

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Oconee County
Honorable Edgar W. Dickson, Circuit Court Judge

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S.C. SUPREME COURT

GREGORY LEE MURPHY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002445

APPENDIX

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STATE OF SOUTH
CAROLINA

COUNTY OF OCONEE

) IN THE COURT OF GENERAL
) SESSIONS
)
) INDICTMENT NO: 2013-GS-37-312

STATE OF SOUTH
CAROLINA

PLAINTIFF,

-vs-

GREGORY LEE MURPHY,

DEFENDANT.

)
)
)
) TRANSCRIPT OF RECORD
) TRIAL - VOLUME I
)
)
)
)
)

JUNE 24, 2013
WALHALLA, 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:

BLAIR L. STOUDEMIRE ESQ.
DEPUTY 10TH CIRCUIT SOLICITOR
ATTORNEY FOR THE STATE

R. DANIEL DAY, ESQ.
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1 ** START OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD **

2 DAY 1 OF GREGORY LEE MURPHY TRIAL

3 **THE COURT:** All right. The first case is the State
4 of South Carolina versus Gregory Lee Murphy, 2013-DR-37-
5 312.

6 (Discussion off the record.)

7 **THE COURT:** All right. As I say, the first case is
8 the State of South Carolina versus Gregory Lee Murphy
9 2013-DR-37-312. Is there anything from the State before
10 we bring the jury in and strike the jury?

11 **MR. STOUDEMIRE:** Nothing, Your Honor.

12 **THE COURT:** All right. Anything from the
13 Defendant?

14 **MR. DAY:** Your Honor, if I may, Mr. Murphy advises
15 me that he wishes to have other counsel.

16 **THE COURT:** All right. Is that correct,
17 Mr. Murphy?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** How long have you been representing
20 Mr. Murphy, Mr. Day?

21 **MR. DAY:** We, in December-January of this year on
22 this particular case.

23 **THE COURT:** All right. And you met with your
24 client?

25 **MR. DAY:** Yes, sir.

1 THE COURT: Have you done everything he's asked you
2 to do?

3 MR. DAY: Everything except get a decent
4 recommendation from the State as to a recommended
5 sentence. Other than that --

6 THE COURT: I mean as far as witnesses or anything
7 that he's asked you to subpoena or prepare?

8 MR. DAY: I was unable to get the bench warrant
9 lifted and he was arrested on a separate case. Other
10 than that, I believe I've done everything.

11 THE COURT: All right. Is that correct,
12 Mr. Murphy?

13 THE DEFENDANT: No, sir. I kind of feel like he
14 was questioning me instead of representing me, like I
15 have been questioned instead of represented.

16 THE COURT: All right. Which witnesses have you
17 requested that he subpoena for you that he hasn't done?

18 THE DEFENDANT: I didn't have none, sir.

19 THE COURT: Has he not done anything, it's just you
20 don't like him?

21 THE DEFENDANT: I just feel like he ain't done
22 nothing towards the case to help me.

23 THE COURT: All right.

24 THE DEFENDANT: And I'm sorry for the
25 inconvenience.

1 **THE COURT:** All right. In light of the fact that
2 the Defendant has not pointed to any specific testimony
3 or other evidence that could have been produced or that
4 -- and his complaint is generally that he doesn't think
5 he's doing enough or what another attorney might have
6 done, I do not find sufficient cause to grant his motion
7 to relieve counsel on Bozeman versus State 307 S.C. 172,
8 414 S.E.2d 144. Motion denied. All right. Good luck
9 with your case, though.

10 **MR. DAY:** One more, Your Honor.

11 Your Honor, on behalf of the Defendant he is asking
12 that in this case the Solicitor, Mr. Stoudemire, be
13 recused from the case. His grounds are that back in
14 approximately 2003-2004 Mr. Stoudemire when he was in
15 private practice represented the guardians *ad litem* in
16 cases in Family Court, and as such he was involved in a
17 case as Guardian *ad litem* for the -- I mean as attorney
18 for the Guardian *ad litem* in a case in which
19 Mr. Murphy's parental rights were terminated.

20 He feels that as a result of that that
21 Mr. Stoudemire is not being fair with him, has not
22 offered him a reasonable or decent or fair
23 recommendation as to a recommendation from the State on
24 a guilty plea and as such does not feel he is treating
25 him as he should be and would not get a fair trial or

1 his rights are fully protected under the Constitution if
2 Mr. Stoudemire is the one doing the prosecution.

3 THE COURT: Any specific thing that he has been
4 denied? Of course, there is no Constitutional right to
5 plea.

6 MR. DAY: I understand that, Your Honor.

7 THE COURT: All right. Mr. Stoudemire, do you want
8 to recuse yourself?

9 MR. STOUDEMIRE: No, sir. We're ready to go
10 forward.

11 THE COURT: Do you hold any animosity or any
12 personal feelings about Mr. Murphy?

13 MR. STOUDEMIRE: Absolutely none, Your Honor. In
14 fact, I have vague memories of the 2003 TPR case that he
15 references. I did represent the Guardian *ad litem*
16 during that time. I represented them on several cases.

17 THE COURT: How many cases would you have been
18 involved in in that capacity?

19 MR. STOUDEMIRE: I'd say around that time, Judge,
20 could be anywhere from 50 to 75.

21 THE COURT: All right. Again, I don't find
22 sufficient grounds to request for -- and, again, I am
23 asking you, though, as far as an ethical problem, do you
24 find any reason that would create or be sufficient to
25 recuse yourself?

1 **MR. STOUDEMIRE:** No, Your Honor. Everything I've
2 done in this particular case is based upon the facts and
3 circumstances dealing with this case. At no time did I
4 consider any case in the past.

5 **THE COURT:** All right. Motion denied.

6 All right. We are ready to go forward now?

7 **MR. STOUDEMIRE:** Yes, sir, the State is ready to
8 proceed.

9 (Whereupon, the defendant conferred with counsel
10 off the record.)

11 **MR. DAY:** That's all, Your Honor, thank you.

12 **THE COURT:** All right, very good. Ask the jury to
13 join us now.

14 (The Jury entered the courtroom at approximately
15 11:25 a.m.)

16 **THE SHERIFF'S DEPUTY:** They're in, Your Honor.

17 **THE COURT:** Very good.

18 Ladies and gentlemen, this is a term of General
19 Sessions court, sometimes called criminal court. Its
20 purpose is to resolve questions of alleged criminal
21 conduct arising between the State of South Carolina and
22 the Defendant in a fashion which will ensure that
23 justice under the law is accomplished. The trial of a
24 case begins with the selection of a jury. Both the
25 State and the Defendant are entitled to jurors who

1 approach the case with an open mind.

2 The trial jury must be free as humanly possible
3 from any bias, prejudice or statements, then you can
4 decide without any preconceived ideas on the facts of
5 the case or the law of the case. Therefore, certain
6 questions will be asked of you the petit jury panel such
7 as will be asked and designed to assure each side a fair
8 and impartial jury.

9 I might go further that if any person should
10 attempt to talk with you or talk with you about any case
11 scheduled for this term of court, it would be your
12 solemn duty to immediately report that matter to the
13 Court. You have been sworn as jurors for the court of
14 General Sessions of Oconee County and no one is to
15 interfere with your service as such. As I say, if
16 anybody should make any effort to talk to you about any
17 case, you should immediately report them to one of the
18 bailiffs and I'll take the appropriate action.

19 Solicitor, you may call your first case.

20 **MR. STOUDEMIRE:** Thank you, Your Honor. May it
21 please the Court, the State calls the State of the State
22 v. Gregory Lee Murphy Indictment Number 2013-GS-37-312
23 on the charge of manufacture, distribution, et cetera,
24 of methamphetamine.

25 **THE COURT:** Ladies and gentlemen of the petit jury

1 panel, please give me your attention. We are about to
2 commence and call of the case entitled State of South
3 Carolina versus Gregory Lee Murphy in the bill of
4 Indictment by the Grand Jury Number 2013-GS-37-312 where
5 he's charged with manufacturing of methamphetamine. All
6 right. The Defendant, Mr. Murphy, is represented by
7 Mr. Day and the State is represented by Mr. Stoudemire.

8 Mr. Stoudemire, if you would please stand,
9 introduce yourself, and anybody who will be assisting
10 you in the trial of this case.

11 **MR. STOUDEMIRE:** Thank you, Your Honor. Good
12 morning, ladies and gentlemen. My name is Blair
13 Stoudemire. I am one of the prosecutors here of the
14 Anderson Oconee Solicitor's Office. Seated with me at
15 the table is Sergeant Brandon Long of the Oconee County
16 Sheriff's Office who will be assisting me in this case.

17 **THE COURT:** All right. Thank you very much
18 gentlemen.

19 And as I say, the Defendant, Mr. Gregory Lee Murphy
20 is represented by Mr. Day. Mr. Day, if you would stand,
21 introduce yourself and your client.

22 **MR. DAY:** Thank you, sir.

23 Ladies and gentlemen, I'm Danny Day with the Public
24 Defender's Office here in Oconee County. I represent
25 Greg Murphy, and the lady sitting them to him is his

1 mother, Mary Burrell (phonetic).

2 THE COURT: Very good. Thank you. Is any member
3 of the jury panel related by blood or marriage to the
4 Defendant Gregory Lee Murphy?

5 (There was no response.)

6 Any member of the jury panel related by blood or
7 marriage, close personal friend or business associate to
8 the Defendant Gregory Lee Murphy? If so, would you
9 please stand at this time.

10 (There was no response.)

11 All right. I'm gonna read a list of potential
12 witnesses in this case. Now, these are potential
13 witnesses. That means they may be called but they do
14 not have to be during the trial of the case. If they
15 are in the courtroom if they would also please stand and
16 look upon the jury. Marlee Crowe, Sergeant Tim
17 Hunnicutt, Lieutenant Jeremy Chapman, Meredith Lanford,
18 Sergeant Brandon Long, Sergeant David Philpott, Laura
19 Smith.

20 (There was no response.)

21 Are there any members of the Jury Panel that are
22 related by blood or marriage, close personal friend or
23 business associate of any of the potential witnesses in
24 this case: Marlee Crowe, Sergeant Tim Hunnicutt,
25 Lieutenant Jeremy Chapman, Meredith Lanford, Sergeant

1 Brandon Long, Sergeant David Philpott, or Laura Smith,
2 if you would please stand at this time.

3 (There was no response.)

4 Was any member of the jury panel a member of the
5 grand jury that found and returned the indictment for
6 this case, that would be the grand jury for Oconee
7 County for the year 2013? Any member of the jury panel
8 a member of the grand jury for Oconee County in the year
9 2013, if they would please stand at this time.

10 (There was no response.)

11 Has any member of the jury panel formed or
12 expressed an opinion about this case? Has any member of
13 the jury panel formed or expressed an opinion about this
14 case? If so, please stand.

15 (There was no response.)

16 Has any member of the jury panel aware of any
17 interest, bias or prejudice towards either the Defendant
18 or the State of South Carolina? If so, please stand.

19 (There was no response.)

20 Does any member of the jury panel know of any
21 reason whatsoever why he or she could not give both the
22 State of South Carolina and the Defendant a fair and
23 impartial trial? If so, please stand.

24 (There was no response.)

25 Any further questions or additional questions from

1 the State?

2 MR. STOUDEMIRE: None, Your Honor.

3 THE COURT: Any further questions or additional
4 questions from the Defendant?

5 MR. DAY: No, Your Honor.

6 THE COURT: Very good.

7 Now, ladies and gentlemen of the jury panel, the
8 way we select a jury in General Sessions Court is that,
9 and we do it with the computers. The computer will
10 randomly draw 20 names, and I'm gonna also ask that at
11 least one alternate, an additional three names. These
12 numbers or these names, as I say, are randomly selected
13 by the computer, so the numbers that you will hear, or
14 actually when you hear the number on the list, it does
15 not relate to your juror number. However, once the list
16 of 20 names and then the additional three names are
17 selected, then we will call on the individual members of
18 the Jury Panel up and each side will excuse or have the
19 right to excuse four of those 20, which will leave 12
20 out of there once the eight are excused.

21 However, they could select all 12, the first 12.
22 But the fact remains is that we will have 12 panel sit
23 at the petit jury panel and then we will have each side
24 will -- no, we'll have 22 so we'll have to have four
25 names for the alternate. And so the State has one

1 challenge for cause or excuse, can excuse a juror, and
2 the Defendant has two.

3 Now, the way it will work is that once we get the
4 list, then we will call the jurors forward. As your
5 name is called, if you would bring with you anything
6 that you have. And if you would come to the front of
7 the courtroom, the bailiff will open the gate here for
8 you, and you can come to the bar turning towards the
9 back of the room. And the State will go first, they
10 will either say please present the juror or excuse the
11 juror and then the Defendant will go next and either say
12 please swear the juror or excuse the juror. Once we get
13 12 jurors -- did I say four? This is five and five,
14 isn't it?

15 MR. DAY: I think ten, Your Honor.

16 THE COURT: Is it five and ten?

17 MR. STOUDEMIRE: Yes, Your Honor.

18 THE COURT: It's five and ten, excuse me. I've
19 been doing Common Pleas which is civil court. You have
20 five challenges for the State and the Defendant has ten,
21 up to ten.

22 All right. But anyway, as your name is called or
23 if your name is called if you would please come forward.

24 Now, could I have a bailiff, Mr. McGuffin or
25 somebody.

1 All right. Madam Clerk, are we ready? Madam
2 Clerk, please give us a jury.

3 THE CLERK: Ladies and gentlemen, as I call your
4 name if you would please come forward if you'll come to
5 the bar, turn around and face the gallery.

6 Juror Number 65, Michelle Hammond.

7 (Whereupon, a White female approached.)

8 THE CLERK: What says the State?

9 MR. STOUDEMIRE: Please present the juror.

10 THE CLERK: What says the Defense?

11 MR. DAY: Please seat Ms. Hammond.

12 THE CLERK: Ma'am, if you would, please take a seat
13 in the jury box.

14 Number 99, Anna Martin.

15 (Whereupon, a White female approached.)

16 THE CLERK: What says the State?

17 MR. STOUDEMIRE: Please present the juror.

18 THE CLERK: What says the Defense?

19 MR. DAY: Please excuse Ms. Martin in this case.

20 THE CLERK: Ma'am, you have been excused from this
21 case, you may be seated.

22 Number 19, Brianna Bright.

23 (Whereupon, a White female approached.)

24 What says the State?

25 MR. STOUDEMIRE: Please present the juror.

1 THE CLERK: What says the Defense?

2 MR. DAY: Excuse Ms. Bright in this case.

3 THE CLERK: Ma'am, you have been excused from this
4 case, you may be seated.

5 Number 29, Delaine Childress.

6 (Whereupon, a White female approached.)

7 What says the State?

8 MR. STOUDEMIRE: Please present the juror.

9 THE CLERK: What says the Defense?

10 MR. DAY: Excuse Ms. Childress in this case,
11 please.

12 THE CLERK: Number 32, Linda Cobb.

13 (Whereupon, a Black Female approached.)

14 THE CLERK: What says the State?

15 MR. STOUDEMIRE: Please present the juror.

16 THE CLERK: What says the Defense?

17 MR. DAY: Please seat Ms. Cobb.

18 THE CLERK: Ma'am, if you would, please take a seat
19 in the jury box.)

20 Number 93, Randall Lear.

21 (Whereupon, a White male approached.)

22 THE CLERK: What says the State?

23 MR. STOUDEMIRE: Please present the juror.

24 THE CLERK: What says the Defense?

25 MR. DAY: Please seat Mr. Lear.

1 THE CLERK: Sir, if you would, please take a seat
2 in the jury box.

3 Number 163, Tiffany Watkins.

4 (Whereupon, a White female approached.)

5 MR. DAY: What was that number, I'm sorry?

6 THE CLERK: Number 163, Tiffany Watkins.

7 What says the State?

8 MR. STOUDEMIRE: Please excuse Ms. Watkins on this
9 case.

10 THE CLERK: Ma'am, you have been excused from this
11 case, you may be seated.

12 Number 166, Pamela Welborn.

13 (Whereupon, a White female approached.)

14 THE CLERK: What says the State?

15 MR. STOUDEMIRE: Please present the juror.

16 THE CLERK: What says the Defense?

17 MR. DAY: Excuse Ms. Welborn in this case.

18 THE CLERK: Ma'am, you have been excused from this
19 case, you may be seated.

20 Number 85, Charlie Jernigan.

21 (Whereupon, a White male approached.)

22 THE CLERK: What says the State?

23 MR. STOUDEMIRE: Please present the juror.

24 THE CLERK: What says the Defense?

25 MR. DAY: Please seat Mr. Jernigan.

1 THE CLERK: Sir, if you would, please take a seat
2 in the jury box.

3 Number 100, Lynne Martin.

4 (Whereupon, a White female approached.)

5 THE CLERK: What says the State?

6 MR. STOUDEMIRE: Please present the juror.

7 THE CLERK: What says the Defense?

8 MR. DAY: Excuse Ms. Martin in this case, please.

9 THE CLERK: Ma'am, you have been excused from this
10 case, you may be seated.

11 Number 38, Christopher Damron.

12 (Whereupon, a White male approached.)

13 THE CLERK: What says the State?

14 MR. STOUDEMIRE: Please excuse Mr. Damron on this
15 case.

16 THE CLERK: Sir, you have been excused from this
17 case, you may be seated.

18 Number 111, Casey Mitchell.

19 (Whereupon, a White female approached.)

20 THE CLERK: What says the State?

21 MR. STOUDEMIRE: Please present the juror.

22 THE CLERK: What says the Defense?

23 MR. DAY: Please seat Ms. Mitchell.

24 THE CLERK: Ma'am, if you would, please take a seat
25 in the jury box.

1 Number 52, Melissa Fortson.

2 (Whereupon, a White female approached.)

3 THE CLERK: What says the State?

4 MR. STOUDEMIRE: Please present the juror.

5 THE CLERK: What says the Defense?

6 MR. DAY: Excuse Ms. Fortson in this case, please.

7 THE CLERK: Ma'am, you have been excused from this
8 case, you may be seated.

9 Number 45, Rachel Duncan.

10 (Whereupon, a White female approached.)

11 THE CLERK: What says the State?

12 MR. STOUDEMIRE: Please excuse Ms. Duncan on this
13 case.

14 THE CLERK: Ma'am, you have been excused from this
15 case, please be seated.

16 Number 35, Amanda Coppock.

17 (Whereupon, a White female approached.)

18 THE CLERK: What says the State?

19 MR. STOUDEMIRE: Please present the juror.

20 THE CLERK: What says the Defense?

21 MR. DAY: Please seat Ms. Coppock, please.

22 THE CLERK: Ma'am, if you would, please take a seat
23 in the jury box.

24 Number 124, Tina Partin.

25 (Whereupon, a Hispanic female approaches.)

1 THE CLERK: What says the State?

2 MR. STOUDEMIRE: Please present the juror.

3 THE CLERK: What says the Defense?

4 MR. DAY: Excuse Ms. Partin in this case, please.

5 THE CLERK: Ma'am, you have been excused from this
6 case, you may be seated.

7 Number 119, Jacob Nix.

8 (Whereupon, a White male approached.)

9 THE CLERK: What says the State?

10 MR. STOUDEMIRE: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. DAY: Please seat Mr. Nix.

13 THE CLERK: Sir, if you would, please take a seat
14 in the jury box.

15 Number 127, Nichos Poole.

16 (Whereupon, a Black male approached.)

17 THE CLERK: What says the State?

18 MR. STOUDEMIRE: Please present the juror.

19 THE CLERK: What says the Defense?

20 MR. DAY: Seat Mr. Poole.

21 THE CLERK: Sir, if you would, please take a seat
22 in the jury box.

23 Number 21, Diane Brown.

24 (Whereupon, a White female approached.)

25 THE CLERK: What says the State?

1 MR. STOUDEMIRE: Please present the juror.

2 THE CLERK: What says the Defense?

3 MR. DAY: Excuse Ms. Brown in this case, please.

4 THE CLERK: Ma'am, you have been excused from this
5 case, you may be seated.

6 Number 98, Kathryn Mabry.

7 (Whereupon, a White female approached.)

8 THE CLERK: What says the State?

9 MR. STOUDEMIRE: Please present the juror.

10 THE CLERK: What says the Defense?

11 MR. DAY: Excuse Ms. Mabry in this case.

12 THE CLERK: Ma'am, you have been excused from this
13 case, you may be seated.

14 Number 101, Steven Massey.

15 (Whereupon, a White male approached.)

16 THE CLERK: What says the State?

17 MR. STOUDEMIRE: Please excuse Mr. Massey on this
18 case.

19 THE CLERK: Sir, you have been excused from this
20 case, you may be seated.

21 Number 56, Gregory Freeman.

22 (Whereupon, a White male approached.)

23 What says the State?

24 MR. STOUDEMIRE: Please present the juror.

25 THE CLERK: What says the Defense?

1 MR. DAY: Please seat Mr. Freeman.

2 THE CLERK: Sir, if you would, please take a seat
3 in the jury box.

4 Number 68, Grace Hanna.

5 (Whereupon, a White female approached.)

6 THE CLERK: What says the State?

7 MR. STOUDEMIRE: Please present the juror.

8 THE CLERK: What says the Defense?

9 MR. DAY: Please seat Ms. Hanna.

10 THE CLERK: Ma'am, if you would, please take a seat
11 in the jury box.

12 Number 82, Sonja Jefferson.

13 (Whereupon, a White female approached.)

14 THE CLERK: What says the State?

15 MR. STOUDEMIRE: Please present the juror.

16 THE CLERK: What says the Defense?

17 MR. DAY: Please seat Ms. Jefferson.

18 THE CLERK: Ma'am, if you would, please take a seat
19 in the jury box.

20 Number 110, Melissa Milam.

21 (Whereupon, a White female approached.)

22 THE CLERK: What says the State?

23 MR. STOUDEMIRE: Please present the juror.

24 THE CLERK: What says the Defense?

25 MR. DAY: Excuse Ms. Milam in this case, please.

1 THE CLERK: Ma'am, you have been excused from this
2 case, you may be seated.

3 Number 46, Lisa Durham.

4 (Whereupon, a White female approached.)

5 THE CLERK: What says the State?

6 MR. STOUDEMIRE: Please present the juror.

7 THE CLERK: What says the Defense for cause?

8 MR. DAY: Please seat the juror.

9 THE CLERK: Ma'am, if you would, please take a seat
10 in the jury box.

11 This will be for the alternate.

12 Number 164, Erica Webb.

13 (Whereupon, a White female approached.)

14 THE CLERK: What says the State?

15 THE COURT: Two and one on the alternate.

16 THE CLERK: What says the State?

17 MR. STOUDEMIRE: Please excuse Ms. Webb on this
18 case.

19 THE CLERK: Ma'am, you've been excused from this
20 case, you may be seated.

21 Number 174, Sara Wright.

22 (Whereupon, a White female approached.)

23 THE CLERK: What says the State for cause?

24 MR. STOUDEMIRE: Please present the juror.

25 THE CLERK: What says the Defense?

1 MR. DAY: Excuse Ms. Wright in this case, please.

2 THE CLERK: Ma'am, you have been excused from this
3 case, you may be seated.

4 Number 15, Christina Blume.

5 (Whereupon, a White female approached.)

6 THE CLERK: What says the State for cause?

7 MR. STOUDEMIRE: Please present the juror.

8 THE CLERK: What says the Defense?

9 MR. DAY: Excuse Ms. Blume in this case, please.

10 THE CLERK: Ma'am, you have been excused from this
11 case, you may be seated.

12 Number 160, Karen Underwood.

13 (Whereupon, a White female approached.)

14 THE CLERK: What says the State for cause?

15 MR. STOUDEMIRE: Please present the juror.

16 THE CLERK: What says defense for cause?

17 MR. DAY: Seat the juror, please.

18 THE CLERK: Ma'am, if you would, please take a seat
19 in the jury box.

20 THE COURT: All right. Is there any reason this
21 jury cannot be sworn for the trial of the case from the
22 State?

23 MR. STOUDEMIRE: None, Your Honor.

24 THE COURT: From the Defense?

25 MR. DAY: None, Your Honor.

1 **THE COURT:** Very good. Ms. Durham, since you were
2 the last one drawn on the jury of the first 12 seated
3 I'm gonna ask you to serve as foreperson of the jury
4 when we come back to try the case. And Ms. Underwood,
5 you are the alternate so you will also sit in that seat.
6 Those are the only two seats, Ms. Durham you will sit in
7 the first seat front row where you're seated. Everyone
8 else can sit wherever they would. Those are the only
9 two seats reserved are the alternate and the foreperson.

10 Now, I'm gonna ask you to go with the bailiff. I
11 need to take up some matters with the attorneys. I'll
12 tell you what, can you approach.

13 (Discussion at sidebar.)

14 **THE COURT:** Madam Forelady, ladies and gentlemen of
15 the jury, we are not gonna start the trial of this case
16 today. We have some matters we have to take up before
17 we do begin the trial, so we're gonna start tomorrow
18 morning at 10:00. So what I'm gonna do, and this
19 instruction is gonna be for everybody because we're
20 gonna draw another jury today before we adjourn, at
21 least I dismiss the jury. You are not to discuss this
22 case among yourselves in any way.

23 A trial follows a certain procedure and you never
24 know what's the most important part of it. It could be
25 the opening statements by the attorneys or the first

1 witness or the last witness or the closing arguments or
2 the charge on the law. You need to keep an open mind
3 throughout the trial of the case. I'll say this to all
4 those who are drawn on juries this week that this is the
5 most difficult time for you because you are going home
6 and somebody will ask what are you doing? And you'll
7 say, well I've been drawn a trial. And they'll say,
8 well what's it about? And, obviously, you don't know
9 anything about it yet but you're gonna have to tell them
10 you can't discuss it regardless. And they're gonna say,
11 well why not? And you're gonna have to tell them
12 because the judge said so.

13 I think you'll find out that every case in General
14 Sessions Court is important to all parties involved, the
15 State of South Carolina, the Defendants, and the
16 witnesses and everything else. And those cases need to
17 be resolved in the proper fashion. And no one who is
18 not sitting in that jury box or in the jury room with
19 those jurors who are selected on a trial on a jury can
20 help you in any way because they will not have heard any
21 of the testimony, seen any of the evidence or anything
22 of that nature. The only thing they can do is confuse
23 the proper resolution of the case.

24 So with that instruction that you are not to have
25 any discussion with anything or permit anyone to discuss

1 it with you. If they attempt to do so, report them so I
2 might take the appropriate action. I'm going to ask
3 this jury to go with the bailiff and he will show you
4 the jury room that you will be using during the trial of
5 this case.

6 Please do not undertake discussion even among
7 yourselves. With that I will dismiss you for the
8 balance of the day. And if you would, please, come back
9 at 10:00 in the morning and we'll begin the trial at
10 that time.

11 Again, everyone else can remain seated while the
12 jury retires from the courtroom.

13 (Whereupon, the Jury left the courtroom at
14 approximately 12:00 p.m.)

15 THE COURT: All right. Mr. McGuffin. (Deputy to
16 court.)

17 THE COURT: Could I see the attorneys, please?
18 (Discussion at sidebar.)

19 (Whereupon, day one of trial concluded at 12:02
20 p.m.)
21
22
23
24
25

1
2
3 CERTIFICATE OF REPORTER

4 I, the undersigned Julie A. Ashbrook, Court
5 Reporter for the Thirteenth Judicial Circuit Family
6 Court of the State of South Carolina, do hereby certify
7 that the foregoing is a true, accurate, and complete
8 transcript of record to the best of my ability of all
9 the proceedings and evidence introduced in the hearing
10 and/or trial of the captioned case, relative to appeal,
11 in the General Sessions Court for Oconee County, South
12 Carolina, on the 24th day of June, 2013.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.
15
16

17 
18 Julie A. Ashbrook
19 Family Court Reporter
20 Thirteenth Judicial Circuit
21
22
23
24
25

1
2 STATE OF SOUTH) IN THE COURT OF GENERAL
3 CAROLINA) SESSIONS
4 COUNTY OF OCONEE) INDICTMENT NO: 2013-GS-37-312

5
6 STATE OF SOUTH)
CAROLINA)
7 PLAINTIFF,) TRANSCRIPT OF RECORD
8 -vs-) TRIAL - VOLUME II
9 GREGORY LEE MURPHY,)
10 DEFENDANT.)

11 JUNE 25, 2013
12 WALHALLA, SOUTH CAROLINA

13
14 B E F O R E:

15 THE HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A
16 JURY.

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

19 BLAIR L. STOUDEMIRE ESQ.
20 DEPUTY 10TH CIRCUIT SOLICITOR
21 ATTORNEY FOR THE STATE

22 R. DANIEL DAY, ESQ.
23 ATTORNEY FOR THE DEFENDANT

24 ROBIN SUE HILD, FCRR, RPR
25 CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

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1 ** START OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD **

2 DAY TWO OF GREGORY LEE MURPHY TRIAL

3 This is Tuesday, June 25, 2013, Oconee County
4 General Sessions Court, Judge Macaulay, morning session,
5 day one of the State of South Carolina versus Gregory
6 Lee Murphy.

7 (Marked for identification was State's Exhibit 1,
8 methamphetamine in BEST pack C14920.)

9 (Marked for identification was State's Exhibit 2,
10 DVD in State of South Carolina versus Murphy dated
11 5-5-2013.)

12 (Marked for identification was State's Exhibit 3,
13 photograph of Murphy.)

14 (Marked for identification was State's Exhibit 4,
15 photograph of Murphy.)

16 (Marked for identification was State's Exhibit 5,
17 photograph of Murphy.)

18 (Marked for identification was State's Exhibit 6,
19 photograph of Murphy.)

20 (Marked for identification was State's Exhibit 7,
21 photograph of Murphy.)

22 THE COURT: Any of the exhibits that the State and
23 the Defendant can agree on? I mean you don't have to,
24 but other than --

25 MR. DAY: May on the pictures.

1 THE COURT: May on the pictures?

2 MR. DAY: I may not agree on the pictures.

3 THE COURT: Let's just leave them all for
4 identification. I expect you to agree on the bag.

5 All right. We're back on the case of State v.
6 Gregory Lee Murphy, 2013-GS-37-312. Is there anything
7 from the State before we bring the jury back?

8 MR. STOUDEMIRE: Nothing, Your Honor.

9 THE COURT: From the Defense? Anything?

10 MR. DAY: Just one second, Your Honor.

11 (The Defendant conferred with counsel off the
12 record.)

13 MR. DAY: No, Your Honor, thank you.

14 THE COURT: All right. Ask the jury to join us,
15 please.

16 (The Jury entered the courtroom at approximately
17 10:25 a.m.)

18 THE COURT: Let's see. Madam, if you would please
19 join the jury down there, and, sir, also. I want the 12
20 jurors all together in one section and then, of course,
21 if you would you might want to move down on the end.
22 There we go. Just so I'll know where the jury is and
23 the alternate.

24 All right. Madam Clerk, if you would please swear
25 the jury.

1 THE CLERK: Ladies and gentlemen, please stand.

2 (All comply.)

3 (Whereupon, the Jury was sworn.)

4 THE CLERK: Please be seated.

5 THE COURT: Madam Forelady, ladies and gentlemen of
6 the jury, I'm sure that you now fully appreciate that
7 this court, the Court of General Sessions for Oconee
8 County exists for the purpose of resolving questions of
9 alleged criminal conduct arising between the State of
10 South Carolina and the Defendant. It is a guaranteed
11 right of every citizen that a charge of criminal conduct
12 be presented in open court according to certain Rules of
13 Procedure.

14 The State has not only an equal right but the duty
15 to present a charge of criminal conduct in open court
16 according the same Rules of Procedure. Each of the
17 parties, therefore, both the State and the Defendant
18 then have an equal right to the opportunity of this
19 judicial proceeding and to have you as the jury selected
20 and now sworn for the trial of this case.

21 One of the most important aspect of your duty as
22 the jury lies essentially in the oath that you have
23 taken to well and truly try and determine the facts in
24 this case. That oath in a very essential way says that
25 you are the sole judges of the facts of the case.

1 Obviously any case tried in court would involve a
2 question of what happened or how something came to
3 happen or whom, if anyone, did anything in a particular
4 occurrence or circumstances.

5 From this point on then no one concerned with the
6 trial of this case has the right to decide any question
7 of fact in this trial or the truth of it except you.
8 The facts then are for your resolution and your decision
9 and yours alone. After you hear all the evidence in the
10 case then it will be your duty to determine the truth by
11 deciding the weight and believability of each part of
12 the evidence and by applying the law of the case
13 thereto.

14 As the trial Judge or as the trial judge my duty is
15 to -- or, actually, I am the Judge of the law of the
16 case. It is also my responsibility, among other duties,
17 to preside over this trial, to rule on the admissibility
18 of evidence during the progress of the trial and to
19 state to you the jury the law applicable to the case.
20 The Constitution of South Carolina mandates that I as
21 the Trial Judge cannot directly or indirectly comment on
22 the facts in the case.

23 The process of a verdict then is simply that you,
24 the jury, first determine what is the truth of the facts
25 and then apply to that true state of facts the

1 principles of law applicable, and by that process
2 determine and report to this Court your final verdict in
3 this case speaking the truth of the case as you
4 determine it.

5 Now I will more fully completely state to you the
6 principles of law applicable to this case before it is
7 submitted to you for your decision. However, there are
8 certain principles of law applicable to the framework in
9 every case in General Sessions Court. The Defendant,
10 for example, has entered a plea of not guilty to the
11 charges he has been indicted.

12 The Indictment of a case is not evidence but simply
13 the written instrument that contains the charge against
14 the defendant and serves as the formal document by which
15 the case is processed into court. The plea of not
16 guilty places upon the State the burden of proof. As is
17 what is meant by the term of burden of proof, the
18 Defendant is presumed in law innocent of all charges
19 contained in the Indictment.

20 The burden of proof requires the State to prove
21 guilt beyond a reasonable doubt and, therefore,
22 consistent with that burden the Defendant or the accused
23 party shall be presumed to be innocent and that
24 presumption of innocence is sufficient to compel a
25 verdict of not guilty or a verdict of acquittal unless

1 you, the jury, conclude that the State has satisfied its
2 obligation to prove the Defendant guilty beyond a
3 reasonable doubt.

4 Now, the term reasonable doubt means the kind of
5 doubt that would cause a reasonable person to hesitate
6 to act. Now, the case will be opened by the Solicitor
7 after which the same opportunity will be afforded to the
8 Defendant to make an opening statement. When all the
9 evidence has been received by the Court, counsel for the
10 State and the Defendant will state to the jury their
11 respective positions after which the Court will fully
12 state the applicable law in the case.

13 Obviously all parts of the case are important. You
14 do not know which witness in the case will be most
15 impress you, whether it be the first witness or the last
16 witness. In reaching your final conclusion you will
17 need the guidance and the principles of law that will be
18 stated to you by the Court.

19 For all these reasons then, if you have any periods
20 of recess, when you retire to the jury room or during an
21 overnight or meal recess, the Court instructs you that
22 you are not, must not undertake discussion of the case
23 among yourselves until the case is finally given to you
24 for your deliberations, nor are you to discuss this case
25 with anyone or permit anyone else to discuss the case

1 with you. If someone tries to do that, I want you to
2 report them immediately.

3 Now, the verdict in this case must be unanimous.
4 That is, all 12 members of the jury must agree on
5 whatever the verdict is reached by the jury.

6 And there are a few other things I need to mention
7 before we begin. As I said earlier, although I am the
8 only person who can tell you what the law is, you and
9 you alone are the only ones who can determine the facts.
10 I do not have the right to indicate how I may feel about
11 the evidence. Being presented and throughout this
12 trial, it is my intention to act impartially towards
13 each party.

14 Second, from time to time an attorney may object to
15 some bit of testimony or evidence that the other side is
16 seeking to present. As in sports or in business or any
17 other structured activity, there are certain rules that
18 both sides must obey in presenting evidence and these
19 rules have a definite purpose. They ensure that the
20 information you receive is the most trustworthy and
21 reliable evidence available.

22 An objection is a procedure we use for an attorney
23 to call a possible violation of the rules to the Court's
24 attention. For this reason you should not hold an
25 attorney's objection against his client nor should you

1 conclude from my ruling on the objection I favor one
2 side or the other.

3 Finally, I would ask you pay the closest attention
4 possible to the evidence presented to you. I will ask
5 that you not take notes. If the note taker makes an
6 error those notes can be more detrimental than helpful
7 during the deliberations. Each of you listen carefully
8 and I'm sure each of you will do that.

9 Having said that, the reason I say that, that I
10 suggest you don't take notes, is you have a tendency to
11 concentrate on the notes. In other words, be sure you
12 are putting down what you think you hear. In doing that
13 you are distracted from what is actually occurring at
14 the time in the courtroom as the testimony or the
15 witnesses or evidence is being presented.

16 More importantly, as I say, if you make an error in
17 those notes, a simple thing like missing a word or even
18 adding a word you think you might have heard changes the
19 note entirely. I would emphasize that. I suggest the
20 word not. If the testimony included not and you missed
21 it, it changes the testimony all together.

22 The better system is how you will reach your
23 verdict in the final instance anyway and that is to rely
24 on the recollection or the understanding of all 12
25 members of the jury and mutually decide what was the

1 actual testimony or what was the actual evidence. As I
2 say, we have a tendency if somebody says well, I've got
3 it written down all of a sudden it becomes more
4 important than what was actually said. As I say, it's
5 what we think we hear that note usually reflects.

6 Now, having said all of that, I do take notes.
7 Please understand it's not one of those things do as I
8 say, not as I do. We have entirely different purposes
9 in this courtroom. As I've said, you and you alone are
10 the only ones that can decide the truth of the facts in
11 this case. In other words, you weigh the evidence, you
12 evaluate the evidence. I'm not concerned about the
13 weight of the evidence. I'm only concerned whether
14 things are done that are required in our procedures so
15 I'm just jotting down what happens. You have to
16 determine the weight or the effect of what is being done
17 in the courtroom. So therefore, my notes have nothing
18 to do with the truth of whatever is done or said in the
19 courtroom. You are the ones who have to decide that.

20 With that I'll recognize the Solicitor for his
21 opening statement.

22 MR. STOUDEMIRE: Thank you, Your Honor. May it
23 please the Court?

24 THE COURT: Mr. Stoudemire?

25 MR. STOUDEMIRE: Good morning, ladies and

1 gentlemen.

2 What we've got for you today is we've got a trial
3 on distribution of methamphetamine. And what the
4 allegations are is that this Defendant, Mr. Gregory Lee
5 Murphy, sold a small quantity of methamphetamine to an
6 undercover operative who was working at the direction of
7 the Oconee County Sheriff's Office, and particularly the
8 officer in charge of this particular operation was
9 Brandon Long. Now, that's basically what I have to show
10 to you now that Mr. Murphy sold drugs, in particular
11 methamphetamine, and that he distributed those drugs in
12 violation of the law.

13 And I have to prove this beyond a reasonable doubt.
14 Now, reasonable doubt is the cornerstone of our justice
15 system and you will hear reasonable doubt various times
16 throughout this trial both at this stage and at the
17 conclusion of testimony prior to your deliberations.
18 Now, reasonable doubt does not mean the removal of all
19 doubt. We had a judge, Judge Epps here for a number of
20 years that essentially said reasonable doubt is a doubt
21 for which you can give a reason. I would submit to you
22 that by the time we get done we will be able to prove
23 this case beyond a reasonable doubt.

24 Now, during our case you will hear from the
25 informant that was used. That is Ms. Marlee Crowe.

1 Now, Marlee Crowe may or may not be somebody you would
2 feel comfortable to have for Thanksgiving dinner. But
3 to be able to do drug transactions you've got to have
4 people that the drug dealer is going to believe this is
5 a person that would be engaged in the purchase of drugs.
6 You can't have Thomas Alexander go down and buy drugs
7 for somebody. It's just not gonna be believable.

