
25 \$1,800.00 PER OUNCE. HE BOUGHT FROM THE DEFENDANT

1 BETWEEN THE MONTHS OF APRIL AND MARCH OF 2004, AND THE
2 TOTAL AMOUNT HE GOT HE SAID APPROXIMATELY IS ONE POUND,
3 454 GRAMS, DIRECTLY FROM THE DEFENDANT, SETH STEARNS.

4 THERE'S YOUR 400 GRAMS.

5 WE'RE NOT GONNA GO INTO ABOUT HOW HE
6 CORROBORATED WHAT MOSER TOLD HIM ABOUT ALL THE TRAILERS.
7 I HOPE YOU REMEMBER THAT.

8 I'M NOT GONNA GO INTO HOW HE TALKED ABOUT
9 HIS BROTHER, CHAD, GETTING HIM HOOKED AT HIS WIFE'S
10 BIRTHDAY PARTY AND THEN LATER ON AT HIS HOUSE.

11 WHEN SETH STOPS DEALING, (POINTING) ROBBY
12 BEGINS TO WORK FOR HIS BROTHER, NOT ONLY PURCHASING
13 DRUGS FROM HIS BROTHER BUT SELLING DRUGS FOR HIS
14 BROTHER. HE'S INVOLVED, HE IS IN THIS CONSPIRACY, AND
15 HE PLED GUILTY.

16 KENNY LAVENDER PLED GUILTY TO TRAFFICKING 28
17 TO A HUNDRED GRAMS OF METHAMPHETAMINE, IS FACING UP TO
18 30 YEARS JUST THAT ALONE. PLED GUILTY TO CONSPIRACY, 28
19 TO A HUNDRED GRAMS, FACING ANOTHER 30 YEARS. AND HE
20 PLED GUILTY TO TRAFFICKING MARIJUANA, TEN TO A HUNDRED
21 GRAMS, FACING UP TO 20 YEARS -- I'M SORRY -- TEN TO A
22 HUNDRED POUNDS. A TOTAL OF 80 YEARS.

23 KENNY LAVENDER HAS BEEN DEALING DRUGS,
24 SPECIFICALLY MARIJUANA, SINCE 1976. THAT'S NOT WHY
25 WE'RE HERE TODAY. WE'RE NOT HERE ABOUT HIS TRAFFICKING

1 MARIJUANA CONSPIRACY INDICTMENT. IT'S IN THIS
2 INVESTIGATION, AND HOPEFULLY THAT INDICTMENT WILL BE
3 RESOLVED LATER THIS WEEK. THAT'S NOT WHY WE'RE HERE
4 TODAY. WE'RE HERE TODAY BECAUSE OF HIS ICE.

5 HOW DID HE MEET THE DEFENDANT? HE SOLD HIM
6 A CAR. HOW DID SETH STEARNS PAY FOR THE CAR? CASH.
7 THEN HE SOLD HIM A BOAT. HOW DID HE PAY FOR THE BOAT?
8 ICE.

9 KENNY LAVENDER IS AN ADDICT. HE MET SETH
10 STEARNS IN THE SUMMER OF '04 AND BEGAN PURCHASING FROM
11 HIM TWO OUNCES EVERY WEEK OR TWO, \$1,200.00 PER OUNCE.
12 IT DIDN'T STOP THERE, IT INCREASED. HE STARTED
13 PURCHASING UP TO A FOURTH OF A POUND OF ICE DIRECTLY
14 FROM THE DEFENDANT.

15 HE KNEW ABOUT AMANDA. HE DIDN'T KNOW HER
16 PERSONALLY, BUT KNEW THAT SETH WAS GOING TO ATLANTA TO
17 GET THE DRUGS FROM HER, AND KNEW THAT SHE HAD
18 MULTICOLORED HAIR AND KNEW HER NAME.

19 WHAT ELSE DID HE KNOW? (POINTING.) THAT
20 SETH DIDN'T WANT TO SELL ANYMORE DIRECTLY TO HIM, SO HE
21 INTRODUCED HIM TO BRIAN MUELLER. SETH TOOK CARE OF HIS
22 CUSTOMERS. WHEN HE DECIDED THIS BUSINESS IS TOO
23 DANGEROUS, THERE IS TOO MUCH AT RISK, I DON'T WANT TO BE
24 SHOT, I DON'T WANT TO BE DRIVING BACK FROM ATLANTA WITH
25 MILLIONS OF DOLLARS WORTH OF ICE, I'M GONNA LET MY BUDDY

1 BRIAN MUELLER DO IT.

2 BUT I'M NOT GONNA SELL OUT MY CUSTOMERS, I'M
3 NOT GONNA DESERT THEM BECAUSE YOU GOT TO HAVE IT. I'M
4 GONNA INTRODUCE ALL OF THEM TO BRIAN AND I'M GONNA MAKE
5 SURE THEY GET THAT ICE.

6 MR. LAVENDER BOUGHT FROM ONE TO ONE AND A
7 HALF POUNDS DIRECTLY FROM SETH. THAT'S SOMEWHERE
8 BETWEEN 450 AND 680 GRAMS. THE ACT OF ONE IS
9 ATTRIBUTABLE TO ALL THE MEMBERS. SO LET'S TALK ABOUT
10 HOW MUCH HE BOUGHT FROM BRIAN. FROM SEPTEMBER TO
11 NOVEMBER OF '04 HE BOUGHT A TOTAL OF ANOTHER
12 THREE-FOURTHS POUND -- I'M SORRY -- A FOURTH OF A POUND
13 EVERY ONE TO TWO WEEKS.

14 NOW, BRIAN GETS BUSTED IN NORTH CAROLINA,
15 YOU HEARD IT FROM HIM, YOU HEARD IT FROM KENNY AND YOU
16 HEARD IT FROM CHAD. WHAT DOES KENNY DO (POINTING TO
17 BOARD)? HE GETS WITH CHAD (POINTING TO BOARD) AND THEY
18 CALL SETH (POINTING TO BOARD). ADDICT. GOT TO HAVE IT.
19 GOT TO FIND A NEW SOURCE. AND THEY PARTNER UP AND THEY
20 GET INTRODUCED TO AMANDA. BY WHOM? (POINTING TO
21 BOARD.) SETH. ACT OF ONE, ATTRIBUTABLE TO ALL.

22 ICE CONTINUES TO FLOW. NOW KENNY AND CHAD
23 ARE WORKING TOGETHER WITH THE HELP OF SETH TO GET THE
24 ICE FROM AMANDA AND TO KEEP IT FLOWING INTO SOUTH
25 CAROLINA. HOW DO WE KNOW THIS? WE NOT ONLY KNOW IT

1 THROUGH THE INDEPENDENT CORROBORATED TESTIMONY OF THOSE
2 THREE INDIVIDUALS (POINTING TO BOARD). THE POLICE
3 CAUGHT THEM. DUE TO KENNY'S COOPERATION ON APRIL 5TH,
4 2005, YOU'VE GOT A DEAL, AN UNDERCOVER BUY-BUST, IT'S
5 CONTROLLED IN EVERY EXPECT IT CAN BE CONTROLLED. IT
6 DIDN'T GO AS PLANNED. I THINK YOU HEARD NESYA CARON
7 SAID NOT ONE HAS GONE AS PLANNED THAT SHE'S BEEN
8 INVOLVED WITH.

9 BUT THEY RECORDED THE PHONE CALLS THAT THEY
10 COULD. THEY MADE SURE KENNY LAVENDER DIDN'T HAVE
11 ANYTHING BUT MONEY THEY GAVE HIM ON HIM WHEN HE WENT TO
12 THE DEAL. THEY OBSERVED IT, AND THEY GOT THE ICE WHEN
13 IT WAS OVER.

14 WHAT DID KENNY SAY? CHAD HAD GONE DOWN THE
15 NIGHT BEFORE TO GET THE ICE FROM AMANDA WITH THE MONEY
16 HE GAVE HIM. WHAT DID CHAD SAY? KENNY GAVE HIM MONEY,
17 HE WENT DOWN THE NIGHT BEFORE, STAYED UNTIL THE SOURCE
18 GOT THERE AND WAS COMING BACK WITH THE ICE THAT HE
19 PURCHASED FROM AMANDA. WHAT ELSE DID HE SAY? HE SAID
20 HE DIDN'T QUITE GET A POUND BECAUSE HE DIDN'T HAVE THE
21 MONEY.

22 SIMILAR STORIES.

23 WHAT DID AMANDA SAY? CHAD CAME DOWN,
24 COULDN'T GET AHOLD OF HER SOURCE, SPENT THE NIGHT. HE
25 LEFT IN THE MORNING, ROLANDO BROUGHT THE ICE TO HER, SHE

1 CALLED HIM BACK UP, HE COMES BACK.

2 WHAT DID CHAD SAY? HE LEFT TO GET HIS CAR
3 WASHED. BEFORE HE ENDED UP GETTING HIS CAR WASHED, SHE
4 CALLED HIM, HE GOES BACK. INDEPENDENT CORROBORATION
5 FROM INDIVIDUALS WHO HAVE NOT HAD THE CHANCE TO GET
6 TOGETHER AND COMPARE STORIES.

7 CHAD SEXTON, LET'S TALK ABOUT HIM FOR A
8 LITTLE BIT. HE PLED GUILTY TO CONSPIRACY TO TRAFFIC
9 METHAMPHETAMINES, 28 TO A HUNDRED GRAMS; TRAFFICKING
10 METHAMPHETAMINES, 28 TO A HUNDRED GRAMS, TRAFFICKING
11 METHAMPHETAMINES, 10 TO 28 GRAMS; POSSESSION OF A
12 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME --
13 TRAFFICKING, LADIES AND GENTLEMEN, IS CLASSIFIED AS A
14 VIOLENT CRIME -- AND FAILURE TO STOP FOR POLICE
15 OFFICERS. HE'S FACING UP TO 83 YEARS.

16 ADDICT. GOT HOOKED, HAD TO HAVE IT.

17 HOW DID HE MEET SETH STEARNS? SOLD HIM A
18 CAR. THEY'RE BUYING A LOT OF CARS THESE DAYS, NOT ONLY
19 FROM KENNY BUT ALSO FROM CHAD. I THINK CHAD TESTIFIED
20 NOT ONLY AN EXPLORER BUT THEN A TAHOE, AND KENNY
21 TESTIFIED ABOUT A MERCEDES. THEY SMOKED TOGETHER, AND
22 SHORTLY THEREAFTER SETH STEARNS BECOMES CHAD'S SUPPLIER.

23 EVERY TWO TO THREE DAYS IN THE BEGINNING HE
24 WAS GETTING ANYWHERE FROM A GRAM TO AN EIGHT BALL. AN
25 EIGHT BALL IS 3.5 GRAMS. HE QUICKLY MOVES UP TO A

1 FOURTH OF AN OUNCE. AND HE TELLS YOU HE'S GOT FOUR
2 CUSTOMERS, INCLUDING KENNY LAVENDER AND HIS BROTHER.

3 CORROBORATION OF THEIR STORIES.

4 IN THE TWO MONTHS, NOVEMBER TO DECEMBER OF
5 2004, THAT CHAD DEALT DIRECTLY WITH SETH, HE SOLD HIM A
6 TOTAL OF A FOURTH OF A POUND, THAT'S A LITTLE OVER A
7 HUNDRED GRAMS.

8 SETH TRIES TO QUIT SELLING DIRECTLY TO
9 PEOPLE. HE TAKES CARE OF HIS CUSTOMERS BY INTRODUCING
10 CHAD TO BRIAN. ICE CONTINUES TO FLOW.

11 THROUGH BRIAN, CHAD PURCHASED APPROXIMATELY
12 TEN TO 15 POUNDS FOR A TOTAL OF ALMOST FIVE POUNDS OF
13 ICE. WHY? BECAUSE SETH SET HIM UP WITH HIM.

14 THIS IS WHERE I THINK IT'S REAL INTERESTING.
15 THERE ARE THREE PEOPLE IN THIS CONSPIRACY, REALLY FOUR
16 PEOPLE IN THE CONSPIRACY THAT TESTIFY ABOUT AN ARGUMENT
17 THAT OCCURRED BETWEEN SETH AND BRIAN MUELLER, BRIAN
18 BEING THE FIRST ONE, AND PROBABLY SINCE HE HAS THE
19 FIRSTHAND KNOWLEDGE OF THE FIGHT BETWEEN HIM AND SETH,
20 HE'S A GOOD ONE TO LISTEN TO.

21 BUT HOW IS IT CORROBORATED? IT'S
22 CORROBORATED THROUGH AMANDA, THROUGH CHAD, AND THROUGH I
23 THINK KENNY LAVENDER'S TESTIMONY.

24 WHAT DOES SETH DO? WELL, SETH IS GETTING,
25 ALTHOUGH HE'S NOT SELLING DIRECTLY ANYMORE, HE'S GETTING

1 ICE, A FREE OUNCE OF ICE AND A THOUSAND DOLLARS FOR EACH
2 TRIP BRIAN MAKES. TO WHOSE SOURCE? WHOSE SOURCE?
3 SETH'S SOURCE, AMANDA. (POINTING ON BOARD.) HE DOESN'T
4 GET OUT OF THIS CONSPIRACY. HE JUST TRIES TO BE SMART
5 ABOUT IT.

6 WHEN BRIAN SAYS, THIS ISN'T A GREAT DEAL.
7 NOT ONLY AM I THE ONE TAKING ALL THE RISK DRIVING WITH
8 THIS MILLIONS OF DOLLARS OF ICE, AS THE DEFENSE HAS
9 INFORMED YOU, AND THE HUNDREDS OF THOUSANDS OF DOLLARS
10 IN CASH, I GOT TO HAVE A GUN TO PROTECT IT, I'M BEING
11 TOLD WHO TO SELL IT TO AND I'M HAVING TO PAY HIM AND
12 GIVE HIM PART OF THE PRODUCT? THAT ISN'T A GOOD DEAL.

13 WHAT DOES SETH DO? HE CAN'T GO TO THE COPS
14 TO ENFORCE THE CONTRACT. HE CAN'T HIRE A CIVIL ATTORNEY
15 TO ENFORCE THE CONTRACT. HE EMPLOYS ANOTHER INDIVIDUAL
16 AND GIVES THEM THE SAME IF NOT A LITTLE BIT BETTER DEAL.
17 I JUST WANT AN OUNCE OF ICE FROM HIM EACH TRIP, AN OUNCE
18 OF ICE TO USE. WHOSE SOURCE? SETH'S SOURCE.

19 THINK ABOUT EACH OF THEIR TESTIMONY ABOUT
20 THE ARGUMENT. EVEN AMANDA KNEW ABOUT THE ARGUMENT
21 (POINTING ON BOARD). AND GUESS WHAT? CORROBORATES IT.
22 SETH INTRODUCES CHAD TO AMANDA. BUT FOR SETH, CHAD
23 DOESN'T KNOW AMANDA. (POINTING ON BOARD.)

24 EACH AND EVERY ONE OF THEM SAID SETH
25 INTRODUCED CHAD TO AMANDA BECAUSE BRIAN WOULDN'T FULFILL

1 HIS END OF THE AGREEMENT BECAUSE HE STOPPED DOING
2 BUSINESS. IN A CONSPIRACY YOU CAN'T ACTIVITY WITHDRAW.
3 LADIES AND GENTLEMEN, AT THIS TIME I WOULD
4 SAY THAT BRIAN MUELLER ACTIVELY WITHDREW FROM THIS
5 CONSPIRACY. AND CHAD TOOK OVER. THE CONSPIRACY STILL
6 EXISTS, HE'S JUST OUT OF IT.

7 THE DEFENSE ATTORNEY MADE A BIG DEAL ABOUT
8 HOW MUCH BRIAN WAS GETTING FROM AMANDA, SPECIFICALLY
9 AFTER HE EXITED. I'M NOT SAYING BRIAN STOPPED, I'M NOT
10 SAYING HE GOT A CONSCIENCE AND BECAME A GOOD GUY. I'M
11 STAYING HE STARTED HIS OWN CONSPIRACY THAT DIDN'T
12 INVOLVE ANY OF THESE PEOPLE. AND, LADIES AND GENTLEMEN,
13 HE GOT CAUGHT AND PROSECUTED IN GEORGIA FOR THAT
14 CONSPIRACY, AND THAT'S WHY HE'S IN THE DEPARTMENT OF
15 GEORGIA CORRECTIONS (POINTING ON BOARD.)

16 HOW ELSE CAN CHAD CORROBORATE WHAT HE'S TOLD
17 YOU? WELL, WHEN HE'S DEBRIEFED BY LAW ENFORCEMENT, HE
18 GIVES SEVERAL PHONE NUMBERS THAT HE KNOWS TO LAW
19 ENFORCEMENT: TWO FOR AMANDA FORDHAM, TWO FOR SETH
20 STEARNS AND ONE FOR SUPERMAN. THOSE PHONE NUMBERS MATCH
21 THE PHONE NUMBER THAT AMANDA FORDHAM TESTIFIED SHE HAD.
22 THEY MATCH THE PHONE NUMBERS THAT WHEN AMANDA FORDHAM
23 WAS ARRESTED AND TURNED OVER TO D.E.A. HER CELL PHONE,
24 THEY MATCHED THE PHONE NUMBERS STORED IN HER PHONE.

25 WE TALKED A LITTLE BIT ABOUT BRIAN MUELLER.

1 BUT HOW DID BRIAN MUELLER MEET SETH STEARNS? HE MET HIM
2 THROUGH AN INDIVIDUAL NAMED NATE. HE WAS BUYING SO MUCH
3 FROM NATE HE COULDN'T KEEP UP. HE SAID, GO TO MY
4 SUPPLIER. GUESS WHO NATE'S SUPPLIER WAS? SETH STEARNS.

5 HE STARTED BUYING EIGHT-BALL AMOUNTS, ONE TO
6 TWO TIMES PER WEEK, IT INCREASED. THREE AND FOUR TIMES
7 A WEEK, OUNCE AMOUNTS, HE WOULD BREAK IT DOWN AND SELL
8 IT SOMETIMES IN THREE TO FOUR HOURS. HE SEEMED TO BE
9 PRETTY GOOD AT HIS JOB.

10 FIVE TO SIX MONTHS AFTER DEALING WITH SETH
11 IS WHEN SETH SAYS, HEY, MAN, I DON'T WANT TO TAKE THE
12 RISK ANYMORE, LET'S GO GET YOU SET UP WITH MY FRIEND
13 AMANDA.

14 THEY SET UP THE AGREEMENT. IT WASN'T
15 WRITTEN DOWN, BUT IT WAS AN AGREEMENT NONETHELESS. THE
16 AGREEMENT WAS PER TRIP, ONE THOUSAND DOLLARS AND ONE
17 OUNCE PER POUND. AND, OH, BY THE WAY, YOU GOT TO KEEP
18 SELLING TO MY CUSTOMERS.

19 UNDER THAT AGREEMENT HE TESTIFIED HE MADE
20 TEN TO 15 TRIPS TO ATLANTA ONCE A WEEK. HE PURCHASED AT
21 LEAST A POUND, TOTAL 20 POUNDS. THE TOTAL WE HAVE FROM
22 AMANDA IS PROBABLY DOUBLE THAT IF NOT MORE. I THINK SHE
23 TESTIFIED SOMEWHERE IN THE NATURE OF 50 POUNDS. THIS
24 CONSPIRACY HERE TODAY, WE'RE HERE FOR THIS CONSPIRACY
25 TODAY, 20 POUNDS THIS CONSPIRACY ALONE (POINTING ON

1 BOARD).

2 I CAN'T EVEN DO THE MATH ON THAT ONE. 20
3 TIMES 450.

4 THERE'S LITTLE FACTS TO CORROBORATE. ROBBY
5 SEXTON SAYS THAT HE SOLD EQUIPMENT TO BRIAN AND SETH AND
6 THAT ON ONE OCCASION SETH GOT BRIAN TO DELIVER THE DRUGS
7 BECAUSE ROBBY WASN'T AVAILABLE. WELL, WHAT DOES BRIAN
8 SAY? YEAH, I MET THAT GUY TWICE, ONCE WHEN HE SOLD US A
9 TRUCK ONCE WHEN I SOLD TO HIM. MINOR DETAILS? MAYBE.
10 BUT IT'S CORROBORATION.

11 AMANDA FORDHAM. THE WORST OF THE WORST.
12 RESPONSIBLE FOR MILLIONS OF DOLLARS OF ICE COMING INTO
13 THIS STATE. SHE SUPPORTED HERSELF, SHE HAD AN APARTMENT
14 AND A HOUSE AND CARS. AND NOW SHE'S IN FEDERAL PRISON
15 FOR 20 YEARS. WHY? BECAUSE OF THIS CONSPIRACY. SHE
16 ACTUALLY WENT UP FEDERALLY. THERE'S A STATE STATUTE
17 THAT SAYS IF SOMEONE IS PROSECUTED FEDERALLY FOR THE
18 SAME DRUG CRIME, THAT YOU COULDN'T BE PROSECUTED FOR IT
19 STATE-WISE BECAUSE YOU CAN'T GET PROSECUTED TWICE FOR
20 ONE CRIME IN THE DRUGS. BUT THE FEDS GOT HER, SHE'S
21 DOING 20 YEARS. SHE'S HOPING FOR A DOWNWARD DEPARTURE.
22 BUT HER COOPERATION IN SETTING UP HER SOURCES THAT SHE
23 DID THROUGH THE FEDS, THAT DIDN'T HELP HER. MAYBE HER
24 TESTIMONY WILL.

25 WHAT DOES SHE TELL YOU? SHE TOLD YOU SHE

1 HAD ONE SOURCE, IT WAS A FAMILY OF THREE, A HUSBAND, HIS
2 WIFE AND A BROTHER. ROLANDO, HIS WIFE, AND HIS BROTHER.
3 FORGIVE ME, I CAN'T EVEN PRONOUNCE THEIR NAMES.

4 HOW DID SHE MEET THAT SOURCE? THROUGH
5 ANTHONY, ANTHONY AND ROLANDO WERE ROOMMATES. SHE WAS
6 FRIENDS WITH ANTHONY AND STARTED BUYING FROM HIM. WHEN
7 HE GOT LOCKED UP, HE STARTED DEALING WITH ROLANDO. THAT
8 WAS IN MAY OR JUNE OF 2004.

9 INITIALLY HIS HER CUSTOMERS WERE ALEX AND
10 MIKEY. WHO DID ALEX AND MIKEY INTRODUCE TO AMANDA?
11 (POINTING ON BOARD.) SETH STEARNS. ALEX AND MIKEY ARE
12 FROM GREENVILLE (POINTING ON BOARD). ALEX AND MIKEY,
13 BOTH IN JAIL.

14 SHE STARTED DEALING WITH SETH IN JULY OF
15 2004 ABOUT ONE TIME A WEEK ANYWHERE FROM EIGHT OUNCES TO
16 A POUND, TOTAL FIVE TO TEN POUNDS. SHE TELLS THE SAME
17 STORY, LADIES AND GENTLEMEN: IN SEPTEMBER SETH BRINGS
18 BRIAN AND INTRODUCES HER. AND WHAT ELSE DID SHE SAY?
19 BUT FOR THE FACT THAT SETH INTRODUCED BRIAN TO HER, HE
20 COULD HAVE KNOCKED ON HER DOOR ALL DAY LONG AND TWICE ON
21 SUNDAY AND SHE WOULD NOT HAVE SOLD HIM A DIME.

22 BUT FOR SETH VOUCHING, SHE WOULD NOT HAVE
23 DEALT WITH BRIAN. BUT FOR SETH, BRIAN WOULD NOT HAVE
24 BROUGHT 50 POUNDS OF ICE BACK INTO OUR STATE, OUR
25 COUNTY, OUR COMMUNITY. MILLIONS OF DOLLARS WORTH OF

1 ICE.

2 THIS IS WHAT GETS ME. SETH STEARNS IS A
3 GREEDY, GREEDY PERSON. HE WANTS TO REAP ALL THE
4 BENEFITS WITHOUT DOING ANY OF THE WORK. AND WHEN THIS
5 GUY (POINTING ON BOARD) REALIZES IT AND SAYS I AIN'T
6 DOING THAT DEAL ANY MORE, HE DOESN'T STOP, LADIES AND
7 GENTLEMEN, HE DOESN'T STOP. HE'S GOT A LAKE ON THE -- A
8 HOUSE ON THE LAKE IN ANDERSON AND HE DOESN'T STOP. HE'S
9 GOT TWO, MAYBE THREE CARS. HE DOESN'T STOP. HE EMPLOYS
10 SOMEBODY ELSE. HE PUTS SOMEBODY ELSE AT RISK AND
11 CONTINUES TO BRING ICE INTO THIS COMMUNITY.

12 SHE CORROBORATES WHAT CHAD SAYS, SHE
13 CORROBORATES WHAT BRIAN SAYS, SHE CORROBORATES WHAT THE
14 PHONE NUMBERS WERE.

15 NOW LET'S TALK ABOUT SETH STEARNS DIRECTLY.
16 HE DIRECTLY SOLD TO ROBBY SEXTON BETWEEN MARCH AND APRIL
17 OF '04 AT LEAST A POUND. HE DIRECTLY SOLD TO CHAD
18 SEXTON, WHO HE MET THROUGH ROBBY, FROM NOVEMBER TO
19 DECEMBER OF '04 FOR A FOURTH OF A POUND TOTAL. HE
20 DIRECTLY SOLD TO KENNY LAVENDER, MET HIM BY SELLING A
21 CAR OR A BOAT FROM MAYBE SEPTEMBER OF '04 ONE TO ONE AND
22 A HALF POUNDS TOTAL. HE DIRECTLY SOLD TO BRIAN MUELLER.
23 I DON'T EVEN KNOW HOW TO COUNT OUT UP TO HOW MUCH HE
24 SOLD TO BRIAN MUELLER. BUT HE MET HIM THROUGH NATE.

25 INDIRECTLY, AND STILL A PART OF THIS

1 CONSPIRACY, SETH STEARNS IS RESPONSIBLE FOR BRIAN
2 MUELLER GETTING 20 POUNDS FROM AMANDA, CHAD SEXTON
3 GETTING FIVE POUNDS FROM AMANDA, ALONE. 25 POUNDS RIGHT
4 THERE, INDIRECTLY. AND AMANDA SOLD DIRECTLY TO SETH
5 SOMEWHERE BETWEEN FIVE AND TEN POUNDS. WHO'S THE COMMON
6 DENOMINATOR?

7 LADIES AND GENTLEMEN, THIS IS MY ONE AND
8 ONLY OPPORTUNITY TO ADDRESS YOU. THE DEFENSE ATTORNEY
9 IS GONNA GET UP IN A SECOND. HE'S GONNA TALK TO YOU
10 ABOUT THE FACTS IN THIS CASE AND HE'S GONNA TALK TO YOU
11 ABOUT ... THERE'S AN OLD SAYING IN THE LEGAL BUSINESS
12 THAT IF THE FACTS ARE AGAINST YOU, COME OVER HERE AND
13 YOU ARGUE THE LAW. IF THE LAW IS AGAINST YOU, COME OVER
14 HERE AND YOU ARGUE THE FACTS. AND IF BOTH ARE AGAINST
15 YOU, YOU ATTACK EVERYTHING.

16 I WOULD SUBMIT TO YOU OVER THE PAST FEW DAYS
17 THAT IS ALL THE DEFENSE HAS DONE. THEY'VE ATTACKED LAW
18 ENFORCEMENT, SAID THEY DIDN'T DO A GOOD ENOUGH JOB.
19 WHERE ARE THE RECORDS, WHERE ARE THE RECORDS, WHERE ARE
20 THE RECORDS? LADIES AND GENTLEMEN, THEY DON'T KEEP
21 RECORDS. THEY TEAR THEM UP, THEY FLUSH THEM, THEY BURN
22 THEM, THEY DON'T KEEP THEM. IF THEY KEEP THEM, IT'S FOR
23 A SHORT PERIOD OF TIME, AND ONCE THEY GET CAUGHT WITH
24 THEM, I GUARANTEE YOU THEY LEARN THEIR LESSON. WHY?
25 THAT'S INCRIMINATING RECORDS. THEY DON'T NEED RECORDS.

1 THEY'RE NOT PAYING TAXES. THEY CAN'T GO TO CIVIL COURT
2 AND ENFORCE CONTRACTS OR BUSINESS DEALS THAT WENT BAD.
3 THEY DON'T KEEP WORTH A DARN OF RECORDS. NOT TO MENTION
4 THE MAJORITY OF THESE PEOPLE WERE ALREADY IN JAIL WHEN
5 THE FIRST STARTED COOPERATING AND HAD NO ACCESS TO
6 RECORDS. MAYBE WE COULD HAVE GOTTEN CELL PHONE CALLS TO
7 PROVE THEY KNEW EACH OTHER?

8 HE ATTACKED EACH AND EVERY CONSPIRATOR.
9 WHAT DID THEY DO? THEIR STORIES STAY THE SAME AND THEY
10 CORROBORATED EACH OTHER INDIVIDUALLY, AND THEY ALL
11 COOPERATED INDEPENDENT OF ONE ANOTHER.

12 LADIES AND GENTLEMEN, WAS THERE A
13 CONSPIRACY? DID IT EXIST BEYOND A REASONABLE DOUBT?
14 WAS THE DEFENDANT INVOLVED BEYOND A REASONABLE DOUBT?
15 AND DID THAT CONSPIRACY'S GOAL TO TRAFFIC
16 METHAMPHETAMINES, WERE THEY SUCCESSFUL IN DOING SO FOR
17 MORE THAN 400 GRAMS, BEYOND A REASONABLE DOUBT? YES.

18 I ASK YOU TO PLEASE RETURN A VERDICT OF
19 GUILTY FOR THE DEFENDANT FOR TRAFFICKING
20 METHAMPHETAMINES BY CONSPIRACY OF MORE THAN 400 GRAMS.
21 THANK YOU.

22 THE COURT: MR. KAPPEL?

23 MR. KAPPEL: THANK YOU, YOUR HONOR MAY IT
24 PLEASE THE COURT, MS. PORTER, MS. EVANS.

25

1 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT:

2 MR. KAPPEL: MADAM FORELADY, LADIES AND
3 GENTLEMEN OF THE JURY. WHEN I WAS A PROSECUTOR YEARS
4 AGO AND I LOOKED AT THESE TYPES OF CASES, THE FIRST
5 THING YOU WOULD ALWAYS LOOK AT IN EVALUATING THESE CASES
6 IS ANY INDEPENDENT VERIFICATION. INDEPENDENT
7 VERIFICATION. CELL PHONE RECORDS IS JUST ONE LITTLE
8 PIECE FOR VERIFICATION, COMMUNICATION. THEY ALL
9 COMMUNICATED THROUGH CELL PHONES. MR. DORSEY HAD A CELL
10 PHONE. WE DON'T EVEN KNOW IF THE NUMBER WAS FOR SETH
11 STEARNS, BUT HE HAS A CELL PHONE WITH A PHONE NUMBER.
12 DID HE RUN THE PHONE RECORD? NO. WOULD IT HAVE BEEN A
13 GOOD IDEA? ABSOLUTELY.

14 IN EVALUATING THIS CASE IF I WAS THE
15 PROSECUTOR, THE FIRST THING I WOULD ASK FOR WOULD BE THE
16 PHONE RECORDS. WHO IS HE CALLING? WHO IS CALLING HIM?

17 THEY HAD AMANDA'S PHONE NUMBER APRIL 13TH,
18 2005. DID THEY RUN THAT DOWN? DID NOT. THEY CHECKED
19 TO SEE IF THEY HAD AN ADDRESS FOR THE PHONE NUMBER. DID
20 NOT. THEY DIDN'T FIND AMANDA UNTIL 2007. PHONE RECORDS
21 ARE JUST A SMALL PIECE, IT'S NOT A BIG PIECE, IT'S A
22 SMALL PIECE, BUT THAT'S HOW YOU LOOK AT THESE CASES WHEN
23 YOU START PUTTING THEM TOGETHER.

24 WHEN YOU LOOK AT THESE CASES AND YOU START
25 TALKING TO PEOPLE LIKE THIS AND PEOPLE LIKE THIS AND

1 LIKE THIS (POINTING ON BOARD) AND YOU START ASKING FOR
2 THEM TO VERIFY THEMSELVES, WHAT ARE YOU DOING? YOU ARE
3 SETTING YOURSELF FOR GETTING A BAD STORY, GETTING AN
4 ERRONEOUS STORY.

5 NOW, I'M NOT TRYING TO TELL YOU THAT THESE
6 PEOPLE ARE LYING COMPLETELY ABOUT EVERYTHING THAT'S
7 GOING ON. THEY ARE CLEARLY IN A CONSPIRACY TRAFFICKING
8 DRUGS, THERE'S NO QUESTION ABOUT IT. ALL THEY HAVE TO
9 DO IS FLIP ONE LITTLE ITEM, ONE LITTLE PIECE, TO
10 ACTUALLY TURN THIS CASE ON ITS HEAD. THAT'S IT. THAT'S
11 ALL THEY HAVE TO DO.

12 WHERE DOES THIS STORY FROM SETH STEARNS
13 ORIGINATE, WHERE DOES IT COME FROM? WHERE IS THE FIRST
14 TIME THE OFFICER HEARS THE STORY ABOUT SETH STEARNS?
15 REMEMBER? MARCH 24, 2005, AND IT COMES FROM KENNY
16 LAVENDER. HE'S THE FIRST ONE THAT EVER SAID, YOU KNOW,
17 SETH, HE'S THE GUY.

18 NOW, IF YOU REMEMBER, KENNY, HE GAVE A
19 STATEMENT IN 2004, HE GAVE A STATEMENT MARCH THE 15TH,
20 HE GAVE TWO STATEMENTS BEFORE THE STATEMENT ON MARCH
21 24TH, AND HE IDENTIFIED OTHER PEOPLE AS HIS SUPPLIERS
22 FOR METHAMPHETAMINE. HE IDENTIFIED DENNIS STYLES, ED
23 CASH. HE DIDN'T SAY SETH STEARNS. HE DIDN'T SAY SETH
24 STEARNS TILL MARCH THE 24TH.

25 IF YOU REMEMBER, KENNY LAVENDER WAS CAUGHT

1 ON THE 15TH WITH A LARGE QUANTITY OF METHAMPHETAMINE,
2 CASH, AND HE WAS ALLOWED TO REMAIN FREE.

3 HOW MUCH CONTACT DID KENNY HAVE WITH CHAD?
4 DO WE HAVE ANY IDEA? THEY TALKED TO EACH OTHER A LOT
5 FROM THE 24TH THROUGH THE 6TH OF APRIL? WE DON'T KNOW.
6 WE DON'T KNOW IF KENNY SAID TO CHAD, HEY, YOU KNOW, WE
7 GOT A PROBLEM. WE HAVE NO IDEA HOW MANY TIMES CHAD WENT
8 TO ATLANTA FOR KENNY. KENNY AND CHAD ARE PARTNERS.
9 KENNY IS GIVING CHAD MONEY. HE GAVE CHAD \$6,000.00
10 KENNY SAID HE ONLY GAVE \$2,000.00 OR \$2,400.00. KENNY
11 GAVE CHAD \$6,000.00, CHAD PUT TOGETHER ANOTHER \$3,000.00
12 TO MAKE \$9,000.00 TO GO TO ATLANTA ON THE 5TH OF APRIL.

13 CHAD GETS SET UP AND THEN CHAD IS SHOT AND
14 ARRESTED. CHAD THEN DECIDES TO COOPERATE AND GIVES HIS
15 STATEMENT ON APRIL THE 13TH. AND WHAT DOES HE SAY? HE
16 SAYS THE SAME THING THAT KENNY SAID. THIS STORY ABOUT
17 CHAD FLIPPING THIS ONE LITTLE ITEM ABOUT WHO'S
18 RESPONSIBLE, MAKING SETH RESPONSIBLE, THAT ORIGINATED
19 WITH KENNY IS GOING UP THE CHAIN TO CHAD. NOW CHAD IS
20 ON BOARD, HE'S SAYING SETH IS THE ONE THAT PROVIDED THIS
21 METHAMPHETAMINE.

22 DO WE HAVE ANY OTHER STATEMENTS FROM ANYBODY
23 ELSE BESIDES LAVENDER AND SEXTON PRIOR TO MARCH OF 2007?
24 NOPE. THE ONLY INFORMATION WE HAVE IS FROM LAVENDER AND
25 SEXTON AS IT MOVED UP FOR TWO YEARS. BRIAN MUELLER

1 DIDN'T SAY ANYTHING. ROBBY SEXTON DIDN'T SAY ANYTHING.
2 KEVIN MOSER, I THINK, SPOKE, BUT HE DIDN'T KNOW SETH, HE
3 NEVER IMPLICATED SETH EVER. AMANDA FORDHAM, THEY DIDN'T
4 FIND HER UNTIL MARCH.