8 You will also hear her talking about buying drugs
9 specifically from Mr. Murphy and she bought a small
10 quantity of methamphetamine from him and the price was
11 around \$20. You will also hear from Brandon Long and
12 other law enforcement officers who will detail to you
13 how a drug deal of this type works, how a person is
14 searched beforehand, how they're wired for video and
15 audio, how that is monitored, how they make sure that
16 the drug deal itself takes place and if the drugs they
17 get back in are the drugs that were actually purchased,
18 things of that nature.

19 In addition to that you will hear about the
20 processing of this methamphetamine to determine that it
21 actually is an illegal drug. And you will hear from
22 people such as David Philpotts with the Oconee Sheriff's
23 Office in their evidence department. You will hear from
24 Meredith Lanford, who is a forensic chemist with the
25 Anderson/Oconee County drug lab, and she will be able to

1 tell you all kinds of things that I don't completely
2 understand about what type of procedures they use to
3 test and determine whether or not things are drugs or
4 are not drugs and she'll make it understandable to all
5 of us.

6 We also have a little show and tell for you in the
7 form of a video. The good thing is you are going to see
8 this entire transaction take place before your very eyes
9 up on that screen.

10 So what I'm asking is your attention. We're gonna
11 try to keep things moving at a pace where you won't get
12 bored. And at the conclusion I'll be back to talk to
13 you again and I will be asking you to find Mr. Murphy
14 guilty as charged. Thank you.

15 THE COURT: Mr. Day?

16 MR. DAY: Thank you, Your Honor.

17 Good morning ladies and gentlemen. As the
18 Solicitor says, what we have before you here is a person
19 charged with selling drugs. If you stopped right there,
20 what can you say? That's bad. Selling drugs is not
21 good. No doubt about it. You can't escape it on
22 television, newspapers, many people in their own
23 neighborhoods, in their own towns; nearby in schools,
24 it's all over, selling drugs, not good. And nobody is
25 here to say it is. But there's more to it than just

1 that. What we have here is Greg Murphy. Greg Murphy is
2 an addict. He's a user. He is addicted to meth. It is
3 an insidious drug. It destroys lives. It in so many
4 ways it is in so many ways bad. It's just bad. And
5 when it gets ahold of you it hurts.

6 What you see sitting over here now is Greg Murphy
7 is not the way he looked when he was arrested. The way
8 he looked when he was arrested was wild eyed, thin,
9 because he was hooked and he knew that.

10 He also knew someone who he used drugs with who he
11 contacted and he contacted him to buy drugs. And what
12 he saw was an opportunity to get some more. Here was an
13 opportunity for somebody to help me pay for it, somebody
14 to get me those drugs. And so someone he knew, who knew
15 him and knew he was a user. And she came to get some
16 drugs. She gave him some money. He walked back in the
17 house with these people, he got drugs from them, he
18 brought it back.

19 And you know what? You're gonna see the video of
20 this transaction. It's a very good video. The
21 technology is good so you'll be able to see what's going
22 on. All right? What you will see is she gave him the
23 money, he leaves the car, he comes back. And what you
24 will see when he comes back he will have in his hand a
25 pipe, a glass pipe that you use to smoke meth. He will

1 have in his hand a cigarette lighter. You gonna smoke
2 it you got to light it. He also had in his hand \$5
3 because she gave him \$25. \$25. And he brought back
4 drugs and he gave her \$5 of it back of the money, so he
5 could reach in that bag get some of that meth put it
6 into his pipe and smoke it.

7 That's what this is all about. Now, is that right?
8 Of course not. No one says it is. It's a violation of
9 the law. That's what these officers' job is, to stop
10 that. What you will see is a person who's been broken
11 by drugs, couldn't beat his addiction and ended up
12 violating more of the law. So it will be up to you to
13 make a determination exactly what is he guilty of?

14 Nobody says this is not serious, nobody is
15 downplaying any of this. That is what this issue is all
16 about. As you look at the evidence, see what's going
17 on, this is not what you would think of when you hear
18 selling drugs. This is a person who's an addict, who's
19 hooked, and got a problem.

20 We ask only, as the Solicitor said, your attention
21 to watch and see what's going on. And the Judge will
22 tell you the law and you will take the law as he reads
23 it, look and see if that's really what happened here. I
24 ask you to look at that very carefully. Nobody is
25 saying that this man over here is as pure as the driven

DIRECT EXAMINATION OF SERGEANT BRANDON LONG BY MR. STOUDEMIRE

1 snow. That's not true. But look at it very carefully
2 and we thank you.

3 THE COURT: All right, Mr. Stoudemire, you may call
4 your first witness.

5 MR. STOUDEMIRE: Thank you, Your Honor. We call
6 Brandon Long of the Oconee County Sheriff's Office.

7 THE CLERK: Mr. Long, if you would, please come
8 forward and be sworn. Please place your left hand on
9 the Bible and raise your right hand.

10 Do you solemnly swear or affirm the testimony you
11 give will be the truth, the whole truth, and nothing but
12 the truth?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated.

15 THE COURT: If you would, please, give us your full
16 name spelling your last name.

17 THE WITNESS: It's Brandon Long, LONG.

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

19 THE WITNESS: Yes, sir.

20 SERGEANT BRANDON LONG,

21 Having first been duly sworn, was examined and testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. STOUDEMIRE:

25 Q. Is it still Sergeant Long?

1 A. Yes, sir.

2 Q. I didn't know if you had gotten promoted yet or
3 not. Sergeant Long, where are you employed?

4 A. Oconee County Sheriff's Office.

5 Q. How long have you worked for the Oconee County
6 Sheriff's Office?

7 A. For the Sheriff's Office it will be eight years in
8 August.

9 Q. Were you in law enforcement prior to coming to work
10 for them?

11 A. Yes, sir. I've got approximately 16 years law
12 enforcement experience.

13 Q. What type of training do you have with regard to
14 that?

15 A. I have the basic law enforcement. I have various
16 traffic offenses or traffic stuff. Mainly I've been
17 extensively trained in narcotics, everything from
18 clandestine meth lab clean up to working meth lab cases.
19 I've been to various meth lab conferences, undercover
20 schools.

21 Q. Okay. And you currently work in the narcotics
22 division with the Sheriff's Office?

23 A. Yes, sir.

24 Q. How long have you worked in that particular
25 division?

1 A. About in August it will be six years.

2 Q. Okay. And during that time, those six years, what
3 type of duties do you have with the narcotics division?

4 A. Basically our main objective is getting drug
5 dealers off the street, catch people selling drugs.

6 Q. And how do you go about catching people selling
7 drugs just on a general basis?

8 A. Most cases are done using a confidential informant.

9 Q. When you say confidential informant, tell us what
10 that means.

11 A. Basically, that is a confidential informant is a
12 regular person on the street, a civilian that they'll
13 come to us, whether it be having charges or not, they'll
14 come to us and provide us with information that they can
15 buy drugs from a certain person. And then we go through
16 a process of basically signing that person up. We'll go
17 through the rules of what they can do, can't do while
18 they're there. Then we'll, we provide the money, we
19 send them there, they go straight there, they come
20 straight back, turn over what they purchase to us. We
21 monitor the transaction through audio to hear what's
22 happening.

23 Q. Okay. And so you have these confidential
24 informants do the drug deals. Why don't officers
25 themselves do them usually?

1 A. Whenever it's possible we can but Oconee County
2 being a pretty small place, I mean, we ain't like New
3 York City, you know, where the population is extensive.
4 When you have been in law enforcement for a long time
5 you've dealt with a lot of these people they know you
6 just as well as you know them. A lot of them if I knock
7 on their door they will know who I am right off the bat.

8 Q. Okay. Now, you talked about with the confidential
9 informant going through the rules what they can do and
10 what they can't do.

11 A. Yes, sir.

12 Q. Is there an agreement they sign or anything?

13 A. Yes, sir. We have an informant agreement that
14 before we run somebody they sign.

15 Q. Okay. And what does that agreement entail?

16 A. It gives us basic rules like they can't carry a
17 gun, they aren't to do any drugs, not to tamper, alter
18 with any of the drugs. They are not to tell people that
19 they are an informant for their own safety, things like
20 that.

21 Q. Are they designed to cover every possible scenario
22 out there?

23 A. No. It's just kind of a basis to go by.

24 Q. Okay. Just guidelines?

25 A. Yes, sir.

1 Q. Okay. Now, were you working in your current
2 capacity on August 8, 2012?

3 A. Yes, sir.

4 Q. Okay. And did you all do an undercover buy that
5 particular day?

6 A. Yes, sir.

7 Q. Okay. Who was working with you that day?

8 A. Myself, Lieutenant Jeremy Chapman, Investigator Tim
9 Hunnicutt, and Courtney Wright.

10 Q. Okay. And are all of those individuals working
11 with the Sheriff's Office?

12 A. No, sir. Tim Hunnicutt and Courtney Wright worked
13 for the Seneca Police Department.

14 Q. Okay. And do you all work together from time to
15 time?

16 A. Yes, sir.

17 Q. Was there an undercover informant working for you
18 that day?

19 A. Yes, sir.

20 Q. And who was that?

21 A. Marlee Crowe.

22 Q. What area of the county were you in that day?

23 A. In Seneca off of Friendship Road, in that area.

24 Q. Do you remember the specific address where this
25 particular drug deal occurred?

1 A. Yes, sir. It's ■ Durham Brown Road, which is
2 inside Ocone County limits.

3 Q. And you said that's in the Seneca area off
4 Friendship?

5 A. Yes.

6 Q. And who was supervising the transaction that day?

7 A. Myself.

8 Q. And you said Marlee Crowe was the informant. Have
9 you used her before as an informant?

10 A. Yes, sir.

11 Q. Okay. About how many times, do you remember?

12 A. I would say off the top of my head seven or eight
13 times.

14 Q. Okay. Have you found her to be a reliable
15 informant, provide reliable information?

16 A. Yes, sir, I have.

17 Q. And did you make any promises to her in exchange
18 for her cooperation in this case?

19 A. No, sir.

20 Q. Okay. Why was she doing this drug buy?

21 A. For money.

22 Q. Okay. And how much money was she being paid for
23 this?

24 A. She was paid \$60.

25 Q. Okay. And so did you all bring her to the area or

1 did you all just set up a place to meet up?

2 A. We met her.

3 Q. Okay. And when she came out there, based on your
4 law enforcement training and experience, was Ms. Crowe
5 under the influence of drugs or alcohol that day that
6 you could see?

7 A. No, sir.

8 Q. Okay. Go through for me, if you can, how the
9 process of doing an undercover drug buy would work.

10 A. Okay. Basically sometimes we will -- the informant
11 will already have the deal set up, as in this case, but
12 if not we'll make a phone call and we'll record it. And
13 then we'll kind of figure out where the deal is gonna go
14 at, how much drugs is gonna be purchased, so we'll know
15 how much money and all that. We'll search the
16 informant, we'll search their vehicle. We do a pretty
17 extensive search to make sure that they don't bring
18 drugs to the deal, that the drugs are actually
19 purchased.

20 After that, the informant is wired up with all the
21 audio and video. They are given funds, which we
22 document in case when we arrest the person if we can
23 recover the documented funds on them it makes the case
24 stronger. The informant is then advised to go straight
25 to wherever they're going, which in this case was [REDACTED]

1 Durham Brown Road.

2 They meet with the person, they buy the drugs, they
3 come straight back. It ain't no stopping by the store
4 or anything like that. They come straight back, give
5 the drugs to us and basically we do what's called a
6 debriefing. We ask them some questions, basically
7 gathering information about what happened because in
8 most cases we ain't there and can't see it, so we gather
9 as much information to build a case as strong as we can.

10 Q. And when you talked about the search of the
11 informant prior to this transaction, take me through
12 that a little bit. How extensive a search are we
13 talking about?

14 A. It's very extensive. What we do when it's a female
15 like this and there's only male officers there, we have
16 them pull their pockets inside out so we know for sure
17 there ain't nothing in their pockets. This day
18 Ms. Crowe had flip flops on so it wasn't where she could
19 hide anything in her socks or in her shoes. We make
20 them turn around and shake their bra out where if they
21 anything hidden in their bra it would fall out, shake
22 their waistline. So basically as good of a search as we
23 can possible do to ensure that there's no drugs there.

24 Q. Okay. And who searched Ms. Crowe in this
25 particular case?

DIRECT EXAMINATION OF SERGEANT BRANDON LONG BY MR. STOUDEMIRE

1 A. Myself.

2 Q. Okay. And you said her vehicle was also searched?

3 A. Yes, sir.

4 Q. And who searched the vehicle?

5 A. Lieutenant Chapman.

6 Q. Okay. And you talked about audio and video being
7 hooked up, how is that done?

8 A. It can be hooked up in various differently ways.
9 In this case it was put on her pocketbook.

10 Q. Okay. And when you say it was put on her
11 pocketbook, what was put on her pocketbook?

12 A. The wireless transmitter. The thing we actually
13 hear and listen to make sure the informant is safe, was
14 inside the pocketbook, along with a camera and there was
15 a hole cut in her pocketbook to where the camera was
16 pointing out where to record.

17 Q. Okay. And so after all that's done, you said the
18 Sheriff's Office provides funds for the transaction?

19 A. Yes, sir, we document funds.

20 Q. And how much money was Ms. Crowe given in this
21 case?

22 A. She was given \$25 to take over.

23 Q. Okay. And are those funds documented in any way?

24 A. Yes, sir.

25 Q. Okay. How are they documented?

1 A. We write the serial numbers down.

2 Q. Okay. In this particular case were those funds
3 recovered at the end?

4 A. Five dollars of it was given back because the
5 informant went there to actually purchase \$25 worth of
6 methamphetamine but Mr. Murphy took \$5 worth of
7 methamphetamine out of the baggie of meth and gave the
8 informant five dollars back which we'll see in the
9 video.

10 Q. Okay. And you said Mr. Murphy, was he the target
11 of this transaction?

12 A. Yes, sir.

13 Q. Okay. And the Durham Brown Road address that you
14 gave us, who lives there?

15 A. I'm not sure exactly who lives there. He just
16 happened to be there.

17 Q. Okay. That was -- was that the address that the
18 deal was set up to take place at?

19 A. She was, the informant was told just come down
20 Ocone Creek, toward Ocone Point and I think she
21 actually called on the way and he kind of guided her in.

22 Q. Okay. So obviously she went to the location via
23 automobile.

24 A. Yes.

25 Q. Okay. Is this her automobile?

1 A. Yes.

2 Q. And that's the reason for the search?

3 A. Yes.

4 Q. Are you able to monitor her progress in getting
5 there?

6 A. As much as we can. I mean we can't follow them on
7 their bumper till they're there. That would kind of
8 give us away, you know. We have audio monitoring the
9 whole time and we do stay behind them. When we start
10 getting close we back off to where it don't mess up the
11 operation.

12 Q. And is that what you did in this particular case?

13 A. Yes, sir.

14 Q. Okay. Now, you said this recorded both audio and
15 video, correct?

16 A. Yes.

17 Q. Okay. Have you had a chance to review the video
18 with the audio of this particular transaction?

19 A. Yes, sir.

20 Q. Okay. And is it a fair and accurate representation
21 of what you monitored on that particular day?

22 A. Yes, sir.

23 Q. Okay. And based on your investigation, what you
24 saw on the video and what you heard going on, what took
25 place on August 8, 2012, between Ms. Crowe and

1 Mr. Murphy?

2 A. A drug deal, a sell of methamphetamine.

3 Q. Okay. And, again, you've reviewed the videotape,
4 correct?

5 A. Yes, sir.

6 Q. Okay. In your review of the videotape were you
7 able to determine who was on the tape?

8 A. Yes.

9 Q. Okay. And who's on it?

10 A. Greg Murphy.

11 Q. Okay. Anybody else appear on the tape?

12 A. Other -- I mean you hear the informant's voice but,
13 no, that's the only person that's on there.

14 Q. So those are the only two people there during this
15 entire transaction?

16 A. Yes, sir.

17 Q. Okay.

18 MR. DAY: Just one second, Your Honor, I need to
19 ask the Defendant a question.

20 THE COURT: Certainly.

21 (The Defendant conferred with counsel off the
22 record.)

23 MR. STOUDEMIRE: Your Honor, may I approach the
24 witness?

25 THE COURT: Certainly.

1 BY MR. STOUDEMIRE:

2 Q. Sergeant Long, I'm gonna show you five photos
3 marked for identification State's Exhibits Numbers 3, 4,
4 5, 6 and 7, and I want to see if you can identify those
5 for me, please, sir.

6 A. Yes, sir. These are the still photos I took from
7 the video.

8 Q. All right. And you said those are still photos you
9 took from the video. Which video are we talking about?

10 A. The video of the incident.

11 Q. Okay. And is this -- when you say incident, is
12 this the drug transaction that took place between Marlee
13 Crowe and the Mr. Murphy on August 8, 2012?

14 A. Yes, sir.

15 Q. Okay. And who's in these photos?

16 A. The defendant.

17 Q. Okay.

18 THE COURT: Are you moving to be admitted?

19 MR. STOUDEMIRE: Yes, Your Honor, we are moving to
20 have them admitted.

21 MR. DAY: No objection, Your Honor.

22 THE COURT: All right. State's Exhibits 3, 4, 5,
23 6, and 7 are admitted without objection.

24 (Received in evidence was State's Exhibits 3, 4, 5,
25 6, 7.)

1 BY MR. STOUDEMIRE:

2 Q. Who is that?

3 A. The Defendant, Greg Murphy.

4 Q. Okay. And he appears to be holding something in
5 his left hand. Can you tell me what that is, please.

6 A. Yes, sir. That's a glass pipe that's commonly used
7 to smoke methamphetamine with.

8 Q. Okay. And I want to next show you State's Exhibit
9 Number 4. Can you tell me what that shows?

10 A. Yes, sir. That's just another view of the glass
11 pipe that he's using.

12 Q. Okay. And Number 5?

13 A. That's the actual baggie of methamphetamine as he's
14 tying it up.

15 Q. Okay. And that's what's in his hand about right
16 there, the white portion?

17 A. Yeah, the white portion in his hand, that's the
18 baggie of methamphetamine.

19 Q. And again, State's Exhibit Number 6, who is that?

20 A. That's Greg Murphy.

21 Q. All right. And lastly, State's Exhibit Number 7?

22 A. That's Greg Murphy when he was walking to the car.

23 Q. Okay. It looks like he might be holding something
24 in his left hand. Is that what it looks like to you?

25 A. Yes. It is the same methamphetamine glass pipe.

1 Q. All right. And again, all those are still shots
2 made from the video; is that correct?

3 A. Yes, sir.

4 Q. And during the transaction -- oh, I'm sorry, let me
5 move on.

6 What happened after the transaction took place?

7 A. The informant came back and met with us, turned the
8 methamphetamine over to me. The informant was then
9 debriefed.

10 Q. Okay. And were you able to monitor the transaction
11 by way of audio?

12 A. Yes, sir.

13 Q. And were you able to hear during that transaction
14 drugs being discussed at all?

15 A. Yes.

16 Q. Were they discussed a lot?

17 A. A reasonable amount. They discussed the price. He
18 stated that he was only gonna give the informant \$20
19 worth instead of 25 because he wanted to keep some for
20 himself.

21 Q. Okay.

22 A. He also stated they would be back to get more
23 because it was good dope.

24 Q. Okay. And after the drug deal is concluded,
25 Ms. Crowe left that scene on Durham Brown Road; is that

1 correct?

2 A. Yes, sir.

3 Q. Okay. And where did she go then?

4 A. Came back and met with us.

5 Q. And did she make any stops along the way?

6 A. No.

7 Q. Were you able to maintain audio surveillance of her
8 until then?

9 A. Yes.

10 Q. Until you debriefed?

11 A. Yes, sir.

12 Q. Okay. And since then you've had the opportunity to
13 review the video as well, correct?

14 A. Yes, sir.

15 Q. And does the video show her making any stops either
16 on the way to the buy or after the buy?

17 A. Other than stopping at stop signs and stuff like
18 that, no.

19 Q. Never stopped and got out of the car?

20 A. No, sir.

21 Q. Or met with anyone else?

22 A. No, sir.

23 Q. Okay. And you talked a little bit before about
24 debriefing. Can you explain to me what's involved in
25 debriefing?

1 A. Basically debriefing is for we collect the evidence
2 questions. Where did you go? What happened? Who did
3 you meet with? Can you describe that person? Did you
4 see any more drugs? Where did the drugs come from?
5 Just basically us gathering information on the case.

6 Q. Okay. And is she searched again?

7 A. Yes.

8 Q. Okay. What about the vehicle, is it searched again
9 as well?

10 A. Yes. Everything is searched again to make sure
11 that no drugs are being taken away from the incident.

12 Q. And was she able to bring you drugs that she
13 purchased from Mr. Murphy?

14 A. Yes.

15 Q. Okay. How did she turn that over to you?

16 A. She handed it to me and I placed it -- it came in a
17 baggie, the one he had in his hand a while ago, and I
18 always put it inside another baggie just in case there
19 may be a hole in it or something for extra security.

20 Q. Okay. I'm gonna show you what's been marked for
21 identification as State's Exhibit Number 1. Can you
22 identify any part of that?

23 A. Yes.

24 Q. Okay. What do you recognize about that exhibit?

25 A. That's the methamphetamine that we purchased.

1 Q. Okay. And does your name appear anywhere on this?

2 A. Yes, right here where I signed and sealed the BEST
3 pack.

4 Q. Okay. And what's the date on that?

5 A. It would be August the 9th of 2012.

6 Q. So this transaction occurred on August 8th --

7 A. Yes, sir.

8 Q. -- 2012, correct?

9 A. Yes, sir.

10 Q. Okay. And once Ms. Crowe gave the drugs back to
11 you what did you do with them at that point?

12 A. It was kept in my possession and locked in my
13 storage locker which I only have the keys to for
14 security reasons until I gave it into evidence on the
15 9th.

16 Q. Okay. So you got the drugs from Ms. Crowe.

17 A. Yes, sir.

18 Q. And took them back to the Sheriff's Office on
19 August the 9th?

20 A. Yes, sir.

21 Q. Okay. Were they ever out of your possession at any
22 time from the time Ms. Crowe gave them to you until the
23 time that you put them in your specific locker?

24 A. No, sir.

25 Q. Okay. And then did you lock them in there?

1 A. Yes.

2 Q. Okay. And you are the only person with that
3 combination, correct?

4 A. Yes, sir.

5 Q. Okay. And when did you submit the drugs into
6 evidence with the Sheriff's Office?

7 A. On the 9th, the next morning.

8 Q. The next morning?

9 A. Yes, sir.

10 Q. All right. And tell me what you do to submit the
11 drugs into evidence with the Sheriff's Office.

12 A. We fill out what's called a BEST pack. Basically
13 our drugs go to the Anderson/Ocone Forensics Lab to be
14 tested to show that they are actually illegal drugs. We
15 fill out the paperwork that has the suspect's name, the
16 case number, just general information on it. We seal it
17 up to where it can't be tampered with in any way and
18 then we turn it into evidence and our evidence
19 technicians does take it to the lab to be tested.

20 Q. Okay. And showing you State's Exhibit Number 1
21 again, is there a BEST pack in there?

22 A. Yes.

23 Q. Okay. Tell me what part of that is the BEST pack?

24 A. You'll see the blue going around the plastic here,
25 that's the actual BEST pack in itself.

1 Q. Okay. And do you seal that in some way?

2 A. Yes. Across the top you pull a strip off of it and
3 it's extremely sticky to where if somebody did tamper
4 with it you would have to tear it before the stickiness
5 would break.

6 Q. Okay. And once you put it in the BEST pack --
7 well, let me ask you this. Let me back up a little bit.

8 When you took it out of your locker or your safe
9 that particular morning on the 9th, did the evidence
10 appear to be in the same condition it was in when you
11 put it into --

12 A. Yes.

13 Q. -- that location the day before?

14 A. Yes.

15 Q. Okay. Had it been altered, tampered with or
16 compromised in any way?

17 A. No.

18 Q. Okay. And you then put it in a BEST bag, in this
19 particular BEST pack; is that correct?

20 A. Yes.

21 Q. Okay. And when you did that did you seal this
22 strip?

23 A. Yes.

24 Q. Okay. And is that your name and signature there?

25 A. Yes, sir.

DIRECT EXAMINATION OF SERGEANT BRANDON LONG BY MR. STOUDEMIRE

1 Q. Okay. And that's the date of August 9th, correct?

2 A. Yes.

3 Q. Okay. And after you put it in the BEST pack, did
4 you in any way alter, tamper with or compromise that
5 evidence in any way?

6 A. No.

7 Q. Okay. And when you submitted it into evidence at
8 the Sheriff's Office, do you give it to a particular
9 person there?

10 A. No. We have different lockers downstairs and in
11 our evidence receiving room you take it down there and
12 lock it in a locker and the technician will get it.

13 Q. Okay. So, and after you lock it in a locker is
14 there any way for you to access it?

15 A. No. Once it's locked in the locker we don't have
16 access to it.

17 Q. Okay. You don't have a key to that locker or
18 anything like that?

19 A. No, sir.

20 Q. Okay. And in this particular case are there
21 numbers assigned to these lockers you put them in?

22 A. Yes, sir.

23 Q. Okay. What number locker did you put this in?

24 A. Number two.

25 Q. Number two, okay.

1 MR. STOUDEMIRE: I believe those are all the
2 questions I would have. Please answer any Mr. Day would
3 have.

4 THE COURT: Cross-examine.

5 MR. DAY: Thank you.

6 CROSS-EXAMINATION

7 BY MR. DAY:

8 Q. Hi, Mr. Long. Let me, if I may, I'll try to use
9 this.

10 THE COURT: All right, Mr. Day, which exhibit is
11 that that you're showing?

12 MR. DAY: Oh, I'm sorry. That would be Exhibit
13 Number 7.

14 THE COURT: Thank you, sir.

15 MR. DAY: I'm trying to get out of the way, Your
16 Honor.

17 BY MR. DAY:

18 Q. That's Mr. Murphy coming to the car, right?

19 A. Yes, sir.

20 Q. And in his left hand is what?

21 A. By the picture there it appears to be a pipe. It's
22 a little on the blurry side but that would be my guess.

23 Q. Okay. And here at State's Exhibit Number 3 where
24 he's actually leaning into the car, that also shows a
25 pipe, does it not?

CROSS-EXAMINATION OF SERGEANT BRANDON LONG BY MR. DAY

1 A. Yes, sir.

2 Q. All right. And that also shows a pipe that's in
3 his hand there?

4 THE COURT: Which one is that?

5 MR. DAY: I'm sorry. State's Exhibit Number 4.

6 BY MR. DAY:

7 Q. That shows again the pipe and that's a cigarette
8 lighter in his hand, isn't it?

9 A. Yes, sir.

10 Q. Okay. And State's Exhibit Number 5, here I think
11 you identified this one as right up here in the white in
12 between his fingers there was a little baggie of meth?

13 A. Yes, sir, methamphetamine.

14 Q. Yes. Right there. And it appears that he is doing
15 something with that bag.

16 A. He's tying the bag back up.

17 Q. Tying it up because he has gotten some out?

18 A. Yes, sir.

19 Q. All right. Now, over the years you and I have seen
20 a lot of these videos.

21 A. Yes, sir.

22 Q. You more than I because I don't handle all of them.
23 But I don't remember seeing anywhere the person selling
24 drugs is carrying around his pipe.

25 A. We've had it happen. It happens.

1 Q. It doesn't happen very often, does it?

2 A. Somewhat. Not a whole lot, but I haven't had very
3 many videos where they were just toting it around like
4 he was.

5 Q. Okay. And in this case he came out with the pipe,
6 he used the pipe, he had his cigarette lighter and he
7 actually used some of it.

8 A. Uh-huh.

9 Q. That's what Marlee says, that he actually used it.

10 A. Yes.

11 Q. He smoked it right there in the car with her.

12 A. Yes.

13 Q. Okay. And I believe that this video will show that
14 he talked about smoking it, just using it.

15 A. Yes. He was trying to get her to.

16 Q. All right. And she didn't want to do that?

17 A. No.

18 Q. So because she was under instructions from you,
19 you're not using any drugs?

20 A. Correct.

21 Q. Okay. So he gets \$25, goes out, comes back to the
22 car, and he's still got his pipe and he shows the meth
23 and gives her \$5 back while he takes some out of the bag
24 and smokes it?

25 A. Yes.

1 Q. And that's what occurred that day?

2 A. Yes.

3 Q. All right. Now, when you hired Marlee to do this,
4 I would assume that one of the prerequisites of doing
5 what she's doing is she knows what meth is.

6 A. Yes.

7 Q. And I would also assume that you would want to make
8 sure that she knows what meth is. I'm not saying by you
9 giving her some or anything of that nature, but that's
10 got to be why you would do that.

11 A. Well, they generally -- when people come to us they
12 generally know what meth is. If they're calling in a
13 complaint they know what it is.

14 Q. Okay. So Marlee came to you all and volunteered?

15 A. She called us and said that she could buy drugs
16 from Greg Murphy, yes.

17 Q. And she's the only person that she ever bought
18 drugs from?

19 A. I'm sorry, I don't --

20 Q. Or he's the only person she's ever bought drugs
21 from?

22 A. No. No, she's made several cases for us.

23 Q. How many?

24 A. Probably before this I'd say seven or eight,
25 somewhere in that.

1 Q. Seven or eight individual people?

2 A. Yes.

3 Q. So she knew another seven or eight people involved
4 in drugs?

5 A. Yes.

6 Q. All right. How many times are you aware that
7 Marlee Crowe used drugs?

8 A. I've never seen her.

9 Q. I understand that. But I don't think that you shut
10 out the whole world when you talked to her about drugs,
11 do you? You didn't shut out the whole world saying that
12 she says she can buy drugs but we won't worry about
13 whether she's used, seen, been around it or anything?

14 A. No.

15 Q. Okay. In your line of business would you say that
16 people are able to buy drugs apparently had some sort of
17 relationship, be it ever so slight with other people
18 using drugs?

19 A. Yes, sir. In most cases I mean, like
20 Mr. Stoudemire said in his opening statement, you can't
21 get a preacher to go buy drugs for you. I mean, it's
22 going to speak out, that's the way it is.

23 Q. You need someone who is in the drug life?

24 A. Yes.

25 Q. And in this regard did Ms. Crowe tell you she and

1 Greg had used drugs together before?

2 A. She really didn't state.

3 Q. Excuse me?

4 A. She really didn't state whether they did or not.

5 She said she knew him from a long time back and that was
6 about it.

7 Q. And when she came to you, is this the first time
8 that she had ever done it, bought drugs for you?

9 A. No, sir.

10 Q. Okay. But she came to you and said she could go
11 buy drugs from Greg Murphy?

12 A. Yes.

13 Q. And she's the one that came to you to give you this
14 new name?

15 A. Yes.

16 Q. How about the other seven or eight people you
17 talked about, is that the same way she did those, or did
18 you all pick out people for her to go after?

19 A. We don't pick -- we don't pick out and target
20 nobody. We let the informants give us information about
21 who's selling drugs.

22 Q. All right. So once she gives you a name you do
23 target them because you go after them.

24 A. I mean, our job is to catch a drug dealer.

25 Q. I understand that. But that's what you do is you

1 target that person with your informant.

2 A. If we can buy drugs from them, yeah, get a drug
3 dealer off the street.

4 Q. And as part of this, were there any pending charges
5 on Ms. Crowe at the time that this was done?

6 A. No, sir.

7 Q. Okay. And y'all had entered into an agreement, as
8 I remember correctly?

9 A. An informant agreement, yes, sir.

10 Q. Do you remember when you did that?

11 A. I don't remember the date right offhand.

12 Q. Neither do I because the copy I got doesn't have a
13 date on it anyway. So we're not sure? Okay.

14 I know you checked off below signed individual is
15 not currently charged with a criminal offense. And then
16 you have them go through and she initialed all the
17 things in here that would appear to apply to her because
18 she didn't initial all of them, but she initialed a part
19 that says no promises or represents part of the
20 agreement that I receive a specific sentence
21 probationary or otherwise.

22 A. Uh-huh.

23 Q. But she had no charges pending you say?

24 A. No, sir. As we said in the beginning that's
25 general guidelines, that ain't for every single case.

1 And since she didn't have charges that didn't apply to
2 her.

3 Q. All right. Okay. Whose car was she in?

4 A. Her own.

5 Q. She was using her own car?

6 A. Yes.

7 Q. Did you check to make sure she had a valid driver's
8 license?

9 A. Yes.

10 Q. Did she?

11 A. Yes.

12 Q. That's good. Okay. At any time when she was
13 working for y'all as a confidential informant did you
14 ever have her drug tested?

15 A. No, sir.

16 Q. Never?

17 A. I had no reason to.

18 Q. All right. Other than the fact that she knew
19 people apparently who were involved in drugs?

20 A. That don't give me a reason to drug test her.

21 Q. Okay. I think the drugs themselves were actually
22 officially weighed by the lab; is that correct?

23 A. Yes, sir. They give the actual weight.

24 Q. So when you all look at the weight, you don't know
25 the weight, you've given it an eyeball guess?

1 A. In most cases, yes. We may set them on scales but
2 it has the bag weight with it. We don't take it out of
3 the bag.

4 Q. And I think this amount was what, 2.2 grams?

5 A. I think 2.2 was probably more like it.

6 Q. Point 2 grams. Two-tenths of a gram?

7 A. Yes, sir.

8 (The Defendant conferred with counsel off the
9 record.)

10 MR. DAY: I believe those are all the questions I
11 have. Thank you, sir.

12 THE WITNESS: Yes, sir.

13 THE COURT: Re-exam?

14 MR. STOUDEMIRE: None, Your Honor.

15 THE COURT: All right. You may step down. Thank
16 you, sir.

17 THE WITNESS: Yes, sir.

18 (Witness leaves stand.)

19 THE COURT: Let me see counsel, please.

20 (Discussion at sidebar.)

21 THE COURT: Madam Forelady, ladies and gentlemen of
22 the jury, before we continue with the case, I'm gonna
23 suggest we take our morning break. This will be at your
24 decision. Use it as a morning break. There are
25 refreshments back there, Mr. Bailiff? And then when you

1 are ready to come back just knock on the door and we
2 will continue the trial of the case. As I said earlier,
3 my instructions throughout the trial is not to undertake
4 discussion of the case among yourselves in any way.

5 Very good.

6 Everybody else remain seated while the jury retires
7 from the courtroom.

8 (Whereupon, the Jury left the courtroom at
9 approximately 11:25 a.m.)

10 THE COURT: Anything from the State?

11 MR. STOUDEMIRE: No, Your Honor.

12 THE COURT: From the Defense?

13 MR. DAY: No, Your Honor.

14 THE COURT: All right. We'll stand at ease while
15 awaiting the Jury's return.

16 (A recess was taken.)

17 THE COURT: I understand the jury is ready. Is
18 there anything from the State before we bring them back?

19 MR. STOUDEMIRE: Nothing, Your Honor.

20 THE COURT: From the Defense?

21 MR. DAY: No, Your Honor.

22 THE COURT: All right. Ask the jury to join us,
23 please.

24 (The Jury entered the courtroom at approximately
25 11:44 a.m.)

1 THE COURT: All right. Let the record reflect the
2 jury and alternate are in the jury box.

3 Madam Forelady, ladies and gentlemen of the jury,
4 we will now proceed.

5 Mr. Stoudemire, you may call your next witness.

6 MR. STOUDEMIRE: Thank you, Your Honor, the State
7 would call Tim Hunnicutt.

8 THE CLERK: If you'll place your left hand on the
9 Bible and raise your right hand. (Complies.)

10 Do you solemnly swear or affirm the testimony you
11 give to the Court be the truth, the whole truth and
12 nothing but the truth?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated.

15 THE COURT: All right. Sir, if you would, please,
16 state your full name for the record, spelling your last
17 name.

18 THE WITNESS: Tim Hunnicutt, H-U-N-N-I-C-U-T-T.

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

20 Whereupon,

21 SERGEANT TIM HUNNICUTT,

22 Having first been duly sworn, was examined and testified
23 as follows:

24 DIRECT EXAMINATION

25 BY MR. STOUDEMIRE:

DIRECT EXAMINATION OF SERGEANT TIM HUNNICUTT BY MR. STOUDEMIRE

1 Q. Mr. Hunnicutt, where are you employed?

2 A. The Seneca Police Department.

3 Q. And what's your job title there?

4 A. Narcotics investigator but just got promoted to the
5 Sergeant over narcotics.

6 Q. And how long have you been with the Seneca Police
7 Department?

8 A. About five years.

9 Q. Were you in law enforcement prior to that?

10 A. Yes. I was at the Sheriff's office for around six.

11 Q. So around 11 years or so in law enforcement?

12 A. Yes, almost 12.

13 Q. Okay. What type of training in narcotics do you
14 have?

15 A. Just numerous classes on meth, different workshops,
16 just several different ones.

17 Q. Okay. And as part of your duties with Seneca
18 Police Department dealing with narcotics, do you
19 frequently deal with undercover drug buys?

20 A. Yes, I do.

21 Q. Okay. And when you are doing an undercover drug
22 buy, how do they work?

23 A. Sometimes an informant will give us a call, say
24 they can purchase illegal drugs from a certain
25 individual, and then we'll meet with them. We'll

1 sometimes make calls, record it. We'll search them,
2 wire them, wireless transmitter, video, give them buy
3 money, documented funds. And they'll actually go make
4 the purchase, come back, meet with us, give the drugs to
5 the agents. Then they're searched again. Basically the
6 same way the Sheriff's Office does it.

7 Q. Okay. And since you worked with Seneca Police
8 Department, do you have occasion to work with the
9 Sheriff's Office on occasion?

10 A. Yes.

11 Q. And, in fact, were you working in conjunction with
12 the Sheriff's Office doing a drug buy on August 8th,
13 2012?

14 A. Yes.

15 Q. Okay. What area of the county was that in?

16 A. South Friendship. It's in Seneca. It's off Durham
17 Brown Road.

18 Q. And did you assist Sergeant Long that day?

19 A. I did.

20 Q. And who was the -- who were the drugs being
21 purchased from that day?

22 A. Gregory Murphy.

23 Q. And is that the Defendant in this case?

24 A. Yes.

25 Q. That's the gentleman seated at the middle chair

1 over at the defense table?

2 A. It is.

3 Q. Now, who was the informant y'all were using that
4 day?

5 A. Marlee Crowe.

6 Q. Okay. Did you arrive for the search and briefing
7 prior to the transaction, did you arrive at that
8 location before Ms. Crowe did?

9 A. Yes, I was there the whole time.

10 Q. When she arrived, based on your law enforcement
11 training and experience, did Ms. Crowe appear to be
12 under the influence of any alcohol or drugs that day?

13 A. No, she did not.

14 Q. Was she driving her own vehicle?

15 A. Yes.

16 Q. Now, what role did you play in setting up this
17 transaction?

18 A. The only thing I did was I done audio. I set up
19 the audio and video surveillance.

20 Q. Can you go through with me how you did that?

21 A. We had a pocketbook we used, I placed a wireless
22 transmitter in. And also the camera that we have, it's
23 a camera that I cut a whole in the pocketbook and had a
24 hole where the camera was pointing out. That's
25 basically how it was set up.

1 Q. And this video, is it digital type video?

2 A. Yes.

3 Q. Okay. Color, sound, all that stuff?

4 A. Yes.

5 Q. Okay. And were you able to be a part of monitoring
6 the transaction while it took place?

7 A. I was.

8 Q. Okay. And I believe it's been said that the
9 transaction is monitored by audio; is that correct?

10 A. Correct.

11 Q. Okay. So just due to the nature of the equipment
12 you are not able to watch the video while everything is
13 going on?

14 A. No.

15 Q. Okay. Was there anything remarkable or out of the
16 ordinary in the audio of the transaction that you heard
17 based on your experience?

18 A. Nothing out of the ordinary.

19 Q. And have you had a chance to review the videotape
20 of the transaction?

21 A. Yes.

22 Q. Okay. Were you able to see on the video who the
23 drugs were purchased from?

24 A. Yes.

25 Q. Okay. We've had some photos, I'm gonna put up a

1 photo marked as State's Exhibit Number 3. Who does that
2 appear to be in that photo?

3 A. Greg Murphy.

4 Q. Okay. And is that who was the subject of this
5 transaction on August 8th, 2012?

6 A. Yes.

7 Q. Okay. And is that the same Greg Murphy that's
8 seated at the defense table there?

9 A. It is.

10 Q. Any doubt in your mind?

11 A. No.

12 Q. Now, after the transaction took place, the CI or
13 confidential informant returns back to a location to
14 meet with law enforcement again; is that correct?

15 A. Correct.

16 Q. What happens at that point?

17 A. Had a debriefing.

18 Q. Okay. And what did you do during the debriefing?

19 A. I was there during the debriefing just basically
20 listening. But after the debriefing, that's when I kind
21 of cut off the cameras and audio equipment.

22 Q. Okay. And did you take that equipment yourself?

23 A. Yes.

24 Q. Okay. And what did you do with that afterwards?

25 A. Hook it up to a computer, download it to a computer

1 and burn it to a disc.

2 Q. Okay. And are you able to view the transaction at
3 that time?

4 A. Yes.

5 Q. Okay. And outside of taking it from the equipment
6 that's used you put it on a DVD or a CD of some type?

7 A. Yes.

8 Q. Okay. And outside of doing that, is the material
9 contained in that video, is it changed or altered in any
10 way whatsoever?

11 A. No.

12 Q. Okay. So basically is it fair to say that what's
13 recorded on there is the transaction that took place,
14 that recording is in its original form it's just
15 transported to a DVD?

16 A. Correct.

17 Q. Okay. And after you did all that what did you do
18 with the DVD of this transaction?

19 A. I turned it over to Sergeant Long.

20 Q. Okay. Did you have any other involvement in this
21 case other than that?

22 A. No.

23 Q. Had you dealt with Ms. Crowe before as a
24 confidential informant?

25 A. Yes.

1 Q. Okay. Had you found her to be reliable in the past
2 and give reliable information?

3 A. Yes, definitely.

4 Q. All right. And your experience with her on this
5 particular day, was it any different than your
6 experiences with her in the past?

7 A. No.

8 Q. Okay. And about how many times would you have used
9 Ms. Crowe in the past as a confidential informant, if
10 you know?

11 A. I don't know exactly, but several. I'm not sure
12 exactly how many.

13 MR. STOUDEMIRE: Thank you. That's all the
14 questions I would have. Please answer any Mr. Day may
15 have for you.

16 THE COURT: Cross-examine.

17 CROSS-EXAMINATION

18 BY MR. DAY:

19 Q. Just to follow up on that, when you say several are
20 we talking a dozen?

21 A. At least.

22 Q. At least a dozen. It could be more, it could be
23 less?

24 A. Yes.

25 Q. So somewhere around -- we'll just use a figure of

1 12, okay?

2 A. Okay.

3 Q. And what did you pay her?

4 A. We pay her about normally 40 to \$60 each time.

5 Q. And when you say that nothing out of the ordinary,
6 looking at State's Exhibit Number 3 -- now I have my
7 trusty weapon here, that right there, the pipe?

8 A. Yes.

9 Q. And in his hand as shown on the other pictures is a
10 lighter?

11 A. True.

12 Q. Right. So it's not out of the ordinary for your CI
13 to be there when drugs are being used on the video?

14 A. It don't happen every time but it does happen some,
15 yes.

16 Q. Some?

17 A. Yes.

18 Q. Five percent?

19 A. Maybe.

20 Q. Maybe.

21 A. Yes, sir.

22 Q. That is unusual that they come out in this case
23 where a person is supposed to be dealing he's coming out
24 and he's using drugs. It is unusual, isn't it?

25 A. I wouldn't say it's unusual. It happens some but

1 not every day.

2 Q. But you're saying it's not unheard of?

3 A. Right.

4 Q. And in this case, as shown in State's Exhibit
5 Number 5, here again, here he is as Sergeant Long said,
6 there is the meth there, and this is where he's getting
7 out and actually using it?

8 A. That's where he's tying the bag back up.

9 Q. Tying it back up: This is after he's used it?

10 A. That's where he's put it in his pocket, yes.

11 Q. Right. And he's doing it right there with

12 Ms. Crowe?

13 A. Correct.

14 Q. Right. And with Ms. Crowe, using her in the past,
15 you have found that she is able to make contact
16 apparently with people involved with drugs?

17 A. Yes.

18 Q. Did you ever have her drug tested?

19 A. No.

20 Q. Did she ever tell you how she knew any of these
21 people were using drugs or had drugs?

22 A. No.

23 Q. So she just kind of wandered in off the street and
24 said I can do this and you all said okay, let's go.

25 A. She said she could purchase drugs so we were able

1 to use her.

2 Q. You say afterword or during or while it was going
3 on you all were actually monitoring the audio?

4 A. Yes.

5 Q. I would imagine that's kind of a safety issue to
6 make sure nothing bad is going down?

7 A. Correct.

8 Q. Okay. When you were using her as a CI, did she
9 have any pending criminal charges?

10 A. No.

11 Q. Did you ever intervene on her behalf for any
12 charges she may have had?

13 A. No.

14 Q. Okay. So if she had charges *nolle pros'd* you
15 wouldn't know anything about that?

16 A. No.

17 Q. And just to make sure, when I use the term *nolle*
18 *pros* that means that the Judge in the case has dismissed
19 the case on a request of the State or prosecuting
20 agency, not totally dismissed but says it's not gonna be
21 prosecuted. Does that sound right?

22 A. Yes.

23 Q. Do you remember when it was you started using
24 Ms. Crowe, approximately when, a date? I'm not asking
25 you for a time, an hour or anything but something

1 proximate?

2 A. 2009.

3 Q. 2009?

4 MR. DAY: I believe those are all the questions I
5 have. Thank you, sir.

6 THE COURT: Re-exam.

7 REDIRECT EXAMINATION

8 BY MR. STOUDEMIRE:

9 Q. Sergeant Hunnicutt, you have been in law
10 enforcement 12 years and dealing in narcotics, what, six
11 or seven of those?

12 A. Basically all -- yeah. Some of it in the Sheriff's
13 Office and I helped out with the narcotics unit and the
14 rest of the time I've been bottled up with narcotics.

15 Q. Okay. So over your time in law enforcement how
16 many drug dealers have you dealt with approximately?

17 A. No telling. Hundreds.

18 Q. Okay. And in those hundreds of drug dealers, is it
19 common or uncommon for those dealers to use drugs
20 themselves?

21 A. A lot of them do.

22 Q. And are some drug dealers better drug dealers than
23 others?

24 A. Yeah, the ones that don't use their products.

25 Q. Okay. So is it fair to say just because someone

1 uses drugs and is a drug dealer it doesn't make them --
2 well, let me rephrase.

3 If somebody uses drugs and is a drug dealer,
4 they're just not as good as one that doesn't, correct?

5 A. Correct.

6 Q. And just because Mr. Murphy uses drugs it doesn't
7 make him not a drug dealer, does it?

8 A. Correct.

9 MR. STOUDEMIRE: Thank you. That's all I have.

10 MR. DAY: I don't have any more questions, Your
11 Honor.

12 THE COURT: Very good. You may step down. Thank
13 you, sir.

14 (Witness leaves stand.)

15 MR. STOUDEMIRE: Your Honor, the State would call
16 Jeremy Chapman.

17 THE CLERK: Please place your left hand on the
18 Bible and raise your right hand. (Complies.)

19 Do you solemnly swear or affirm the testimony you
20 give the Court will be the truth, the whole truth, and
21 nothing but the truth?

22 THE WITNESS: I do.

23 THE CLERK: You may be seated.

24 THE COURT: All right. If you would please, sir,
25 state your full name for the record, spelling your last

1 name.

2 THE WITNESS: Jeremy Edward Chapman, C-H-A-P-M-A-N.

3 THE COURT: Very good, thank you.

4 Whereupon,

5 LIEUTENANT JEREMY EDWARD CHAPMAN,

6 Having first been duly sworn, was examined and testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. STOUDEMIRE:

10 Q. Mr. Chapman, where are you employed?

11 A. Oconee County Sheriff's Office.

12 Q. And what's your rank there?

13 A. Lieutenant over narcotics and vice.

14 Q. Okay. So you are over the narcotics division of
15 the Sheriff's Office?

16 A. Yes.

17 Q. How long total have you been employed with law
18 enforcement?

19 A. About ten years with the Oconee County Sheriff's
20 Office. All but approximately three the rest have been
21 in narcotics.

22 Q. Okay. And have you gone through various
23 specialized training and classes with regard to
24 narcotics?

25 A. Yes. First of all, graduated Criminal Justice

1 Academy, South Carolina. I've had narcotics commanders
2 workshops, methamphetamine workshops and several,
3 several undercover classes.

4 Q. Okay. And are undercover drug buys part of the
5 daily business for the narcotics unit with the Sheriff's
6 Office?

7 A. It is. On a daily basis we have complaints come in
8 and we have agents investigate complaints and see what
9 we can do to help alleviate the problem.

10 Q. And how do these transactions work?

11 A. Usually some of the people that call can actually,
12 you know, they are familiar with the people, how they
13 know them. We may not know how they know them. We know
14 that they can go over and purchase drugs from them and
15 that's what we do.

16 Q. Why does the Sheriff's Office use those particular
17 types of transactions?

18 A. As Sergeant Long said, being in Oconee County it is
19 kind of a small County. Everybody knows pretty much
20 everybody who is in law enforcement and it actually
21 makes it difficult for us to actually do the deals
22 ourselves.

23 Q. Were you working on August 8, 2012?

24 A. Yes, I was.

25 Q. And were you working in Oconee County?

1 A. Yes.

2 Q. What area of the county were you working that day?

3 A. In the Friendship area, in the Seneca area.

4 Q. And on that day did you assist Sergeant Long in an
5 undercover transaction involving Gregory Lee Murphy?

6 A. I did. I was just a sergeant also like Sergeant
7 Long. I was not a Lieutenant at that time.

8 Q. Okay. You and Sergeant Long worked together a good
9 bit?

10 A. Yes.

11 Q. Okay. Now, based upon your training and
12 experience, the CI in this case was Marlee Crowe; is
13 that correct?

14 A. That's correct.

15 Q. And did you have occasion to have contact with her
16 that day as well?

17 A. Yes, I did. Like I say, I was partnered up with
18 Sergeant Long at that time.

19 Q. Okay. And based on your training and experience
20 was Ms. Crowe under the influence of any alcohol or
21 drugs on that day?

22 A. No, sir.

23 Q. Okay. And who was in charge of the transactions
24 that were going on that day?

25 A. Sergeant Long was actually the case agent that day.

1 Q. And who was in charge of searching the CI?

2 A. Sergeant Long.

3 Q. And who was in charge of doing the wiring of the CI
4 and setting up the audio and video?

5 A. I believe Sergeant Long had Sergeant Tim Hunnicutt
6 do that.

7 Q. And who was in charge of searching the car and
8 making sure everything was okay with that?

9 A. I done that.

10 Q. Okay. Can you explain your role in that, tell me
11 how that works?

12 A. Yes, sir. Basically what happens is when the
13 informant meets the agents we have several different
14 jobs going on. One thing is we do want to be safe so we
15 do check the vehicle for any drugs, weapons, anything
16 that's out of the ordinary. And that was my particular
17 job that day. Sergeant Long, he just met and started
18 doing a brief on the CI at that particular time while
19 Investigator Hunnicutt done the actual wiring.

20 Q. And again whose car was used for this particular
21 transaction?

22 A. The informant's car, Ms. Marlee's.

23 Q. And when you searched the car, did you find
24 anything out of the ordinary in the car?

25 A. No, sir.

1 Q. Any drugs or illegal contraband of any kind?

2 A. No, sir.

3 Q. Okay. Any extra money or anything like that?

4 A. No, sir.

5 Q. And did you monitor the transaction with Sergeant
6 Long?

7 A. Yes.

8 Q. And did the transactions that took place that day
9 involve Mr. Murphy?

10 A. Yes, sir.

11 Q. How were you able to monitor the transactions?

12 A. It was through the wireless transmitter. It allows
13 us to hear transaction as it's going. It's just audio.
14 You cannot see the video at that time, it's just audio.

15 Q. Okay. And do you recall where the transactions was
16 to take place?

17 A. It was on Durham Brown Road, I believe. I cannot
18 remember the number.

19 Q. And is that in Ocone County?

20 A. Yes. Yes, it is.

21 Q. And have you had a chance to review the videotape
22 since the transaction was completed?

23 A. Yes. I believe it was pretty much that evening we
24 went back and looked at the video right off the bat.

25 Q. And upon reviewing the video, do you recognize

1 anybody from the video in the courtroom?

2 A. Mr. Murphy.

3 Q. Any doubt that in your viewing of the video and
4 seeing Mr. Murphy in the courtroom today, any doubt that
5 Mr. Murphy here is the person in that video?

6 A. No doubt whatsoever.

7 Q. Okay. And what happened during that transactions?

8 A. Pretty much the informant, Ms. Marlee, went to the
9 residence, they talked for a little bit. Money
10 exchanged and Mr. Murphy give her the methamphetamine
11 and she brought it back to Sergeant Long.

12 Q. Okay. And what happened after the transaction?

13 A. When the transaction was done and over with, the
14 informant met back with us. As soon as they done that,
15 Sergeant Long started debriefing and Investigator
16 Hunnicutt started doing, turning off the wires right
17 after the debriefing and I immediately started searching
18 the car. Checked it for hidden drugs, extra money,
19 anything like that. We always checked for that.

20 Q. On her way back to the debrief, are you able to
21 maintain audio surveillance of the CI until y'all reach
22 that debrief location?

23 A. Audio, yes. Sometimes, you know, we can't ride up
24 with the informant because we don't want anything to go
25 bad. If somebody sees our vehicles out and about they

1 kind of get scared. So we always stay a little bit
2 back, but we still observe by audio, yes.

3 Q. All right. And did Ms. Crowe make any stops after
4 the transaction took place on her way back to the
5 debrief?

6 A. No, sir.

7 Q. And during the debriefing, you said your role again
8 was to search the vehicle one more time?

9 A. Yes, sir.

10 Q. And why is that? You said you searched the vehicle
11 again. Why is that?

12 A. We always look for hidden money, drugs, anything
13 like that that could be placed back in the car.

14 Q. Was there anything in the car after the transaction
15 took place that was not in the car before the
16 transaction took place?

17 A. No, sir.

18 Q. Okay. Would it be fair to say the car was clean of
19 any drugs, any implements used for using drugs anything
20 like that?

21 A. Yes. Anything like that, weapons.

22 Q. No extra cash or anything like that?

23 A. No extra cash, right.

24 Q. And who did Ms. Crowe turn the narcotics in to?

25 A. Sergeant Long.

1 MR. STOUDEMIRE: Those are all the questions I
2 would have. Please answer any Mr. Day would have.

3 CROSS-EXAMINATION

4 BY MR. DAY:

5 Q. Were there any drugs on the floor?

6 A. No, sir.

7 Q. Okay. Did you work with Ms. Crowe on any other
8 cases?

9 A. Pretty much Brandon run her as an informant. I'd
10 been with him sometimes.

11 Q. Okay. To your knowledge did she use drugs?

12 A. None that I know of.

13 Q. Okay. Did you ever ask?

14 A. Never asked.

15 Q. And you said there was no extra cash. I thought
16 she brought some money back with her.

17 A. When they do the debriefing all that's brought at
18 that time, too.

19 Q. But she brought back cash too, didn't she?

20 A. Right. But when I searched the car it was not left
21 in the car.

22 Q. And in this case you were monitoring the entire
23 time listening in?

24 A. Listening, yes, sir.

25 Q. I think Officer Hunnicutt said one reason is for

1 safety reasons?

2 A. That is correct.

3 Q. Just want to be sure.

4 A. Yes, sir.

5 Q. And in this case what's going on is that you expect
6 her to be using drugs; isn't that correct?

7 A. It could be, yes, sir.

8 MR. DAY: Those are all the questions I have.

9 Thank you, sir.

10 THE COURT: Re-exam.

11 MR. STOUDEMIRE: Just a couple.

12 REDIRECT EXAMINATION

13 BY MR. STOUDEMIRE:

14 Q. In your review of the videotape was money exchanged
15 for drugs?

16 A. Yes, sir.

17 Q. Okay. And did Ms. Crowe give money to Mr. Murphy?

18 A. No. Yes. Yes. She give money to Mr. Murphy.

19 Yes, I'm sorry.

20 Q. And in return for that money did Mr. Murphy give
21 methamphetamine to Ms. Crowe?

22 A. Yes.

23 MR. STOUDEMIRE: Thank you. That's all I have.

24 MR. DAY: Nothing further, Your Honor.

25 THE COURT: All right. You may step down. Thank

1 you, sir.

2 (Witness leaves stand.)

3 THE COURT: Another sidebar, please.

4 (Discussion at sidebar.)

5 THE COURT: Madam Forelady, ladies and gentlemen of
6 the jury, before we proceed there are certain things we
7 have to set up, technology or technical aspects of the
8 case, so it's gonna take us a little bit of time. It's
9 a little bit after noon. I would suggest we take a
10 lunch break and come back and do all these things so
11 we'll be ready to proceed when we do come back.

12 This will be your first duty, Madam Forelady.
13 Consult with your jury and find out when they would like
14 to come back. How much time do you need for lunch? You
15 know where things are around here and how much time you
16 think it might take. I would suggest an hour, an hour
17 and 15 minutes, an hour and a half. This is not
18 unanimous, just a consensus. Just check with your jury
19 in the box there. Either 1:15, 1:30, 1:45.

20 THE FORELADY: One hour would be fine.

21 THE COURT: And hour? All right. So let's say
22 1:15 then. Again, I think you understand, particularly
23 now, that this is an important case to everybody
24 involved and it is to be resolved in a proper fashion.
25 Do not undertake discussion of this case until it has

1 been completed. With that I'll excuse you till 1:15.
2 Just come back to the jury room.

3 Everyone else remain seated until the jury retires
4 from the courtroom.

5 (Whereupon, the Jury left the courtroom at
6 approximately 12:15 p.m.)

7 THE COURT: Gentlemen, a statement was made during
8 examination of a witness about the effect of a nolle
9 pros. Now, there are three ways that you can dispose of
10 a pending action, particularly in General Sessions. Of
11 course, one is a not guilty verdict, a dismissal, or a
12 nolle pros. Now a nolle pros does not dismiss the
13 action, it just determines that the action cannot be
14 prosecuted. It's done by the State not by the Court,
15 but the State announces it.

16 Now, if a jury has not been impanelled -- now, of
17 course, if a jury has been impaneled and you nolle pros
18 it you're not gonna prosecute it. But if a jury has not
19 been impaneled, it's the Court's understanding, that it
20 is not a final determination and can be brought back
21 again.

22 I don't think it needs any further instruction to
23 the jury because this case was not *nolle pros'd* and
24 there was at least no mention of -- I think the answer
25 to it was that there were no cases *nolle pros'd*. Just

1 to be sure for the record and for future information
2 there are three things that could happen to a case.
3 Nolle pros, dismiss, not guilty, and they have different
4 dispositions of the case. Is there any question? Is
5 the Court correct on that?

6 State v. Patrick, 318 South Carolina 352, 1995. Of
7 course the Court had to look at it to be sure that it
8 was satisfied that that was proper. But anyway, it's
9 not an issue in this case, but just for future reference
10 I think there is a distinction. All right. Very good.
11 Any question from the State?

12 MR. STOUDEMIRE: None, Your Honor.

13 THE COURT: From the Defense?

14 MR. DAY: Not at this time, Your Honor. I will be
15 discussing that with the confidential informant on her
16 record that case that was *nolle pros'd*.

17 THE COURT: Well, do you want to look at the case
18 to be sure? We can do that. That is the case. Do you
19 have it? Did I give enough information?

20 MR. STOUDEMIRE: Give it to us one more time to be
21 sure.

22 THE COURT: State v. Patrick, 318 South Carolina
23 352, 457 S.E.2d 632, Court of Appeals, 1995. All right.
24 Very good.

25 All right. Thank you very much.

1 MR. STOUDEMIRE: Thank you, Your Honor.

2 (Whereupon, a luncheon recess occurred.)

3 (Whereupon, afternoon proceedings begun at 1:25
4 p.m.)

5 THE COURT: Thank you very much. You may take your
6 seats.

7 All right. As I understand, the Jury is ready.
8 Anything from the State?

9 MR. STOUDEMIRE: Judge, the next witness we plan on
10 calling from the State is the CI in this case,
11 Ms. Marlee Crowe. I'm sure there will be some questions
12 from the Defense as to her criminal record. I would
13 like to make sure we go through to make sure what can
14 and cannot be gone into.

15 MR. DAY: That's correct, Your Honor. She has a
16 conviction for a simple possession of a marijuana. We
17 would submit would be, we wouldn't be able to ask her
18 about unless she admits to it. As well as a fraudulent
19 check in 2012 and obtaining goods by false pretenses in
20 2012. She had some cases back in 2005-2007, they were
21 *nolle pros'd*, one was a burglary, but I admit that the
22 testimony does not show that she was a CI at that time.

23 THE COURT: I think the question was whether or not
24 there were any pending charges.

25 MR. DAY: Right. Yes, sir.

1 THE COURT: Is there anything you have that would
2 change that?

3 MR. DAY: No, sir.

4 MR. STOUDEMIRE: Judge, my only question with the
5 simple possessions are, those are obviously less than a
6 year. I didn't know if that was stuff that could be
7 gone into or not. But granted they would be drug
8 offenses. And then the only --

9 THE COURT: Now, the ones within the last ten years
10 would be.

11 MR. STOUDEMIRE: Yes, sir. But she's got two
12 simple possessions, I think one in '04 and '07, so those
13 would be within the prior ten years.

14 THE COURT: Has she had something outside the ten
15 years?

16 MR. STOUDEMIRE: No, sir. The only other things
17 that I see is a driving under suspension, which I don't
18 know that that really matters, from, it looks like, '07.
19 And then the only other conviction that I see within ten
20 years is obtaining goods under -- obtaining signing
21 false pretenses in 2012. The fraudulent check Mr. Day
22 was speaking about all I see were two non convictions.

23 THE COURT: Mr. Day are you planning to use the non
24 convictions for an impeachment?

25 MR. DAY: Let me find those here.

1 MR. STOUDEMIRE: I'm looking at the rap sheet.
2 He's looking at the public index so, of course, there
3 may be something showing on the rap sheet that does not
4 show there.

5 (Counsel confer.)

6 THE COURT: All right. What do we have?

7 MR. STOUDEMIRE: Judge, I think the only other
8 question is we agree on the convictions. With regard to
9 the fraudulent checks Mr. Day is talking about from
10 2005, at least on the rap sheet from NCIC they are
11 listed as not guilty/bench trial with a court date of
12 3/29/2012. However, if you look on the public index it
13 appears Judge Derrick's office input them as *nolle*
14 *pros'd* on that day. So there is a discrepancy there.

15 And I think Mr. Day's intention is to ask her if
16 they were *nolle pros'd* as a result of anything she had
17 done. My only objection to that would be that Sergeant
18 Hunnicutt was already asked if he ever was ever asked to
19 have anything *nolle pros'd* or disposed of for Ms. Crowe.

20 MR. DAY: And this particular case is an Ocone
21 County case and she was arrested on February the 15th,
22 2012, and the date of the case we're here talking about
23 is August the 8th, 2012. And March 29th of 2012 it was
24 disposed of, according to the Clerk of Court's records,
25 by being *nolle pros'd*.

1 **MR. STOUDEMIRE:** And given the arrest date it looks
2 like those charges are completely separate from the ones
3 that are here. Those charges that Mr. Day is speaking
4 of don't even show up on her NCIC.

5 **THE COURT:** Well, they wouldn't if they were
6 dismissed or disposed of in any fashion.

7 **MR. STOUDEMIRE:** And, Judge, I think that's -- I
8 think that would be my issue with going into it that
9 they're dismissed or disposed of; that they're not
10 convictions. If we're gonna cross-examine her then I
11 think we need to cross-examine her.

12 **THE COURT:** What's your question, Mr. Day?
13 Apparently she had a forgery charge in February that was
14 disposed of in March, and then she became a CI in this
15 particular case in August?

16 **MR. DAY:** Well, that's when this took place. We
17 don't know when she became a CI.

18 **THE COURT:** Well, I'm just asking, but isn't that
19 your position? You're saying that she was a CI the
20 whole time -- but she wouldn't have been a CI as far as
21 this Defendant.

22 **MR. DAY:** That's what we're looking at. This
23 occurred on August the 8th.

24 **THE COURT:** Some six months, five months after the
25 other charges were dismissed.

1 MR. DAY: All right. I would submit to the Court,
2 Your Honor, one thing we will be asking about would be
3 her informant agreement when she says there's no pending
4 charges. We don't know the date this occurred, so I'm
5 gonna have to try to ask her --

6 THE COURT: Well, you can ask her about that, if
7 somehow it develops that it was prior to March the 29th?

8 MR. STOUDEMIRE: Yes, sir.

9 THE COURT: And actually it would have to be prior
10 to February -- it would have to be done sometime between
11 February and March. February were the charges and they
12 are dismissed, disposed of in March.

13 MR. STOUDEMIRE: That's correct.

14 THE COURT: So if you can show that agreement was
15 sometime in that timeframe. Do you want to examine her?

16 MR. DAY: Even if at that time in which she signed
17 it was prior to her arrest then it would appear that she
18 received something, some benefit on a pending charge.

19 THE COURT: There was no pending charge if it was
20 not done between March -- I mean, February and March.

21 MR. DAY: But if she signed it in January.

22 THE COURT: Well, she couldn't be guilty of
23 something she hadn't done. She wasn't charged until
24 February.

25 MR. DAY: Right, sir. And in March the case was

1 dismissed. She was still acting as a confidential
2 informant.

3 THE COURT: I thought you said that you were gonna
4 contradict her on the fact that there were no pending
5 charge.

6 MR. DAY: Yes, sir. And whether or not she
7 actually received any.

8 THE COURT: In January there would be no pending
9 charges.

10 MR. DAY: That's correct.

11 THE COURT: So what's the contradiction?

12 MR. DAY: My supposition, Your Honor, is that she
13 in fact received some benefit.

14 THE COURT: Oh, we know better than suppositions
15 and speculations. You have to have some basis for it.
16 And from what you've given me so far there isn't any,
17 unless you can establish that she was a CI sometime
18 between -- or that agreement was done sometime between
19 February and the end of March.

20 MR. DAY: All right, sir.

21 THE COURT: Otherwise there's nothing to contradict
22 it.

23 MR. DAY: I understand.

24 THE COURT: At least as to that particular
25 statement that she had no pending charges. If it was

1 done in January or whatever, there were no pending
2 charges unless you have something that I haven't heard.

3 MR. DAY: Yes, sir. I want to try to establish
4 when she became a CI by signing this and did she receive
5 some benefit as a result of that by having her charges
6 dismissed.

7 THE COURT: Well, you can ask her if she received
8 any benefit by having charges dismissed. If she says no
9 you have to show that she had charges at the time she
10 signed that agreement.

11 MR. DAY: I understand that, Your Honor. What I'm
12 talking about is whether or not she received benefits
13 later even if they weren't then. Part of her agreement
14 was she was not to violate the law.

15 THE COURT: Well, you haven't talked about that
16 part. You were talking about pending charges when she
17 entered the agreement.

18 MR. DAY: Right.

19 THE COURT: You've got to take things one at a
20 time.

21 MR. DAY: Oh, okay, I'm sorry.

22 THE COURT: Now, you're talking about she wouldn't
23 violate the law.

24 MR. DAY: Yes, sir.

25 THE COURT: What would that be now?

1 MR. DAY: That would be after she had entered into
2 an agreement she had no pending charges and later has
3 charges made against her and part of her agreement she
4 would not violate the law.

5 THE COURT: What happened to those charges, the
6 driving under suspension?

7 MR. DAY: I think it was nolle pros'd for later. I
8 don't think it was --

9 THE COURT: Well, the other one was dismissed. I
10 mean, I'm afraid I'm not following you but that's my
11 problem, I guess. If you can satisfy the provisions
12 of --

13 (Counsel confer.)

14 (Discussion off the record.)

15 (The clerk conferred with the Court off the
16 record.)

17 THE COURT: Gentlemen, let's have a sidebar.

18 (Discussion at sidebar.)

19 THE COURT: All right. Let's just be sure that the
20 record is clear. The Court has done some research and
21 found that the two, was it fraudulent check charges?

22 MR. STOUDEMIRE: Yes, sir.

23 MR. DAY: Obtaining goods.

24 THE COURT: Obtaining goods, breach of trust,
25 obtaining goods by false pretenses. The March the 29th

1 charges -- the February charges were expunged on March
2 the 29th of 2012, so that would not be admissible.
3 However, any other charges that fall within the ten
4 years, also it has to be within ten years and one-year
5 sentence, does it not?

6 MR. STOUDEMIRE: Judge, and that was my question,
7 simple possession of marijuana is a 30 day maximum
8 charge and they did occur in 2004 and 2007 so they are
9 within the ten years but they don't carry more than a
10 year.

11 THE COURT: What do you say to that, Mr. Day?

12 MR. DAY: We would submit that those should be in
13 fact because of that is, in fact, a drug case. And in
14 this case it indicates that she has been convicted of a
15 drug case. And I would submit that being in possession
16 of an illegal substance, in this case marijuana, would
17 be a crime of moral turpitude.

18 THE COURT: The two drug offenses are what you are
19 talking about, simple possession?

20 MR. DAY: Yes, sir.

21 MR. STOUDEMIRE: Yes, sir.

22 THE COURT: It's been a while since we visited
23 crimes of moral turpitude after the rules of evidence
24 that we have are pretty much limited to convictions of
25 ten years or more where the punishment is more than a

1 year, where the potential sentence was more than a year.
2 And I'm doing this from memory, but when it got to
3 narcotics, possession was not a crime of moral
4 turpitude, whereas distribution or something that
5 doesn't involve something more than simple possession
6 rose to a crime of moral turpitude. I'm gonna follow
7 403. That was 2004, 2007?

8 MR. STOUDEMIRE: Yes, sir.

9 THE COURT: Considering the time and all, I'm going
10 to rule that it would not be admissible because it's
11 prejudicial value, if any, or any probative value would
12 be outweighed by any prejudicial value. And also I
13 don't find that it falls within the impeachment
14 offenses. All right.

15 MR. DAY: Noting my objection.

16 THE COURT: Subject to the objection of the
17 Defendant. All right.

18 MR. STOUDEMIRE: Yes, sir.

19 THE COURT: All right. Anything else? Are we
20 ready on the video at all?

21 MR. STOUDEMIRE: Yes, Your Honor. Outside of
22 putting it in the player and pushing play.

23 THE COURT: That's what I'm asking. We told the
24 jury that's what we were gonna be doing. I didn't
25 realize all this other was coming up.

1 Anything from the Defendant before I bring the jury
2 back?

3 MR. DAY: No, Your Honor.

4 THE COURT: All right.

5 (The Defendant conferred with counsel off the
6 record.)

7 (The Jury entered the courtroom at approximately
8 1:55 p.m.)

9 THE COURT: All right. Let the record reflect the
10 jury and alternate are in the jury box.

11 Madam Forelady, again I do apologize but I do
12 appreciate your patience but we are now ready to go
13 forward.

14 Mr. Stoudemire, you may call your next witness.

15 MR. STOUDEMIRE: Thank you, Your Honor.

16 The State would call Marlee Crowe.

17 THE CLERK: Please place your left hand on the
18 Bible and raise your right. (Complies.)

19 Do you solemnly swear or affirm the testimony you
20 give this Court will be the truth, the whole truth and
21 nothing but the truth?

22 THE WITNESS: I do.

23 THE CLERK: Please be seated.

24 THE COURT: If you would please, ma'am, state your
25 full name for the record, spelling your last name.

1 THE WITNESS: Marlee Alicia Crowe, C-R-O-W-E.

2 THE COURT: Very good, thank you.

3 Whereupon,

4 MARLEE ALICIA CROWE,

5 Having first been duly sworn, was examined and testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. STOUDEMIRE:

9 Q. Ms. Crowe, how old are you?

10 A. 38.

11 Q. And how far did you go in school?

12 A. I went to the eighth grade.

13 Q. And where do you live?

14 A. I live in Walhalla.

15 Q. Now, have you ever been convicted of any crimes
16 before?

17 A. Yes, sir.

18 Q. Okay. In fact, were you convicted of two counts of
19 obtaining goods under false pretenses in 2012?

20 A. Well, actually it was a fraudulent check. It just
21 was wrote up that way.

22 Q. Okay. But two of them in 2012?

23 A. Yes. And I turned myself in, actually.

24 Q. And that was, I believe they were disposed of on
25 December 7th; is that right?

1 A. I believe that was right.

2 Q. You got a valid driver's license?

3 A. Yes, sir.

4 Q. Did you have a valid driver's license back on
5 August 8, 2012?

6 A. Yes, sir.

7 Q. Have you worked as a confidential informant for the
8 Oconee County Sheriff's Office before?

9 A. Yes, sir.

10 Q. And when you worked for the Oconee County Sheriff's
11 Office, are you familiar with a confidential informant
12 agreement?

13 A. It's a paper that you sign. I know I signed a
14 paper before, yes.

15 Q. Okay. And basically, if I remember right, the
16 paper says what you're supposed to do, what you can do
17 and can't do, right?

18 A. Right.

19 Q. Okay. Do you recall when you signed that paper?

20 A. It's been a few years.

21 Q. Okay.

22 MR. DAY: I'm sorry, Your Honor, I did not hear the
23 answer.

24 THE WITNESS: It's been a few years.

25 MR. DAY: Thank you.

1 BY MR. STOUDEMIRE:

2 Q. And in working as a confidential informant, what do
3 you do?

4 A. You set up a deal to go buy illegal drugs.

5 Q. Okay. And you cooperate with law enforcement with
6 this?

7 A. Yes.

8 Q. And did you cooperate for money?

9 A. Yes.

10 Q. Okay. About how many times have you done this with
11 the Oconee Sheriff's Office?

12 A. With the Oconee Sheriff's office?

13 Q. Yes.

14 A. Maybe six or seven times.

15 Q. Okay. And do you know Gregory Lee Murphy?

16 A. Yes, sir.

17 Q. Is he in the courtroom?

18 A. Yes, sir.

19 Q. Can you point him out to me?

20 A. Yes, sir. (Points.)

21 Q. He is the gentleman --

22 A. He's the gentleman in the center.

23 MR. STOUDEMIRE: Thank you. Your Honor, we would
24 like the court record to reflect the witness pointed to
25 Mr. Murphy.

1 THE COURT: The record will so reflect.

2 BY MR. STOUDEMIRE:

3 Q. Do you call him by any other name?

4 A. Leo.

5 Q. Okay. And over the course of your cooperation with
6 the sheriff's office did you have occasion to buy drugs
7 from Mr. Murphy?

8 A. Yes.

9 Q. Okay. Were these illegal drugs?

10 A. Illegal drugs.

11 Q. Okay. Do you remember when that was?

12 A. It was August the 8th last year.

13 Q. Okay. How did that deal get set up?

14 A. I actually had made a phone call to him on a cell
15 phone and asked him if he had any methamphetamines to
16 sell and he said yes, so I called and called Mr. Long,
17 Brandon, and asked him if I could do some work. And so
18 I called him and he said yes so we met up, and it went
19 from there.

20 Q. Okay. Do you remember when that initial call to
21 Mr. Murphy took place?

22 A. It was just right before I called Mr. Long.

23 Q. Okay.

24 A. I just called him to make sure that he had the
25 drugs before that I met with Mr. Long.

1 Q. All right. And you went to do the transaction on
2 August 8th, correct?

3 A. Correct.

4 Q. Okay. Where were you briefed by law enforcement
5 prior to this transaction taking place?

6 A. You mean the location?

7 Q. Yeah.

8 A. At the Seneca pool.

9 Q. Okay. And who was there when you met with law
10 enforcement?

11 A. Mr. Long and I'm not sure what Jeremy's last name
12 is, but Jeremy and Tim Hunnicutt.

13 Q. Okay. Now, were you wired for sight and sound
14 during this briefing?

15 A. Yes.

16 Q. Okay. Were you searched prior to this transaction
17 taking place?

18 A. Yes, sir, thoroughly.

19 Q. And who performed the search of your person?

20 A. Excuse me?

21 Q. Who performed the search on you?

22 A. On me?

23 Q. Yes.

24 A. Tim searched me. Tim done the search. No, he done
25 the audio, sorry. He done the audio and video and

1 Brandon searched me. Yeah, that's right.

2 Q. Okay. And what type of search did that entail?

3 A. You have to shake your bra out. I mean, they pat
4 you, you know, your pockets, if you have any pockets. I
5 had pockets. They make you pull your pockets out.

6 Pretty much everything. You have to shake your bra out
7 and, you know, they pat you down or if you have pockets
8 you turn them inside out.

9 Q. Would you characterize it as thorough?

10 A. Very. Very thorough.

11 Q. Was your car searched as well?

12 A. Yes, sir.

13 Q. And I believe Lieutenant Chapman testified earlier
14 he's the one that searched your car; is that correct?

15 A. Jeremy?

16 Q. Yeah.

17 A. Yes.

18 Q. And you said Officer Hunnicutt, Sergeant Hunnicutt
19 did the audio and video?

20 A. Right, the wiring.

21 Q. All right. Now, where was the camera and audio
22 placed in this transaction?

23 A. It was placed in a pocketbook.

24 Q. Okay. Was this one that you owned or was provided
25 to you?

1 A. It's provided to me.

2 Q. Okay. And was the audio in the pocketbook as well
3 or somewhere else?

4 A. Both of them were in the purse. It had like a hole
5 in it for the camera to go through.

6 Q. And where did you go? After all this was done,
7 where did you go to meet with Mr. Murphy?

8 A. It was Durham Brown Road, I believe the address was
9 [REDACTED]. It was on the left-hand side of the road. I do
10 remember the house was white.

11 Q. It was in Oconee County?

12 A. Yes, sir.

13 Q. All right. How did you get there?

14 A. In my car.

15 Q. All right. And if you can tell us briefly what
16 happened once you got to the Durham Brown Road address?

17 A. When I got to the Durham Brown Road, I pulled up
18 into the driveway. And I actually had called him, I
19 believe, on the way there. And he was talking to me on
20 the way there and I told him I would be there in just a
21 minute.

22 So when I pulled up in the driveway he came out to
23 the car. And when he come out to the car he had a pipe
24 in his hand and he was like checking his pockets. And
25 he said he forgot it in the house, but he went back in

1 the house and he came back out with the drugs.

2 Q. And when did the actual deal take place?

3 A. In my car.

4 Q. Okay. And that was, again, that was August the
5 8th?

6 A. Yes, sir.

7 Q. Of last year?

8 A. Yes, sir.

9 Q. All right. Now, how did this deal take place? You
10 said he went into the house and came out with the drugs,
11 correct?