5 SO FOR TWO YEARS WHAT THEY HAD WAS AN IDEA
6 OF SETH STEARNS BEING IN THE MIDDLE OF THIS CONSPIRACY
7 BASED UPON KENNY AND THEN THREE WEEKS LATER BASED UPON
8 CHAD.

9 KEVIN MOSER, WELL, HIS TESTIMONY WAS NOT
10 REALLY APPLICABLE. HE MADE ONE COMMENT ABOUT WHEN HE
11 WAS ARRESTED, AND THE OFFICER SAID, DO YOU HAVE ANY
12 DRUGS OR WEAPONS IN YOUR CAR? AND HE SAID NO. HE SAID,
13 WELL, YOU JUST LIE TO STAY OUT OF JAIL, YOU DO WHAT YOU
14 CAN TO STAY OUT OF JAIL.

15 ONE THING THAT THIS COUNTRY HAS DONE -- I
16 DON'T WANT TO TRY TO GET PHILOSOPHICAL HERE -- BUT ONE
17 THING THIS COUNTRY HAS DONE THE LAST 30 YEARS IS WE HAVE
18 UNDERESTIMATED DRUG TRAFFICKING. WE DID IT IN THE
19 SEVENTIES WITH COCAINE, WE DID IT IN THE EARLY EIGHTIES
20 WITH CRACK COCAINE, WE'VE DONE IT IN THE NINETIES AND
21 NOW INTO 2000 WITH METHAMPHETAMINE. WHAT I MEAN BY
22 UNDERESTIMATING, UNDERESTIMATING THE PLAYERS INVOLVED,
23 THEIR RESOURCEFULNESS, THEIR INTELLIGENCE.

24 WHO WOULD HAVE THOUGHT THAT LITTLE OLD
25 AMANDA FORDHAM WOULD BE SENDING MILLIONS OF DOLLARS OF

1 METHAMPHETAMINE TO GREENVILLE? I'M SURE Y'ALL WERE AS
2 SURPRISED AS I WAS WHEN I DISCOVERED IN THIS CASE THAT
3 LITTLE OLD AMANDA FORDHAM DOWN IN ATLANTA OFF OF ROSWELL
4 ROAD, GRADUATED HIGH SCHOOL IN ATLANTA, WAS CONNECTED
5 WITH A MEXICAN FAMILY THAT WAS HAVING POUNDS AND POUNDS
6 OF ICE BROUGHT IN FROM MEXICO.

7 SHE'S WORKING WITH BRIAN MUELLER. BRIAN
8 MUELLER. WHO WOULD HAVE THOUGHT THAT THIS GUY, WHO SAID
9 HE WAS A WAITER AT BUFFALO'S, WOULD BE RIDING AROUND
10 WITH \$115,000.00 OF CASH IN HIS CAR, THREE POUNDS OF ICE
11 IN HIS CAR?

12 IT IS CERTAINLY POSSIBLE FOR THE TWO OF THEM
13 TO GET TOGETHER, SEXTON AND LAVENDER TO GET TOGETHER AND
14 FLIP THIS STORY ON ITS HEAD AND SAY LET'S TURN IT ON
15 SETH.

16 DO YOU REMEMBER THE OFFICERS ARE NOT SO MUCH
17 INTERESTED IN WHO'S BELOW YOU IN A CONSPIRACY. IF YOU
18 GET ARRESTED, THEY'RE NOT GONNA BE PEPPERING YOU WITH,
19 WELL, LET'S SET UP A SALE TO THIS USER, LET'S SET UP A
20 SALE TO THIS USER. WHAT DO THEY WANT? THEY WANT YOU TO
21 GO UP. IF YOU DON'T HAVE INFORMATION UP, THEN YOU GOT A
22 PROBLEM. IF YOU GIVE INFORMATION ON THE PEOPLE ABOVE
23 YOU, THEN YOU MAY CERTAINLY HAVE A PROBLEM. SO WHAT YOU
24 DO ESSENTIALLY IS YOU GIVE INFORMATION ABOUT SOMEBODY
25 AND YOU TELL THEM THIS GUY IS HIGHER, GET HIM, HE'S YOUR

1 GUY.

2 AND TO HAVE ANOTHER CO-CONSPIRATOR SAY THE
3 SAME THING, IF THAT IS, IN FACT, CORROBORATION? NO,
4 SIR. THAT'S CORROBORATION OF ANOTHER PERSON'S STORY,
5 IT'S NOT CORROBORATION OF THE TRUTH.

6 WHAT DO WE KNOW ABOUT THE INFORMANTS? AS A
7 COUNTRY WHAT HAVE WE LEARNED ABOUT INFORMANTS IN THE
8 LAST 15 YEARS? THEY LIE. HOW MANY TIMES DO WE HAVE TO
9 LEARN THAT AS A COUNTRY, THAT INFORMANTS LIE?

10 KENNY LAVENDER, THE FIRST PERSON TO SAY THE
11 NAME SETH STEARNS TO LAW ENFORCEMENT, OFFICER DORSEY
12 SAID AT THE BEGINNING OF THIS CASE THAT KENNY HAD ZERO
13 CREDIBILITY. ZERO. HE WARNED KENNY'S LAWYER IN
14 CLEVELAND PARK, OR AT THE FAIRGROUNDS, I CAN'T REMEMBER
15 WHICH, THAT KENNY HAS BEEN LYING TO US ABOUT HIS
16 INVOLVEMENT AND RESOURCES THROUGHOUT. DO YOU REMEMBER
17 THAT? THAT WAS ON APRIL 5TH, I BELIEVE, 2005. THAT WAS
18 AFTER HE HAD GIVEN THE STATEMENT ON MARCH 24TH WHERE HE
19 SAID ESSENTIALLY THE SAME THING. KENNY LAVENDER HAS
20 BEEN LYING TO US THROUGHOUT. HE DIDN'T REMEMBER SAYING
21 IT. HE DIDN'T REMEMBER PUTTING IT IN HIS SURVEILLANCE
22 NOTE.

23 THEY TOLD KENNY, COME CLEAN, TELL US THE
24 TRUTH, TAKE A POLYGRAPH, WE'LL REEVALUATE YOUR
25 SITUATION. JUST TELL THE TRUTH. WE'LL PUT YOU IN JAIL

1 FOR 20 YEARS UNLESS YOU TELL US THE TRUTH. WHAT DOES HE
2 DO? HE GOES TO EASLEY, HE GETS HOOKED UP TO A MACHINE
3 WHERE THEY PUT STICKERS ON HIS CHEST WITH WIRES. THEY
4 ASK HIM QUESTIONS AND THEY SAY, WHERE DID YOU GET YOUR
5 DRUGS? SETH STEARNS. WHAT IS THE RESULT OF THAT
6 POLYGRAPH? (MAKES BUZZING SOUND.) NEGATIVE.
7 PHYSIOLOGICAL MANIFESTATIONS THAT LEAD THE EXAMINER TO
8 CONCLUDE THAT KENNY LAVENDER WAS BEING DECEPTIVE. WHAT
9 DOES THAT MEAN? KENNY LAVENDER LIED AGAIN. THEY
10 ARRESTED HIM.

11 WE KNEW ONE THING, THOUGH, FOR SURE AFTER
12 THAT POLYGRAPH. KENNY WAS TELLING THE TRUTH ABOUT HIS
13 CONNECTION WITH CHAD, ABSOLUTELY, 100 PERCENT. SHE SAYS
14 SHE'S NOT 100 PERCENT CERTAIN OF ANYTHING. I'M 100
15 PERCENT SURE THAT KENNY LAVENDER WAS CONNECTED TO CHAD
16 FOR SURE? HOW? WHY? BECAUSE OF THE REPORTED PHONE
17 CALLS. BECAUSE OF THE TRANSACTION AT THE WAL-MART THAT
18 ENDED UP AT THE MCDONALD'S. BECAUSE OF THE DRUGS FOUND
19 IN CHAD'S CAR (HOLDS UP DRUGS).

20 THIS IS THE CORROBORATION. THIS IS WHY I'M
21 100 PERCENT CERTAIN OF THIS CONNECTION. THIS IS THE
22 KIND OF INDEPENDENT CORROBORATION THAT WE MUST HAVE IN
23 THESE CASES. WHY? BECAUSE THIS GUY CANNOT BE TRUSTED,
24 PERIOD. (POINTING ON BOARD.)

25 YOU TAKE CHAD SEXTON. OH, YEAH, SETH

1 STEARNS SET ME UP WITH THIS SOURCE IN ATLANTA, AMANDA.
2 DO WE HAVE ANY INDEPENDENT CORROBORATION? NONE. TO
3 CORROBORATE IT WITH ANOTHER CO-CONSPIRATOR IS NOT
4 ENOUGH. IT'S NOT ENOUGH, NOT IN THIS WORLD, NOT IN OUR
5 SYSTEM.

6 WHAT IS THE MOST INTERESTING THING ---

7 MS. PORTER: YOUR HONOR, I OBJECT. THAT'S
8 CONTRARY TO THE LAW.

9 THE COURT: RESTATE IT, MISTER...

10 MR. KAPPEL: YOU AS THE JURORS ARE THE
11 DEFINITIVE OPINION ON WHAT CORROBORATION IS NECESSARY
12 FOR A CONVICTION IN THIS CASE, OKAY? WHY DON'T WE LEAVE
13 IT THERE?

14 THE COURT: WELL, LET'S DO THIS. LET'S
15 UNDERSTAND THAT, LADIES AND GENTLEMEN OF THE JURY, YOU
16 ARE THE FINAL JUDGES ON THE FACTS OF THE CASE, NOT THE
17 ARGUMENT OF COUNSEL, AND THAT GOES BOTH FOR THE STATE
18 AND THE DEFENDANT.

19 AS FAR AS THE LAW OF THE CASE, YOU WILL TAKE
20 THE LAW AS I GIVE IT TO YOU AS THE CORRECT LAW.

21 YOU MAY PROCEED.

22 MR. KAPPEL: THANK YOU, JUDGE.

23 WHAT IS THE MOST INTERESTING ASPECT OF CHAD
24 SEXTON -- AND I'M SURE YOU RECALL THIS -- CHAD SEXTON IS
25 ON THE WITNESS STAND, HE'S TALKING ABOUT HOW HE WENT TO

1 ATLANTA FOR TWO DAYS. HE HAD TO PAY SETH AN OUNCE, A
2 THOUSAND DOLLARS, WHATEVER, FOR EVERY TRIP. THAT WAS
3 THE DEAL. HE WAS DOWN THERE FOR TWO DAYS. THEY DIDN'T
4 HAVE ANY DRUGS. WENT TO WASH MY CAR. SHE CALLED ME. I
5 WENT BACK TO AMANDA'S HOUSE TO PICK THE DRUGS UP. AFTER
6 I GOT THE DRUGS, GOT ON THE INTERSTATE, START HEADING
7 BACK TO GREENVILLE.

8 THE ATTORNEY GENERAL'S OFFICE ASKED HIM THE
9 QUESTION, LOOKING FOR THE CORROBORATION: DID YOU MAKE
10 ANY STOPS ON YOUR WAY BACK TO GREENVILLE? THE IDEA WAS,
11 IS THAT HE WOULD HAVE STOPPED AT SETH'S HOUSE TO DROP
12 OFF THE PAYMENT, DROP OFF HIS SHARE OF THE DRUGS. DID
13 THAT HAPPEN? HUH-UH.

14 DO YOU KNOW WHAT HE SAID? HE WENT TO A GUY
15 NAMED KELLY'S HOUSE. THEN HE WENT TO HIS BROTHER'S
16 HOUSE. THEN HE WENT HOME TO TAKE A SHOWER. AND THAT'S
17 WHEN KENNY WAS CALLING AND CALLING AND CALLING AND SAID,
18 HEY, MAN, I WANT MY STUFF, I WANT MY STUFF. HE SAID,
19 ALL I WANT TO DO IS JUST -- I'VE BEEN UP FOR TWO DAYS,
20 ALL I WANT TO DO IS JUST CHILL OUT. BUT KENNY KEPT
21 CALLING AND CALLING, SO I WENT TO MEET KENNY TO GIVE HIM
22 HIS DRUGS.

23 WHERE WAS SETH? HOW WAS SETH INVOLVED? HE
24 WASN'T. WHERE'S THE CORROBORATION? THERE ISN'T ANY.

25 HOW ABOUT BRIAN MUELLER? NO STATEMENTS FROM

1 LAW ENFORCEMENT UNTIL MARCH THE 21ST, 2007. WHAT WAS HE
2 DOING? GETTING READY FOR THIS CASE, THAT'S WHAT HE WAS
3 DOING.

4 YESTERDAY I HAD A FLOW CHART OF MY OWN PUT
5 TOGETHER, IF IT WILL HOLD UP. EXCUSE ME FOR ONE SECOND.

6 (OFF-THE-RECORD DISCUSSION.)

7 MR. KAPPEL: WHAT IS IT THAT WE REALLY KNOW?
8 I HOPE EVERYBODY CAN SEE THIS. WE'VE GOT AMANDA FORDHAM
9 AT THE TOP, I'M GONNA TALK ABOUT HER MORE SPECIFICALLY
10 IN A MINUTE. SHE SELLS 50 POUNDS OVER THE COURSE OF A
11 PERIOD OF TIME TO BRIAN MUELLER. THAT'S OVER
12 \$750,000.00 WHOLESALE, IT'S 50 TIMES 15, 50 TIMES
13 \$15,000.00.

14 BRIAN MUELLER, HE'S ARRESTED SEPTEMBER 7TH,
15 2005, HE'S ARRESTED WITH THREE POUNDS OF
16 METHAMPHETAMINE, \$115,000.00 IN CASH. WHAT ALSO IS
17 BRIAN MUELLER DOING? BRIAN IS TRADING WITH KENNY ICE
18 FOR MARIJUANA.

19 KENNY. YOU RECALL KENNY, OF COURSE, THE
20 TRAFFICKER WHO HAD THE CONNECTION FROM CALIFORNIA HAVING
21 THOUSANDS OF POUNDS OF MARIJUANA SHIPPED TO GREENVILLE.

22 REMEMBER, DON'T UNDERESTIMATE THESE PEOPLE.
23 DON'T LOOK AT KENNY UP HERE, DON'T LOOK AT KENNY'S
24 PICTURE DOWN HERE AND SAY, YOU KNOW, I ACTUALLY FEEL
25 SORRY FOR THIS GUY. HE COMES ACROSS AS HAVING LOST HIS

1 MIND A LITTLE BIT. DON'T UNDERESTIMATE HIM. IT'S NOT
2 THE AVERAGE PERSON THAT CAN HAVE A THOUSAND POUNDS OF
3 MARIJUANA SHIPPED FROM CALIFORNIA TO GREENVILLE.

4 BRIAN MUELLER IS CONNECTED TO KENNY, THEY
5 ARE TRADING MARIJUANA AND ICE. BRIAN MUELLER IS SELLING
6 TO CHAD. (POINTING ON BOARD.)

7 ONE THING I WANTED TO POINT OUT: CHAD IS
8 ARRESTED APRIL 6, 2005, IN THE MCDONALD'S INCIDENT. OF
9 COURSE, HE GOT OUT ON BOND, MADE THOSE PHONE CALLS TO
10 AMANDA TO TRY TO SET UP AMANDA. HIS PLEA AGREEMENT,
11 MARCH 21ST, 2007; BRIAN MUELLER'S, MARCH 21ST, 2007;
12 KENNY LAVENDER, HIS PLEA AGREEMENT, MARCH 21ST, 2007;
13 ROBBY SEXTON, HIS PLEA AGREEMENT, MARCH 21ST, 2007. IS
14 IT JUST SOME SORT OF ACCIDENT THAT BRIAN MUELLER, ROBBY
15 SEXTON ALL OF A SUDDEN HAVE GIVEN STATEMENTS TO THE
16 POLICE AND PLEA AGREEMENTS ON MARCH 21ST, 2007,
17 PARTICULARLY WHEN THEY WERE ARRESTED MONTHS IF NOT YEARS
18 BEFORE?

19 MS. PORTER: YOUR HONOR, I'M GONNA OBJECT TO
20 THE MISCHARACTERIZATION ON THAT.

21 THE COURT: AGAIN, MADAM FORELADY, YOU ARE
22 THE JUDGES OF THE FACTS. NOW, THE INTERPRETATION THAT
23 THE ATTORNEYS MIGHT GIVE TO THE FACTS IS SOMETHING FOR
24 YOU TO CONSIDER, BUT YOU ARE TO CONSIDER THE FACTS THAT
25 WERE PRESENTED, BECAUSE AGAIN, ARGUMENT OF COUNSEL IS

1 NOT TESTIMONY, IT'S NOT EVEN AUTHORITY ON THE LAW. THIS
2 IS HIS OPPORTUNITY TO TRY TO PERSUADE YOU TO HIS VIEW OF
3 THE FACTS, THE SAME AS IT WAS FOR THE STATE.

4 GO AHEAD.

5 MR. KAPPEL: I AM, JUDGE. I'M TRYING TO
6 PICK MY MIND BACK UP. THANK YOU.

7 LET'S TALK ABOUT ROBBY SEXTON FOR A MINUTE.
8 ROBBY'S DOWN HERE (POINTS TO BOARD). HIS PLEA
9 AGREEMENT, OF COURSE, MARCH 21ST, 2007.

10 DAVID REVIS PROVIDING POUNDS OF
11 METHAMPHETAMINES TO THE SEXTONS. CHAD SAYS ABOUT ROBBY,
12 I LOVE MY BROTHER. WHAT'S ROBBY GONNA DO? HE'LL DO
13 WHAT CHAD DOES. ROBBY SAID, IF YOU REMEMBER, EVEN AT
14 ONE POINT IN TIME A FEW WEEKS AGO THAT ROBBY AND CHAD
15 WERE IN THE SAME, WE CALL THEM PODS, THE SAME LITTLE
16 DORMITORY AT THE DETENTION CENTER.

17 DID Y'ALL TALK ABOUT THIS CASE?

18 OH, NO, WE DIDN'T TALK ABOUT THIS CASE.

19 DID Y'ALL TALK ABOUT WHAT YOU WERE GONNA
20 TESTIFY TO?

21 OH, NO.

22 NONSENSE. ABSOLUTE NONSENSE. IT'S JUST
23 NATURAL THAT TWO BROTHERS ARE GONNA TALK. THEY'RE GONNA
24 TALK ABOUT THEIR CASE, THEY'RE GONNA TALK ABOUT HOW MUCH
25 TIME THEY'RE GONNA DO IN PRISON, THEY'RE GONNA TALK

1 ABOUT THEIR FAMILIES, THEY'RE GONNA TALK ABOUT
2 EVERYTHING.

3 ROBBY, IF YOU WILL REMEMBER, WAS UNDER
4 INVESTIGATION FOR HAVING THE LIEUTENANT IN PICKENS
5 KILLED, THE LIEUTENANT OVER THE VICE AND NARCOTICS UNIT.
6 A SNITCH AS HE PUT IT FROM THE DETENTION CENTER WROTE A
7 LETTER TO LAW ENFORCEMENT WHO WAS INVESTIGATING. WHAT
8 DID ROBBY SAY? "OH, THAT'S NOT TRUE. THAT'S JUST SOME
9 GUY, HE'S TRYING TO GET OUT OF JAIL."

10 HE WAS NEVER CHARGED. I SUPPOSE THEY DIDN'T
11 HAVE ANY INDEPENDENT VERIFICATION THAT THAT WAS ACTUALLY
12 OCCURRING.

13 THE QUESTION FOR YOU IS, OF COURSE,
14 CREDIBILITY. AS THE JUDGE SAID, HE'S GONNA INSTRUCT YOU
15 ON CREDIBILITY. I BELIEVE HE'S GONNA INSTRUCT YOU -- IF
16 HE INSTRUCTS YOU DIFFERENTLY TAKE THE JUDGE'S
17 INSTRUCTIONS -- BUT I BELIEVE HE'S GOING TO TELL YOU YOU
18 CAN BELIEVE ALL OF WHAT A WITNESS SAYS, SOME OF WHAT A
19 WITNESS SAYS, OR NONE OF WHAT A WITNESS SAYS. YOU CAN
20 BELIEVE THAT AMANDA FORDHAM PROVIDED 50 POUNDS OF
21 METHAMPHETAMINE TO BRIAN MUELLER. YOU CAN CHOOSE NOT TO
22 BELIEVE THAT AMANDA FORDHAM WAS INTRODUCED TO BRIAN
23 THROUGH SETH STEARNS.

24 YOU CAN BELIEVE THAT KENNY LAVENDER HAD A
25 CONNECTION WITH CHAD SEXTON AND ALSO BELIEVE THAT HE HAD

1 A CONNECTION WITH BRIAN MUELLER. YOU CAN QUESTION
2 WHETHER OR NOT KENNY LAVENDER MET BRIAN MUELLER THROUGH
3 SETH STEARNS OR KENNY LAVENDER MET SETH STEARNS THROUGH
4 BRIAN MUELLER.

5 IF YOU REMEMBER, KENNY LAVENDER SAID TWICE,
6 ON TWO DIFFERENT OCCASIONS OVER SEVERAL MONTHS APART,
7 THAT HE MET BRIAN MUELLER -- EXCUSE ME -- HE MET SETH
8 STEARNS THROUGH BRIAN MUELLER. I HAD TO ASK HIM TWICE.
9 THE SECOND TIME WAS IN MAY TWO THOUSAND AND -- I THINK
10 MAY 2005: "WELL, WHICH IS IT? DID YOU MEET BRIAN
11 THROUGH SETH OR SETH THROUGH BRIAN?"

12 "WELL, IT WAS, IT WAS, IT WAS BRIAN THROUGH
13 SETH."

14 "SO THEY GOT IT WRONG IN THE REPORT?"

15 "YEAH, THEY WOULD HAVE HAD TO HAVE GOTTEN IT
16 WRONG."

17 TWO DIFFERENT OFFICERS OVER SEVERAL
18 DIFFERENT MONTHS, AND IT WAS MISTAKENLY WRITTEN DOWN.

19 WHERE DOES THAT BECOME A PROBLEM? IT
20 BECOMES A PROBLEM IN TRYING TO VERIFY WHAT IS HAPPENING
21 IN THIS CASE, TO HAVE SOME SORT OF INDEPENDENT
22 VERIFICATION. THIS CONSPIRACY, ICE CREAM, WITH A
23 BUDGET -- THIS IS A BUDGET, AND I'M SURE S.L.E.D. HAS
24 GOT A CAMERA, I'M SURE S.L.E.D. KNOWS HOW TO FILE A
25 SUBPOENA WITH NEXTEL, WITH THE PHONE COMPANY. THEY ARE

1 FOLLOWING KENNY LAVENDER AROUND. COULD THEY NOT HAVE
2 PUT SOME SURVEILLANCE ON SETH STEARNS? THEY ARE TALKING
3 ABOUT A HOUSE DOWN AT THE LAKE. WE DON'T EVEN KNOW IF
4 HE'S GOT A HOUSE AT THE LAKE. THERE ARE NO REAL ESTATE
5 RECORDS. HOW HARD IS IT TO GO TO THE ANDERSON COUNTY
6 WEBSITE AND DO A DEED SEARCH? IT TAKES LIKE THREE
7 SECONDS. IT'S ALL ON THE INTERNET. WE COULD SEE IF HE
8 ACTUALLY OWNED THE HOUSE IN ANDERSON. WE COULD SEE WHAT
9 HE PAID FOR IT, SEE IF THERE WAS A MORTGAGE ON IT.

10 ANYTHING TO TRY TO VERIFY WHAT THESE PEOPLE
11 ARE SAYING. ANYTHING.

12 TO THROW YOUR HANDS UP AND SAY I DIDN'T WANT
13 TO BRING EVERYBODY IN HERE BUT I DIDN'T WANT TO WORK
14 THROUGH TRYING THIS CASE THROUGH CHRISTMAS, OR I COULD
15 HAVE BROUGHT SUCH AND SUCH IN HERE BUT I DIDN'T WANT TO
16 BE WORKING THROUGH NEW YEAR'S, THAT'S ABOUT THE MOST
17 RIDICULOUS THING I'VE HEARD TODAY.

18 YOU COME INTO COURT, TRY YOUR CASE, YOU PUT
19 UP THE EVIDENCE YOU GOT, BECAUSE THAT'S WHAT YOU ARE
20 REQUIRED TO DO. YOU NEVER, NEVER, NEVER COME IN AND SAY
21 WELL, YOU KNOW, I'M GONNA LEAVE THIS EVIDENCE OUT, I'M
22 GONNA LEAVE THIS OUT BECAUSE WE JUST, WE DON'T WANT TO
23 BE HERE.

24 NOT IN THESE CASES. NOT IN THE SEVERITY OF
25 THESE CASES, YOU DO NOT DO THAT. YOU BRING EVERYBODY IN

1 AND YOU GIVE THE JURY EVERYTHING, EVERYTHING. YOU BRING
2 DUSTY MARTIN IN. HE'S IN JAIL. YOU BRING MIKEY WALLACE
3 IN. HE'S IN JAIL. THEY'RE NOT IN THIS GROUP. MAYBE
4 THEY WOULD SAY SOMETHING DIFFERENT. MIKEY WALLACE OUT
5 OF ATLANTA, WHO SHE (POINTING ON BOARD) SAYS INTRODUCED
6 HER TO SETH STEARNS. MAYBE HE WOULD HAVE SOMETHING
7 DIFFERENT. HE'S IN JAIL. BRING HIM. DUSTY MARTIN,
8 BRING HIM.

9 WE KNOW THAT AMANDA WAS CONNECTED TO A GUY
10 NAMED ALEX HATZIDAKIS WHO SHE SAID WAS INITIALLY
11 SUPPLYING THE UPSTATE. WHY DON'T WE HAVE HIM HERE? HOW
12 DIFFICULT WOULD IT BE TO TAKE HATZIDAKIS AND FLIP HIM
13 WITH SETH STEARNS TO CREATE THIS CONSPIRACY? HOW DO WE
14 KNOW THAT HATZIDAKIS ISN'T THE ONE?

15 DO YOU WANT TO TALK ABOUT FLIPPING THE CASE
16 ON ITS HEAD? HOW HARD IS IT TO TAKE THE SAME STORY AND
17 JUST FLIP ONE NAME FOR ANOTHER?

18 I'LL BE HONEST WITH YOU, AMANDA, SHE LOOKED
19 PITIFUL. I GUESS YOU COULD TRY TO EXTRACT AN OUNCE OF
20 BLOOD FROM HER, BUT SHE LOOKED REALLY PITIFUL, SAD
21 REALLY. HER PARENTS KICKED HER OUT OF HER HOUSE, SHE'S
22 ALL ALONE. PEOPLE WERE ATTRACTED TO HER IN TERMS OF
23 SPENDING TIME WITH HER BECAUSE OF HER METHAMPHETAMINE
24 CONNECTIONS. IT'S JUST REALLY PATHETIC.

25 I HAD TO REMIND MYSELF, WAIT A MINUTE NOW.

1 DON'T FORGET THIS WOMAN IS ADMITTING TO SELLING OVER A
2 THOUSAND POUNDS OF METHAMPHETAMINE AT \$15,000.00 APIECE.
3 YOU CANNOT FORGET WHO SHE IS AND WHAT SHE REALLY IS.

4 AND WHEN YOU TALK ABOUT THE PYRAMID OF DRUG
5 FLOW TO THIS AREA, WHO IS AT THE TOP? SHE'S NOT
6 COMPLETELY AT THE TOP. SHE'S CLOSE. SHE DIDN'T GET
7 THERE 'CAUSE SHE'S DUMB. SHE FOUND AN OPPORTUNITY, SHE
8 EXPLOITED IT, AND SHE EXPLOITED IT TO MAKE MILLIONS OF
9 DOLLARS. IF SHE MADE \$500.00 PER POUND SHE SOLD, THAT'S
10 HALF A MILLION DOLLARS.

11 SHE'S NO DUMMY. SHE FIGURED IT OUT. SHE
12 FIGURED OUT HOW TO SELL THOUSANDS OF POUNDS OF
13 METHAMPHETAMINE AND STAY ON THE STREET. SHE WASN'T
14 ARRESTED UNTIL MARCH OF '07. SHE'S NOT STUPID. SHE'S
15 NOT INCAPABLE OF FLIPPING ALEX'S NAME FOR SETH'S NAME.

16 ALL THESE PEOPLE WERE TALKING DURING THE
17 CRITICAL MONTHS OF MARCH AND APRIL OF '06 -- EXCUSE
18 ME -- '05. HOW DIFFICULT IS IT TO FLIP ONE NAME FOR
19 ANOTHER? IT'S NOT IMPOSSIBLE.

20 WHY IS THIS IMPORTANT? WHY IS INDEPENDENT
21 VERIFICATION IMPORTANT? IT'S IMPORTANT SO THAT KIND OF
22 STUFF CANNOT HAPPEN.

23 I'M GONNA TALK TO YOU ABOUT MEMORY FOR JUST
24 A MINUTE. MEMORY IS KIND OF AN INTERESTING THING. IN
25 MY GRANDPARENTS' GENERATION, FOR THEM THE EVENT WAS

1 PEARL HARBOR. THEY COULD TELL YOU WITH ABSOLUTE
2 PRECISION WHERE THEY WERE, WHAT THEY WERE EATING, AND
3 WHAT THEY WERE WATCHING ON TELEVISION [SIC] WHEN THEY
4 FOUND OUT ABOUT PEARL HARBOR. THAT MEMORY WAS INDELIBLY
5 MARKED INTO THEIR BRAIN.

6 MY PARENTS' GENERATION WAS THE ASSASSINATION
7 OF JOHN F. KENNEDY. AGAIN, THEY COULD TELL YOU WHERE
8 THEY WERE, WHAT THEY WERE DOING, WITH ABSOLUTE PRECISION
9 AND CLARITY.

10 NATURALLY, FOR OUR GENERATION, SEPTEMBER
11 11TH, 2001, IT'S HARD TO BELIEVE IT'S ALREADY BEEN SIX
12 YEARS, BUT SEPTEMBER 11TH, THAT'S OUR GENERATION'S
13 MEMORY, OUR EVENT WHERE WE CAN SAY, YOU KNOW, I WAS AT
14 THIS PLACE, WITH THIS PERSON, EATING THIS TYPE OF FOOD,
15 GOING TO THIS TYPE OF BALL GAME, WHATEVER.

16 WHAT OTHER EVENTS ARE IN A PERSON'S LIFE
17 THAT YOU CAN RECALL WITH ABSOLUTE PRECISION, WITH
18 ABSOLUTELY CLARITY?

19 LET'S THROW THIS IN THERE. HOW MANY EVENTS
20 CAN YOU RECALL IN YOUR LIFE WITH THAT KIND OF PRECISION
21 AND CLARITY WHEN YOU'RE ON THIS KIND OF STUFF (HOLDS UP
22 DRUGS)? IT'S NOT EASY.

23 (POINTING ON BOARD): MARCH 21ST, MARCH
24 21ST, MARCH 21ST, MARCH 21ST, AND MARCH THE 13TH.

25 THE ATTORNEY GENERAL MENTIONED YOU GOT TO GO

1 TO HELL TO GET THE WITNESSES. AGAIN, THAT'S WHY THE
2 INDEPENDENT VERIFICATION IS SO IMPORTANT. WE HAVE BEEN
3 IN THE DEPTH OF HELL THIS WEEK, NO QUESTION ABOUT IT.
4 WHY CAN WE NOT HAVE INDEPENDENT VERIFICATION, SOME
5 SURVEILLANCE AND SOME VIDEO, BANK RECORDS, REAL ESTATE
6 RECORDS, VIDEOTAPES, AUDIOTAPES, ANYTHING, ANYTHING TO
7 INDEPENDENTLY VERIFY WHAT THESE PEOPLE ARE SAYING?
8 ANYTHING TO DISPROVE JUST SIMPLY FLIPPING ONE NAME FOR
9 ANOTHER?

10 THE JUDGE, I BELIEVE, WILL INSTRUCT YOU THAT
11 HAVING PASSIVE KNOWLEDGE OF A CONSPIRACY IS NOT ENOUGH
12 TO BE IN A CONSPIRACY. YOU HAVE TO BE ACTIVELY
13 PARTICIPATING.

14 FINALLY, TO TALK TO YOU BRIEFLY ABOUT
15 REASONABLE DOUBT. THE JUDGE, I BELIEVE, WILL INSTRUCT
16 YOU ALL ABOUT REASONABLE DOUBT CAUSING A REASONABLE
17 PERSON TO HESITATE TO ACT. IF YOU GO BACK IN THAT JURY
18 ROOM -- THIS IS HOW I DESCRIBE TO TRY IT BECAUSE IT HAD
19 AN IMPRESSION ON ME WHEN I HEARD THIS FROM ANOTHER
20 LAWYER STATE THIS, SO I'M BORROWING THIS -- WHEN YOU GO
21 BACK TO THAT JURY ROOM AND THAT INDICTMENT OR THAT JURY
22 FORM IS ON THE TABLE AND YOU HAVE THE WORD GUILTY OR NOT
23 GUILTY AND THE PEN IS IN YOUR HAND, WILL YOU HESITATE
24 BEFORE YOU SIGN YOUR NAME ON THE WORD "GUILTY"? IF YOU
25 HESITATE, THEN IT'S NOT GUILTY.

1 THAT'S ALL I HAVE. THANK YOU.

2 **THE COURT:** MADAM FORELADY, LADIES AND
3 GENTLEMEN OF THE JURY, YOU'VE BEEN IN THE JURY-BOX A
4 LITTLE OVER -- ACTUALLY IT'S ABOUT AN HOUR AND A HALF.
5 I'M GOING TO SUGGEST YOU TAKE A SHORT BREAK AND THEN
6 WHEN YOU COME BACK, I'LL GIVE YOU A CHARGE ON THE LAW.
7 IT WILL TAKE MAYBE 20 MINUTES OR SO. BUT DO NOT
8 UNDERTAKE DISCUSSION OF THE CASE AMONG YOURSELVES IN ANY
9 WAY. WHEN YOU ARE READY TO COME BACK, JUST KNOCK ON THE
10 DOOR.

11 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
12 10:47 A.M.)

13 **THE COURT:** WE'LL TAKE A SHORT BREAK.

14 **MS. PORTER:** YOUR HONOR, WHEN WE COME BACK I
15 WOULD LIKE TO REQUEST ---

16 **THE COURT:** GO AHEAD AND DO IT NOW SO WHEN
17 WE COME BACK I CAN CHARGE THE JURY.

18 **MS. PORTER:** BASED UPON THE DEFENSE CLOSING,
19 I COUNTED AT LEAST SIX TIMES THAT HE REITERATED
20 INDEPENDENT VERIFICATION. HE ALSO STATED THAT THE
21 STATEMENT OF A CO-CONSPIRATOR IS NOT ENOUGH. BECAUSE OF
22 THOSE STATEMENTS IN CLOSING, I WOULD ASK THIS COURT TO
23 RECONSIDER THE REQUEST TO CHARGE FOR CORROBORATION OF
24 ONE CONSPIRATOR IS ENOUGH AND THAT THE STATE IS NOT
25 REQUIRED TO CORROBORATE THAT STATEMENT.

1 THE COURT: BUT WHAT'S THE AUTHORITY FOR
2 THAT?

3 MS. PORTER: YOUR HONOR, IT'S IN MY
4 COMPUTER. THE AUTHORITY IS THE SAME CITE UNDER THE
5 REQUEST TO CHARGE THAT WILL WE PRESENTED.

6 THE COURT: ALL RIGHT. I'LL LOOK AT IT.

7 MS. PORTER: THANK YOU, YOUR HONOR.

8 (WHEREUPON, A RECESS WAS TAKEN.)

9 THE COURT: ALL RIGHT. WE'RE READY TO GO
10 BACK ON THE RECORD, FROM THE STATE?

11 MS. PORTER: YES, SIR, YOUR HONOR.

12 THE COURT: FROM THE DEFENSE?

13 MR. KAPPEL: YES, SIR.

14 THE COURT: ALL RIGHT. I'VE LOOKED AT THE
15 REQUEST TO CHARGE AS TO THE CORROBORATION ISSUE OF
16 ACCOMPLICE. I FIND THAT THERE IS GOOD LAW IN THIS STATE
17 AS TO THE -- I FIND THAT THE LAW IS IN THIS STATE AS THE
18 LAST CASE, STATED FROM A 1846 CASE, BUT LAST TIME CITED
19 WAS 1976 IN STATE V GIBBONS (PHONETIC), 267 S.C. 47, AND
20 IT GOES TO THE QUESTION OF ADMISSIBILITY AND WEIGHT
21 RATHER THAN -- OR AT LEAST THAT'S WHERE THE ISSUE HAS
22 BEEN RAISED BEFORE.

23 HAVING READ THE CASES, I'M GOING TO, AS A
24 PART OF MY CHARGE ON THE COURT'S DUTY TO JUDGE THE
25 CREDIBILITY OF WITNESSES AND THE EVIDENCE PRESENTED, AT

1 THE POINT WHERE I STATE TO CHARGE THEM THAT AS JURORS
2 YOU HAVE THE RIGHT TO BELIEVE A SMALL PORTION OF A
3 WITNESS'S TESTIMONY AND DISCARD THE LARGER OR VICE
4 VERSA, YOU MAY BELIEVE ALL OF A WITNESS'S TESTIMONY OR
5 NONE, AND THEN INSERT THIS: THE TESTIMONY OF AN
6 ACCOMPLICE IS ALTOGETHER FOR THE JURY AND, IF BELIEVED,
7 NEED NOT BE CORROBORATED.

8 I THINK THAT'S THE WAY -- OTHERWISE, IT
9 WOULD BE A STATEMENT OR A CHARGE ON THE FACTS. NOW,
10 I'LL SAY THIS. I DO HAVE SOME RESERVATIONS ABOUT IT
11 INASMUCH AS THE ONLY LAW THAT SPECIFICALLY ADDRESSES
12 CORROBORATION OF A WITNESS IS WHAT I UNDERSTAND UNDER
13 THE CRIMINAL SEXUAL CONDUCT STATUTE THAT PROVIDES THAT A
14 VICTIM'S TESTIMONY DOES NOT HAVE TO BE CORROBORATED.

15 AND I HAVE A CERTAIN RESERVATION. SOMETHING
16 TELLS ME THE OLD ADAGE ABOUT, OR THE MAXIM OF *EXPRESSIO*
17 *UNIUS EST EXCLUSIO ALTERIUS*, THE FACT THAT THEY LIMIT
18 NON-CORROBORATION TO ONE SPECIFIC SECTION UNDER THE MORE
19 MODERN LAW. THEY DON'T, AS I FIND IT HERE, THAT THAT IS
20 A CORRECT STATEMENT. SO I AM GOING TO CHARGE THAT.

21 I'LL NOTE THE DEFENDANT'S OBJECTION TO THAT,
22 THOUGH.

23 MR. KAPPEL: THANK YOU.

24 THE COURT: ALL RIGHT. ANYTHING ELSE?

25 MS. PORTER: NO, YOUR HONOR, THANK YOU.

1 **THE COURT:** ALL RIGHT. ASK THE JURY TO JOIN
2 US.

3 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
4 11:12 A.M.)

5 **THE COURT:** MADAM FORELADY, LADIES AND
6 GENTLEMEN OF THE JURY, I APOLOGIZE FOR THE DELAY.. I
7 THOUGHT I HAD EVERYTHING TOGETHER, BUT IT TURNED OUT
8 THAT I HAD TO LOOK AT SOMETHING ELSE BEFORE I COULD GIVE
9 YOU A COMPLETE CHARGE ON THE CASE. I'VE NOW DONE THAT
10 AND THIS WILL BE THE FINAL PART OF THE CASE AS FAR AS
11 THE TRIAL IS CONCERNED.

12
13 **CHARGE ON THE LAW BY THE COURT:**

14
15 AS JURORS IN THIS CASE YOU HAVE CERTAIN
16 FUNCTIONS AND RESPONSIBILITIES TO PERFORM WHICH ARE
17 ENTIRELY SEPARATE AND DISTINCT FROM THOSE OF MINE AS A
18 TRIAL JUDGE. I AM PROHIBITED BY THE CONSTITUTION OF OUR
19 STATE FROM CHARGING YOU ON THE FACTS OF THIS CASE. I AM
20 ALSO PROHIBITED FROM DISCUSSING THE FACTS OF THE CASE
21 WITH YOU OR IN ANY WAY INTIMATING WHAT MY FEELINGS, IF
22 ANY, ARE ABOUT THE FACTS OF THIS CASE.

23 IT IS YOUR RESPONSIBILITY AND YOURS ALONE TO
24 PASS UPON ALL ISSUES OF FACT PRESENTED IN THE CASE. I
25 WOULD, THEREFORE, CHARGE YOU THAT IF DURING THE COURSE

1 OF THE TRIAL OR DURING MY CHARGE YOU HAVE BEEN GIVEN OR
2 LEFT WITH THE IMPRESSION OR FEELING THAT I DO HAVE A
3 PERSONAL FEELING ABOUT THE FACTS OF THIS CASE, I WOULD
4 SPECIFICALLY INSTRUCT YOU TO DISREGARD THAT FEELING OR
5 IMPRESSION.

6 MOREOVER, YOU ARE THE SOLE JUDGES OF THE
7 TESTIMONY AND WHAT IT WAS AND NOT THE ARGUMENT OF
8 COUNSEL. IT IS ALSO YOUR DUTY AND YOURS ALONE TO WEIGH
9 THE TESTIMONY AND EVIDENCE IN THE CASE AND TO PASS UPON
10 THE CREDIBILITY OR BELIEVABILITY OF THE WITNESSES. IN
11 THIS CONNECTION YOU HAVE A RIGHT TO BELIEVE ALL THAT A
12 WITNESS TELLS YOU OR TO DISBELIEVE ALL THAT A WITNESS
13 TELLS YOU. YOU HAVE A RIGHT TO BELIEVE A PART OF WHAT A
14 WITNESS TELLS YOU AND TO DISBELIEVE A PART OF WHAT A
15 WITNESS TELLS YOU. YOU HAVE THE RIGHT TO TAKE INTO
16 CONSIDERATION ANY BIAS OR PREJUDICE OR INTEREST YOU FEEL
17 A WITNESS MIGHT HAVE IN THE CASE. I SAY THIS MERELY TO
18 EMPHASIZE THAT THE WEIGHT YOU SEE FIT TO GIVE TO THE
19 TESTIMONY, TO THE CREDIBILITY OF THE WITNESSES, AS WELL
20 AS ALL ISSUES OF FACT ARE FOR YOUR SOLE DETERMINATION.

21 AS JUDGES OF THE FACTS YOU ARE THE SOLE
22 JUDGES OF THE CREDIBILITY, THAT IS THE BELIEVABILITY OF
23 THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE. IN
24 PASSING UPON THEIR CREDIBILITY YOU MAY TAKE INTO
25 CONSIDERATION MANY THINGS, SUCH AS THE APPEARANCE AND

1 MANNER OF THE WITNESS ON THE STAND, SOMETIMES REFERRED
2 TO AS THE Demeanor OF THE WITNESS.

3 WAS THE WITNESS FORTHRIGHT OR HESITANT? WAS
4 THE WITNESS'S TESTIMONY CONSISTENT OR DID IT CONTAIN
5 DISCREPANCIES? WHAT WAS THE ABILITY OF THE WITNESS TO
6 KNOW THE FACTS ABOUT WHICH HE OR SHE TESTIFIED? DID THE
7 WITNESS HAVE A CAUSE OR A REASON TO BE BIASED AND
8 PREJUDICED IN FAVOR OF THE TESTIMONY HE OR SHE GAVE?
9 WAS THE TESTIMONY OF THE WITNESS CORROBORATED OR MADE
10 STRONGER BY OTHER TESTIMONY AND EVIDENCE OR WAS IT MADE
11 WEAKER OR IMPEACHED BY SUCH OTHER TESTIMONY AND
12 EVIDENCE?

13 NOW, THE TESTIMONY OF AN ACCOMPLICE IS
14 ALTOGETHER FOR THE JURY TO BELIEVE IN THEIR
15 CONSIDERATION, AND IF BELIEVED, NEED NOT BE
16 CORROBORATED.

17 AS JURORS YOU HAVE THE RIGHT TO BELIEVE A
18 SMALL PORTION OF A WITNESS'S TESTIMONY AND DISCARD THE
19 LARGER OR VICE VERSA. YOU MAY BELIEVE ALL OF A
20 WITNESS'S TESTIMONY OR NONE. MOST CERTAINLY YOU DO NOT
21 DETERMINE THE AMOUNT OF CREDIBILITY OR BELIEVABILITY BY
22 COUNTING UP THE NUMBER OF WITNESSES WHO MAY HAVE
23 TESTIFIED ON BEHALF OF THE PARTIES.

24 NOW, THE RULES OF EVIDENCE ORDINARILY DO NOT
25 PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS.

1 AN EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL
2 EXPERT WITNESSES. A WITNESS WHO BY EDUCATION AND
3 EXPERIENCE HAS BECOME EXPERT IN SOME ART, SCIENCE,
4 PROFESSION OR CALLING MAY STATE AN OPINION AS TO
5 RELEVANT AND MATERIAL MATTER IN WHICH THE WITNESS CLAIMS
6 TO BE AN EXPERT AND MAY ALSO STATE THE REASONS FOR THE
7 OPINION. YOU SHOULD CONSIDER ANY EXPERT OPINION
8 RECEIVED IN EVIDENCE IN THIS CASE AND, LIKE ANY OTHER
9 EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF
10 YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT
11 BASED ON SUFFICIENT EDUCATION OR EXPERIENCE, OR IF YOU
12 CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE
13 OPINION ARE NOT SOUND OR THAT THE OPINION IS OUTWEIGHED
14 BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION
15 ENTIRELY. AN EXPERT WITNESS'S TESTIMONY IS TO BE GIVEN
16 NO GREATER WEIGHT THAN OTHER WITNESSES SIMPLY BECAUSE
17 THE WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED
18 TO ACCEPT AN EXPERT'S OPINION EVEN THOUGH IT IS NOT
19 CONTRADICTED.

20 THROUGHOUT THIS ENTIRE PROCESS YOU HAVE BUT
21 ONE SINGLE OBJECTIVE AND THAT IS TO SEEK THE TRUTH,
22 REGARDLESS FROM WHAT WITNESS THE TESTIMONY MAY HAVE
23 COME.

24 NOW, BY THE SAME CONSTITUTION AND LAW WHICH
25 MAKES YOU THE FINDERS OF THE FACTS AND EVIDENCE AS I'VE

1 DISCUSSED WITH YOU, I AM, AS THE JUDGE, MADE THE SOLE
2 AND ONLY INSTRUCTOR OF THE LAW, AND YOU MUST ACCEPT AS
3 CORRECT THE LAW WHICH I CHARGE AS CORRECT AND APPLY TO
4 IT THE EVIDENCE AS YOU FIND IT AND REACH YOUR VERDICT.
5 IF I MAKE AN ERROR IN THE LAW AS I INSTRUCT IT TO YOU,
6 THERE IS ANOTHER TIME AND PLACE THAT ERROR CAN BE
7 CONSIDERED AND, IF NECESSARY, CORRECTED, BUT FOR THE
8 PURPOSES OF THIS CASE TODAY YOU MUST ACCEPT THE LAW AS I
9 CHARGE IT TO YOU TO BE THE CORRECT LAW.

10 AND FINALLY I CHARGE YOU IN THIS REGARD,
11 THAT YOU, NOR FOR THAT MATTER I, SHOULD BE CONCERNED
12 WITH WHAT THE LAW OUGHT TO BE BUT RATHER WHAT I CHARGE
13 YOU THE LAW TO BE.

14 NOW, THE DEFENDANT HAS PLED NOT GUILTY TO
15 THIS INDICTMENT AND THAT PLEA PUTS THE BURDEN ON THE
16 STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED
17 WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS
18 NEVER REQUIRED TO PROVE HIMSELF OR HERSELF INNOCENT. I
19 CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW THAT
20 A DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE
21 SERIOUSNESS OF THE CRIME MAY BE, OR THE CHARGE MAY BE,
22 WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR
23 WHICH THE INDICTMENT WAS ISSUED UNLESS THE GUILT HAS
24 BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT
25 BEYOND A REASONABLE DOUBT.

1 THE PRESUMPTION OF INNOCENCE DOES NOT END
2 WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES
3 THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A
4 VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF
5 THAT GUILT BEYOND A REASONABLE DOUBT. PRESUMPTION OF
6 INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT
7 THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE
8 DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT
9 BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT
10 BEYOND A REASONABLE DOUBT.

11 THE PRESUMPTION OF INNOCENCE IS NOT MERE
12 LEGAL THEORY, IT IS NOT JUST A LEGAL PHRASE; IT IS A
13 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED
14 UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF
15 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

16 AND WHAT IS A REASONABLE DOUBT IN THE LAW?
17 A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE
18 A REASONABLE PERSON TO HESITATE TO ACT.

19 NOW, I INSTRUCT YOU AND EMPHASIZE THAT THE
20 FACT THE DEFENDANT DID NOT TESTIFY, PUT UP EVIDENCE OR
21 EVEN APPEAR ARE NOT FACTORS TO BE CONSIDERED BY YOU IN
22 ANY WAY IN YOUR DELIBERATIONS AND IN YOUR CONSIDERATION
23 OF THE QUESTION OF WHETHER THE STATE HAS PROVEN THE
24 DEFENDANT IS GUILTY OR NOT GUILTY OF THE CHARGE IN THE
25 INDICTMENT. IT MUST NOT BE CONSIDERED BY YOU IN ANY

1 MANNER WHATSOEVER. A DEFENDANT HAS A CONSTITUTIONAL
2 RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT
3 MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS.
4 THE DEFENDANT MAY ALSO WAIVE HIS RIGHT TO BE PRESENT AT
5 TRIAL.

6 I REPEAT: UNDER YOUR OATH YOU ARE TO DRAW
7 NO CONCLUSION WHATEVER FROM THE FACT THAT THE DEFENDANT
8 IN THIS CASE DID NOT TESTIFY, PRESENT EVIDENCE OR ATTEND
9 THE TRIAL. THE FACT THAT THIS DEFENDANT DID NOT TESTIFY
10 SHOULD NOT EVEN BE DISCUSSED BY YOU IN THE JURY ROOM.
11 THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE
12 STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS
13 INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO
14 PROVE GUILT BEYOND A REASONABLE DOUBT.

15 NOW, THERE ARE TWO TYPES OF EVIDENCE
16 GENERALLY PRESENTED DURING A TRIAL: DIRECT EVIDENCE AND
17 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE
18 TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL
19 KNOWLEDGE OF A FACT SUCH AS AN EYE WITNESS. IT IS
20 EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO
21 BE PROVED IF BELIEVED.

22 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN
23 OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A
24 FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES
25 COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE

1 INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED UPON
2 INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.
3 IT IS PROOF THAT DOES NOT ACTUALLY ESTABLISH THE FACT IN
4 QUESTION BUT THAT ASSERTS OR DESCRIBES SOMETHING ELSE
5 FROM WHICH YOU MAY EITHER REASONABLY INFER THE TRUTH OF
6 THE FACT OR AT LEAST REASONABLY INFER AN INCREASE IN THE
7 PROBABILITY THAT THE FACT IS TRUE.

8 FOR CIRCUMSTANTIAL EVIDENCE TO BE SUFFICIENT
9 TO WARRANT THE FINDING OF A FACT, THE CIRCUMSTANCES MUST
10 LEAD TO THAT FACT WITH REASONABLE CERTAINTY. THE FACTS
11 AND CIRCUMSTANCES SHOULD BE CONSIDERED IN LIGHT OF
12 ORDINARY EXPERIENCE AND COMMON SENSE. THE EXISTENCE OF
13 A FACT CANNOT BE BASED ON SPECULATION, SURMISE, OR
14 CONJECTURE.

15 THE LAW MAKES ABSOLUTELY NO DISTINCTION
16 BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT
17 OR CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF
18 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF
19 DIRECT EVIDENCE.

20 FOR EXAMPLE, CRIMINAL INTENT IS A STATE OF
21 MIND THAT OPERATES JOINTLY WITH AN ACT OR OMISSION IN
22 THE COMMISSION OF A CRIME. CRIMINAL INTENT IS A MENTAL
23 STATE. CRIMINAL LIABILITY IS NORMALLY BASED UPON THE
24 CONCURRENCE OF TWO FACTORS: AN EVIL MEANING MIND AND AN
25 EVIL DOING HAND. PROOF OF INTENT NECESSARILY RESTS ON

1 INFERENCES FROM CONDUCT.

2 NOW, IN INDICTMENT NUMBER 2005-GS-47-25,
3 COUNT ONE, THE DEFENDANT, SETH AARON STEARNS, IS CHARGED
4 WITH TRAFFICKING IN METHAMPHETAMINE BY CONSPIRACY IN
5 EXCESS OF 400 GRAMS, IN VIOLATION OF SOUTH CAROLINA CODE
6 OF LAWS SECTION 44-53-375(C)(5). I REMIND YOU THAT THE
7 FACT THAT THE DEFENDANT WAS ARRESTED, CHARGED AND
8 INDICTED IN THIS CASE IS NOT EVIDENCE IN THIS CASE AND
9 CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS
10 CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF
11 GUILT. THE INDICTMENT IS SIMPLY THE FORMAL WRITTEN
12 INSTRUMENT WHICH CONTAINS THE CHARGE MADE AGAINST THE
13 DEFENDANT, IT IS THE FORMAL DOCUMENT BY WHICH THE CASE
14 IS BROUGHT INTO COURT.

15 NOW, THE DEFENDANT, SETH AARON STEARNS, IS
16 CHARGED WITH TRAFFICKING BY CONSPIRACY MORE THAN 400
17 GRAMS OF METHAMPHETAMINE. THE STATE MUST PROVE BEYOND A
18 REASONABLE DOUBT THAT THE DEFENDANT KNOWINGLY SOLD,
19 MANUFACTURED, CULTIVATED, DELIVERED, PURCHASED, BROUGHT
20 INTO THIS STATE, PROVIDED FINANCIAL ASSISTANCE OR
21 OTHERWISE AIDED, ABETTED, ATTEMPTED TO CONSPIRE TO SELL,
22 MANUFACTURE, CULTIVATE, DELIVER, PURCHASE OR BRING INTO
23 THIS STATE, OR WAS KNOWINGLY IN ACTUAL CONSTRUCTIVE OR
24 KNOWINGLY ATTEMPTED TO BECOME IN ACTUAL OR CONSTRUCTIVE
25 POSSESSION OF METHAMPHETAMINE, WHICH IS AN ILLEGAL

1 SCHEDULE II CONTROLLED SUBSTANCE UNDER SECTION
2 44-53-210(D) OF THE SOUTH CAROLINA CODE OF LAWS.

3 NOW, THE STATE MUST ALSO PROVE BEYOND A
4 REASONABLE DOUBT THAT THE AMOUNT OF THAT METHAMPHETAMINE
5 WAS IN THE AGGREGATE 400 GRAMS OR MORE.

6 NOW, TO PROVE POSSESSION THE STATE MUST
7 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAD
8 THE POWER AND THE INTENT TO CONTROL THE DISPOSITION OF
9 THE METHAMPHETAMINE. POSSESSION MEANS EITHER ACTUAL OR
10 CONSTRUCTIVE. ACTUAL POSSESSION MEANS THAT THE
11 METHAMPHETAMINE WAS IN THE ACTUAL PHYSICAL CUSTODY OF
12 THE DEFENDANT. CONSTRUCTIVE POSSESSION MEANS THE
13 DEFENDANT HAD DOMINION AND CONTROL OVER OR THE RIGHT TO
14 EXERCISE DOMINION AND CONTROL OVER EITHER THE
15 METHAMPHETAMINE ITSELF OR THE PROPERTY ON WHICH THE
16 METHAMPHETAMINE WAS FOUND.

17 MERE PRESENCE AT THE SCENE WHERE THE DRUGS
18 WERE FOUND IS NOT ENOUGH TO PROVE POSSESSION. ACTUAL
19 KNOWLEDGE OF THE PRESENCE OF THE METHAMPHETAMINES IS
20 STRONG EVIDENCE OF THE DEFENDANT'S INTENT TO CONTROL ITS
21 DISPOSITION OR USE. THE DEFENDANT'S KNOWLEDGE OF
22 POSSESSION MAY BE INFERRED WHEN THE SUBSTANCE IS FOUND
23 ON THE PROPERTY UNDER THE DEFENDANT'S CONTROL; HOWEVER,
24 THE INFERENCE IS SIMPLY AN EVIDENTIARY FACT TO BE TAKEN
25 IN CONSIDERATION BY YOU ALONG WITH THE OTHER EVIDENCE IN

1 THE CASE AND TO GIVE IT THE WEIGHT YOU DECIDE IT SHOULD
2 HAVE. NOW, TWO OR MORE PERSONS MAY HAVE JOINT
3 POSSESSION OF A DRUG.

4 TO DELIVER MEANS TO ACTUALLY CONSTRUCTIVELY
5 OR ATTEMPT TO TRANSFER THE DRUG. DISTRIBUTE MEANS TO
6 DELIVER OTHER THAN BY ADMINISTERING OR DISPENSING THE
7 DRUG.

8 MANUFACTURE MEANS TO PRODUCE, PREPARE,
9 CONVERT, PROCESS, PLANT, CULTIVATE, GROW OR HARVEST A
10 DRUG NATURALLY OR CHEMICALLY. MANUFACTURE INCLUDES ANY
11 PACKAGING OR REPACKAGING OF THE DRUG OR LABELING OR
12 RELABELING OF THE DRUG'S CONTAINER.

13 NOW, THE DEFENDANT IS CHARGED WITH
14 TRAFFICKING MORE THAN 400 GRAMS OF METHAMPHETAMINE BY
15 CONSPIRACY. TO PROVE CONSPIRACY THE STATE MUST PROVE
16 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMBINED
17 WITH ONE OR MORE PERSONS FOR THE PURPOSES OF COMMITTING
18 AN UNLAWFUL ACT OR OF COMMITTING A LAWFUL ACT BY
19 UNLAWFUL MEANS. THERE MUST BE A MUTUAL UNDERSTANDING,
20 AGREEMENT, OR COMMON INTENTION AND PLAN.

21 MERE PRESENCE AT OR MERE PASSIVE KNOWLEDGE
22 OF OR CONSENT TO THE CRIMINAL CONDUCT OF ANOTHER IS NOT
23 ENOUGH TO MAKE A PERSON A CONSPIRATOR. THERE MUST BE
24 GUILTY KNOWLEDGE AND PARTICIPATION. SIMILARLY, THE FACT
25 THAT THE DEFENDANT MAY HAVE ASSOCIATED WITH ANOTHER

1 PERSON OR MET WITH ANOTHER PERSON TO DISCUSS COMMON AIMS
2 AND INTERESTS DOES NOT NECESSARILY ESTABLISH PROOF OF
3 THE EXISTENCE OF A CONSPIRACY OR THAT THE DEFENDANT WAS
4 INVOLVED IN A CONSPIRACY.

5 ON THE OTHER HAND, IT IS NOT NECESSARY THAT
6 THE AGREEMENT BE A FORMAL ONE, THAT IT BE IN WRITING,
7 THAT THE PERSONS HOLD A MEETING AND EXPRESSLY STATE THE
8 TERMS OF THE COMMON PLAN OR THAT THE AGREEMENT BE STATED
9 IN WORDS BETWEEN THEM. THE AGREEMENT OF A CRIMINAL
10 CONSPIRACY MAY COME INTO BEING THROUGH AN IMPLIED MUTUAL
11 UNDERSTANDING. THE WILLFUL, INTENTIONAL AND KNOWING
12 ADOPTION BY TWO OR MORE PERSONS OF A COMMON PLAN IS
13 SUFFICIENT.

14 NO OVERT ACT NEED BE SHOWN TO ESTABLISH A
15 CONSPIRACY. A CONSPIRACY MAY BE SHOWN BY CIRCUMSTANTIAL
16 EVIDENCE AND THE CONDUCT OF THE PARTIES. EACH MEMBER OF
17 A CONSPIRACY IS RESPONSIBLE FOR EVERY CRIMINAL ACT DONE
18 IN FURTHERANCE OF THE CONSPIRACY BY EVERY OTHER MEMBER
19 OF THE CONSPIRACY DURING ITS EXISTENCE AND WHILE THE
20 PERSON REMAINS IN THE CONSPIRACY.

21 IN ORDER TO CONVICT THE DEFENDANT OF
22 CONSPIRACY, THE STATE MUST PROVE BEYOND A REASONABLE
23 DOUBT NOT ONLY THAT THE DEFENDANT KNEW OF THE UNLAWFUL
24 CONDUCT, BUT THE DEFENDANT AGREED TO COMBINE WITH OTHER
25 PERSONS FOR THE PURPOSE OF ACCOMPLISHING THE UNLAWFUL

1 CONDUCT.

2 NOW, THE STATE HAS THE BURDEN OF PROOF OF
3 ESTABLISHING EACH ELEMENT OF THE CHARGED OFFENSE BEYOND
4 A REASONABLE DOUBT. IF YOU AS JURORS HAVE A REASONABLE
5 DOUBT AS TO WHETHER THE STATE HAS MET ITS BURDEN OF
6 PROOF AND SHOWN ALL THE ELEMENTS OF THE CRIME OF
7 TRAFFICKING BY CONSPIRACY MORE THAN 400 GRAMS OF
8 METHAMPHETAMINE, YOU WOULD FIND THE DEFENDANT NOT
9 GUILTY. YOU SHOULD ENTER YOUR VERDICT BASED ON WHETHER
10 OR NOT YOU ARE SATISFIED THAT THE STATE HAS ESTABLISHED
11 BEYOND A REASONABLE DOUBT ALL OF THE ELEMENTS OF THE
12 OFFENSE.

13 NOW, MADAM FORELADY, LADIES AND GENTLEMEN OF
14 THE JURY, YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL
15 JURORS SWORN TO IMPARTIALLY TRY AND DETERMINE THE FACTS
16 OF THIS CASE, AND WHEN YOU COMPLY WITH YOUR OATH TO DO
17 SO, THEN NO ONE WILL HAVE A RIGHT TO CRITICIZE YOUR
18 VERDICT AND YOU WILL HAVE FULLY DISCHARGED YOUR DUTY AS
19 JURORS. YOU SHOULD NOT BE INFLUENCED BY OPINIONS OR
20 EXPRESSIONS OF OPINIONS, IF ANY, WHICH YOU MAY HAVE
21 HEARD ON THE OUTSIDE, BUT YOU ARE TO DECIDE THIS CASE
22 ACCORDING TO THE TESTIMONY THAT YOU HEARD FROM THE LIPS
23 OF THE SWORN WITNESSES, ALONG WITH THE OTHER EVIDENCE
24 THAT MAY HAVE BEEN INTRODUCED.

25 YOU MUST NOT CONSIDER AS EVIDENCE ANY

1 STATEMENT OF COUNSEL MADE DURING THE TRIAL. HOWEVER, IF
2 THE PARTIES HAVE STIPULATED TO ANY FACT OR ANY FACT HAS
3 BEEN ADMITTED BY COUNSEL, YOU WILL REGARD THAT FACT AS
4 BEING CONCLUSIVELY PROVED AS TO THE PARTY OR PARTIES
5 MAKING THAT STIPULATION OR ADMISSION.

6 AS TO THOSE QUESTIONS TO WHICH AN OBJECTION
7 WAS SUSTAINED, YOU MUST NOT SPECULATE AS TO WHAT THE
8 ANSWER MIGHT HAVE BEEN OR AS TO THE REASON FOR THE
9 OBJECTION. YOU MUST NOT CONSIDER FOR ANY PURPOSE ANY
10 OFFER OF EVIDENCE THAT WAS REJECTED OR ANY EVIDENCE THAT
11 WAS STRICKEN BY THE COURT, SUCH MATTER IS TO BE TREATED
12 AS IF YOU HAD NEVER KNOWN OF IT. YOU MUST NEVER
13 SPECULATE TO BE TRUE AN INSINUATION SUGGESTED BY A
14 QUESTION ASKED A WITNESS. A QUESTION IS NOT EVIDENCE
15 AND MAY BE CONSIDERED ONLY AS IT SUPPLIES MEANING OF THE
16 ANSWER.

17 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
18 JURY, AS I SAID EARLIER, YOU ARE THE JUDGES OF THE FACTS
19 AND YOU ARE TO DETERMINE ONLY IF THIS DEFENDANT IS
20 GUILTY OR NOT GUILTY BASED UPON THE TESTIMONY AND
21 EVIDENCE PRESENTED IN THE TRIAL AND AFTER APPLYING THE
22 LAW AS I'VE GIVEN IT TO YOU. IF FROM THE EVIDENCE YOU
23 HAVE A REASONABLE DOUBT AS TO WHETHER OR NOT THE
24 DEFENDANT IS GUILTY, IT IS YOUR DUTY TO ACQUIT HIM AND
25 WRITE THE TWO WORDS "NOT GUILTY."

1 UNDER THE OATH YOU TOOK YOU SWORE TO TRY
2 THIS CASE BASED ONLY AND SOLELY ON THE TESTIMONY AND
3 EVIDENCE AND LAW PRESENTED AND HEARD IN THE COURTROOM.
4 IT IS YOUR DUTY TO LAY ASIDE ALL BIAS OR PREJUDICES OR
5 SYMPATHY YOU MAY HAVE IN REACHING YOUR VERDICT. YOU
6 HAVE NO FRIENDS TO REWARD OR ENEMIES TO PUNISH IN THIS
7 CASE. THE WORD VERDICT, I MIGHT NOTE, IS TAKEN FROM THE
8 LATIN TERM *VEREDICTO*, WHICH MEANS TO SPEAK THE TRUTH.
9 ABIDE BY YOUR OATH AND RETURN A VERDICT WHICH DOES SPEAK
10 THE TRUTH.

11 NOW, MADAM FORELADY, I HAVE PREPARED A
12 VERDICT FORM HERE THAT YOU WILL USE IN YOUR
13 DELIBERATIONS. AND, AS I MENTIONED, THE VERDICT MUST BE
14 UNANIMOUS. THAT MEANS ALL 12 MEMBERS OF THE JURY MUST
15 AGREE TO THAT VERDICT. AS YOU WILL NOTICE, IT SAYS
16 INDICTMENT NUMBER 2005-GS-47-25, COUNT ONE, TRAFFICKING
17 METHAMPHETAMINE BY CONSPIRACY, 400 GRAMS OR MORE. YOUR
18 VERDICT WILL BE ONE OR THE OTHER: WE, THE JURY,
19 UNANIMOUSLY FIND THAT THE DEFENDANT, SETH AARON STEARNS,
20 IS GUILTY OF TRAFFICKING METHAMPHETAMINE BY CONSPIRACY
21 400 GRAMS OR MORE, OR NOT GUILTY. NOW, WHATEVER IS YOUR
22 UNANIMOUS VERDICT, MADAM FORELADY, YOU WILL CHECK THE
23 APPROPRIATE BLOCK AND SIGN THE VERDICT FORM ON THE LINE
24 ABOVE YOUR NAME. AS I SAY, IT MUST BE UNANIMOUS, ALL
25 12. THE FORELADY WILL BE THE ONE WHO WRITES THE

1 VERDICT, BUT THE VERDICT MUST BE THE VERDICT OF ALL 12
2 MEMBERS OF THE JURY, WHICHEVER VERDICT IT MIGHT BE.

3 IF YOU WOULD, PLEASE, RETURN THE VERDICT
4 FORM TO THE BAILIFF, AND I'M GOING TO ASK YOU TO RETIRE
5 ONE MORE TIME TO THE JURY ROOM AND DO NOT BEGIN YOUR
6 DELIBERATIONS UNTIL I SEND THE VERDICT FORM AND ALL THE
7 EXHIBITS THAT HAVE BEEN INTRODUCED IN THIS CASE BACK TO
8 YOU. THAT WOULD TAKE JUST A FEW MINUTES. BUT ONCE YOU
9 GET THE VERDICT FORM AND THE EXHIBITS, BEGIN YOUR
10 DELIBERATIONS. ONCE YOU HAVE REACHED A VERDICT, KNOCK
11 ON THE DOOR AND WE WILL HAVE YOU RETURN AND RECEIVE YOUR
12 VERDICT.

13 MADAM ALTERNATE, IF YOU WILL REMAIN WITH US.
14 THE REMAINDER OF THE JURY, IF YOU WOULD
15 PLEASE RETIRE TO THE JURY ROOM.

16 (WHEREUPON, THE JURY, EXCEPT FOR THE
17 ALTERNATE, LEFT THE COURTROOM AT 11:32 A.M.)

18 **THE COURT:** I'M GOING TO ASK HER TO RETIRE
19 TO ANOTHER JURY ROOM.

20 JUST FOR A FEW MINUTES UNTIL I CAN FIND OUT,
21 IF YOU WILL WAIT FOR A FEW MINUTES IN THE OTHER JURY
22 ROOM.

23 AND DO GET HER THINGS.

24 YOU MIGHT NOT HAVE TO STAY TOO LONG, BUT I
25 NEED TO SEE HOW THINGS ARE GOING. VERY GOOD. THANK

1 YOU, MA'AM.

2 (THE ALTERNATE LEFT THE COURTROOM.)

3 THE COURT: ALL RIGHT. ANY EXCEPTIONS OR
4 REQUESTS FROM THE STATE?

5 MS. PORTER: NO, YOUR HONOR.

6 THE COURT: FROM THE DEFENSE?

7 MR. KAPPEL: NONE, YOUR HONOR.

8 THE COURT: EXCEPT FOR YOUR OBJECTIONS.

9 MR. KAPPEL: ABSOLUTELY. ALL MY OBJECTIONS.

10 THE COURT: VERY GOOD. ALL RIGHT. LET'S
11 LOOK AT THE EXHIBITS. NOW, IT'S NOT MY POLICY TO SEND
12 CONTROLLED SUBSTANCES BACK. ANY REQUESTS OR WHATEVER?

13 MS. PORTER: I WOULD REQUEST THAT YOU SEND
14 THEM BACK.

15 THE COURT: IF THEY ASK FOR THEM, I MIGHT
16 RECONSIDER. ARE THEY PACKAGED, SEALED?

17 MS. PORTER: YES, SIR.

18 MS. EVANS: THEY CAN'T GET TO THEM.

19 MS. PORTER: THEY ARE SEALED. THEY CAN'T
20 GET IN THEM.

21 THE COURT: ALL RIGHT. WELL, IF THEY DO,
22 WE'LL FRISK EVERYBODY. ALL RIGHT. I'LL LET THE
23 EXHIBITS GO BACK, THEN. ALL RIGHT. WE'RE OFF THE
24 RECORD.

25 (OFF-THE-RECORD DISCUSSION.)

1 (WHEREUPON, THE JURY STARTED DELIBERATIONS AT
2 APPROXIMATELY 11:58 A.M.)

3 (WHEREUPON, A VERDICT WAS REACHED BY THE JURY
4 AT APPROXIMATELY 12:15 P.M.)

5 MS. EVANS: WE HAVE A VERDICT.

6 THE COURT: OH, WE HAVE A VERDICT.

7 IS THE STATE READY? I UNDERSTAND WE HAVE A
8 VERDICT.

9 MS. PORTER: YES, YOUR HONOR.

10 THE COURT: DEFENSE READY?

11 MR. KAPPEL: YES, SIR.

12 THE COURT: ALL RIGHT. ASK THE JURY TO JOIN
13 US, PLEASE.

14 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
15 12:22 P.M.)

16 VERDICT OF THE JURY:

17 THE COURT: MADAM FORELADY, I UNDERSTAND THE
18 JURY HAS REACHED A VERDICT?

19 THE FORELADY: THAT'S CORRECT.

20 THE COURT: IF YOU WOULD PLEASE HAND THE
21 FORM UP.

22 STATE OF SOUTH CAROLINA VERSUS SETH AARON
23 STEARNS, INDICTMENT NUMBER 2005-GS-47-25, COUNT ONE:
24 WE, THE JURY, UNANIMOUSLY FIND THAT THE DEFENDANT, SETH
25 AARON STEARNS IS GUILTY OF TRAFFICKING IN

1 METHAMPHETAMINE BY CONSPIRACY 400 GRAMS OR MORE, SIGNED
2 VANESSA A. MAZZOLI, FORELADY, GREENVILLE, SOUTH
3 CAROLINA, DECEMBER 13TH, 2007.

4 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
5 JURY, EVERYONE BUT THE ALTERNATE, IF THIS IS YOUR
6 VERDICT, AND DO YOU STILL SAY IT'S YOUR VERDICT? IF SO,
7 INDICATE BY RAISING YOUR RIGHT HAND.