12 A. Well, when he first came out he didn't have it and
13 he went back in and came back out with it.

14 Q. Okay. And then tell me what happened after he came
15 back with the drugs?

16 A. When he came back he was standing outside the car
17 at first and then he actually got in the car and he
18 opened the baggie and he put some in his pipe and I
19 thought he was gonna smoke it there but he didn't. And
20 he offered me some, I told him no, that I didn't want
21 it, that the people would think that I had touched there
22 stuff. So that was the excuse that I used.

23 Q. Okay. Did he charge you for these drugs?

24 A. Yes.

25 Q. And how much did he charge you?

1 A. Well, I gave him \$25 because I thought that a
2 quarter gram of methamphetamine was \$25, and he gave me
3 five dollars back because he had took some out.

4 Q. Okay.

5 A. Which I gave to the Sheriff's Department.

6 Q. Okay. So you ended up giving him \$20 for the
7 methamphetamine?

8 A. Right, correct.

9 Q. And in return for that \$20 --

10 A. He gave me the methamphetamines.

11 Q. Okay. And what was it packaged in?

12 A. In like a corner of like a sandwich baggie.

13 Q. Now, the transaction that we're talking about, is
14 that on video and audio recording?

15 A. Yes, sir.

16 Q. Okay. And again, the recording device was in your
17 car in a purse, correct?

18 A. Correct.

19 Q. Okay. Have you had a chance to review that?

20 A. Yes, sir.

21 MR. STOUDEMIRE: Your Honor, may I approach the
22 witness?

23 THE COURT: Certainly.

24 MR. STOUDEMIRE: Thank you.

25 BY MR. STOUDEMIRE:

1 Q. I'm gonna show you, Ms. Crowe, what's been marked
2 as State's Exhibit Number 2. Can you identify what that
3 is for me, please, ma'am?

4 A. That's the video. That's my initials there.

5 Q. Okay. How do you know that's the video that you
6 watched?

7 A. Because that's my initials there. That's my
8 handwriting.

9 Q. Okay. And did you date it as well?

10 A. Yes, sir.

11 Q. All right. And the video that's on here, is that
12 the video of the transaction from August 8, 2012, that
13 we've been talking about?

14 A. Yes, sir.

15 Q. Okay. And is it a fair and accurate representation
16 of the transaction that took place that day?

17 A. Yes.

18 Q. When you viewed it did it appear to have been
19 changed or altered in any way from what the transaction
20 was?

21 A. No way.

22 Q. Nothing added to it, nothing subtracted from it?

23 A. No, sir.

24 MR. STOUDEMIRE: Your Honor, at this point the
25 State would move to admit State's Exhibit Number 2 into

1 evidence.

2 THE COURT: Any objection?

3 MR. DAY: No objection, Your Honor.

4 THE COURT: All right. Without objection State's
5 Exhibit 2 is admitted.

6 MR. STOUDEMIRE: With your permission we would like
7 to publish State's Exhibit 2. And we would like to dim
8 the lights if we can so we can see it a little easier.

9 (Received in evidence was State's Exhibit 2, DVD,
10 State v. Murphy dated 6-5-2013.)

11 (DVD published to jury from approximately 2:08 p.m.
12 until approximately 2:50 p.m.)

13 BY MR. STOUDEMIRE:

14 Q. Now, Ms. Crowe, when you got out there to the
15 Durham Brown Road residence, Mr. Murphy, had you already
16 discussed the amount of drugs and the amount of money?

17 A. Yes.

18 Q. And when you got out there how much did you
19 actually pay him for the drugs?

20 A. \$25. I gave him \$25 and he gave me \$5 back after
21 he took some out of the bag.

22 Q. And what was the reason for giving you \$5 back?

23 A. Because he was taking some out so he was giving me
24 \$5 because he was making the bag slack or short or the
25 weight.

1 Q. And did you complain about that at all?

2 A. No.

3 Q. Did he say anything or tell you what to tell
4 anybody about why the bag was a little short?

5 A. Because he waited on me all day. That's why.

6 Q. Okay. I'm gonna show you a few photos real quick.
7 First I'm gonna show you State's Exhibit Number 3. Do
8 you recognize the individual in that photo?

9 A. Yes, sir.

10 Q. And who is that?

11 A. That's Gregory Murphy.

12 Q. Okay. Try to speak in that microphone to make sure
13 everybody can hear you.

14 A. Oh, sorry.

15 Q. And is that from this transaction?

16 A. Yes, sir.

17 Q. Okay. And State's Exhibit Number 4, do you
18 recognize that?

19 A. Yes. That is the pipe he was holding.

20 Q. Okay. And again, is that from this transaction?

21 A. Yes, sir.

22 Q. All right. And what's this thing right here above
23 the pipe that he's holding in his hand? Can you tell?

24 A. No. No.

25 Q. Okay. And State's Exhibit Number 5. What's that?

1 A. That's the bag of methamphetamines.

2 Q. And who's holding it?

3 A. He is.

4 Q. Okay. And Number 6, who is that?

5 A. That's Gregory Murphy.

6 Q. And in his hand again?

7 A. Is the pipe.

8 Q. All right. And lastly, Number 7. Again, who is
9 that?

10 A. Gregory Murphy.

11 Q. And were all of these photos from this transaction?

12 A. Yes.

13 Q. On August 8, 2012?

14 A. 2012.

15 Q. Okay. Any doubt that the individual in those
16 photographs is Gregory Lee Murphy?

17 A. No doubt.

18 Q. Any doubt that it's the same Gregory Murphy that's
19 sitting in the courtroom today?

20 A. No doubt.

21 Q. All right. Now, after the transaction was over and
22 concluded, what did you do then?

23 A. After I met with him, I left the driveway and I
24 actually went back a different way because it took
25 forever to get there that way so I went through Ocone

1 point through Friendship. That's Friendship Road, I
2 guess. Through there. And I went to the stop sign and
3 kept going straight. And I met with Brandon and Jeremy
4 and Tim at the pool.

5 Q. And is that what they call a debriefing?

6 A. Yes.

7 Q. Okay. And what happened during the debriefing?

8 A. I turned over the methamphetamines to Brandon and
9 he asked me what happened and I told him. And Tim was
10 taking -- actually, no. We spoke about everything
11 before he took the video thing, turned it off. And
12 Jeremy was searching my car while I was talking to
13 Brandon about what happened.

14 Q. So your car was searched again?

15 A. Yes.

16 Q. Were you searched again as well?

17 A. Yes.

18 Q. And Tim Hunnicutt went ahead and took the audio and
19 video equipment from you?

20 A. Yeah, he took it. It was inside a purse so he took
21 it apart I guess for his next...

22 Q. Okay. And the drugs that you got from Mr. Murphy,
23 were they still with you at that point?

24 A. I had already, I turned it over to Brandon as soon
25 as I pulled up.

1 Q. Let's back up a little bit. When you got the drugs
2 from Mr. Murphy and you went back for the debriefing,
3 was the methamphetamine with you at that time?

4 A. Yes.

5 Q. Okay. Did you stop anywhere from Durham Brown
6 Road?

7 A. No.

8 Q. Until you met back with law enforcement?

9 A. No, sir.

10 Q. Okay. Outside of stopping at a red light or a stop
11 sign?

12 A. No. No, sir.

13 Q. Did you alter, examine or change the drugs in any
14 way whatsoever prior to turning them over to Sergeant
15 Long?

16 A. No, sir.

17 MR. STOUDEMIRE: Thank you. That's all the
18 questions I would have. Please answer any Mr. Day would
19 have.

20 THE COURT: We've been here for a little while. I
21 suggest we take a short break. We'll come back and it
22 would be the after break before we start the
23 Cross-Examination. But again, this would be when you
24 are ready to come back just knock on the door and say
25 you're ready to come back in and we'll begin the trial

1 at that time. But again, do not undertake discussion
2 among yourselves. Everyone else remain seated while the
3 jury retires from the courtroom.

4 (Whereupon, the Jury left the courtroom at
5 approximately 2:55 p.m.)

6 THE COURT: All right. Anything from the State
7 before we take a break?

8 MR. STOUDEMIRE: Nothing, Your Honor.

9 THE COURT: All right. I've looked further as to
10 the question of moral turpitude in determining whether
11 or not a crime is one involving moral turpitude the
12 Court focuses primarily on the duty to society and
13 fellow man which is breached by the commission of a
14 crime. Crimes which involve primarily self-destructive
15 behavior generally do not involve moral turpitude, to
16 include simple possession of marijuana. And this was a
17 case in which there's possession of cocaine. Like
18 possession of marijuana it leads more to
19 self-destructive behavior than to Defendant's duty to
20 other people or society in general. Therefore, we
21 conclude possession of cocaine is not a crime involving
22 moral turpitude.

23 Distinction other than admitted other than impeach
24 the appellant to her prior conviction of cocaine. State
25 v. Harvey cited in State v. Ball which I just read from.

1 State v. Ball and State v. Harvey cited by the late
2 Chief Justus Julius V. Ness and ball is 1991 and Harvey
3 is 275 South Carolina 225.

4 So apparently my recollection is correct. Simple
5 possession or even now I find out cocaine is not or was
6 not a crime against moral turpitude that could be
7 subject to impeachment.

8 All right. Anything further from the State?

9 MR. STOUDEMIRE: No, Your Honor.

10 MR. DAY: No, Your Honor.

11 THE COURT: All right. We'll stand at ease while
12 the jury has a break.

13 Now, madam witness, you have been sworn so you
14 can't discuss your testimony with anybody, either of the
15 attorneys or anyone else until you complete your
16 testimony. Do you understand?

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. Thank you. You may step
19 down.

20 (A recess was taken.)

21 THE COURT: All right. Anything from the State
22 before we bring the jury back?

23 MR. STOUDEMIRE: Nothing.

24 THE COURT: From the Defense?

25 MR. DAY: No, Your Honor.

1 THE COURT: All right. Ask the jury to join us,
2 please.

3 (The Jury entered the courtroom at approximately
4 3:25 p.m.)

5 THE COURT: Let the record reflect the jury and
6 alternate are in the jury box.

7 Madam Forelady, ladies and gentlemen of the jury,
8 we will now continue with the trial of the case and this
9 be the cross-examination of the witness.

10 You do understand you are still under oath?

11 THE WITNESS: Yes, sir.

12 THE COURT: Very good. Thank you.

13 You may proceed, Mr. Day.

14 CROSS-EXAMINATION

15 BY MR. DAY:

16 Q. Hi, Ms. Crowe, I just have a few questions, if I
17 may?

18 A. Okay.

19 Q. In looking at this particular day that we're
20 talking about on August the 8, 2012, you said you had
21 contacted Greg Murphy and then you contacted Brandon
22 Long.

23 A. Yes.

24 Q. Is that the way it went?

25 A. Yes.

1 Q. Isn't it true that Greg contacted you?

2 A. Actually he called me a few times, 4 o'clock in the
3 morning, 7 o'clock, all kinds of different times.

4 Q. Yeah. He was looking for meth, wasn't he?

5 A. Excuse me?

6 Q. He was looking for meth?

7 A. He was looking to see if I wanted to buy some meth,
8 yes.

9 Q. You are saying he was wanting to sell?

10 A. He was trying to sell meth.

11 Q. Why would he think that you would be the person
12 that he would want to sell to?

13 MR. STOUDEMIRE: Objection, Your Honor, calls for
14 speculation.

15 THE COURT: Restate your question, Mr. Day.

16 BY MR. DAY:

17 Q. Why do you think he would call you looking for
18 meth?

19 MR. STOUDEMIRE: Again, I think that's the same
20 objection.

21 THE COURT: Same question.

22 MR. DAY: I like that question. All right. Let me
23 go back.

24 THE COURT: You can ask if she knows of any reason
25 why he would call her but if she doesn't, everything

1 would be speculative.

2 BY MR. DAY:

3 Q. Let me ask you it this way. Have you ever used
4 meth before?

5 A. No, sir.

6 Q. So you have never used meth with --

7 A. With Gregory, no.

8 Q. Well, who have you used meth with?

9 A. I don't think who I've used meth with pertains to
10 this case, and I don't use meth, so --

11 THE COURT: You can answer the question either yes
12 or no. Have you used meth?

13 THE WITNESS: Have I used meth before ever? Yes.

14 THE COURT: All right.

15 BY MR. DAY:

16 Q. As a matter of fact, I think the testimony has been
17 here that you have made buys on six or seven people for
18 the county and maybe approximately the same amount for
19 the city of Seneca?

20 A. More for the city than the county...

21 Q. That's right. You said somewhere around 12 or
22 something like that. Does that sound about right?

23 A. Yeah. Maybe a little more than that probably.

24 Q. Okay. And these are people that you know are
25 involved with meth?

1 A. Not just meth. Any illegal drugs.

2 Q. Okay. All right. And when you entered into your
3 agreement to work for the County, you did it, as you
4 said, some years ago or a couple of years ago or
5 something like that when you signed the informant
6 agreement?

7 A. Yes.

8 Q. Do you remember --

9 A. I have no idea, sir, about the date.

10 Q. I don't need a date. Are we saying two years ago
11 from today?

12 A. Give or take. It's been a while.

13 Q. Okay. And in that it said you would not get any
14 kind of break, consideration anything for what you are
15 doing other than getting paid?

16 A. I don't understand what you mean.

17 Q. It said, when you signed this, you checked off
18 where it said not currently charged with a criminal
19 offense.

20 A. I wasn't. I didn't have any criminal offenses
21 during this case, no.

22 Q. No. When you signed this.

23 A. When I signed the paper?

24 Q. Yes, ma'am.

25 A. Had I ever been convicted of a crime?

1 Q. No. No. I asked you did you have any pending
2 criminal charges when you signed your informant
3 agreement?

4 A. Not that I'm aware of, no.

5 Q. Okay. And in this you went through and initialed
6 all of it that said you aren't gonna get any kind of
7 promised help or anything in exchange for what you were
8 gonna do?

9 A. I still don't understand what you are trying to ask
10 me.

11 Q. All right. This is the undated, a copy of the
12 undated informant agreement, okay? And at the beginning
13 -- that's what I was reading there. (Shows to witness.)

14 A. It's just to pay money for it. It wasn't for a
15 criminal offense. It wasn't for nothing like that.

16 Q. Okay. And the other thing where you went through
17 and initialed, you acknowledged: I further acknowledge
18 I have not been offered or promised anything in exchange
19 for cooperation, cooperation is completely voluntary and
20 not as a result of coercion?

21 A. All right. Yes, that's my signature.

22 Q. Okay. Now, on this day, when you arrived at Greg's
23 house and y'all talked two or three times on the phone
24 trying to figure out how to get there, right?

25 A. Yes. I talked to him on the way there.

1 Q. State's Exhibit Number 7, this is a picture of Greg
2 coming to the car when you arrived; is that right?

3 A. He came to the car twice, so yes, that's him.

4 Q. And that in his hand is his pipe?

5 A. Yes.

6 Q. Okay. Have you seen that pipe before?

7 A. Before that day or then?

8 Q. Before that day.

9 A. No, sir.

10 Q. Okay. State's Exhibit Number 6, that's him leaning
11 into the car again and that's him holding his pipe?

12 A. Correct.

13 Q. Now, and I believe he asked you, as we heard on
14 there, to -- if you wanted to use some as well, you-all
15 wanted to do some right then?

16 A. Yes, he did ask me that. I told him no.

17 Q. Okay. State's Exhibit Number 5, this as I
18 understand it, that's the --

19 A. That's the bag of meth.

20 Q. Right. And this is when he was putting it back
21 together after he had gotten some out?

22 A. Yes. He's tying it back.

23 Q. Okay. And this is State's Number 4. Again, this
24 is him in the car next to you and that's his pipe right
25 there?

1 A. Correct.

2 Q. Okay. And he took some of the meth out of the bag,
3 put it into his bowl. And I believe, according to the
4 statement that you gave to the officers, on the same day
5 you stated that when Greg got back in the car with me he
6 smoked a bowl of meth. Greg then handed me the baggie
7 of meth and five dollars meth?

8 A. Yes, he smoked. He was doing it, not me.

9 Q. I know. I understand that's what you said there.

10 A. Just letting you know I don't do ice.

11 Q. Okay.

12 A. Meth, methamphetamines.

13 Q. What drugs do you do?

14 A. I don't do any.

15 Q. Okay. All right. Let me get back to my notes
16 here.

17 All right. Let me make sure I understand. Other
18 than this day, you say you were never around Greg when
19 he smoked meth?

20 A. Around him? Have I ever been around him before?

21 Q. Around Greg when he smoked meth.

22 A. I don't remember seeing him smoking meth but I've
23 been around him before. It's been about ten years ago.

24 Q. Okay.

25 (The Defendant conferred with counsel off the

1 record.)

2 MR. DAY: I don't believe I have any more
3 questions, Your Honor.

4 THE COURT: Re-examine?

5 MR. STOUDEMIRE: None, Your Honor. We would ask
6 that this witness be excused.

7 MR. DAY: No objection.

8 THE COURT: All right. Without objection you may
9 be excused. Thank you, ma'am.

10 (Whereupon, the Witness was excused.)

11 (The Defendant conferred with counsel off the
12 record.)

13 THE COURT: You may call your next witness.

14 MR. STOUDEMIRE: Thank you, Your Honor. The State
15 would call Laura Smith.

16 THE CLERK: Place your left hand on the Bible and
17 raise your right. (Complies.)

18 Do you solemnly swear or affirm the testimony you
19 give the Court to be the truth, the whole truth and
20 nothing but the truth?

21 THE WITNESS: Yes, I do.

22 THE CLERK: Please be seated.

23 THE COURT: If you would please, ma'am, give us
24 your full name, spelling your last name.

25 THE WITNESS: Okay. It's Laura Jean Smith. That's

DIRECT EXAMINATION OF LAURA SMITH BY MR. STOUDEMIRE

1 S-M-I-T-H.

2 Whereupon,

3 LAURA SMITH,

4 Having first been duly sworn, was examined and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. STOUDEMIRE:

8 Q. Ms. Smith, where are you employed?

9 A. Oconee County Sheriff's Department.

10 Q. And what is your job there?

11 A. Communications dispatcher.

12 Q. Okay. Did you do anything for the Sheriff's
13 Department other than working as communications
14 dispatcher?

15 A. For a few months I helped out in evidence to help
16 catch up.

17 Q. Were you working in evidence in August 2012?

18 A. Yes, sir.

19 Q. Okay. And did you have occasion to, on August 9th
20 receive into evidence any items involving Gregory Lee
21 Murphy?

22 A. Yes, sir.

23 Q. Okay. And what item was that? Do you recall?

24 A. I know it was narcotics. Other than that I don't.
25 I'm not that familiar with narcotics.

1 MR. STOUDEMIRE: Your Honor, may I approach the
2 witness?

3 THE COURT: Certainly.

4 BY MR. STOUDEMIRE:

5 Q. Thank you. I'm gonna show you what's been
6 previously marked as State's Exhibit Number 1. Do you
7 recognize anything about that specific exhibit?

8 A. Yes, sir.

9 Q. Okay. What do you recognize?

10 A. I put the sticker on it to state where it was gonna
11 be, what BEST pack number it was and also my signature
12 and the date.

13 Q. Okay. And so your signature appears on that?

14 A. Yes, sir. Well, my initials.

15 Q. Your initials, okay.

16 A. Yes.

17 Q. Did you date it as well?

18 A. Yes, sir.

19 Q. What date did you put on that?

20 A. August the 9th, 2012.

21 Q. And why do you initial it and date it?

22 A. Just to say that I did handle it and just chain of
23 command or chain of custody.

24 Q. How did this all come into your possession?

25 A. When I was helping out in evidence I EPI'd the

1 lockers and keyed in the evidence and put it back where
2 it needs to be.

3 Q. Okay. Tell me about when you said you emptied out
4 the lockers and keyed in the evidence. Tell me what
5 that involves.

6 A. Yes, sir. We unlock the back of the lockers, the
7 back doors and evidence are put in different locked
8 lockers from the outside, and we just remove the
9 evidence and unlock the locker and key in the evidence
10 in the computer and lock it back.

11 Q. Okay. So when an officer puts in an item of
12 evidence such as this from the outside and closes it, is
13 there any way for that officer to reopen that?

14 A. No, sir. Once he pushes the button to lock it,
15 that's it.

16 Q. Okay. And so how do you retrieve it?

17 A. There's two van doors that goes to all the lockers
18 and you have to have a key, which the only people that
19 have a key is David Philpott and one of his other
20 partners in there.

21 Q. Okay.

22 A. And I was given a key.

23 Q. Okay. So you were given the key by Mr. Philpott or
24 Sergeant Merck to specifically unlock that evidence
25 locker?

1 A. Yes, sir.

2 Q. Okay. And which evidence locker was this
3 particular item obtained from?

4 A. Number two.

5 Q. And what was in locker number two on August 9th?

6 A. The evidence is in a main pack. It comes in a
7 manila envelope and it's closed and all the paperwork in
8 it.

9 Q. Okay. And I believe -- so there's a clear plastic
10 envelope in there. Is that what was inside the manila
11 envelope?

12 A. Yes, sir.

13 Q. What's that commonly referred to as?

14 A. We just call them BEST packs.

15 Q. Was that particular BEST pack sealed?

16 A. Yes, sir.

17 Q. Was it signed and dated as well?

18 A. Yes, sir.

19 Q. Whose signature and date appeared on that?

20 A. Brandon Long's.

21 Q. What was the date on the BEST pack?

22 A. 8-9-2012.

23 Q. Okay. So you got it out of the locker number two
24 the same day he actually put it in locker number two
25 from the other side?

1 A. Yes, sir. It was just a short time.

2 Q. Okay. Was the BEST pack sealed when you got it?

3 A. Yes, sir.

4 Q. Okay. Did it appear that it had been tampered with
5 or altered or opened in any way after being sealed?

6 A. No, sir.

7 Q. Okay. And it had some sort of -- something in it
8 that was at least identified as a narcotics?

9 A. Yes, sir.

10 Q. Okay. And once you obtain it from locker number
11 two, what did you do then?

12 A. The computer is right behind the lockers, so I just
13 turn around and I key it in the computers, make sure my
14 initials, signatures is on all the paperwork every that
15 needs to be done, date and time. We also have a
16 computerized thing where you just stamp it, time stamp
17 it.

18 Q. Okay.

19 A. And then after I do that I go to the back behind
20 locked doors and put it into a filing cabinet they have
21 that goes to the lab.

22 Q. Okay. When you key everything into the computer
23 does it print out some sort of a label --

24 A. Yes, sir.

25 Q. -- for you to put on that particular BEST pack?

1 A. Yes, sir.

2 Q. Okay. And is there a label on there?

3 A. Yes, sir.

4 Q. And what does that label say?

5 A. It gives our IR number which is the SC0375 number.
6 It gives the case number, which is the 2012-27-137, the
7 BEST pack and the BEST pack number. And it gives the
8 locker number, which is 189 B 1, which is locked in the
9 file cabinet to go to the lab.

10 Q. So it, so it puts out essentially where to put it?

11 A. Yes, sir. Where I put a sticky note with it and
12 where it should be.

13 Q. And in the entire time that you had that item in
14 your care, custody and control did you open it, alter it
15 or otherwise compromise any of the evidence contained in
16 it in any way?

17 A. No, sir.

18 Q. Okay. And once you got through keying in
19 everything in the computer and it printed out the label
20 telling you where to put it what did you do then?

21 A. I went and put it in the file cabinet.

22 Q. Okay. And specifically what storage location?

23 A. 189 which is narcotics.

24 Q. And you said there were letters or something after
25 that?

1 A. Some letters about?

2 Q. Like 189 B 1 or something?

3 A. Yeah. B 1, which is different boxes different
4 filing cabinet drawers, lockers.

5 Q. And looking at it now today, is it in substantially
6 the same condition as when you saw it prior?

7 A. Yes, sir, without going to the lab.

8 Q. Okay. And once you put it in 189 B 1 did you have
9 anything else to do with this particular item of
10 evidence?

11 A. No, sir.

12 MR. STOUDEMIRE: Thank you. Those are all the
13 questions I would have. Please answer any Mr. Day may
14 have.

15 THE COURT: Cross-Examination.

16 CROSS-EXAMINATION

17 BY MR. DAY:

18 Q. I just need to --

19 A. (Handing) State's Exhibit 1.

20 Q. One second.

21 A. No problem.

22 Q. Thank you. (Defendant looks at State's Exhibit 1.)
23 You pass it onto the people so they can get it to
24 the lab?

25 A. Yes, sir.

1 Q. That's your job?

2 A. That was on my job just to type it in the computer
3 and put it away.

4 MR. DAY: Looks like you did a good job. No
5 further questions.

6 MR. STOUDEMIRE: We ask the witness be excused.

7 MR. DAY: No objection.

8 THE COURT: The witness may be excused. Thank you,
9 ma'am.

10 THE WITNESS: Thank you, Your Honor.

11 (Whereupon, the Witness was excused.)

12 MR. STOUDEMIRE: Your Honor, the State would next
13 call Sergeant David Philpott.

14 THE CLERK: Place your left hand on the Bible and
15 raise your right. (Complies.)

16 Do you solemnly swear or affirm the testimony you
17 give the Court will be the truth, the whole truth and
18 nothing but the truth?

19 THE WITNESS: I do.

20 THE CLERK: Please be seated.

21 THE COURT: All right. If you would please, sir,
22 give us your full name for the record, spelling your
23 last name.

24 THE WITNESS: David Philpott, P-H-I-L-P-O-T-T.
25 Whereupon,

1 SERGEANT DAVID PHILPOTT,
2 Having first been duly sworn, was examined and testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. STOUDEMIRE:

6 Q. Is it Sergeant Philpott; is that correct?

7 A. Correct.

8 Q. Sergeant Philpott, you work at the Sheriff's
9 Office; is that correct?

10 A. Yes, sir.

11 Q. And how long have you been employed in law
12 enforcement?

13 A. Approximately 12 years.

14 Q. And you are currently in evidence; is that correct?

15 A. Yes, sir.

16 Q. All right. How long have you been working down
17 there?

18 A. Full-time I've been assigned to the CID criminal
19 investigative division for approximately three years.

20 Q. All right. And what type of training and education
21 are necessary for your current position?

22 A. Beyond the initial basic law enforcement
23 certificate, I've had numerous investigative classes
24 from crime scene processing, latent print examination,
25 blood stain analysis, marijuana analysis, just numerous

1 advanced crime scene classes.

2 Q. And, as part of your duties, do you take in
3 evidence obtained from crimes?

4 A. Yes, sir.

5 MR. STOUDEMIRE: Your Honor, may I approach?

6 THE COURT: Certainly.

7 BY MR. STOUDEMIRE:

8 Q. Sergeant Philpott, I'm gonna show you what's been
9 marked as State's Exhibit Number 1 for identification.
10 Can you identify that item for me, please, sir?

11 A. This is what we commonly refer to as a BEST pack.
12 It is a sealed plastic bag with a control number of C,
13 Charlie, 14920. It was taken in from Sergeant Brandon
14 Long that after it being logged in it would subsequently
15 be delivered to the lab for analysis.

16 Q. And when was it placed in a BEST pack by Sergeant
17 Long, can you tell?

18 A. August 9, 2012.

19 Q. And when was it received into evidence?

20 A. August 9, 2012.

21 Q. And from where would it have been received?

22 A. From the temporary locker position. May I refer to
23 my notes?

24 Q. Certainly.

25 A. This particular BEST pack was placed into locker

1 number two and was removed from that locker on August 9,
2 2012, at 4:06 p.m. by Laura Smith.

3 Q. Okay. And where did it go from when Ms. Smith had
4 it?

5 A. She logged it in and placed into the storage
6 location 189 B 1, which 189 is the narcotics storage
7 room and B 1 is where all the BEST packs are placed
8 until they are delivered to the lab.

9 Q. And, in fact, did you deliver this particular item
10 for chemical testing?

11 A. Yes, sir, I did.

12 Q. Okay. Where did you take it?

13 A. I took it to the Anderson/Oconee Forensics Lab and
14 hand delivered it to Meredith Lanford on August 15,
15 2012.

16 Q. And Meredith Lanford is employed by the
17 Anderson/Oconee Forensics Lab?

18 A. Correct.

19 Q. Okay. And is that who does the chemical testing on
20 items of this nature?

21 A. Either her or Michael Miller. Both use as the
22 director of the lab.

23 Q. Okay. And this particular exhibit, Number 1, after
24 you took it out of the storage bin, 189 B 1, was it in
25 your care, custody and control that entire time from

1 then until it was received by the lab at Anderson for
2 testing?

3 A. Yes, sir. What I would do is remove it from 189 B
4 1. It would stay within my immediate control from
5 there, you know, drive straight to the lab, no stops or
6 errands, hand-deliver it to Meredith and chain of
7 custody is completed with her paperwork at that time.

8 Q. Okay. And at some point after the testing is
9 completed, are the items returned to you for storage?

10 A. Yes, sir.

11 Q. All right. When was it returned to you?

12 A. That item was returned on February 8, 2013.

13 Q. Okay. And is this item in substantially the same
14 condition as when you received it from the bin to take
15 it to the lab till now?

16 A. Aside from this outer plastic bag it is. When it's
17 first delivered to the lab it's not in this second bag.

18 Q. Is that something that the Anderson Forensics Lab
19 does?

20 A. Yes. Once they break the seal on the BEST pack,
21 the inner plastic bag, then they will repackage it on
22 this outer bag and it has their label.

23 MR. STOUDEMIRE: All right. That's all the
24 questions I would have, Sergeant Philpott. Please
25 answer any questions Mr. Day may have for you.

CROSS-EXAMINATION

BY MR. DAY:

Q. Sergeant Philpott, let me look at that and let me make sure I understand. We're talking about the clear plastic baggie, that's this thing here, the BEST pack?

A. That is the bag that it's packaged in from the lab.

Q. Okay. And what's on the inside is this little baggie right here?

A. Correct.

Q. And that's what the drugs would have been in?

A. Correct.

Q. Okay. So when it comes back from the lab, it's sealed again?

A. Uh-huh. It's sealed when we first receive it, it remains sealed until it's delivered to the lab. The lab will break the seal and when we receive it back, it is once again sealed.

MR. DAY: All right. That's what I need to know. I think those are all the questions I have. Thank you.

THE COURT: Re-exam?

MR. STOUDEMIRE: No reexamination, Your Honor. We would ask that this witness be excused as well.

MR. DAY: No objection, Your Honor.

THE COURT: Without objection this witness will be excused as well.

1 (Whereupon, the Witness was excused.)

2 THE COURT: You may call your next witness.

3 MR. STOUDEMIRE: Thank you, Your Honor. The State
4 would call Ms. Meredith Lanford.

5 THE CLERK: Place your left hand on the Bible and
6 raise your right. (Complies.)

7 Do you solemnly swear or affirm the testimony you
8 give the Court will be the truth, the whole truth and
9 nothing but the truth?

10 THE WITNESS: I do.

11 THE CLERK: Please be seated.

12 THE COURT: All right. If you would please, ma'am,
13 give us your full name, spelling your last name for the
14 record.

15 THE WITNESS: Meredith Lee Lanford, L-A-N-F-O-R-D.

16 THE COURT: Very good. Thank you, ma'am.

17 Whereupon,

18 MEREDITH LANFORD,

19 Having first been duly sworn, was examined and testified
20 as follows:

21 DIRECT EXAMINATION

22 BY MR. STOUDEMIRE:

23 Q. Ms. Lanford, where are you employed?

24 A. I'm employed with the Anderson/Ocone Forensics
25 Lab.

1 Q. And how long have you worked for the lab?

2 A. I have worked there for about seven years.

3 Q. What are your duties there?

4 A. My primary job function is to analyze evidence that
5 is brought to our laboratory for any suspected
6 controlled substances.

7 Q. And to do this I'm assuming there's some fairly
8 significant educational background involved.

9 A. Yes. I graduated from Clemson University with a
10 bachelors of science degree in chemistry. I went on to
11 complete the forensic science certificate program with
12 Green Technical College. I was then certified and
13 trained as a forensic chemist with my employer now as
14 well as my previous employer, the Charleston police
15 laboratory.

16 I was trained in the area of forensic drug
17 chemistry by the Drug Enforcement Administration. I'm a
18 member of the American Chemical Society, as well as the
19 Clandestine Laboratory Investigating Chemists. And each
20 year I try to attend seminars on forensics training.
21 And I'm also required to complete a yearly proficiency
22 test in the area of forensic drug chemistry.

23 Q. And during the course of your duties how often do
24 you analyze things for the presence of controlled
25 substances?

1 A. Just about every day.

2 Q. And is there any way to estimate how many times you
3 have done this over the course of your career?

4 A. How many I've actually tested?

5 Q. Uh-huh.

6 A. Probably over 5,000.

7 Q. And have you ever been called to testify in court
8 before?

9 A. Yes, I have.

10 Q. Have you ever been qualified as an expert in court
11 before?

12 A. Yes, I have.

13 Q. And what field were you qualified?

14 A. Forensic drug chemistry.

15 MR. STOUDEMIRE: Your Honor, at this time the State
16 would move to have Ms. Lanford qualified in the field of
17 forensic drug chemistry.

18 THE COURT: Voir Dire.

19 MR. DAY: No, Your Honor, we accept that.

20 THE COURT: All right. Madam forelady, ladies and
21 gentlemen of the jury, as you noted most witnesses are
22 limited to things they know of their own knowledge, in
23 other words, what they see, hear, touch or whatever.
24 However, some witnesses by reason of their background
25 training or experience are considered experts in a

1 particular area, and in this case the witness has been
2 proffered as an expert in the area of forensic
3 examination of --

4 MR. STOUDEMIRE: Forensic drug chemistry, Your
5 Honor.

6 THE COURT: Forensic drug chemistry. All right.
7 And so she will be able to not only give her testimony
8 but the basis of her opinion. Now, do remember all
9 witnesses' testimony, expert or otherwise is for your
10 evaluation. All right. You may proceed.

11 BY MR. STOUDEMIRE:

12 Q. Thank you, Your Honor. Ms. Lanford, can you tell
13 us about the composition or makeup of methamphetamine?

14 A. Methamphetamine is the next often type we see is
15 what they call ice. It's usually a crystal-like
16 substance. It can also be a powder of any type of color
17 or a rock substance. It just depends on how it's
18 actually made as to what it will look like.

19 Q. And is methamphetamine classified as a controlled
20 substance under the law?

21 A. Yes, it is. It's a schedule two substance.

22 Q. Schedule two? Thank you.

23 MR. STOUDEMIRE: Your Honor, may I approach the
24 witness?

25 THE COURT: Certainly.

1 BY MR. STOUDEMIRE:

2 Q. Ms. Lanford, I'm gonna show you what's been marked
3 as State's Exhibit Number 1. Can you identify that
4 item?

5 A. Yes, I can. This is our BEST pack that all of our
6 drug evidence is supposed to be sealed up in and brought
7 to the lab.

8 Q. And how do you identify this particular item?

9 A. We have control numbers on each of the bags and I
10 have actually, when I receive it into the lab, I always
11 mark it with the lab number that we generate, my
12 initials and the date that I received it.

13 Q. And when did you receive this particular item?

14 A. I received this on August 15th, 2012.

15 Q. Okay. And from whom did you receive it?

16 A. From David Philpott of the Oconee County Sheriff's
17 Office.

18 Q. And when you receive items from Sergeant Philpott
19 does he bring them to you personally?

20 A. Yes, he does.

21 Q. And are they -- was this particular item when he
22 delivered it, was it sealed?

23 A. Yes, it was.

24 Q. Okay. Did it appear to have been sealed in the
25 proper manner using containers and bags that are

1 acceptable to your office?

2 A. Yes, it is. We do not accept any evidence that is
3 not properly sealed.

4 Q. Okay. So if it had been compromised in some way
5 you wouldn't have been able to take it into your
6 possession?

7 A. Correct.

8 Q. And once you receive that item from Sergeant
9 Philpott did it remain in your care, custody, and
10 control during the period in which it was analyzed?

11 A. Yes, it did.

12 Q. And is the item today in substantially the same
13 condition as when you received it?

14 A. Yes.

15 Q. And for what purpose did Exhibit Number 1 come into
16 your possession?

17 A. In order for it to be tested to see if any
18 controlled substances were present.

19 Q. Okay. And were you able to determine a weight of
20 the drugs?

21 A. Yes, I did. The substance itself weighed 0.13
22 grams.

23 Q. Okay. And when did you conduct chemical analysis
24 on that item?

25 A. I analyzed this particular substance on October

1 16th, 2012.

2 Q. And when you analyze these substances, is any
3 portion of the item that comes into your possession, is
4 it destroyed as a consequence of doing the testing?

5 A. Yes, it is.

6 Q. Okay. How does the process for testing for
7 narcotics work?

8 A. The first thing I do is this is the center bag
9 right here, the BEST pack. I open it, pulled a
10 substance out, removed any other packaging that is
11 around the substance. In this case it was obtained in a
12 clear plastic Ziploc bag. There was another clear
13 plastic baggie inside a clear plastic Ziploc bag. So I
14 removed all those bags and I take a weight of just the
15 substance itself, not any other packaging. And, like I
16 said, that weight was 0.13 grams. We do two screening
17 tests in order to narrow down what type of substance
18 might be present. And then we perform two confirmatory
19 tests on instruments in the laboratory in order to
20 confirm if there is an actual controlled substance
21 present.

22 Q. And from all this testing were you able to form an
23 opinion as to what Exhibit 1 is and what it contains?

24 A. Yes, I did.

25 Q. And what is that?

1 A. I found that this substance contained
2 methamphetamine.

3 Q. Okay. And on what do you base that opinion?

4 A. On my analysis of the substance.

5 Q. Okay. And were you able to issue any sort of a
6 report that states what the results of the testing were?

7 A. Yes, I did.

8 Q. Okay. Do you have that with you?

9 A. I do.

10 Q. And what does that report state?

11 A. It states that the item submitted was a clear
12 plastic Ziploc bag containing crystal line substance
13 which was methamphetamine found 0.13 grams.

14 Q. And your signature, I'm assuming, is attached to
15 that as well?

16 A. Yes, it is.

17 Q. Is that the original of the report?

18 A. Yes, it is.

19 MR. STOUDEMIRE: May I have that exhibit?

20 (Counsel confer.)

21 (Whereupon, marked for identification was State's
22 Exhibit 8, drug analysis report.)

23 MR. STOUDEMIRE: And, Your Honor, at this time the
24 State would move to have State's Exhibit Number 1, the
25 BEST pack, admitted into evidence, as well as move to

1 have the original of the Anderson/Oconeel Regional
2 Forensics Laboratory lab report in this particular case
3 admitted into evidence as well and that's been marked as
4 State's Exhibit Number 8.

5 THE COURT: Any objection to State's Exhibit 1
6 being admitted into evidence?

7 MR. DAY: No, Your Honor.

8 THE COURT: Without objection State's Exhibit 1 is
9 admitted into evidence.

10 (Whereupon, State's Exhibit Number 1 was admitted
11 into evidence.)

12 Any objection to State's Exhibit Number 8 being
13 admitted into evidence?

14 MR. DAY: No, Your Honor.

15 THE COURT: State's Exhibit Number 8 is admitted
16 into evidence. All right. You may proceed.

17 (Whereupon, State's Exhibit Number 8 was admitted
18 into evidence.)

19 MR. STOUDEMIRE: Thank you, Your Honor that's all
20 the questions I would have of this witness.

21 CROSS-EXAMINATION

22 BY MR. DAY:

23 Q. On your report, which I have a copy here, it states
24 what the items are and when you did it, that sort of
25 thing so you can keep up with what's going on with the

1 control number which tells you what you're working on,
2 where it came from, et cetera, et cetera; is that
3 correct?

4 A. Yes, it is.

5 Q. And the item that you are testing you identify as a
6 clear plastic Ziploc bag containing knotted clear
7 plastic baggie containing Crystalline substance.

8 A. Yes.

9 Q. Okay. Now, the clear plastic Ziploc bag, is that
10 the BEST pack?

11 A. No, that is not.

12 Q. Oh, okay. So what is that?

13 A. That was an actual -- this bag right here that was
14 sealed up in this.

15 Q. Okay. So what was inside of this little Ziploc
16 bag?

17 A. Was a knotted clear plastic baggie containing the
18 Crystalline substance.

19 Q. Is that still in there?

20 A. It should be. Yes, I see it right here.

21 Q. Okay. That's the little one that's inside that
22 one?

23 A. Yes, sir.

24 Q. All right. That's what I was trying to figure out.
25 I couldn't find that other bag. All right. And the

1 amount you found was point. 13 grams?

2 A. 0.13.

3 Q. 0.13. And approximately how would you describe
4 that amount?

5 A. It's a very small amount, but I've seen a lot
6 smaller.

7 Q. Yeah. But there wasn't much to it?

8 A. You could say that, sure.

9 Q. Enough to test.

10 A. Ample enough to test.

11 MR. DAY: All right. Thank you very much.

12 THE COURT: Re-exam?

13 REDIRECT EXAMINATION .

14 BY MR. STOUDEMIRE:

15 Q. Enough to use as well?

16 A. Yes, sir.

17 MR. STOUDEMIRE: Okay. Thank you. That's all I
18 have, Your Honor.

19 MR. DAY: No further questions, Your Honor.

20 THE COURT: Very good. May the witness be excused?

21 MR. STOUDEMIRE: Please.

22 MR. DAY: Without objection.

23 THE COURT: Without objection you may be excused.
24 Thank you, ma'am.

25 (Whereupon, the Witness was excused.)

1 THE COURT: All right. You may call your next
2 witness.

3 MR. STOUDEMIRE: Your Honor, at this time the State
4 would rest.

5 THE COURT: Let me see the attorneys at sidebar,
6 please.

7 (Discussion at sidebar.)

8 THE COURT: All right. Madam Forelady, ladies and
9 gentlemen of the jury, the State has rested in its
10 Case-in-Chief. Now, that obviously doesn't mean the
11 case is over at all because we still have other parts to
12 consider in the trial.

13 Now, also, it's after 4:00. I have a policy that
14 says that we don't take or start another part of the
15 trial, in other words, or even taking a new witness
16 after 4:30. The reason for that is, if you go beyond
17 5:00 I find that it interferes with our lives in the
18 sense that it seems that we have two. One begins early
19 in the morning and goes to about five and one begins
20 about five and sometimes goes on forever.

21 So what I usually do is try to break somewhere that
22 would get us out about five, and that would include
23 taking a witness or going into other parts of the trial.
24 As I say, after we finish everything in the trial, of
25 course, it's going to be given to you for your

1 deliberations.

2 And I think that all cases require being able to
3 have adequate time to consider everything. So,
4 therefore, there's no way we can complete the trial
5 today. Rather than trial to piecemeal it, I'm gonna
6 suggest we retire for the day. There are some things I
7 need to take up with the parties, but I'm going to
8 excuse you for the balance of the day.

9 And again, Madam Forelady, consult with your jury
10 as to what time you would like to start in the morning.
11 I would say 9:30, 10:00 or whatever time. It's up to
12 you. You know where you come from and how long it takes
13 to get here, what time you would like to start. So just
14 consult with your jury, please. Again, a consensus, not
15 a unanimous decision.

16 **THE FORELADY:** 9:30 would be fine.

17 **THE COURT:** 9:30. That's an excellent time. With
18 that I'm going to excuse you. And, of course, as I
19 instructed you yesterday of course you are not permitted
20 to permit anybody to discuss the case with you or you to
21 days among yourselves or with anybody. I think you
22 understand this is a very important case to everybody
23 involved and needs to be resolved in a proper fashion.

24 And as I said yesterday, no one who will be in that
25 jury room when you reach your decision tomorrow can help

1 you, they can only interfere with the proper resolution.
2 With that I'm going to excuse you and I'll see you at
3 9:30 in the morning.

4 Everyone else remain seated while the jury retires
5 from the courtroom.

6 (Whereupon, the Jury left the courtroom at
7 approximately 4:10 p.m.)

8 THE COURT: All right. To save some time the State
9 has rested. Is there anything else from the State
10 before we proceed with any motions from the Defense?

11 MR. STOUDEMIRE: No, sir.

12 THE COURT: All right. Are there any motions from
13 the Defense?

14 MR. DAY: Of course we would move for a directed
15 verdict of acquittal in that the State has failed to
16 produce sufficient evidence upon which to produce a
17 conviction in this matter.

18 THE COURT: Anything from the State?

19 MR. STOUDEMIRE: No, sir. We think there's
20 certainly evidence enough to proceed to the jury on this
21 matter.

22 THE COURT: I think it's Rule 19 that says the
23 Court is not concerned with the weight of the evidence
24 but whether or not there is any evidence which would
25 require that the case be submitted to the jury, and in

1 this case I do find that there is sufficient evidence to
2 go forward to the jury. It is for them to weigh that
3 evidence and reach a verdict based on it so the motion
4 for directed verdict is denied. But it's noted for the
5 record.

6 MR. DAY: Thank you, Your Honor.

7 THE COURT: All right. Anything else?

8 MR. DAY: Your Honor, at this point we ask the
9 Court to ensure the Defendant is aware of his Fifth
10 Amendment rights either to testify or remain silent.

11 THE COURT: All right. Mr. Murphy, if you would
12 please stand. Raise your right hand. (Complies.)

13 Do you solemnly swear or affirm the testimony
14 you're about to give is the truth, the whole truth and
15 nothing but the truth?

16 THE DEFENDANT: I do.

17 (Whereupon, the Defendant was sworn.)

18 THE COURT: Very good sir.

19 All right. Mr. Gregory Lee Murphy, at this time I
20 am going to explain to you certain of your rights. If
21 you do not understand anything I say please let me know.
22 If you want me to explain anything in more detail,
23 please let me know. Do you understand this?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: We have now reached that stage of the

1 trial where you may present your defense. You have the
2 right to claim the protections given to you by the Fifth
3 Amendment to the Constitution of the United States.

4 This amendment states in pertinent part, quote, no
5 person shall be compelled in any criminal case to be a
6 witness against himself, close quotes.

7 This means that you cannot be required to testify
8 in this case. You have a right to testify on your own
9 behalf. However, no one can make you testify. This is
10 a personal right and no one can waive this right except
11 you. If you decide to testify, you will be subject to
12 the same rules that govern other witnesses. You may be
13 examined and cross-examined on any relevant issue in
14 this case. In addition, if you have any convictions
15 involving dishonesty or false statements or crimes
16 punishable by imprisonment by more than one year and
17 this Court determines that the probative value of
18 admitting this evidence outweighs its prejudicial effect
19 to you, the Solicitor will be able to introduce your
20 record to attack your credibility.

21 If you decide to testify this decision on your part
22 must be freely, voluntarily and intelligently made with
23 knowledge of the protections given to you by the Fifth
24 Amendment and the consequences of the decision to
25 testify. Do you understand all of this?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: If you decide not to testify I will
3 instruct the jurors that they cannot give the fact you
4 did not testify any consideration whatsoever; that there
5 is to be absolutely no prejudice to you because you
6 didn't testify. You may talk with your attorney, your
7 family and friends or anyone else, but the final
8 decision will be left entirely up to you. Do you
9 understand this?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand all that I've
12 explained to you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions about what
15 I've explained to you?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you discussed with your lawyer
18 whether or not you should testify?

19 THE DEFENDANT: A little bit but not completely.

20 THE COURT: That's one of the reasons I wanted to
21 recede for the afternoon so that you would have the
22 opportunity to discuss with your family and your lawyer
23 whether or not you want to testify, but you do not have
24 to make any decision until tomorrow when we reconvene,
25 do you understand that?

1 THE DEFENDANT: Yes, sir, thank you.

2 THE COURT: You want to consider it overnight
3 before you make any decision. Do you understand that

4 THE DEFENDANT: Yes, sir, I do.

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

6 THE DEFENDANT: Thank you.

7 THE COURT: Anything else from Defense?

8 MR. DAY: Nothing further, Your Honor.

9 THE COURT: Very good. Anything further from the
10 State?

11 MR. STOUDEMIRE: Nothing, Your Honor.

12 THE COURT: We'll stand in recess until tomorrow
13 morning at 9:30. Be here a little bit earlier. That
14 might even include whether or not the Defendant wishes
15 to testify. I would like to go to the jury as soon as
16 possible or start the trial as soon as possible so that
17 we do have plenty of time to go to the jury after
18 completion of all the testimony. Very good. We will
19 stand in recess until tomorrow morning at 9:30.

20 (Whereupon, court adjourned at 4:30 p.m.)

21

22 --- THIS ENDS SECOND DAY OF TRIAL ---

23

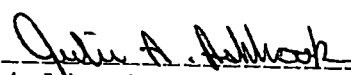
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3 CERTIFICATE OF REPORTER

4 I, the undersigned Julie A. Ashbrook, Court
5 Reporter for the Thirteenth Judicial Circuit Family
6 Court of the State of South Carolina, do hereby certify
7 that the foregoing is a true, accurate, and complete
8 transcript of record to the best of my ability of all
9 the proceedings and evidence introduced in the hearing
10 and/or trial of the captioned case, relative to appeal,
11 in the General Sessions Court for Oconee County, South
12 Carolina, on the 25th day of June, 2013.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.
15
16

17 
18 Julie A. Ashbrook
19 Family Court Reporter
20 Thirteenth Judicial Circuit
21
22
23
24
25

1
2 STATE OF SOUTH) IN THE COURT OF GENERAL
3 CAROLINA) SESSIONS
4 COUNTY OF OCONEE) INDICTMENT NO: 2013-GS-37-312

5 STATE OF SOUTH)
6 CAROLINA)
7 PLAINTIFF,) TRANSCRIPT OF RECORD
8 -vs-) TRIAL - VOLUME III
9 GREGORY LEE MURPHY,)
10 DEFENDANT.)

11 JUNE 26, 2013
12 WALHALLA, SOUTH CAROLINA

13
14 B E F O R E:

15 THE HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A
16 JURY.

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

19 BLAIR L. STOUDEMIRE ESQ.
20 DEPUTY 10TH CIRCUIT SOLICITOR
21 ATTORNEY FOR THE STATE

22 R. DANIEL DAY, ESQ.
23 ATTORNEY FOR THE DEFENDANT

24 ROBIN SUE HILD, FCRR, RPR
25 CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

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E X H I B I T S

NUMBERMARKED ENT'D

NO EXHIBITS PROFFERED

1 ** START OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD **

2 DAY THREE OF GREGORY LEE MURPHY TRIAL

3 This is Wednesday, June 26, 2013, Oconee County
4 General Sessions Court, Judge Macaulay, continuation of
5 the trial of State of South Carolina of Gregory Lee
6 Murphy, day 3.

7 **THE COURT:** All right. It's my understanding
8 everybody is here. Anything from the State before we
9 bring the jury back?

10 **MR. STOUDEMIRE:** Nothing, Your Honor.

11 **THE COURT:** From the Defendant?

12 **MR. DAY:** Just one second, if I may, Your Honor.

13 **THE COURT:** Certainly.

14 (The Defendant conferred with counsel off the
15 record.)

16 **MR. DAY:** Nothing further from the Defendant, Your
17 Honor.

18 **THE COURT:** Has the Defendant made his decision as
19 to whether or not he will take the stand?

20 **MR. DAY:** He has, Your Honor. He advises me he
21 does not wish to take the stand and, therefore, the
22 defense rests.

23 **THE COURT:** Let me -- well, first of all,
24 Mr. Murphy if you would please stand.

25 **THE DEFENDANT:** Yes, sir.

1 THE COURT: You understand you are still under oath
2 from yesterday when I asked you about your right to
3 testify or not to testify?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you discussed with your lawyer
6 whether or not you should testify or not?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you wish to talk to your lawyer any
9 more at this time?

10 THE DEFENDANT: Maybe just one second, yes, sir.
11 I'm sorry.

12 THE COURT: No, not at all.

13 (The Defendant conferred with counsel off the
14 record.)

15 MR. DAY: Your Honor, the Defendant tells me now he
16 wishes to testify.

17 THE DEFENDANT: Sorry, Your Honor.

18 THE COURT: No, not at all. Listen, that is your
19 right to do so. You do understand, as I explained to
20 you yesterday, if you testify you will be just as any
21 other witness, and if you have any convictions involving
22 dishonesty or false statement or for crimes punishable
23 by prison for more than one year and the Court
24 determines the value for admitting outweighs prejudicial
25 value it will be admitted into the record for the

1 solicitor to attack your credibility as a witness. Do
2 you understand that? Do you understand that?

3 THE DEFENDANT: Oh, yes, sir. I'm sorry.

4 THE COURT: All right. Is there anything else you
5 need to understand about your right about not to have to
6 testify or present any evidence, your right to remain
7 silent? Do you have any other questions?

8 THE DEFENDANT: No, sir.

9 THE COURT: And you do wish to testify in this
10 case?

11 THE DEFENDANT: I haven't really had -- I -- yes,
12 sir, I would like to testify.

13 THE COURT: All right. And by the way, Mr. Day do
14 you intend to present any other evidence?

15 MR. DAY: Excuse me? I'm sorry.

16 THE COURT: Do you intend to present any other
17 evidence?

18 THE DEFENDANT: No, sir.

19 THE COURT: Very good. All right. Now, is there
20 anything from the State before I bring the jury back?

21 MR. STOUDEMIRE: Nothing, Your Honor.

22 THE COURT: I will recognize you, of course, to go
23 forward. You made your motion for a directed verdict
24 which was denied so you will be going forward based on
25 the Court's ruling.

1 MR. DAY: Your Honor, in that regard just to be
2 sure, Mr. Murphy does have a record indicating a
3 possession of methamphetamine back from 2004 when he was
4 convicted and criminal domestic violence high and
5 aggravated nature, a disorderly conduct, and a receiving
6 stolen goods which occurred in 2012. The 2012 was
7 Magistrate's Court offense.

8 THE COURT: Then it wouldn't be a year.

9 MR. DAY: Yes, sir.

10 MR. STOUDEMIRE: Judge, my only question with
11 disorderly conduct I don't think that's a moral
12 turpitude ground. I would have a question whether or
13 not the receiving stolen goods would be a moral
14 turpitude.

15 THE COURT: It would be petit larceny if it was in
16 Magistrate's Court.

17 MR. STOUDEMIRE: No. No, I don't know that petit
18 larceny would be, but I mean --

19 THE COURT: But I'm just saying that if receiving
20 stolen goods the goods would have to be less than 2,000.

21 MR. STOUDEMIRE: They are less than 2,000.

22 THE COURT: Which is a magistrate offense. Plus --
23 let me ask you this. Go through the ones that you
24 intend to use or you would like to use.

25 MR. STOUDEMIRE: The only ones that I had no

1 question about were the possession of less than one gram
2 of methamphetamine, which is from 2004, the CDV high and
3 aggravated.

4 THE COURT: I'm going to permit that to be used.

5 MR. STOUDEMIRE: And then the CDV high and
6 aggravated from 2004.

7 THE COURT: I'm not sure if that is that probative
8 in this case, so I'm going to rule under 403 that its
9 prejudicial value outweighs any probative value.

10 MR. STOUDEMIRE: Yes, sir.

11 THE COURT: All right. So the only one we use is
12 the prior drug offense.

13 MR. STOUDEMIRE: Yes, sir.

14 MR. DAY: The prior drug back in 2004, yes, sir.

15 THE COURT: Anything else?

16 MR. DAY: No, sir.

17 THE COURT: Very well. Ask the jury to join us,
18 please.

19 (The Jury entered the courtroom at approximately
20 9:55 a.m.)

21 THE COURT: Let the record reflect the jury and
22 alternate are in the jury box.

23 Madam Forelady, ladies and gentlemen of the jury,
24 the defense (sic) rested as we left the court yesterday.
25 Let's see. Have you rested on the record,

1 Mr. Stoudemire?

2 MR. STOUDEMIRE: Yes, sir, we did.

3 THE COURT: All right. Well, he's rested for sure
4 now. All right. But now we'll go forward with the
5 defense case.

6 Mr. Day, call your first witness.

7 MR. DAY: Thank you, Your Honor. I call Gregory
8 Murphy.

9 THE CLERK: Place your left hand on the Bible and
10 raise your right hand. (Complies.)

11 Do you solemnly swear or affirm the testimony you
12 give the Court will be the truth, the whole truth and
13 nothing but the truth?

14 THE WITNESS: I do.

15 THE COURT: Give us your full name for the record,
16 spelling your last name.

17 THE WITNESS: Gregory Lee Murphy, M-u-r-p-h-y.

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

19 Whereupon,

20 GREGORY LEE MURPHY,

21 Having first been duly sworn, was examined and testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. DAY:

25 Q. Mr. Murphy, how old are you?

1 A. I'm gonna be 41 [REDACTED] [REDACTED].

2 Q. You got to speak up now, sir, so everyone can hear
3 you.

4 A. Okay. 41 almost that's about it.

5 Q. And how long have you lived here in Oconee County?

6 A. All my life.

7 Q. Born here?

8 A. Yes.

9 Q. All right. And the lady you have been sitting with
10 during the trial is who?

11 A. My mama.

12 Q. All right. Where did you go to school?

13 A. I went to Seneca. I went to -- I did leave for a
14 while and went to New York for three years, I went to
15 school there, and then I went to Salem.

16 Q. Did you finish high school?

17 A. No, sir.

18 Q. How far did you go?

19 A. Eighth grade.

20 Q. Can you read and write?

21 A. Not very well at all.

22 Q. Have you gotten a G.E.D. or any other kind of
23 training?

24 A. No, sir.

25 Q. Been to any other kind of schools or training?

1 A. I done tutoring one time and that's all.

2 Q. What kind of work have you done?

3 A. Carpentry work, construction mainly, block work.

4 Work for a guy in Salem for a while, construction
5 mainly.

6 Q. And how long did you -- what's the longest you ever
7 held a job?

8 A. I worked for the town of Salem for three years.

9 After that not very -- I mean construction work is funny
10 the way I was is fun, too, you know, kind of hard to
11 keep a job sometimes.

12 Q. And we've talked about this before and it's a hard
13 question, you've had a hard time talking about it. You
14 have children?

15 A. Yes, sir.

16 Q. How many?

17 A. Two.

18 Q. You lost your children, didn't you?

19 A. Yes, sir.

20 Q. When was that?

21 A. In '05, I think.

22 Q. When we say lost children, they didn't die, did
23 they?

24 A. No, sir.

25 Q. They were taken away from you?

1 A. Yes, sir.

2 Q. Why was that?

3 A. Well, DSS said it was because of violence in the
4 home, but it was violence and a drug habit.

5 Q. Because of drugs you lost your children?

6 A. Yes, sir.

7 Q. When did you start using drugs?

8 A. The first time I was 16. Really never done it too
9 -- off and on a little bit until '09 and then after '09
10 I really got bad on it.

11 Q. As a matter of fact you were convicted of being in
12 possession of methamphetamine, weren't you?

13 A. Yes, sir.

14 Q. And that was back I believe, let me look at the
15 exact date here, I wrote it down, let's see here, and
16 that was November the 15, 2004.

17 A. Yes, sir.

18 Q. Does that sound right?

19 A. Pretty much. I didn't know exactly the date.

20 Q. And on that charge did you go to trial on that
21 charge?

22 A. No, sir.

23 Q. Why?

24 A. I was guilty.

25 Q. Did you plead guilty?

1 A. Yes, sir.

2 Q. You stood up in the court and admitted you were
3 guilty?

4 A. Yes, sir..

5 Q. And you did have possession of meth then?

6 A. Yes, sir.

7 Q. And you were using it?

8 A. Yes, sir.

9 Q. And you said you got onto it harder in 2009. What
10 was going on?

11 A. I, I just started doing it, I increased from 16 to
12 all the way through my life I would do a little, a
13 little more, get shorter times that I would, it was
14 twice a, once a month maybe then it got to twice a
15 month, then once a week, then two times a week then it
16 ended up being every day.

17 Q. Now, going into 2012, you got arrested on this
18 time, apparently you spoke to a Marlee Crowe.

19 A. Yes, sir.

20 Q. Do you know a Marlee Crowe?

21 A. Yes, sir.

22 Q. How do you know Marlee Crowe?

23 A. We used drugs together.

24 Q. How many times do you say y'all used drugs
25 together?

1 A. Four or five.

2 Q. And on this particular day she says that you had
3 contacted her.

4 A. That's not true.

5 Q. What happened?

6 A. I called her earlier that morning and asked her if
7 she wanted to come over and that's about all I have to
8 say and she knows what it is usually.

9 Q. You got to speak up. Move up a little closer.

10 A. Okay. I'm sliding away.

11 Q. You talked to her. Why did you talk to her?

12 A. Because I didn't have no money and I wanted to get
13 high and we used to get high together and if I didn't
14 have the money she did or if I had the drugs she didn't.
15 Either way.

16 Q. And do you remember prior to, before this day on
17 August the 8th, do you remember how long before that you
18 and she had used drugs together?

19 A. Maybe two weeks.

20 Q. And on this particular date when y'all talked, you
21 said you talked to her first; is that correct?

22 A. Yes, sir. Yes, sir.

23 Q. And then she says she called you?

24 A. That's not true. She did call me but I called her
25 first earlier that morning.

1 Q. Right. And when she called you did she say she was
2 coming over?

3 A. Not right at the time. A little bit later she
4 called me back and told me she wanted to come over.

5 Q. And she did, as a matter of fact?

6 A. Yes, sir.

7 Q. We saw the video here.

8 A. Yes, sir.

9 Q. And she was headed to where you were.

10 A. Yeah. Yes, sir.

11 Q. This place wherever y'all ended up together where
12 this took place that we watched on video, where was
13 that?

14 A. In Seneca, Fairplay.

15 Q. And who lived there?

16 A. A girl named Carrie, I didn't know her first name
17 -- last name, so...

18 Q. Were there drugs there?

19 A. Yes, sir.

20 Q. Well, why didn't you just go use the drugs?

21 A. I didn't have the money and we usually get high
22 together.

23 Q. They wouldn't give you drugs?

24 A. No, sir. You got to have money, believe me.

25 Q. On this day Marlee Crowe shows up.

1 A. Yes, sir.

2 Q. And she brought money.

3 A. Yes, sir.

4 Q. Now, according to the video we watched she handed
5 you that money. Now, when you came out to the car --
6 okay -- I'll open this. I'm gonna show you what's been
7 marked as State's Exhibits 3, 6, and 7. And I want to
8 start with Number 7. That shows you.

9 A. Yes, sir.

10 Q. Is that correct?

11 A. Yes, sir.

12 Q. And what's in your left hand?

13 A. My pipe.

14 Q. What's that for?

15 A. To smoke meth with.

16 Q. All right. Just so the jury understands, when you
17 say you smoke it, how do you smoke it?

18 A. Put it in a pipe, you put a lighter to it and let
19 it melt and then you just puff on it just like a pipe.

20 Q. Okay. And that's what you used to get high?

21 A. Yes, sir.

22 Q. When you came out of the house you brought that
23 with you?

24 A. Yes, sir.

25 Q. What were you expecting to do with that pipe?

1 A. Me and her use it.

2 Q. Okay. And I show you State's Exhibits 3 and 6,
3 pictures on that. And on both of those show you leaning
4 into the car and the pipe is in your left hand; is that
5 right?

6 A. Yes, sir.

7 Q. And you had your cigarette lighter?

8 A. Yes, sir.

9 Q. So you are ready to smoke?

10 A. Yes, sir.

11 MR. DAY: Your Honor, if I may I would like to
12 publish these to the jury.

13 THE COURT: Certainly.

14 BY MR. DAY:

15 Q. Now, when you got --

16 THE COURT: Just for the record, though, is that
17 State's Exhibits 3, 6 and 7?

18 MR. DAY: Yes, sir.

19 THE COURT: All right. Very good.

20 BY MR. DAY:

21 Q. Now, when Marlee got there, she gave you some
22 money?

23 A. Yes, sir.

24 Q. And how much was it?

25 A. \$25.

1 Q. That's what she said. She testified she gave you
2 \$25. And according to the video you left, got out of
3 the car and went in the house.

4 A. Yes, sir.

5 Q. What did you do in the house?

6 A. I got the drugs. I got the -- I bought the drugs.

7 Q. And you went back out to the car?

8 A. Yes, sir.

9 Q. Did you give her all those drugs?

10 A. No, sir.

11 Q. We watched the video and it shows you talking about
12 some of the drugs.

13 A. Yes, sir.

14 Q. Do you remember how much money you gave her back?

15 A. Five dollars.

16 Q. And it shows that on there. You talked about so
17 you could use some.

18 A. Yes, sir.

19 Q. Now, prior to you using it you didn't hand her the
20 bag of meth before that, did you?

21 A. No, sir.

22 Q. You held onto it?

23 A. Yes, sir.

24 Q. Why were you holding onto it?

25 A. I was gonna get mine.

1 Q. You wanted some?

2 A. Yeah, very bad.

3 Q. In it it shows on the video and State's Exhibit
4 Number 5 the picture of the little baggie with the meth
5 in it, right?

6 A. Yes, sir.

7 Q. Now, you took some of that out and put it into the
8 bowl in your pipe.

9 A. Yes, sir.

10 Q. Did you smoke it there?

11 A. I don't think right at the time but as soon as she
12 left I did, but she was in a hurry on me.

13 Q. You asked her to join you, didn't you?

14 A. Yes, sir.

15 Q. And she didn't want to?

16 A. That's the first time ever.

17 Q. So when she didn't want to -- and y'all did not
18 sit, stay in the car?

19 A. No, sir.

20 Q. Now according to, looking at the picture of State's
21 Exhibit Number 5, I'm just gonna show you here very
22 quickly, that's been identified as that being the little
23 piece of a sandwich bag, corner of a sandwich bag or
24 whatever with the meth in it; is that right?

25 A. Yes, sir.

1 Q. And that's where you got it out of?

2 A. Yes, sir.

3 Q. And -- oh, I'm sorry.

4 A. You see the lighter. I'm ready.

5 Q. And in that, that's where you are tying it back up
6 so it's closed up.

7 A. Either tying it up or untying it, one of the two.

8 Q. And then you gave that back to Marlee?

9 A. Yes, sir.

10 MR. DAY: All right. With Court's permission
11 State's Exhibit Number 5 I would also publish to the
12 jury.

13 THE COURT: Very well.

14 BY MR. DAY:

15 Q. And she took that bag, along with the five dollars
16 you gave her back with some of the drugs you got out of
17 that bag, and then she left?

18 A. Yes, sir.

19 Q. After that did you see her again?

20 A. A couple more times but not like that.

21 Q. You didn't use drugs again?

22 A. No, sir.

23 Q. Okay. Now, tell us what happened now. You've been
24 in the car, got the drugs, and from what we could see on
25 video, it appeared you were putting apparently those

1 drugs into your pipe?

2 A. Yes, sir.

3 Q. All right. And at that point you got out of the
4 car and I think that's what those picture showed the
5 ones we looked at before what you looked like getting in
6 and out of the car. Okay. And then she left and where
7 did you go?

8 A. Back into the house.

9 Q. What did you do?

10 A. Well, before I went in the house I smoked the meth
11 on the porch before I went inside.

12 Q. So no sooner did she get out of the driveway or
13 wherever you were smoking?

14 A. I thought we was gonna do it together but as soon
15 as she left I smoked it.

16 Q. All right. During the time you said you really got
17 into this heavy in 2009, you said you went from a couple
18 days -- I mean, a couple times a week into practically
19 every day.

20 A. It increased over the years.

21 Q. The money that you had at that time, did you use it
22 for anything else besides drugs?

23 A. What do you mean, talking about, sir, say again.

24 Q. Any money that you had.

25 A. Yeah.

1 Q. Where did you get the money from?

2 A. My mama. And I draw disability.

3 Q. All right. What are you drawing disability for?

4 A. My back injury, anxiety, depression. Just
5 overworked my body, I guess, in both ways, I guess,
6 drugs and but it ain't for drugs but --

7 Q. All right. How much do you get from disability?

8 A. I got \$704 at first and then it raised up to about
9 740, something like that.

10 Q. And that's the money you use?

11 A. Yes, sir.

12 Q. And when that ran out you went to where?

13 A. To either Marlee or one of my other friends. We
14 would always get high together. One person had it most
15 of the time or went there or a few other places I went
16 to to get high or try to.

17 Q. Marlee wasn't the only person you were smoking
18 drugs with?

19 A. No, sir.

20 Q. Using meth every time you could?

21 A. Every day if I could.

22 Q. On disability, your mother was your primary sources
23 of getting money?

24 A. Yes, sir.

25 Q. Now, that was 2012 so we're talking about

1 approximately three years, close to it when you were
2 going through this period of your life?

3 A. Yes, sir.

4 Q. Now I've looked at these pictures here and we saw
5 up there, and you look a little bit different.

6 A. Thank you, sir.

7 Q. All right. We were sitting there at the table and
8 were looking at the video and we looked at it before,
9 needless to say. How did you describe yourself the
10 first time we looked at that video?

11 A. I was ashamed of myself.

12 Q. How did you describe what you look like?

13 A. Pitiful. It disgusted me. I had never seen myself
14 on tape. I was as they call wiped out.

15 Q. That was the term you used to me, you were wiped
16 out.

17 A. Yes, sir.

18 Q. Had your mother ever seen that video?

19 A. No, sir.

20 Q. Your mother knew you had a problem?

21 A. Yes, sir.

22 Q. She hung with you, though, didn't she?

23 A. She tried her best.

24 Q. But you didn't do right by her?

25 A. No, sir, I did not.

1 Q. So drugs have cost you your children?

2 A. Yes, sir.

3 Q. You've had to depend on your mother and you are how
4 old?

5 A. 41, like I said, July 5th next month.

6 Q. And you are still having to depend on your mother?

7 A. Yes, sir. She's the only one I got here. I don't
8 see none of my drug friends.

9 Q. You went into jail the end of November of last
10 year. You went into jail the end of November last year?

11 A. Yes, sir.

12 Q. And you have been there ever since?

13 A. Yes, sir.

14 Q. Do you know approximately how much weight you
15 gained since you went in?

16 A. I weighed about 180 when I went in. Now I'm close
17 to 230.

18 Q. I know this may seem like a silly question, but
19 since you were arrested in November have you had any
20 drugs?

21 A. No, sir.

22 Q. All right. When we talked about this before, you
23 used the word addict. Can you explain what you believe,
24 what is an addict?

25 A. Me.

1 Q. Huh?

2 A. Me.

3 Q. You are. What is that?

4 A. Somebody that couldn't at the time control their
5 drug habit or wanted drugs or just they were pitiful,
6 just isn't in their right mind.

7 Q. All right. And as a result, you haven't been able
8 to accomplish much in your life, have you?

9 A. Nothing. I still haven't done nothing good, sir.

10 Q. And one of the things we've talked about also prior
11 to starting this trial, you are not saying you didn't do
12 anything wrong, did you?

13 A. No, sir, I know I done wrong.

14 Q. On this day, you knew what you were doing was
15 wrong?

16 A. Yes, sir.

17 Q. That you wanted those drugs?

18 A. Very bad.

19 Q. And on this day when Marlee came, someone you knew,
20 you expected her to do drugs, right?

21 A. Yes, sir.

22 Q. And as a result of that, you actually gave her some
23 money back so you could get those drugs?

24 A. Yes, sir.

25 Q. So you didn't try to take any away from her?

1 A. No, sir.

2 Q. Didn't threatened her or anything?

3 A. No way.

4 Q. Were you surprised when you found out it was Marlee
5 was the one who had turned you in?

6 A. No, sir, not really. I knew.

7 Q. But you wanted those drugs?

8 A. Yes, sir.

9 Q. Do you think it was any help for you? Has it
10 helped you in this addiction?

11 A. Yes, sir, it has.

12 Q. Do you think that you have been, like I said, away
13 from them since November of last year, has this helped
14 you?

15 A. Oh, yes.

16 Q. Now, in looking at this case, you have been
17 described by the State and by police officers as a dope
18 dealer or a drug dealer.

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

20 Q. All right. In that regard, are you an addict or a
21 dealer?

22 A. I'm an addict.

23 Q. This stuff must be pretty powerful.

24 A. Very powerful.

25 Q. Because when you stop and look at .13 grams, or

1 grains, rather, that's not very much, is it?

2 A. No, sir.

3 Q. .13. As the lady said from the lab, you can just
4 barely see what's in there at that very bottom.

5 A. I can't see it from here.

6 Q. (Handing.)

7 A. There ain't nothing in it.

8 Q. You see a little bit of grains in it. That's about
9 all it takes, isn't it?

10 A. No, sir. I would say it would be a little bit more
11 than that. I can't even see that.

12 Q. That stuff is power enough to where that little bit
13 would affect you and make you high?

14 A. No, sir, not me. For sure not me. I don't see
15 anybody -- there ain't nothing in the bag.

16 Q. Now, how long would this high last normally?

17 A. Sometimes if I did it every day -- that's a hard
18 question because it depends how much you do.

19 Q. On this particular day you sat on the porch how
20 long did that one last?

21 A. That evening, maybe to the nighttime. But I've
22 been up for days on it and you don't make good decisions
23 then.

24 Q. All right. Do you want to get beyond this part of
25 your life?

1 A. Yes, sir.

2 Q. Do you want to get past this?

3 A. Yes, sir.

4 Q. A while ago you said that the drugs cost you a lot,
5 including your family?

6 A. Yes, sir. The most important thing was my family.

7 Q. Are you hoping to be able to reestablish that
8 relationship?

9 A. Yes, sir. I kind of am already starting to with my
10 daughter, one of them. The other one is about to turn
11 18 on December 29th and she's telling them she's telling
12 my other daughter that she loves her daddy and she'll be
13 there to see me and I hadn't seen her in 12 years.

14 Q. It's a long time, isn't it?

15 A. Yes, sir.

16 Q. Just because you made a decision that the drugs
17 were more important to you at that time, isn't that
18 right?

19 A. They weren't more important, it's just they took
20 over. There is not a family alive or around that can
21 beat this. I mean if you have addiction, you're gonna
22 lose your family somewhere or somehow. You're gonna
23 lose your wife, lose your kids or lose your life. I
24 mean your life.

25 MR. DAY: All right, sir. Please answer any

1 questions Mr. Stoudemire may have.

2 THE WITNESS: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. STOUDEMIRE:

5 Q. Mr. Murphy, let's be straight about one thing. On
6 August 8, 2012, Marlee Crowe gave you \$20 and you gave
7 her methamphetamine, correct?

8 A. \$25 and I gave her five back, yes, sir.

9 Q. Okay. So you got \$20 at the end of the deal and
10 she got --

11 A. I didn't get the \$20, the man of the house did.

12 Q. Okay. So she didn't put \$20 in your hand?

13 A. No, sir. Yes.

14 Q. Okay. So she put money in your hand and you put
15 methamphetamine in her hand, correct?

16 A. Yeah, I guess you could say that.

17 Q. Okay. So we're clear on that, right?

18 A. Of course.

19 Q. Okay. Now, I'm gonna show you this picture. I'm
20 curious and I'm trying to understand, where is the
21 lighter in that picture?

22 A. In my palm of my hand. You might not be able to
23 see it, but that's where it is.

24 Q. Okay. What's that?

25 A. Cellphone.

1 Q. Okay. So the lighter is somewhere down in here.

2 A. It's right here. (Indicating.)

3 Q. We just can't see it?

4 A. I'd say that's where it's at. I had it in my hand
5 and that's where it was.

6 Q. Okay.

7 THE COURT: Which picture was that?

8 MR. STOUDEMIRE: I'm sorry, Your Honor, that was
9 State's Exhibit 4.

10 BY MR. STOUDEMIRE:

11 Q. When Marlee came to the house that day on August 8
12 you didn't have any hard feelings with her, did you?

13 A. No, sir.

14 Q. Okay. How long had you known each other about that
15 time?

16 A. Like she said, we knew each other about ten years
17 over. About a while, and then after this a couple
18 months, maybe.

19 Q. Okay.

20 A. Three at the most.

21 Q. Didn't have any arguments with her, you didn't know
22 of any ax she had to grind against you, did you?

23 A. Not that I know of, no.

24 Q. And you didn't have any ax to grind against her?

25 A. No, sir, I don't recall any.

1 Q. Okay. Now, on this particular day you said, I
2 believe your words, you were whacked out?

3 A. Yeah. Marlee said that. She could tell.

4 Q. Okay. So you were on drugs when this started,
5 correct?

6 A. I've been on drugs for a while then, yes.

7 Q. Okay. I want to ask you a couple of questions
8 about this video, but quite honestly I don't think any
9 of us want to see the inside of a car while we drive to
10 the house so I'm gonna skip ahead a little bit.

11 A. That would drive them all crazy.

12 Q. To be quite honest it drove me crazy, too.

13 Okay. Now, when we get to the house you had been
14 on the phone with Ms. Crowe on the way there giving her
15 directions, correct?

16 A. Yes, sir.

17 Q. Okay. And what you're telling us today is that you
18 called her that morning to come out to the house so you
19 could get some money from her to buy some drugs so the
20 two of you could use together. That's what you are
21 telling us today, correct?

22 A. That's true. That's true.

23 Q. Okay. But that's what you are telling us?

24 A. Yeah.

25 Q. So you didn't -- your intention was not -- you are

1 telling us your intention was not to sell her drugs for
2 her to give to somebody else or anything like that.
3 Your intention was to give her drugs to use with you at
4 that time?

5 A. Yes, sir. That's how it was supposed to be and
6 that ain't what happened, though.

7 Q. And so you are saying you took -- she pulled up,
8 you came to the car, you got the money and then went
9 inside to get the drugs?

10 A. Yes, sir.

11 Q. Okay. All right. (Playing video.)

12 Now, what's in your left -- or what's in your right
13 hand there?

14 A. I'm not sure I can see.

15 Q. Okay. (Playing video.)

16 A. Cell phone there. I'm not sure. I still can't
17 see.

18 Q. Okay. (Plays video.)

19 A. Cell phone. (Plays video.)

20 Q. Okay. Now, right there I think I heard you say you
21 asked her if she wanted to hit it; is that right?

22 A. Yes, sir. Most times she does.

23 Q. Okay. So when you asked her do you want to hit it
24 what does that mean?

25 A. Do you want to smoke it, do you want it?

1 Q. Okay. (Plays video.)

2 Now, is that the money she gave you in your right
3 hand?

4 A. Yes, sir.

5 Q. How much is in your right hand at this point?

6 A. \$25.

7 Q. (Plays video.) Hold on. So did you already give
8 her the five dollars back? I'm only seeing 20 in your
9 hand?

10 A. No, sir, I have not.

11 Q. Okay. Let's back it up a little bit here. (Plays
12 video.)

13 Okay. So did I hear you right you said this is
14 good stuff.

15 A. Yeah. It probably was good stuff or I thought at
16 that time.

17 Q. (Plays video.) Okay. Now, what did you say there?

18 A. I said I was gonna have some I waited all day.

19 Q. Okay. And you said you were gonna have some,
20 right?

21 A. I was gonna get some maybe or that was what I
22 meant. (Plays video.) I couldn't understand myself.

23 Q. Okay. Hold on a second. Go ahead and finish what
24 you were say, I'm sorry.

25 A. I said I couldn't hardly understand myself talking.

1 Q. (Plays video.) Did you just say I can get more?

2 A. Yeah, inside the house. There's more inside the
3 house.

4 Q. Okay. So what bill is that sitting on your lap
5 right there?

6 A. It looks like I thought all the money.

7 Q. Okay. (Plays video.) Now what's that that you
8 just pulled out of your pocket with the blue cap?

9 A. It had some Lortabs in it.

10 Q. It had Lortabs in it, okay. (Plays video.)

11 Okay. We didn't hear anything about Lortab. Why
12 do you got Lortab?

13 A. I take them. I have a prescription for them.

14 Q. Okay. So you keep your prescription in a little
15 bottle with a blue screw cap?

16 A. Not all the time.

17 Q. Okay. So what do you keep your meth in?

18 A. Usually in that little bottle usually.

19 Q. All right. So you keep your methamphetamine in the
20 same bottle where you keep your Lortab?

21 A. I don't always keep the Lortab in that, but just
22 sometimes.

23 Q. But you're saying you did this day?

24 A. Yes, sir.

25 Q. Okay. And it's not possible you opened that

1 thinking there was gonna be methamphetamine in there --

2 A. I didn't --

3 Q. Well, hold on a second. Let me finish my question.

4 THE COURT: Just a moment. Let's not talk over
5 each other.

6 BY MR. STOUDEMIRE:

7 Q. So it's not possible that you thought the
8 methamphetamine was gonna be in the container where you
9 normally kept your methamphetamine and you had to go in
10 the house to get it?