8 LET THE RECORD REFLECT THAT ALL MEMBERS OF
9 THE JURY AFFIRMED THE VERDICT.

10 IS THERE ANYTHING FROM THE STATE BEFORE I
11 DISMISS THE JURY.

12 MS. PORTER: NO, YOUR HONOR.

13 THE COURT: FROM THE DEFENSE?

14 MR. KAPPEL: NOTHING FROM THE DEFENSE.

15 THE COURT: MADAM FORELADY, LADIES AND
16 GENTLEMEN OF THE JURY, I AM NEVER INTERESTED IN A
17 VERDICT, ONLY HOW THAT VERDICT IS REACHED. AND I AM
18 COMPLETELY SATISFIED IN THIS PARTICULAR CASE YOU GAVE
19 THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL.
20 IT WAS AN UNUSUAL CASE AND IT TOOK A LITTLE BIT LONGER
21 THAN PERHAPS SOME CASES MIGHT HAVE BEEN BECAUSE OF THE
22 UNUSUAL NATURE OF THE TRIAL. BUT IT WAS TRIED VERY
23 PROFESSIONALLY BY ALL OF THOSE INVOLVED, AND I THANK
24 THEM FOR THEIR RESPONSIBILITY. AS I SAY, IF ANYBODY
25 QUESTIONS OUR SYSTEM WHERE EVERY BENEFIT IS GIVEN TO

1 CITIZENS WHO ARE CHARGED WITH CRIMES AND OFFENSES, I
2 THINK THIS IS A GOOD EXAMPLE OF HOW THAT SYSTEM WORKS.
3 AND THE REASON IT WORKS IS BECAUSE YOU WERE HERE AND YOU
4 HAD TO DO A VERY DIFFICULT THING AND YOU DID IT IN THE
5 FINEST SENSE OF THE WORD OF THE DUTY AS JURORS.

6 I THINK SOMEBODY MIGHT HAVE MENTIONED IT
7 EARLIER, BECAUSE IT IS SOMETHING THAT I'VE ALWAYS BEEN
8 IMPRESSED WITH. WINSTON CHURCHILL, THE PRIME MINISTER
9 FROM THE LAST CENTURY, ONCE SAID NO GREATER DUTY CAN A
10 CITIZEN IN PEACETIME PERFORM THAN THAT AS A JUROR,
11 BECAUSE I THINK YOU UNDERSTAND NOW YOU ARE THE BACKBONE
12 OF OUR SYSTEM OF JUSTICE. IF WE DID NOT HAVE CITIZEN
13 PARTICIPATION, OUR SYSTEM WOULD NOT BE WHAT IT IS AND
14 THAT IS ADMIRER BY THE WHOLE WORLD, AND I THANK YOU FOR
15 YOUR PART, AND I DO THIS ON BEHALF OF THE STATE OF SOUTH
16 CAROLINA AND OUR JUDICIAL SYSTEM. I THANK YOU VERY
17 MUCH.

18 I WISH THERE WAS SOMETHING I COULD DO FOR
19 YOU. THE ONLY THING I CAN SAY IS THAT ON THE FIRST DAY
20 WHEN YOU WERE QUALIFIED, I'M SURE YOU WERE ASKED IF ANY
21 MEMBER HAD SERVED ON A JURY IN THE LAST THREE YEARS. AT
22 LEAST YOU WON'T HAVE TO SERVE FOR ANOTHER THREE YEARS.
23 BUT I HOPE YOUR SERVICE HAS NOT BEEN WITHOUT SOME
24 BENEFIT. THANK YOU VERY MUCH AND I DO APPRECIATE IT.

25 YOU ARE NOW EXCUSED AND YOU WILL NOT HAVE TO

1 SERVE ANY FURTHER THAN THIS WEEK. AND I DO APPRECIATE
2 IT. YOU ALL HAVE A WONDERFUL WEEKEND. IT LOOKS LIKE
3 THE WEATHER IS CHANGING, SO BUNDLE UP.

4 (WHEREUPON, THE JURY WAS EXCUSED AT 12:26
5 P.M.)

6 THE COURT: ALL RIGHT. ANYTHING FROM THE
7 STATE?

8 MS. PORTER: NO, YOUR HONOR.

9 THE COURT: FROM THE DEFENSE?

10 MR. KAPPEL: JUST A MOTION FOR A NEW TRIAL.

11 THE COURT: ALL RIGHT. MOTION IS ---

12 MR. KAPPEL: AND ALL MY OTHER OBJECTIONS.

13 THE COURT: AND BASED ON ALL THE OTHER
14 GROUNDS THAT WERE RAISED DURING THE TRIAL AND THE
15 RULINGS OF THE COURT, THE COURT FINDS THAT THE VERDICT
16 IS SUPPORTED BY THE LAW AND EVIDENCE, AND THE MOTION FOR
17 NEW TRIAL AND ALL THE OTHER GROUNDS ARE DENIED.

18 ALL RIGHT. HAVE YOU GOT THE SENTENCING
19 SHEETS?

20 MS. PORTER: YES, SIR, YOUR HONOR.

21 THE COURT: WHO IS GOING TO KEEP IT? DOES
22 THE STATE GRAND JURY KEEP IT?

23 THE CLERK: YES, SIR.

24 THE COURT: ALL RIGHT. HAVE YOU GOT AN
25 ENVELOPE?

1 THE CLERK: YES, SIR (HANDING).

2 MS. PORTER: YOUR HONOR, I DON'T KNOW IF YOU
3 WANT HIS PRIOR RECORD OR NOT.

4 THE COURT: WELL, I'M GETTING READY TO LOOK
5 AT WHAT WE HAVE HERE, I'M GETTING RID OF ALL OF THE
6 THINGS WE DON'T NEED. ALL RIGHT. YOU MAY. I THINK I
7 UNDERSTAND THE FACTS OF THE CASE, SO WHAT IS HIS PRIOR
8 RECORD?

9 MS. PORTER: HIS PRIOR RECORD IS IN 1999 HE
10 HAS A POSSESSION OF MARIJUANA CONVICTION, IN 1999 HE
11 ALSO HAS A DRIVING UNDER SUSPENSION CONVICTION, IN 2002
12 HE HAS ANOTHER DRIVING UNDER SUSPENSION CONVICTION.

13 FROM NORTH CAROLINA HE HAS GOT... ACTUALLY
14 THAT'S NOT A CONVICTION, YOUR HONOR, I APOLOGIZE.

15 FROM GEORGIA HE HAS GOT A THEFT OF A MOTOR
16 VEHICLE FOR WHICH HE RECEIVED PROBATION. AND THAT SEEMS
17 TO BE IT.

18 THE COURT: ALL RIGHT. DO YOU HAVE ANY
19 OBJECTION TO THAT BEING THE RECORD OF THE DEFENDANT?

20 MR. KAPPEL: THANK YOU, YOUR HONOR. YOUR
21 HONOR, IT'S TAKEN ME JUST A MINUTE TO RETRIEVE HIS
22 RECORD. IF I COULD HAVE JUST A MINUTE TO LOOK AT THAT?

23 THE COURT: CERTAINLY.

24 MR. KAPPEL: I DIDN'T QUITE HEAR EVERYTHING
25 SHE SAID. I THINK THE MOST SIGNIFICANT THING YOU HAVE

1 IS THAT THEFT OF A MOTOR VEHICLE IN GEORGIA.

2 IS THERE ANYTHING ELSE?

3 MS. PORTER: THE POSSESSION OF MARIJUANA AND
4 A COUPLE OF DRIVING UNDER SUSPENSIONS.

5 MR. KAPPEL: YES, THAT'S ALL, THANK YOU.

6 THE COURT: THE MAXIMUM SENTENCE IS 25 TO 30
7 YEARS AND A \$200,000.00 FINE?

8 MS. PORTER: THAT'S MY UNDERSTANDING, YOUR
9 HONOR.

10 THE COURT: OKAY. ANYTHING YOU WOULD LIKE
11 TO SAY ON BEHALF OF THE STATE?

12 MS. PORTER: I THINK YOU HAVE HEARD THE
13 FACTS, YOUR HONOR. WE WOULD JUST ASK FOR THE MAXIMUM.

14 THE COURT: ANYTHING YOU WOULD LIKE TO SAY
15 ON BEHALF OF THE DEFENDANT?

16 MR. KAPPEL: I'LL PROBABLY RESERVE MY
17 COMMENTS.

18 THE COURT: TO WHEN THE TIME COMES?

19 MR. KAPPEL: YES, SIR.

20 THE COURT: ALL RIGHT. DID YOU PUT THE
21 INDICTMENT IN THERE?

22 THE CLERK: WE WILL.

23 THE COURT: I'M GOING TO HAVE TO SEAL IT.
24 I'VE GOT A COPY OF THE INDICTMENT, IS THAT ALL RIGHT?
25 IT LOOKS LIKE IT'S A COPY.

1 THE CLERK: LET ME MAKE SURE THAT IT'S IN
2 THE SAME CASE. NO, THIS IS A DIFFERENT ONE.

3 THE COURT: THE ONE I SENTENCED HIM ON WAS
4 25, COUNT ONE?

5 THE CLERK: HERE'S THE CORRECT ONE.
6 (HANDING).

7 MS. PORTER: YES, SIR, IT'S 25, COUNT ONE.

8 THE COURT: OKAY. ALL RIGHT. ANYTHING
9 ELSE? AGAIN, Y'ALL TRIED A VERY GOOD CASE.

10 OH, WAIT A MINUTE. I GUESS I'D BETTER PUT
11 THAT IN THERE, TOO. I MIGHT NEED A NEW ONE. DO YOU
12 NEED THE VERDICT? I GUESS THE VERDICT STAYS WITH THE
13 FILE, DOESN'T IT?

14 THE CLERK: YES, SIR.

15 THE COURT: ONLY THE SENTENCE SHEET GOES IN
16 THERE.

17 (WHEREUPON, THE COURT SEALED THE SENTENCING
18 SHEET IN THE ENVELOPE.)

19 THE COURT: ALL RIGHT. AGAIN, I DO THANK
20 YOU FOR THE WAY YOU DID TRY YOUR CASE. I LEARNED
21 SOMETHING, WHICH EVEN AT MY AGE I LEARN A LOT OF NEW
22 THINGS. AGAIN, I DO WANT TO THANK YOU. SO YOU WILL BE
23 EXCUSED.

24 (WHEREUPON, THE TRIAL IN THE MATTER OF THE
25 STATE OF SOUTH CAROLINA VERSUS SETH AARON

1 STEARNS WAS CONCLUDED AT APPROXIMATELY 12:35
2 P.M.)

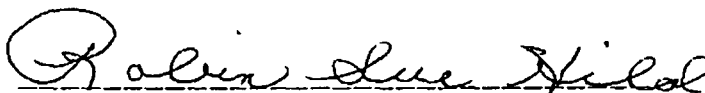
3 ***** END OF REQUESTED TRANSCRIPT *****
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CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE
TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND THE
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
VOLUME IV, PAGES 602 THROUGH 690, RELATIVE TO APPEAL, IN
THE STATE GRAND JURY, COURT OF GENERAL SESSIONS FOR
GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 10TH, 11TH,
12TH, AND 13TH DAY OF DECEMBER, 2007

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

JULY 24, 2008



ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH) IN THE COURT OF GENERAL
CAROLINA) SESSIONS
)
STATE GRAND JURY) INDICTMENT NO: 2005-GS-47-25
COUNTY OF GREENVILLE) COUNT ONE

STATE OF SOUTH)
CAROLINA)
)
PLAINTIFF,) TRANSCRIPT OF RECORD
) SENTENCING HEARING
-VS-) TRIAL - VOLUME V
)
SETH AARON STEARNS,)
)
DEFENDANT.)

MARCH 25, 2008
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE

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

SUSAN O. PORTER, ESQ.
JENNIFER EVANS, ESQ.
ASSISTANT ATTORNEY GENERALS, STATE GRAND JURY
ATTORNEYS FOR THE STATE

MATT KAPPEL, ESQ.
ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

INDEX

WITNESSES

PAGE

NO WITNESSES WERE CALLED.

SENTENCE OF THE COURT

696

CERTIFICATE OF COURT REPORTER

706

EXHIBITS

NO. DESCRIPTION

ID. EV.

NO EXHIBITS WERE INTRODUCED.

1 ***** START OF REQUESTED TRANSCRIPT *****

2 MS. EVANS: THE STATE CALLS SETH STEARNS.

3 THE COURT: YES, MA'AM.

4 MS. EVANS: IF IT PLEASES THE COURT, YOUR
5 HONOR, THIS IS THE STATE OF SOUTH CAROLINA VERSUS SETH
6 AARON STEARNS, FOR TRAFFICKING METHAMPHETAMINE BY
7 CONSPIRACY IN VIOLATION OF 44-53-375(C)(5), INDICTMENT
8 NUMBER 2005-GS-47-25.

9 ON DECEMBER 10TH A TRIAL WAS CALLED IN
10 MR. STEARNS' ABSENCE FOR THAT CHARGE, OF WHICH HE WAS
11 PROPERLY SERVED WITH THE INDICTMENT. THIS COURT
12 CONDUCTED A TRIAL THAT LASTED FROM DECEMBER 10TH TO
13 DECEMBER 12TH, AT WHICH TIME A JURY CAME BACK AND FOUND
14 MR. STEARNS GUILTY OF CONSPIRACY TO TRAFFIC
15 METHAMPHETAMINE GREATER THAN 400 GRAMS.

16 THE SENTENCE FOR THAT IS 25 YEARS TO 30
17 YEARS MANDATORY, IT CANNOT BE SUSPENDED. IT IS MY
18 UNDERSTANDING THAT THIS COURT, AFTER THAT JURY CAME BACK
19 WITH THAT SENTENCE [SIC] IMPOSED A SEALED SENTENCE, BUT
20 THAT SENTENCE HAS ALREADY BEEN GIVEN TO THE DEFENDANT
21 AND IT IS UNDER SEAL.

22 HOWEVER, IF THE COURT WOULD LIKE TO HEAR
23 FROM THE STATE ABOUT SENTENCING, WE WOULD, BUT BEING
24 THAT WE THINK THAT IT'S UNDER SEAL AND ALREADY BEEN
25 DECIDED, THAT AT THIS POINT WE WOULD DEFER TO YOUR

1 HONOR'S JUDGMENT.

2 THE COURT: ALL RIGHT. THIS IS THE CASE OF
3 THE STATE VERSUS SETH AARON STEARNS, 2005-GS-47-25.

4 ARE YOU SETH AARON STEARNS?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: IF YOU WOULD, PLEASE, RAISE YOUR
7 RIGHT HAND.

8 (WHEREUPON, THE DEFENDANT WAS SWORN BY THE
9 COURT.)

10 THE COURT: THE STATE IS REPRESENTED BY
11 MS. EVANS.

12 MS. EVANS: YES, SIR.

13 THE COURT: AND THE DEFENSE IS REPRESENTED
14 BY MR. KAPPEL.

15 THE COURT IS OPENING THE SEALED SENTENCE.
16 THE STATE OF SOUTH CAROLINA VERSUS SETH AARON STEARNS,
17 ET AL., TRAFFICKING METHAMPHETAMINES, 400 GRAMS, GREATER
18 THAN 400 GRAMS, 2005-GS-47-25.

19 WOULD YOU ALL APPROACH, PLEASE?

20 (WHEREUPON, COUNSEL APPROACHED THE BENCH AND
21 CONFERRED WITH THE COURT OUT OF THE PRESENCE
22 OF THE COURT REPORTER.)

23 THE COURT: ALL RIGHT. THE COURT HAS FOUND
24 THE VERDICT OF THE JURY (READING):

25 WE, THE JURY, UNANIMOUSLY FIND THAT THE

1 DEFENDANT, SETH AARON STEARNS, IS GUILTY OF TRAFFICKING
2 IN METHAMPHETAMINE BY CONSPIRACY, 400 GRAMS OR MORE,
3 SIGNED BY THE FORELADY ON DECEMBER THE 13TH, 2007; FILED
4 WITH THE CLERK OF THE STATE GRAND JURY ON DECEMBER 13TH,
5 2007.

6 SENTENCE OF THE COURT:

7 THE COURT: ALL RIGHT. BEFORE I HEAR
8 ANYTHING FROM THE PARTIES, BEING THE STATE AND
9 MR. STEARNS, THE SENTENCE IN THE CASE ON 2005-GS-47-25,
10 COUNT ONE, WAS THAT SETH AARON STEARNS BE COMMITTED TO
11 THE STATE DEPARTMENT OF CORRECTIONS FOR A TERM OF 30
12 YEARS AND PAY A FINE OF \$100,000.00 PLUS COSTS AND
13 ASSESSMENTS AS APPLICABLE. DEFENDANT IS TO UNDERGO DRUG
14 AND ALCOHOL TESTING AND TREATMENT AND SUBSTANCE ABUSE
15 COUNSELING AND RECEIVE A.T.U., THE ADDICTION TREATMENT
16 UNIT PROGRAM.

17 ALL RIGHT. MR. STEARNS, I'LL TELL YOU NOW,
18 YOU DO HAVE TEN DAYS TO APPEAL THE SENTENCE OF THE
19 COURT, BUT YOU MUST FILE AN INTENTION TO APPEAL WITHIN
20 THAT TIME. IT IS MY UNDERSTANDING, THOUGH, THAT THERE
21 IS AN APPEAL IN THIS CASE?

22 MS. EVANS: NO, I BELIEVE THAT NO APPEAL HAS
23 BEEN FILED YET.

24 THE COURT: YOU HAVE TEN DAYS TO FILE AN
25 APPEAL.

1 ALL RIGHT. ANYTHING FROM THE STATE?

2 MS. EVANS: NOTHING FROM THE STATE, YOUR
3 HONOR.

4 THE COURT: MR. KAPPEL, WHAT DO YOU SAY
5 ABOUT MR. STEARNS?

6 MR. KAPPEL: THANK YOU, YOUR HONOR, MAY IT
7 PLEASE THE COURT. MY CLIENT IS 27 YEARS OLD. HE IS
8 JOINED IN COURT BY HIS MOTHER, HIS GRANDPARENTS, AND HIS
9 SISTER, THEY'RE AT THE BAR FACING YOUR HONOR.

10 THIS IS JUST A REALLY SAD SITUATION, AND I
11 HATE TO SEE SOMEBODY AS YOUNG AS SETH BASICALLY BE
12 SENTENCED TO A TERM OF IMPRISONMENT THAT WILL ENCOMPASS
13 HIS YOUNG ADULT LIFE.

14 HE ASKED ME TO ASK THE COURT -- YOU KNOW,
15 THERE'S VERY LITTLE WIGGLE ROOM IN TERMS OF WHAT
16 SENTENCE THE COURT CAN GIVE.

17 THE COURT: WELL, ACTUALLY, THE SENTENCE
18 WOULD BE FROM 25 TO 30 YEARS.

19 MR. KAPPEL: THAT'S CORRECT. AND I WOULD
20 ASK THE COURT -- IMPLORE THE COURT TO IMPOSE A SENTENCE
21 OF 25 YEARS. HE WILL HAVE TO DO 85 PERCENT OF THAT
22 SENTENCE. HE'S 27. IF THE COURT IS INCLINED TO GIVE
23 HIM 25 YEARS, HE WOULD NOT BE RELEASED FROM THE
24 DEPARTMENT OF CORRECTIONS UNTIL HE HAS REACHED THE AGE
25 OF 48 YEARS OLD OR THEREABOUTS. I WOULD SIMPLY SUGGEST

1 TO THE COURT THAT THAT'S AN EXCEEDINGLY LONG PERIOD OF
2 TIME AND IT WOULD SERVE THE INTERESTS OF THE PUBLIC TO
3 DETER THIS KIND OF CONDUCT FOR WHICH HE WAS CONVICTED.
4 IT HAS SUCH A SUBSTANTIAL SENTENCE, AND I WOULD JUST
5 SIMPLY ASK THE COURT TO DO THAT.

6 HE COMPLETED I THINK 11 YEARS OF EDUCATION,
7 WAS IN OUTSIDE SALES FOR A MEAT DISTRIBUTION COMPANY.
8 AND I JUST SIMPLY ASK THE COURT TO BE AS LENIENT AS
9 POSSIBLE.

10 THE COURT: ALL RIGHT. ANYTHING FROM THE
11 STATE?

12 MS. EVANS: YES, SIR, I WOULD LIKE TO
13 RESPOND TO THAT. WE WOULD URGE THE COURT TO REMAIN WITH
14 ITS ORIGINAL SENTENCE. MR. STEARNS HAD THE OPPORTUNITY
15 TO BE PRESENT AT TRIAL. YOUR HONOR HEARD ALL THE
16 EVIDENCE, THE INDIVIDUALS, THE CODEFENDANTS COME IN AND
17 TALK ABOUT MR. STEARNS' INVOLVEMENT IN THIS CONSPIRACY
18 WHICH BROUGHT POUNDS OF MARIJUANA -- EXCUSE ME --
19 METHAMPHETAMINE INTO THIS STATE.

20 AND MR. STEARNS NOT ONLY -- HE HAD A RIGHT
21 NOT TO BE PRESENT AT THE TRIAL, BUT HE WAS A FUGITIVE,
22 AND WHEN WE FINALLY FOUND HIM, HE ALSO GOT ADDITIONAL
23 CHARGES IN SOUTH DAKOTA WHEN THEY WERE TRYING TO
24 APPREHEND HIM. I THINK THAT ORIGINAL SENTENCE OF 30
25 YEARS SHOULD REMAIN IN EFFECT. THAT WAS THE SENTENCE

1 THAT THIS COURT RENDERED AFTER HEARING ALL THE EVIDENCE
2 AND AFTER THE JURY FINDING HIM GUILTY. WE ASK THAT THAT
3 30-YEAR SENTENCE REMAIN IN EFFECT.

4 MR. KAPPEL: JUDGE, IT'S MY INFORMATION THAT
5 THOSE CASES OUT WEST HAVE BEEN DISMISSED.

6 THE COURT: I'M NOT CONCERNED WITH THE
7 SENTENCE IN OTHER CASES, BUT ONLY WHAT THIS SENTENCE IS
8 BASED ON AS FAR AS THE ACTIVITIES HERE AND REFLECTED BY
9 THE INDICTMENT.

10 ALL RIGHT. MR. STEARNS, ANYTHING YOU WOULD
11 LIKE TO SAY?

12 THE DEFENDANT: I JUST ASK THAT YOU PLEASE
13 BE LENIENT, SIR. BECAUSE I FEEL I'VE ALREADY LEARNED MY
14 LESSON AS OF RIGHT NOW, AND I MEAN IF YOU GAVE ME 25,
15 THAT WOULD BE MORE THAN, MORE THAN ENOUGH AS IT IS
16 RATHER THAN 30. AND I APPRECIATE YOU, IF YOU WILL BE
17 LENIENT BECAUSE I HAVE A FAMILY OUT HERE THAT I LOVE SO
18 MUCH, SIR. AND THAT'S IT.

19 THE COURT: ALL RIGHT. ANYTHING ELSE,
20 MR. KAPPEL?

21 MR. KAPPEL: NO. I WOULD JUST POINT OUT
22 THAT WE HAD A FOUR-DAY TRIAL IN THIS CASE, AND THERE
23 WEREN'T ANY, THERE WASN'T ANY TESTIMONY OF PISTOLS OR
24 VIOLENCE OF ANY SORT PRESENTED ON BEHALF OF THE STATE.
25 IT WAS BASICALLY, YOU KNOW, THEIR EVIDENCE THEY

1 PRESENTED WAS THAT OF A DRUG ORGANIZATION AND
2 DISTRIBUTION, BUT THERE WASN'T ANY EVIDENCE OF FIREARMS
3 OR ANY KIND OF VIOLENCE OF ANY SORT, AND ---

4 THE COURT: THE ONLY THING THAT CONCERNS ME
5 IS THE CHARGE BY ITS DEFINITION IS VIOLENT, THE FACT
6 THAT IT'S SERIOUS AND VIOLENT.

7 MR. KAPPEL: I'M USING THE TERM IN THE
8 LITERAL SENSE.

9 THE COURT: I UNDERSTAND. BUT I THINK THAT
10 OUR LEGISLATURE HAS DETERMINED THAT AFTER A CERTAIN
11 AMOUNT, THAT METHAMPHETAMINES CAN HAVE A, NOT ONLY A
12 DELETERIOUS BUT A TRAUMATIC EFFECT THAT SHOULD BE
13 TREATED AS A SERIOUS AND VIOLENT OFFENSE.

14 BUT, NO, I UNDERSTAND WHAT YOU ARE SAYING.
15 BUT STILL -- ALL RIGHT. ANYTHING ELSE?

16 MR. KAPPEL: REALLY, THAT'S ALL I WOULD
17 HAVE, JUDGE.

18 THE COURT: ALL RIGHT. AS I SAY, THE
19 LEGISLATURE HAS DETERMINED THAT THERE IS A VERY LIMITED
20 AREA FOR -- WOULD ANYBODY ELSE LIKE TO SAY ANYTHING?

21 MR. KAPPEL: WOULD YOU LIKE TO SAY ANYTHING?
22 PLEASE TELL THE COURT REPORTER YOUR NAME, PLEASE.

23 THE COURT: YOU CAN COME FORWARD IF YOU ARE
24 GOING TO ADDRESS THE COURT.

25 MS. LAURA STEARNS: I'M LAURA STEARNS,

1 SETH'S MOTHER.

2 THE COURT: YES, MA'AM.

3 MS. LAURA STEARNS: THE FIRST THING IS, HIS
4 NAME IS STEARNS, NOT STEARNS.

5 THE COURT: I'M SORRY. STEARNS. I
6 APOLOGIZE. YES, MA'AM.

7 MS. LAURA STEARNS: IT'S THE SMALL THINGS
8 THAT...

9 THE COURT: I'M SORRY, YES, MA'AM.

10 MS. LAURA STEARNS: I DON'T REALLY KNOW WHAT
11 TO SAY. I DON'T KNOW EXACTLY EVERYTHING THAT'S GONE ON.
12 TO MY KNOWLEDGE HE HAD QUIT DOING WHATEVER HE HAD BEEN
13 DOING FOR QUITE SOME TIME. AND I DON'T UNDERSTAND, AND
14 I DON'T UNDERSTAND EVERYTHING THAT'S GOING ON HERE. BUT
15 I'VE HEARD IT CALLED A CONSPIRACY. AND I DON'T KNOW OF
16 ANY HARD AND FAST EVIDENCE.

17 AND I KNOW HE'S TAKEN AN INTEREST IN THE
18 YEARS HE'S BEEN LOCKED UP IN MORE RELIGIOUS THINGS. AND
19 MY DAD IS A MINISTER AND WE LIKE TO -- HE SHOWS A CHANGE
20 OF HEART. AND I DON'T AGREE WITH WHAT HE'S DONE, BUT I
21 DON'T UNDERSTAND WHY HE SHOULD SERVE SO MUCH TIME WHEN
22 THERE'S MURDERERS THAT GET OUT IN SO MUCH LESS TIME.
23 AND ---

24 THE COURT: HAVE YOU SEEN THE RESULTS OF
25 METHAMPHETAMINES?

1 **MS. LAURA STEARNS:** I DON'T KNOW MUCH ABOUT
2 METH AND ---

3 **THE COURT:** UNFORTUNATELY, I HAVE, AND I CAN
4 ASSURE YOU THAT THE EFFECT CAN BE AS DEVASTATING AS EVEN
5 OTHER PHYSICAL INSTANCES. AND I DON'T MEAN TO LECTURE
6 YOU AT ALL BECAUSE I UNDERSTAND THE CONCERN YOU HAVE FOR
7 YOUR SON. UNFORTUNATELY, THERE HAS TO BE SOME CONCERN
8 FOR THE ONES WHO SUFFER FROM SUCH ACTIVITIES AS YOUR SON
9 WAS APPARENTLY ENGAGED IN AS WAS FOUND BY A JURY. AND I
10 CAN ASSURE YOU, I DO REMEMBER THE CASE AND IT WAS THREE
11 OR FOUR DAYS. IT WAS WELL-TRIED. IN FACT, I THINK THE
12 JURY STAYED OUT A WHILE.

13 **MS. EVANS:** I BELIEVE IT WAS ABOUT THREE
14 HOURS.

15 **THE COURT:** SO I REGRET THAT YOU DON'T
16 UNDERSTAND; I WISH YOU DID. MAYBE YOU COULD HELP OTHERS
17 SO THAT THEIR CHILDREN WOULDN'T BE HERE. ANYTHING ELSE?

18 **MS. LAURA STEARNS:** NO, SIR.

19 **THE COURT:** ANYONE ELSE?

20 **A MAN:** MAY I SPEAK?

21 **THE COURT:** PLEASE. ANY HELP THAT I COULD
22 GET WOULD BE APPRECIATED. YES, SIR, YOUR NAME, PLEASE?

23 **DEFENDANT'S GRANDFATHER:** FRED SMYTH
24 (PHONETIC), I'M HIS GRANDFATHER. I HAVEN'T HAD ANY
25 TRAFFICKING DRUGS WHEN I WAS GROWING UP. THERE WEREN'T

1 ANY THAT I WAS AWARE OF, AND I THINK I WOULD BECAUSE I
2 WAS IN SHOW BUSINESS BACK IN THE '40'S. BUT I'M ALERT
3 TO WHAT'S GOING ON IN THE WORLD TODAY, AND I WATCH THE
4 NEWS, AND THAT'S WHERE I LEARNED WHAT I KNOW. AND IT
5 JUST SEEMS TO ME THAT AS SERIOUS AS THESE CHARGES ARE,
6 AT HIS YOUNG AGE HE'S MORE OF A VICTIM THAN AN
7 INSTIGATOR.

8 THE FORCES IN THE WORLD, THE VARIOUS
9 DIFFERENT COUNTRIES THAT ARE FEEDING THESE CHEMICALS
10 INTO THIS COUNTRY IS ABSOLUTELY FIENDISH. I MEAN, THEY
11 SHOULD BE PUNISHED FOR THESE, THIS COULD BE CLASSIFIED
12 AS HEINOUS CRIMES. AND SETH GOT SUCKED INTO IT FOR ONE
13 REASON OR ANOTHER. AND I'M SURE YOU, OF COURSE, ARE
14 AWARE OF MORE THAN THE COMPLEXITIES OF THIS AND THE
15 ENORMOUS IMPACT THAT IT'S HAD ON OUR YOUNG PEOPLE OF THE
16 UNITED STATES. I'M SURE YOU KNOW A LOT MORE ABOUT THAT
17 THAN I DO.

18 BUT, AND I'VE HAD A CHANCE TO TALK TO SETH,
19 NOT OFTEN LATELY SINCE HIS INCARCERATION, BUT I'M
20 SATISFIED THAT IF HE RECEIVED A SENTENCE AND IT WAS
21 SOMEWHERE NEAR GREENVILLE WHERE I COULD VISIT HIM IN MY
22 MINISTERIAL STATUS, I THINK I COULD, AS LONG AS THE
23 STATE, ON A REGULAR BASIS AND GET HIM INVOLVED IN WHAT
24 THE BIBLE REALLY TEACHES, AND HE'S ALREADY RESPONDED TO
25 THE CONVERSATIONS I'VE HAD IN THE PAST SINCE HE'S BEEN

1 CONVICTED OF THIS, I FEEL THAT HE COULD BE A CREDIT TO
2 THE CITIZENSHIP OF THIS COUNTRY, AND ANY INVOLVEMENT
3 HE'S HAD IN THE PAST WOULD BE SOMETHING THAT WOULD HELP
4 HIM BE A BETTER CITIZEN. I KNOW HE HAS TO HAVE SOME
5 PUNISHMENT, BUT THAT'S THE WAY I FEEL.

6 THE COURT: THANK YOU, SIR.

7 ALL RIGHT. ANYTHING ELSE, MR. STEARNS?

8 THE DEFENDANT: NO, SIR.

9 THE COURT: AS I MENTIONED EARLIER, THE LAW
10 IS SOMEWHAT -- WELL, IT LIMITS WHAT THE COURT CAN DO.
11 IT'S A MERE RANGE OF 25 TO 30 YEARS AND A \$200,000.00
12 FINE. AND IN THIS PARTICULAR CASE, WHEN EVERYTHING IS
13 TAKEN INTO ACCOUNT, THE DEGREE OF DRUGS THAT WERE
14 INVOLVED OR THE AMOUNT OF DRUGS THAT WERE INVOLVED, AND
15 THE PARTICIPATION OF SO MANY, AND MR. STEARNS'
16 INVOLVEMENT BEING SUCH THAT HE WAS FOUND GUILTY AS
17 INDICTED, I FIND THAT THE UPPER LEVEL IS APPROPRIATE IN
18 THIS CASE AND THE SENTENCE REMAINS THAT THE DEFENDANT BE
19 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
20 TERM OF 30 YEARS AND PAY A FINE OF \$100,000.00 PLUS
21 COSTS AND ASSESSMENTS.

22 MS. EVANS: THANK YOU, YOUR HONOR.

23 THE COURT: GOOD LUCK TO YOU, SIR.

24 MR. KAPPEL: YOUR HONOR, THERE'S ONE FINAL
25 MATTER THAT I WANTED TO ADDRESS WITH YOU, SIR.

1 THE COURT: JUST A MOMENT. ALL RIGHT. YES,
2 SIR.

3 MR. KAPPEL: JUDGE, AND THIS IS JUST A
4 HOUSEKEEPING MATTER AND I APOLOGIZE FOR HAVING TO BRING
5 THIS UP AT THIS POINT. BUT I'VE REVIEWED MY CONTRACT
6 WITH MR. STEARNS, WITH SETH EARLIER TODAY, AND MY
7 OBLIGATIONS AT THIS POINT HAVE BEEN COMPLETED, AND I ASK
8 RESPECTFULLY ---

9 THE COURT: WELL, HE DOES UNDERSTAND --
10 MR. STEARNS, YOU DO UNDERSTAND THAT YOU DO
11 HAVE A RIGHT TO APPEAL, BUT YOU NEED TO FILE YOUR NOTICE
12 OF INTENT TO APPEAL WITHIN 30 DAYS -- I'M SORRY, TEN
13 DAYS.

14 MS. EVANS: TEN DAYS.

15 THE COURT: TEN DAYS. DO YOU UNDERSTAND?

16 THE DEFENDANT: YES.

17 THE COURT: ALL RIGHT. MR. KAPPEL WILL BE
18 RELIEVED.

19 MR. KAPPEL: THANK YOU, JUDGE.

20 MS. EVANS: THANK YOU, YOUR HONOR.

21 (WHEREUPON, THE ABOVE SENTENCING HEARING WAS
22 CONCLUDED.)

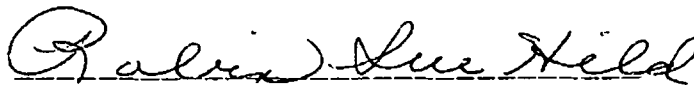
23 ***** END OF REQUESTED TRANSCRIPT *****
24
25

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE THIRTEENTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
THE EVIDENCE INTRODUCED IN THE SENTENCING HEARING OF THE
CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
GENERAL SESSIONS, STATE GRAND JURY, FOR GREENVILLE
COUNTY, SOUTH CAROLINA, ON THE 25TH DAY OF MARCH, 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

JULY 27, 2008



ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
 County of GREENVILLE)

In the Court of Common Pleas

2011-CP-23-

1468

SETH AARON STEARNS, #327380

Full name and prison number, if any, of applicant.

v.

STATE OF SOUTH CAROLINA

Name of Respondent

APPLICATION FOR
 POST-CONVICTION RELIEF

FILED
 CLERK OF COURT
 GREENVILLE CO. SC
 FEB 28 PM 11:06

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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

1. Place of detention: McCormick Correctional Institution; 386
Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence _____
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2005-GS-47-25 ; (Trafficking in Methamphetamine)
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 25, 2008 ; Sentence of Thirty (30) years
 - (b) _____
 - (c) _____

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5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
(b) after a plea of not guilty ☒ _____
(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. South Carolina Court of Appeals
ii. _____
iii. _____

(b) the result in each such Court to which you appealed:

- i. Appeal Dismissed
ii. _____
iii. _____

(c) the date of each such result:

- i. March 1, 2010
ii. _____
iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. 2010 - UP - 167
ii. _____
iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
(b) _____
(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial Counsel
(b) Ineffective Assistance of Appellate Counsel
(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Failing to Object to numerous prejudicial comments by Solicitor during Closing Arguments.

(b) Failing to seek Discretionary Review to State's Highest Court on claim of error, for Exhaustion Purposes.

(c) _____

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) 'PCR' proper action
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (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 application with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Matt Kappel, Esq.; Current Address Unknown
- ii. Robert M. Pachak, Esq.; P.O. Box 11589, Columbia, SC 29211
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial and Sentencing
- ii. Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

New Trial

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

) VERIFICATION

COUNTY OF GREENVILLE)

I, Seth A. Stearns, #327380, 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.

Sworn to and subscribed before me

This 22 day of Feb, 2011

Joyce L Young L.S.

Notary Public for South Carolina

My Commission Expires

8 28 2011

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Seth A. Stearns, #327380, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application, I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

x

Applicant

Sworn to and subscribed before me

This 22 day of Feb, 2011

Joyce L Young L.S.

Notary Public for South Carolina

My Commission Expires:

8 28 2011

CERTIFICATE OF SERVICE

I, Seth A. Stearns, do certify before below-
signed Notary Public that, on below-said date, I
did deposit an Original Draft of my 'PCR
Application' into the custody of the M^cC.I.
Mail Room Clerk (below-signed Notary Public) to
be immediately forwarded by sufficient U.S.
Postage to:

Clerk, Greenville County
Court of C.P. & G.S.
305 East North Street
Greenville, SC 29601

Sworn and Subscribed

to before me this 22

day of Feb, 2011

/s/ Joyce L Young

Notary Public, South Carolina

My Commission Expires: 8-28-2011

/s/

Seth A. Stearns, # 327380
M^cC.I. F-4-256-A
386 Redemption Way
McCormick, SC 29899

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

SETH AARON STEARNS, # 327380
APPLICANT

- Vs. -

STATE OF SOUTH CAROLINA,
RESPONDENT

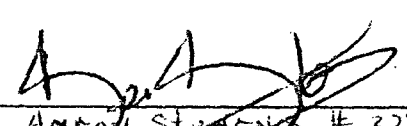
C.A. No. 2011-CP-23-1468

MOTION TO AMEND
'PCR' APPLICATION

The above-captioned Applicant moves to
Amend Numbers 10(a) and 10(b), PCR
Application, to expound at length upon the concise
facts noted briefly within the PCR Application.

This Motion is based upon the conjoined
'Memorandum of Points and Authorities'.

161


Seth Aaron Stearns, # 327380
M.C.I. F-4-256-A
386 Redemption Way
McCormick, SC 29879

5-19-11
DATE

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

SETH AARON STEARNS, # 327380
APPLICANT

- Vs. -

STATE OF SOUTH CAROLINA,
RESPONDENT

C.A. No.: 2011-CP-23-1468

MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF MOTION TO AMEND
'PCR' APPLICATION

• The above-captioned Applicant expounds upon noted Points within the conjoined Motion to Amend 'PCR' Application by and through the below-noted Authorities.

- I. -

• AUTHORITY PERMITTING
AMENDMENT

• Under the Post-Conviction Procedures (§§

- 1. -

17-27-10 to 17-27-160, S.C. Code of Laws (2003, as Amended)), the South Carolina Rules of Civil Procedure ("SCRCP") are available for Applicant's use. See § 17-27-80 (in relevant part). SCRCP 15(a) says "[a] party may amend his pleading once as a matter of course at or any time before ... a responsive pleading is served ...", (in relevant part); SCRCP 15(b) permits Applicant to further construct the initial PCR claims so that they will conform to the evidence which will be presented upon them.

The law also declares that "[s]tatutory rules of construction may be applied to the construction of court rules." Garner v. Houck, 312 S.C. 481, 435 S.E.2d 847, 849 (S.C. 1993); and "the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." State v. Cabrera - Pena, 350 S.C. 517, 567 S.E.2d 472 (S.C. App. 2002) (internal citations omitted).

Applicant, therefore, will Amend the 'PCR' claims as follows.

- II -

AMENDED 'PCR' CLAIMS.

• Consistent with designated numbers of 'PCR'
Application :

A - 10(a)

- Failing to Object to Numerous
Prejudicial comments of Solicitor
during State's Closing Argument
to jury.

(i) - FACTUAL BASIS.

- Applicant's In Absentia trial was
fraught with questionable testimony of
State witnesses who, obviously, in
facing charges themselves, would have
an interest in testifying falsely.

For instance, State witness Kevin
Moser was charged with Trafficking
Methamphetamines and was facing
"up to 25 years" for that crime

— despite the fact of the State offering him a recommended sentence of 13 years through an "agreement" [see Trial Transcript ("Tr." hereinafter) Pg. 215, ln. 12 to Tr. Pg. 216, ln. 11].

State Witness Robert Sexton was charged with Conspiracy and was facing a term of imprisonment of 7 to 25 years, yet the State was recommending 18 years pursuant to a plea agreement with the State for his testimony against Applicant [Tr. Pg. 258, ln. 9 - 22].

State Witness Brian Mueller was charged with Conspiracy to Traffick Methamphetamines (aside of his incarceration in the State of Georgia for a Trafficking charge), and pled guilty to that charge facing 7 to 30 years despite the State's

recommendation of 15 years due to a plea agreement [Tr. Pg. 300, ln. 5 to Tr. Pg. 302, ln. 2].

Kenny Lavender, State Witness with an extensive criminal record [see Tr. Pg. 354, ln. 22 to Tr. Pg. 355, ln. 21], pled guilty to Trafficking in Methamphetamine by Conspiracy and entered into an agreement with the State for a sentence of 18 years by recommendation [Tr. Pg. 356, ln. 1 to Tr. Pg. 357, ln. 4] even though Kenny was subject to a possible increased penalty for his multiple convictions. (Compare § 17-25-45, S.C. Code of Laws).

And finally, State's Witness Amanda Fordham (who was under charges by the Federal Government out of Georgia) testified that she wasn't promised anything in

exchange for testifying [Tr. Pg. 546, ln. 10-22], even though a 'contract' for a reduced sentence pursuant to Fed. R. Crim. Pr. 35 could have existed between Amanda and the Federal Government.

These facts were submitted only to support the assertion that Trial Counsel should have objected where the Solicitor stated:

"Keep in mind when you are prosecuting the Devil, you got to go to Hell to get the witnesses."

- Tr. Pg. 625, ln. 19-20 .

The Solicitor said that, although nobody forced Kevin Moser to "Smoke Ice." (Tr. Pg. 628, ln. 15-18), that Ice dealers have the ability to

sell to people and "...[g]et them hooked," [Tr. Pg. 623, ln. 22 to Tr. Pg. 624, ln. 1] — and Trial Counsel didn't object.

Factually, enough of a basis exists to put Applicant's Trial Counsel's decision not to object to the prejudicial comments of the Solicitor.

(ii) - THE LAW

Applicant's Trial Counsel was bound, under the 6th Amendment to the U.S. Constitution, to provide Applicant with the "... assistance of counsel for his defense."; the U.S. Supreme Court established a two (2) prong standard to test an Attorney's performance during a criminal trial. See Strickland

v. Washington, 466 U.S. 668,
104 S.Ct. 2052, 80 L.Ed.2d
674 (1984).

Applicant, therefore, will
equate the above-noted
'Factual Basis' with the two
(2) prongs of Strickland.

[1] - DEFICIENT PERFORMANCE

- Strickland holds that when
an Applicant challenges the
Trial Counsel's performance,
Applicant must first show
that Counsel's performance
was 'deficient', in that Counsel
was not functioning as the
'counsel' guaranteed by the
6th Amendment. See Strickland,
at U.S. 687, 104 S.Ct. at 2064.

Applicant submits that,
during the course of his 'In
Absentia' jury trial, Counsel

was not functioning as the 'counsel' guaranteed by the 6th Amendment by failing to object upon the Solicitor saying that the 'jury' should see that 'when you are prosecuting the Devil, you got to go to Hell to get the witnesses', as noted above, where the Solicitor's comment, here, took away the jury's power to view all of the above-mentioned State Witnesses as having more of a reason to lie on Applicant in hopes of favorable treatment during their own sentencing — and, thus, bind the jury from exercising their own reasoning as to 'trustworthiness'.

[2] PREJUDICE

Next, Applicant is required by Strickland to show that Counsel's 'deficient performance' Prejudiced Applicant trial defense to the level of depriving Applicant of a fair trial, "a trial whose result is reliable". Id.

Here, it goes without too much elaboration that absent Trial Counsel's Failure to object, there is a reasonable probability that the jury would've disbelieved the State Witness's testimonies and acquitted Applicant — based upon the potential that they were lying, for favorable deals.

- In conclusion to this Ground, Applicant submits that Trial Counsel was Ineffective for

Failing to object.

B - 10(b)

- Failing to Seek Discretionary Review to State's Highest Court on claim of Error, for Exhaustion Purposes.

(i) - FACTUAL BASIS.

Applicant submits that following his Direct Appeal to the S.C. Court of Appeals, Appellate Defender Robert M. Pachak didn't seek a Petition for a Writ of Certiorari for the S.C. Supreme Court to review the Court of Appeals' decision.

(ii) - THE LAW

Ineffective Assistance of

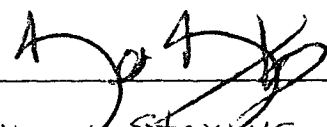
Appellate Counsel claims follow the same two (2) prong showing of Strickland; yet, both prongs are met when Appellate Counsel deprives a client of a procedural step required for Exhaustion of state remedies. See, e.g., Smith v. Robbins, 528 U.S. 259, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000); accord O'Sullivan v. Boerckel, 526 U.S. 838, 119 S.Ct. 1728, 144 L.Ed.2d 1 (1999).

- In conclusion to this Ground, Applicant submits that Appellate Counsel rendered Ineffective Assistance in failing to seek Discretionary Review in the S.C. Supreme Court for Exhaustion purposes.

- III. -CONCLUSION

- Consistent with PCR Application,
Applicant moves for a New Trial based
on the foregoing points.

Respectfully Submitted,

/s/ 
Seth Aaron Stevens, # 327380
M.E.C.I. - E.4 - 256-A
386 Redemption Way
McCormick, SC 29899

5-19-11
DATE

- CERTIFICATE OF SERVICE -

I, Seth A. Stearns, do certify before below-signed Notary Public that, on below-said date, I did deposit an Original Draft of my 'Motion to Amend 'PCR' Application', with a supporting 'Memorandum of Points and Authorities', addressed to below-signified Clerk of Court, and a True and Exact Copy of the same materials addressed to below-noted Attorney General, into the custody of the McCormick C.I. Mail Room Clerk (below Notary Public) to be immediately forwarded by sufficient U.S. Postage to:

- Clerk, Greenville County
Court of C.P. & G.S.
305 East North Street
Greenville, SC 29601

- Alan Wilson, Atty. Gen.
P.O. Box 11549
Columbia, SC 29201

- Sworn and Subscribed
to before me this 19
day of May, 2011

s/ J. Francis
Notary Public, South Carolina

* My Commission Expires: 12-16-2019

1st Seth A. Stearns, #327380
McC.I. - F.4 - 256-A
386 Redemption Way
McCormick, SC 29879

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-1468
COUNTY OF GREENVILLE	)	
	)	
Seth Aaron Stearns,	)	
S.C.D.C. No. 327380,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed February 28, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections. The State Grand Jury indicted the Applicant at the December 2005 term for trafficking methamphetamines (conspiracy) (2005-GS-47-0025). Matthew J. Kappel, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was tried in absentia. The jury found the Applicant guilty and the Honorable Alexander S. Macaulay sealed the sentence on December 13, 2007. On March 25, 2008, the Applicant appeared in court and Judge Macaulay sentenced him to thirty (30) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an

Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Stearns, Op. No. 2010-UP-167 (S.C. Ct. App. filed March 1, 2010).

Attached herewith and incorporated herein by reference are the records of the State Grand Jury Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:²

1. Ineffective assistance of trial counsel:
 - a. Failure to object to prejudicial remarks made by solicitor during closing argument.
2. Ineffective assistance of appellate counsel:
 - a. Failure "to seek discretionary review to State's highest court on claim of error, for exhaustion purposes."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441,

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

² The Applicant expanded upon these issues in a "Motion to Amend 'PCR' Application" filed May 27, 2011.

442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

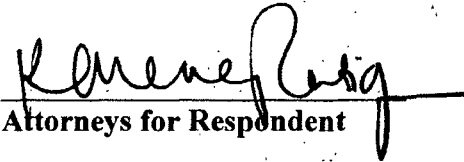
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

June 28, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2011-CP-23-1468

SETH AARON STEARNS, 327380)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

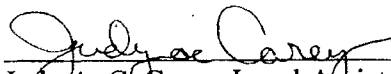
STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

1. I am an employee of the Respondent in the above captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Seth Aaron Stearns, 327380
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

DATED this 28th day of June, 2011.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

SETH AARON STEARNS #327380,)

APPLICANT,)

VS.)

STATE OF SOUTH CAROLINA)

RESPONDENT.)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

APPLICANT'S SECOND
MOTION TO AMEND
PCR APPLICATION

2011-CP-23-1468

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER
2011 APR 21 PM 12 43

Now comes the above named Applicant, who moves this Honorable Court in the above entitled matter per S.C. Code Ann. §17-27-90 to add the below grounds and arguments set out in his original and first amend application for PCR.

Ineffective Assistance Of Trial Counsel

- 1) Trial counsel, Matt Kappel, prejudiced Applicant when he failed to object to the sufficiency of the indictment, when the indictment alleged a single conspiracy. But here the State's evidence was proof of several smaller conspiracies
- 2) Moreover, counsel prejudiced Applicant when he failed to argue "Material Variance" where the State showed proof of several smaller conspiracies, which constitutes a material variance from the indictment.
- 3) In opening statement, the solicitor argued two theories of conspiracy: The Wheel Conspiracy that focuses on a central person or group transacting with several other person; the Hub as she stated Applicant was. (See p54 L10-L17; also See p48 L4-L10) The Hub agrees separately with several co-conspirators, who are the "Spokes" of the wheel. Also, the solicitor argued the Chain Conspiracy. Unlike the Wheel Conspiracy, which focuses on a specific person, The Hub, the Chain Conspiracy focuses on a single subject matter. The solicitor kept mentioning Wal-Mart. (See p43 L14-p47; p48 L20-p50 L12; p50 L25 – p51 L16) In the Chain Conspiracy, there is successive communication and cooperation in much the same way as with legitimate business operations between manufacturer and wholesaler, then wholesaler and retailer, and then retailer and consumer. Here, counsel prejudiced the Applicant's trial when he failed to ask Agent Max Dorsey, whom the State was offering to present Agent Dorsey as an expert in the field of narcotics investigation, specifically including conspiracies, "does he know the difference between the Wheel and Chain Conspiracy and or the elements under South Carolina Law of Conspiracy." This failure to ask Agent Dorsey these questions only allowed Agent

- Dorsey to prejudice the Applicant and bolster the alleged co-conspirators' testimony (See p. 95 Line 11 – Line 24; Also See p. 132 Line 7 – Line 12)
- 4) Moreover, counsel Mr. Kappel failed to object to Agent Dorsey's testimony when offering him as an expert, the mention of "when a murder occurs" (See p. 93 Line 15) when asked what was his duties as a narcotics investigator (See p. 92 Line 17 – p. 93 Line 19) This was prejudicial in Applicant's case. When Applicant's case did not have anything to do with any murder(s). This also constituted a denial of due process pursuant to the S.C. and U.S. Constitutions.
 - 5) Counsel failed to ask Agent Max Dorsey what was the sufficiency of the evidence of this alleged agreement, (Wheel Conspiracy), or the alleged common object (Chain Conspiracy), and what was the State's theory, the wheel or the chain.
 - 6) Counsel prejudiced Applicant when he failed to object to Kevin Moser's testimony and ask that it be stricken from the record, where the existence of a conspiracy was never proven. Applicant's name was never called or mentioned by Kevin Moser. (See p. 293 Line 22 – p. 294 Line 4) Also see: Kevin Moser's testimony (p. 214 Line 20 – p. 256 Line 9), which also constituted a denial of due process. Counsel also failed to object to this testimony under S.C.R.E. 403 as there existed danger of unfair prejudice, confusion of the issues, relevance and misleading the jury.
 - 7) Although counsel objected to the Relevance of State's Ex. 2 "Max Dorsey's form B chain of custody form" dealing with ice seized from Kenny Lavender, which the trial judge overruled – and stated that he thought that apparently it does have something to do with an alleged conspiracy. (See p. 109 Line 20 – p. 110 Line 12; Also See p. 103 Line 17 – p. 110 Line 12). Here, the issue with Kenny Lavender did not have anything to do with Applicant's case. (Further, See p. 196 Line 10 – Line 25 and p. 203 Line 10 – Line 14; Also p. 110 Line 14 – p. 207 Line 22) Moreover, there was no mention of any prior or conspiracy to April 2005 that Applicant was allegedly involved in. (See p. 103 Line 17 – p. 108; p. 110 Line 14 – Line 22; p. 139 – p. 142 Line 13; p. 147 Line 20 – p. 148 Line 2; p. 149 Line 3 – Line 18; p. 171 Line 13 – p. 172 Line 8; p. 196 Line 10 – Line 24.) Counsel should have argued that this chain of custody form – State's Ex. 2, and this testimony was irrelevant and inadmissible because of its prejudicial effect versus its probative value. The danger of unfair prejudice, confusion of the issue and misleading the jury, and its admission violated Applicant's 5th and 14th amendment rights to due process and a fair trial, and the corresponding provisions of the U.S Constitution.
 - 8) Agent Max Dorsey testified that the Ice Cream investigation did not start until Saint Patrick's Day, March 17th, 2005 (See p. 172 Line 9 – Line 17), in which Applicant was not mentioned (See p. 105 Line 19 – p. 108 Line 4). Robert Sexton's first time mentioning Applicant was March 2007 (See p. 276 Line 13 – p. 280 Line 9; p. 289 Line 4 – p. 290 Line 10). And, all his testimony was prior to March of 2005. (See p. 285 Line 22 – p. 286

Line 2; Also p. 289 Line 4 – p. 290 Line 25). Brian Mueller never gave any written statement(s) about Applicant. (See p. 337 Line 4 – p. 342 Line 7) out of this alleged conspiracy until trial. Kenneth Lavender did not call Applicant's name until trial - out of all the statements he gave. (See p. 391 Line 22 – p. 393 Line 12; p. 396 Line 7 – p. 398 Line 24; p. 400 Line 25 – p. 401 Line 21; p. 415 Line 1 – Line 16) There was no indication if Chad Sexton knew Applicant. (See p. 371 Line 18 – p. 373 Line 9) Clearly counsel prejudiced Applicant when he failed to argue Material Variance between the testimony and the alleged time of this alleged conspiracy. Here, Kevin Moser never even mentioned Applicant. (See p. 214 Line 20 – p. 256 Line 9) which the trial judge pointed out (See p. 293 Line 22 – p. 294 Line 6). Chad Sexton testified that he had stop dealing with Applicant in December or so, 2004 (See p. 434 Line 25 – p. 435 Line 1; p. 436 Line 14 – p. 439 Line 3) But here, Brian Mueller testified that he stopped dealing with Applicant. (See p. 320 Line 4 – Line 10) And got out of the drug business and got back into the drug business which Applicant was not involved. (See p. 321 Line 15 – p. 323 Line 17). Here, although counsel objected to what Amanda had allegedly told Brian "was I still dealing meth," Counsel prejudiced Applicant when he did not state his grounds for objection, even after the judge asked – a conspiracy – no conspiracy. (See p. 323 Line 1 – Line 21; See *State v Crowley* 85 SE 2d 714; *Grant v White* 340 SE 2d 791). Amanda Fordham testified that she started selling to Applicant July 4, 2004. (See p. 559 Line 20 – p. 560 Line 2), but Brian Mueller was taking over the Applicant's end. (See p. 564 Line 4 – p. 566 Line 1; p. 567 Line 10 – p. 568 Line 1). Counsel failed to cross on what month/year. And, Brian Mueller started coming down on my behalf allegedly in August/September 2004 (See p. 570 Line 19 – Line 25) But Brian Mueller testified that he had stopped dealing with Applicant. (See p. 320 Line 4 – Line 10) Counsel failed to cross on what month/year. And he stopped the drug business late 2004, beginning of 2005. (See p. 322 Line 2 – Line 5; p. 332 Line 22 – p. 333 Line 17). And, after Brian got out of jail he got back into the drug business with Amanda, which Applicant did not have anything to do with. (See p. 322 Line 11 – Line 17; Also See p. 334 Line 5 – Line 14; p. 580 Line 25 – p. 581 Line 15) Amanda Fordham also testified that she started dealing with Chad Sexton per Applicant in December, 2004. (See p. 572 Line 12 – p. 574 Line 2) But here, Chad Sexton testified that he stopped dealing with Applicant because he had gotten in some trouble December or so. (See p. 434 Line 21 – p. 435 Line 10) and that Applicant pushed him off on Brian. Counsel did not cross on what month/year. But he/Chad started selling in November, 2004 (See p. 431 Line 1 – p. 434 Line 3) and Brian Mueller testified that he had stopped dealing with Applicant (See p. 320 Line 4 – Line 10). Counsel never crossed the witness on what month/year and he had stopped the drug business in late 2004, beginning of 2005. (See p. 322 Line 2 – Line 5; p. 332 Line 22 – p. 33 Line 17). And when he got back in the drug business with Amanda, which Applicant did not

have anything to do with. (See p. 580 Line 25 – p. 581 Line 15; p. 334 Line 5 – Line 14 and p. 322 Line 11 – Line 17). Amanda Fordham further testified that Chad Sexton made his first solo trip in January 2005 (See p. 576 Line 21 – Line 24) but she did not sell to Chad Sexton from December 2004 to April 2005 (See p. 580 Line 9 – Line 19). Clearly there was a Material Variance between the testimony(ies) and the alleged time in the indictment as to when the Applicant was allegedly involved, which counsel failed to argue. Here, Amanda Fordham testified that she did not sell to Chad Sexton from December 2004 to April 2005 (See p. 580 Line 9 – Line 19), but at the same time she testified that Chad Sexton made his first solo trip in January 2005 (See p. 576 Line 21 – Line 24) But again, Amanda Fordham testified she started dealing with Chad Sexton per Applicant's request in December 2004. (See p. 572 Line 12 – p. 574 Line 2). Although Chad Sexton testified that he stopped dealing with Applicant because he had gotten in some trouble December or so, and that Applicant pushed him off on Brian, there was no date given. (See p. 434 Line 21 – p. 435 Line 10). Here, Brian Mueller testified that he had stopped dealing with Applicant. (See p. 320 Line 4 – Line 10) He got out of the drug business late 2004/beginning 2005 (See p. 322 Line 2 – Line 5; p. 332 Line 22 – p. 333 Line 17); And when he got back in it, with Amanda, it did not have anything to do with Applicant. (See p. 580 Line 25 – p. 581 Line 15; p. 334 Line 5 – Line 14; p. 322 Line 11 – Line 17). Kenneth Lavender never mentioned Applicant until trial – out of all the people names he called and statements he gave. (See p. 391 Line 22 – p. 393 Line 12; p. 396 Line 7 – p. 398 Line 24; p. 400 Line 25 – p. 401 Line 21; p. 415 Line 1 – Line 16). Brian Mueller never mentioned Applicant or gave a written statement until trial. (See p. 337 Line 4 – p. 342 Line 7) And Robert Sexton's first time mentioning Applicant was March 2007. (See p. 276 Line 13 – p. 280 Line 9; p. 289 Line 4 – p. 290 Line 10). But all his testimony was prior to March of 2005. (See p. 285 Line 22 – p. 286 Line 2; Also see p. 289 Line 4 – p. 290 Line 25) And, Ms. Amanda Fordham did not write her statement upon this alleged conspiracy until March of 2007. (See p. 594 Line 18 – p. 595 Line 4). Clearly, counsel prejudiced Applicant when he failed to argue Material Variance, which was a denial of due process pursuant to the S.C. and U.S. Constitutions.

- 9) Mr. Kappel was well aware of the Applicant's withdrawal, as they had talked about this issue before. Mr. Kappel really prejudiced the Applicant's trial when he failed to bring out the fact(s) and cross examine witnesses on the Applicant's Withdrawal from this conspiracy, which he never got back into for any shared mutual benefit(s). Here, after the Applicant stopped dealing with Robert Sexton, he did not sell his so-called connection to his brother, Chad Sexton, as he testified to. (See p. 270 Line 12 – Line 19; p. 272 Line 15 – p. 274 Line 4; Also See p. 267 Line 21 – p. 268 Line 18). As a matter of fact, Robert Sexton's first time mentioning Applicant was March 2007. (See p. 276 Line 13 – p. 280 Line 9; p. 289 Line 4 – p. 290 Line 10). And all his testimony was prior to

March of 2005. (See p. 285 Line 22 – p. 286 Line 2; Also See p. 289 Line 4 – p. 290 Line 25). And Chad Sexton testified that he stopped dealing with Applicant because he had gotten in some trouble in December or so, and that Applicant pushed him off on Brian. (See p. 434 Line 21 – p. 435 Line 10). Although looking at Amanda Fordham's testimony she testified that she started dealing with Chad Sexton pursuant to Applicant's request December 2004. (See p. 572 Line 12 – p. 574 Line 2) But Ms. Fordham goes on to testify that she did not sell to Chad Sexton from December 2004 to April 2005. (See p. 580 Line 9 – Line 19). Chad Sexton testified that he stopped dealing with Applicant because he had gotten in some trouble December or so and that he pushed him off on Brian. (See p. 434 Line 21 – p. 435 Line 10). Brian Mueller testified that he had stopped dealing with Applicant. (See p. 320 Line 4 – Line 10). He got out of the drug business late 2004/beginning 2005. (See p. 322 Line 2 – Line 5; p. 332 Line 22 – p. 333 Line 17). He got back into the drug business with Ms. Amanda – which did not have anything to do with Applicant. (See p. 580 Line 25 – p. 581 Line 15; p. 334 Line 5 – Line 14; p. 322 Line 11 – Line 17). Here, the trial judge made a point regarding a statement by co-conspirator which also could have been argued my Withdrawal. (See p. 346 Line 16 – p. 347 Line 9). Here, Kenneth Lavender never mentioned Applicant until trial (See p. 391 Line 22 – p. 393 Line 12; p. 396 Line 7 – p. 398 Line 24; p. 400 Line 25 – p. 401 Line 21; p. 415 Line 1 – Line 16). Amanda Fordham did not write her statement upon this alleged conspiracy until March of 2007. (See p594 L18 – p595 L4). And, Kevin Moser never even mentioned Applicant during his testimony. (See p. 214 Line 20 – p. 256 Line 9), which the trial judge pointed out. (See p. 293 Line 22 – p. 294 Line 6). If the Court closely looks at all the testimony from Robert Sexton, Kenneth Lavender, Brian Mueller, Chad Sexton and Amanda Fordham, all knew that Applicant had gotten out and did not get back in. The Applicant does not why the State even called Kevin Moser at the trial of this matter.

- 10) Counsel further prejudiced Applicant when he failed to request a jury charge on co-conspirator's statements and withdrawal. For example, counsel could have requested the following instruction: Even if Defendant Seth Aaron Stearns was a member of a conspiracy with Kevin Moser, Robert Sexton, Chad Sexton, Kenneth Lavender, Brian Mueller and Amanda Fordham, statements by a co-conspirator are not admissible against Defendant Stearns if the statements were made after Defendant Stearns had withdrawn from the conspiracy. Withdrawal is indicated by doing acts which are inconsistent with the purpose of the conspiracy, by making reasonable efforts to inform co-conspirators about the intent to withdraw, or by any other action that shows that the conspirator is no longer a member of the conspiracy. (See *U.S. v U.S. Gypsum* 438 U.S. 422 (Methods of Withdrawing) *U.S. v Read* 658 F 2d 1225 (burden of proof) *U.S. v Smith* 623 F 2d 627; Also See *State v Fair* 40 SE 2d 634).

This charge directs the jury to determine whether the conspiracy existed and whether the statement(s) were made during and in furtherance of the conspiracy. Absent such a requirement, the co-conspirator charge is arguably a comment on the facts by the trial judge, as in Applicant's case, which also counsel failed to object to. Here, the reference by the trial judge to consider the Applicant's co-conspirator's statements would be a clear indication to the jury that the judge had decided a conspiracy existed. Even if no conspiracy is charged an indication that Applicant was a co-conspirator in a conspiracy to commit the crime charged would indicate to the jury the judge's view concerning the guilt of Applicant. (See p. 663 Line 18 – p. 665 Line 23; p. 668 Line 13 – Line 17). Moreover, counsel should have objected to any statements upon this argument as well.

- 11) Applicant further argues that the testimony and or statement of his alleged co-conspirator should have only been admissible against them and not Applicant once it was proven that the Applicant had left the conspiracy. Additionally, trial counsel should have objected to this hearsay.
- 12) Counsel prejudiced Applicant when he failed to object when the solicitor asked Robert Sexton "out of the individuals that he dealt with in this conspiracy, who are you aware or saw carry weapons" to which he answered "all of us." This testimony's prejudicial effect outweighed the probative value and improperly placed Applicant's character in issue (See S.C.R.E. Rule 404(b), which is a due process violation pursuant to the S.C. and U.S. Constitutions. Here, the Applicant had not placed his character at issue. This same question was asked to Chad Sexton, to which he answered that "Seth had a few guns...." (See p. 448 Line 1 – Line 7) Here, there was no objection from counsel.
- 13) Counsel further prejudiced Applicant when he failed to object to Exhibits 5, 6, 7 and 8 where the State's chain of custody was not complete, where Kenneth Lavender was identified as handling the drugs and thus was part of the chain of custody. (See p. 487 Line 25). But, there was no reasonable demonstration of the manner of Kenneth Lavender handling the drugs. Kenneth Lavender was never asked whether the drugs were in the same condition or tampered with in any manner. (See p. 381 Line 13 – p. 383 Line 14; p. 484 Line 18 – p. 489 Line 24; p. 498 Line 21 – p. 505 Line 4; Also See p. 532 Line 6 – p. 536 Line 15;
- 14) Additionally counsel failed to object to Exhibit 5 "Neysa Caron's Chain of Custody Form" (See p. 486 Line 16; p. 532 Line 6 – p. 536 Line 15)
- 15) Counsel further prejudiced Applicant when he failed to object to the judge's charge as to the corroboration issue of accomplice testimony. (See p. 663 Line 18 – p. 665 Line 23; p. 668 Line 13 – Line 17; Appellate Defender's Robert M Pachak Final Anders Brief; Also see *State v. Vanderbilt* 340 Se 2d 543; *State v. Atchison* 235 SE 2d 294), where an objection must be made at trial for review on appeal.
- 16) Counsel prejudiced Applicant when he failed to object to the solicitor's

closing argument which went outside of the record. When the solicitor stated, "They shoot guns. They kill people." Here, there was no evidence of that in my case. (See *State v. Linder* 278 SE 2d 335) The solicitor must stay within the record and draw inferences from the evidence. This was also a denial of due process pursuant to S.C. and U.S. Constitutions. Here, counsel's prejudicial acts and omissions not only prejudiced the Applicant's trial, it prejudiced the Applicant's appeal. Applicant further asserts that this was not reasonable or sound trial strategy, in just pointing fingers at Applicant's co-conspirators without more in a conspiracy case.

- 17) Counsel's opening statement even prejudiced Applicant, when he stated, "that these are bad, bad people – thieves/drug dealers". This statement in a drug conspiracy case prejudiced Applicant – when counsel never argued the Applicant's withdrawal. (See p. 64 Line 15 – p. 65 Line 9). The solicitor even noticed counsel's statement in closing (See p. 623 Line 17 – Line 22)
- 18) Moreover, counsel prejudiced Applicant when he did not object to the State's Exhibits 5, 6, 7, 8, 9, 10 and 11 as inadmissible. Because of the exhibits' prejudicial vs. probative value, the danger of unfair prejudice, confusion of the issue and misleading the jury they should have been excluded. Thus their admission violated the Applicant's 5th and 14th amendment rights.
- 19) Counsel's acts and omissions were both incompetent and prejudicial. (See *Fitzgerald v. Thompson* 943 Fzd 464 (4th cir 91))

Ineffective Assistance Of Appeal Counsel

- 1) Although Appellate counsel does not have a constitutional duty to raise every non-frivolous issue, Appellant is still entitled to effective assistance of appellate counsel. (See *Evitt v. Lucey* 105 S.Ct. 830; *Smith v. Robbins* 528 U.S. 259; *Gray v. Greer* 800 F 2d 644) Here, appellate counsel Robert M. Pachak brought up an issue that was not properly preserved for appellate review. (See Final Anders Brief.)
- 2) Clearly, the more meritorious issue was whether the Directed Verdict was properly denied (See p. 607 Line 16 – p. 608 Line 1), the chain of custody issues (See Exhibit 2, p. 107 Line 25 – p. 110 Line 12; Exhibits 6, 7, 8, 9, 10, p. 484 Line 18 – P. 489 Line 24; p. 498 Line 21 – p. 505 Line 4; p. 522 – p. 537 Line 25), and the issues raised by the Applicant as to the evidentiary relevancy issues.
- 3) Upon the Directed Verdict, first the State failed to prove conspiracy – mutual "benefit", understanding, agreement or common "intention" and plan. There was testimony of the lack of existence of this conspiracy by the alleged members, and that the Applicant was not part of the conspiracy.

Thus the State failed to prove beyond a reasonable doubt that the Applicant trafficked by conspiracy, 400 grams or more. There was no actual or constructive, or the right of "Dominion" to control over either the drugs or the property or the property in or on

• which the meth was found. (*See Jackson v. Va. 443 U.S. 307; In re Winship 397 U.S. 358*) Therefore, Applicant was denied due process pursuant to the S.C. and U.S. Constitutions, and is entitled to a new appeal upon the above issues.

Respectfully Submitted,

Applicant Seth Stearns

Mr. Cormick, South Carolina

April 10, 2014.

P. Hudson

Commission Expires:

4/24/18

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENBARGER

IN THE COURT OF COMMON PLEAS

2011-CP-23-1468

Seth Aaron Stearns
#327380
vs Applicant
DEC 3 PM 1 23

APPLICANT'S 3rd
MOTION TO AMEND
PCR APPLICATION

The State Respondent

NOW COMES the above named Applicant who moves
this Hon. court in the above entitled matter per. S.C.
Code Ann § 17-27-90.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel highly prejudiced Applicant
when he opened the door - to the results
of Kenny Lavender's polygraph test.
Although, Lt. Max Dorsey testified
that Kenny Lavender had failed the
polygraph test SEE: Tr. p 204 L 23 -
p 207 - L 19. Also see 409 L 14 - p 414 -
L 1.

Applicant argues that the mere mention

implied to the jury to believe not only was Kenny Lavender polygraph tested. But that all other co-conspirators may also have been tested before testifying, to corroborate their and Applicant's involvement.

Which is the only inference the jury could have drawn - that they were also telling the truth. See U.S. v Tedder 801 F.2d 1444.

In Applicant's case, the primary evidence of his guilt was the testimony of Six (6) co-conspirators, which their credibility was critical to the State's case - thus the jury's decision. And, although each witness gave some form of inconsistent statements and or testimony.

Here, Applicant's whole case boils down to the statements and testimony

of these co-conspirators. thereby the polygraph issues; the inconsistent statements and testimonies - plus the fact that the co-conspirators were allowed to plea in order to testify against Applicant, to convict him.

Was "not" sound trial strategy for counsel to open highly prejudicial door regarding Cavender's polygraph results. Which Solicitor Porter made argument upon SEE: Trp 351 L 7 - p 353 - L 21. Also see State v McHoney 344 S.C. 85

Applicant further argues that counsel should have never brought up the polygraph test because they are not considered reliable and are questionable SEE: State v Wright 471 SE2d 700; State v Council 515 SE2d 508. And based on State

State v Pressley 252 SE2d 403 even
a passing reference to a polygraph can
create an impermissible inference.

Even in closing, solicitor Porter made
reference to all co-conspirators
having accepted responsibility — pled
guilty and that the credibility of
those witnesses, "co-conspirators", is
absolutely important SEE: Tr p 624
L 15 — p 625 — L 18.

And Counsel Kappel's closing...
regarding the polygraph issue, only
bolstered the State's conspiracy
theory SEE: Tr p 649 — p 651 — L 8

"that he was a 100% sure Kenny and
Chad was connected — Thus we were
all connected"

State of South Carolina
County of Greenville

Seth Aaron Stearns # 327380

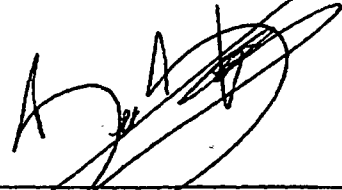
2011-CP-23-1468

VS.

State of South Carolina
respondent

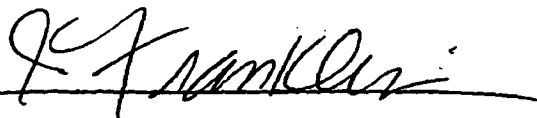
certificate of service

I, the above named Applicant, do hereby
certify that a true copy of applicant's Third
motion to Amend PCR Application, has been sent
to Scarlet B. Moore P.O. box 17615
Greenville S.C. 29606

S/ 

Seth A. Stearns
327380

Subscribed before me this 12
Day of August, 2014



Notary of public of South Carolina

my commission expires 12-16-2019

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
CASE NO.: 2011-CP-23-1468
PAUL B. WICKENHOFER

SETH AARON STEARNS #327380

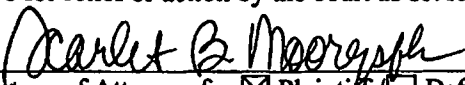
COM DEC 2 PM 1 29
Plaintiff,

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.

STATE OF SOUTH CAROLINA

Defendant.

Plaintiff's Attorney: Scarlet B. Moore, Bar No. 72534 Address: P.O. Box 17615, Greenville, SC 29606 Phone: 864-214-5805 Fax 864-752-0930 E-mail: scarlet28@msn.com Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant 12/03/2014 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS

2011-CP-23-01468

SETH A. STEARNS,)
APPLICANT,)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

ORIGINAL

December 17, 2014

Greenville, South Carolina

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE.