11 A. No, sir. I would never put my meth anywhere else
12 beside my pocket.

13 Q. Well, you just said you keep it in that bottle with
14 the blue cap.

15 A. In my pocket.

16 Q. Okay. Which was in your pocket?

17 A. There was no methamphetamines in there.

18 Q. Okay.

19 A. There was Lortabs. I was going to give her one.

20 Q. (Plays video.) At this point where did you go?

21 A. Into the house.

22 Q. Okay. And whose house is this?

23 A. Her name was Carrie. I don't ask for the last name
24 much.

25 Q. Okay. Were you staying there or just hanging out

1 for the day?

2 A. I've been there -- no, I'd been there a couple days
3 but when you're on meth you don't sleep.

4 Q. So you were just staying there and you just didn't
5 know anybody's name?

6 A. I knew Carrie and I knew her boyfriend named James
7 and there was some guy named John in there and that
8 was...

9 Q. (Plays video.) Okay. The money that you just
10 brought back out you put in your pocket?

11 A. I don't understand because I give her five dollars
12 back.

13 Q. Okay. Is it possible you gave her the five dollars
14 earlier before you went in the house?

15 A. No.

16 Q. That's not possible?

17 A. I wouldn't think so, no.

18 Q. Okay. (Plays video.) What did you say there?

19 A. Would you do it again, please?

20 Q. Absolutely. (Plays video.) What did you say
21 there?

22 A. I said I won't sell her none.

23 Q. Speak up again.

24 A. I said I won't sell her none.

25 Q. Okay. I thought I heard you say don't make me mad

1 or I won't sell you none of it?

2 A. She didn't make me mad. I didn't even want to do
3 it what I thought we was gonna do, but she done said --
4 but I could tell she was leaving because she said I'm in
5 a hurry, I'm in a hurry.

6 Q. Okay. But I'm gonna ask you what you hear next
7 that you say, okay?

8 A. Uh-huh.

9 Q. (Plays video.) What did you say there?

10 A. That I made it extra light because I waited on her
11 all day.

12 Q. Okay. And I thought you said something tell them
13 that I made it light. Who would them be?

14 A. I thought it -- I don't know, I didn't know who
15 them were.

16 Q. Okay. So is it fair to say that them would be
17 someone other than Marlee?

18 A. I figured Marlee was doing it with them because she
19 done it with me.

20 Q. Okay. So presumably she was going to take the
21 drugs from there and give it to them?

22 A. I didn't expect her to be doing that but it sounds
23 like that's what she was doing or she was saying it.

24 Q. (Plays video.) They won't never buy no more. We
25 heard her correct?

1 A. Yes, sir.

2 Q. Okay. So at this point are you still thinking
3 she's there to get drugs to smoke drugs with you?

4 A. Not at the time, no. No.

5 Q. But you haven't given her the drugs yet, right?

6 A. No. But I give the money to one of us.

7 Q. Okay.

8 A. And if I didn't give her the money if I took the
9 drugs back in and got the money back or whatever, I
10 wouldn't have gotten none of the drugs either.

11 Q. Okay. But you still got money in your pocket,
12 right? We saw you put it in your pocket.

13 A. I reckon. I didn't think I had no money. I know I
14 didn't have no money. I don't understand.

15 Q. (Plays video.) It's all I had?

16 A. Yes, sir.

17 Q. Okay. So you're telling her to tell them that's
18 all I had?

19 A. I didn't care what she told them as long as I was
20 getting high.

21 Q. Okay. (Plays video.) What do you mean by my
22 price?

23 A. I give \$20 for it and then I give five dollars for
24 it.

25 Q. Okay. Well, what was your price on that? I don't

1 understand.

2 A. I give her \$20 and brought her five dollars back,
3 and I didn't try to make no money I just wanted drugs.

4 Q. Okay. So what was your price, your price for the
5 transaction, your price for supplying the drugs? What
6 do you mean by that?

7 A. I didn't supply the drugs, the man in the house
8 did. I walked in the house got the drugs. He said,
9 here you can have it for \$20. Okay. I walked backout,
10 I give her the \$20 and got in the bag.

11 Q. Okay. (Plays video.) What are you doing right
12 there?

13 A. Tying a bag back up.

14 Q. Tying a bag up.

15 A. Tying it back up.

16 Q. (Plays video.) So again, if I'm -- tell me if
17 you're hearing something different. What I'm hearing is
18 her saying, is you saying tell them this is the last bag
19 that I had. Is that what I heard you say?

20 A. Yes, sir, I guess I did say that.

21 Q. Okay. So presumably if this is the last bag you
22 had, you had others earlier?

23 A. No, sir. That was just a figure of speech talking
24 to her. That was an excuse for me to get in the bag, is
25 all I care about.

1 Q. (Plays video.) Do you want me to rewind that
2 again?

3 A. No. The man. I'm talking about the man in the
4 house.

5 Q. What I'm asking about is tell them it will be
6 better.

7 A. Huh-uh.

8 Q. You didn't hear you say that?

9 A. No, sir.

10 Q. Do you want me to rewind it a little bit?

11 A. If I did, I said I was looking for more excuses to
12 just get out of the car. Now I had what I was after. I
13 didn't need to go see the guy.

14 Q. Okay. (Plays video.) Did you hear it that time?

15 A. It will be better than -- like I said.

16 Q. You're telling them this is the last sack that I
17 had and instead of putting a butch of --

18 A. I used that line on her more than anything because
19 like I said, she would buy sometimes I would have it
20 sometimes. All I was doing was trying to get out of
21 that car trying to get high. I didn't care if they come
22 back because I done it. If you notice the bag was empty
23 because there wasn't nothing left after I got any and I
24 was trying my best to get out of that car. I didn't
25 care what was going on. I don't sell drugs. I was

1 trying to get high. I didn't care what they thought.

2 Q. (Plays video.) And frankly to be honest, I can't
3 tell you what you were saying?

4 A. Can I tell you something, sir?

5 Q. Okay.

6 A. Neither can I. I mean, I was really in bad shape
7 there, sir.

8 Q. Okay. So, over the years you purchased drugs
9 yourself, correct?

10 A. Yes, sir.

11 Q. You ever purchased drugs from somebody that used
12 drugs themselves?

13 A. Sometimes. Most of the time they had it together.

14 Q. Okay. So the people that you were staying with out
15 there for two days that you say you were buying drugs
16 from you're saying they had it locked up and they
17 weren't using drugs?

18 A. Sometimes they do.

19 Q. Okay. So in your experience over the years it's
20 fairly common for somebody that sells drugs to also use
21 drugs?

22 A. Sometimes. I seen more people not use drugs.
23 They're after the money.

24 Q. The good ones don't use as much as --

25 A. There ain't no good ones.

1 Q. Okay. The ones that make more money, I should say
2 maybe?

3 A. Yes, sir.

4 Q. Okay.

5 MR. STOUDEMIRE: All right. That's all the
6 questions I would have. Thank you.

7 THE COURT: Redirect.

8 REDIRECT EXAMINATION

9 BY MR. DAY:

10 Q. Just a couple things to make sure I understand some
11 terminology. One is gotten the bag. You said you had
12 gotten the bag?

13 A. Yes, sir.

14 Q. What does that mean?

15 A. That means I opened it, I got most of the meth in
16 it and put it in my bag. I didn't care if they came
17 back or not.

18 Q. And the Solicitor asked you about at this point not
19 going to you but when she arrived at the house your
20 understanding was she was gonna supply money for you all
21 to use drugs?

22 A. Her turn, you know what I'm saying? I guess you
23 could say.

24 Q. All right. Then she was not gonna use the drugs
25 with you that day?

1 A. That was awful strange. But like I said, I was not
2 right in my mind at the time. I didn't think about it
3 but after she left I did. I said to myself she never
4 leaves.

5 Q. And what you wanted to do was to get in that bag?

6 A. That's all I cared about.

7 Q. So when you came out of that house you had in your
8 hand drugs, you had possession of drugs?

9 A. Yes, sir.

10 Q. You and Marlee there in the car?

11 A. Yes, sir.

12 Q. And you wanted some of those drugs?

13 A. Very badly, yes, sir.

14 Q. And just as the video just showed when you realized
15 she wasn't gonna smoke it with you you wanted out of
16 that car?

17 A. I wanted to hit the pipe.

18 Q. You had the pipe in your hand?

19 A. Yes, sir.

20 Q. It had meth in it?

21 A. Yes, sir.

22 Q. You had a lighter?

23 A. Yes, sir.

24 Q. You wanted to go use it?

25 A. Yes, sir. As a matter of fact, I used it on the

1 porch before I went to go in the house smoking it. I
2 didn't want to share nothing, I guess you could say or
3 whatever was going on or either way.

4 MR. DAY: That's all the questions I have, Your
5 Honor.

6 THE COURT: Recross?

7 MR. STOUDEMIRE: Nothing, Your Honor.

8 THE COURT: Very good. You may step down. Thank
9 you, sir.

10 (Whereupon, Witness leaves stand.)

11 THE COURT: You may call your next witness.

12 MR. DAY: That's the case for the defense, Your
13 Honor.

14 THE COURT: All right, very well.

15 Any reply?

16 MR. STOUDEMIRE: None, Your Honor.

17 THE COURT: Madam Forelady, ladies and gentlemen of
18 the jury, that concludes the testimony and evidence in
19 the case but we still have the argument by counsel and
20 of course the charge on the law by the Court, but I do
21 need to take up some matters with the attorneys so we
22 need to take a break at this time. Again, do not
23 undertake discussion of this case, though, among
24 yourselves.

25 (Whereupon, the Jury left the courtroom at

1 approximately 10:45 a.m.)

2 THE COURT: All right. Anything from the State?

3 MR. STOUDEMIRE: Nothing, Your Honor.

4 THE COURT: Anything from defense?

5 MR. DAY: Your Honor, I renew my earlier motion.

6 THE COURT: I find there is sufficient evidence to
7 go forward and so the motion for a directed verdict is
8 denied.

9 All right. Do you need a short break or anything
10 before we go over the charges to see if we have
11 everything?

12 MR. DAY: Just a few minutes if we could.

13 THE COURT: All right.

14 (Whereupon, a recess was taken.)

15 CHARGE CONFERENCE:

16 THE COURT: Gentlemen, I understand the jury is
17 ready so let's go over the charges.

18 Is the State ready to prepare for going to the
19 jury?

20 MR. STOUDEMIRE: We are, Your Honor.

21 THE COURT: Defense?

22 MR. DAY: Yes, sir.

23 THE COURT: First of all, I haven't received any
24 request for charges but the charges I will give
25 obviously the general charge about evaluating witnesses'

1 testimony. There was an expert witness in this case, I
2 will give that charge.

3 Now, then I'll of course give the presumption of
4 innocence. And the reasonable doubt of course what the
5 reasonable doubt the kind of doubt that would cause a
6 reasonable person to hesitate to act.

7 Direct and circumstantial evidence. Intent. Or
8 criminal intent. And then the Indictment is for
9 distribution of methamphetamine pursuant to section
10 44-53-375. And then of course I would advise the jury
11 that an Indictment is not evidence but it's just for the
12 record. And then distribution is fairly
13 straightforward, the Defendant is charged with
14 distribution of methamphetamine. The State must prove
15 beyond a reasonable doubt that the Defendant distributed
16 methamphetamine. Distribute means to deliver or to
17 intent to transfer other than administering
18 constructively or intent to transfer a drug. A transfer
19 can involve an exchange for money or barter or gift. It
20 does not have to be anything given in exchange for drugs
21 transfer or distribution.

22 And that's about it. Then of course the reasonable
23 doubt charge that if there is any reasonable doubt, they
24 must find the Defendant not guilty. All right. That's
25 it. Anything from the State?

1 MR. STOUDEMIRE: Nothing, Your Honor.

2 THE COURT: Defense?

3 MR. DAY: Yes, Your Honor. Because of the evidence
4 presented by the State and by the Defendant indicates
5 that not only is there the charge on the distribution
6 but also he was in possession of methamphetamine at the
7 time. One of the elements of distribution is that
8 you've got to have it to sell it. I would submit to the
9 Court that he would be entitled to a charge of the
10 lesser-included offense of possession of the drug as
11 well as the distribution. And I was looking at State v.
12 Matthews one of the earlier cases I looked at on that
13 where it says that possession of crack cocaine would be
14 a lesser-included of trafficking. That being the case,
15 I would submit that since the charge here is
16 distribution of meth and he was in possession of meth
17 that it would be the same.

18 THE COURT: You wouldn't have a copy of Matthews,
19 would you?

20 MR. DAY: I can give you the cite here very
21 quickly.

22 THE COURT: All right. He's going to get it.

23 All right. What does the State say about a
24 lesser-included of I guess simple possession is what you
25 are saying?

1 MR. DAY: Of possession, Your Honor.

2 THE COURT: Of possession, okay.

3 MR. STOUDEMIRE: Judge, quite honestly if he hadn't
4 testified I was probably gonna argue that there was no
5 evidence to show possession. However, based on his
6 testimony I think Mr. Murphy did say that he was keeping
7 part of the drugs for his personal use. I really don't
8 have a whole lot of argument against that if he's
9 keeping part of that for his personal use. I don't know
10 that I can argue against it. I'd love to but it's a
11 distribution.

12 THE COURT: Again, as I understand the law, and
13 I'll be glad to look at Matthews. But State v. Franks
14 says due process requires a lesser-included offense
15 instruction be given only where the evidence warrants
16 such an instruction. Mere contention that a jury might
17 accept State's evidence in part and reject it in part is
18 insufficient to satisfy a requirement for an instruction
19 of lesser-included offense that, there must be some
20 evidence tending to show Defendant was guilty of only
21 the lesser offense.

22 And the evidence in that case did not warrant an
23 instruction on simple possession of marijuana as a
24 lesser-included offense of distribution of marijuana.
25 There, the Defendant delivered the bags of a certain

1 quantity to the buyer and told the buyer how much she
2 would have to pay for the drugs, and obviously exercise
3 dominion and control of the marijuana, which is an
4 integral part of the transaction that led to his arrest.
5 He cannot conceive of any way it would support a finding
6 that Franks committed only the offense of possession of
7 marijuana and did not participate in the distribution.
8 That's State v. Franks.

9 I might also note that Sellers versus the State of
10 South Carolina, 362 South Carolina 182, and that was a
11 trafficking offense in a request for -- at least it was
12 a PCR where the ineffective assistance of counsel was
13 based on the failure to request a lesser-included charge
14 and the Supreme Court ruled a Judge is only required to
15 charge a jury on a lesser-included offense if evidence
16 suggests that the lesser rather than the greater crime
17 was committed. There must be some evidence that the
18 Defendant committed the lesser-included offense for
19 entitlement to the charge on the offense. A Defendant
20 is not entitled to a lesser-included charge of
21 possession with intent to distribute when there is
22 evidence of the amount exceeding trafficking.

23 What is your cite there, Mr. Day?

24 MR. DAY: I have 300 South Carolina 238, 387 S.E.2d
25 258 Supreme Court 1990. Matthews versus State, 300

1 South Carolina 238, 387 S.E.2d 258.

2 THE COURT: Of course there's a due process
3 question, at least Matthews is. I'm talking about
4 sentencing on both the possession with intent to
5 distribute as well as trafficking, and that's not the
6 case here. And it seems to be in conflict with the
7 later case of Sellers versus State of South Carolina
8 where they said that the trafficking would not, inasmuch
9 as trafficking is based on the quantity and that's what
10 the quantity is proven to be, that it would not include
11 a lesser-included offense of possession.

12 I don't find -- I think I find that I am, this
13 Court is controlled by State v. Franks and Sellers
14 versus State and the fact that possession is a common
15 element of both. There is no -- the only testimony is
16 that without controversy or contradiction that he
17 possessed it to distribute it, and therefore, there is
18 no evidence of mere possession.

19 All right. So I'm not gonna charge the
20 lesser-included offense of simple possession. The
21 objection is noted for the record.

22 MR. DAY: Yes, sir.

23 THE COURT: All right. Anything else?

24 (There was no response.)

25 THE COURT: All right. The State will open.

1 MR. DAY: Yes, sir. We would ask the State open in
2 full, Your Honor.

3 THE COURT: In full both on the law and the
4 evidence?

5 MR. DAY: Yes, sir.

6 THE COURT: What do you say about that, Mr.
7 Stoudemire?

8 MR. STOUDEMIRE: Judge, I don't mind opening on the
9 law but I think with Mr. Day presenting evidence in this
10 case why would I open in full on the evidence?

11 THE COURT: Why would you not?

12 MR. STOUDEMIRE: Well, I can.

13 THE COURT: I'm just curious. The Rules of Civil
14 Procedure say in a civil case that the moving party has
15 the obligation of opening fully both on the law and the
16 evidence, and I don't know why we would treat a criminal
17 Defendant any less. And I'll also suggest that we might
18 want to look at, when that was a rule as to both Circuit
19 Court and old Circuit Court rules which applied to both
20 General Sessions and Common Pleas that that was the rule
21 in criminal cases. Later did provide by special rule
22 only for General Sessions that said they only had to
23 open on the law. But that rule was repealed by our
24 rules of civil and criminal procedure.

25 MR. STOUDEMIRE: Yes, sir. Okay.

1 **THE COURT:** Very good. So I'll grant Mr. Day's
2 motion that the State open fully both on law and
3 evidence.

4 **MR. STOUDEMIRE:** And just, and Judge I apologize if
5 I misunderstand. I open on the law and evidence and
6 Mr. Day argues and then I close.

7 **MR. DAY:** I believe he is restricted to rebuttal.

8 **THE COURT:** That's again the civil rule that only
9 matters brought out by the defense, in other words, no
10 sandbagging.

11 **MR. DAY:** All right, sir.

12 **THE COURT:** All right. Anything else?

13 **MR. DAY:** No, sir.

14 **THE COURT:** Very good. Ask the jury to join us,
15 please.

16 (The Jury entered the courtroom at approximately
17 11:20 a.m.)

18 **THE COURT:** Madam Forelady, ladies and gentlemen of
19 the jury, as I mentioned before we took the break, this
20 will be the conclusion of the trial, with the argument
21 by counsel and then the charge on the law and then the
22 case is given to you for your deliberations. The State
23 will open, having the burden of proof, the defense will
24 then argue and the State will close.

25 I recognize Mr. Stoudemire for his argument.

1 MR. STOUDEMIRE: Thank you, Your Honor. May it
2 please the Court.

3 Good morning. And ladies and gentlemen, this has
4 taken a little bit longer than any of us would have
5 liked, but I wanted to first thank you for your time and
6 your attention. It is extremely important both to
7 myself and the Sheriff's Office representing the State
8 and is equally important to Mr. Murphy the Defendant.
9 Our system of justice would not work without the 12 of
10 you sitting here listening to this and taking everything
11 into account to make your decision in this case.

12 Now, first I want to talk to you a little bit about
13 the law in this case. Mr. Murphy is charged with
14 distribution of methamphetamine. Now, what is that,
15 what do I have to prove? Methamphetamine is a schedule
16 2 drug. Our law declares that illegal.

17 To distribute methamphetamine or any drug
18 distribution is essentially defined as a delivery or a
19 transfer. It can be for money, it can be as a gift, but
20 it is essentially giving the drugs from one person
21 taking the drugs and giving them to another. Whether or
22 not they received something in return, who knows?

23 In this particular case of course we've got an
24 exchange of money. It has to be given to another
25 person. You have heard Ms. Marlee Crowe testify that

1 she met Mr. Murphy on August 8, 2012 in Oconee County.
2 They met, met for the purpose of her buying drugs from
3 him. You see on the video that deal took place, she
4 gave him money. In return he gave her methamphetamine.

5 Now, the amount of the drugs granted in this
6 particular case is small. I would submit to you ladies
7 and gentlemen, that the amount of the drugs that were
8 distributed is irrelevant. Simply the fact that the
9 drugs were given from one person to another is enough to
10 meet distribution.

11 Talk to you a little bit about reasonable doubt.
12 You heard about reasonable doubt at the beginning of
13 this case. You will hear about it here. The Judge will
14 charge you on reasonable doubt. What I believe the
15 judge will charge you on reasonable doubt is that the
16 reasonable doubt is the type of doubt that would cause a
17 reasonable person to hesitate to act.

18 I think I said in my opening argument that
19 reasonable doubt was a doubt for which you could give a
20 reason. I think both definitions apply. Take the
21 definition that the Judge gives you back to the jury
22 room. I would, however, submit to you that reasonable
23 doubt is not the removal of all doubt. Very few things
24 in this life are absolutely certain. We all heard the
25 phrase death and taxes. Those may very well be the only

1 things that are absolutely certain.

2 Now, with regard to the evidence in this case.
3 What you will have to be able to take to the jury room
4 is you will have the remainder of the drugs that were
5 distributed. You will have the video of the
6 transaction. You will have the photographs that are
7 still photos from that transaction and you will have the
8 forensic scientist, Ms. Lanford's, report with you to
9 take to the jury room with you.

10 Please consider all of the evidence. I cannot tell
11 you what weight to give to any of the evidence, that is
12 solely for you to decide. Some pieces you may decide
13 are more important than the others. I cannot tell you
14 which is more important than the other.

15 However, in this particular case from the State you
16 heard from several witnesses. You heard from Brandon
17 Long, who was in charge of the operation that day, who
18 has extensive experience in narcotics works in the
19 Sheriff's Department. He talked to you about the use of
20 CIs, why CIs are used. And of course we live in a
21 fairly small community relatively speaking. A lot of
22 people out in the community know who law enforcement
23 officers are, know them by name, sight whether in
24 uniform or out of uniform. That's true if you are just
25 the average person walking down the street and

1 especially true if you are involved in the distribution
2 of drugs.

3 Brandon Long can't walk into a house and buy drugs
4 from someone so the Sheriff's Office has to employ
5 people to do that. And the best people to do that are
6 people that drug dealers are familiar with, that they
7 know and that they have some sort of a relationship
8 with.

9 In this particular case that person turned out to
10 be Marlee Crowe. And you heard Ms. Crowe testify. She
11 may or may not be somebody you want at your house for
12 Thanksgiving dinner. But she had no ax to grind, she
13 had no friends to reward, to enemies to punish in this
14 case. She was paid a sum of money by the Sheriff's
15 Department because she frankly could provide a service.
16 That service was buying illegal drugs from a person, in
17 this particular case that person is this Gregory Lee
18 Murphy.

19 And, again ladies and gentlemen, the videotape does
20 not lie. We watched exhaustively as Ms. Crowe, I'm
21 pretty sure, obeyed every speed law that there possibly
22 is in getting to locations and took her time, got there.
23 The drug deal took place, and then obeyed every speed
24 law and every law that we have. And I'm fairly sure she
25 stopped at every stop sign and every stoplight to get

1 back to the location. Sometimes those things are a
2 little hard to watch and it's a lot of video for a
3 little bit of payoff in the middle.

4 But you see the deal take place. You see Ms.
5 Crowe get there. And you go and you hear things that
6 Mr. Murphy said. You hear him talking about the amount
7 of money. You hear him talking about the quality of the
8 merchandise, so to speak, and you hear him tell her,
9 tell them I shorted it for this reason. This is the
10 last sack I've got. There will be more. Tell them
11 this. Them that. Now Mr. Murphy didn't know who them
12 was, and at the end of the day it turned out them was
13 him.

14 But again, she wasn't buying drugs for herself,
15 ladies and gentlemen. She wasn't sitting there in a car
16 to use drugs with someone. I don't know what the proper
17 etiquette is for drug use whether you invite them in or
18 use them in the car but the bottom line is she was there
19 very clearly with the intent to purchase drugs from
20 Mr. Murphy for someone else. There was no mistake. I
21 would submit to you there's no mistaking that.

22 And whether you watched that video once, whether
23 you watch it ten times, whether you watch it a hundred
24 times it's kind of like watching the replay in a NFL
25 game, it's going to show the same thing every single

1 time. Mr. Murphy sold drugs to Ms. Crowe.

2 Now, you also heard from various people with law
3 enforcement with regard to chain of custody. And chain
4 of custody is something the State always has to prove to
5 make sure that the drugs were not altered, were not
6 tampered with, that they're in essentially the same
7 condition now as they were when the transaction took
8 place back in August of last year.

9 You've heard Brandon Long testify he received the
10 drugs directly from Ms. Crowe or that you heard
11 Ms. Crowe say I bought the drugs, went directly to me,
12 Brandon, gave the drugs to Brandon, didn't stop
13 anywhere, didn't get out of the car, didn't do anything
14 with them. She was searched extensively beforehand, her
15 car was searched extensively beforehand to make sure
16 there were no drugs in the car. She gets back, she
17 gives the drugs to Brandon Long. Brandon Long takes
18 them, puts them in a bag, goes back to the Sheriff's
19 Office, they're never out of his care custody or
20 control. He puts them in a locker that only he has the
21 combination to. There's no way for anybody else to mess
22 with those drugs.

23 Next morning he gets them out of that office,
24 immediately puts them in evidence, again shuts the door.
25 He has no way to open that door once it gets shut and

1 the only way it can get open is on the other side by the
2 evidence technicians by the Sheriff's Department.

3 You heard Laura Smith testify briefly that she
4 simply took those drugs out of a bin, out of the locker,
5 opened that up because she had a key that was given to
6 her by the head of the evidence department, took them,
7 put in a bin. And the reason they are put in that bin
8 and entered into evidence is so they can be sent off for
9 processing.

10 And you also heard from David Philpott, who was one
11 of the evidence officers with Oconee County. He took
12 them from Oconee County directly down to the Anderson
13 drug lab. Did not stop along the way. Did not run any
14 errands. Has the drugs with him goes, from point A to
15 point B, making sure those drugs were never out of his
16 sight. And then he gives them directly to the analyst
17 in this case, Ms. Lanford.

18 And you've heard Ms. Lanford, who testified as an
19 expert. She has an extensive amount of experience in
20 these types of matters in drug testing, drug
21 recognition, things of that nature. And she did test,
22 and fortunately she's able to explain what those tests
23 are better than I ever could. And she told you real and
24 simple it's methamphetamine, not a large quantity but a
25 small quantity. But if you remember, she said I've seen

1 smaller and it was certainly enough to use.

2 Ladies and gentlemen, there's no conspiracy here.
3 Those are the facts of the case. You brought your
4 common sense into this courtroom. I trust you're gonna
5 take it back in the jury room with you. Thank you.

6 MR. DAY: May it please the Court?

7 THE COURT: Mr. Day.

8 MR. DAY: Ladies and gentlemen, we've reached the
9 end of this. This isn't like television or like some
10 states where they take months and months to try a
11 criminal case. In South Carolina we believe the object
12 is to get the case in the courtroom and get it over
13 with. So be thankful you're not in California where
14 they can take two months to try a DUI case. Here that
15 doesn't happen. We appreciate very much you listened,
16 you put up with us and the inconvenience that you had to
17 go through in order to serve on a jury.

18 I want you to understand just how important it is,
19 very important. It's the most important thing you can
20 do as a citizen above and bond serving in the military
21 or voting making sure our judicial system works. You
22 are here to make the decision. The judge, we don't make
23 the decision but you do. Just as Gregory Murphy if you
24 are ever charged with a crime you have the same
25 opportunity to have 12 people chosen from the community

1 make a decision. Y'all got lucky. You got to be here.
2 But we do appreciate it.

3 Now, there's no question about it when there's
4 absolutely no doubt about it. You've seen video, you
5 got the pictures. No question on that day Gregory
6 Murphy had drugs. There's no question that Marlee Crowe
7 was coming to get drugs from him. Now, Marlee Crowe
8 apparently appeared out of nowhere, I don't know whether
9 she walked out of church one Sunday decided she should
10 go into the community and do good. She said I'll buy
11 drugs. I find that a little bit hard. Her testimony
12 was and also that she contacted the Sheriff's Department
13 and she told them I'll buy drugs. And apparently they
14 said okay, go.

15 I just tend to believe there's a lot more to it
16 than that. A lot more. Because in this case, one, she
17 says I don't do drugs. Sat right there and said I don't
18 do that. She said there with that smug look and I just
19 couldn't ask her that question again. My gosh. Who do
20 you think we are? You don't know anything about drugs
21 yet you are out here making buys from people who are
22 into drugs and how do you know that? Also, the
23 Solicitor said we don't target anybody. We let her do
24 it. We let her do it.

25 So in this case no question. Said she she isn't

1 getting anything out of it. She's getting 40 to 60
2 dollars each time. Never indicated anywhere she was
3 working or anything, so this was a way to make a little
4 extra money.

5 I don't think I would want to do that. I don't
6 think you would either. But in this case she says that
7 he had called me. Why do you reckon he called her?
8 Why? Because Greg got up there on the stand and told
9 you they used drugs. They used meth. And there's no
10 doubt in anyone's mind that the person you saw sitting
11 up here Greg Murphy testifying is an addict.

12 Now, his mother is sitting there behind him. She's
13 had to sit through this trial go through this and watch
14 what's happening to him. So it's kind of hard to say
15 things but I'm gonna say to you the same thing I said to
16 Greg and that is he's pitiful. You see on that video,
17 that's pathetic. This guy was whacked out, like he
18 said, wild eyed. He wants drugs. That's what he wants
19 'cause he's hooked and it's cost him. It's cost him a
20 lot. It's pretty much destroyed his life. I told you
21 he lost his children, destroyed his marriage because
22 he's hooked on drugs. And he didn't and doesn't until
23 now had the wherewithal to beat it on his own.

24 So that's what we were here for. And on this day
25 he shows up, Marlee gets there and remember what he said

1 on the video at the beginning? Been waiting all day for
2 this. So that means they had to talk sometime and
3 that's what he was waiting on. She's coming, she's
4 bringing some money. They're gonna get drugs, they're
5 gonna get high because they've done it before, as he
6 said.

7 Do you think he would pick up the phone book or
8 call one of you all or Blair Stoudemire or even Brandon
9 Long and say Hey, come over here let's do drugs. I need
10 some. Come on over. Bring money. I'll get some. He
11 didn't have any money. Had to have something.

12 So she comes over -- and you will have all this
13 back in the courtroom, pictures, et cetera -- and he
14 comes to the door and just like is shown in State's
15 Exhibit Number 7, in his his hand is his pipe. His
16 pipe. I said how often have you seen this? I've seen
17 it before. Yeah. They keep wanting to call this guy a
18 drug dealer. He was an addict and a user. If that was
19 his intention he brought his pipe with him. Do you
20 think a drug dealer is gonna do that? He came out there
21 because he's looking at using. He's got to. He's got
22 to have it. It's whipped him.

23 And on this day he shows up, Marlee shows up,
24 they're in the same place, she's bringing the money,
25 he's got his pipe. He's ready. Goes into the house,

1 comes back out, and you saw it on the video, of course.
2 He says he wants to get in that bag. That's where the
3 drugs are. I want those drugs. That's what we're gonna
4 do, she said I'm not gonna do this. I'm not. He said
5 he was surprised by that.

6 But did he just go ahead and take the drugs anyway?
7 No. Because he knows Marlee. He isn't gonna do that to
8 her. He said he thought she was a friend, a fellow
9 user. He wasn't gonna attack her or say that's too bad
10 I'm keeping the drugs. Tough luck. He wasn't gonna do
11 that. He actually gave her money back so he could have
12 some of these drugs.

13 So if you look at it factually speaking she took
14 drugs which she has purchased, she has possession of
15 because she paid for them and she sells them back to
16 him, or part of it. He gets in there and he gets out
17 some, gives her back five dollars and ties the bag back
18 up and gives to her that little bit, point 13 grams.
19 Wasn't a whole lot, but it doesn't make any difference
20 it still tested as drugs. She then leaves.

21 And in that video, if you remember correctly, a lot
22 of you saw this. After he got his portion of drugs out,
23 he's got them in his pipe, he wants out of that car
24 because he knows they're not gonna do anything in that
25 car. She wants to go, she says she's got to go, he

1 wants out of that car. He wants out of that car now
2 because in his hand, in his hand is that pipe and in
3 that pipe is methamphetamine and he wants that
4 methamphetamine in his body. He wants it in his brain
5 and he wants it now. So he was in such a hurry to get
6 south of there.

7 As soon as she got out, he was moving. He got out
8 of that car. He's talking fast. He didn't even go
9 inside. He sat on the porch and he got high or higher.
10 And that's what this case is about.

11 As I said, you will have all of this back with you,
12 looking at the pictures. You will be able to look at
13 the video if you so desire because that's in evidence.

14 But this case comes down to this. There's no
15 question what went on that day. You have seen that.
16 Nobody has denied that. Gregory Murphy got up on here.
17 Yeah, it did happen. It sure did. But it will be up to
18 you to determine whether or not his intent at that time
19 was to sell drugs to be a dealer or to be a user.
20 That's a pretty difficult decision. Nobody is asking
21 you to do anything you don't believe is right. You
22 swore and took an oath to do what's right. I ask you to
23 do that.

24 The Judge would instruct you on what the law is
25 about distribution. Serious crime. Nobody is trying to

1 put it down. You've got to look at that. You must
2 determine in your mind individually each of you if he's
3 guilty of that particular crime or is he guilty of being
4 an addict, being a user, which destroyed his life and
5 has taken this, sitting in jail since November getting
6 cleaned up to get him away from it. I ask you to
7 consider all that.

8 I'm sure Mr. Stoudemire is going to get up here and
9 give you all the reasons why you shouldn't pay any
10 attention to what I just said. That's his job. He's
11 supposed to do that. Also you got to remember on trial
12 is Gregory Murphy not Brandon Long, not Tim Hunnicutt,
13 not the officers. They're doing their job. That's what
14 they're supposed to do. That's what you and I pay them
15 to do. That's their job. But now it's your job to make
16 a determination of what is right. And that's it.

17 I ask that you please consider all that in looking
18 at all this. There's no question about what it is that
19 went on, who did what, how it was done. There's no
20 question there was a user and an addict.

21 You got Marlee Crowe came up there and made it
22 pretty clear that's what it was about, but she wants you
23 to believe that she's able to appear out of nowhere and
24 be involved with people that use drugs and nobody ever
25 asked her anything, never asked her if she used or

1 nothing and said go ahead and do it.

2 Ladies and gentlemen, I ask you to seriously
3 consider whether or not the State has pushed over the
4 threshold enough evidence on distribution as the intent
5 of what Greg Murphy was doing that day. The Judge will
6 tell you that's your decision and yours alone. Gregory
7 Murphy thanks you. You've got the evidence. What you
8 say is what you got to do with it. But we do appreciate
9 it very much. Thank you.

10 THE COURT: Mr. Stoudemire?

11 MR. STOUDEMIRE: Thank you, Your Honor.

12 Ladies and gentlemen, Ms. Marlee Crowe is not on
13 trial. As much as the defense would like you to believe
14 she is, she's not. Mr. Murphy, however, is. Mr. Day
15 referred to him as an addict, as a user, his life
16 destroyed by drugs, things of that nature. Lost his
17 children, job, et cetera. I would submit to you that
18 every single action that Mr. Murphy took that led him to
19 where he is today were voluntary acts. Nobody forced
20 him to do any of those things. Nobody forced him to use
21 drugs, nobody held him down and made him smoke meth.
22 He's gotten to the stage now where he sells it.

23 Now, again look at the video. It's going to show
24 you the same thing every single time you see it. It
25 will show Ms. Crowe giving Mr. Murphy money, Mr. Murphy

1 giving Ms. Crowe drugs. Yes, he has a meth pipe in his
2 hand. Yes, he has a lighter in his hand. He uses
3 drugs. He also took money for them. I would submit to
4 you that makes you a drug seller.

5 Just because you continue to use drugs while you
6 sell drugs doesn't make you only an addict. It makes
7 you a bad drug dealer maybe, but nobody said and no
8 facts were given to you and no law says that to be a
9 drug dealer you've got to be good at it. Every
10 profession there is there are some people that are
11 better at their jobs than other people. That is simply
12 the nature of life. Mr. Murphy is just frankly not a
13 very good drug dealer.

14 Mr. Day also said that Ms. Crowe takes the drugs
15 and then essentially sells part of those drugs back to
16 Mr. Murphy. I didn't see Ms. Crowe take any drugs out
17 of that bag. Look at the video. Mr. Murphy takes
18 drugs. She gives him \$25. He started to give her a \$25
19 bag of drugs. He said I'm gonna take my cut. And then
20 at some point, that's that.

21 Get the law from the Judge on distribution. Apply
22 that law to the facts in this case, the facts, not the
23 sympathy of this case or anything else. Apply the law
24 to the facts of this case, and when you do that I would
25 submit to you that the only verdict that speaks truth in

1 this case is guilty on the charge of distribution of
2 methamphetamine. Thank you.

3 THE COURT: Madam Forelady, ladies and gentlemen of
4 the jury, as jurors in this case you have certain
5 functions and responsibilities to perform which are
6 entirely separate and distinct from mine as the trial
7 Judge. I am prohibited by the Constitution from
8 charging you on the facts and discussing the facts with
9 you or in any way intimating what my feelings, if any,
10 are about the facts of this case. It is your
11 responsibility to pass upon the facts of the case.

12 I would therefore charge you that if during the
13 course of the trial or during my charge you have been
14 given or left with the feeling that I have a personal
15 feeling about the facts of the case I would specifically
16 instruct you that you are to disregard that impression
17 or feeling. Moreover, you are the sole judges of the
18 testimony, what the testimony was and not the argument
19 of counsel.

20 It is also your duty and yours alone to weigh the
21 testimony and evidence in the case and pass upon the
22 credibility of the witnesses. In this connection you
23 have the right to believe all a witness tells you or
24 disbelieve all a witness tells you. You may believe
25 part of what a witness tells you or disbelieve part of

1 what a witness tells you. You have the right to take
2 into consideration any bias, prejudice or interest you
3 feel a witness might have in a case. I say this merely
4 to emphasize the weight you see fit to give to the
5 credibility of the witnesses as well as all issues of
6 fact are for your sole determination.

7 As judges of the facts you are the sole judges of
8 the credibility that is the believability of the
9 witnesses who have testified in this case.

10 You may take into consideration many things such as
11 the appearance and manner of the witness on the stand,
12 sometimes referred to as the demeanor of the witness.
13 Was it forthright or hesitant? Was the testimony
14 consistent or contain discrepancies? What was the
15 ability of the witness to know the facts about which he
16 or she testified?