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

SCARLET B. MOORE, ESQ.
Attorney for the Applicant

BRIAN T. PETRANO, ESQ.
Assistant Attorney General

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) MATTHEW J. KAPPEL:

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(AW) SETH AARON STEARNS:

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Applicant's Exhibits)			
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All Exhibits were retained by the Clerk of Court for Greenville County.

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THE COURT: Are we ready to go forward?

MS. MOORE: Yes, Judge.

May it please the Court.

I'm Scarlet Moore on behalf of the Petitioner in this matter, Mr. Seth Stearns.

And Mr. Stearns, I do believe, would like to address the Court, if it pleases the Court, today prior to the hearing. And that's --

THE COURT: Okay. Mr. Stearns, let's hear from you.

MR. SETH STEARNS: Yes, sir.

I would like to respectfully submit a request for a continuance. I understand that this case is very old and that it has been continued several times, mostly -- just once on my end. And I feel that I pretty much have everything taken care of as far as I feel confident with what I have.

But there's -- I have this one person who has come late to me, and who has someone who could take a look at it. And if I had the opportunity to get them to look at my case, I would appreciate it. And, you know, it's up to you. I understand it's --

THE COURT: Is this a layperson, or a lawyer?

MR. SETH STEARNS: A lawyer.

THE COURT: What kind of time frame are you talking

1 about? Tomorrow?

2 MR. SETH STEARNS: Well, I have never even seen my
3 Rule 5 discovery. So as soon as I got the Rule 5
4 discovery to go along with my transcript, I would be able
5 to send it to that lawyer, yeah.

6 THE COURT: All right. I'm not certain I understand
7 your request fully. But is it your idea to send the
8 transcript and the discovery from this case to another
9 lawyer to have them review it for, perhaps, assuming
10 representation of you in this matter, or assisting
11 Ms. Moore, or --

12 MR. SETH STEARNS: Basically, Your Honor, I would
13 just like another person's viewpoint. I would like one
14 more person's view -- another lawyer's viewpoint, you
15 know, just -- I feel like this is kind of my last shot.
16 And I have 30 years. And I just -- I feel like -- you
17 know, I would really like to, you know, see if this other
18 person could find something that I didn't, or that
19 Ms. Moore didn't.

20 THE COURT: All right. Assuming they don't, when are
21 you going to know that? I mean, how -- what time frame
22 are you looking at?

23 MR. SETH STEARNS: I would imagine --

24 THE COURT: 30 days? Less? More?

25 MR. SETH STEARNS: Yeah. I mean, being with the

1 holidays right here, I would say 30 -- it shouldn't be
2 more than 30, 45 days, yeah.

3 THE COURT: Now, what part of discovery doesn't he
4 have, Ms. Moore?

5 MS. MOORE: Judge, he informed me that he has
6 never -- I don't think that -- at some point, he did
7 abscond, which is in the transcript. He did not have any
8 further communication with his attorney until he was
9 captured and brought back to South Carolina for sentencing.

10 So I don't -- you know, Judge, I -- honestly, I don't
11 know what he has, what he's been provided for or not. He
12 did call me last week -- or I guess several days ago. I
13 did send an e-mail to Mr. Kappel about that issue. But,
14 again, I don't know. I don't know.

15 THE COURT: Mr. Kappel -- I mean, Mr. Petrano.

16 MR. PETRANO: Thank you, Your Honor.

17 Your Honor, as you can see, this case number is
18 2011-CP-23-1468. That's 2011. Your Honor, it's 2014 now.
19 It's going to be 2015 in 30 days.

20 Your Honor, this case is quite stale. The Applicant
21 has been transported several times. We have subpoenaed
22 Mr. Kappel, I think, over 10 times. Your Honor, that's a
23 great expense, the security issues of just transporting
24 him alone.

25 Your Honor, we're ready to go. If he's not -- does

1 not want to proceed formally -- as an officer of the Court
2 and speaking on behalf of the State, I --

3 THE COURT: Well, how has he been subpoenaed 10
4 times? It's been scheduled 10 times?

5 MR. PETRANO: At least, yes, Your Honor.

6 THE COURT: Well, why has it been continued in the
7 past?

8 MS. MOORE: Judge --

9 MR. PETRANO: Your Honor, various sundry reasons.
10 And I'll volunteer my two. I, one time, had a General
11 Sessions matter that took precedence, according to the
12 priority rules. And another time I had a wedding. And I
13 had an order of protection in place for several -- many
14 months. So those were two of mine.

15 I think, one time, Mr. Kappel was unavailable for --
16 he had an order of protection for a long-standing
17 vacation.

18 Judge, that's where we're at. I think that the State
19 should move to dismiss this for failure to prosecute. And
20 that's what I'm doing right now:

21 THE COURT: All right.

22 MS. MOORE: Judge, certainly, I would object to that.

23 Also, part of the problem is that, first of all, the
24 Attorney General's Office does not call the attorneys in
25 advance to coordinate the scheduling. So that,

1 oftentimes, when we get notices, we already have our
2 dockets and our schedules in place.

3 I do a lot of work for the Department of Social
4 Services. The bottom line is that I've had a lot of
5 conflicts with the dates with previous cases that do, in
6 fact, take precedence over this case. And that's why, at
7 some point during the course of this representation, I did
8 contact Mr. Petrano with the notion of, well, should we,
9 in fact, set a date certain? Because this keeps
10 happening. This keeps happening.

11 And so, you know, I think -- and, again, there --
12 I've, also, been -- opportunities to continue it so -- to
13 look at the case as well, Judge. But it is -- I mean,
14 Judge, it's a 2011 case.

15 MR. PETRANO: And, Judge, I wasn't trying to point
16 and blame anyone for the continuances. My point being
17 there was plenty -- there's been plenty of time to look at
18 whatever supposed issues he may have.

19 Your Honor, respectfully, you know, it's not some
20 type of a confidential matter. He hasn't even disclosed
21 to this Court who this supposed attorney is. Judge, he's
22 got a great attorney. She's right here. They've got
23 everything. We're all here and ready to go.

24 Your Honor, we're ready to proceed.

25 THE COURT: I think the time for reviewing it by

1 another attorney or associating co-counsel has passed. I
2 think it's ready to go forward. That's just my opinion.

3 So, Mr. Stearns, respectfully, I think it's time to
4 cut bait or fish. It's been set several times. The
5 attorneys appear to be prepared. Mr. Kappel is ready,
6 willing, and available to testify. I think it's time to
7 go -- I mean, to have the case heard. And it's just time.

8 So it seems everything y'all presented to me appears
9 reasonable. But I don't see a reason to continue it.
10 There's no good reason to do that, other than having
11 another person look at it. And I just -- I don't find it
12 to be a compelling reason to grant a continuance.

13 So let's move forward.

14 MR. PETRANO: Thank you, Your Honor.

15 This is 2011-CP-23-1468, Mr. Seth Aaron Stearns.

16 Your Honor, it's a Greenville PCR. Obviously, that's
17 where we are. But it originated as a State Grand Jury
18 matter. That indictment number was 2005-GS-4725.

19 Mr. Stearns had been indicted by the -- in the December
20 2005 term of the State Grand Jury for trafficking meth
21 400 grams or more.. That's CDR Code 0370, S.C. Code
22 44-53-0375, Subsection C(2)(c).

23 Your Honor, he was tried in his absence by Judge
24 Macaulay on -- well, let me explain. The trial occurred
25 on December 12th, 2007. He was not picked up or

1 apprehended. And I believe it was North Dakota. And I
2 thought it was Oregon, but counsel has corrected me. It's
3 North Dakota.

4 So he wasn't brought back and, actually, sentenced
5 until March 25th, 2008. That's when the 30-year sentence
6 was handed out. That's when the time for appeal started.

7 Your Honor, he had an appeal. That was an Anders
8 brief with the South Carolina Court of Appeals. That
9 opinion was on March 1st, 2010. Opinion number
10 2010-UP-167. That remittitur date was March 17th, 2010,
11 making this February 28th, 2011, PCR application timely.

12 Your Honor, I'm going to run through just a couple of
13 dates to outline the timeline, because he had absconded.
14 And this will just be very brief. I just want to get this
15 out into the record.

16 December 13th, 2005, is the date of the indictment --

17 THE COURT: Just slow -- you can't talk any faster
18 than that. Slow down for me.

19 MR. PETRANO: Yes, sir, certainly. Sorry, Your
20 Honor.

21 THE COURT: That's all right.

22 MR. PETRANO: On May 15th, 2006, there was a bond
23 order. It was \$75,000. And it was -- specified the
24 methods and conditions of release. One of those was the
25 "Eagle Eye Monitoring System."

1 Your Honor, it took a little while for the Defendant
2 to raise the money. It doesn't look like he was,
3 actually, bonded out on that above-referenced order until
4 August 1st, 2006. Judge, according to the -- some of the
5 bond hearings, he had explained and told the GPS monitor
6 on March 6, 2007, that he had a new job as a painter. And
7 that morning -- or the next morning, March 7th, 2007, he
8 absconded. On March 8th, 2007, the GPS no longer having
9 contact, there was a bench warrant issued.

10 On April 9th, 2007, that was the first trial date.
11 He was a no show. The notice had been sent to the last
12 known address and to the attorney. And, Your Honor, this
13 is all on Page 23 of the trial transcript that you have up
14 in your packet.

15 And then on August 21st, 2007, notice was provided
16 for the second trial date. And, ultimately, the trial
17 itself began on December 10th, 2007. And that was the
18 date of the initial estreatment of bond due to the flight.

19 And, Your Honor, it was a two-day trial. Again, he
20 was, ultimately, picked up several months later. And
21 that's when the sentence was unsealed and the 30-year
22 incarceration term began.

23 Your Honor, in reviewing the file and speaking to the
24 parties, it does appear that there was a plea offer -- or
25 several plea offers at some point. I think there was one

1 out there for 12 years. And that may have changed to 15.
2 Again, I'm not really sure about all that. But I just
3 wanted to put it out there. Not that any of that matters
4 because he did have a full fair trial, at least, that's
5 the State's position.

6 Your Honor, he was represented at that trial by
7 Mr. Matt Kappel, who, for the record, is here and present
8 in the courtroom.

9 And, on that, I will turn it over to Ms. Scarlet
10 Moore, the Applicant's current counsel of record.

11 Thank you.

12 MS. MOORE: Judge, I do believe one housekeeping -- I
13 beg the Court's indulgence.

14 (Pause.)

15 MR PETRANO: Your Honor, please forgive me.

16 Thank you, Counsel, for bringing that to my
17 attention.

18 Your Honor, in your packet, you have the original
19 application. What your packet does not have is the second
20 application -- second amendment to the application, and
21 then a third amendment.

22 Your Honor, it's the State's position that those are
23 not properly before the Court. Your Honor, those amended
24 claims were filed and signed by the Applicant pro se. As
25 Your Honor knows, there is no hybrid representation in

1 this state. Once he got the attorney, anything that's
2 going to be filed and brought forth has to be filed and --
3 you know, put up by the attorney themselves.

4 Your Honor, I'm relying on South Carolina Supreme
5 Court case Jones v. State. Tails do not wag dogs merely
6 because an appellant believes that the irrelevant is
7 relevant and is no reason to turn the system on its head.
8 The point being that any kind of amendments after counsel
9 has been appointed have to come through the attorney, not
10 pro se.

11 But I do have copies of those if --

12 MS. MOORE: And, at this time, I would just move to
13 adopt those amendments as my own. Judge, I've had an
14 opportunity to speak with Mr. Stearns about these case --
15 these amendments. I've thoroughly reviewed them. And, at
16 this point, I would adopt those as my amendments.

17 THE COURT: I understand.

18 (Pause.)

19 THE COURT: Tell me, Ms. Moore, on the -- are you
20 familiar with these amended applications?

21 MS. MOORE: I am, Judge. And I've, actually, spoken
22 with counsel, and not only Mr. Petrano, but Mr. Kappel
23 about these. As you can see, one was filed on April 21st
24 of this year and was served on Mr. Petrano.

25 So, again, Judge, I would just move to adopt these

1 amendments as my own.

2 THE COURT: Well, they seem to be kind of very fact
3 specific as to certain parts of the trial. Do they not,
4 also, flow from any of the original applications
5 deficiencies -- deficient points of counsel? I mean, is
6 it -- it would seem like they have to, but.

7 MS. MOORE: I mean, Judge, our position is that it
8 is -- and the allegations are, you know, ineffective
9 assistance. They -- like I said, Judge, I have provided
10 these to counsel. I did provide these. I've spoken with
11 counsel about these amendments.

12 MR. PETRANO: And, Judge, let me be clear. This is
13 not a notice issue. We've had these for quite sometime.
14 And it looks like counsel even typed them.

15 The mere point was, once again, after getting an
16 attorney appointed, you don't get to file your own pro se
17 stuff. The attorney has to do it, adopt them. And the
18 rules of professional responsibility apply. You don't do
19 frivolous [inaudible], that type of thing. That's all --
20 my only point. And I was -- again, you know, it's not my
21 rule. I was relying on the Jones case.

22 Thank you, Judge.

23 And, Judge, I don't object to her document at this
24 point. But the formality has to be done, respectfully.

25 THE COURT: All right. Well, I'll allow her to go

1 into them. So she can adopt them.

2 MR. PETRANO: Thank you.

3 THE COURT: Move forward on that basis.

4 MS. MOORE: Thank you, Your Honor.

5 And thank you, Mr. Petrano.

6 THE COURT: All right. Are you ready?

7 MS. MOORE: I am, Judge.

8 THE COURT: All right.

9 MS. MOORE: Judge, I would call Matt Kappel to the
10 stand.

11 THE COURT: Mr. Kappel, come on forward and be sworn.

12 THE CLERK: Mr. Kappel, please, place your left hand
13 on the Bible and raise your right hand.

14 WHEREUPON,

15 MATTHEW J. KAPPEL,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you.

18 Please state your full name for the record.

19 THE WITNESS: Matthew J. Kappel.

20 THE CLERK: Thank you.

21 THE WITNESS: Good afternoon, Judge.

22 DIRECT EXAMINATION

23 BY MS. MOORE:

24 Q Can you state your name for the record?

25 A Matthew J. Kappel.

1 Q And, sir, what is your profession?

2 A I'm a lawyer.

3 Q Okay. And how long have you been a lawyer?

4 A I was sworn in in 1998.

5 Q Okay. Now, what does your practice consist of?

6 A Mostly trial work.

7 Q Okay. And do you do criminal defense?

8 A I do.

9 Q What percentage of your practice would you say is
10 criminal defense?

11 A Probably 70 percent.

12 Q Okay. And has it been 70 percent throughout the
13 course of your career?

14 A Well, at one point, it was a hundred percent. I was
15 in the Solicitor's Office for three and a half years.

16 Q Okay. But, at some point, you went to criminal
17 defense; is that correct?

18 A That's correct, in 2001.

19 Q I'm sorry.

20 A In 2001.

21 Q Okay. And was that private practice or with a
22 government agency?

23 A It's private practice.

24 Q Okay. Now, I would imagine as a criminal defense
25 lawyer for the past 13 years -- is that fair to say?

1 A However long.

2 Q Since 2001?

3 A Since -- well, the Solicitor's Office from '98 to
4 2001 -- toward the end of 2001 to present day in private
5 practice.

6 Q Okay. How many criminal jury trials would you say
7 that you've tried?

8 A I have no idea, a lot.

9 Q Okay. Why do you have no idea?

10 A It's just a lot. I don't keep count of it.

11 Q Okay. More than 20?

12 A Yes, certainly.

13 Q Okay. More than 50?

14 A Sure.

15 Q Okay. More than a hundred?

16 A Again --

17 Q You just have no idea.

18 Okay. Now, do you practice in both state and federal
19 court?

20 A I do.

21 Q Okay. Now, at some point, during the course of your
22 employment as a criminal defense lawyer, were you retained
23 to represent Seth Aaron Stearns in a criminal prosecution
24 by the Attorney General?

25 A That's correct.

1 Q Okay. Do you recall approximately when that was?

2 A I don't. I was contacted, I think, by Seth's wife.
3 And I think she and I drove down to Columbia, because his
4 initial bond hearing was in Columbia.

5 And, from that point forward, we had worked out an
6 arrangement where they hired me and I represented him
7 throughout. I don't know -- remember the precise date of
8 the indictment, but it was very shortly after he was
9 served with the indictment. Because I appeared with him
10 at his first bond hearing.

11 Q Okay. So if the indictment was filed on December
12 13th of 2005, would that refresh -- refresh your memory in
13 regard to when you began the representation of
14 Mr. Stearns?

15 A I would just say it's probably right thereafter, you
16 know, he was indicted.

17 Q Where you appointed, or were you retained?

18 A I was retained.

19 Q Okay. Now, I know -- and Mr. Petrano has already
20 informed the Court that, at some point, during the course
21 of your representation that Mr. Stearns did, in fact,
22 abscond and leave the jurisdiction; is that correct?

23 A Yes, ma'am.

24 Q Okay. So what I want to try to do is from roughly
25 2005, or, I guess, the beginning of 2006 subsequent to the

1 indictment and subsequent to your representation of
2 Mr. Stearns, how many times would you say you met with him
3 to discuss his case between the time of engagement of your
4 services to the point that he absconded?

5 A A number of times. I met with him at the jail. I
6 met with him at his [sic] office. I met with him with his
7 wife. Repeatedly, we talked in person and on the
8 telephone about all matters that I thought were important.

9 Q And I'm just -- I don't want to keep referring to it,
10 so I'm going to talk about the time between the -- between
11 the point that you, in fact, were engaged to represent
12 Mr. Stearns to the point that he absconded. Did you
13 appear in court for him?

14 A Yes, of course.

15 Q Okay. And do you recall how many times you appeared
16 in court for him?

17 A I don't. I know we had what I refer to as cattle
18 calls for these Statewide Grand Jury cases. There were
19 probably 40 defendants. And I appeared at all of those.

20 I know the case had been scheduled for trial once
21 prior. I think he had already left at that point. But we
22 talked at length, particularly about the co-defendants
23 that were prepared to testify against him.

24 Q Okay. Did you file any motions on behalf of
25 Mr. Stearns?

1 A I can't remember.

2 Q Okay. Did you have an opportunity to negotiate with
3 the Attorney General about a possible plea agreement for
4 Mr. Stearns?

5 A Absolutely.

6 Q Okay. Can you -- do you recall any of the details of
7 the possible plea agreement?

8 A Of course.

9 Q Okay.

10 A Now, I'm kind of with Mr. Petrano on this, I can't
11 remember precisely if it was 15 or 12. But early on in
12 the case -- I probably hadn't been in the case for eight
13 weeks. And I think an offer was extended for either 12 or
14 15 years.

15 And I can go into the details as to how we talked
16 about it, or what we talked about, if you like.

17 Q That would be great. Go ahead.

18 A All right. So they offered 12 or 15 years. And,
19 obviously, when you read the transcript, it's all based
20 upon the co-defendants testimony. There was one guy named
21 Kenny Lavender, who was -- at that point in time, he was
22 gone. He was in -- he had absconded. There was another
23 person named Chad Sexton. He had absconded.

24 So our discussion was -- well, it was based upon Chad
25 and it was based upon Kenny, and it may be based upon one

1 other person, but they're not around. And so the idea,
2 was, well, they have to have them if they're going to
3 prove the case. And they didn't have them. And that was
4 the advice that I gave him. I didn't tell him to not take
5 it, of course. But I just told him that as the facts are,
6 at that particular time, they didn't have any witnesses.
7 Amanda Fordham hadn't been discovered yet.

8 And they wanted -- they offered 15 years. And I just
9 now remembered. They wanted 15 years. And they wanted
10 him to tell them where Amanda Fordham was. And that offer
11 was rejected, I suppose, principally because the lion
12 share of the case against him, those people were gone. So
13 they didn't have any physical evidence onset.

14 Q Okay. And so, at that point, did he -- did you
15 answer all of his questions -- or any and all of his
16 questions regarding the possible consequences of a plea?

17 A Well, I explained to him all the consequences. I
18 told him -- I said, if you plead guilty, you're accepting
19 responsibility. You're going to serve over 85 -- or
20 85 percent of the sentence. If you don't accept it and
21 these people show up, if they are caught and they show up,
22 then the maximum possible penalty is 30.

23 Q And so do you recall what Mr. Stearns response was to
24 the possible plea offer?

25 A It was negative. It was not -- he wasn't going to

1 accept it. And I would point out, you know, to Seth, I
2 think his wife was kind of driving the train a great deal
3 in terms of what he was going to do.

4 So my memory is that we met together jointly at my
5 office on a number of occasions to talk about, you know,
6 the plea offer.

7 Q Okay. But, at the end of the day, I mean, do you
8 have confidence that the rejection of the plea, in fact,
9 was your client's, Mr. Stearns's rejection?

10 A Absolutely.

11 Q Okay. Now, following this initial 15-year offer --
12 and just -- can we be a little bit -- can we be more
13 specific about what the 15 years, actually, meant? I
14 mean, was it a sentencing recommendation by the State, or
15 was that a 15-year cap, or how was it presented to you?

16 A Well, my memory was it was presented to me as a
17 15-year sentence.. And if you -- when you read the
18 transcript, you know, of course, we got into what
19 everybody was being sentenced to. And everyone testified
20 to their plea agreement and said they were getting
21 15 years, or what have you. And I assumed it was much of
22 the same.

23 You know, we didn't really even get that far because
24 if Seth said, okay, I want to take the plea offer, then I
25 would have hammered out the details as to whether or not

1 it was a negotiated 15, if it was a recommendation of 15,
2 if it was a cap of 15. But we didn't get that far. So I
3 never did follow-up with that.

4 Q Okay. And do you recall -- well, certainly, the
5 offer, was it to plead to a reduced charge? Because, as
6 you know, he was indicted for trafficking, I believe, over
7 400 grams?

8 A Right. And --

9 Q Was it to a reduced charge --

10 A Well, it, certainly, would have had -- it would have
11 had to have been to a reduced charge. And, again, I don't
12 remember precisely.

13 But, based upon the testimony of the other witnesses
14 in the trial, they had all pled to a seven to 25-year
15 statutory range, which was still 85 percent of the -- you
16 know, the sentence had to be served. And I assumed that
17 they were going to reduce it to a 28 to a hundred gram
18 level for him to get to 15 years.

19 Q Which would have been a minimum seven; is that
20 correct?

21 A That's correct.

22 Q Okay. Now, subsequent to your discussions with
23 Mr. Stearns and the rejection of that plea offer, did you
24 have the opportunity after that to further negotiate with
25 the Attorney General and to discuss with Seth any other

1 plea offers?

2 A There were no other plea offers. And, in fact, their
3 position strengthened as Chad Sexton was caught, Kenny
4 Lavender was caught.

5 And then they, ultimately, found Amanda Fordham.
6 And, of course, at that point, they weren't going to
7 negotiate any further, you know. And for a large part of
8 the time, you know, sorry, but I didn't have a client, so.

9 Q So did you learn about the -- let's say the
10 reappearance of Sexton, and Lavender, and Fordham while
11 you were still having contact with Mr. Stearns?

12 A I don't remember, specifically, the time frame. But
13 I suspect that I -- at least, one or two were caught while
14 I was still talking with -- or Seth was still here. I
15 think Amanda Fordham was discovered after he left. I
16 don't remember exactly.

17 Q Okay. But, I mean, does that -- but does it -- it
18 seems like that would be significant if you had a previous
19 conversation about, wait a second, there's very limited
20 evidence against you, we're going to reject the plea
21 offer. But, at that point, witnesses resurfaced and you
22 recall, specifically, discussing that with Mr. Stearns?

23 A If Mr. Stearns was still around and Chad Sexton was
24 arrested, I would absolutely let Seth know. But it was --
25 there was never any communication with me to take a plea

1 offer, never.

2 And, again, as I said, I think -- I can't remember
3 her name, but Seth's wife was, you know -- I think was the
4 one pushing the buttons. And it just -- it was never
5 communicated to me that they -- he wanted to accept the
6 plea.

7 I remember, specifically, talking with the Attorney
8 General, Susan Porter, about that they wanted Amanda
9 Fordham. They didn't have her. They knew she was in
10 Atlanta. They didn't even know her name, I don't believe,
11 when this case started. And that's who they wanted. And
12 it was 15 years. And they wanted the cooperation to get
13 Amanda Fordham, you know.

14 As they started finding people, obviously, that plea
15 wasn't going to get any better. If anything, it was going
16 to get worse.

17 Q And do you -- and how -- during the course of your
18 career, I mean, how many State Grand Jury drug cases would
19 you say that you handled?

20 A A number of them. I just finished one a couple weeks
21 ago. And, in fact, in the ice cream case, I had two. And
22 I think there were two trials for ice cream out of 40
23 something defendants. And I had both of them.

24 Q But they were different strains [phonetic], though;
25 is that correct?

1 A That's correct. There was approval with the Court,
2 and the Attorney General, and the clients. There was
3 never an issue of a conflict.

4 Q Okay. Now -- but, I mean -- but do you find in your
5 experience that as time goes on, sometimes the pleas do,
6 actually, get better?

7 A And sometimes they get worse. And, in this case,
8 their position did nothing but strengthen over time. Time
9 helped them. Because if we had had a trial quickly, they
10 wouldn't have had any witnesses.

11 Q So is that an acknowledgment that sometimes the pleas
12 do get better?

13 A It's an acknowledgement that pleas change -- plea
14 offers change as the wind blows. I mean, you just don't
15 know.

16 Q Okay. And so I think you testified to this and we've
17 stated that, at some point, during the representation,
18 Mr. Stearns did abscond from the jurisdiction; is that
19 correct?

20 A Yes.

21 Q And I believe -- and if I recall your testimony, it
22 is that you don't have a specific recollection of when
23 that, actually, occurred; is that correct?

24 A No. I mean, I heard Mr. Petrano issue dates as to
25 terms -- to when the GPS -- but I don't have any

1 independent recollection as to when. And I'm not sure
2 that I would have been notified the same day, hour, or
3 minute that he did. I just -- at some point, I learned
4 that he had, you know, absconded. And I had no contact
5 with him.

6 Q Okay. So if the trial transcript at the trial -- and
7 the Prosecutor, Ms. Porter, announced to the Court that on
8 March 7th, 2007, he absconded. Does that sound accurate?

9 A Sure.

10 Q And, certainly, there was no objection -- you had no
11 objection to that information at the trial?

12 A Sure.

13 Q Now, following March 7th of 2007, did you have --
14 well, when was the next point following approximately
15 March 7th of 2007, that you had contact with Mr. Seth
16 Stearns?

17 A It was a phone call, actually. I think he had been
18 brought back to the state. And I can't remember if they
19 took Seth to Columbia first. But it was prior to -- it
20 was well prior to sentencing. And he had called me on the
21 telephone.

22 Q Okay. So this was after he had been apprehended?

23 A That's correct.

24 Q Is that right?

25 A After he had been apprehended and after he had been

1 brought back to the state, he had called me. And we had a
2 conversation about the case, and about the plea offer.

3 Q Okay. And what was the conversation? Tell --

4 A Well, the plea offer was -- I, specifically,
5 remember, the plea offer was -- is the 15 years still
6 available? That was the conversation.

7 Q Okay. So the conversation -- Mr. Stearns asked you
8 whether or not the 15 years was still available?.

9 A That's correct.

10 Q Okay. Now -- and what did you tell him?

11 A Well, I told him, no, it was not.

12 Q Okay. And why?

13 A Well, we had had a trial. He had been convicted. He
14 hadn't been sentenced. But the sentence was under seal.
15 And it was going to be between 25 and 30 years.

16 Q Okay. And so at that first phone call with
17 Mr. Stearns following his absconding from the
18 jurisdiction, did you -- were you the one who told
19 Mr. Stearns that he, in fact, had been tried in his
20 absence?

21 A I'm sure I told him. I mean, what I have a precise
22 memory of is the discussion of the 15 years. And I'm sure
23 I told him, that's not going to happen. Because we've
24 already had the trial. He's been -- he was convicted.
25 And the sentence was sealed.

1 Q Okay. I guess what I'm trying to get at is, you
2 know, at that point, I mean, did you have a belief or
3 information from Mr. Stearns that he had awareness that
4 he, in fact, had been tried in his absence?

5 A Well, he did after I told him.

6 Q Okay. So --

7 A But as far as from March 2008 to -- excuse me,
8 March of 2007 to February, March of 2008, I mean, I don't
9 know what he did at that point.

10 Q So if I tell you that the sentencing occurred on
11 March 25th of 2008 --

12 A Right.

13 Q -- and there's, certainly, no reason to doubt the
14 transcript in this matter. Does that refresh -- refresh
15 your recollection as to when approximately that first
16 phone call would, in fact, have occurred prior to that?

17 A Well, if the sentencing was March of 2008, I suspect
18 it was about a month in advance of that. I mean, it
19 wasn't the day of. It wasn't the week of. He had just
20 been brought back into the state.

21 And I want to say he was not in Greenville. Because
22 if he was in Greenville, I probably would have gone down
23 to the jail to see him. But I think he was in Columbia.

24 Q Okay. I mean, and do you have a recollection of that
25 conversation that Mr. Stearns was surprised that he had

1 been tried in his absence, or...

2 A I don't have any thought on that. I don't know.

3 Q Okay. Now, I believe the trial transcript indicated
4 that -- and as Mr. Petrano has just put on the record that
5 Mr. Stearns did, in fact, sign a bond acknowledgement
6 regarding the warning that if he -- that he does have the
7 right to be present, and if he fails to attend that he
8 will -- a trial will proceed in his absence. Do you have
9 a recollection of that?

10 A I mean, I wasn't -- I wasn't part of the bond
11 process. I mean, I was part of trying to get a bond set.

12 Q Okay.

13 A But then as far as, you know, what they sign, what
14 have you, I mean, I'm sure we talked about bench warrants,
15 and showing up for court, and coming when you're called
16 to, and what would happen if you don't.

17 Q But do you -- I mean, do you feel confident that you
18 received information in your file regarding the bond?

19 A I probably have a copy of the bond somewhere. But
20 that's not really -- I mean, in my practice, I don't look
21 at the bond order a whole lot, other than if I've lost
22 their address and I'm trying to send them a letter, or
23 something.

24 Q And it's boilerplate language and it's in every
25 single bond proceeding --

1 A Sure.

2 Q -- so that would be the reason why you wouldn't take
3 a look at that?

4 A Yes.

5 Q Okay. And, also, the record establishes that he was,
6 in fact, served -- well, he was mailed notice to his last
7 known address as pursuant to Page 23 of the record, which
8 Mr. Petrano has, in fact, already stated for the record
9 today. Was that your recollection?

10 A I don't remember. I mean, I'm sure the bonding
11 company, the Clerk of Court, myself, we all did what we
12 could to try to find him.

13 Q Okay. And so I guess -- does your file reflect that
14 you independently served or sent him a letter to his last
15 known address?

16 A I don't know. I didn't -- I haven't looked for that.

17 Q Okay. But you, certainly -- there was no objection
18 to the information presented by Ms. Porter that he was, in
19 fact, mailed notice to his last known address?

20 A I didn't have any reason to object to it, you know.
21 He was on GPS monitoring. It was broken. I hadn't had
22 any contact with him or his wife. I mean, I wasn't -- I
23 was going to focus on preparing for trial and not sending
24 letters to ghost mailboxes.

25 Q Okay. But just to be clear. You, certainly, never

1 had a phone conversation with Mr. Stearns and advised him
2 that his case was going to be tried on December 10th of
3 2007?

4 A Absolutely not. I didn't know where he was or how to
5 communicate with him.

6 Q Okay. Did you consider moving for a continuance
7 based on the fact that Mr. Stearns was not present?

8 A You know, I -- truthfully, I mean, I would have loved
9 to have seen the case be continued. But, in truth, I
10 didn't really feel like I had a basis for a continuance
11 motion.

12 I had worked probably for three weeks straight
13 preparing for trial. I have a specific memory of being in
14 Atlanta over Thanksgiving at the public library with my
15 file preparing.

16 He had violated the bond clearly by breaking the GPS
17 monitor. I had no way of getting in touch with him, if he
18 was in South Dakota, or North Dakota, or wherever he was.
19 I mean, I, certainly, had no idea where he was. And I
20 don't know what I would have said to Judge Macaulay to ask
21 him for a continuance, other than, well, maybe he'll
22 somehow appear at some point.

23 Q Okay. And was there a bench warrant that was already
24 outstanding for Mr. Stearns at this point?

25 A I think so, yes.

1 Q Okay.

2 A Because I think it was -- the case had been
3 previously scheduled and -- or a bench warrant may have
4 been automatic once he -- once the GPS broke.

5 Q Okay. And, in fact, that was, certainly, referred to
6 on Page 22 of the record in regard to the bonding company
7 and SLED had been looking for him; is that right?

8 A I suppose. I mean --

9 Q Okay. So you don't have any -- you don't have any
10 doubts -- you don't have any reason to doubt that the
11 transcript, it represents that?

12 A Well, I know bonding companies when they're faced
13 with an estreatment, they do what they can to find whoever
14 they're supposed to find. So I suspect they were looking
15 for him.

16 Q Okay. And I think your testimony was that there was,
17 at least, prior to -- prior to December 10th of 2007 --
18 and it's reflected in the record, and as Mr. Petrano has
19 already presented to the Court, that there was a previous
20 trial date of April 9th of 2007. Do you have a
21 recollection of that?

22 A Very little, but I suppose.

23 Q Okay. And so Mr. Stearns did not appear for that
24 hearing. Is that your recollection?

25 A Yes.

1 Q Okay. And that's reflected in the transcript?

2 A Yes.

3 Q Okay. And, at that point, do you recall -- was a
4 bench warrant issued pursuant to the April 9th, 2007,
5 trial date?

6 A I mean, I suppose. I -- what -- I don't know. I
7 know he was -- had left.

8 Now, whether or not they get a bench warrant for him
9 for cutting off the GPS bracelet or if he didn't --
10 because he didn't show up in April of 2007, I don't know.
11 I know that there's a bench warrant for his arrest. I
12 know that he's not in my office. And I didn't see or hear
13 from him again until sometime in early 2008, about a month
14 before the sentencing..

15 Q Okay. Did you ever consider moving to be relieved as
16 counsel for Mr. Stearns?

17 A I don't know how -- I don't know what ground I would
18 have been able to put forward to be relieved.

19 Q Okay. Well, certainly, I mean, to be fair, since I
20 think the record, certainly, reflects that Mr. Stearns
21 did, in fact, abscond on March 7th of 2007, he, certainly,
22 was not aiding you in his representation. Isn't that a
23 fair statement?

24 A I do [sic]. But I -- again, I don't think the -- you
25 know, my personal feeling is I didn't have any ground to

1 move to be relieved. I had all the discovery. I had
2 reviewed the discovery and prepared his case the best I
3 could.

4 Q Okay. Have you ever moved to be relieved as counsel
5 for a defendant?

6 A Sure.

7 Q Okay. What have been some of the grounds to -- that
8 you've moved the Court to be relieved?

9 A Any number of them. I mean, some of those would be,
10 you know, privileged information. So I'm not quite sure
11 I'm going to be able to get into that. But --

12 Q But just in -- I mean, but just, in general, let's
13 say that you were -- I mean, as a seasoned attorney,
14 certainly, more seasoned than I am to advise, for example,
15 young attorneys, you know, you might want to consider a
16 motion to be relieved if X happens or Y happens. You have
17 to understand I used to be a professor, Mr. Kappel.

18 A I -- listen, I think probably the times that I've
19 been relieved mostly either comes from financial reasons,
20 it comes from maybe a conflict reason. It might be that
21 the client doesn't like the advice that I'm giving them
22 and they want another opinion.

23 Q Okay. Have you ever -- in your career as a criminal
24 defense lawyer, have you ever had another trial in
25 absentia besides Mr. Stearns case?

1 A Yes.

2 Q Okay. And how many have you had?

3 A Oh, I don't know. A few.

4 Q Okay. More than five?

5 A I -- probably not.

6 Q Okay. So maybe less than five?

7 A Probably.

8 Q And they, certainly, are rare, are they not?

9 A In my practice, it's rare.

10 Q Okay. And do you have an opinion in regard to your
11 experience as to why trials in absentia are rare?

12 A My experience is most of my clients, you know, don't
13 abscond, or, you know, a lot of them -- sorry. A lot of
14 them are in jail and they can't abscond. But then a
15 number of them, you know, don't abscond.

16 And it's hard to abscond. It's not easy to do. And
17 I think this case proves it, that it's not easy to
18 abscond.

19 Q What do you mean by that?

20 A Well, it's just -- if you're going to -- if you're --
21 you're getting a little far field.

22 But if you're going to abscond, it requires money.
23 It requires a license with a different name on it, a
24 different -- I mean, just -- it's difficult. It's not
25 easy to do. And this case proves it. There were a bunch

1 of people that tried to flee prosecution and were unable
2 to do it.