17 Does the witness have cause or reason to be biased
18 and prejudiced in favor of the testimony he or she gave?
19 Was the testimony corroborated or made stronger by other
20 testimony and evidence or weaker or impeached by other
21 testimony and evidence? As jurors you have the right to
22 believe a small portion of a witness's testimony and
23 discard the larger or vice versa. You may believe all
24 of a witness's testimony or none.

25 You may believe the testimony of a single witness

1 against that of many witnesses or the other way around.
2 Most certainly you do not determine the amount of
3 believability by counting up the number of witnesses who
4 testify on behalf of the parties. The Rules of Evidence
5 ordinarily do not permit witnesses to testify to
6 opinions or conclusions.

7 An exception exists for witnesses we call expert
8 witnesses, a witness who by education and expense has
9 become an expert in an art science profession or calling
10 may state an opinion and may also state the reasons for
11 the opinion. You should consider any expert opinion
12 given in evidence in this case and like any other
13 evidence give it the weight you think it deserves.

14 If you decide the opinion of an expert witness is
15 not based on sufficient education and experience or the
16 reasons given are not sound or that the opinion is
17 outweighed by other testimony you may disregard the
18 opinion entirely. An expert witness's testimony is to
19 be given no greater weight than the other witnesses
20 simply because the witness is an expert. Further you
21 are not required to accept the expert's opinion even
22 though it is not contradicted.

23 You have one single objective and that is to seek
24 the truth regardless of from what witness the testimony
25 may have come.

1 Now, by the same Constitution and law which makes
2 you the finders of the facts and evidence, as I have
3 discussed with you, I am as the Judge made the sole and
4 only instructor on the law. You must accept as correct
5 the law which I charge and apply to it the evidence as
6 you find it and reach your verdict. If I make an error
7 there is another time and place, there is a way to
8 correct my error but for purposes of today you must
9 accept the law as I give it to you to be the correct
10 law. You nor I should be concerned with what the law
11 ought to be but rather what I charge you the law to be.

12 The Defendant pled not guilty to this Indictment
13 and that puts the burden on the State to prove the
14 Defendant guilty. A person is never required to prove
15 himself innocent. I charge you that it is an important
16 rule of law that the Defendant in a criminal trial no
17 matter what the seriousness of the charge may be, will
18 always be presumed to be innocent of the crime the
19 Indictment issued unless there is proof of evidence
20 satisfying you of that guilt beyond a reasonable doubt.

21 The presumption of innocence does not end when you
22 begin your deliberations but accompanies the Defendant
23 throughout the trial until you reach a verdict of guilt
24 based upon evidence satisfying you of that guilt beyond
25 a reasonable doubt. The presumption of innocence is

1 like a robe of righteousness placed about the shoulders
2 of the Defendant which remains with the Defendant until
3 it has been stripped by the Defendant by evidence
4 satisfying you of the Defendant's guilt beyond a
5 reasonable doubt.

6 The presumption of innocence is not a legal theory
7 or phrase. It is a substantial right to which every
8 Defendant is entitled unless you, the jury, are
9 satisfied the evidence of the Defendant's guilt is
10 beyond a reasonable doubt. What is a reasonable doubt?
11 A reasonable doubt is a kind of doubt that would cause a
12 reasonable person to hesitate to act.

13 There are two types of evidence, direct evidence
14 and circumstantial evidence. Direct evidence is the
15 testimony of a person who claims to have actual
16 knowledge, such as an eyewitness which immediately
17 establishes the main fact to be proved. Circumstantial
18 evidence is proof of a chain of facts and circumstances
19 indicating an existence of a fact which immediately
20 establishes collateral facts from which the main fact
21 may be inferred.

22 Circumstantial evidence is based on an inference
23 not on personal knowledge or observation. It is proof
24 that does not actually establish the fact in question,
25 but asserts or describes something else which may

1 reasonably infer the truth or the fact or at least
2 reasonably infer an increase in the probability the fact
3 is true.

4 To be sufficient to warrant a finding of fact the
5 circumstances must lead to that fact with reasonable
6 certainty. The facts and circumstances should be
7 considered in light of ordinary common sense, not be
8 based on speculation, surmise or conjecture. The law
9 makes no distinction between the weight or value to be
10 given to direct or circumstantial evidence nor a greater
11 degree of certainty. You should weigh all of the
12 evidence. If you are not convinced of the guilt of the
13 Defendant beyond a reasonable doubt you must find the
14 Defendant not guilty.

15 In order to establish criminal liability criminal
16 intent is required. For example, the mental state
17 required to be proved by the State for a particular
18 crime might be purpose, intent, knowledge, criminal
19 intent or knowledge. Criminal intent must be proven by
20 the State beyond a reasonable doubt. Criminal intent is
21 always a matter that must be determined by the jury from
22 the circumstances surrounding the situation. There is
23 no way to prove intent to a mathematical certainty.
24 There's no way medical science can dissect a person's
25 brain to determine what the person had in mind. The law

1 says intent may be shown from the circumstances shown to
2 have existed. This is how you make a determination on
3 whether or not the element requiring intent was present.

4 It's not necessary to establish intent by direct or
5 positive evidence but it may be established by
6 inference, taking in consideration the acts of the
7 parties and the facts and circumstances of the case.
8 Criminal intent is a mental state a conscious wrong
9 doing. It is up to you to determine what the Defendant
10 intended to do based on the circumstances.

11 Criminal intent is a state of mind, an act or
12 omission with the commission of a crime. Criminal
13 intent is a mental state. Criminal liability is based
14 normally upon the concurrence of two factors: An evil
15 meaning mind and an evil doing hand. A person is said
16 to act purposely if he consciously desires that result
17 whatever the likelihood of the result happening from his
18 conduct.

19 A person is said to act knowingly if he is aware
20 that the result is certain to follow his conduct
21 whatever his desire may be that would lead to that
22 result. Suspicion however strong is not enough to
23 sustain a conviction and evidence presented by the State
24 must be substantial evidence to prove the Defendant
25 guilty beyond a reasonable doubt.

1 Indictment 2013-GS-37-312 charges the Defendant
2 Gregory Lee Murphy with distribution of methamphetamine
3 pursuant to code of law section 44-53-375 B. I remind
4 you the fact the Defendant was arrested, charged and
5 indicted cannot be used by you as evidence of guilt.
6 The document is simply the written instrument which
7 contains the charge against the Defendant and the formal
8 document by which this case is brought into court.

9 The Defendant is charged with distribution of
10 methamphetamine. The State must prove beyond a
11 reasonable doubt that the Defendant distributed
12 methamphetamine. Distribute means to deliver or to
13 actually constructively or attempt to transfer a drug
14 other than by administering or dispensing. Deliver
15 means to actually constructively or attempt to transfer
16 a drug. A transfer can involve an exchange for money, a
17 barter or a gift. It does not have to be anything given
18 in exchange for the drugs or transfer to constitute
19 distribution.

20 If you have a reasonable doubt of the Defendant's
21 gift after considering all of the evidence then you must
22 find the Defendant not guilty. On the other hand, if
23 you have no reasonable doubt of the Defendant's guilt
24 after considering all the evidence then you must find
25 the Defendant guilty as charged.

1 Madam Forelady, ladies and gentlemen of the jury,
2 you have been selected as fair and impartial jurors,
3 sworn to impartially try and determine the facts of this
4 case and when you supply with your oath to do so no one
5 will have a right to criticize your verdict and you will
6 have fully discharged your duty as jurors. You should
7 not be influenced by opinions you may have heard on the
8 outside but decide this case from the testimony from the
9 witnesses along with the other evidence that may have
10 been introduced.

11 As I said earlier, you are the judges of the facts
12 in this case and you are to determine only if this
13 Defendant is guilty or not guilty based on the testimony
14 and evidence presented in the trial and after applying
15 the law as I have given it to you.

16 If you have a reasonable doubt whether the
17 Defendant is guilty it is your duty to acquit him and
18 write the words not guilty. Under the oath you took you
19 swore to try this case based only on the testimony and
20 evidence. It is your duty to lay aside bias prejudice
21 or sympathy. You have no friends to reward or enemies
22 to punish in this case. The word verdict comes from the
23 Latin term *veredicto* which means to speak the truth.
24 Abide by your oath and return a verdict which does, in
25 fact, speak the truth.

1 Now, Madam Forelady, I prepared a verdict form to
2 use in the Jury's deliberations. Now, whatever verdict
3 that you reach it must be unanimous, that means all 12
4 members of the jury have reached the same verdict.
5 However, Madam Forelady, you will fill out the form to
6 indicate what that verdict is on the verdict form. If
7 you will note it says 2013-GS-37-312, distribution of
8 methamphetamine, we, the jury, unanimously find on
9 2013-GS-37-312 that the Defendant Gregory Lee Murphy is,
10 and you have two possible verdicts.

11 The first at the top is guilty of distribution of
12 methamphetamine or not guilty. Whatever the unanimous
13 verdict of the jury is, Madam Forelady, you will
14 indicate that verdict on the verdict form and then sign
15 your name on the line provided, knock on the door, and
16 we will return and receive your verdict at that time.

17 Now, I'm gonna ask you to return the verdict form
18 to the bailiff and then one more time to retire to the
19 jury room without beginning your deliberations because
20 what I need to do is discuss -- take a minute or two
21 with the attorneys but once the bailiff brings in the
22 verdict form together with all the exhibits and other
23 evidence introduced in this trial then you are to begin
24 your deliberations. And then once you reach a unanimous
25 verdict and completed the form knock on the door and we

1 will receive that verdict.

2 Now retire to the jury room except for the
3 alternate if you will stay with us, please, ma'am.

4 (Whereupon, the Jury left the courtroom at
5 approximately 12:05 p.m.)

6 THE COURT: Any exceptions or requests or additions
7 from the State?

8 MR. STOUDEMIRE: No, sir, Your Honor.

9 THE COURT: From the Defense?

10 MR. DAY: Yes, Sir, Your Honor. We would like to
11 except your failing to charge the possession charge as a
12 lesser-included.

13 THE COURT: All right, noted. And as I say, I've
14 looked at the Matthews case as well as the Franks case
15 and I think I mentioned State v. Sellers that I will
16 provide the court reporter.

17 Also, on the requirement for opening fully on both
18 the law and evidence I rely on State v. Adderberry, it's
19 a rather old case, 129 South Carolina 164, southeast
20 648, but it was the law at that time which is our law
21 now because the later case was State v. Lee, 255 South
22 Carolina 309 was based on a change in the rule to
23 Adderberry, and that rule has now been repealed. And we
24 now have the rule that applies at least in civil actions
25 and I would see as they said in Adderberry there's no

1 reason that the rule would be limited. There's nothing
2 in the rules of Circuit Court to suggest that the rule
3 applies solely to Common Pleas and not to the Court of
4 General Sessions. So, again, that's the basis of that.
5 And but I do note your objection, but I think that under
6 the facts of this case that the lesser-included would
7 not be an appropriate charge.

8 All right. Duly noted. And now go through the
9 evidence and be sure that everything that's supposed to
10 go back does but nothing that's not supposed to go back
11 does.

12 (Discussion off the record.)

13 (Court to alternate off record, after which
14 alternate was dismissed at approximately 12:08 p.m.)

15 THE COURT: Anything else from the State?

16 MR. STOUDEMIRE: Nothing, Your Honor.

17 THE COURT: From the Defense?

18 MR. DAY: None, Your Honor.

19 (Jury began deliberations at 12:08.)

20 (Verdict reached at 12:55.)

21 THE COURT: It's my understanding the jury has
22 reached a verdict. Is there anything from the State
23 before we bring the jury back?

24 MR. STOUDEMIRE: No, Your Honor.

25 THE COURT: Anything from the Defense?

1 MR. DAY: No, sir.

2 THE COURT: All right. Ask the jury to join us,
3 please.

4 (The Jury entered the courtroom at approximately
5 1:00 p.m.)

6 THE COURT: Madam Forelady, I understand the jury
7 has reached a verdict.

8 THE FORELADY: Yes, sir.

9 THE COURT: If you would please, ma'am, pass it up
10 to the bailiff.

11 THE FORELADY: (Complies.)

12 THE COURT: Madam Clerk, if you would please
13 publish the verdict. Would the Defendant stand and face
14 the jury, please.

15 THE CLERK: In the matter of the State of South
16 Carolina versus Gregory Lee Murphy on Indictment Number
17 2013-GS-37-312, distribution of methamphetamine, we, the
18 jury, unanimously find on Indictment Number
19 2013-GS-37-312 that the Defendant Gregory Lee Murphy is
20 guilty of distribution of methamphetamine.

21 Ladies and gentlemen of the jury, if this was your
22 verdict and remains your verdict please indicate so by
23 raising your right hand. Let the record reflect that
24 all members of the jury have raised their right hand.

25 THE COURT: Thank you. All right. Anything else

1 from the State before I dismiss the jury?

2 MR. STOUDEMIRE: Nothing, Your Honor.

3 THE COURT: From the Defense?

4 MR. DAY: Nothing, Your Honor.

5 THE COURT: Ladies and gentlemen of the jury, I'm
6 never interested in a verdict only how that verdict is
7 reached. It looks like I'm doing everything up here
8 except paying attention but I have developed over the
9 years a certain knack of keeping up with what goes on in
10 the courtroom and I noticed in this particular case you
11 paid very careful and close attention to all the
12 testimony and evidence and argument by counsel and I
13 trust the charge on the law.

14 I say that because the backbone or the foundation
15 of our judicial system of justice here in the United
16 States and South Carolina is the participation of
17 civilian juries. In other words, people who bring to
18 the judicial process their common sense, their
19 experiences, varied experiences, and that is the one
20 thing that makes it as admired as it is, in fact, in the
21 world. And I noticed throughout this you were so
22 carefully paying attention to everything. And this was
23 a difficult case. All cases are difficult but this was
24 a difficult case where there were so many things
25 involved in it that got you to where you were able to

1 reach a verdict and I'm satisfied that you were able to
2 give both the State and the Defendant a fair and
3 impartial trial.

4 Now, having said that, this completes your service
5 this week. There's nothing I can do for you really.

6 Does the Clerk have anything?

7 THE CLERK: Yes. If any of you need a work
8 statement before you receive your check, if you would
9 have your employer or someone in your human resources
10 department call our office and ask for me, Lisa Burton,
11 I will be more than happy to provide one for them.

12 THE COURT: Also, if you remember on Monday when I
13 qualified the entire jury panel I asked how many had
14 served in the last three years? At least you won't be
15 called for another three years. But I do want to thank
16 you for your service and I hope it hasn't been without
17 some benefit to you and I thank you today. And may you
18 have a wonderful summer, and on behalf of Oconee County
19 and the judicial system here in South Carolina I thank
20 you. All right. You are excused.

21 Again, thank you so much. And I do appreciate your
22 patience with the Court, too.

23 (Whereupon, the Jury left the courtroom at
24 approximately 1:08 p.m.)

25 THE COURT: Is the State ready to proceed?

1 MR. STOUDEMIRE: We are, Your Honor. Did you need
2 the foreperson to sign off?

3 (Court to foreperson, after which foreperson
4 excused.)

5 THE COURT: Thank you, Mr. Stoudemire.

6 MR. STOUDEMIRE: Yes, sir.

7 THE COURT: All right. Is the State ready to
8 proceed?

9 MR. STOUDEMIRE: We are, Your Honor.

10 THE COURT: All right. Defense?

11 (Members of jury come into the courtroom for
12 sentencing.)

13 THE COURT: You may proceed. Come forward.

14 All right. Mr. Gregory Lee Murphy, you have been
15 found guilty of distribution of methamphetamine, second
16 offense pursuant to section 44-53-375 B 2, on a second
17 offense. I understand the minimum sentence is a
18 mandatory five years and a maximum of 30 years and a
19 \$50,000 fine. Now, do you have certification of prior
20 conviction?

21 MR. STOUDEMIRE: That's what I'm trying to find,
22 Your Honor.

23 THE COURT: Have you seen the sentence sheet,
24 Mr. Day?

25 MR. DAY: Yes, sir.

1 **THE COURT:** I have Indictment Number
2 2003-GS-37-1223 where Gregory Lee Murphy made a purchase
3 July the 5th, date of birth [REDACTED] [REDACTED] 1972, was
4 sentenced by this Court on December the 15, 2004 on a
5 charge of possession of methamphetamine to five years in
6 the Department of Corrections suspended to payment of
7 costs and assessments and five years' probation.
8 Apparently this was concurrent sentence with another
9 Indictment, but this is a true copy thereof. Any
10 question about it, Mr. Day?

11 **MR. DAY:** No, Your Honor, I've seen it.

12 **THE COURT:** Mr. Stoudemire, tell me a little bit
13 about Mr. Murphy that I haven't heard.

14 **MR. STOUDEMIRE:** Just for the Court's information
15 the concurrent sentence you were referring to was a
16 criminal domestic violence high and aggravated that he
17 pled to that same day. He also has convictions for
18 disorderly conduct and a receiving stolen goods from
19 2012 as well.

20 Judge, in going through this case and talking with
21 law enforcement and going through this trial it did not
22 appear to me or to law enforcement that Mr. Murphy has
23 engaged in this type of conduct. He seemed entirely too
24 familiar with drug deals, how they worked, how to
25 package the methamphetamine, et cetera. We feel that a

1 sentence of substantial prison time is appropriate in
2 this case, not to send a message to society or anybody
3 else, but basically to let Mr. Murphy know that this
4 conduct cannot and will not be tolerated. He's already
5 pled guilty to the same or similar crime in the past and
6 given a probationary sentence and while that was some
7 time ago that obviously did not take and we feel that
8 substantial prison time is appropriate.

9 THE COURT: All right. How much time has he
10 served?

11 MR. DAY: I'm sorry, Your Honor. I'm coming, Your
12 Honor.

13 THE COURT: Very well.

14 (There was a pause in the proceedings.)

15 MR. DAY: 215 days, Your Honor. I'm sorry. That's
16 216, actually. He had one extra day before he got out
17 on bond.

18 THE COURT: All right. Does that sound right,
19 Mr. Murphy?

20 THE DEFENDANT: Very close.

21 THE COURT: Are you satisfied that 216 credit for
22 time served?

23 THE DEFENDANT: Yes, sir, I guess.

24 THE COURT: All right. Mr. Day, tell me again a
25 little bit about Mr. Murphy.

1 MR. DAY: Your Honor, I think you heard on the
2 testimony from Mr. Murphy that drugs have destroyed his
3 life and it started a long time ago and has spiraled to
4 what we have now causing him to have lost his children.
5 His rights have been terminated. He has just now gotten
6 to the point where he has been able to reestablish
7 himself with his children.

8 I have two letters, Your Honor, to him from his
9 daughter and he's still working with the other daughter
10 that has not come together as quickly as this one. He
11 has, daughter has a child which he wants to become part
12 of that was born while he's been in prison, in jail
13 awaiting trial.

14 We would submit to the Court, Your Honor, that this
15 man is a user. He's an addict, there's no question
16 about that. I think that was brought out very well
17 during the trial that, in fact, he is a user and an
18 addict. He got involved when he shouldn't have and
19 doing things he shouldn't have in order to be able to
20 get the drugs. In looking at it, he made it from 2004
21 without running into a drug problem again but then it
22 got him.

23 And like I said, he said during the testimony that
24 in 2009 it really got away from him and that's when he
25 really went down and here he was caught just a couple

1 years after that.

2 I submit, Your Honor, if I may for the Court to
3 consider the possibility I wonder if the Court might
4 even consider house arrest.

5 THE COURT: It's a mandatory five-year sentence.

6 MR. DAY: Yes, sir.

7 THE COURT: I understand that he doesn't have
8 income other than disability and his family.

9 MR. DAY: Yes, sir. Just hold on.

10 I know he will want to speak, Your Honor, but his
11 brother sent me a letter saying that he will have
12 employment, try to put him to work as best he can with
13 his disability.

14 THE COURT: Would that affect his disability?

15 MR. DAY: He understands he would lose part of his
16 disability or he can make up to a certain amount before
17 his disability becomes affected but he would be able to
18 do that and he would ask the Court to possibly consider
19 that as part of any sentence. We also ask the Court to
20 consider for an active sentence that a minimum of five
21 years not be exceeded so he can get back out and get
22 control of his life.

23 Since he's been in jail, Your Honor, as he
24 testified to, he's gained weight since he's gotten away
25 from the drugs. Since November 23rd of last year he has

1 been without drugs. This has cleared up his mind and
2 his abilities considerably. Something even his mother
3 who has been here with us through the entire trial, Your
4 Honor, and she has seen the difference in him from what
5 he was and what he is now. I think that shows, Your
6 Honor, that he is capable of getting beyond this
7 addiction.

8 We would ask the Court to consider as low a
9 possible active sentence as can be done, if at all
10 possible, even a house arrest and that part of that be
11 rehab, if at all possible; that the mandatory rehab be
12 as part of his sentence so that he will get treatment.
13 And that if that can be done, I think he would be able
14 to beat this. He's got that first step behind him with
15 he's gotten away from it for a good long time and if he
16 can get into rehab, take the next big step the
17 possibility hanging over his head a sentence if
18 incapable of doing rehab or incapable of getting beyond
19 this addiction if he starts to backslide then he can do
20 it in prison. We would ask the Court consider that.

21 He received two letters from his daughter and I
22 would like to hand those up, if I may.

23 THE COURT: Please do.

24 MR. DAY: (Hanging.) (Court reads documents.)

25 THE COURT: All right. I've read the two letters.

1 Anything else?

2 MR. DAY: Again, Your Honor, we would ask the Court
3 to consider the possibility if the Court can do that as
4 to a house arrest. He served his probation time before.
5 He understands what he has to do and a place to put him.
6 And I don't think that -- his record is such that
7 there's no question, I'm not saying it's non existent
8 and it shouldn't be trivialized in any way, but the
9 drugs have caused him problems and I think if we get
10 past that that would help him considerably. His mother
11 would like to address the Court.

12 THE COURT: Yes, ma'am. Your name, please for the
13 record.

14 MOTHER: Mary Burrell, Greg's mother. I've been
15 praying for quite a few years that he gets better. And
16 I think now that he has two older brothers that are
17 willing to work with Lee any which way. Keith is able
18 to give him a part-time job. Keith Hurley and he is in
19 pest control and happy for Lee to help him. Also a
20 fisherman. He'd like to get Lee involved in that and
21 also his older brother too, Ricky. He has a younger
22 brother Thomas. He loves gardening and he wants to get
23 him involved in that with Thomas. We want him back in
24 our life. He's been away too long. And I talked to his
25 -- excuse me, Your Honor.

1 **THE COURT:** Mr. Day?

2 **MOTHER:** I talked to his daughter just a matter of
3 minutes ago and she said granny, bring my daddy home.
4 And I hope, I'm pleading for mercy from the Court that
5 you will give him a chance to get straightened out with
6 our help and God's help.

7 **THE COURT:** Thank you, ma'am. All right. Anyone
8 else? Mr. Murphy, do you have anything to say?

9 **THE DEFENDANT:** Yes, sir. I really, when I went to
10 jail back in November, I really think that y'all saved
11 my life because I had never done much time. But I'm
12 going starting my eighth months I guess, or going on it.
13 My brother is very religious I'm talking about going to
14 work for. I won't be able to go fishing and stuff I
15 know if I get house arrest I would have to do what you
16 say to do. But I would like to have some time if it is
17 possible that I could get the time to go to work, work
18 hours or whatever and I could get -- I know he would
19 work with me as much as he could, 'cause before this,
20 Your Honor, my brother wouldn't have nothing to do with
21 me, told me not to be around him.

22 And my kids, like I said, one of them just had
23 another grandson I hadn't gotten to see. Tory, my
24 youngest daughter, she'll be 18 coming December 29th and
25 she's planning on coming back. I don't want to be in

1 prison for that. I've waited 12 years. And I don't
2 want to disappoint my mama no more, or family.

3 THE COURT: All right. Anything else?

4 MR. DAY: No, Your Honor.

5 THE COURT: The sad part about life is not what we
6 necessarily do to ourselves as what we do to others.
7 And I noticed your mother being here every day and I've
8 read the letters of your older daughter.

9 There's one thing that the Court has to be
10 concerned about and that is that it's not just what you
11 have done to yourself, but what you have done to others.
12 Now, you might say Oh, I haven't done anything. But you
13 are talking about your addiction and your habit. Unless
14 they're giving away methamphetamine, I understand that
15 there's a price on it. Of course, I think in the video
16 you said you took five dollars out of that amount that
17 you had distributed to the confidential informant and
18 quote, that's my price.

19 Well the price is a whole lot more as you found out
20 apparently in your own life. But there's an interesting
21 thing about drugs and particularly meth. There wouldn't
22 be the big dealers out there if there weren't the small
23 users. And as you noted, small users sometimes to
24 support their own habit become dealers. And I won't
25 embarrass you by asking you something I probably asked

1 you maybe the first time I sentenced you back in 2004,
2 because it was me, I think, it's my signature.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: But I usually or sometimes ask drug
5 offenders when they have children -- now you have a
6 grandchild -- how old do you want those children or
7 grandchildren to be when they start using meth.

8 THE DEFENDANT: Never, Your Honor.

9 THE COURT: As long as there's somebody out there
10 buying it there will be somebody selling it. Now, let
11 me just ask you this, though. If you caught somebody
12 giving meth -- not selling meth, but say, it won't be
13 your grandchild for several years but will eventually,
14 what would you do to that person? Give them a little
15 hit, a little excitement, what would you do to that
16 person.

17 THE DEFENDANT: I definitely wouldn't like it.

18 THE COURT: Well now you understand my dilemma.

19 THE DEFENDANT: Yes, sir. And also that it does
20 hurt kids.

21 THE COURT: No question. I don't know where you
22 started, but from what I see is too many young people.

23 All right.

24 (Whereupon, the defendant conferred with counsel
25 off the record.)

1 MR. DAY: Excuse me, Your Honor. He did say he had
2 one more thing he would like to say.

3 THE COURT: Go ahead, yes, sir.

4 THE DEFENDANT: Yes, Your Honor. When I was out
5 there doing the drugs or on it like you seen in the
6 video I did not do that a whole, whole lot but I did do
7 it, and when I went to jail I was really bad on it and
8 it took me like four months before I could even really
9 get back straight where I was eating proper, doing
10 proper. And I was starting to realize that I woke up
11 and I was 40-years-old like from a bad dream and there's
12 my family my mama especially and my daughters and, like
13 I said, my grandson was born.

14 It was like I woke up from a bad dream that my life
15 is almost gone, and I realized how bad I hurt my mom
16 now. Before I was blinded from that because I just kept
17 my head so messed up with it that I didn't really
18 realize that I was harming no one. But I harmed me, I
19 harmed every who -- that stuff harms everybody, you
20 don't have to do it or you do it, whatever, it hurts
21 everybody, especially in your family, and I really did
22 not mean to distribute it like that. Thank you.

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

25 MR. STOUDEMIRE: Nothing, Your Honor.

1 THE COURT: Mr. Day, anything further from defense?

2 MR. DAY: No, sir.

3 THE COURT: Mr. Murphy, anything you would like to
4 say?

5 THE DEFENDANT: Sir, I just to want say I'm sorry
6 to the Court. That's the first time I'd ever seen
7 myself on camera like that. I have been very ashamed of
8 that for some time. But I have learned this since I've
9 been in jail. If I would have been ashamed of it back
10 then I probably would have got more help. And I realize
11 being ashamed of it is part of getting better and if I
12 could go to work with my brother he does not put up with
13 nothing like that. He would probably bring me up here
14 and put me in jail his self because he hates it. He's
15 seen what it's done and all I want to do is, Your Honor,
16 try to start putting my life back together financially
17 and every way, in every day. It's hard to do that in
18 prison, sir.

19 THE COURT: All right. Anything else?

20 THE DEFENDANT: No, sir. I appreciate it. Thank
21 you.

22 Sentence of the Court:

23 THE COURT: Indictment Number 2013-GS-37-312 it's
24 the sentence of the Court that the Defendant Gregory Lee
25 Murphy be committed to the State Department of

1 Corrections for a term of 25 years provided upon the
2 service of 90 months and payment of costs and
3 assessments as applicable the balance is suspended with
4 probation for five years. Defendant be given credit for
5 216 days' time served. Special conditions of probation
6 and sentence is to obtain his G.E.D., undergo drug and
7 alcohol testing and treatment, substance abuse
8 counseling drug rehabilitation and also ATU while
9 incarcerated, pay \$500 to the Clerk of Court during
10 probation. All right. Good luck to you, sir.

11 THE DEFENDANT: Thank you, Your Honor.

12 THE COURT: All right. We'll stand in recess until
13 2:30.

14 MR. STOUDEMIRE: Yes, sir. That's fine.

15 (Whereupon, trial ended at 1:28 p.m.)

16

17

18 --- THIS ENDS REQUESTED TRANSCRIPT ---

19

20

21

22

23

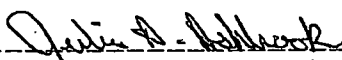
24

25

1
2
3 CERTIFICATE OF REPORTER

4 I, the undersigned Julie A. Ashbrook, Court
5 Reporter for the Thirteenth Judicial Circuit Family
6 Court of the State of South Carolina, do hereby certify
7 that the foregoing is a true, accurate, and complete
8 transcript of record to the best of my ability of all
9 the proceedings and evidence introduced in the hearing
10 and/or trial of the captioned case, relative to appeal,
11 in the General Sessions Court for Oconee County, South
12 Carolina, on the 26th day of June, 2013.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.
15
16

17 
18 Julie A. Ashbrook
19 Family Court Reporter
20 Thirteenth Judicial Circuit
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of Oconee)Gregory Murphy 355966)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

2013 . CP . 37 . 00812)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2013 NOV - 8 P. 2:47

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Ridgeland C I
2. Name and location of Court which imposed sentence Oconee County
3. Name(s) of co-defendant(s) (if any) Manley Crowe
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013 G53700312 - Drugs Manufacture Distribution Etc of
 - (b) Methamphetamine 2nd

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 6-26-13
- (b) _____
- (c) _____
6. 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 _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Ineffective assistance of Counsel - Counsel Fail To File Appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Counsel Denied Right To Appeal - Conflict of Interest
- (b) Prosecutorial Misconduct - Unlawful Sentence enhancement
- (c) No True Bill Stamp on indictment denied a Fair-impartial Trial
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel Fail To File Appeal Fail To Inform Court of Prosecutors previous involvement with Applicant and DSS Family issues
- (b) Prosecution previously assisted DSS against Applicant
- (c) Trial Court knew that prosecutor had previously assisted DSS as a lawyer against Applicant - could not be impartial
- (d) Should not have been sentenced as 2nd offense since 1st offense was dropped. indictment has no True Bill Stamp.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Counsel Fail To File Direct Appeal
 (b) Ineffective assistance of Counsel
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO
 (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? NONE
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. _____
 ii. Oconee County Public Defender - Danny Day
 iii. Same
 (b) the proceedings at which each such attorney represented you:
 i. Trial and Sentencing
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

Vacation of Sentence-Direct Appeal or
Resentencing

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Oconee)

VERIFICATION

2013 - CP - 37-00912

I, Gregory Lee Murphy, 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.

Gregory Lee Murphy

SWORN to and subscribed before me this 22
 day of Oct., 2013.

Virginia Robinsen (L.S.)
 Notary Public

My Commission Expires: May 26, 2021

FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2013 NOV - 8 P 2:47

2013-CP-31-03812
 APPLICATION TO PROCEED WITHOUT PAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF

I, Gregory Lee Murphy, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Gregory Lee Murphy
 Applicant

SWORN or affirmed to and subscribed before me this
22 day of Oct., 2013.

Virginia Robinson
 Notary Public

My Commission Expires: May 20, 2021

FILED O'CONNOR, SC
 BEVERLY H. WHITEFIELD
 CLERK OF COURT
 2013 NOV -8 P 2:47

CIVIL ACTION COVERSHEET

2013 -CP- 37 -00012

FILED O'CONNOR, SS
BEVERLY H. WHITEFIELD
CLERK OF COURT

Plaintiff(s)

vs.

Defendant(s)

Submitted By:

Address:

State of South Carolina

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- _____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:

Gregory L Murphy

Date: 11-5-13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee²⁷⁵, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
	)	
Gregory Lee Murphy,	)	C.A. No. 2013-CP-37-812
S.C.D.C. No. 355966,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(counsel has been appointed)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed November 8, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Oconee County. The Applicant was indicted at the March 2013 term of the Court of General Sessions for Oconee County for possession, manufacture, distribution, etc. of methamphetamine, second offense (2013-GS-37-312). The Applicant was represented by Daniel R. Day, Esq. Applicant proceeded to trial and was found guilty on June 26, 2013. He was convicted as indicted. The Honorable Alexander S. Macaulay sentenced Applicant to a term of twenty-five (25) years imprisonment for possession, manufacture, distribution, etc. of methamphetamine, second offense. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Oconee County Clerk of Court regarding the subject conviction(s), the transcript from

Applicant's trial hearing, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance Counsel, in that;
 - a. Counsel failed to file an appeal on Applicant's behalf,
 - b. Counsel failed to resolve a conflict of interest,
2. Prosecutorial Misconduct, in that;
 - a. Applicant's sentence was unlawfully enhanced,
3. Constitutional Violation, in that;
 - a. The indictment lacked a "True Bill" stamp, and this denies Applicant a fair and impartial trial.

III.

The Applicant's first claim is an allegation of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland 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, 305 S.E.2d 247 (1983).

IV.

The Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is

not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). The Respondent submits the Applicant has not carried his burden of proving actual prosecutorial misconduct, therefore, this allegation should be summarily dismissed.

V.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code '17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VIII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

IX.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel and prosecutorial misconduct.

ALAN WILSON
Attorney General

JOHN W. McINTOSH

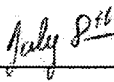
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
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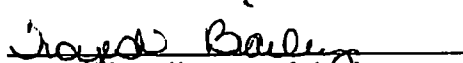
, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TENTH CIRCUIT
COUNTY OF OCONEE	)	
	)	
	)	2013-CP-37-812
	)	
GREGORY LEE MURPHY	)	
	)	
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:

Hugh W. Welborn
P.O. Box 173
Anderson, SC 29622

DATED this 8th day of July, 2014


Troyeshi Brailey, Legal Assistant
For Respondent

State of South Carolina

County of Oconee

In the Court of Common Pleas

Gregory Lee Murphy,

Applicant,

-vs-

State of South Carolina,

Respondent.

)
)
)
)
)
)
)
)
)
)

2013-CP-37-812

July 28, 2014

Transcript of Record

B E F O R E:

The Honorable Edgar W. Dickson, Judge

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

Hugh Welborn, Esquire
Attorney for the Applicant

John W. Whitmire, Esquire
Attorney for the State

Renee H. Tollison, CVR
Circuit Court Reporter (retired)

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EXHIBITS

No	DESCRIPTION	ID	EV
A-1	<i>No exhibits were presented during the hearing</i>		
A-2			
A-3			

1 **JULY 28, 2014**

2 (WHEREUPON, convened with all parties present, and
3 the following proceedings were had commencing at
4 approximately 3:57 p.m.)

5 MR. WHITMIRE: May it please the Court, Your
6 Honor.

7 THE COURT: Yes, sir.

8 MR. WHITMIRE: The next matter before this
9 Court is Gregory Lee Murphy v. State of South Carolina,
10 case number 2013-CP-37-812. Mr. Murphy was indicted for
11 possession to distribute second offense. He was
12 represented by Mr. Day. He proceeded to trial and was
13 found guilty on June 26, 2013, found guilty as indicted.
14 Judge Macaulay sentenced him to 25 years suspended upon a
15 substantial amount of probation leaving him eight or nine
16 years of actual incarceration. No appeal was filed on
17 his behalf. This was a trial. Mr. Day is present.

18 At this time, Mr. Murphy has indicated he's going to
19 proceed on failure to object to the indictments, failure
20 to object to the enhancement to a second offense, failure
21 to object or cross-examine the State regarding the
22 procedures they used for a buy bust. Also, prosecutorial
23 misconduct, failure of solicitor to recuse himself as a
24 result of an alleged conflict of interest, failure to
25 file a direct appeal.

1 The second to last issue regarding prosecutorial
2 misconduct, this was, I believe, argued, and put on the
3 record on Mr. Murphy's behalf by his attorney. It was
4 dropped. And a number of these, Your Honor, at the
5 appropriate time I would ask for summary judgment once
6 Mr. Murphy has had a chance to make his case.

7 THE COURT: All right.

8 Mr. Welborn?

9 MR. WELBORN: Your Honor, the only other issue
10 is that my client alleges the indictment lacks the true-
11 bill stamp. That's in his application.

12 THE COURT: Yes, sir, I saw that as well.
13 Okay.

14 MR. WELBORN: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. WELBORN: We call Gregory Murphy to the
17 stand.

18 (WHEREUPON, the witness was duly sworn.)

19 THE COURT: Mr. Murphy, when you get
20 comfortable, let me know.

21 THE WITNESS: I'm ready.

22 THE COURT: Mr. Welborn?

23 MR. WELBORN: May it please the Court.

24 **GREGORY LEE MURPHY,**

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION

2 BY MR. WELBORN:

3 Q. All right. You are Gregory Murphy, is that correct?

4 A. Yes, sir.

5 Q. Mr. Murphy, you were indicted on March of 2013 for
6 possession, manufacture, distribution, et cetera, of
7 methamphetamine second offense. We'll talk about that in
8 a moment. You were found guilty after you went to trial
9 June 26, 2013, and you were convicted on those charges.
10 As counsel stated, you got 25 years for that second
11 offense, the possession, manufacture, distribution, et
12 cetera, of methamphetamine. You didn't appeal those
13 things.

14 Let's talk about these issues. First of all, you've
15 alleged that your sentence should never have been -- or
16 your conviction and sentence should never have been for a
17 second offense. Why is that?

18 A. Because I was told that it was a second felony drug
19 charge. And I looked into it, and there is not -- the
20 first one was a misdemeanor.

21 Q. What was the first conviction that you are aware of
22 of any kind of drug charge? What was it?

23 A. Possession of meth.

24 Q. Simple possession of meth?

25 A. Possession, yes.

1 Q. And so your contention is that for you to have a
2 conviction for second offense for distribution, it would
3 have to be a first offense conviction of distribution.
4 Is that your contention?

5 A. Yes. Or manufacturing or something, I would think.
6 I would have thought.

7 Q. Now, you also allege that your attorney failed to
8 file an appeal on your behalf after your trial. Did you
9 ask him to appeal?

10 A. Yes, sir, as I was going out the door, going back to
11 be locked up.

12 Q. And did you ever get an appeal?

13 A. No, sir. He told me he'd be right there, and I
14 never seen him.

15 Q. Well, are you asking the Court now to allow you to
16 have what we call a belated appeal? In other words, are
17 you asking to be able to appeal at this time if the Court
18 says I'll let that happen?

19 A. Yes, I guess I would say yes.

20 Q. You also say there was a conflict of interest. You
21 alleged in talking with me the other day that Mr.
22 Stoudemire, including some others, was the prosecutor and
23 he prosecuted you in a DSS case, and somehow he had it in
24 for you. That was a conflict because he already knew
25 about you and was going to try to hurt you in some

1 fashion by knowing about your prior history. Is that
2 basically what you're trying to tell the Court?

3 A. Yes, sir.

4 Q. Did you tell your lawyer to make an issue out of
5 that alleged conflict?

6 A. Several times I asked him to.

7 Q. And what was his response?

8 A. He said that he -- I asked him to do that. I said,
9 well, is there any way I could get another lawyer. And
10 he looked me and said, I doubt it, after I had asked him
11 three or four times.