3 Q Did you consider objecting to the trial in
4 Mr. Stearns absence?

5 A You know, once again, I didn't feel I had a ground to
6 do it. Rightly or wrongly, I just didn't feel I had a
7 ground. It was clear to me that he had absconded. And
8 it's within the statutory authority of the Court to try
9 someone in their absence when they do so.

10 Q Okay. But it, certainly, is something that you
11 considered?

12 A Maybe briefly. But, again, I didn't feel I had a
13 ground to ask for a continuance, or to be relieved.

14 Q Or to object to the trial in absentia?

15 A Or to object to the trial in his absence.

16 Q Okay. Now, you've heard -- we've talked briefly this
17 morning about the Rule 5 discovery. Did you, in fact,
18 receive the discovery from the Attorney General's office?

19 A I did.

20 Q Okay. And let me ask you. In this case, I think
21 which is common in a lot of these State Grand Jury cases,
22 was there a protective order preventing you from releasing
23 that information, specifically, to your client?

24 A I seem to recall that -- I'm sure there was -- I
25 think there was a protective order. And I think it

1 applied to disseminating the material.

2 If I -- I think that, you know, we would meet in my
3 office and not -- you know, I don't know if you saw my
4 file. I mean, I printed out most of it. It came in the
5 form of CDs. And we went through it.

6 And, of course, there were statements that we were
7 fixated on. I mean, there's probably this much material.
8 But of this much material, there's about four or five
9 different people that gave two and three statements. And
10 that's what we worked through.

11 Q And did -- I mean, but, certainly, having done a lot
12 of these State Grand Jury drug cases, I mean, it's common
13 for there to be a protective order --

14 A Right.

15 Q -- against dissemination of information --

16 A Right.

17 Q -- isn't that correct?

18 A Yeah.

19 Q Is that -- for example, you would be -- you would,
20 certainly, be allowed to meet with Seth as much as you
21 possibly wanted to meet with him to go over every piece of
22 evidence in your office, as long as you maintain that
23 control; is that right?

24 A That's my understanding of the order. I mean, I
25 can't let a client copy it, or leave my office with it.

1 But if they wanted to sit in a conference room for a week,
2 they could sit in my conference room and read the material
3 and take notes, if they wanted.

4 Q Okay. And just to be clear. I mean -- and it sounds
5 like -- you've testified that that is something that you
6 did, in fact, do with Mr. Stearns. Is that your
7 testimony?

8 A Absolutely. But my practice is that I would go
9 through the discovery completely. I mean, I don't want a
10 client -- there's no need to have a client sit in my
11 office and watch me read the material. And I would pull
12 out everything that was relevant to our case. And I would
13 call the client up. And I'd pull the material out and
14 we'd review it.

15 Q And just to be clear. Do you have a specific
16 recollection of sitting down with Mr. Stearns and going
17 over the discovery or, at least, some of the discovery?

18 A Absolutely.

19 Q So you don't -- so there's no question that you did
20 that?

21 A There's no question in my mind.

22 Q I just -- I want to kind of switch gears right now
23 and ask you a little bit about the trial testimony. Do
24 you recall -- in regard to the testimony of Kenny
25 Lavender -- and I believe, if you'll recall, Mr. Lavender --

1 it was something that you elicited pursuant to your
2 examination that Mr. Lavender had submitted to a polygraph
3 test; is that right?

4 A Yes, ma'am.

5 Q Okay. And that's something that you, specifically,
6 brought out through your examination of Mr. Lavender,
7 certainly, in front of the jury; is that correct?

8 A Yeah. If my memory is right, it first came out
9 through my cross-examination of the SLED agent, Max
10 Dorsey. Because I had pulled some surveillance notes
11 where he had written in his own notes that Kenny Lavender
12 was completely lying to him. And, you know, I kind of
13 reviewed a little bit of the transcript today. I don't
14 know how the polygraph material came out, I just don't,
15 but it did.

16 Q Okay.

17 A And to our advantage, of course. Because he had --
18 it was elicited that he had -- Lavender had failed the
19 polygraph exam.

20 Q That's absolutely correct. And I think if you review
21 the transcript, does it refresh your recollection that
22 prior to calling Mr. Lavender, there was an off the --
23 well, excuse me -- outside the presence of the jury
24 discussion about whether or not Mr. Lavender would be
25 allowed to discuss the polygraph results. Why? Because

1 the Attorney General had, specifically, advised him
2 pursuant to the trial transcript not to even mention that,
3 because she was concerned about a mistrial. Does that
4 refresh your recollection?

5 A Sure.

6 Q Okay. So all of that is in the trial -- in the trial
7 transcript?

8 A Yes.

9 Q And if you'll recall, does it, also, refresh your
10 recollection that the Judge, Judge Macaulay, specifically,
11 said, you know, well, guess what? I'm in control here.
12 And I'm the one who makes those decisions regarding what's
13 going to be admissible and not admissible in court. Is
14 that your recollection?

15 A Yes. Of course, I wanted to get into the polygraph.

16 Q Okay.

17 A That was helpful to us. And it was brought out
18 through Max Dorsey through my cross-examination of the
19 SLED agent. And she had raised the issue because she had
20 instructed Lavender not to answer that type of question,
21 because she felt it would cause a problem.

22 But it, also, hurt the State's case, because it was
23 their own witness being polygraphed by the SLED -- by a
24 private company at the behest of SLED. And that he was
25 testifying and they were relying upon his testimony to try

1 to convict Seth.

2 So, obviously, our defense was that Kenny Lavender
3 was not to be trusted and couldn't be trusted. And the
4 polygraph was central to that.

5 Q Okay. But did you have -- but did you, also, have a
6 concern that, perhaps, that might leave a lingering
7 thought with the jury that, well, wait a second, why is he
8 just talking about Kenny Lavender being polygraphed and
9 not all these other defendants? Did you have a concern
10 about that?

11 A Of course. And if I remember right, Ms. Evans tried
12 to argue to put in the plea agreements for all the other
13 witnesses that were testifying -- she wanted to put in the
14 actual plea agreement, which I objected to, because it had
15 polygraph language in the plea agreements. And my
16 recollection is that the Judge did not allow them to do
17 that because of that reason.

18 You know, you think about things like that that might
19 hurt, because you are implying that others may have passed
20 it. But in terms of having two or three witnesses
21 testifying against your client and you have a polygraph
22 that's coming in that says that one of them lied, it's
23 kind of hard, in my opinion, to walk away from that.

24 So I didn't expect it to come in, but it did. And
25 you have to make a split second decision. Mine was let it

1 in. The guy is not being truthful, hasn't been truthful.

2 And here we have a polygraph to say he isn't truthful.

3 Q But so -- so you weren't concerned about the fact
4 that -- well, strike that. Let me rephrase my question.

5 So, I mean, I think you testified earlier that the
6 sum -- well, the majority of the evidence that was
7 presented against Mr. Seth -- Mr. Stearns at his trial
8 was, in fact, testimony of the co-conspirators; isn't that
9 correct?

10 A I mean, that was -- I mean, the evidence against Seth
11 was -- all of it, you know, not 90, not 97, but it was a
12 hundred percent there was not -- going into my closing
13 argument again, there wasn't a phone call. There wasn't a
14 phone record. There wasn't a photograph. There wasn't
15 any videotape. There wasn't any surveillance. There
16 wasn't anything, except the testimony of Lavender,
17 Sexton -- both Sexton boys, Lavender, Amanda, and one
18 other, I think.

19 Q Brian Muller?

20 A Muller.

21 Q Is that right?

22 A I think one person that did not was Moser, I think
23 was his name.

24 Q And there were a couple of exhibits and drugs that
25 were, actually, introduced into evidence as well; is that

1 correct?

2 A Yes.

3 Q Because there was a discussion about whether or not
4 that was going to be sent back to the jury room?

5 A Yes. And I think I -- when that first piece came
6 through somebody, I objected to it not being relevant.
7 And the Judge determined there was a conspiracy.

8 Q That's right. So just to be clear. In highlighting
9 the fact that Mr. Lavender took a polygraph, but then,
10 certainly, there's no mention of any polygraph in regard
11 to these other co-defendants, you didn't have a concern
12 that, perhaps, the jury has a lingering thought about,
13 wait a second, had these people took a polygraph,
14 certainly, Mr. Kappel would have brought that up?

15 A Sure.. I had a concern about it, of course. But the
16 plea agreements were prohibited from being published to
17 the jury that had the polygraph language.

18 In addition, if the polygraph material was something
19 they could get into, then I -- you know, it's possible the
20 jury would think, well, if these people had passed
21 polygraph tests, perhaps, they would have brought that out
22 on their own.

23 So, again, I mean, there's so many different ways to
24 slice it. But if you have a key witness that has failed a
25 polygraph and the Judge is going to permit it, my feeling

1 was to let the jury have at it.

2 Q Okay. And any -- in other cases that you have been
3 associated with as a criminal defense lawyer, have you
4 raised this issue of the polygraph, or have you had an
5 occasion to raise the issue in some of your other cases?

6 A I had a polygraph -- I did an appeal on a polygraph
7 at one point, but not on a trial before. I've not had a
8 polygraph come in like this.

9 Q Okay. And just to be clear. Are you saying that the
10 polygraph hasn't come into evidence, or you haven't had a
11 case in which you had a co-defendant or a possible witness
12 who has failed a polygraph that you could use at trial?

13 A I've never had an instance where a polygraph has come
14 into evidence or used at trial.

15 Q Okay. You do understand that Mr. Stearns has alleged
16 in his second motion to amend PCR application that you
17 failed to argue material variance where the State showed
18 proof of several smaller conspiracies constituting
19 material variance from the indictment. Have you had an
20 opportunity to look at that?

21 A I mean, I've saw it.

22 Q Okay. And what is your opinion about that?

23 A I don't know.

24 Q Okay. Why do you say you don't know?

25 A I mean, I just don't know. I mean, you know, I was

1 operating in this trial on the evidence that they were
2 presenting. And what they were presenting was a
3 connection from a number of people through Seth Stearns to
4 this woman in Atlanta.

5 Q And, certainly, you had --

6 A And, you know, part of the -- you know, the defense,
7 I mean, we did raise as part of our defense, you know,
8 other suppliers and other parts of this conspiracy about
9 Kenny Lavender talking about multiple suppliers. And
10 Amanda Fordham, you know, she supplied a bunch to other
11 people. And I think that's -- you know, you can see that
12 in the closing argument that we made -- or I made.

13 Q Okay. And have you had -- you've had an opportunity
14 to review the indictment against Mr. Stearns?

15 A Not lately.

16 Q But, certainly, at the time, did you have an
17 opportunity --

18 A Sure.

19 Q -- to review it?

20 There was one count of trafficking methamphetamines
21 conspiracy. That's right.

22 So he was never indicted on any kind of possession or
23 possession with intent to distribute?

24 A No. Because they didn't have any possession.

25 Q So it was just, clearly, conspiracy.

1 And pursuant to the indictment, seven people are
2 listed as part of the conspiracy, but then, also -- and
3 other persons whose names are known and unknown to the
4 State Grand Jury did in Anderson, Greenville, and Pickens
5 County during the period of January 1st of 2004, to the
6 present, which, again, as I said, it was clocked on
7 December 13 of 2005, conspire to sell, manufacture,
8 deliver, purchase, or bring into the State more than
9 400 grams of methamphetamines, et cetera.

10 Does that refresh your recollection?

11 A Yeah. I mean, I assume that's what -- you know --

12 Q Okay. So, certainly, pursuant to the indictment,
13 there are multiple people listed that were part of that
14 conspiracy; is that right?

15 A Sure.

16 Q Okay. Did you ever discuss the issue of a variance
17 or withdrawal with Mr. Stearns?

18 A I can't remember, specifically, if we talked about
19 that. I think our position was that he was not involved
20 in the conspiracy.

21 Q Okay. And, I mean, in reviewing the file and
22 reviewing the Rule 5 discovery, I mean, were you satisfied
23 that, in fact, the State had sufficient evidence to go
24 within those time frames of the indictment of 2004 to the
25 period that it was filed in December of 2005?

1 A You know, I don't know that I was satisfied with it,
2 of course. I mean, I was defending the case --

3 Q Well --

4 A I mean, obviously, I was going to challenge whatever
5 it is that they were going to put up. And our position
6 was that we had people that were, clearly, guilty, had a
7 history of telling different stories, a history of lying,
8 being called liars by the SLED agent himself. And our
9 position at trial -- my position at trial was that Seth
10 Stearns was the only one coming up for trial, and that the
11 Government went to these witnesses and said, we've got a
12 trial against Seth Stearns, what can you tell us about
13 him? And that they simply, you know, flipped somebody's
14 name and replaced it with Seth to make it up to be able to
15 get a time reduction.

16 Q And that's something that you highlighted in your
17 closing argument?

18 A Sure.

19 Q That's right.

20 A And I'm quite certain that Seth and I talked about
21 that strategy before trial.

22 Q Okay. And so -- but that discussion about the trial
23 strategy would have been prior to his absconding; correct?

24 A That's correct. And I guess the form of the
25 discussion would have been more of if they find Kenny

1 Lavender, if they find Chad Sexton, this is the defense
2 that we're going to raise, that they are cooperating.
3 They cannot be trust trusted. They're cooperating. And
4 their only interest is to try to get their time reduced.

5 Q But I guess -- this is my specific question. So in
6 reviewing the Rule 5 discovery materials that you were
7 provided by the Attorney General and, also, speaking to
8 Mr. Stearns about this case, were you satisfied that the
9 State had sufficient evidence to prove conspiracy against
10 Mr. Stearns, based on the time frames that are listed in
11 the indictment of 2004, to somewhere in December of 2005?

12 A Well, I'm not quite sure I understand the question.
13 It's not really for me at any point in time to say, well,
14 they've got enough here. I mean, obviously, we make an
15 evaluation. But my evaluation was completely based upon
16 the fact that the people that were cooperating and
17 testifying against him were people that could not be
18 trusted --

19 Q Okay.

20 A -- regardless of the time frame.

21 Q Okay. But during the trial of the matter, I mean,
22 did you have any concerns about the time frames that were
23 being presented through the testimony of the witnesses for
24 the Attorney General regarding that 2004 and -- between
25 2004 and 2005 time frame in the indictment?

1 A I don't know.

2 Q You just don't recall?

3 A I don't recall.

4 Q All right. But, certainly, there was no objection to
5 the sufficiency of the evidence; is that right?

6 A Well, I hope I moved for a directed verdict.

7 Q You did.

8 A Okay.

9 Q You did. That's right. And it was general.

10 I mean, do you recall that? I mean, do you recall,
11 specifically, just making a motion for a directed verdict
12 without any --

13 A I assume I made a directed verdict based upon the
14 fact that the evidence in the light most favorable to the
15 State did not warrant putting the case to a jury,
16 particularly based upon the lack of physical evidence and
17 the whole case is predicated on believing people that
18 cannot be believed. And I think Max Dorsey even said in
19 his cross-examination that he said that they all lied, I
20 think.

21 Didn't he?

22 Q He -- that's something that you pointed out in your
23 closing. That's correct. Yes, that's right.

24 But you don't have a -- you just -- but, again, you
25 just don't have any recollection -- you just don't have

1 any recollection of making any specific allegations
2 regarding the directed verdict, or any specific arguments
3 regarding the directed verdict?

4 A I don't.

5 Q You just don't recall that.

6 And in looking at the transcript on Page 607, does
7 this --

8 MS. MOORE: May I approach the witness, Your Honor?

9 THE COURT: You may.

10 MS. MOORE: Thank you.

11 (WHEREUPON, counsel had an off-the-record
12 discussion.)

13 MS. MOORE: Judge, just to be clear. I just had a
14 brief conversation with Mr. Petrano. I -- certainly, we
15 did stipulate that the transcript would, in fact, become
16 part of this record. And so he, as well as I, consider
17 this a part of the record.

18 So I'd be glad to mark it, if it pleases the Court.

19 THE COURT: Let's mark it.

20 MR. PETRANO: And that's all articulated in our
21 return, the standard boilerplate.

22 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
23 identification and admitted into evidence.)

24 BY MS. MOORE:

25 Q I'm going to show you Page 6 of 7 of the transcript.

1 And I'm going to read this, and you tell me if I'm reading
2 this correctly. Okay. Defendant's motion for directed
3 verdict.

4 Mr. Kappel, colon, Judge, of course, just my usual
5 motions, a motion for directed verdict viewing the
6 evidence in the light most favorable to the State to
7 support a conviction against my client.

8 Court's ruling on Defendant's motion.

9 The Court, colon, you are, of course, familiar with
10 Rule 19 that I'm not concerned about the weight of the
11 evidence only whether or not there is any evidence that
12 would support the charge in the indictment. And I find
13 that there is sufficient evidence to go forward to the
14 jury and deny your motion for a directed verdict.

15 How many witnesses do you have?

16 Mr. Kappel, colon, none, sir.

17 Did I read that correctly?

18 A Sure.

19 Q Okay. So did you consider making any specific
20 allegations or any kind of arguments regarding your
21 directed verdict motion?

22 A I guess not.

23 Q Do you recall the testimony of Kevin Moser in this
24 matter?

25 A A little bit.

1 Q Okay. Do you -- who -- upon your recollection, who
2 is Kevin Moser?

3 A I can't remember.

4 Q Okay.

5 A I know he was part of the case. I think he was -- if
6 my memory is correct, I don't think he implicated Seth
7 during his testimony. And I think he -- they tried to ask
8 him who one of the Sexton boys was working with. And I
9 objected to it. I don't think he made any mention of Seth
10 in the case. I might be wrong. I don't remember.

11 Q That's right. He was a co-defendant in this matter,
12 it's fair to say.

13 A Okay.

14 Q And the testimony -- the transcript reflects that he
15 was at the Greenville County Detention Center having pled
16 guilty at the time of trial. Does that refresh your
17 recollection?

18 A Not completely, no.

19 Q Okay. So do you recall his testimony?

20 A I mean, I can read it, if you like.

21 Q No. That's okay.

22 But just any kind of -- did you -- and I believe --
23 and like you just -- I think you just testified that
24 pursuant to Kevin Moser's testimony, he did not, in fact,
25 implicate Mr. Stearns; is that correct?

1 A That's my recollection.

2 Q Okay. And so did you consider objecting to the
3 testimony and asking it to be stricken from the record
4 where, in fact, Mr. Moser did not, in fact, implicate
5 Mr. Stearns?

6 A I don't know that I really had a basis for that.
7 Maybe, you know -- I don't think I considered it. I don't
8 know that I had a basis to make that motion. They used
9 Moser, I suppose, to authenticate what the Sextons were
10 saying. To me, in my view, the question in the case was
11 who was dealing with Fordham. And, ultimately, that was
12 the issue, or who had the connection to Amanda Fordham.

13 THE COURT: Moser -- can I ask a question? Moser did
14 not implicate Mr. Stearns?

15 MS. MOORE: That's correct.

16 THE COURT: Why would you object to that? That's
17 good.

18 THE WITNESS: I thought it was great. You know, I --
19 you know, when you -- you know, we -- Judge, they had a
20 poster board with all these different people on it. And,
21 you know, I tried to write an X through each face that
22 didn't name him, or couldn't be trusted to name him. And
23 it, ultimately -- it came down to three people.

24 BY MS. MOORE:

25 Q And who were those three people?

1 A Chad, Robbie, and Amanda, I think, maybe Mueller,
2 too -- or Muller.

3 THE COURT: If y'all don't mind, let's take a quick
4 break. I need to step off the bench just for a moment.

5 So we will stand at ease.

6 (WHEREUPON, a break was taken.)

7 THE COURT: Yes, Ms. Moore.

8 BY MS. MOORE:

9 Q I just want to explore a little bit further about the
10 issue of Mr. Stearns alleged withdrawal from the
11 conspiracy. Do you recall having conversations with
12 Mr. Stearns about that?

13 A Specifically, probably not. But, I mean, I think our
14 conversations were grounded in the idea that he was not
15 involved. And I think the way it came out at trial was
16 that the testimony at trial was that he was involved by
17 making money off of a guy named Muller, who was going to
18 Atlanta.

19 Q I'm sorry. Mr. Stearns was?

20 A Yes.

21 Q Okay. And so it's -- so your testimony is that you
22 just don't recall a conversation with Mr. Stearns about
23 his alleged withdrawal from the conspiracy?

24 A Well, certainly, we talked about him not being
25 involved in the case, that -- where this -- where they

1 brought him in -- where they tried to bring him in was
2 this notion that Seth had this source, Amanda. Amanda had
3 testified to that.

4 But, at some point, this guy named Muller was making
5 the trips to Atlanta. And Muller testified, if my memory
6 is correct, that on each trip he would give Seth money or,
7 you know, part of the load as part of the arrangement that
8 he had with Seth. And the arrangement was made so that
9 Muller would have access to his source that he had in
10 Atlanta.

11 Naturally, we denied that that ever happened.

12 Q Okay. And so have you had an opportunity in your
13 practice to have cases -- conspiracy cases in which
14 defendants have, in fact, withdrawn from the conspiracy?

15 A Of course.

16 Q Okay. And so you're, certainly, familiar with the
17 law regarding withdrawal of conspiracies?

18 A Yes.

19 Q Okay. And was it a consideration in this case to
20 make any -- to make that argument or to, actually, request
21 a jury charge regarding the issue of Mr. Stearns
22 withdrawal, based on his allegation that the statements
23 that the Defendants made were after Mr. Stearns had
24 withdrawn from the conspiracy?

25 A I have not read those cases in a while. But, based

1 upon the testimony that was presented, I didn't really
2 know what basis I had for withdrawal. I needed a client
3 to testify that I was a part of the conspiracy at one
4 point. I mean, if you can withdraw, you have to be part
5 of it.

6 And so I needed a client to say, I was a part of it,
7 but I was only a part of it for this little amount of time
8 and then I got away from it, you know. I just had a case
9 like this. And the idea is, I was part of the conspiracy,
10 I did a very little bit. And then I realized I needed to
11 straighten my life out. And I got away from them.

12 And, you know, the test in federal court is whether
13 or not you reasonably foresee whatever the amount of drugs
14 are involved. And I can't -- I don't know what the
15 standard is in South Carolina, but I'm sure it's similar.

16 But, you know, I needed a client to testify that they
17 were a part of the conspiracy and then they withdraw from
18 it, you know. My position was -- at trial really was we
19 don't have any evidence he was ever a part of a
20 conspiracy, much less withdrawing.

21 Q Okay. And so -- but, certainly -- I mean, do you
22 have a recollection that the trial transcript reflects
23 that some of the witnesses, actually, did testify at
24 some -- that, at some point, Mr. Stearns did stop
25 trafficking meth? Is that your recollection?

1 A I suspect that there were -- I don't remember. But I
2 suspect there were comments that he was making the trips
3 to Atlanta and then he stopped making the trips to
4 Atlanta.

5 And then this Muller character said, well, he stopped
6 making the trips because I was making the trips. And,
7 basically, I bought his source from him in Atlanta and
8 paid him through giving him part of the -- part of it.

9 Making a motion to withdraw, to me, was -- would not
10 be sensible. Because then it would imply, at least, to
11 the Court or to whomever that I'm giving up and making --
12 you know, saying that he is a part of the conspiracy when
13 the defense was that he was never part of the conspiracy.

14 And, furthermore, to withdraw, I mean, we're only
15 talking -- it's not federal court where we have federal
16 sentencing guidelines where we're talking about pounds
17 and, you know, trying to figure out where we're going to
18 land on the sentencing guidelines.

19 I mean, this was a 400-gram indictment, I think; is
20 that correct? 400 grams?

21 Q That's correct. That's right.

22 A I mean, it doesn't take much for them to reach that
23 threshold. So even if I argue, well, Judge, he was a part
24 of it, but he withdrew. I mean, they had, clearly,
25 surpassed the waive requirement early on, particularly

1 through Amanda's testimony, who says that she gave him
2 pounds.

3 Q Okay. And, I mean, based upon your recollection,
4 when you were trying the case, do you recall that there
5 was, in fact -- that there was, in fact, any corroboration
6 of Amanda's testimony regarding the conspiracy?

7 A Any corroboration of her testimony?

8 Q Correct.

9 A You know, in reading of -- I came across like a phone
10 record or something that they had tried to bring out that
11 there was some sort of phone record. I can't -- you know,
12 I saw it at the beginning. And I can't remember if it
13 was, actually, allowed into the record. You could maybe
14 help me with that.

15 If it was allowed in, I don't believe they had a
16 subscription to the number. They didn't have a name on
17 the account. They still didn't have a connection to it.

18 Q But you just don't have any independent recollection
19 of any corroboration by any of the other witness who
20 testified?

21 A You know, I can't remember. You know, I know that --
22 well, I don't know. I suspect that Amanda --

23 MR. PETRANO: Your Honor, I'm going to object to
24 these belaboring details of the transcript. The
25 transcript speaks for itself, rather than this, you know,

1. got-you game with the witness.

2. MS. MOORE: Just -- fair enough. I'll withdraw the
3. question.

4. THE COURT: Okay.

5. MS. MOORE: I'll move on, Judge.

6. THE COURT: All right.

7. MS. MOORE: Thank you.

8. That's right. That's absolutely correct. The
9. transcript is in evidence.

10. BY MS. MOORE:

11. Q Okay. And are you familiar with the argument of
12. Mr. Stearns regarding, you know, the issue of the weapons,
13. that there was no objection when the Solicitor asked
14. Robert Sexton out of the individuals that he dealt with in
15. this conspiracy, who are you -- who or where you ever saw
16. carrying weapons? Do you recall that line of testimony
17. regarding Mr. Sexton?

18. A A little bit, yeah.

19. Q And I believe at one point -- at another point in the
20. transcript, there was a mention or a discussion in --
21. well, in the closing argument of the Attorney General, do
22. you recall that she mentioned guns, these are bad people,
23. they carry guns? Do you recall that -- those statements
24. in closing by the Attorney General?

25. A Yes.

1 Q Okay. And did you consider objecting to those
2 statements?

3 A Maybe, you know. Part of what I was -- you know, I
4 had cross-examined, I guess, Robbie Sexton about him
5 trying to hire someone to kill Chad Brooks.

6 In one sense, it -- maybe I'm wrong about this. I
7 don't know. But, in one sense, it almost seems to help if
8 the people that the Government is asking a jury to believe
9 if they know that they're, actually, dangerous, you know.
10 I don't know.

11 Q Well, explain --

12 A I mean, I'm trying to explain it. I guess I used
13 this whole idea that Robbie Sexton had -- you know, that
14 there was an idea that he had tried to hire someone to
15 kill the lieutenant of the vice and narcotics unit in
16 Pickens. I used that as a method to try to discredit him.

17 So I didn't necessarily feel it was the right way to
18 handle the case by shying away from weapons, or whether
19 they're dangerous and have the propensity to kill a police
20 officer. I felt like that was something that could help
21 us.

22 Q Okay. But just to be -- I mean, just to be clear.
23 Like -- how, specifically, could that, in fact, help the
24 case when, in fact, Mr. Stearns in the indictment was not
25 charged with any kind of weapons charge; is that right?

1 A Right. But, I mean, I wasn't -- what I was fixated
2 on was to try to put as much up there to where a jury
3 would say, we just simply cannot believe these people.

4 And, as I turns out, if my memory is right, that when
5 Robbie Sexton testified, he denied ever trying to hire
6 someone to kill the lieutenant in Pickens. And that it
7 came out of a jailhouse snitch, as he described it. And
8 that, in turn, may have helped us. Because it was a tie
9 in to having a snitch in the jail telling the Government
10 anything they possibly could, true or not true, to try to
11 get their sentence cut.

12 So I -- you know, maybe I should have objected to it.
13 I'm not sure.

14 Q Okay. But can you see how that possibly could, in
15 fact, be prejudicial to Mr. Stearns?

16 A Of course. The whole case is -- you know, everything
17 is prejudicial. I mean, a lot of it is prejudicial. The
18 testimony is prejudice -- excuse me, is prejudicial. The
19 drugs are prejudicial. It's all prejudicial. If I could
20 have kept all of it out, I would have.

21 MS. MOORE: Judge, I beg the Court's very brief
22 indulgence.

23 THE COURT: Sure.

24 MS. MOORE: Thank you.

25 (Pause.)

1 BY MS. MOORE:

2 Q And just to be clear. You did, in fact, in the
3 transcript move to be relieved as far as on appeal, or to
4 be, specifically, clear, you presented your fee
5 agreement -- your retainer agreement as authority to say,
6 you know, I don't represent Mr. Stearns on appeal; is that
7 right?

8 A Yeah. I mean, our contract, specifically, excludes
9 appeals. And that -- as I advise all my clients, that
10 would be a separate retainer agreement if they wanted to
11 hire me for an appeal.

12 Q That's right.

13 And so you did present that to the Court?

14 A I suppose. I mean, I didn't read the sentencing.
15 I'm sorry.

16 Q No. That's all right. But if it's in the
17 transcript, there's no reason to doubt that?

18 A But I did whatever I could, you know. I met with
19 Seth in the hallway after sentencing and had him sign a
20 notice of appeal. And I made sure that was filed for him
21 so that he could prosecute an appeal.

22 Q Okay. And so did you have any communication with
23 Mr. Stearns appellate counsel?

24 A No.

25 Q No. Okay.

1 Did appellate counsel ever call you to ask you about
2 any parts of the transcript regarding the trial in this
3 matter?

4 A No.

5 Q Okay. Is that unusual, or is that something that
6 typically happens?

7 A I'm not sure. I suppose it varies from one
8 practitioner to another. I mean, I was never called and
9 asked to give them the file.

10 So, I mean, to be frank, I didn't even realize -- I
11 didn't know anything about the appeal, or at what stage
12 the appeal was, or what had been decided.

13 Q Okay. And so --

14 MS. MOORE: Judge, I have no further questions of
15 this witness.

16 Thank you.

17 THE COURT: All right.

18 CROSS-EXAMINATION

19 BY MR. PETRANO:

20 Q Sir, I'm just going to ask you one question about the
21 transcript, and then I'm going to move on to a different
22 subject. Okay.

23 Earlier you testified that you did not elaborate on
24 the directed verdict motion. If I could direct your
25 attention to Page 617, sir.

1 A Okay.

2 Q Sir, is that an example of you elaborating, as best
3 you can, with this case on the directed verdict motion?

4 A Can you give me a line number that you're,
5 specifically, referring to?

6 Q Sure. 21.

7 A Oh, I see what you're saying. I'm sorry. I'm just
8 reading this.

9 I don't know where this is coming into the
10 transcript. I assume that this -- that I'm incorporating
11 all of my objections that I made into the motion.

12 Q And is that, basically, a supplement of the directed
13 verdict motion?

14 A I suppose. I mean, basically, what I'm trying to do
15 is preserve every objection I made for his appeal.

16 Q All right. And then let's get back to -- sir, as
17 you're aware, the filing of the PCR application waives any
18 attorney-client privilege. Are you aware of that?

19 A Of course, yeah.

20 Q You had spoken about, initially, the State approached
21 with the offer. And they wanted to know -- that they
22 wanted Amanda. Did Mr. Stearns want to cooperate?

23 A No.

24 Q Was it his claim all along to you that he had nothing
25 to do with any of this?

1 A (There was no response.)

2 Q Tell us what he told you --

3 A Well, it's --

4 Q -- briefly.

5 A I'll try. It's hard for me to remember the -- what I
6 do remember, specifically, was the Government wanted
7 Amanda. And they were willing to give him a 15-year plea
8 if he did it, and cooperated, and pled guilty. The answer
9 was, no.

10 The connection to Amanda was through his wife. And I
11 remember her name. Nina, I think, was her name. And that
12 was the connection to Amanda was through the wife. It was
13 a vague connection from Seth to her. Of course, he knew
14 her because his wife knew her. But it was never conveyed
15 to me by Seth that he was driving to Atlanta and picking
16 up loads of methamphetamine.

17 And I suppose to be responsive to your question, it
18 was never, I know where she is, but I choose not to give
19 her up. It was never -- he never said that. It was
20 implied more to me that his connection with her was pretty
21 thin. Because it was a friend of his wife's, and he
22 didn't know where she was.

23 Q Did he ever admit to you that he trafficked
24 cocaine -- excuse me, trafficked methamphetamine in any
25 amount?

1 A No.

2 Q Not just --

3 A No. He did not admit it.

4 Q Could you, sir, in good faith advise a client to
5 accept a plea if they denied being involved?

6 A Well --

7 Q Most?

8 A Well, that's such a hard question.

9 Q Generically speaking.

10 A I mean, you know, I had one lawyer explain it to a
11 judge in that getting a client's mind wrapped around
12 pleading can take six weeks, you know. Every case is
13 different. Sometimes, you have to meet with people. And
14 I'm not talking about Seth. But I'm talking about just,
15 generally, you have to meet with people a number of times
16 to show them the evidence over, and over, and over.

17 So it -- if someone tells me they're not guilty,
18 that's fine. I mean, that's -- those are my marching
19 orders for a trial. But, you know, at some point, things
20 change, as I said.

21 Q And did Seth always maintain that he was not guilty?

22 A To my recollection, he did.

23 MR. PETRANO: Thank you.

24 Nothing further.

25 MS. MOORE: Nothing further, Judge.

1 THE COURT: You may step down.

2 THE WITNESS: Thank you, Judge.

3 MR. PETRANO: Your Honor, may this witness be
4 relieved from his subpoena?

5 MS. MOORE: No objection.

6 THE COURT: Sure.

7 THE WITNESS: Thank you, Judge.

8 THE COURT: All right.

9 MS. MOORE: Judge, I would call my client,
10 Mr. Stearns.

11 THE COURT: All right. Mr. Stearns, come up, be
12 sworn, and have a seat.

13 THE CLERK: Mr. Stearns, please, place your left hand
14 on the Bible and raise your right hand.

15 WHEREUPON,

16 SETH AARON STEARNS,
17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you.

19 Please state your full name for the record.

20 THE WITNESS: Seth Aaron Stearns.

21 THE CLERK: Thank you.

22 You may be seated.

23 DIRECT EXAMINATION

24 BY MS. MOORE:

25 Q Mr. Stearns, how old are you?

1 A 34.

2 Q 34. And when were you born?

3 A 4/14/80.

4 Q Okay. And I want to talk with you about this
5 specific prosecution, and your indictment for conspiracy
6 to traffic methamphetamine over 400 grams. Okay.

7 Now -- and you've heard the testimony of Mr. Kappel
8 regarding the fact that you retained Mr. Kappel to
9 represent you; is that correct?

10 A Yes, ma'am.

11 Q Okay. So Mr. Kappel was not appointed to represent
12 you; is that right?

13 A That is correct.

14 Q And do you recall how much your retainer fee was for
15 Mr. Kappel?

16 A I believe it was 15,000.

17 Q 15,000. Okay.

18 And did -- do recall how soon following your
19 indictment on this conspiracy charge would you say that
20 you contacted Mr. Kappel to represent you?

21 A I was in prison in Georgia. I had a small charge
22 down there. And I kind of thought I was about to change
23 my life over and turn a whole new leave.

24 And then my wife had called me and said that they had
25 indicted me with conspiracy to traffic 400 grams. And so

1 it was -- and she had reached Matt Kappel. And so it was
2 pretty -- I don't think I, actually, got to talk to Matt
3 Kappel until I came to South Carolina.

4 Q And do you recall when that was?

5 A (There was no response.)

6 Q Let me -- like if I say, for example, that the
7 indictment was filed on December 13th of 2005, do you
8 recall subsequent to that when your first meeting with
9 Mr. Kappel was?

10 A Oh, it was right -- I can't recall exactly. I know
11 it was in the jail in Columbia. And so that would be
12 right there at the beginning of 2006. I'm not real
13 positive of the exact...

14 Q Okay. And I believe -- your testimony was that your
15 wife contacted Mr. Kappel; is that right?

16 A Uh-huh.

17 Q Now, subsequent to that first meeting that you --
18 that your recollection is that that was in jail in
19 Columbia, to the point that you absconded in 2007, how
20 many times would you say that you were able to meet with
21 Mr. Kappel regarding this case?

22 A I would say I went to his office maybe -- at least,
23 twice, twice that I can think of for sure. And I talked
24 to him over the phone a handful of times, at least, two or
25 three times.

1 Q Okay. You said two or three times on the phone?

2 A Uh-huh.

3 Q Okay. Now, you heard Mr. Kappel testify regarding
4 the issue of your Rule 5 discovery. And you heard his
5 testimony that he did, in fact, review the discovery with
6 you at his office. Do you have a recollection of that?

7 A I don't. Maybe, at that point in time, I didn't even
8 know what a Rule 5 discovery was and -- whereas now I --
9 you know, I know a little more and -- but I can't
10 really -- I definitely couldn't recall anything that was on
11 it, no.

12 Q Okay. But did you have an opportunity or occasion to
13 speak with Mr. Kappel regarding the evidence that the
14 State had against you?

15 A Yeah.

16 Q Okay. And what was your understanding and
17 recollection of the evidence that was going to be
18 presented against you at trial?

19 A They had no evidence at all.

20 Q Okay. Can you elaborate on that? What do you mean
21 they had no evidence --

22 A All they had was a couple people who were saying that
23 I -- that were saying -- well, basically, the only
24 evidence they had -- the major evidence they had was two
25 statements. They had two statements, which were Chad and

1 Kenneth Lavender's statements. And then -- and that was
2 pretty much it.

3 Q Okay. And I think that's -- that was, essentially,
4 in line with what Mr. Kappel just testified to regarding
5 the status of the evidence.

6 Now, did Mr. Kappel discuss any plea offers regarding
7 this case with you?

8 A Yes. He had discussed the 15-year plea. And, at
9 that point in time, I -- they didn't have any evidence.
10 They didn't have anything on me but those two people. And
11 the same way he kind of -- he was pretty much on point
12 there as the fact that they only had those people. And
13 then a few of them, they had tried to run.

14 So that was like all the evidence they had. And so
15 I, certainly, wasn't thinking about taking a plea
16 agreement when the only evidence they had was taken off.
17 At that point in time, that's all they had.

18 And, also, my wife was like just very adamant about
19 they have no -- nothing on you and you should not -- you
20 do not need to snitch on anybody. And if you tell on
21 somebody, you'd be telling on yourself.

22 Q Well, just to be clear. Did -- was there only one
23 plea offer that was communicated to you by Mr. Kappel?

24 A I think there's a possibility that it was like
25 12 years in the county -- in the county jail before he

1 ever even -- before I ever met him, he went to SLED first.
2 And he talked with them and said, if my client cooperates,
3 would you give him seven? And that's without talking to
4 me or anything.

5 And they said, no, that they wasn't going to do seven
6 at all. And that they wanted, at least, 12 for everybody
7 involved.

8 And then I think possibly after that very first
9 thing, later on, over the phone, he may have told me that
10 they would still be -- they'd be willing to do 15, or
11 something possibly.

12 Q Okay. But, I mean, do you recall Mr. Kappel's
13 counsel to you about, you know, the merits of taking the
14 plea? I mean, I guess the specific question is, did
15 Mr. Kappel tell you that, well, look, they really just
16 don't have very much evidence against you, so I can't
17 really see you taking the plea? I mean, was that
18 communicated to you?

19 A I wouldn't necessarily say he said it like that.

20 Q Okay.

21 A I would say that, you know, he said that, you know,
22 if you cooperate, you can get 15 years. And that -- and
23 if you don't, then you could receive 30 years at the end
24 of this if they prove you -- but he, also, you know, made
25 sure -- he, also, let me know that, you know, they don't

1 have anything on me at this point in time, you know.

2 And...

3 Q Okay. So -- now, is this a correct statement? So
4 that, at some point, in 2007 -- and it's identified in the
5 trial transcript as March 7th, 2007, you did, in fact,
6 abscond from the jurisdiction; is that correct?

7 A Yes, ma'am.

8 Q Okay. Now, following roughly March 7th of 2007, when
9 you left the jurisdiction, did you have any communication
10 with Mr. Matt Kappel regarding this presentation prior to
11 your sentencing?

12 A After March 2007 you said?

13 Q Yes. Correct. From roughly March 7th of 2007, when
14 you absconded to the point in the future when you were
15 sentenced and were back in court with Mr. Kappel, did you
16 have communication with Mr. Kappel during that period of
17 time?

18 A No, I did not. I wish that I had. And hindsight is
19 20/20. Because, you know, they moved it to December 12th,
20 or somewhere around that nature. And I was arrested on
21 January 8th.

22 So, I mean, it was almost no point of me going
23 anywhere almost, if you look at it that way. And I wish I
24 had been in contact with him and had known that it had
25 gotten moved to December. I, certainly, would have

1 thought about, you know, making sure I got there a whole
2 lot more than if I had -- you know, but I did not
3 know that it had been moved to December, no, definitely
4 not.

5 Q Okay. And so the case was -- then, subsequently, you
6 learned that the trial was set for April 9th of 2007.
7 You, subsequently, when you came back, you became aware of
8 that date; is that correct?

9 A Yes, ma'am.

10 Q Okay. And so -- now, so -- to be crystal clear. Did
11 you have actual notice for April 9th, 2007, or the trial
12 date of December 10th of 2007?

13 A I would say that I knew about the court date on
14 April 7th. I wouldn't say that I got anything in the
15 mail, or anything of that nature.

16 And I know my mom or sister had not been necessarily
17 aware. But -- and I definitely had no idea about
18 December. And my family had no idea about the trial being
19 moved to December either.

20 I mean, because I was in contact with my family. And
21 if they had known that the trial date had been moved from
22 April to December --

23 MR. PETRANO: Your Honor, may we approach?

24 THE COURT: Yeah.

25 (WHEREUPON, a bench conference was held.)

1 BY MS. MOORE:

2 Q But just to be clear. You did not know about the
3 December 10th, 2000 [sic], court date; is that right?

4 A Yes. That's correct.

5 Q All right. Now, you have filed a second motion to
6 amend your PCR application and, also, a third amendment to
7 amend your PCR application. Mr. Stearns, just, in general
8 terms, you know, when you filed your initial petition, why
9 did you file an action against Mr. Kappel alleging that he
10 had provided ineffective assistance of counsel?

11 A All right. I'm not clear -- exactly clear of the
12 question.

13 Q Well, I'm just asking -- so you, initially -- you
14 filed an original fill-in-the-blank PCR application; isn't
15 that right?

16 A The very first one?

17 Q That's right. The very first one.

18 A Uh-huh.

19 Q Why did you do that? Why did you file an action
20 against Mr. Kappel for ineffective assistance of counsel?

21 A Well, because this is the -- because it was the --
22 very much the next step in the procedures and somewhat my
23 last chance. And I felt that there was several issues
24 that, you know, could have been raised.

25 Q Okay. And so, at some point, I mean, it's crystal

1 clear to this Court that you were not there for this
2 trial; correct?

3 A Yes, ma'am.

4 Q Okay. And so, at some point, when you returned to
5 the State of South Carolina, did you have an opportunity
6 to receive a copy of the trial transcript?

7 A Yes. When -- I received the trial transcript, I
8 guess, right when -- right after I had been -- probably
9 right after I got to McCormick in -- so, yeah.

10 Q So, at some point, you did, in fact, receive a copy
11 of the trial transcript?

12 A Yes, ma'am.

13 Q Okay. So did you have an opportunity to review the
14 trial transcript prior to filing your initial PCR
15 application?

16 A Yes, ma'am.

17 Q Okay. And just looking at this transcript,
18 certainly, from a lay perspective, I mean, you are not a
19 lawyer; is that correct?

20 A Yes, ma'am.

21 Q You're not a lawyer.

22 Were there things about the transcript that caused
23 you concern regarding the evidence that was presented
24 against you at the trial?

25 A Yes, ma'am.

1 Q Okay. And you, certainly, have detailed those issues
2 in your first, second, and third amendments to your PCR
3 application; is that correct?

4 A Yes, ma'am.

5 Q Okay. Now, during the time that you filed your
6 initial PCR application, have you -- did you have any
7 assistance from anyone at the prison regarding your
8 application?

9 A The very first one?

10 Q Yes.

11 A Yes. I needed someone to help me to figure out how
12 to fill out the form.

13 Q And without just, basically, reading your application
14 for -- your PCR application, can you highlight for the
15 Court some of the issues that caused you the most concern
16 regarding the evidence that was presented at trial against
17 you?

18 A Well, I would say the material variance on the dates
19 and times, and the withdrawal are huge for me.

20 Q And why is that the case?

21 A Well, because the -- this is all based on people
22 testifying to the truth. But if you go into the
23 transcript, those -- they're totally saying -- you know,
24 it's very inconsistent. They're saying -- well, they're
25 saying, well, I -- he bought dope from me from here to

1 here. And then they say that he didn't. And they
2 contradict themselves completely.

3 Q Okay. And did you have a concern -- and, certainly,
4 you have addressed that in your application about
5 Mr. Kappel's failure to object to some of these issues
6 that you're raising right now?

7 A Yes.

8 Q You had concerns about that. Okay.

9 And you, certainly, were concerned about, you know,
10 that the mention of weapons, or guns, or -- and that type
11 of thing in both the closing argument and, also, the
12 cross-examination. Is that a fair statement?

13 A Very much so.

14 Q Okay. And why were you concerned about that?

15 A Well, number one, because they had -- well, I am not
16 a violent person. And I've -- you can look on my entire
17 history of -- even since I've been in prison and out of
18 prison, you know, I don't have any violent history. And
19 they said in there, you know, these are thieves, very bad
20 people. They said that they carry guns. And that has
21 nothing to do with me or my case. And it painted a
22 picture to the jury that I am a thief, or a very bad
23 person, or shoot guns.

24 And then the -- I think the Solicitor even said in
25 her closing statement, they shoot guns, they kill people.

1 She said the phrase "kill people." And my lawyer didn't
2 object to it, you know.

3 And so I thought that was very prejudicial just in
4 the -- you know, it'd be one thing if you want to let
5 somebody slide with a few things. But as far as all the
6 gun talk, it has nothing to do with me, and nothing to do
7 with the case itself. Because it's a drug case.

8 Q That's right.

9 And, in this indictment, you weren't accused of any
10 kind of weapons charge?

11 A No, ma'am.

12 Q Okay. Was there anything else in regard to -- a
13 substantial concern that you had regarding the evidence
14 that was presented and Mr. Kappel's failure to object to
15 such evidence? Was there anything else that caused you
16 concern?

17 A Well, if -- pretty much all of these issues caused me
18 a lot of concern. I didn't like the fact that he let
19 Kevin Moser hold -- that they let Kevin Moser come on
20 trial. Because he -- I didn't even know the guy. They
21 brought somebody who I don't even know and never met to
22 testify against me, and who didn't even mention my name,
23 you know.

24 And, also, I didn't really like that they brought in
25 somebody else's drugs into my, you know, proceedings that

1 has nothing to do with me. And if you're the jury and you
2 look at that and you see a big bag of drugs over there,
3 you're just imagining they had something to do with me
4 when they never had, you know, found anything on me,
5 period.

6 Q And it is true that Mr. Kappel did not represent you
7 on appeal; correct?

8 A Yes, ma'am.

9 Q And that was your -- that, in fact, was in your
10 retainer agreement; is that right?

11 A Yeah. I do remember him, at the time, saying that he
12 would not be doing the appeal. And I didn't understand
13 all the logistics. I had, you know, barely been in
14 trouble really. So I didn't really know if it was a good
15 thing. I didn't know I -- if he was supposed to or not
16 supposed to.

17 So I just went along with what he said, you know. He
18 said that he wasn't going to do it. And I said, okay.

19 Q Okay. And did you have appointed counsel on appeal?
20 Did you retain an appellate --

21 A No, I did not.

22 Q So you had an appellate attorney appointed for you?

23 A I didn't even know what happened with the appeal. I
24 was in prison. They sent me a letter saying that I had a
25 lawyer. Then they sent me a letter saying that that

1 lawyer was no longer my lawyer, and that I had a new
2 lawyer.

3 Then he sent me a letter saying that he was going to
4 bring forth a certain issue. Then the next thing you
5 know, he sent something talking about how he wanted to be
6 relieved of my counsel, and how -- and then the next thing
7 you know, it said it was dismissed. It was all through
8 letters. I had -- I barely knew anything was going on
9 with the appeal.

10 Q Okay. So just to be clear about that. Did you ever
11 have a phone conversation or an in-person conversation
12 with your appellate counsel?

13 A No, never.

14 Q Did you, in fact, send him letters?

15 A No. I didn't barely know what was going on. So, no,
16 I didn't send a letter.

17 Q Okay. Now, did -- and it was Robert Pachak --

18 A Yeah.

19 Q -- who was your appellate counsel?

20 Did he ever send you correspondence requesting
21 information from you regarding the trial?

22 A No. Requesting information, no, none. Like I say,
23 it was all him -- it was all kind of statements. He sent
24 me, this is happening, this is happening, this is
25 happening, dismissed.

1 Q Okay. So, just to be crystal clear. You did not
2 have an opportunity to, specifically, speak to Mr. Pachak
3 regarding this appeal, or any issues that may be raised on
4 appeal?

5 A Definitely not.

6 Q Is that right?

7 A That's correct.

8 Q Okay. And was your case appealed to the Supreme
9 Court?

10 A I don't know. Appealed -- I just know that it was
11 appealed. I don't know if that's to the Supreme Court or
12 what.

13 Q Okay.

14 A Like I say, it was all very -- it all happened in
15 letters. And it all happened so quick that the next you
16 know, it was dismissed. And I didn't even understand -- I
17 didn't even barely know what was going on.

18 Q Okay.

19 A I don't think I even necessarily knew that I wasn't
20 going to be showing up, you know, towards the beginning
21 until pretty much it got dismissed. And then I was like,
22 wait, you know. I'm pretty new to -- you know, to court
23 proceedings and such.

24 MS. MOORE: Judge, I have no further questions of
25 this witness.

CROSS-EXAMINATION

BY MR. PETRANO:

Q Mr. Stearns, is one of your claims that you wanted to plead guilty?

A No.

Q Okay.

A That I wanted to plead guilty, no.

Q Okay. So you have no claim of ineffective assistance of counsel regarding any type of plea offer, or wanting a -- plea negotiations. Am I hearing that correctly?

A As far as I guess -- ineffective assistance of counsel regarding plea negotiations?

Q Yes, sir. And I don't mean to be awkward in my question.

A No.

Q Okay. Do you understand my question?

A Yeah.

Q Okay. Why did you flee, sir?

A I was scared. I asked my -- I asked Matt Kappel, What do you think the chances are of me winning, honestly?

And he said, I honestly think you have a 25 percent chance of winning.

And I had -- I had just been to prison in Georgia for the first -- I had only been to jail like 30 days, 45 days. And then I was in Georgia. And I was in jail

1 for six months, and then prison for seven months.

2 And Georgia is -- and the place where I was at was
3 full of young people. And I tried to get robbed -- people
4 tried to rob me three times within those seven months.
5 And I felt that prison was just not for me. And I
6 understand you can't, you know -- so I was scared to
7 death.

8 And when he said 25 percent chance of winning, I
9 thought 75 percent chance of losing. And even though, you
10 know, they didn't have hardly anything on me, I got
11 scared. And I'm not going to lie. I've -- in the past,
12 I've kind of always run from my problems, instead of, you
13 know, going towards them like I'm supposed to.

14 MR. PETRANO: Thank you, sir.

15 Nothing further.

16 THE COURT: Anything else?

17 MS. MOORE: Nothing further, Judge.

18 THE WITNESS: I would like to -- it may seem -- I
19 hope it doesn't seem too obsessive. I know these
20 proceedings may have taken a while longer than -- I don't
21 know how much longer than anybody -- than the
22 peoples [sic] others.

23 But I would definitely like to put on record all my
24 issues. And -- so that they can be on record. That's
25 really my -- my -- my main trial strategy here was to get

1 these issues on record.

2 THE COURT: I think she asked you that, but go ahead.

3 MR. PETRANO: And, Your Honor, I do object to the pro
4 se issues. That was my whole point at the beginning
5 regarding the Jones case. He has an attorney. The issues
6 come through the attorney, Judge.

7 Thank you.

8 MS. MOORE: Judge --

9 THE COURT: I thought Ms. Moore asked the questions
10 from her last page under reasons you filed your PCR
11 application, or something to that effect. That's what she
12 asked for. And he struggled with an answer. And that's
13 exactly what he says he wants to say.

14 So be succinct --

15 THE WITNESS: At first, she had said in your own
16 words tell me -- you know, without reading, you know, tell
17 me the answers to these questions. But my -- I just
18 wanted to get all of this on record. Because this is
19 every issue I've -- it's everything I've worked on. And
20 this is 30 years of my life. And I'm, you know --

21 THE COURT: I'll let you do it as long as you -- if I
22 say that's the same issue, you go to the next one.

23 THE WITNESS: Yeah. It took -- I definitely don't
24 want to argue with you, or anything. But --

25 THE COURT: I don't want you to either.

1 Go ahead. Start out. And we'll see how far we get.

2 THE WITNESS: All right. The -- okay. All right.
3 Trial counsel, Matt Kappel, prejudiced me when he failed
4 to object to the sufficiency of the indictment when the
5 indictment alleged a single conspiracy. But, here, the
6 State's evidence was proof of several smaller
7 conspiracies.

8 THE COURT: Okay. I've got that issue. And you've
9 already dealt with it.

10 Go ahead.

11 (WHEREUPON, there was no response.)

12 THE COURT: That issue is on the record. That's in
13 your application. You're good with that one. I mean,
14 I'll consider that one.

15 THE WITNESS: All right. I don't think any one of
16 them recalled about the smaller conspiracies and larger
17 conspiracies.

18 THE COURT: It was in your written application.
19 Because I've read that one. So that is before me. And
20 that's an issue I've got to decide.

21 THE WITNESS: Okay. All right.

22 THE COURT: You've got --

23 THE WITNESS: Moreover, counsel prejudiced me when he
24 failed to argue material variance where the State showed
25 proof of several smaller conspiracies, which constitutes a

1 material variance from the indictment.

2 In opening statement, the Solicitor argued two
3 theories of conspiracy, the wheel conspiracy that focuses
4 on a central person or group transacting with several
5 other persons, the hub, as she stated I was. See Pages
6 54, Line 10 through 17, Page 48, Line 4 through line 12.
7 The hub agreed separately with several co-conspirators who
8 were spokes of the wheel.

9 Also, the Solicitor argued the chain conspiracy.
10 Unlike the wheel conspiracy, which focuses on a specific
11 person, the hub -- the chain conspiracy focuses on a
12 single subject matter. The Solicitor kept mentioning
13 Walmart. See Page 43, Line 19 --

14 THE COURT: All right. Hang on now. You're kind of
15 going kind of quick for my court reporter. She's taking
16 down everything you're saying.

17 THE WITNESS: All right. I didn't --

18 THE COURT: And those have been adopted by your
19 lawyer. That's part of that first thing that your lawyer
20 handed me was the -- is it that?

21 THE WITNESS: Yes, sir. That's what I'm reading,
22 every bit of that.

23 THE COURT: Okay. Well, I've got that.

24 THE WITNESS: Okay.

25 THE COURT: So I'll consider that.

1 THE WITNESS: Okay.

2 THE COURT: I mean, it's several pages.

3 THE WITNESS: It is.

4 THE COURT: Eight.

5 THE WITNESS: Yeah. That's right.

6 THE COURT: Okay.

7 THE WITNESS: That is the main -- I just wanted to
8 make sure it was all on record and -- so that you can
9 review it. But, I mean, if you have it in your hands to
10 review it, then that's the main thing.

11 THE COURT: Well, I accepted it, because your lawyer
12 asked to adopt the arguments you made --

13 THE WITNESS: Okay.

14 THE COURT: -- as part of her case [phonetic] today.
15 And the State's lawyer objected to it, but it was allowed.

16 THE WITNESS: Okay.

17 THE COURT: So it's before me. So I've got to
18 consider it.

19 THE WITNESS: Okay.

20 THE COURT: All right.

21 THE WITNESS: All right. Well, then that pretty much
22 takes care of it. If you have a copy of all eight pages
23 and -- the third amendment, do you have a copy of that,
24 too?

25 THE COURT: I do.

1 THE WITNESS: Okay.

2 THE COURT: I sure do. So that is an issue -- those
3 issues are before me and must be ruled on.

4 THE WITNESS: Okay.

5 THE COURT: I haven't ruled on them.

6 THE WITNESS: Yes.

7 THE COURT: But they must be ruled on.

8 THE WITNESS: Yes.

9 THE COURT: Okay. Good. You did well.

10 THE WITNESS: Thank you.

11 THE COURT: Now, anything else?

12 THE WITNESS: No.

13 THE COURT: Now, you can step down.

14 THE WITNESS: Okay.

15 THE COURT: All right. Anything else?

16 MS. MOORE: Judge, I have no further witnesses.

17 THE COURT: Okay.

18 MR. PETRANO: Judge, I've got nothing else in the way
19 of witnesses or evidence. I do just have a -- I really
20 mean brief, a couple of sentences in argument. I just
21 wanted to encapsulate our position on a couple of the
22 issues that I thought deserved remarks on.

23 THE COURT: Okay.

24 MR. PETRANO: Go ahead with that?

25 THE COURT: Yes, sir.

1 MR. PETRANO: All right. Just one of the claims the
2 Applicant spoke of in his testimony was that trial counsel
3 didn't object to the actual physical drugs coming in at
4 trial. And I just wanted point out, Judge, he did
5 repeatedly. The learned trial judge overruled those
6 objections having found there was a conspiracy, and that
7 it was relevant.

8 And then, Your Honor, regarding the mention of the
9 drugs, and the State's closing argument that there was a
10 shooting, Your Honor, that was a reasonable inference of
11 the testimony and evidence presented at the trial. Your
12 Honor, there were guns recovered. And I don't think I'm
13 exaggerating, I think there were hundreds of guns
14 recovered in all of the warrants being served on the
15 individual co-conspirators. It may not be hundreds, maybe
16 it was, you know, 40 or 60. But there were a lot of legal
17 and illegal weapons.

18 Your Honor, there was evidence of one of the
19 individuals trying to arrange to have a cop killed. Your
20 Honor, there was someone shot. Now, I want to be clear.
21 That was -- that individual was shot by the police. But
22 he was shot because he was trying to run people over with
23 his car. So the -- you know, the remarks that they do try
24 to kill people, those were a reasonable inference
25 regarding the record. Drugs are violent, Your Honor.

1 That's common knowledge.

2 Thank you, Your Honor.

3 THE COURT: All right. Ms. Moore, anything from you
4 summatively?

5 MS. MOORE: No, Judge. I'll just -- I'll let the
6 Court -- let the record stand.

7 I just would move pursuant to Rule 5(b) [sic] to ask
8 for the amendments to conform to any of the evidence that
9 was presented in this case --

10 THE COURT: Granted.

11 MS. MOORE: -- that -- for the Court's consideration
12 that were, certainly, tried by either implied or explicit
13 consent by the parties. Because, certainly, a lot of the
14 issues were presented in regard to Mr. Kappel's testimony.

15 So I would move pursuant to Rule 15(b) that -- to
16 amend the pleadings to conform to the evidence presented.

17 THE COURT: Okay. That will be granted.

18 MS. MOORE: Thank you.

19 THE COURT: All right. I'll let y'all know after I
20 review the transcript, and the arguments, and submissions.

21 *****END OF TRANSCRIPT OF RECORD*****
22
23
24
25

CERTIFICATE OF REPORTER

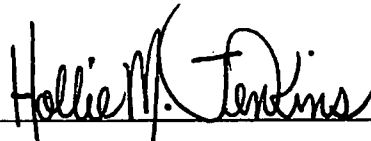
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 17th day of December, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 28, 2015

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Seth Aaron Stearns, #327380,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
13th JUDICIAL CIRCUIT
Case No. 2011-CP-23-1468

ORDER OF DISMISSAL

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. HENDERSON
2015 JUL 14 PM 3 38**PROCEDURAL HISTORY**

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed February 28, 2011. The Respondent made its Return on June 28, 2011. Through appointed counsel, Applicant filed a filed a *pro-se* "Motion to Amend 'PCR' Application" on May 27, 2011. He subsequently filed "Applicant's Second Motion to Amend PCR Application," dated April 20, 2014, and "Applicant's 3rd Motion to Amend PCR Application, dated August 12, 2014. A hearing into the matter was convened on December 17, 2014. The applicant was represented by Scarlett Moore, Esquire. The Respondent was represented by Brian T. Petrano of the Attorney General's Office.

The records before this Court reflect that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the



December 2005 term of the State Grand Jury for trafficking methamphetamines (conspiracy) (2005-GS-47-0025).

While on bond after the original charge, the Applicant absconded. Ultimately the Applicant was tried in absentia. The jury found the Applicant guilty and the Honorable Alexander S. Macaulay sealed the sentence on December 13, 2007. Eventually the Applicant was apprehended in South Dakota and on March 25, 2008, the Applicant appeared in court and Judge Macaulay sentenced him to thirty (30) years imprisonment: 2005GS4725, CDR # 0370 S.C. Code § 44-53-0375(C)(2)(c) Drugs / Trafficking in ice, crank or crack - 400 g or more.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief.² The Court of Appeals dismissed the appeal. State v. Stearns, Op. No. 2010-UP-167 (S.C. Ct. App. Filed march 1, 2010).

In his Application, dated February 28, 2011, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failure to object to prejudicial remarks made by solicitor during closing argument.
2. Ineffective assistance of appellate counsel:
 - a. Failure "to seek discretionary review to State's highest court on claim of error, for exhaustion purposes."

Applicant's first "motion to amend 'PCR' Application" elaborated upon the factual bases of his allegations in his original application. In addition, the

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 493 (1967).

² The issue presented on appeal was "Whether the trial court erred in charging the jury that the testimony of an accomplice need not be corroborated?" (Final Brief of Appellant, p. 3).

SCA

Applicant argued that the testimony of the State's witnesses were not credible because the witnesses were influenced by plea agreements. In "Applicant's Second Motion to Amend PCR Application" he alleged ineffective assistance of trial counsel citing trial counsel's "failure to object to the sufficiency of the indictment," failure to argue "[m]aterial [v]ariance" where state showed proof of several smaller conspiracies" failure "to object to Agent Dorsey's testimony when offering him as an expert," and failure to object to testimony of co-conspirators, among other things. The Applicant further alleged ineffective assistance of appellate counsel, claiming that appellate counsel raised an issue not properly preserved for appellate review, and that "the more meritorious issue was whether the Directed Verdict was properly denied.

Applicant additionally argued in "Applicant's 3rd Motion to Amend PCR Application," that "counsel highly prejudiced Applicant when he opened the door to the results of Kenny Lavender's polygraph test," claiming that this "implied to the jury to believe not only was Kenny Lavender polygraph tested . . . [b]ut that all other co-conspirators may also have been tested before testifying, to corroborate their and Applicant's involvement." Applicant further argued that "counsel should have never brought up the polygraph test because they aren't considered reliable and are questionable."

In making its decision, the Court had before it the available records of the State Grand Jury Clerk of Court regarding the subject convictions, and/or the Applicant's records from the South Carolina Department of Corrections, the

Applicant's Application, the trial transcript, the sentencing transcript, and the *Respondent's Return*.

At the hearing before this Court, the Respondent made an oral motion regarding the *pro se* amendments and argued that they were not properly before this Court.³

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. This Court found the testimony of counsel to be more credible than the testimony of Applicant as to all allegations raised in the application and at the hearing.

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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.

³ See, e.g., Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

At the PCR hearing, Applicant testified that he retained his trial counsel, Matthew Kappel, Esquire, and paid him \$15,000 for his services. Applicant testified that he discussed his case with Counsel both in person and over the phone. Applicant further testified that he reviewed all of the State's evidence and witnesses against him. Applicant also testified that Counsel initially asked for a



plea agreement entailing a seven-year sentence, but the State offered a sentence of twelve years. The State later changed its offer to fifteen, which the Applicant decided to decline. Applicant claims he and his family were aware of the April 7 court date, but not of the December trial. He admits that he did not communicate with Counsel after his flight and before sentencing. Applicant testified that he is filing for post-conviction relief because it is his "last chance." Applicant claimed he fled [to South Dakota] because he was afraid of an unfavorable trial outcome.

At the hearing, Applicant reiterated some of the claims made in his PCR applications. Applicant stated that he was concerned that Counsel did not argue material variance or withdrawal from conspiracy, and that these were important issues for him. Furthermore, Applicant noted that Counsel failed to object to the State's offering to introduce drugs into evidence. Applicant also stated that Counsel failed to object to remarks in the State's closing that some of Applicant's co-conspirators killed people, which Applicant claimed was prejudicial.

Counsel testified that he has practiced law in the state of South Carolina since 1998 and that approximately seventy percent of his practice consists of criminal defense, amounting to over fifty criminal trials. Counsel testified that he was retained by Applicant's family, and that he met with Applicant "a number of times" both while Applicant was in and out of jail. Counsel reviewed all discovery materials and discussed potential plea deals with the Attorney General's office. Counsel testified that the plea offer was approximately fifteen years, but that he advised Applicant of the possibility of a thirty-year sentence following a trial.

Moreover, the State's position was strengthened before trial because Applicant's co-conspirators were convinced to plead guilty and testify at trial. Counsel testified that he was not able to expound deeply on the plea-bargaining process because Applicant made the decision to reject the plea offer. Applicant "never wanted to plea."

Counsel testified that he had no contact with the Applicant before trial because Applicant removed his GPS monitor and absconded. Applicant was tried in absentia. Counsel testified that he did not have a good-faith basis to request a continuance or object to a trial in absentia. Counsel also stated that he had previously discussed with the Applicant the consequences of breaking the terms of his bond and failing to show for court.

Counsel testified that during the trial he attempted to object to the entry of the drugs into evidence based on their irrelevancy, but the Court allowed entry due to a finding of conspiracy.⁴ Counsel also testified that in cross-examination of the State's expert witness, he brought out the fact that Kenny Lavender had failed a polygraph, which undermined his credibility.⁵ Counsel also stated that he chose this course of action because the advantage of opening the door to his polygraph results and showing that the witness was not credible outweighed any risk that the jury might infer that other co-conspirators had passed the polygraph. Thereafter, the State offered the plea agreements for the other witnesses into evidence because the plea agreements referenced their polygraphs. Counsel admitted that he was

⁴ Trial transcript, p. 493; objection renewed p. 499.

⁵ Trial transcript, p. 205; 410; 649, etc.

aware of the risk of the implication that other witnesses had passed polygraph exams, but was willing to let it go to the jury because there was no physical evidence against the defendant; rather, the State presented only the self-interested testimony of co-conspirators. Counsel further stated that he and Applicant came to the decision that, if Applicant was named as a co-conspirator by the other defendants, Counsel and Applicant would argue that they were only doing so to gain a more favorable sentence for themselves. Counsel was familiar with the argument of "withdrawal from a conspiracy," but deemed that argument inappropriate due his and Applicant's decision to deny involvement in the conspiracy and because it did not adequately deal with the fact that the State had over four-hundred grams of methamphetamine in its possession. Counsel also testified that he did not object to statements by the Attorney General about co-conspirators use of guns, because he believed that these statements would make the testimony of the co-conspirators less credible in the minds of the jury. Counsel later filed a Notice of Appeal, but did not hear from the State after doing so.

This Court finds the testimony of Counsel to be most credible. This Court also finds that the Applicant has failed to meet his burden of proof and has not presented any evidence of any deficient conduct on Counsel's behalf that would have undermined the jury's verdict.

Counsel failed to object to the sufficiency of the indictment

Applicant alleged that Counsel was deficient in failing to object to the sufficiency of the indictment. This Court finds this allegation without merit.

Counsel would have no legal basis on which to object to the sufficiency of this indictment. An indictment is sufficient "if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and if an acquittal or a conviction thereon may be pleaded as a bar to any subsequent prosecution." Winns v. State, 363 S.C. 414, 418, 611 S.E.2d 901, 903 (2005) (citing Joseph v. State, 351 S.C. 551, 561, 571 S.E.2d 280, 285 (2002)).

Counsel's performance was deficient when he opened the door to the results of co-conspirator's polygraph results on cross examination

With regard to the Applicant's allegation that Counsel was deficient in his cross-examination of the State's witness, which opened the door to the results of his co-conspirator's polygraph examination, this Court finds that the Applicant has failed to meet his burden of proof. The nature and scope of cross-examination is inherently a matter of trial tactics. The Applicant has the burden of providing that counsel's performance was deficient and that counsel's deficient performance prejudiced the Applicant such that there is a reasonable probability that but for counsel's errors, the outcome of the trial would have been different. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Moreover, where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313. The Applicant has not shown that a different approach on cross examination would have been beneficial to the defense. Accordingly, Applicant has failed to meet his burden of proof.

Counsel failed to object to object to State's offer to introduce drugs into evidence

The Applicant alleged that Counsel was ineffective for failing to object to the State's offer to introduce drugs into evidence. This allegation has no factual basis and is unsupported by Counsel's testimony and the trial transcript.⁶

Counsel failed to object to prejudicial remarks in the State's closing and also failed to argue material variance and withdrawal from conspiracy.

With regard to the Applicant's allegations that Counsel was ineffective in failing to object to prejudicial remarks in the State's closing and failing to argue "material variance" and withdrawal from conspiracy, this court finds that the Applicant has failed to meet his burden of proof. This Court finds that Counsel articulated a valid reason that he did not object to the State's closing remarks and his choice not to make the aforementioned arguments. *Id.* 317 S.C. 292, 294, 454 S.E.2d 312, 313. At the hearing, Counsel testified that he didn't object to comments by the solicitor that the State's witnesses, Applicant's co-conspirators, were dangerous and participated in undesirable behaviors because trial counsel wanted to leave the jury with the impression that the witnesses were not credible. Counsel testified that he and Applicant decided that they would argue that the Applicant was not a part of the conspiracy at all, which would be inconsistent with arguments of withdrawal. Moreover, Counsel's decision not to argue material variance was valid trial strategy, as this course of action may have undermined their argument that Applicant was not a part of the conspiracy. The Applicant has

⁶ Trial transcript, p. 493; objection renewed p. 499.

not shown that Counsel's performance fell below an objective standard of reasonableness or that Counsel's performance was prejudicial.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id. Additionally, the

Applicant's appeal was an Anders appeal and the South Carolina Court of Appeals found no issue(s) of arguable merit.⁷

This Court finds that this allegation must be denied and dismissed as Applicant cannot establish that he would have been successful on appeal absent counsel's allegedly unprofessional errors. Specifically, there is no reasonable likelihood that Applicant would have been successful on appeal, had appellate counsel sought discretionary review by the Supreme Court, after Applicant's appeal was dismissed by the Court of Appeals. Moreover, Applicant offered no additional testimony or evidence in support of his allegation at the hearing. Therefore, this allegation must be denied and dismissed with prejudice.

Summary

This Court finds in regards to the allegations of ineffective assistance of trial and appellate counsel, Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his

⁷ In Anders v. California, the United States Supreme Court announced the procedure an appointed attorney should follow if that attorney believes the client's appeal is frivolous and without merit. 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Under Anders, the defendant must be given time to respond and to raise any additional points after his attorney submits the Anders brief. Id. The court then is obligated to conduct a "full examination" of the record to determine whether the appeal is "wholly frivolous." Id.

representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, his allegations of ineffective assistance of trial and appellant council are denied.

CONCLUSION

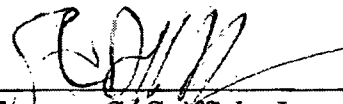
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29th day of June, 2015.



Eugene C. Griffith, Jr.
Presiding Judge

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	CASE NO. 2005GS 47 25
	)	
VS.	)	INDICTMENT FOR
	)	UNLAWFUL DRUGS
AMANDA FORDHAM,	)	
KENNETH LEE LAVENDER,	)	Trafficking Methamphetamines
KEVIN DALE MOSER aka "REDNECK",	)	(Conspiracy)
BRIAN OLIVER MUELLER,	)	S.C. Code Ann. § 44-53-375(C)(5)
CHAD EARNEST SEXTON,	)	
ROBERT LAWRENCE SEXTON aka "Robby")	)	
SETH AARON STEARNS,	)	
	)	
DEFENDANTS.	)	

FILED
DEC 13 2005
 LISA C. DUNBAR,
 CLERK, STATE GRAND JURY

At a session of the State Grand Jury of South Carolina, convened in Columbia,
 South Carolina, on December 13, 2005, the State Grand Jurors present upon their oath:

COUNT I
TRAFFICKING METHAMPHETAMINE (CONSPIRACY)
S.C. Code Ann. § 44-53-375 (C)(5)

That AMANDA FORDHAM, KENNETH LEE LAVENDER, KEVIN DALE MOSER, BRIAN OLIVER MUELLER, CHAD EARNEST SEXTON, ROBERT LAWRENCE SEXTON, SETH AARON STEARNS, and other persons whose names are both known and unknown to the State Grand Jury, did in Anderson County, Greenville County and Pickens County of South Carolina, during the period of time extending from on or about January 1, 2004 to present, conspire to sell, manufacture, deliver, purchase, or bring into this State, more than four hundred (400) grams of methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by

law and such activity occurring and/or having significance in more than one county of
this State.

Against the peace and dignity of the State and contrary to the statute in such case
made and provided.

A True Bill

Cathy P. Coffey
FOREMAN

Henry McMaster
HENRY McMASTER (sop)
ATTORNEY GENERAL