12 Q. Now, that's a separate kind of case, the DSS case.
13 It wasn't the same issues as it was in the criminal case.
14 Would you agree?

15 A. No, sir.

16 Q. But you felt he was coming after you because he knew
17 you and thought you were a bad dude or something. Is
18 that it?

19 A. There was a lot of stuff said that was in my trial
20 that wasn't so. I mean, in my DSS case that wasn't true.
21 And also, every time something that would come to the
22 courthouse, he would be the one to snatch it up. And I
23 didn't understand why when there was -- he would always
24 do that.

25 Q. You're talking about Mr. Stoudemire?

1 A. Yes, sir. Every time. And then I tried to get him
2 to -- Mr. Day to see if I could get him off my case, and
3 there wasn't no way.

4 Q. Okay. You also allege that there was a -- the
5 indictment lacked a true-bill stamp on it, and therefore
6 for some reason you were just improperly tried. Can you
7 explain to the Court what you mean by that?

8 A. I just seen it, and I -- even before I was tried, I
9 knew I wasn't going to get a fair trial, not with this
10 man, because his plea was ten years or trial to me.

11 Q. Now, you also alleged in talking to me the other day
12 that you felt your lawyer, Mr. Day, didn't do a real good
13 cross-examination on the bias of your codefendant. What
14 did he not do what you wish he had done related to that
15 issue?

16 A. Well, there's several things. One thing was that
17 when she was on the stand, he asked her had she ever done
18 meth before. And she admitted she had. And I asked him
19 several times could he ask to see if she was maybe under
20 the influence of any kind of drugs at that time by maybe
21 a urine test or whatever. And he told me he would, but
22 then before -- but then I kept waiting for him to do it.
23 And I asked him again. I said, how about that drug test.
24 And he said he would, but then when it come time, he just
25 told her -- he said, I think she's lying and they think

1 -- and nobody believes what she's saying. So he just let
2 her off the stand right then.

3 Q. So for my understanding and the judge's
4 understanding, you think that the judge should have
5 stopped the trial right then and told this witness to
6 come down there and get a drug test? Is that what you
7 wanted to have happen?

8 A. No. I just mainly tried to consider that she would
9 get them to see that she would -- I could see -- I could
10 almost tell that she was on something that morning.

11 Q. And you and I talked about this the other day on the
12 phone a little bit, and I told you, you know, they don't
13 normally tell people to come down off the stand in a
14 criminal trial to be drug tested when they're just simply
15 a witness.

16 A. But when -- from one addict to another, you know, I
17 knew that she was high.

18 Q. But in any event, you're telling the court that
19 there should have been a more vigorous cross-examination,
20 at least an effort to have a drug test. Is that it?

21 A. Yeah, and just not that. Maybe when she said she
22 was thoroughly searched by the male officer, I think --
23 I'm trying to ---

24 Q. I'm going to get there about the search in just a
25 moment.

1 A. Okay.

2 Q. I'll get there.

3 A. Yes, sir.

4 Q. Now, let's talk about that search. You said that
5 this -- if I recall, there was a male officer who sent
6 this female, alleged female informant, in and the male
7 officer could not have obviously done, you know, a proper
8 search of a female about is she hiding drugs or got some
9 contraband of something. Tell the Court your position on
10 that. Did I sort of state it correctly?

11 A. Could you please say it again, please?

12 Q. I'll slow it down.

13 A. Okay.

14 Q. You've alleged -- you talked to me the other day
15 that this female informant, she would have been searched
16 when she went in or went out from buying a drug or
17 getting a drug. She should have been searched by another
18 female, but she wasn't. She was searched by a male. In
19 other words, your suggestion is there wasn't a good
20 thorough search because a male did it. Did I make a
21 little better sense then?

22 A. Yes, sir. I just missed it. Yes, sir, I do say
23 that because I don't see how -- they said it was a
24 thorough search. I don't see how that was a thorough
25 search.

1 Q. Did you tell your lawyer how you felt about it?

2 A. I tried to. He just ignored me again.

3 Q. Do you think that he should have made an issue out
4 of that on cross examination about the thoroughness of
5 that search or going in or whatever she did?

6 A. Yeah, or at least told me that. It didn't make no
7 sense. But I really do think that's grounds if a male
8 searches a female.

9 Q. Now, you've also alleged that there's an issue about
10 I couldn't be distributing drugs; I was just smoking it.
11 I think you told me that.

12 A. That's on the videotape.

13 Q. Yes, sir. So did you tell Mr. Day about that, tell
14 him was you just told me?

15 A. Yes, sir.

16 Q. That you were just smoking; you weren't selling or
17 distributing. Did you tell him that?

18 A. Yes, sir. It was obvious. I was really, really
19 high.

20 Q. Was there a video that you wanted to see of that
21 particular event that you know existed?

22 A. Yes, sir. I seen it.

23 Q. You've seen it?

24 A. I seen -- yes, sir.

25 Q. When did you see it? After the trial?

1 A. No. I seen it before trial, but I was ---

2 Q. All right. Let's talk about it. If you saw it
3 before trial, did Mr. Day mention that or just ignore it
4 when he went through the trial?

5 A. Ignored it.

6 Q. He didn't bring it up at all?

7 A. Not that I can recall, but I haven't had a
8 transcript to kind of look back either. Do you see what
9 I'm saying? I'm trying my best to get here.

10 Q. Okay. So your position is he sort of ignored some
11 stuff that was critical that would have shown you were
12 just a smoker of meth; you weren't selling it. Is that
13 your position?

14 A. Yes, sir.

15 Q. Now, so if I understand what you're asking the Court
16 to do, you're saying that your sentence was not proper
17 because you didn't have a first offense distribution; you
18 had a first offense possession. Is that it?

19 A. Yes, sir.

20 Q. And you're also saying that there should have been a
21 better use of this informant or else suppress all that
22 evidence because of the issues of bias, that sort of
23 thing. Is that correct?

24 A. Yes. He never even asked about our relationship or
25 nothing like that.

1 Q. And you're also alleging that this was a defective
2 indictment because it didn't get stamped true-billed, is
3 that correct?

4 A. It just made me wonder what was wrong.

5 Q. And you're also alleging that Mr. Stoudemire had a
6 conflict of interest because he prosecuted you in another
7 case with DSS. He just sort of had it in for you, and
8 Mr. Day should have made an objection, is that right?

9 A. I asked for a change of venue or whatever I could
10 get.

11 Q. I've got you. You didn't file an appeal, correct?

12 A. No, sir.

13 Q. And I think I've asked the questions I wanted to ask
14 you. Now, I'm going to ask you one more that's kind of
15 an open-ended question. These are the things we've
16 talked about, and these are the things you've got on your
17 application, and these are the things that I've admitted
18 with a very kind and generous opposing counsel letting me
19 do it. Is there anything I've missed that you want to
20 tell the Court?

21 A. Yeah. I asked him -- he said he would also talk
22 about since I was pretty messed up on the meth that he
23 would talk about getting me -- he would at least consider
24 asking the judge about rehab. He didn't do none of that.
25 My brother had me a job as long as I was off the drugs

1 when I got out. He told me, my brother, that he would
2 fax him a paper. My brother did all that. He didn't
3 mention that. Just stuff like that. Let's see. He told
4 me that the first drug charge, meth charge, was a felony,
5 but I've got it wrote down here where it was a
6 misdemeanor.

7 Q. Okay.

8 A. But he said it was a second felony drug charge.

9 Q. We talked about that. We're going to let the Court
10 rule on that.

11 Thank you. Answer anything opposing counsel may
12 have or the Court.

13 THE COURT: Mr. Whitmire?

14 CROSS-EXAMINATION

15 BY MR. WHITMIRE:

16 Q. Mr. Murphy, you were arrested August of 2012, is
17 that correct?

18 A. No, sir.

19 Q. When were you arrested?

20 A. I was arrested November the 22nd, I think.

21 Q. Yeah, the offense for which you were tried, the buy
22 bust, occurred in August?

23 A. Yes, sir.

24 Q. And then you were tried, I believe, in November
25 2013?

1 A. Yes, sir.

2 Q. So you were aware they were going to try you for
3 manufacturing and distribution?

4 A. Not necessarily because I waited -- I was in jail
5 the whole time this was going on.

6 Q. How many times did your attorney come meet with you?

7 A. Three, I think, but two was on another charge that
8 was dismissed. Or one maybe. I'm not sure.

9 Q. You told him your version of events?

10 A. Him?

11 Q. Uh-huh (affirmative).

12 A. Yes, I tried.

13 Q. And you testified to those at trial?

14 A. Yes, sir.

15 Q. Now, tell me if I'm wrong. But that version of
16 events was that you were just using, and you and the
17 informant were pooling your resources together to buy the
18 meth?

19 A. Yes, sir.

20 Q. Did you tell them whose house you were at?

21 A. They never asked.

22 Q. Do you think that that would have been helpful to
23 show that you weren't the dealer?

24 A. They should have seen I wasn't the dealer, the shape
25 I was in.

1 Q. And you said your attorney never asked you, you
2 know, where you got that and if you were just using it?

3 A. No, sir. They just automatically thought it was me.
4 And I had already went in -- jumped up and went into the
5 house and got it and come back out. I didn't have no
6 money. I didn't have nothing. I give her the money
7 back, what was left.

8 Q. So you were the in-between, and you were trying to
9 just score a little bit of free meth out of it?

10 A. Not necessarily, no. It was more like me and her
11 had been doing this more than one time before, and he did
12 not even -- I said he never even asked about the
13 relationship or nothing that we had had.

14 Q. So where did the meth come from?

15 A. Inside the house.

16 Q. From whom specifically? You don't have to tell me.
17 Did you tell your attorney that?

18 A. He said -- yeah, he seen me go inside to get it to
19 come back out. He didn't even ask her about the drugs
20 inside -- or if I went inside the house to get the drugs
21 or nothing that I can remember.

22 Q. But you don't deny that it was meth, actually
23 methamphetamine, do you?

24 A. No, sir. I was high on meth. I mean, I ain't going
25 to sit and lie.

1 Q. And he presented this case to the jury, didn't he?

2 A. Somewhat, yes. Just that.

3 Q. And tell me if I'm wrong. But part of the defense
4 was that in fact it was meth, but I'm not a dealer; I'm
5 just a user and addict?

6 A. Yes, sir.

7 Q. Now, when did you ask Mr. Day to appeal?

8 A. As I was going out of there. They put the cuffs on
9 me and I was going out of the courtroom.

10 Q. Is this your first offense in the system?

11 A. This is the first time I've ever been locked up,
12 yes, sir.

13 Q. Did you ever write Mr. Day and ask him what's going
14 on following that notice of appeal?

15 A. I wrote him three times. I ain't never got a letter
16 back from him.

17 Q. Do you remember when you sent those letters?

18 A. I can't give you the dates, but it's been since I
19 was incarcerated.

20 MR. WHITMIRE: Beg the Court's indulgence.

21 THE COURT: Take your time.

22 MR. WHITMIRE: No further questions, Your
23 Honor. Thank you.

24 THE COURT: All right.

25 Anything on redirect?

1 MR. WELBORN: No, Your Honor.

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

3 MR. WELBORN: That's our case.

4 THE COURT: All right.

5 Any witnesses for the State?

6 MR. WHITMIRE: Your Honor, the State calls Mr.
7 Day.

8 R. DANIEL DAY,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. WHITMIRE:

12 Q. I've just got a handful of questions for you. I'll
13 try not to keep you too long.

14 A. Yes.

15 Q. How long have you practiced criminal law in Oconee
16 County?

17 A. Here 36 years.

18 Q. I think you've done a good number of drug cases?

19 A. I have.

20 Q. Now, do you recall your representation in this
21 matter?

22 A. I do.

23 Q. Have you had a chance to review your trial file?

24 A. I did and have it, yes.

25 Q. Just a few basic questions for the record. I

1 appreciate your patience. Do you know how many times you
2 met with your client in this matter?

3 A. Not an exact number. We met quite a bit. He had a
4 couple of charges, and we went over this case quite a few
5 times.

6 Q. Would it be fair to say more than two or three?

7 A. Oh, yeah.

8 Q. And what was his version of the facts that led to
9 his arrest?

10 A. His version is exactly what happened. He told me
11 the truth, exactly what occurred in this case. And I
12 worked from that and from the evidence that was correct
13 as to what happened.

14 Q. Did your client have a good amount of
15 methamphetamine on him when this went down, the buy bust?

16 A. Not a great deal, no. The accusation was that Marly
17 Crowe contacted him, came to him, brought money. The
18 video, which was an exceptional video, one of the best I
19 think the sheriff's department has ever put together,
20 showed him coming to the car, getting money from her and
21 going back, leaving from the car, going to a house,
22 coming back with the meth and also with some money. And
23 what he did is he gave her part of the meth, he kept part
24 of it and paid her for part of it, gave her part of her
25 money back or whatever. And then when she would not

1 smoke with him at that point, he got out of the car and
2 took what meth he had and headed back to the house, and
3 she left, went back to the officers.

4 Q. Did he provide you with any leads, ask you to
5 investigate anything that would indicate that he was just
6 a go-between, he wasn't the dealer?

7 A. Oh, he said there was no question that she came to
8 him, gave him the money, he went in the house, got it
9 from someone else. It was his way of getting meth. He
10 was a user. No question about it.

11 Q. Did he give you any other information indicating
12 maybe who it came from -- and I'm not asking for a name
13 -- besides what you presented at trial?

14 A. Just that, you know, the people that were in the
15 house, and he was staying there and that this was a way
16 for him to get meth. I mean, he was an addict. He was a
17 user, and he was stuck with it.

18 Q. Did you investigate all witnesses that he asked you
19 to do?

20 A. Yes.

21 Q. The correct theory of the case was mere user
22 possession?

23 A. That was it. He was only -- in effect, it was like
24 an accommodation sale, but unfortunately, we don't have
25 accommodation sales for meth. But that's what it was.

1 He was doing whatever he had to to get meth for him to
2 use.

3 Q. At what point during the course of your
4 representation did you get the feeling this case was
5 probably going to be resolved at a trial?

6 Q. Well, we had negotiated with the solicitor. They
7 had come up with a 20-year sentence. He rejected that.
8 Just about two weeks before trial, I got them down to ten
9 years to cover that and a possession charge he had. And
10 to cover all of it, and he turned that down as well. So
11 we knew we were going to trial if he wasn't going to take
12 those, and so I had prepared for trial. And that's what
13 we did. He said he wouldn't take the plea offer, so we
14 were going to trial.

15 Q. Do you recall your preparation strategy concerning
16 Ms. Crowe, the informant?

17 A. Well, preparation was going over it. He described
18 where it occurred, and I went by there just to see if
19 there was anything that might possibly -- nothing there
20 except the driveway and a house. Pretty much just
21 preparing it by going over with him to let him know what
22 we would be facing and that their whole case was based
23 upon the confidential informant. The confidential
24 informant had been wired. And in that regard, when you
25 saw the video, it was -- like I said, it was an

1 exceptional video. Showed him doing it, showed that in
2 fact he was high, showed that he was using. That's all
3 he cared about. He wanted to use it with her. And his
4 information to me was that he had used meth with her
5 before.

6 Q. As I recall, did you impeach her with her plea
7 agreement during the course of trial?

8 A. Did I do what?

9 Q. Did you impeach her? Did you ask her questions
10 about her plea agreement she'd signed years prior to the
11 day of ---

12 A. Oh, she had an assistance agreement. According to
13 her and from the testimony from the officer, she had no
14 pending charges when this occurred. So there was nothing
15 that I could find that would indicate that she was under
16 any charges or pending charges when this occurred, that
17 she was doing it for the pay. And I went over with her
18 that she admitted to using meth before and that she had
19 made a number of buys. And so my strategy was to show
20 that she was lying through her teeth, which she probably
21 was. But in this particular case, the video pretty much
22 said it all. No matter how hard I hit her on it, she
23 just would not come up with anything other than, I was
24 not under any charges and I signed an agreement and
25 that's what I did.

1 MR. WHITMIRE: For the record, Your Honor, I
2 mean assistance agreement, not plea. I apologize.

3 THE COURT: Okay.

4 Q. When the jury returned its guilty verdict and Judge
5 Macaulay sentenced your client, did y'all have a
6 discussion about filing an appeal?

7 A. I recall asking if he wanted an appeal, and he said
8 no. If he said he wanted me to appeal and I didn't hear
9 that, then I missed it. Had I known that, I would have
10 filed an appeal. I do them all the time. I have to do a
11 lot of trials. I've tried some pretty tragic cases,
12 unfortunately, when juries don't agree with me. And I
13 file appeals all the time. But in this case if I missed
14 that, I didn't hear it. And I asked his mother, and she
15 had said no. But if I missed that, then that would be my
16 fault, and I would have filed an appeal.

17 Q. Would you have noted or made a notation that he
18 desired an appeal on your file folder or anywhere?

19 A. I did not, no.

20 Q. What is your practice for filing a notice of appeal
21 after trial?

22 A. I have every form on my computer where all I have to
23 is put in the names, the dates, and the numbers. Fill it
24 all in, send off the letters, file the appeal, serve
25 them, get them all done. So it's a package. I know it

1 takes me about three hours to do it all, put it together
2 for mailing to Appellate Defense and to the Court of
3 Appeals, get it filed over here, send off the letters.
4 And when I do them, I send off a copy to the defendant as
5 well. In this case, that's what I would have done, but I
6 did not -- like I say, I missed it. If he had wanted it,
7 I would have done it.

8 Q. What I'm asking specifically, do you have a general
9 practice to make a note during the sentencing proceeding
10 that my client wants to appeal this so you won't forget?

11 A. Not really. I don't have a method of doing that,
12 but normally, like I said, if someone wants an appeal, we
13 just file the appeal. We've got all the paperwork to do
14 it.

15 Q. Did you try this case to the best of your ability?

16 A. Yes.

17 Q. Do you have any doubt that your client was aware of
18 the charges he was facing?

19 A. Oh, yes, he understood.

20 Q. I believe he had brought up an issue regarding
21 enhancement. Did he ask you about the fact that it was a
22 second offense?

23 A. Oh, 40 or 50 times at least. He just could not
24 understand why it would be a distribution second. I went
25 over the statutes with him that it was in fact -- that it

1 was a prior meth charge. This makes it a second meth
2 charge. And if it's distribution, it will be
3 distribution second. And that's what he would be going
4 to trial on. All of our negotiations -- it started out
5 as distribution second; we were trying to get it down to
6 distribution first as part of the plea agreement. But I
7 kept explaining it, and he just kept saying, no, no, no,
8 that's not the law, and that's not the way it's supposed
9 to be.

10 Q. Thank you, Mr. Day. Please answer any questions
11 opposing counsel may have for you.

12 THE COURT: Anything on cross?

13 MR. WELBORN: May it please the Court.

14 CROSS-EXAMINATION

15 BY MR. WELBORN:

16 Q. Mr. Day, your client alleges there was a conflict of
17 interest between he and Mr. Stoudemire. He said he told
18 you that, and he thought that might have a bad impact on
19 his case. What's your response to that? Did you try to
20 get Mr. Stoudemire off the case?

21 A. I did. I talked to Mr. Stoudemire on numerous
22 occasions about it, and he understood what Mr. Murphy's
23 position was. We went over that. I asked him about it.
24 And even before the trial started, we did exactly that.
25 Brought it to the Court's attention that we believed Mr.

1 Stoudemire had a vendetta for him, and as a result, he
2 should be removed from the case because he couldn't be
3 fair. The judge reviewed it and decided that that was
4 not enough.

5 Q. That's in the transcript, as I recall, is that
6 correct?

7 A. Yes, sir.

8 Q. All right. Now, you say that -- we talked about his
9 sentence. And so you explained numbers of times about
10 this enhancement, is that right?

11 A. Yes, sir.

12 Q. And he also alleges that there wasn't a true-billed
13 stamp. Does that bother you in any way?

14 A. When I saw that in there, I went and double checked.
15 And he was right. I don't think there is one on there,
16 but his indictment was listed in the clerk's list of true
17 bills returned by that particular grand jury. I was
18 hoping that might have been something we could have used,
19 but unfortunately it didn't.

20 Q. All right. He's also alleged that you could have
21 done more with cross on the bias of this woman. Any
22 reason -- what's your response to that?

23 A. We went after her every way that we could. She had
24 no charges, and we went through every record in Oconee,
25 Pickens and Anderson County as to any pending charges

1 against her. We found none in any of those. We went
2 through, and they had to give me copies of all of her
3 convictions, as they did before the trial, of course.
4 But we could find nothing whatsoever pending against her
5 or within the last year before that of anything going on.
6 And during the trial, she denied having any. But she
7 admitted to using meth, admitted to using meth with the
8 defendant, but that was about as far as she would go. I
9 think she was probably lying through the whole thing, but
10 we had nothing which we could really show other than Mr.
11 Murphy testifying, which he did.

12 Q. Now, he alleges there should have been a better
13 search of this female by another female, that a male
14 apparently couldn't have done it right. What's your
15 position on that?

16 A. That's the first I've heard of that, but I really
17 don't know they -- they say they do a search. In this
18 case, whether there was a search or not was of absolutely
19 no import because the video was just spot on. That's
20 what killed him.

21 Q. Thank you.

22 MR. WELBORN: Your Honor, at some point -- I'm
23 through with this particular witness, but I will say at
24 some point I'll have some reply very briefly from my
25 client.

1 THE COURT: Okay.

2 MR. WELBORN: Thank you, Mr. Day.

3 THE COURT: Any redirect?

4 MR. WHITMIRE: Just a few quick questions,
5 Judge.

6 REDIRECT EXAMINATION

7 BY MR. WHITMIRE:

8 Q. Regarding this alleged conflict of interest, you
9 brought this on behalf of your client at the beginning of
10 trial?

11 A. Yes, we brought it during the trial. Certainly.

12 Q. How long have you worked with Mr. Stoudemire?

13 A. Since he's been practicing law, which has been 15 to
14 20 years now probably. Close to that.

15 Q. And the basis -- it's my understanding -- correct me
16 if I'm wrong. The basis of that argument was your client
17 was upset about not getting a good plea deal?

18 A. He felt that he should have gotten a better deal and
19 that Mr. Stoudemire, because of his involvement, would
20 not give him a better deal. As a matter of fact, I think
21 I made a note that he was hung up on the fact that there
22 were other people getting deals on drug cases and he
23 wasn't getting as good a deal, and as a result, that was
24 because Mr. Stoudemire was out to get him. I got him
25 down to ten years on this particular charge. That was as

1 good as I thought it was going to get. He turned that
2 down, and we went to trial.

3 MR. WHITMIRE: No further questions, Your
4 Honor.

5 THE COURT: Okay. Before you ask him any
6 questions, Mr. Day, let me ask you a question. The best
7 deal you got from the State was a 10-year offer, is that
8 correct?

9 THE WITNESS: Excuse me, sir?

10 THE COURT: The best deal you got from the
11 State was a 10-year offer, is that correct?

12 THE WITNESS: Yes, sir.

13 THE COURT: Yet, you go to trial and he got 25
14 years suspended upon the service of 90 months. Now,
15 according to my calculation, that's seven and a half
16 years?

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay. Just wanted to make sure my
19 math was right. Thanks.

20 Anything on recross?

21 MR. WELBORN: Just on reply from my client.

22 THE COURT: Thank you, sir.

23 MR. WHITMIRE: Thank you, Mr. Day.

24 Your Honor, at this time, the State would ask that
25 Mr. Day be excused.

1 THE COURT: Any objection?

2 MR. WELBORN: No objection.

3 MR. WHITMIRE: Thank you for your patience.

4 THE COURT: Thank you, Mr. Day.

5 THE WITNESS: Good to see you.

6 THE COURT: Good to see you.

7 You're recalling Mr. Murphy?

8 MR. WELBORN: Yes, sir, very limited.

9 THE COURT: Mr. Murphy, come on back up. Mr.
10 Murphy, do you understand -- I'll let you get seated. Go
11 ahead and get seated.

12 (WHEREUPON, the witness resumed the witness stand.)

13 THE COURT: Mr. Murphy, do you understand you
14 were sworn earlier? You're still under oath.

15 THE WITNESS: Yes, sir.

16 THE COURT: All right.

17 MR. WELBORN: Approach the witness?

18 THE COURT: Yes, sir.

19 **GREGORY LEE MURPHY,**

20 **BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:**

21 **DIRECT REPLY EXAMINATION**

22 **BY MR. WELBORN:**

23 Q. I'm just giving you your materials you had over at
24 the table. Mr. Murphy, the whole time I was listening to
25 the testimony, you were telling me various things. And I

1 want you to tell the Court those things that concern you
2 about what's true and what you say is not true about what
3 you've just heard. Just go through them quickly.

4 A. Well, one of the main things was that he told me
5 that she didn't have no charges, that she hadn't had none
6 in the last ---

7 THE COURT: Hold on. You need to talk just a
8 little louder, if you don't mind. If you'd just answer
9 the question again.

10 A. Yes. That she said she didn't have no charges
11 pending or nothing.

12 Q. You're talking about this female we talked about?

13 A. Yes, sir, the informant.

14 Q. Yes, sir. Go ahead.

15 A. That she had two charges dismissed right at the same
16 time that the video was taken. And he told me. He's the
17 one that told me that.

18 Q. So your position is she did have some charges
19 pending, and they got dismissed, and that should have
20 been made an issue. Is that your position?

21 A. He said I thought that's what we were saying we were
22 going to do, yes.

23 Q. Do you have any proof today that she had any charges
24 pending after having heard Mr. Day's testimony?

25 A. I can't say pending. I can say they dismissed those

- 1 two fraudulent charges. Something.
- 2 Q. Two fraudulent check charges?
- 3 A. I think so.
- 4 Q. Okay. But no drug charges?
- 5 A. Not that I can think of.
- 6 Q. Tell me what else you heard Mr. Day say that you
- 7 think is not accurate.
- 8 A. I don't remember what he said.
- 9 Q. You said a lot in my ear, so tell me what ---
- 10 A. Yeah, I know, but I don't remember now. I could
- 11 just remember saying it as he was saying it. When he was
- 12 saying them, I was remembering and trying to tell you
- 13 what he was saying so I could help you remember that.
- 14 Q. So you would agree a while ago that you were
- 15 constantly telling me little things, and it was just ---
- 16 A. Yes, sir.
- 17 Q. It's hard to hear all that and hear him at the same
- 18 time. Would you agree?
- 19 A. Yes, sir. I'm sorry.
- 20 Q. That's okay. But this is your case, so I want you
- 21 to tell the Court anything you remember right now besides
- 22 what you told the Court you think is critical that Mr.
- 23 Day misrepresented or anything like that.
- 24 A. You want him back up there?
- 25 Q. Based on his testimony. I'm talking about what he

1 just testified to. That's it.

2 A. I don't remember exactly what he was saying there.

3 I mean, I was listening then.

4 Q. Well, I think he testified that he met with you
5 several times, and you said that's not true. Is that
6 right?

7 A. The most I know of is three.

8 Q. You don't think he got enough information during
9 that three times. Is that what you're trying to tell the
10 Court?

11 A. Yes, sir, I don't think he did because one thing,
12 nobody -- back when we were in the trial, nobody had
13 known anything about Mr. Stoudemire and my conflict that
14 I know of for -- of any sort because Mr. Stoudemire
15 admitted that he was involved in a DSS case of mine. And
16 I'm the one that told the judge about Mr. Stoudemire and
17 tried to get Mr. Day to ---

18 MR. WHITMIRE: Your Honor, I'm going to object.
19 This is a direct appeal issue. It was brought to the
20 Court's attention at the very beginning of trial.

21 THE COURT: I understand. So noted on the
22 record.

23 Go ahead. If you could just wrap it up, if you can.

24 MR. WELBORN: I'll be brief.

25 THE COURT: I understand.

1 Q. Like I said, you went over this, and I believe there
2 was a record where you put it in front of the judge, or
3 Mr. Day did, and the court ruled on that, is that
4 correct?

5 A. Yes, sir.

6 Q. Anything else?

7 A. There was no detail -- there was no more detail that
8 said that he was on the DSS case. He answered it.

9 Q. Besides that issue, anything else that you heard Mr.
10 Day just testify to that you want the Court to know
11 that's not exactly true or accurate. Anything else?

12 A. There's one more thing. I just can't remember.

13 Q. Thank you. That's all I have.

14 THE COURT: Anything?

15 MR. WHITMIRE: No, Your Honor.

16 THE COURT: Thank you, sir. You may step back
17 down. Thank you, sir.

18 Any other witnesses on behalf of the State?

19 MR. WHITMIRE: None, Your Honor. The State
20 would rest, and we would just ask for a very brief
21 closing statement.

22 THE COURT: Okay. All right.

23 MR. WHITMIRE: Your Honor, the last issue
24 regarding the CI, her prior record, her assistance
25 agreement was substantially developed by Mr. Day. His

1 performance was highly effective in this case. I
2 believe, Your Honor, that is on page -- in this record --
3 about 65 through 83-84. It's all done in-camera.

4 THE COURT: Okay.

5 MR. WHITMIRE: Thereby, any issue related to it
6 would be a direct appeal issue.

7 THE COURT: Okay. Anything else?

8 MR. WHITMIRE: No, Your Honor. I'd be happy to
9 answer any questions for you, but rest on the record.

10 THE COURT: Okay. What I'll do is I'll review
11 this and I'll get back to y'all.

12 MR. WELBORN: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (WHEREUPON, the hearing ended at approximately 4:37
15 p.m.)

16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter (retired) for the Tenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript of
6 record of all the proceedings had and evidence introduced
7 in the trial/hearing of the captioned case, relative to
8 appeal, in the Circuit Court for Oconee County, South
9 Carolina, on the 28th day of July 2014.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 March 23, 2017

15

16 s/ *Renee H. Tollison*

17 Circuit Court Reporter (retired)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Gregory Lee Murphy,)
 S.C.D.C. No. 355966,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2013-CP-37-0812

**ORDER OF DISMISSAL AND
 GRANT OF APPEAL PURSUANT TO
WHITE V. STATE¹**

FILED OCONEE COUNTY S.C.
 JUDGE J. G. WELBORN
 2014 JUL 28 PM 4:30

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 8, 2013. Respondent filed its Return on July 11, 2014. An evidentiary hearing into the matter was convened on July 28, 2014, at the Oconee County Courthouse. Applicant was present at the hearing and was represented by Hugh W. Welborn, Esquire. Also present was Applicant's previous PCR counsel, Daniel Day, Esquire, who testified. Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Oconee County. The Applicant was indicted at the March 2013 term of the Court of General Sessions for Oconee County for possession, manufacture, distribution, etc. of methamphetamine, second offense (2013-GS-37-312). The Applicant was represented by Daniel R. Day, Esq. Applicant proceeded to trial and was found guilty on June 26, 2013. He was convicted as indicted. The Honorable Alexander S.

¹ 263 S.C. 110, 208 S.E.2d 35 (1974).

Macaulay sentenced Applicant to twenty-five (25) years for possession, manufacture, distribution, etc. of methamphetamine, second offense. The Applicant did not appeal his conviction or sentence.

Allegations

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance Counsel, in that;
 - a. Counsel failed to file an appeal on Applicant's behalf,
 - b. Counsel failed to resolve a conflict of interest,
2. Prosecutorial Misconduct, in that;
 - a. Applicant's sentence was unlawfully enhanced,
3. Constitutional Violation, in that;
4. The indictment lacked a "True Bill" stamp, and this denies Applicant a fair and impartial trial.

At the evidentiary hearing, the Applicant also alleged counsel was ineffective for failing to adequately cross-examine his confidential informant, and failing to bring out that he was only smoking, not selling, meth.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony and evidence presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the prior PCR proceedings, the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2016), this Court makes the following findings of fact and conclusions of

law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Solicitor's Conflict of Interest

Applicant first alleged counsel was ineffective in failing to resolve a conflict of interest. He testified that the prosecutor had a conflict of interest based on a prior DSS charge – he said he told counsel, but counsel did not do anything. Applicant alleged in his application that counsel was ineffective for failing to inform the court of the solicitor's previous involvement with Applicant and DSS family issues. He said the solicitor previously assisted DSS against Applicant. Applicant further alleged in his application that the trial court knew that the solicitor had previously assisted DSS as a lawyer against Applicant, and that he could not be impartial.

This allegation is without merit. Counsel has no duty to make frivolous motions or objections. See Lowry v. Lewis, 21 F.3d 344, 346 (9th Cir. 1994) (A lawyer's zeal on behalf of his client does not require him to file a motion which he knows to be meritless on the facts and the law). Applicant has also failed to show any prejudice from the solicitor's alleged conflict. See, e.g., State v. Bell, 374 S.C. 136, 646 S.E.2d 888 (Ct. App. 2007) (situation where investigator in solicitor's office previously interviewed defendant while he was investigator for Public Defender's office did not require disqualification of solicitor's office where no prejudice shown).² As Applicant has failed to show either deficiency or prejudice, this allegation is dismissed.

Failure to Adequately Cross-Examine Informant

Applicant next alleged counsel was ineffective in failing to adequately cross-examine the confidential informant who testified at trial. Specifically, Applicant alleges counsel should have brought out the fact that the confidential informant was a woman, and that that she was searched before and after the controlled buy by male officers. Applicant's argument appears to be that

² Nor does the purported conflict call the integrity of the entire judicial system into question. Compare State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000).

male police officers cannot thoroughly search a woman. Applicant has failed to meet his burden to show that counsel's performance was objectively unreasonable. The transaction between Applicant and the confidential informant was caught on video. (State's Exhibit 2). The videotape apparently depicted Applicant holding a bag that was identified as methamphetamine. Tr., Vol. 2, p. 97-98. Additionally, Applicant's testimony at trial was that he bought the drugs while accompanied by the confidential informant, and then gave her a share. Tr. Vol. 3, p. 17-20. Accordingly, to the extent Applicant is alleging his attorney should have argued the confidential informant somehow managed to sneak her own drugs onto the video to frame him, such a theory would have been inconsistent with the video evidence presented at trial *and Applicant's own testimony*.

Applicant has also failed to show prejudice. In light of the above referenced evidence, there was already ample direct evidence from which the jury could find Applicant possessed the drugs and intended to distribute them. As a result, Applicant has failed to meet his burden to prove that counsel's alleged deficiency calls into question the outcome of the proceeding.

Failure to Bring Out that Applicant was a User, Not a Seller

Applicant also alleged counsel was ineffective for ignoring at trial that he was a user instead of a seller. Counsel testified at the evidentiary hearing that Applicant was no doubt a user, and acted as a "go-between" to accommodate the sale. However, counsel said there was no such charge for meth. Further, after reviewing the record, this Court notes that trial counsel argued during his closing statements that Applicant was an addict and not a dealer. Tr. Vol. 3.,

p. 62-65.³ There is therefore no factual basis for this allegation, and Applicant has failed to meet his burden. As a result, this allegation is denied.

Alleged Improper Enhancement

Applicant also alleged his sentence was unlawfully enhanced as a result of prosecutorial misconduct. This allegation is factually refuted by the record. An offense is considered a second or subsequent offense if for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within the previous ten years of a first violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs. S.C. Code Ann. § 44-53-470 (2010). The record reflects that Applicant had a certified conviction for possession of methamphetamine (indictment number 2003-GS-37-1223). He was sentenced for that offense on December 15, 2004. Tr. (Day 3) p. 85, l. 1-10. Applicant was therefore eligible for enhancement. This allegation is denied and dismissed.

Failure to Object to Indictment

Applicant alleged he was prejudiced by counsel's failure to object to the indictment, which had no True Bill stamp. Applicant has failed to show deficiency or prejudice. Counsel testified that the clerk had the indictments listed as "true bill." This is corroborated by the face of the indictment, which does indeed indicate that it was True Billed. In any event, Applicant has not present any evidence which would indicate that he was prejudiced by an indictment that

³ Counsel told the jury "Yeah, it did happen. It sure did. But it will be up to you to determine whether or not his intent at that time was to sell drugs to be a dealer or to be a user." Tr. Vol. 3., p. 65, l. 17-19.

was not true billed, as is his burden in this forum. This allegation is therefore denied and dismissed.

Failure to file a Direct Appeal

Finally, Applicant has alleged counsel was ineffective in failing to file a direct appeal. This Court agrees, and grants relief pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of a right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 224-25 670 S.E.2d 373, 374 (2008) (citing Roe v. Flores-Ortega, 528 U.S. 470, 471 (2000)). Our courts have held that when a defendant reasonably expressed an interest in an appeal or where there is reason to think that a rational defendant would want to appeal are such circumstances that would require informing a defendant of the right to appeal from a guilty plea. Id. "The better practice is for counsel routinely to consult with defendant about an appeal," even though there is no constitutional requirement to do so in the absence of extraordinary circumstances. Flores-Ortega, at 472. In addition to showing that counsel's deficient performance deprived defendant of the right to appeal, the defendant must show that but for counsel's failure to consult with defendant about an appeal, he would have timely appealed. Id. If a defendant has not knowingly and intelligently waived his right to appeal, he is entitled to a belated appeal. Turner, at 374.

The Court finds that Defense Counsel never filed the appeal that Applicant requested. Based on Applicant's PCR application and testimony at the evidentiary hearing, it is apparent that he both requested an appeal and intended to appeal his conviction. Defense Counsel admitted at the hearing that he could have missed Applicant's request for an appeal. This Court

finds that Applicant did not knowingly and intelligently waive his right to appeal and is therefore entitled to a belated appeal.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

[Signature follows]

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations beyond denial of his right to the effective assistance of counsel for failure to file a direct appeal. Counsel was not deficient in any other manner, nor was Applicant prejudiced by the remainder of counsel's representation. Therefore, each of Applicant's other allegations must be denied and dismissed with prejudice. This Court, however, concludes Applicant is entitled to a new appeal as a result of appellate counsel's deficient performance.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice;
2. Within thirty (30) days of service of this Order, Applicant must file a notice of appeal to secure the appropriate review of Applicant's conviction. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure.

AND IT IS SO ORDERED this 26th day of October, 2016.

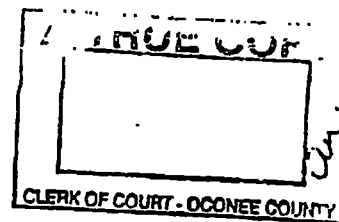


EDGAR W. DICKSON
Presiding Judge
Tenth Judicial Circuit

OCT 26 2016
 10:00 AM
 CLERK OF COURT
 DOONEE COUNTY, SC



South Carolina



FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 MAR 11 PM 1 57

ENTERED
2/13
WATER

DOCKET NO. 2013GS37 00312

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS

MAR 11 2013

Term

THE STATE

vs.

GREGORY LEE MURPHY

BLS

Indictment for

DRUGS/ MANUFACTURE, DISTRIBUTION, ETC.
OF METHAMPHETAMINE - 2ND OFFENSE

SC Code: 44-53-0375(B)(2)
CDR Code: 3199

WITNESSES

B E Long, Oconee Co Sheriff's Dept.

Scott A. McGee

ARREST WARRANT NUMBER

2012A3710400148

ACTION OF GRAND JURY

Truebill

ROB

Foreperson of Grand Jury
Date: MAR 11 2013

VERDICT

Guilty

Lisa R. Dunham

Foreperson of Petit Jury
Date: 4-26-13

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on MAR 11 2013, the Grand Jurors of Oconee County present upon their oath:

DRUGS/ MANUFACTURE, DISTRIBUTION, ETC. OF
METHAMPHETAMINE - 2ND OFFENSE

That on or about **August 8, 2012** in Oconee County, South Carolina, the Defendant, **Gregory Lee Murphy**, did distribute, dispense, deliver or otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver a quantity of Methamphetamine, a schedule II controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such not having been authorized by law, all in violation of Section 44-53-375, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR