

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

Brooks P. Goldsmith, Circuit Court Judge

 ORIGINAL

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

NANCY HAWORTH,

APPELLANT

Appellate Case No. 2012-210208

RECORD ON APPEAL

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorneys for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

)
) COURT OF GENERAL SESSIONS
) 2010-GS-39-1484
)
)
)

ORIGINAL

STATE OF SOUTH CAROLINA

PLAINTIFF)

vs.

) TRANSCRIPT OF RECORD
)
)

NANCY HAWORTH

DEFENDANT)

February 29 - March 2, 2012
Pickens, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, Judge; and a jury.

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

BAKER CLEVELAND, ESQ.
LISA BENTLEY, ESQ.
Attorneys for the State

ROBERT NEWTON, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

1 discuss with the attorneys a matter of law. And in doing
2 so, it may require me to discuss or mention the facts of
3 the case. As I told you earlier, I'm prohibited from
4 discussing the facts of the case in your presence. From
5 time to time it may even require us to ask you to step in
6 the jury room for a few minutes while we do those same
7 kinds of things.

8 So, ladies and gentlemen, we'll now begin the
9 opening statements.

10 MR. CLEVELAND: Thank you, Your Honor. May it
11 please the Court?

12 THE COURT: Certainly.

13 OPENING STATEMENT

14 MR. CLEVELAND: Good morning, again, ladies and
15 gentlemen. Again my name is Baker Cleveland, I'm the
16 assistant solicitor in this case. I'm representing the
17 State. And it is my duty to prosecute the cases.
18 Criminal offenses that are brought about in this county.
19 By prosecute what I mean I have to do is it is my burden,
20 it's my burden alone, to prove the guilt of a individual
21 beyond a reasonable doubt. Ms. Haworth sits over here an
22 innocent lady. And she will be innocent, presumed
23 innocent mind you, throughout this trial until I present
24 evidence to prove her guilty.

25 Now, ladies and gentlemen, I want to go ahead

1 and level up with you right now. I proudly accept that
2 burden the State has placed on me in this case. Because I
3 feel that after you hear this evidence that we present
4 today, that you believe Ms. Haworth is guilty beyond a
5 reasonable doubt... Of distribution of methamphetamine.
6 Now, you might have in your mind what distribution of
7 methamphetamine is or how it's illegal or what the
8 elements of that offense are. I'm going to ask you at
9 this point in time and throughout the trial and at the end
10 of the trial when the Judge tells you the law, to put
11 whatever idea you have out of your mind and listen very
12 closely to the law in this case.

13 You see distribution of drugs is an industry
14 much like distribution of any commodity. The law doesn't
15 just provide that it is illegal to hand over and sell the
16 drugs. The charge is distribution of methamphetamine.
17 Now, what the law defines distribution as is if a person
18 distributes, dispenses, delivers, aids or abets somebody
19 in any of that stuff or conspires with another person to
20 distribute or dispense or deliver a quantity of drugs. In
21 this case methamphetamine. They are guilty of
22 distribution of methamphetamine.

23 Let me be clear, it is not necessary for a
24 person to actually be the one handing over the drugs. In
25 this case I'll level with you, Nancy Haworth was not the

1 one that handed over the drugs. Where Nancy Haworth's
2 culpability, where her guilt comes in is in the other
3 requirements, the aiding, the abetting, the conspiring.
4 Conspiring is when two or more individuals get together
5 for the purpose of doing a criminal act. And actually do
6 something in furtherance of that act. Aiding means
7 helping, means assisting, means facilitating. See, the
8 reason why the State brings all that stuff in is because
9 all of those activities are just as necessary to provide
10 illicit drugs to their customers as the actual handing over
11 of the drugs.

12 A colleague of mine often times uses the example
13 of the BMW plant in Spartanburg. We have -- they sell
14 thousands of automobiles a year. But it's no one person
15 that's responsible, it not one small group of people
16 that's responsible that even could get those vehicles out.

17 You've got folks that work on the assembly line that turn
18 the nuts and bolts on these vehicles. But without someone
19 in the sales department, marketing at the dealership to
20 create the demand, the place to order those vehicles, they
21 wouldn't have any nuts and bolts to turn on. It if
22 weren't for the folks, the accountants, the bean counters,
23 the parts manager, everybody together is necessary.
24 Everybody is required to distribute that product. And
25 drugs are absolutely no different than any other

1 commodity.

2 Now, as you listen to the evidence in this case
3 and compare that to the charge based in the Indictment --
4 oh, I also mention briefly, you also have to distribute a
5 quantity of methamphetamine. We will present evidence
6 that the actual substance that was that distributed was
7 indeed methamphetamine. Some people call it crystal meth,
8 ice, crank, but the technical term is methamphetamine is
9 that is what was distributed.

10 The way the State is going to prove its case in
11 this case is there's going to be a little bit of forensics
12 but basically it's going to boil down to old fashion
13 testimony. The way cases have been tried in this country
14 and other countries across the world for hundreds and
15 hundreds of years. The testimony, old fashion testimony,
16 is going to come from the witness stand right here. And
17 that's where you play the most important role. Because
18 not only are you to listen to what they have to say and
19 take it on its face value, you have to assess the full
20 credibility of a witness. As jurors, y'all can believe
21 all, some or none of what any witness has to say. That's
22 why there's 12 of you. That's why we pick citizens --
23 this is nothing -- credibility of a witness is nothing a
24 computer can determine, it's nothing that can be narrowed
25 down to a mathematical certainty. Credibility is

1 too much longer than a day or so but every -- I just want
2 to reinforce that every witness, every bit of testimony is
3 important in this case. Y'all have been attentive group
4 so far, I know that y'all will continue to be throughout
5 the trial. I look forward to working with you throughout
6 this case. As one brief side note, this is a drug deal.
7 It typically is something that happens, not as nice or as
8 friendly -- not as nice or as friendly people as you would
9 deal with on your daily lives. I'm going to introduce you
10 to a young lady who was working with the police during our
11 investigation in this case, you may not like her, you may
12 not think she's someone you want to hang out with. But
13 understand we'll get into the testimony that utilizes
14 people undercover and is part of the business and how
15 these drug investigations, work. I apologize if some of
16 the language you hear and some of the exhibits will be a
17 little foul. But again, it's all part of the drug trade,
18 kind of how these deals go down. So -- sensibilities --
19 but I want to put y'all on notice that there could be
20 something like that.

21 Again, just remind you that all this is about
22 the facts in this case. Y'all are to determine the facts.
23 Y'all don't have any enemies to punish or friends to
24 reward in this case. It isn't about punishment, it's just
25 about the facts. And at the end of the evidence, end of

1 all the testimony, you're firmly convinced that indeed,
2 Nancy Haworth did aid, abet, conspire to dispense or
3 deliver any one of those or any combination of those, a
4 quantity of methamphetamine, then it's your duty to find
5 her guilty. Thank you.

6 THE COURT: Thank you, Mr. Cleveland.

7 Mr. Newton.

8 OPENING STATEMENT

9 MR. NEWTON: Thank, you, Your Honor.

10 Ladies and gentlemen, I'm going to keep my
11 remarks very brief. Because what I have to say to you
12 right now, everything the prosecutor just said to you, is
13 not evidence. The only evidence in this case is what you
14 hear from the witness stand or other exhibits that are
15 introduced. Okay. At the end of this case, once you
16 heard all the evidence, then I will address you
17 considerably more at length. At that time I'll going over
18 our theory of what the evidence shows. I just at this
19 time ask you to pay attention to what everyone says as
20 they testify. Pay close attention. Do not make up your
21 minds until you've heard from the last witness. Because
22 there's two sides to any story. Thank you.

23 THE COURT: Solicitor, you may call your first
24 witness.

25 MR. CLEVELAND: Thank you, Your Honor. The

1 State would call Agent Ashley Asbill to the stand.

2 THE CLERK: Place your left hand on the Bible.

3 ASHLEY ASBILL, after being duly sworn, testified
4 as follows:

5
6 THE CLERK: Thank you, sir, have a seat and
7 state your name for the record, please.

8 THE WITNESS: My name is Brunson, B-R-U-N-S-O-N,
9 Ashley, A-S-H-L-E-Y, Asbill, A-S-B-I-L-L. And I work with
10 the State Law Enforcement Division.

11 DIRECT EXAMINATION

12 BY MR. CLEVELAND:

13 Q Agent Asbill, what do you by? Do you go by Brunson
14 or Ashley?

15 A Ashley.

16 Q You mind if I call you Ashley?

17 A That's fine.

18 Q You state you work for the State Law Enforcement
19 Division. What is your basic job description would
20 you say? Or what's your role that you play with the
21 State Law Enforcement Division?

22 A I am assigned primarily with the Special Operations
23 Unit which it includes drug investigations, alcohol
24 investigations and gaming investigations.

25 Q How long have you been with the Special

1 Investigations Unit of the State Law Enforcement
2 Division?

3 A I have been with that particular unit over ten years.
4 I have been in law enforcement for 27.

5 Q What did you do before you worked for SLED?

6 A I was a ABC agent. Alcohol, Beverage, Control.

7 Q All right. Is that law enforcement as well?

8 A It is. Alcohol licensed locations.

9 Q Over your 10 years, could you estimate how many drug
10 investigations you have been partied to with SLED?

11 A Well over 500 I would say.

12 Q During those drug investigations, did you ever
13 conduct undercover or controlled buys of drugs from
14 potential drug dealers?

15 A Yes, sir, I have.

16 Q How many transactions like that have you encountered?

17 A Numerous. I mean, well over 500.

18 Q Have you worked in undercover capacity yourself to
19 purchase drugs undercover for law enforcement
20 purposes?

21 A Yes, I have.

22 Q Do you ever utilize informants or confidential
23 informants, non law enforcement personal to aide in
24 these investigations?

25 A Yes, I have.

1 Q How often do you do that?

2 A Routinely.

3 Q Okay, based on your experience, why do you need to
4 use these non law enforcement informants or personal
5 to aid in these investigations?

6 A In narcotics investigations, a lot of the people that
7 are involved in narcotic transactions are people that
8 they deal with on a day-to-day basis or people
9 they're familiar with or people they grew up with,
10 people they normally associate with.. And many times
11 in narcotics investigation, people whom they do not
12 know, are uncomfortable around, they're not going to
13 sell drugs to them.

14 Q So it is fair to say it's a matter of trust? People
15 don't trust everybody. People in the drug world
16 don't trust strangers?

17 A That's correct.

18 Q So you -- these people that y'all utilize, do they
19 normally tell you who they can deal with or do you
20 tell them who they need to deal with?

21 A General rule they tell us who they can buy narcotics
22 from or who they can buy drugs from.

23 Q How do you go about locating or getting the
24 cooperation of these individuals, for an example?

25 A There are many different -- the majority of them come

1 to us or they been caught themselves and they are
2 trying to help themselves out or cooperate with law
3 enforcement. Some do come to law enforcement.
4 They've been involved with drugs before. And for
5 whatever reason, conscious or whatsoever, they decide
6 they want to try to help law enforcement clean up
7 neighborhoods or get people that they know that's
8 dealing drugs. So it comes in different forms.

9 Q Let's fast forward to March 30th 2010, were you part
10 of a drug investigation on that date?

11 A Yes, I was.

12 Q Did that drug investigation involve the use of a
13 confidential informant?

14 A Yes, it did.

15 Q Who is that confidential informant?

16 A Tonya Smith.

17 Q Did she approach -- how did law enforcement come into
18 contact with her? Was it you or another agency?

19 A Another agency, Greenville County Sheriff's Office.

20 Q All right. Tell me about that drug investigation
21 that night. Who was involved other than yourself and
22 the informant, Tonya Smith?

23 A Investigator Chad Ayers with the Greenville County
24 Sheriff's Office, Investigator Brett Barwick with the
25 Pickens County Sheriff's Office, Investigator Brian



1 Cooley with the Greenville County Sheriff's Office
2 and myself.

3 Q Okay. What was your objective that night on that
4 drug investigation?

5 A Ms. Smith had indicated that she could buy
6 methamphetamines from an individual --

7 MR. NEWTON: Objection, hearsay.

8 THE COURT: Sustained.

9 BY MR. CLEVELAND:

10 Q I apologize, officer -- agent, don't tell me what
11 anybody said, just what was the general objective of
12 that night?

13 A To purchase methamphetamines.

14 Q Okay. Cut right to the chase. As a result of that
15 investigation, did you purchase -- did law
16 enforcement purchase methamphetamine that night?

17 A Yes, we did.

18 Q Tell me about how this deal or this purchase was set
19 up. You don't have to tell me anything anybody said,
20 just in general terms. Was it on the phone, was it
21 in person, stuff like that?

22 A It was initially set up on the phone.

23 Q All right. After the phone call -- who made those
24 phone calls, you or the informant?

25 A The informant, Tonya Smith.

1 Q Did anybody else talk to the suspect or attempt to
2 buy drugs or was it just the informant?

3 A Repeat that.

4 Q Did anybody else call anybody else or was it just the
5 informant?

6 A Just the informant.

7 Q Based on those calls was she able to set up a deal?

8 A Yes, she was.

9 Q Once she was able to set up the deal, what was the
10 next -- what procedures did law enforcement, you and
11 the other investigators, follow?

12 A Okay, the informant, after the deal was set up, the
13 informant was searched, the vehicle was searched.

14 Q Who searched the vehicle and the informant?

15 A The informant was searched by Investigator Ayers and
16 the vehicle was searched by Investigator Ayers.

17 Q Well let me stop you right there. Why do you search
18 the informant and the vehicle?

19 A To make sure that they don't have any narcotics on
20 them.

21 Q Okay. So it is fair to say to minimize any
22 appearance of tampering or any ulterior motive by the
23 informant?

24 A That's correct.

25 Q Okay. All right. Was there any narcotics located on

1 this individual, Ms. Tonya Smith?

2 A No.

3 Q Okay. Then what happened next?

4 A Ms. Smith was wired by Agent Barwick with the Pickens
5 County Sheriff's Office with the audio recording
6 transmitter.

7 Q All right. When you say transmitter, does that just
8 record something on her person or does that actually
9 send out a signal?

10 A It sends out a signal.

11 Q Okay.

12 A And it also records.

13 Q Okay. What about the money from this to pay for
14 these drugs, where did that come from?

15 A They were SLED confidential funds to purchase.

16 Q What are SLED confidential funds? Just tell the jury
17 kind of about that.

18 A We have an account where we have funds where we
19 purchase -- money we use to purchase illegal drugs
20 for cases such as this.

21 Q How much confidential funds did you give -- did you
22 provide the funds?

23 A I did provide the funds.

24 Q How much funds did you give to Tonya Smith on this
25 night to conduct this drug deal?

1. A \$170.00.

2 Q All right, did -- were you present when these drug
3 deals were being set up over the phone?

4 A Yes, I was.

5 Q Was Tonya Smith speaking on the phone in private or
6 was it on speaker phone?

7 A I believe it would be on speaker phone.

8 Q All right. Did you hear the voice on the other end
9 of the phone?

10 A I did not hear the voice.

11 Q Okay.

12 A On the other end of the phone.

13 Q Did you -- let's go forward to the deal. Once she's
14 been, if I may summarize, provided funds, searched
15 and been wired, what happened then?

16 A Investigator Ayers with the Greenville County
17 Sheriff's Office drove her to the meeting location.

18 Q Where was the meeting location to be set up or where
19 was the incident location, where did it happened?

20 A It happened at the Hot Spot on Highway 123 right
21 there at the fair grounds.

22 Q Is that within Pickens County?

23 A Yes, it is.

24 Q What vehicle did Investigator Ayers drive the
25 informant in?

1 A Her vehicle.

2 Q Okay.

3 A Tonya Smith's vehicle.

4 Q Okay. Did -- again, was that common practice to use
5 the informant's own vehicle instead of law
6 enforcements personal vehicle?

7 A It would be a vehicle that they know to be -- they're
8 comfortable with. The vehicle they're comfortable
9 with.

10 Q When you say they, who do you mean? Typically.

11 A The people that they're buying the drugs from. If
12 they know that's somebody's vehicle they know.

13 Q Did you and anybody else follow Investigator Ayers?

14 A Yes, me and Agent Barwick followed Investigator Ayers
15 and Tonya Smith to the Hot Spot on 123.

16 Q All right. Did y'all park at The Hot Sport right
17 next to them or?

18 A No, we were across the street.

19 Q Could you visually observe the Investigator Ayers and
20 Tonya Smith from your location?

21 A Yes, we could.

22 Q Tell me also, you said she was wired with a
23 transmitter, were y'all monitoring the transmission
24 from that transmitter?

25 A That is correct, yes.

1 Q Was that audio, video or what?

2 A Audio.

3 Q That's just audio.

4 A Just audio.

5 Q When did y'all start monitoring, when did you stop?

6 A We started monitoring her from the time we left the
7 meeting location.

8 Q Where was the meeting location?

9 A Bi-Lo's on Anderson Road in Greenville County.

10 Q Okay. So y'all -- did you record the transmission
11 from that or did somebody record it?

12 A Agent Barwick did.

13 Q Have you had an opportunity to review that recording?

14 A Yes.

15 Q Okay. I'm just going to show you now what's marked
16 as State's Exhibit No. 2, do you recognize that disk?

17 A Yes, I do.

18 Q Is that the recording of the -- basically a recording
19 that you listened to that basically recorded the
20 transmission that you heard during this deal?

21 A Yes, it is.

22 Q Is that a substantial -- or is that an accurate
23 reproduction recording without any omissions or
24 editing of the incidents as they happened that night
25 as you're heard them coming through the wire?

1 A Yes, it is.

2 Q Tell me what you observed from your visual advantage
3 point, if you can remember. How far away were you,
4 first of all?

5 A We were across the road. I mean, it a four lane
6 road, we were on the other side of the road. We were
7 kind of up so I could kind of see down to whole
8 parking lot there. Investigator Ayers pulled in, I
9 don't know within three to five minutes I guess, the
10 vehicle pulled up beside them.

11 Q How long was that vehicle there for?

12 A Short period of time, a few minutes.

13 Q Okay. Did you -- was the audio streaming during that
14 time?

15 A It was, yes.

16 Q When did the deal end, I guess?

17 A We observed Ms. Smith get out that vehicle that
18 pulled up beside them and get back into her vehicle.

19 Q Okay. So initially she got out -- did she get out of
20 her car and get in the vehicle --

21 A She got out of her car, she got into the vehicle that
22 pulled up beside her.

23 Q Okay. All right. And then after she got out, as you
24 testified to, is that correct; got back in her
25 vehicle, what happened then?

1 A You could hear on the wire, you could tell that the
2 deal was done. I believe Investigator Ayers had
3 called either myself or Agent Barwick, told us the
4 deal was done. So we met to take possession of the
5 methamphetamines and to do paper work.

6 Q All right. Did you actually take possession of the
7 methamphetamine?

8 A I did not.

9 Q Was the informant searched again after the deal?

10 A Yes, she was.

11 Q Was her vehicle searched again?

12 A Yes, it was.

13 Q Was there anything found out of the ordinarily or
14 elicited?

15 A Nothing.

16 Q Okay. Did -- did the Defendant -- not the Defendant,
17 did the informant give you a statement as to the
18 events that happened that night?

19 A Yes, she did.

20 Q Did you write the statement or did she write it?

21 A I wrote it.

22 Q I'm just going to show you -- Well did you sign the
23 bottom of that statement?

24 A I did.

25

1 (WHEREUPON, State's Exhibit No. 4 was marked for
2 identification only.)

3 BY MR. CLEVELAND:

4 Q I'm going to show video what I've marked for
5 identification, State's Exhibit No. 4, is that the
6 page that you wrote? Take your time to go over it if
7 you need to.

8 A Yes, it is.

9 Q Did you transcribe that exactly as the informant told
10 you?

11 A I did, yes.

12 Q Did you add or omit anything in taking that
13 statement?

14 A No.

15 Q Is that your signature at the bottom of it?

16 A Yes, it is.

17 Q Thank you. I know you said you didn't see the
18 methamphetamine in this case, I mean, you didn't take
19 possession of it but did you ever see the container
20 the methamphetamine was delivered in in this case?

21 A Yes, I did.

22 Q Can you describe that container?

23 A It was one of those, I call it a stick, like a
24 Tylenol, like chapstick, but it's Tylenol tablets
25 inside one of those things.

1 Q I'm going to show you what I have marked as State's
2 Exhibit No. 3, does that appear to be the same stick
3 that you recovered that evening?

4 A It does.

5 Q Thank you. Does that conclude your involvement in
6 this investigation or did you do any follow-up after
7 that?

8 A I think that concluded after taking the statement.

9 MR. CLEVELAND: Thank you, Mr. Asbill, please
10 answer any questions that Mr. Newton has.

11 THE COURT: Cross-examination, Mr. Newton.

12 MR. NEWTON: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. NEWTON:

15 Q Agent to your knowledge, was that bottle ever tested
16 for fingerprints?

17 A Not to my knowledge, no, sir.

18 Q You indicated that Greenville County sheriff's
19 deputies were involved in this case even though this
20 incident happened in Pickens County, is that correct?

21 A That is correct.

22 Q Why were Greenville County sheriff's deputies
23 involved?

24 A At the time we were working a joint investigation
25 with the Pickens County Sheriff's Office and the

1 Greenville County Sheriff's Office.

2 Q Isn't there another reason in this case? Didn't you
3 say that sometimes CI's work because they've gotten
4 into trouble themselves and they're trying to help
5 themselves out?

6 A That is correct.

7 Q Isn't it true that the CI in this case had pending
8 charges for drugs herself in Greenville County at the
9 time?

10 A I believe she had some charges, yes, sir.

11 Q And she was working with the Greenville County and
12 you guys through Greenville County trying to get her
13 own charges taken care of, wasn't she?

14 A I didn't understand your question.

15 Q Wasn't she acting as a drug informant trying to save
16 herself from her own criminal problems?

17 A She was cooperating. She was a cooperating
18 informant. And cooperating with law enforcement to
19 assist us with other drug investigations.

20 Q You earlier admitted right up in front of the jury
21 that typically it is people who are charged with drug
22 crimes themselves who act as confidential informants,
23 isn't that true?

24 A Yes, it is.

25 Q And they're doing it try to get a favor from law

1 enforcement, aren't they?

2 A They're trying to do it to cooperate with the
3 investigation.

4 Q You testified that the confidential informant, Tonya,
5 made the initial calls. Was it on a cell phone or
6 some other type of phone?

7 A Cell phone.

8 Q Cell phone?

9 A Yes, sir.

10 Q Were those conversations recorded?

11 A I don't believe at the time it was.

12 Q Why not?

13 A Sometimes we record the telephone calls, sometimes we
14 don't. Sometimes they call, can't get them on the
15 phone. They'll see where they've called then call
16 them back. And sometimes we record phone calls,
17 sometimes we don't. We don't know if the deal is
18 going to go so. So sometimes we don't do it.

19 Q Well, don't you think that a recording of the persons
20 voice who's on the other end of the phone would be
21 helpful in cases like this?

22 MR. CLEVELAND: Objection, calls for
23 speculation, Judge.

24 THE COURT: Overrule, let him answer that.

25 THE WITNESS: It can help. But most of the

1 times if the informant can identify and know exactly who
2 they're calling, they know the phone number, they know
3 their name, there's no need for it.

4 BY MR. NEWTON:

5 Q Isn't it possible that somebody else could answer the
6 phone?

7 A Could be.

8 Q Isn't it true that some people share the same phone?

9 A Could be.

10 Q Now you said you believed but you're not sure this
11 call was on a speaker phone?

12 A I believe it was.

13 Q What speaker is that? Is that inside of a vehicle or
14 something? What exactly?

15 A The speaker phone, to cell phone where you can -- you
16 can choose to put it on speaker phone on your cell
17 phone.

18 Q Okay. You said you believe this was on a speaker
19 phone and yet you did not hear the conversation?

20 A As well I can remember we were busy doing other
21 things while she was making the phone call. Or I
22 was. And Investigator Ayers was monitoring her and
23 the phone call. And I was doing other things. So I
24 can't say for sure that -- I could hear the
25 conversation on the speaker phone but I could not

1 hear what was being said.

2 MR. NEWTON: No further questions of this
3 witness at this time.

4 THE COURT: Thank you.

5 Redirect?

6 MR. CLEVELAND: Beg the Court's indulgence for
7 one moment, Your Honor. I don't have any further
8 questions for Agent Asbill.

9 THE COURT: Thank you, sir, you may step down.

10 MR. CLEVELAND: May this witness be excused
11 Judge?

12 MR. NEWTON: No objection.

13 THE COURT: You may be excused from your
14 subpoena.

15 THE WITNESS: Thank you.

16 THE COURT: You may call your next witness.

17 MR. CLEVELAND: Thank you, Your Honor, the State
18 calls Chad Ayers to the stand solicitor.

19 CHAD AYERS, after being duly sworn, testified as
20 follows:

21 THE CLERK: Thank you, sir, have a seat. State
22 your name for the record.

23 THE WITNESS: May name is Chad Ayers, A-Y-E-R-S.

24

25

DIRECT EXAMINATION

1 BY MR. CLEVELAND:

2 Q Mr. Ayers, who do you work for?

3 A The Greenville County Sheriff's Office.

4 Q All right. You do any work with any other agencies
5 in law enforcement?

6 A I'm currently assigned as a task force officer for
7 the DEA, Drug Enforcement Administration.

8 Q How long have you been in law enforcement?

9 A June will be six years.

10 Q And during your career as a law enforcement officer,
11 what areas have you primarily worked?

12 A Mainly street level narcotics. Vice and narcotics.

13 Q When you say street level, describe for the jury what
14 that means.

15 A Majority has been for about two years quick narcotics
16 purchases. Not extensive multi-months, long-term
17 cases initially. Then I moved into long-term cases.
18 But a lot of what I did was street level. Undercover
19 buys and working undercover.

20 Q When you say you worked undercover, do you, yourself,
21 engage in street level drug buys?

22 A I do.

23 Q During your investigations do you utilize non law
24 enforcement informants ever?

25 A I do.

1 Q What's the purpose of utilizing those non law
2 enforcement informants?

3 A Again, as an outsider it's very difficult just to
4 drive up to a known drug dealer's house, knock on the
5 door, request narcotics. Again, they don't know who
6 you are, they never dealt with you on that level
7 before. So we use informants who have dealt in the
8 past with these dealers to make an introduction so
9 they feel comfortable in selling narcotics to us.

10 Q Thank you. Is Tonya Smith an informant that you used
11 before?

12 A She is.

13 Q How do you know Tonya Smith?

14 A I believe it was in 2008, 2009, Tonya had reached out
15 to me. She had been arrested and expressed her
16 interest in wanting to cooperate and work with law
17 enforcement.

18 Q So did you ever, I guess for lack of better term,
19 dangle a carrot in front of her or did she come to
20 you?

21 A She came to me.

22 Q Did you ever talk to her about -- tell her she needs
23 to do something to help herself out or was it
24 completely voluntary on her part?

25 A No, sir, it was voluntary on her part, she reached

1 out to me.

2 Q Have you ever made a drug charge against Tonya?

3 A I have.

4 Q Did you dismiss that charge based on her cooperation
5 or was she convicted of it?

6 A She was convicted of it.

7 Q So in spite, did you take -- who, I guess, processed
8 that conviction? Was that your agency or was that
9 the Solicitor's Office? Who prosecuted her?

10 A The Solicitor's Office.

11 Q What county was that?

12 A Greenville County.

13 Q All right. How -- since Tonya reached out to you,
14 how often, how many times, I guess, have you utilized
15 her or has she worked with you in drug
16 investigations?

17 A Substantial amount.

18 Q Okay.

19 A It would be hard to put an exact number but.

20 Q Would you -- would you say you've gotten to know
21 Tonya pretty well?

22 A I have.

23 Q Have you, since those drug incidents, since she
24 reached out to you, to your knowledge, have you or
25 anyone in your agency re-arrested her for drug

1 charges?

2 A No.

3 Q I want to fast forward to the date, March 30th, 2010,
4 were you on duty that night?

5 A I was.

6 Q What were y'all doing that night?

7 A We arranged to make a narcotics purchase that night
8 for methamphetamine.

9 Q Okay. Who was we? When you say, We?

10 A It was a joint investigation with -- involving the
11 Greenville County Sheriff's Office, the State Law
12 Enforcement Division and Pickens County Sheriff's
13 Office.

14 Q I'm going to, Investigator Ayers [sic] hit on it, but
15 would you elaborate on it, is that common for
16 different jurisdictional agencies to work together?

17 A Absolutely.

18 Q Why is that common, just briefly, can you tell the
19 jury?

20 A Several reasons. One, informants -- someone might be
21 an informant for the Greenville County Sheriff's
22 Office but primarily be buying their narcotics in an
23 adjoining county. SLED, having the statewide
24 authority and the financial means sometimes to buy
25 larger amounts of narcotics, we work hand and hand

1 with them. Again, with -- again, just with the
2 intermingling of narcotics dealers, again, they move
3 frequently, they don't like to stay in one place
4 sometimes. So with them moving we all work together.

5 Q Very good. These narcotics deals, based on your six
6 years experience, is this something that's usually
7 set up in advance notice or do these things usually
8 happen pretty quick? Narcotic -- general street
9 level narcotics deals.

10 A Pretty quick. A phone call is made and it's a pretty
11 quick turn around. You know, we're talking about
12 making a phone call and the dealer stating, Yes I
13 have it or no I don't have it. If they have it it
14 happens within minutes. And a lot of times if you're
15 not there within that certain amount of time, they
16 get nervous and they'll leave.

17 Q And do you know -- do you necessarily know before
18 time who you're going to be purchasing narcotics
19 from?

20 A Not exactly. Through my experience they're -- you
21 know, you'll make a phone call to the dealer and the
22 dealers have runners, what we call runners. And
23 that's someone that comes to deliver the drugs for
24 them.

25 Q All right. Is that a common practice?

1 A Yes, sir.

2 Q Does everybody do that is that just some people,
3 everybody's different it?

4 A I wouldn't say everybody. But through my experience
5 a lot of people use runners.

6 Q When y'all set up this deal that night, did Tonya
7 provide the contacts or did y'all tell her to call?

8 A Tonya provided the contacts.

9 Q Did she make phone calls to contact those -- reach
10 out to those people?

11 A She did.

12 Q Were you present when she made those phone calls?

13 A I was.

14 Q Did you hear the person on the other end of those
15 phone calls?

16 A I did.

17 Q Did the person on the other end of those phone calls
18 indicate that they had narcotics they were available
19 for sale?

20 A Yes, sir, they did.

21 Q Did they indicate a willingness to sell those?

22 A They did.

23 MR. NEWTON: Objection, to hearsay.

24 THE COURT: All right, sustain the objection.

25

1 BY MR. CLEVELAND:

2 Q Okay. Not to -- okay. Did how many of those phone
3 calls were made to -- on this night that you were
4 present to before you left to actually go do the
5 deal?

6 A I believe before we left the initial location to go
7 to the meeting location?

8 Q Yeah.

9 A I believe just one.

10 Q Okay.

11 A I can't recall exactly.

12 Q Okay. Did you hear the voice on the other end of
13 those calls?

14 A I did. It was on speaker phone, I was standing
15 beside the informant.

16 Q Just based on what you heard as a witness, can you
17 describe that voice?

18 A Yes, sir. It was a older female, a raspy voice is
19 what I would describe it as, a raspy voice.

20 Q All right. After y'all set up that deal, what did
21 y'all do? How did you prepare to carry out the deal?

22 A I was in charge of searching the CI and the CI's
23 vehicle. I was working in a undercover capacity. I
24 was going to be driving the informant to the meet
25 location. So standard procedure, I searched the

1 informant's vehicle to again, make sure there was no
2 illegal drugs or illegal contraband in the vehicle..
3 I also searched the informant's persons to make sure
4 that she wasn't in possession of any narcotics
5 already or anything illegal. Then the funds were
6 furnished by Agent Asbill to the informant. And then
7 we drove from the meeting location, which was the
8 Bi-Lo on Anderson Road, to the Hot Spot on 123.

9 Q Is that Hot Spot within Pickens County?

10 A Yes, sir, it is.

11 Q Was the informant, it was testified to earlier, she
12 was wearing a wire, did you observe her wearing that
13 wire again?

14 A Yes, sir, I observed Agent Barwick put the wire on
15 her.

16 Q Okay. Did you, I guess, you were in the car the
17 whole time?

18 A Yes, sir.

19 Q Did you ever get out of the car for any purpose
20 during this deal?

21 A No, sir, I stayed in.

22 Q Did the informant get out of the car to make a deal
23 or did that happen in y'all's car?

24 A No, the informant exited the vehicle. No, the
25 informant actually --

1 Q I'll just slow you down real quick. Tell me, when
2 y'all arrived -- from when y'all left the meet
3 location, what transpired with you in the car with
4 her?

5 A Me and the informant had general conversation on the
6 way to the meet location. Once we arrived we
7 parked -- if you were facing the Hot Spot on 123, we
8 parked on the right-hand side, there's a -- some
9 parking spaces right there. We parked on that side.
10 I remember observing Investigator Brian Cooley, he
11 was also part of the cover team and surveillance
12 team. He pulled in front of the store. I
13 specifically remember him being there. We sat there.
14 The informant made another phone call, maybe a second
15 phone call. And let the target know that we were
16 there at the location. We sat there several minutes,
17 observed a dark color vehicle pull up right next to
18 us. The informant exited the vehicle--

19 Q Can you describe that vehicle? Car, SUV, two door,
20 four door?

21 A I believe it was a four door. It was a dark in color
22 vehicle, it was dark out.

23 Q About what time of day did this transaction occur?
24 If you don't know--

25 A I don't know. You know, it was dark and it had been

1 dark for a while. It wasn't like dusk, it had been
2 dark for a little while.

3 Q Okay. That dark colored vehicle, four door, is that
4 correct?

5 A Yes, sir, it was.

6 Q Did you see any occupants of that vehicle?

7 A I did.

8 Q Who was -- what could you see from who occupied that
9 vehicle? How many people were in it?

10 A Just the driver.

11 Q Okay.

12 A And the driver -- the driver of the vehicle that
13 night was in the courtroom today.

14 Q Okay. That's fine. You can't say it was Nancy? It
15 was not Nancy?

16 A It was not Nancy.

17 Q Let's get that fact clear. Did you have an
18 opportunity to review the tag number?

19 A I did.

20 Q Of that vehicle? Do you recall that tag?

21 A Not right offhand. But as the vehicle was backing
22 up, after the transaction was completed, I advised
23 over the wire that I was going to relay the tag
24 number to the undercover agents for them to write it
25 down.

1 Q Did you relay that tag as you saw it?

2 A I did.

3 Q Did you review the incident report prepared by
4 Pickens County?

5 A No, sir.

6 Q Okay. That --- how long was the informant and the --
7 actually what I'll do is -- go ahead and tell me how
8 long was the informant in the car with the other
9 person?

10 A Estimated two minutes, maybe. Very quick.

11 Q All right. Then what did she do after she got back
12 in car with you, is that correct?

13 A Yes, sir. She got back in the vehicle with me,
14 passed off a, like a Tylenol, a round, longer pill
15 bottle. I opened it up, observed a clear crystal
16 substance in there, stuck it back in. And held on to
17 it until we returned to pre-determined meeting
18 location where I turned the narcotics over to Agent
19 Barwick with the Pickens County Sheriff's Office.

20 Q All right. I'm going to show you now what I have
21 marked as State's Exhibit No. 3. Would you describe
22 for the jury the contents of that package?

23 A There's a, like a clear plastic jewelry style baggy
24 containing a clear crystal like substance. There's
25 also a pill bottle, Tylenol cold, multi-symptom.

1 Q All right. Do you recognize that item?

2 A I do.

3 Q What is that item?

4 A This is the item that the informant handed to me
5 after the transaction took place.

6 Q All right. Did you -- I guess, did you observe the
7 informant to have any money or her person provided to
8 her for this?

9 A Yes, sir, I was present when Agent Asbill handed the
10 \$170.00 to Tonya prior to leaving.

11 Q Did you search -- did you search Tonya after this
12 incident?

13 A I did. I searched her and also the vehicle.
14 Especially focusing on the area she was sitting.

15 Q Money was not there?

16 A No, sir, it was not.

17 Q After you -- has that package changed in any way or
18 been tampered with to your observations from what you
19 observed that night?

20 A No, sir. I was there with Agent Barwick when the
21 initial packaging was done. And no, sir, it has not
22 been tampered.

23 Q Did you tamper with the contents of that package or
24 either the small jewelry style bag with the crystal
25 substance inside while it was in your possession?

1 A No, sir, I did not.

2 Q It is substantially in the same condition as it was
3 when you last saw it on March 30th, 2010?

4 A Yes, sir, it is.

5 Q Thank you. Based on your experience in your drug
6 investigations, is that packaging consistent with how
7 methamphetamine is sold? Just specifically to the
8 jewelry bag?

9 A Yes, sir.

10 Q There was some earlier testimony that the wire was
11 recorded, did you have an opportunity to review that
12 recording prior to this court date?

13 A I did.

14 Q I'm going to show you what I have marked as State's
15 Exhibit No. 2. Do you recognize that disc?

16 A Yes, sir.

17 Q What do you recognize that disc to be?

18 A That disc contains the audio recording, the wire from
19 that evening.

20 Q You were present -- it's a fair assessment that you
21 were present in the car while that was being recorded
22 as long as the informant was in the car?

23 A Yes, sir.

24 Q The only time that, I guess, you couldn't hear what
25 was going on is when she was in the other car. You

1 could hear what was being recorded while you were in
2 the car with her?

3 A That's correct. As long as the informant was there
4 and the wire was on her person, I could hear.

5 Q Okay. Is that -- does that recording, is that a true
6 and accurate recording?

7 A It is.

8 Q Of the incident that night?

9 A Yes, sir.

10 Q Is there any errors or omissions or anything been
11 taken or added to it?

12 A No, sir.

13 Q As you heard it. Does that recording have you
14 calling out what tag number it was?

15 A It does.

16 Q You just can't recall right off the exact tag number?

17 A Correct.

18 Q Okay. Did -- Tonya free to go that night after she
19 was -- tell me about, I guess, after you searched her
20 what happened?

21 A After I searched her, as I was searching the vehicle,
22 Agent Barwick removed the wire. We then all three
23 sat down in a room as Tonya provide an oral, written
24 statement to Agent Asbill as to the events that
25 transpired that evening and exactly what had taken

1 place in the vehicle.

2 Q Okay. I'm going show you what's marked for ID only,
3 State's Exhibit No. 4. Is that the statement that
4 the informant gave?

5 A It is.

6 Q Is that your signature at the bottom of the page?

7 A It is.

8 Q Did you witness the entirety of that statement?

9 A I did.

10 Q Have you reviewed that statement to be a true
11 recitation of what she told y'all that night?

12 A I have.

13 Q Thank you.. Did that conclude your involvement in
14 this particular investigation on the night in
15 question?

16 A Yes, sir.

17 Q Were any arrests made that particular night?

18 A Not that particular night.

19 Q That's okay, you don't have to tell me. So is that
20 typical for the way these transactions will, I guess,
21 play out or go down?

22 A Correct.

23 Q Do sometimes you do immediately arrest the person?

24 A Under certain circumstances we will. If we don't
25 know the -- usually if we don't know who the target

1 is.

2 Q Okay. Does things ever go wrong based on your
3 experience in these types of situations? These types
4 of drug deals? That you have to, I guess, react to
5 somehow or another? Change of plans?

6 A Absolutely.

7 Q Anything go wrong on this night or did it pretty much
8 go as planned?

9 A Uh --

10 Q You don't have to tell me what you know, did it go
11 smoothly?

12 A It went smooth.

13 Q Okay. To your knowledge and your work experience
14 with Tonya, has she been a reliable informant as far
15 as showing up when she's supposed to and following
16 through on her information?

17 A Yes, sir, extremely reliable.

18 Q She ever, I guess for lack of a better term, in any
19 way, shape or form, hung you out to dry or lie to you
20 about something?

21 A No, sir.

22 Q Has she ever tried to, I guess, fake a deal and keep
23 the money or anything of that nature?

24 A Absolutely not.

25 MR. CLEVELAND: That's all the questions the

1 State has for this witness, Your Honor.

2 Please answer anything that Mr. Newton may have.

3 THE COURT: Mr. Newton.

4 MR. NEWTON: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. NEWTON:

7 Q You testified that Tonya came to you, sheer
8 volunteer. How did she know who to contact?

9 A Again, like I stated before, she had been arrested by
10 me prior.

11 Q For what?

12 A Methamphetamine.

13 Q Possession or distribution?

14 A I can't recall at this time.

15 Q Could it have been possession with intent to
16 distribute?

17 A Again, I can't recall exactly what she was arrested
18 for.

19 Q How long ago was that?

20 A 2008.

21 Q Did you make any other drug charges or just that one?

22 A Are speaking about on?

23 Q On Tonya.

24 A No, that was the only one that I made on Tonya.

25 Q That you personally made?

1 A Correct.

2 Q Are you aware if she had any other drug charges by
3 other officers?

4 A I believe she was stopped on a traffic stop and found
5 to be in possession of narcotics.

6 Q What kind of narcotics?

7 A I believe it was methamphetamine.

8 Q So describe the circumstances of how she voluntarily
9 came to you. I'm trying to picture that. Can you
10 explain to the jury how that happens?

11 A Yes, sir. If someone's -- at the time Ms. Smith
12 reached out to me, she was currently incarcerated.
13 And I believe she either wrote a letter or contacted
14 another narcotics officer requesting that I come up
15 and speak to her.

16 Q Okay. Is that all she said, she just requested that
17 you come speak to her at the jail?

18 A Yes, sir.

19 Q Greenville County jail?

20 A Yes, sir.

21 Q All right. So you came and spoke to her?

22 A That's correct.

23 Q What did you speak about?

24 A We pulled her out, I asked her exactly what it was
25 that she needed to speak to me about. She said that

1 she was more or less tired of this lifestyle and
2 wanted to move on with her life and do the right
3 thing. So she wished to cooperate with law
4 enforcement to try to get the narcotics off the
5 streets. For lack of a better term is what she said.

6 Q Officer, let's be honest, isn't it true that she was
7 hoping for a better deal from you?

8 A I'm just stating--

9 MR. CLEVELAND: That calls for speculation. He
10 can only know what she told him, Judge.

11 THE COURT: All right, I'll sustain the
12 objection.

13 BY MR.. NEWTON:

14 Q You said that the charge you charged her with she was
15 convicted of?

16 A I believe so, yes, sir.

17 Q What about the other drug charges that she was
18 charged with, was she convicted of those or were
19 those dismissed?

20 A No, I believe she was convicted of those.

21 Q Isn't it true that it was dismissed?

22 A I don't know. I know she was sentenced to a rehab
23 facility because of those charges by the Court.

24 Q Did she get any prison time when she finally went to
25 court on these charges?

1 A No, sir, she did.

2 Q She got probation, didn't she?

3 A Correct.

4 Q And how much time was she facing possibly for those
5 charges?

6 A I don't know, it was not my charges, I don't believe.
7 I believe she's on probation for the second offense.

8 Q Is that the one you charged her with?

9 A No, sir.

10 Q Well you said she was convicted of the one you
11 charged her with.

12 A Correct. It was in 2008. I can't recollect exactly
13 how much time she was given. I've worked a lot of
14 narcotic cases since then. I don't keep track of
15 everyone's time.

16 Q Well, sir, isn't it true that she didn't go to court
17 on those charges until last year, 2011?

18 A It's possible. Again, I can't recall.

19 Q You charged her with those in 2008?

20 A Yes, sir, I did.

21 Q She didn't go to court until 2011 and got probation.

22 A Okay.

23 Q How much time could she have gotten?

24 A I don't know.

25 Q So these charges were pending, hanging over her head

1 while she was working with you, isn't that true?

2 A Yes, sir, that's correct.

3 Q I believe you testified also that since she worked
4 with y'all she had not been charged with any
5 additional crimes by you or any member of your
6 agency. Didn't you testify to that?

7 A Yes, sir.

8 Q But isn't it true that other agencies have charged
9 her with additional crimes since that time?

10 A Not to my knowledge.

11 Q When was the last time you spoke with her?

12 A About an hour ago.

13 Q Before then?

14 A Yesterday afternoon.

15 Q Okay, before this week, when was the last time you
16 talk to her or had any contact with her?

17 A I keep up with her on a very few week basis. You
18 know, like I do with most informants just to make
19 sure -- see if there's any new information they need
20 to furnish.

21 Q Oh, so she's still acting as an informant with you?

22 A She still furnishes information.

23 Q Okay. Well did she mention her new arrest?

24 A No, sir.

25 Q You said she's always honest with you?

1 A Yes, sir. She just got out of an extensive rehab
2 right before Christmas. And I was getting pretty
3 regular updates from the rehab facility.

4 Q So I guess it's safe to say you don't make it a point
5 to keep track of the criminal troubles of the people
6 working for you?

7 A I have several people, numerous people working for
8 me. And if it's brought to my attention.

9 Q If it's brought to your attention what do you do
10 about it?

11 A I don't understand your question.

12 Q I withdraw that. Okay, you said when the initial
13 phone calls were made you were sitting right there
14 and it was on speaker phone, correct?

15 A Yes, sir.

16 Q Speaker on a cell phone?

17 A Yes, sir, that is correct.

18 Q Why didn't you record those conversations?

19 A It could have been the fact that we didn't have the
20 digital recorder with us. I don't remember that
21 evening why we didn't record the phone call.

22 Q Y'all forget to take your recorder with you to these
23 drug buys?

24 A We have the wire with was but we use a different
25 device to monitor phone calls.

1 Q And just forgot to bring that?

2 A It's possible. I don't remember that evening why we
3 didn't record the phone call.

4 Q How many phone calls are we talking about, exactly?

5 A Are you talking about on that evening?

6 Q Uh-huh.

7 A Before we left the location or throughout the whole
8 deal?

9 Q Throughout the entire deal.

10 A Possibly three.

11 Q Three phone calls were made and none of which were
12 recorded?

13 A No, sir.

14 Q Okay. Were any phone calls recorded?

15 A No, sir. I believe you could hear on the wire while
16 we're driving and once we're at the location, you can
17 hear the phone call being made stating that we were
18 at the location waiting on the narcotics. But you
19 can't distinguish, you know, it wasn't an actual
20 recording of the phone call. It was just hearing the
21 body wire transmitter, hearing the informant
22 speaking.

23 Q Okay. So these were calls that were made after you
24 had arrived at the Hot Spot, correct?

25 A The ones that were recorded, yes, sir. Or picked up

1 on the wire.

2 Q On the wire?

3 A Yes, sir.

4 Q But all the other ones that were made before you
5 arrived at the Hot Spot, none of those were recorded?

6 A Correct.

7 Q And there were three of those you said?

8 A Before we left -- three phone calls total that
9 evening, I would estimate. That includes at the meet
10 location and that also includes as we we're driving
11 and once we arrived at the location. At total of
12 three I would estimate.

13 Q Well of those three, how many are recorded and how
14 many are not recorded?

15 A When you say recorded do you mean other than on the
16 wire? Because the wire is recording the informant
17 making the phone call but it's not--

18 Q Whether by the wire or any other recording device,
19 how many of those three phone calls do you have a
20 recording of?

21 A I believe two.

22 Q Two?

23 A Yes, sir.

24 Q So there was one that was made that was not recorded?

25 A Yes, sir.

1 Q Now how many of those phone calls you said that
2 sounded like an older female with a raspy voice?

3 A That was the initial phone call that was made.

4 Q Did you write a incident report after the incident?

5 A No, sir.

6 Q Did you make notes?

7 A No, sir.

8 Q No notes of that night?

9 A No, sir. I just -- if a deal took place in Pickens
10 County, Agent Barwick would be responsible for
11 writing that report. And I would, you know, I would
12 relay to them anything that I saw.

13 Q So the only police report is one made by Agent
14 Barwick, is that what you're saying?

15 A Yes, sir, that is correct.

16 Q In that report is there any mention, whatsoever, made
17 of the female having an older, raspy voice?

18 MR. CLEVELAND: Object, Judge, that's hearsay.
19 He's asking about Agent Barwick's report, he didn't write
20 a report. He said he didn't, he can't answer that
21 question.

22 THE COURT: I sustain.

23 BY MR. NEWTON:

24 Q Did you tell Agent Barwick that the female had an
25 older raspy voice?

1 A I don't remember.

2 Q This incident happened almost two years ago, right?

3 A Yes, sir.

4 Q How many drug buys have you been involved in since
5 then, the past two years?

6 A Investigations or buys where I was working undercover
7 capacity?

8 Q Buy as undercover capacity similar to this occurrence
9 on this evening?

10 A Numerous.

11 Q Can you give a estimate, some number? Are we talking
12 tens, or hundreds, thousands?

13 A No, sir, probably working undercover capacity,
14 probably 70.

15 Q Seventy. And you've not taken personal notes to help
16 your memory when these cases come up two years later?

17 A At times I do.

18 Q But you didn't on this case?

19 A No, sir. No, sir.

20 Q Was any of this on video recording?

21 A No, sir.

22 Q Y'all had several agents there at the scene watching,
23 right?

24 A That is correct.

25 Q Why didn't you take the video camera?

1 A We just didn't.

2 MR. NEWTON: No further questions at this time.

3 THE COURT: Redirect?

4 MR. CLEVELAND: Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. CLEVELAND:

7 Q You testified on cross-examination that on the first
8 phone call of three, that you observed with a raspy
9 voice. Can you describe the voice you heard on the
10 other end of the phone on the other two phone calls?

11 A Yes, sir. It was a younger female voice, what I
12 would state to be a younger female. Not a raspy
13 voice though. It was distinctively two different
14 voices.

15 Q So based on your observations and interview, I guess,
16 two different voices on the phone calls, and you're
17 sure of that? Based on your observation in your
18 opinion?

19 A Yes, sir.

20 Q Okay. It is uncommon for informants to have charges
21 hanging out over their heads while they're working
22 for y'all?

23 A No, sir.

24 Q Is that an exception or is that pretty much the rule?
25 I mean, most informants have charges hanging over

1 their heads?

2 A I would say so, yes, sir.

3 Q Is there -- without kind of getting to the point, is
4 there any other real way to find reliable informants
5 than to locate them after they've been arrested?

6 A No, sir.

7 Q Okay. All right.

8 A I believe it all goes back to, again, someone like
9 myself would have difficulty and a normal person that
10 isn't involved in drugs would have difficulty walking
11 up and knocking on a drug dealers door and attempting
12 to buy narcotics.

13 Q Based on -- well based on that just in general, are
14 these informants valuable assets to law enforcement?

15 A Extremely valuable.

16 Q Is Tonya a valuable asset to law enforcement for your
17 investigations?

18 A Yes, sir.

19 Q Do you always -- what's the policy for recording
20 phone calls? Do y'all always record them or just on
21 a case by case basis?

22 A No, sir, on a case by case basis. There's no policy
23 on requiring us to record phone calls.

24 Q Okay. Is it uncommon for you not to record phone
25 calls?

1 A Yes, sir.

2 Q Did, in this case, based on your investigation, did
3 you have any reason to believe that the person on the
4 other end of the phone wouldn't be the person selling
5 the methamphetamine?

6 A No, sir.

7 Q And you conducted a full surveillance of the actual
8 drug deal, is that correct?

9 A Yes, sir.

10 Q It is -- did it surprise you, based on your
11 observation, I guess, of the two voices, that a
12 different person might have showed up to do the drug
13 deal that you heard the voice of the first time?

14 A Yes, sir.

15 Q Okay.

16 MR. CLEVELAND: That's all the State has.

17 MR. NEWTON: Nothing further, Judge.

18 THE COURT: All right, thank you, you may step
19 down.

20 Call your next witness.

21 MR. CLEVELAND: May I approach just a second?

22 THE COURT: Would y'all like to stand up and
23 stretch a little bit?

24 (WHEREUPON, a bench conference was held in the
25 presence of the jury but out of the hearing of

1 the jury.)

2 THE COURT: We're going to take a short break,
3 ladies and gentlemen. I'll ask you to retire to the jury
4 room and remind you that it's too early to begin
5 discussing the case.

6 (WHEREUPON, the jury left open court at
7 approximately 11:30 a.m.)

8 (WHEREUPON, a short break was taken.)

9 (WHEREUPON, State's Exhibit No. 5 was marked for
10 identification only.)

11 MR. CLEVELAND: So go to the 404(b), you want to
12 take it up as it happens?

13 THE COURT: Well, y'all want to go ahead and
14 talk about it now? Let's go ahead and come back to order
15 and see where we are. Did y'all have an agreement that
16 you want to put on the record?

17 MR. CLEVELAND: Yes, sir, Your Honor.

18 MR. NEWTON: Yes, Your Honor.

19 MR. CLEVELAND: Defense counsel and the State
20 have agreed to stipulate to the chain -- to the proper
21 handling of the chain of custody on State's Exhibit No. 3.
22 And to the chemical analysis of State's Exhibit No. 3
23 which is a quantity of methamphetamine of 1.46 grams. The
24 way the State would do this by entering State's Exhibit
25 No. 5 into evidence at the appropriate time before the

1 close of the State's case. It is a County of Greenville
2 lab report stating that the methamphetamine is 1.46 grams.
3 I intend to publish on the record to the jury, the
4 stipulation and the contents of the report and offer it.
5 At Defense counsel's request make note that while it does
6 have both Ms. Timms and Ms. Haworth's name, that just
7 indicates that they were the subjects of this
8 investigation. That it's not -- whatever--

9 MR. NEWTON: It's not in any way an admission
10 that the drugs came from Ms. Haworth.

11 THE COURT: Okay. We can do that then. All
12 right, I got that and we'll go ahead and do that in the
13 presence of the jury when we're ready to do it. Now
14 what's the other matter we need to talk about outside the
15 presence?

16 MR. CLEVELAND: Your Honor, my next witness is
17 Ms. Tonya Smith, she was the informant in this case as the
18 testimony will reveal. I plan to develop with her her
19 relationship with the Defendant and how she knows her.
20 Because -- which is through several drug deals over the
21 course of the years. That is inherently a prior bad act.
22 However, the State's position is that that information,
23 one she's entitled to testify as to how she knows the
24 Defendant. And was just based on the business basis for
25 drug deals. And she's familiar with her. I believe

1 she'll testify about two years, have spoken with her on a
2 round about weekly basis over those prior two years
3 leading up to this incident. That was really for the
4 purpose of the elicited sale of drugs.

5 I'm not going to go into any particular instance
6 but just the fact that she is the one and the reason is
7 because she does not deal drugs with the co-defendant in
8 this case, Ashley Timms. She will testify to that.

9 404(b) allows prior bad acts to show absence of mistake.
10 One, that is to go to the weight of her testimony of the
11 two different voices. And two, to show the Defendant's
12 identity, who she is as a drug dealer and she has contact
13 with her. She has her number saved, she knows her. And
14 her intent. The Defendant's intent. It's not to show
15 conformity within but we feel that that is necessary.

16 Furthermore, because we're not going into any
17 specifics, not bringing out a prior criminal history, not
18 doing anything like that. Certainly think that that sets
19 the basis for that testimony and it is not substantially
20 outweighed by the prejudicial value to the Defendant. The
21 probative value of that is very, very much important to
22 the State's case. As detective or Agent Ayers testified
23 and to the jury, knows that people that deal -- they
24 utilize these informants because they deal with people
25 they that know. They provide the name. Because strangers

1 can't go up to them. I think the jury's entitled to know
2 the basis of the relationship to set up this deal with the
3 Defendant. Especially if there's going to be a defense,
4 which I presume it will be. That it was not her that did
5 the deal but someone else.

6 THE COURT: All right, let me ask you this
7 question, I'm not sure I quite understood it. I
8 understood the witness wants to say number A, that she has
9 known the Defendant for a couple of years.

10 MR. CLEVELAND: That's correct.

11 THE COURT: Two years.

12 MR. CLEVELAND: Prior to this incident, Your
13 Honor.

14 THE COURT: Right. And she wants to go in and
15 describe how she knew her, is that right?

16 MR. CLEVELAND: How she met her, how she knew
17 her, what relationship she had with her. She was the --
18 I'll ask her that she -- what it boils down to is the
19 co-defendants were involved in a relationship. This
20 Defendant was the one she bought the drugs from, not the
21 other. That's what the basis of the testimony I seek to
22 establish here. Because she -- well we can proffer the
23 testimony if, Your Honor, likes but that's what I seek to
24 elicit. How she knows her, what she knows her as, what
25 their relationship is. Which is they--

1 THE COURT: Well you can't have her say that I
2 know her as a drug dealer, can you?

3 MR. CLEVELAND: Well I believe I can, Your
4 Honor. I did find a case. Pardon me for not getting this
5 out earlier. Case I'm referring to is State vs. King.
6 This is 561 SE2d 640. There is language in this case that
7 says testimony regarding a Defendant's past drug activity
8 was admissible to establish intent in prosecutions of
9 possession with intent to distribute crack cocaine.
10 Confidential informant -- confidential police informant
11 testifies that she had purchased crack cocaine in this
12 case at least 20 times from the Defendant. And had seen
13 the Defendant engaged in 40 additional drug
14 investigations.

15 Now, the relevance of this case is certainly
16 prior bad acts have to be established by clear and
17 convincing evidence, this case sets a precedent for a
18 co-defendant and CI's testimony -- that -- standard it
19 wasn't allowed in this case, it was upheld on that basis.
20 Furthermore, to show how, I guess, how the drug deal went
21 down. To show her intent in the situation. The actual
22 language the CI will testify to, I believe, would be that
23 she called her asking for some work because that's what
24 their code word was. So that's to show the intent. That
25 she had used that before with her and she'll testify to

1 that.

2 THE COURT: All right, what do you say,
3 Mr. Newton? You familiar with the case?

4 MR. NEWTON: I am not, Your Honor.

5 MR. CLEVELAND: The Court examined that problem
6 under Lyle, Judge.

7 THE COURT: Did say it was the State vs. King?

8 MR. CLEVELAND: State vs. King, Your Honor,
9 that's correct.

10 THE COURT: I hate to delay this, I'm just going
11 to have to read that case. I wish you had given it to us
12 earlier, Mr. Cleveland.

13 MR. CLEVELAND: I apologize, Your Honor.

14 THE COURT: Have you had a chance to review the
15 case?

16 MR. NEWTON: I have, Your Honor.

17 THE COURT: Any response?

18 MR. NEWTON: I think it's certainly very
19 distinguishable from the situation here. In their case
20 the case law there is talking about the question was
21 whether, as I understand it, the person who was at the
22 residence, the drugs were at the residence. And the
23 question was difference between possession, mere
24 possession or possession with intent to distribute. And
25 that's why it was allowed to be introduced. That is not

1 the situation here at all, Judge.

2 THE COURT: Mr. Cleveland, see if I understand
3 this correctly, now. I'm not sure I fully understand all
4 of the reasons why you are arguing that it ought to be
5 admissible. But is this any different than they other
6 case? In other words, any informant case? If I accept
7 your argument, isn't it in every informant case the
8 informant will get to say I bought from that person
9 before?

10 MR. CLEVELAND: No, Your Honor.

11 THE COURT: Or knew about him.

12 MR. CLEVELAND: The difference in this case is
13 it was actually Ms. Timms that showed up delivering the
14 drugs in this case.

15 THE COURT: All right.

16 MR. CLEVELAND: It was not Ms. Haworth.
17 However, Ms. Haworth was the one that the informant spoke
18 to.

19 THE COURT: Right.

20 MR. CLEVELAND: I have to prove that she
21 distributed, aided, abetted or conspired to distribute
22 these drugs. I have to set a foundation. The CI is going
23 to give information basically that she would not have set
24 up this drug deal with just Ashley because she was not her
25 contact and she was not someone that she trusted. She

1 only would have set it up and did indeed set it up with
2 the Defendant because of her past relationship and she
3 knows she's who to go to to get the drugs.

4 The whole deal was set up through the Defendant
5 is what the State's case is and what the State seeks to
6 prove. And by setting up that relationship, in addition
7 to, you know, her recognizing her voice on the phone and
8 everything, that's how the State proves the Defendant's
9 motive, intent to do that. Now that was going to be my
10 argument initially before the co-defendant in this case
11 pled. Now there's been some testimony on the record --
12 and at least the State, and I can address this after the
13 fact, the testimony that it was not Ms. Haworth, it was
14 Ms. Timms on the phone.

15 Again, that information becomes relevant to show
16 the informant's lack of mistake under 404(b). That she
17 thought she was talking to Nancy when indeed she was
18 talking to Ashley. That's what the State, at least, sees
19 the way this trial is going. So under 404(b), I guess,
20 it's the State's position that their prior history is
21 relevant and admissible to show her intent to sell the
22 drugs and to show her motive to sell the drugs. But she
23 wasn't the one that actually showed up on the scene.

24 THE COURT: I couldn't hear you, the last thing
25 you said?

1 MR. CLEVELAND: Even though she was not the one
2 that actually showed up on the scene, she still had the
3 motive and intent to sell and distribute the drugs under
4 our laws.

5 THE COURT: Mr. Newton.

6 MR. NEWTON: Your Honor, in this case there's no
7 question that distribution was made. So it's not a
8 question of having to prove the element of intent to the
9 distribution charge. I mean, someone carried the drug out
10 to the scene, money was exchanged for the drugs. Clearly
11 a distribution happened. So there's no reason to get into
12 intent at all. The Defense's position is simply that our
13 lady, Ms. Haworth, was never on the phone and was not
14 involved in this conversation at all. So I fail to see
15 the relevance of trying to prove the intent element of
16 distribution in this case. Again, it's clear that a
17 distribution did happen. It's simply our position that
18 Ms. Haworth was not involved in this transaction at all.
19 She was not the person on the phone. And testimony will
20 be made to that effect. So the case the prosecutor brings
21 up is very distinguishable. In that case there was an
22 issue between mere possession and possession with intent
23 to distribute. And that's why the intent element is in
24 there.

25 THE COURT: That's why they permitted it.

1 MR. NEWTON: Right. And, Your Honor's, point
2 that you made earlier is right on point. If this is going
3 to be the standard, then this becomes automatic testimony
4 in every CI case. Because the officers have sworn under
5 oath that CI's go to people they know to be drug dealers.
6 So basically they're trying to allowed this sort of prior
7 bad act in every single drug buy, drug case, that involves
8 a confidential informant.

9 THE COURT: All right, I find that the facts of
10 this case as presented to the Court, are clearly
11 distinguishable from the King case. The only reason -- in
12 King, the only reason that the prior information about the
13 Defendant was admitted was because of the question of
14 whether or not there was an intent. The charge was
15 possession with intent and whether or not -- trying to
16 make a distinction between whether or not the person
17 merely possessed or possessed it with intent. I find the
18 prejudice judicial effect outweighs its probative value
19 and I'm going to sustain the objection to that evidence.

20 Now, the witness certainly can testify how long
21 they've known each other, how often they saw each other
22 and how many times they spoke on the phone or whatever it
23 is to identify them. Then, of course, the jury can draw
24 their own conclusions about why she would have not spoken
25 to the other lady. I guess she can say she didn't have

1 any relationship with the other lady, didn't know her, I
2 don't know. But at any rate, what else?

3 MR. CLEVELAND: That's all at this time, Your
4 Honor. I guess I'm interested to see what the
5 co-defendant will testify to if called by the Defense.

6 THE COURT: Y'all ready for the jury?

7 MR. CLEVELAND: Yes, sir.

8 MR. NEWTON: Yes sir.

9 THE COURT: All right. As far as scheduling
10 witness and taking a lunch break, what does it look like
11 to you?

12 MR. CLEVELAND: I have two more witnesses and
13 that will be it.

14 THE COURT: What I mean is what time do think we
15 ought to be taking a break? Between the witnesses? How
16 long is your next witness?

17 MR. CLEVELAND: About an hour. A little longer,
18 maybe.

19 THE COURT: We'll see where it goes.

20 (WHEREUPON, the jury came into open court at
21 approximately 12:10 p.m.)

22 Welcome back ladies and gentlemen. There's not
23 any magic to where you sit. You can sit anywhere you want
24 to. Except we prefer that the alternate juror, just for
25 identification purposes, stay over here.

1 I believe we're ready to resume testimony,
2 Solicitor?

3 MR. CLEVELAND: That's correct, Your Honor. At
4 this time, Your Honor, the state calls Tonya Smith to the
5 stand. Place your left hand on the Bible, raise your
6 right.

7 TONYA SMITH, after being duly sworn, testified
8 as follows:

9 THE CLERK: Thank you, ma'am. If you would have
10 a seat and state your name for the record, please.

11 THE WITNESS: My name is Tonya Michelle Smith.

12 DIRECT EXAMINATION

13 BY MR. CLEVELAND:

14 Q Hi Tonya. You got a pretty soft voice, if you would
15 talk -- sit a little closer to that microphone, make
16 sure everybody in the back of the jury box can hear
17 you.

18 A Okay.

19 Q Tonya, have you worked as an informant for law
20 enforcement in the past?

21 A Yes.

22 Q Did you approach law enforcement and volunteer to
23 work with them or they come to you?

24 A I approached them.

25 Q Do you remember who you approached specifically?

1 A Officer Chad Ayers.

2 Q All right. Here in open court, we don't have any --
3 I like to think we don't have any secrets. Did you
4 use to have a drug problem?

5 A Yes, I did.

6 Q What was your drug of choice?

7 A It was methamphetamine.

8 Q And about how long did you battle addiction with
9 methamphetamine?

10 A About six years.

11 Q All right. Do you still use methamphetamine?

12 A No, I do not.

13 Q When's the last time you were high or used
14 methamphetamine?

15 A January 5th, 2011.

16 Q All right. What happened between then and now? Did
17 you just quit?

18 A No.

19 Q Okay.

20 A I went to Heart of Hannah in Traveler's Rest, it's a
21 rehab program. It's a six month to a year program
22 and I was there for nine months.

23 Q All right. Did you find the program to be
24 successful?

25 A Yes.

1 Q When you were using methamphetamine, did you ever
2 sell those drugs as well?

3 A Yes, I did.

4 Q Did you ever get in trouble?

5 A Yes, I did.

6 Q How many times did you get in trouble for selling
7 those drugs?

8 A I had two possession with intent charges.

9 Q All right, were those charges dropped or?

10 A No, they weren't. I pled.

11 Q All right, did you accept responsibility for those
12 charges?

13 A Yes, I did.

14 Q What county was that in?

15 A Greenville County.

16 Q Now -- so when did you do that?

17 A March 1st of 2011.

18 Q All right. At this point in time, do you have any
19 pending charges or anything hanging over your head?

20 A No, I do not.

21 Q All right. You're not -- are you here for any other
22 reason because of the fact that I subpoenaed you here
23 today?

24 A That's the only reason I'm here.

25 Q All right. Would you tell the jury whether me or law

1 enforcement has promised you anything in exchange for
2 your testimony today?

3 A No, they have not. Nothing.

4 Q All right. Are you here just to testify to the truth
5 on what happened on March 30th, 2010?

6 A Yes, I am.

7 Q Now I just want to go through, you have been in
8 trouble once since -- well since you pled in March of
9 2011, have you been in trouble with law anymore?

10 A No, I have not.

11 Q In addition to those drug charges you talked about,
12 were you convicted of two driving charges back in
13 2010?

14 A Yes.

15 Q Do you have a driver's license now?

16 A No, I don't. I don't drive.

17 Q You do not?

18 A (The witness shook her head.)

19 Q All right, did you plead to a larceny charge about
20 the same time you pled to the other stuff?

21 A Yes, I did.

22 Q And back in the 90's did you write two bad checks?

23 A Yes, sir.

24 Q Is that the extent of your criminal record?

25 A That's the extent of my criminal record.

1 Q Currently are you on probation?

2 A Yes, I am.

3 Q All right. Do you sell drugs anymore?

4 A No, I do not.

5 Q Do you have a full-time job?

6 A Yes, I do.

7 Q And do you maintain your own residence?

8 A Yes, I do.

9 Q Thank you, Tonya. Now, going to the night of
10 March 30th, 2010, do you remember that night?

11 A Yes, sir.

12 Q What were you doing on that evening?

13 A Well I went and met them and--

14 Q When you say them, who do you mean?

15 A I mean, Ashley, Chad and Brett.

16 Q Is that for the purpose of trying to conduct drug
17 deals?

18 A Yes.

19 Q Did they ever tell you who they wanted to conduct a
20 drug deal from or did you provide them?

21 A I provided them the information.

22 Q All right. On the night of January or excuse me,
23 March 30th, 2010, who did you make contact with to
24 buy drugs from?

25 A Nancy.

1 Q All right. This Nancy person, do you see who you
2 know as Nancy in the courtroom today?

3 A Yes, I do.

4 Q Would you point her out to the jury, please.

5 A Sure, sitting right over there.

6 Q All right. How long had you known Nancy prior to
7 March 30th, 2010?

8 A For a couple of years.

9 Q When did you -- how did you come about meeting her?
10 Just in general?

11 A I know family members of hers. That was my neighbor.

12 Q Okay. Her or her family members?

13 A I met her through her family members, through her
14 brother.

15 Q Okay. How long had you known her brother?

16 A About 15 years.

17 Q Prior to this date?

18 A Prior to this date.

19 Q All right. About -- did you know -- I guess, how
20 long -- how often did you speak with Nancy or see
21 Nancy? What was your -- how often did you talk to
22 Nancy during those two years that you knew her?

23 A I mean it was on and off. It wasn't like every day.
24 It was maybe once a week, sometimes it would go once
25 a month, it just varied.

1 Q Okay. So did you speak with her on the phone mostly
2 or did you see her in person or both?

3 A Both.

4 Q All right. Did you -- were you provided her phone
5 number on that night or did you have it already?

6 A I had it already.

7 Q To your knowledge, knowing her over those two years,
8 was she in a relationship?

9 A Yes.

10 Q Who was she in a relationship with?

11 A With Ashley.

12 Q Did you know this Ashley person?

13 A Yes, I did.

14 Q Do you see her in the courtroom today?

15 A Yes, I do.

16 Q Could you point out who Ashley is to the jury?

17 A She's sitting back there.

18 Q Based on your observations, what kind of relationship
19 did they have?

20 A They were intimate with each other. Based on what I
21 saw.

22 Q This was not a friendship, it was a romantic
23 relationship, is that what I understand?

24 A Yes.

25 Q All right. Did you observe that relationship to be

1 continuance during those two years?

2 A On and off, yes.

3 Q You say on and off but when you would see Nancy in
4 person, about how often was Ashley with her?

5 A About all the time. She didn't -- they didn't go
6 away from each other often.

7 Q Okay. On the night did you recognize -- did you
8 know -- I mean, did you know if they lived together
9 or not?

10 A Yes.

11 Q Did they live together?

12 A Yes.

13 Q Did Nancy, I guess, since you saw her over those two
14 years, did you know what Nancy's vehicle looked like?
15 Did she have one?

16 A Yes, she did.

17 Q Would you describe that vehicle?

18 A It was a little four-door car. I mean, I don't know
19 exactly the type, dark in color.

20 Q All right. Did you know if Ashley had a car or not?

21 A No, she did not.

22 Q All right. What about her -- since you say you knew
23 Ashley, how often -- did you ever talk to Ashley
24 directly or were you mostly just friends with Nancy?

25 A Mostly just friends with Nancy.

1 Q Did you ever have an occasion to talk with Ashley
2 without Nancy knowing?

3 A Not often.

4 Q All right. On this night in question, did you call
5 Nancy or did she call you?

6 A I called Nancy.

7 Q What did you ask her?

8 A I asked her if she had any work that she would sell
9 me so I could go make some money.

10 Q All right, when you say work, what do you mean by
11 that?

12 A Methamphetamine.

13 Q All right. How did you know that you were talking to
14 Nancy on the phone?

15 A Because Nancy and Ashley's voices are very different.

16 Q All right, you said Nancy and Ashley. Would it have
17 been possible that Ashley could have answered Nancy's
18 phone?

19 A I mean, yeah, she's done that before. She answered
20 the phone and I said, Let me speak to Nancy and she
21 would give her the phone.

22 Q Every time that you've called and done that, did you
23 immediately know that it was Ashley that answered the
24 phone and not Nancy?

25 A Yes.

1 Q And on this night in question, who answered the
2 phone?

3 A It was Nancy.

4 Q When you asked her for any work, what did she tell
5 you?

6 A That she had some.

7 Q All right. Did you discuss -- when you say work or
8 drugs, what specific drugs?

9 A Methamphetamine is what I mean.

10 Q All right. At this point in time were you selling
11 drugs still?

12 A Yes.

13 Q Or up until this point you proceeded to sell drugs?

14 A Yes, I was.

15 Q Did you call her -- so when you say work you mean
16 you're looking for drugs presumably to resale?

17 A Yeah. Because I looked at that -- as selling drugs
18 as my job.

19 Q All right. At that point in time or leading up to
20 when you got clean, is that the way you paid the
21 bills?

22 A Yes, it was.

23 Q Now, how much -- did y'all discuss the particulars of
24 this drug sale?

25 A I just told her that I wanted a 8-ball.

1 Q How much is an 8-ball?

2 A It's 3.5 grams.

3 Q All right. Did y'all discuss the price of an 8-ball?

4 A Yes. Usually run about \$300.00.

5 Q All right. Was that the final agreement?

6 A No. She had called back and said that she didn't
7 have that much.

8 Q All right. When you said, she called back. Who do
9 you mean?

10 A I spoke with Nancy then.

11 Q So could it have been Ashley that called you back?

12 A No, I didn't start talking to Ashley on the phone.
13 until right before they met us. I thought Ashley and
14 her were together. I thought Ashley and Nancy were
15 together.

16 Q Okay. Did she tell you where she was?

17 A Not at first. After maybe, I think, the second call
18 I come to realize they were at Jamie's house.

19 Q Who is Jamie?

20 A Her brother's nephew.

21 Q Okay. Did--

22 A I mean, her brother's son, her nephew.

23 Q What did -- did Nancy tell you what they were doing
24 there, was there any discussion about that?

25 A I found out they had the kids there. Jamie had left

1 and left the kids with them.

2 Q Okay, when you say, Them, who do you mean?

3 A Nancy and Ashley.

4 Q Did you tell -- after you had set up, I guess, if I
5 may summarize your testimony, you called once to buy
6 an 8-ball?

7 A Uh-huh.

8 Q Is that how much you asked for or is that how much
9 Nancy--

10 A That's how much I asked for.

11 Q Okay.

12 A To see if she had that much.

13 Q Okay. Nancy then called you back and told you?

14 A No, that all she had was a half 8.

15 Q How much is a half of an 8-ball?

16 A 1.7.

17 Q Grams?

18 A Grams.

19 Q Did you discuss with Nancy a price for that amount?

20 A Yes.

21 Q Who was that price?

22 A 170.

23 Q Okay. Did you discuss with Nancy where to meet?

24 A Yes. I told them to come meet me at the Hot Spot on
25 123. Because I thought they were in Easley at their

1 house at that time.

2 Q Okay, where were you?

3 A We were actually in Greenville.

4 Q Okay. All right. So initially you -- did you find
5 out later they were not in Easley?

6 A Yes, while I was there waiting on them to get there.

7 Q Okay. When you say, Them, did you understand from
8 the get go, that they were together that night?

9 A Yes.

10 Q Okay. When you made this phone call, would you have
11 similarly set up a deal with Ashley if Ashley had
12 answered the phone instead of Nancy?

13 A No.

14 Q And to your knowledge and observation, is Ashley
15 younger or older than Nancy?

16 A She's younger than Nancy.

17 Q Significantly younger or just a little?

18 A Significantly.

19 Q Could you describe, based on your experience in
20 speaking with Ashley, what Ashley's voice sounds
21 like?

22 A Ashley's just young, she has a young voice. It's
23 not, you know, the older you get the rougher your
24 voice sounds. Especially if you smoke and do drugs,
25 there's a difference.

1 Q Okay. Describe what Nancy's voice sounds like.

2 A She's older and it's deeper. It's got a little
3 scratch to it.

4 Q Okay. Are you -- how sure are you on a scale of zero
5 to 100 percent that you were speaking to Nancy and
6 not Ashley the night when you called?

7 A On the first call when I called initially?

8 Q Yes.

9 A It was 100 percent Nancy.

10 Q Is that when y'all agreed to the drug deal?

11 A Yes.

12 Q Did you ever speak to Ashley on the phone?

13 A Yes, I did.

14 Q All right. We'll get into that later. And actually
15 just to fast forward to it, who did you actually end
16 up purchasing the drugs from?

17 A From Ashley.

18 Q All right. Now, let's go -- after y'all had agreed
19 to meet and on a price, what did you do then? What
20 did you do to involve law enforcement?

21 A Chad searched my car. I was -- wire placed on me by
22 Brett. And Ashley provided the money to me.

23 Q You say Ashley, I want to make clear--

24 A Yeah, that one.

25 Q All right.

1 Let the record reflect she pointed to Agent
2 Ashley.

3 How did you get to the Hot Spot from where you
4 were in Greenville?

5 A Officer Chad Ayers drove my car there.

6 Q What kind of car did you have?

7 A I got a Dodge Stratus.

8 Q And on the way to that location, did you receive or
9 make any phone calls?

10 A Yes, I did.

11 Q All right. Did you call the same number or different
12 number?

13 A I called the same number. That's the only number
14 they had.

15 Q All right. Now, who did you speak to?

16 A At that point it was Ashley.

17 Q All right. Did you think it was strange that Ashley
18 answered the phone?

19 A No because I could hear the kids and noise, you know,
20 I didn't think it was strange.

21 Q All right. But I want to make clear, you testified
22 earlier that you would not have asked Ashley --

23 A No --

24 Q -- for the drugs.

25 A I mean, Ashley knew why I called but, I mean, as far

1 as saying, Hey, I want to do this for you. No, it
2 was not that way.

3 Q All right. When -- your testimony is when you dialed
4 that number you would have only dealt with Nancy, is
5 that correct?

6 A Yes.

7 Q Now, you spoke to Ashley on the phone, who got to the
8 Hot Spot first, you or someone else?

9 A Me and Officer Chad.

10 Q All right. Did you -- when did Ashley show up?

11 A It was five, 10 minutes, I guess. Maybe we were
12 there for a good five minutes waiting.

13 Q Did she ever call you to let you know where she was
14 or anything like that?

15 A No, I believe I called her to see where she was.

16 Q When you say where she was, did you at this point in
17 time still think that Ashley and Nancy were together?

18 A Yes, I thought Nancy was still with her. I didn't
19 know she was coming alone.

20 Q All right. Who pulled up?

21 A She did.

22 Q Who is she?

23 A Ashley.

24 Q Was she alone?

25 A Yes, she was alone.

1 Q She didn't have any kids with her?

2 A No, she had no kid with her.

3 Q She did not have Nancy with her?

4 A No, she did not have Nancy. I asked her where Nancy
5 was. She told me she had stayed at Jamie's with the
6 kids.

7 Q Is that -- tell me about -- I guess I want to slow it
8 down a little bit. When Ashley pulled up, what did
9 you do?

10 A I got out of my car, got in the car with her.

11 Q Where did Investigator Ayers stay?

12 A He stayed in the driver's seat of my vehicle.

13 Q About how far away were y'all parked from each other?

14 A Maybe a parking space.

15 Q What car pulled up? Whose car did you recognize?

16 A It was Nancy's car that I recognized.

17 Q Now, when you got in the car, what did you do?

18 A Got in the car, asked her where Nancy was.

19 Q Okay.

20 A She explained that she was at Jamie's.

21 Q Okay. How were y'all talking? Were you talking slow
22 and clear or were you talking pretty fast?

23 A Talking pretty fast.

24 Q All right. What was Ashley's Moody when you got in
25 the car, was she calm?

- 1 A No, she was kind of spastic..
- 2 Q Was she upset for any particular reason that you
- 3 could tell?
- 4 A Yes.
- 5 Q Why is that?
- 6 A Because Jamie had left the kids with them and took
- 7 off.
- 8 Q Why did that frustrate her?
- 9 A Because she wasn't trying to baby sit.
- 10 Q Okay. So was it your understanding Nancy couldn't
- 11 just leave the kids there?
- 12 A Right.
- 13 Q Now, did you ask her anything specifically about the
- 14 drugs?
- 15 A I asked her if it weighed right.
- 16 Q All right.
- 17 A Because I didn't have anything on me to weigh it.
- 18 Q Would you normally have something?
- 19 A Yes.
- 20 Q What do you normally weigh the drugs with?
- 21 A A little set of scales.
- 22 Q Okay. Did you give her that money?
- 23 A Yes, I did.
- 24 Q All right. What did she give you in return for the
- 25 money?

1 A I mean, she gave me the Tylenol bottle with the drugs
2 inside of it. So that way it couldn't be seen. So.
3 When I got out of the car.

4 Q All right. I'm going to show you what's been marked
5 as State's Exhibit No. 3.

6 A That's what she gave me.

7 Q All right. Did it have any -- how was it packaged
8 inside that?

9 A It was just like that. Just the bag with the
10 methamphetamine in it, stuck inside the bottle,
11 that's it.

12 Q All right. Who had given you the money? You
13 testified Ashley did.

14 A Ashley.

15 Q Now, when you got possession of that what did you do
16 with it?

17 A I got into my car and gave it directly to Officer
18 Chad Ayers.

19 Q Okay. During this time, before you had left, did you
20 tell Agent Barwick that you were going to buy drugs
21 from Nancy?

22 A Yes.

23 Q Did you tell Agent Asbill and Agent Ayers that that's
24 who you were buying drugs from?

25 A Yes.

1 Q Did you tell them that she may be with Ashley?

2 A She might be with her but I was going to purchase it
3 from Nancy.

4 Q Okay. But it was your understanding before you even
5 left they would be together?

6 A I'm sorry?

7 Q It was your understanding before you left that
8 there's a good possibility you thought they were
9 together?

10 A Yes, they would be together.

11 Q When you got -- what happened after y'all left the
12 location, where did you go back to? Or did you go
13 back somewhere and meet back up with them?

14 A Yes, we went back into Greenville. They took the
15 evidence and that was pretty much it. I left.

16 Q All right. Who did you -- did they search your car
17 and person?

18 A Yeah, they searched my car, my person, to make sure
19 that I had gave them, I guess, everything that was
20 purchased. Then I just, you know, I signed the
21 statement.

22 Q All right. When you say you signed the statement,
23 did you tell them -- who did you give the statement
24 to?

25 A To Officer Ashley.

1 Q Okay. Is that statement, just a brief description of
2 what happened that night, is that how you would
3 classify that statement?

4 A Yes.

5 Q Now, you can review that. Is that the statement you
6 gave?

7 A Yes, it is.

8 Q Did you write that or did someone else?

9 A Officer Ashley wrote this and I signed it. Read it
10 and signed it.

11 Q Okay. But that's your signature at the bottom?

12 A Yes, it is.

13 Q Now, you understand that the transmission from that
14 wired recording was recorded that night, is that
15 correct?

16 A Yes, I do.

17 Q Have you had an opportunity to review that recorded
18 deal that night?

19 A Yes, I heard it.

20 Q All right. I'm going to show you what's been marked
21 again as State's Exhibit No. 2.

22 A Yes.

23 Q Do you recognize that disk?

24 A Yes, I do.

25 Q Is that the recording from March 30th, 2010?

1 A Yes, it is.

2 Q Is this a complete and true recording of the events
3 that happened that night?

4 A Yes, it is.

5 MR. CLEVELAND: Your Honor, at this time the
6 State would like to move State's Exhibit No. 2 into
7 evidence and publish it to the jury.

8 MR. NEWTON: No objection.

9 THE COURT: It will be admitted without
10 objection.

11 (WHEREUPON, State's Exhibit No. 2 was admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 2 was published
14 to the jury.)

15 BY MR. CLEVELAND:

16 Q Now, while I'm getting this ready, whose voices
17 appear on this that you remember?

18 A That I remember?

19 Q Yeah.

20 A Officer Brett, my voice, Chad Ayers and Ashley's.

21 Q Okay. Can you -- we'll listen to it then we'll
22 discuss it.

23 A Okay.

24 Q All right, Tonya, that's what went down that night?

25 A Yes, it is.

1 Q I want to take you back to a few places on that call,
2 just to get you to clarify a few things. Does --
3 first of all, towards the end when presumably Ashley,
4 one of you, when you heard a Yeah, then said, Thank
5 you, girl. What did you ask her then to get a
6 answer, Yeah?

7 A If it weighed right.

8 Q All right. She said -- there was a discussion on
9 that where she said something about back there with
10 Nancy and stuff. What did you ask her? What brought
11 about that conversation? I believe she said back
12 there with Nancy or something to that effect?

13 A I asked where the kids was. I asked where Nancy was.

14 Q All right. You asked her when she pulled up, it
15 sounded like you said, pardon my french, What the
16 hell are you doing?

17 A Yeah.

18 Q Why did you ask her that?

19 A I believe the way she was driving, the fact that she
20 was by herself.

21 Q Was that -- were you surprised she was by herself?

22 A Yes.

23 Q You actually said what the F a couple of times, what
24 was--

25 A Because taking too along. What I call in dope land,

1 you know, just taking her time.

2 Q Okay. On those phone calls, you told and recorded on
3 there, I believe you told Deputy Ayers you said,
4 They've got kids with them or something to that
5 effect, I'm paraphrasing. Is that what you
6 understood it was Nancy, Ashley and the kids?

7 A Yes.

8 Q That happened right at the beginning of the tape,
9 those prior phone calls what let you know they had
10 the kids with them?

11 A Yes.

12 Q Okay. Also, when you talked -- on the first phone
13 call on that tape, you asked Ashley, Are y'all okay?

14 A Yeah.

15 Q I believe it was inaudible, I couldn't hear it, at
16 least. How did she respond to that? Did she ever
17 say it's just me, it's not Nancy?

18 A No, we're okay. I think that's when she told me the
19 kids were with them. That they weren't just there at
20 Jamie's, that the kids were with them.

21 Q Okay. On all those phone calls do you recognize that
22 to be Ashley's voice?

23 A Yes.

24 Q And that was indeed Ashley that met you that night?

25 A Yes.

1 Q Did you see the tag number on the back of the car as
2 it was being read out?

3 A No, I can't remember.

4 Q Now, when you went -- and after the end of that deal,
5 just to paraphrase your earlier testimony, you were
6 searched, handed over the good and gave a statement,
7 correct?

8 A Yes.

9 Q I want to take you back briefly to your initial, the
10 first time you ever talked to Deputy Ayers when you
11 came to him.

12 A Yes.

13 Q Did you come to him to get a deal to try to work your
14 way out of your charges or did you come to him
15 because you wanted--

16 MR. NEWTON: Objection, leading question.

17 THE COURT: Sustained.

18 BY MR. CLEVELAND:

19 Q Why did you come to him?

20 A Because I wanted out.

21 Q When you said you wanted out, what did you want out
22 of?

23 A That lifestyle. Selling the drugs. You get to a
24 point that you don't -- you feel like there's no way
25 out.

1 Q Okay. How did he offer to help you out or did he
2 help you out?

3 A I just started talking to him and telling him pretty
4 much everything about my life.

5 Q Okay. Do you have any regrets about the drugs that
6 you sold?

7 A Yes. I regret the amount of dope that I pushed out
8 on the streets.

9 Q Why is that?

10 A Because I know what it does to peoples lives and
11 their families.

12 Q Did do it your life?

13 A Yes, it did.

14 Q Did Chad help you? Chad Ayers help you get a plea
15 deal or do anything like that with your charges?

16 A No.

17 Q Did he ever promise you or tell you that while you
18 were working that you needed to do this in order for
19 him to help you or to get something out of it?

20 A No, I mainly did it because of my guilt that I felt.

21 Q Did you -- did Chad Ayers or anybody with SLED or
22 Pickens County or my office tell you today that you
23 needed to follow through today?

24 A No.

25 Q Promise you anything?

1 A No.

2 Q Were there any promises made whatsoever?

3 A No.

4 Q Were any threats beared upon you to testify here
5 today?

6 A No, sir, there were not.

7 Q Do you harbor any ill will towards Ashley Timms?

8 A No, I do not.

9 Q Do you harbor any ill will towards Nancy Haworth?

10 A No, I do not. Either one of them.

11 Q And it's your testimony, those voices we hear on that
12 tape, that is not Nancy Haworth?

13 A No, it is not.

14 Q And that is not the person that you spoke to earlier
15 in the night?

16 A No, it is not.

17 Q It's not the person that you negotiated a price with?

18 A No.

19 Q It is not the person that you asked for dope?

20 A That is correct. No, it's not.

21 Q And it is not the person that you -- who you told to
22 meet you at the Hot Spot?

23 A No, it's not.

24 MR. CLEVELAND: Thank you, Tonya, I don't have
25 any other questions at this time, please answer anything

1 Mr. Newton may have.

2 THE COURT: I think this may be a good time to
3 stop for lunch.

4 MR. NEWTON: Think so, this may take a while.

5 THE COURT: More than two or three minutes?

6 MR. NEWTON: Definitely, Judge.

7 THE COURT: Ladies and gentlemen, let's take
8 lunch until about 2:15. Ask you to -- that will give you
9 a little over an hour to get lunch. Ask you to be back in
10 the jury room at 2:15. Remind you don't let anybody talk
11 to you about the case and you don't talk to anybody else
12 about the case. See you back at 2:15. When you come back
13 see if you can select a foreperson to represent the jury.

14 (WHEREUPON, the jury left open court at
15 approximately 1:00 p.m.)

16 THE COURT: You can go ahead. Anything we need
17 to take care of during the lunch break? Anything else
18 coming up?

19 MR. CLEVELAND: Nothing, Judge.

20 MR. NEWTON: No, Your Honor.

21 THE COURT: Be at ease until 2:15.

22 MR. CLEVELAND: Thank you, Judge.

23 (WHEREUPON, a lunch break was taken.)

24 THE COURT: The State ready?

25 MR. CLEVELAND: Yes, Your Honor.

1 THE COURT: Defense?

2 MR. NEWTON: Your Honor, I don't know where my
3 client is. I told her to be back about an hour ago.

4 THE COURT: I thought maybe you had.

5 MR. NEWTON: I just tried to call her, no answer
6 on her cell phone. I'll try again. I apologize.

7 (WHEREUPON, a short break was taken.)

8 THE COURT: All right, I believe we are ready
9 for the jury.

10 (WHEREUPON, the jury came into open court at
11 approximately 2:21 p.m.)

12 THE COURT: All right, welcome back, ladies and
13 gentlemen. Did you have the opportunity to select a
14 foreperson?

15 A JUROR: Yes, sir.

16 THE COURT: That would be?

17 A JUROR: Number 48, Sandra Goodson.

18 THE COURT: Number 48, I couldn't have done a
19 better job myself.

20 MADAM FORELADY: Thank you.

21 THE COURT: Solicitor, I believe we're ready to
22 resume testimony in the case.

23 MR. CLEVELAND: State's ready, Your Honor.

24 THE COURT: Want to retake the witness stand.
25 Ma'am, remind you you're still under oath.

1 Mr. Newton.

2 MR. NEWTON: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. NEWTON:

5 Q Ms. Smith, you understand you're under oath to tell
6 the truth today, correct?

7 A Yes, sir, I do.

8 Q You had implied earlier that there was some sort
9 of -- well, I guess I'll just say it, a lesbian
10 relationship?

11 A Yes, sir.

12 Q What makes you think that?

13 A They shared a bedroom. Slept in the same bed. They
14 argued and fought just like any normal couple does.
15 She would -- Nancy would get jealous all the time
16 over Ashley and what she did.

17 Q Did you ever see them kissing each other, anything
18 like that?

19 A No.

20 Q Any physical contact?

21 A No.

22 Q Of a sexual nature.

23 A No.

24 Q None at all?

25 A No.

1 Q Okay. So you're just speculating?

2 A That's just how they acted and that's what we always
3 assumed. So yes, I guess, I am.

4 Q Well when you testified under oath earlier to this
5 jury, you didn't say this was something you were
6 imagining or speculating about, you said as if it was
7 a fact.

8 A They acted like it was a fact. Just because I never
9 saw them be intimate doesn't mean that wasn't what it
10 was.

11 Q Well before you said they were acting intimate with
12 one another?

13 A I mean, I didn't see them kissing or nothing. I
14 mean, they stand beside each other holding hands. I
15 mean, they'd be right up against each other like you
16 would your partner. That's how they acted.

17 Q How well do you think you knew these people?

18 A I thought I knew them pretty well.

19 Q Okay. And you knew the car that they had?

20 A Yes. I know I could see it and recognize it was
21 their car. No, I don't know exact model the car but
22 that's been a couple of years ago.

23 Q Well at the time didn't you misidentify the model of
24 the car?

25 A Yeah. I admit that.

1 Q Now, you said earlier that when you went to the
2 officer initially for help, you said you wanted out
3 of that sort of lifestyle?

4 A Yes, sir.

5 Q Selling drugs?

6 A Yes, sir.

7 Q How did you go to the officer if you were
8 incarcerated at the time?

9 A I wrote him a letter while I was in jail.

10 Q And what jail was that?

11 A Greenville County Detention Center.

12 Q How long had you been there when you wrote that
13 letter?

14 A About a month.

15 Q And did you get out of jail soon after that letter?

16 A No, I was in there three months.

17 Q Three more months? How did you eventually get out?

18 A I did get a bond eventually, yes.

19 Q The bond was lowered for you?

20 A No, I got a PR bond.

21 Q PR bond?

22 A Uh-huh.

23 Q Explain to the jury, who may not know what a PR is,
24 what is a PR bond?

25 A It's a personal recognizance bond. You sign your

1 signature on the bond saying you'll show up to court.

2 Q So you didn't have to pay any money at all to get out
3 of jail?

4 A No. That's not uncommon when you sit there for three
5 months. Not when it's just a possession with intent
6 to distribute charge.

7 Q Well what was you're original bond before it got
8 reduced to a PR bond?

9 A I didn't have one, there was no bond.

10 Q Do you think anybody in law enforcement intervened to
11 help you get a PR bond?

12 A No, sir, I do not. I don't feel like they helped me
13 in any way as far as my charges or anything went.

14 Q But didn't you say you went to them for help?

15 A I went to them to get out of the lifestyle. I didn't
16 go to them to help me get out of my charges, no.

17 Q Okay. And when was the meeting with the officer in
18 jail?

19 A It happened in December of '09. I don't know the
20 exact date.

21 Q December of '09?

22 A Yes.

23 Q Okay. And this -- the buy that we're here for today
24 happened in March of 2010, right?

25 A Yes, sir.

1 Q A few months later. Okay. You testified earlier
2 that the last time you did methamphetamine was
3 January 5th of 2011?

4 A Yes, sir.

5 Q Is that correct?

6 A That's correct.

7 Q Okay. So you met with this officer supposedly to
8 help you out of this lifestyle in December 2009?

9 A Yes, sir.

10 Q And you're still doing methamphetamine as late as
11 January of 2011?

12 A Yes, sir, I was.

13 Q How exactly did the officer help you out of that
14 lifestyle?

15 A It -- he has helped me in a lot of ways.

16 Q Like what?

17 A It still was my own choices whether or not to stop.
18 But he helped give me options of how to get out of
19 that lifestyle.

20 Q Like what?

21 A I don't know how to explain it really. I mean, I
22 just don't know. I don't know how to explain it to
23 where it doesn't sound like I'm rambling on.

24 Q Take as much time as you need to explain.

25 A He'll talk to me, even now he still talks to me if I

1 have a problem, if I get upset, he still does.

2 Q How often do you talk with him?

3 A I don't know. Maybe once a month.

4 Q How do these conversations take place?

5 A I call him.

6 Q On the phone?

7 A Yes.

8 Q How long do these conversations typically last?

9 A Just a couple of minutes.

10 Q What do you say during these few minutes?

11 A Just whatever is bothering me, whatever I need to ask
12 him I'll ask and he'll him answer it and that's it.

13 Q Could you give an example of some of the things that
14 are bothering you that you asked him about?

15 A Okay another friend of mine was -- just recently, a
16 friend of mine, her sister was on methamphetamine.
17 And was going through some things, I called and asked
18 about that. At the time he didn't answer the phone
19 but that's the last time I called and asked him about
20 something. On what her sister should do legally to
21 help with her kids. With her sister's kids.

22 Q Did he ever call you back about it?

23 A Yes, we talked about it. But stuff like is what I
24 talked to him about.

25 Q Are you still doing buys for him?

1 A No, I do not.

2 Q When was the last time you did an undercover job?

3 A May of 2010.

4 Q About how many undercover operations did you
5 participate in?

6 A Nine. About nine.

7 Q Nine?

8 A (The witness nods.)

9 Q And those were with different people?

10 A Yes.

11 Q So nine different people?

12 A Yes.

13 Q You help set up?

14 A Yes.

15 Q Okay. Were these all people you knew?

16 A Yes.

17 Q You mentioned you went to drug rehab for about nine
18 months?

19 A Yes, sir, I did.

20 Q When was that?

21 A I went March 24th until December 22nd of 2011.

22 Q That was right after you pled guilty to your own drug
23 charges in Greenville?

24 A Yes. I was sentenced to a drug rehab program.

25 Q I didn't ask you that --

1 A I could have went to a 28 day program but I chose a
2 six month to a year program.

3 Q Right. But the Court ordered you --

4 A Yes.

5 Q -- to have rehab has part of your probation?

6 A Yes, they did.

7 Q That's why you want to rehab.

8 A Yes. That and I wanted to change.

9 Q Well, ma'am, you said you wanted to change back in
10 December of 2009?

11 A Right.

12 Q Why did it take until the Court ordering you to do
13 it--

14 A Methamphetamine is a very powerful drug. And it
15 makes you do things that you would never do under any
16 other circumstance. It's hard to let go of that.
17 And it's hard to let go of that lifestyle once you're
18 there.

19 Q And all during that time, how were the officers
20 helping you out of that lifestyle?

21 A They were just -- they were talking to me when I
22 needed it. I didn't stop until I made my own choice
23 to stop.

24 Q Uh-huh. And so the talking to you from time to time
25 obviously didn't make you stop doing it, did it?

1 A No.

2 Q You were doing it all this while during time when you
3 were working with the police. You were during meth
4 too.

5 A Yes, I was.

6 Q All right. You sound a lot different on that audio
7 tape than you do today. Were you high on
8 methamphetamine--

9 A No, I wasn't high then.

10 Q Are you sure?

11 A Yes, I was sure.

12 Q When was the last time you did meth before that tape
13 was made?

14 A Probably the day before.

15 Q The day before?

16 A Uh-huh.

17 Q Did you tell the police that?

18 A No. I wasn't high when I went around them, though.

19 Q But you said you were asking them for help and
20 they're promising you to help change your lifestyle.
21 But you do meth and you don't tell them about it?

22 A That's part of the addiction.

23 Q Ma'am, isn't it the truth that you went to them
24 because you wanted to stay out of prison? That's why
25 you volunteered?

1 A They did not help me with my charges.

2 Q You got probation, didn't you?

3 A I got probation because I never had any other charges
4 before except two fraudulent checks. I'd never been
5 in trouble before that. That's why I got probation.

6 Q During your guilty plea, it is not true that some
7 mention was made that you'd been cooperating with the
8 police?

9 A Yes.

10 Q To the Judge.

11 A Yes, they knew that.

12 Q And that -- didn't the Judge take that into
13 consideration when he gave you probation?

14 A I'm sure he did.

15 Q Now you're claiming that the person you talked to on
16 the phone, who is not the one who brought the meth
17 out to you, is this lady right here, Nancy Haworth.

18 A Yes, sir.

19 Q How many times did you talk to her before that,
20 before Ashley brought out the drugs, on the phone?

21 A A couple of times.

22 Q A couple of times?

23 A Yes.

24 Q Are you certain? One, two, three?

25 A About twice.

1 Q Twice.

2 A After that Ashley started answering the phone.

3 Q Okay.

4 A Because they were dealing with the kids or they were
5 doing this or they were doing that is why Ashley was
6 answering the phone.

7 Q Okay. It's on a speaker phone, right?

8 A Yes.

9 Q While this conversations happening and the officers
10 sitting right there next to you?

11 A Yes, they are.

12 Q Okay. So why would the officer testify that only one
13 such call was made?

14 A I don't know. The one initial call was made to
15 Nancy.

16 Q And then didn't you say that she called you back a
17 short time later?

18 A To tell me that she didn't have the amount of dope
19 that I wanted, yes.

20 Q So two different phone calls?

21 A Yes.

22 Q That are not recorded, have no recording of. And you
23 said earlier, it is not true, that you sure it was
24 Nancy and not Ashley because the voices sounded
25 different?

1 A Yes. Do their voices sound the same now when they
2 talk? No, they don't. They still have different
3 voices? You can tell the difference between Nancy's
4 voice and Ashley's voice.

5 Q Okay. So it was clearly two different people you
6 were talking to?

7 A Yes.

8 Q How long would you say meth affects you after you --
9 I'm not sure, do you smoke it?

10 A I was a IV user.

11 Q IV?

12 A Yes.

13 Q How long does that continue to affect you after you
14 inject yourself?

15 A According to the rehab I went to it takes 18 months
16 before your brain goes back to completely to how it's
17 supposed to be.

18 Q Okay. So does it affect your judgment?

19 A It can, yes.

20 Q Affect your perception?

21 A Yes, it can.

22 Q Ability to comprehend what's going on around you?

23 A Yes, it can.

24 Q Ability to recognize what you're looking at?

25 A Right.

1 Q Or what you're hearing?

2 A Yes, it can.

3 Q Thank you. Now you said you would not set up the
4 deal with Ashley if Ashley had answered the phone?

5 A No, I would not. I would not have done that.

6 Q Okay. But when Ashley arrived by herself, with the
7 meth, you had no problem going through with the
8 transaction.

9 A But I asked her where Nancy was. Because I wanted to
10 make sure Nancy knew she was over there selling this
11 stuff without her there. I asked her, Where's Nancy?

12 She said, she was at the house with Jamie's
13 kids.

14 Q Now you said you wanted to make sure what?

15 A Look, when you buy drugs from people, it's out of
16 respect for them not to go behind their back and do
17 disrespectful things as far as selling goes. Nancy
18 is who I always purchase from, not Ashley.

19 MR. NEWTON: Objection.

20 THE WITNESS: Sorry.

21 THE COURT: I'm sorry.

22 THE WITNESS: You wanted me to explain, that's
23 the best way I know how to explain.

24 BY MR. NEWTON:

25 Q What you meant what you said earlier, you wanted to

1 make sure Nancy knew what?

2 A That Ashley was bringing me drugs and not going
3 behind her back and trying to make money or do
4 something that Nancy didn't know she was doing. If
5 you don't--

6 Q So you're, doing all this for Nancy's benefit?

7 A No, I asked. It's just the way that they are. It's
8 just the way that lifestyle is. There's no way to
9 explain it to you to where you're not going to try to
10 twist it.

11 Q I want the truth.

12 A I can tell you the truth but I'm not trying to say
13 things that I shouldn't be saying either. Just like
14 I said, that is who I purchased drugs from, not
15 Ashley.

16 Q Isn't it true that Ashley and you did hang out quite
17 a bit and did meth together?

18 A Do what?

19 Q Isn't it true that you and Ashley did meth together
20 on more than one occasion?

21 A Yes, sir, it is. And Nancy was with us.

22 Q It's no secret that Nancy has a troubled past in some
23 ways, you know that?

24 A Yeah.

25 Q Did you know she was on probation at the time?

1 A No, I did not.

2 Q Okay. But this is somebody you claim to know well as
3 to what she's up to and what her activities are like?

4 A See her maybe once a week, once every two weeks just
5 to get high. Sold dope or buy dope, that's what it
6 was.

7 Q Oh, you sold some to her sometimes?

8 A Yes. It's not a secret that I was a -- I was a drug
9 dealer because I was.

10 Q So we're not talking about a case of you being the
11 low person on the totem pole trying to get a big time
12 dealer, is it?

13 A No, it is not.

14 Q Y'all were doing drugs together?

15 A Yes.

16 Q All right. So if you had hung out with Ashley before
17 and done drugs with her before and even sold her
18 drugs before, why would you be so reluctant to deal
19 with Ashley?

20 A Because Ashley was not the one with the dope
21 connection. That could get dope that amount I
22 wanted. It was Nancy. Ashley would never have any
23 amount of drugs on her at any time. Normally it's
24 less than a gram or so. If I bought drugs it was to
25 resale it. I would use some, yes. But it was mainly

1 to resale it and make money. So that's why I would
2 not bought normally from Ashley. But Ashley said
3 that Nancy sent her with it. And it was okay. So I
4 got the dope from Ashley.

5 Q Do you know somebody named Becky Moore?

6 A Yes.

7 Q Who is Becky Moore?

8 A I know the name.

9 Q Okay. Is she one of the people you ever set up
10 before?

11 A No.

12 Q Do -- you would have the jury to believe that you
13 weren't going to deal with Ashley, just Ashley,
14 because she couldn't provide you with the amount of
15 drugs you wanted?

16 A Correct. And normally when you have two people that
17 are in a relationship, that are in the drug world,
18 you have one that's a dealer and one's not. That's
19 how it is. You have one that has the supplier and
20 one that doesn't.

21 Q Is the amount of drugs that you were asking for on
22 this occasion considered a large amount of drugs?

23 A An 8-ball, no, it's not.

24 Q So you weren't looking to buy a large amount of
25 drugs, were you?

1 A No. I mean, that's normally what I bought at a time.

2 Q I believe the testimony was the purchase price was
3 \$170.00?

4 A For a half 8, yes, sir.

5 Q That's what you got?

6 A (The witness nods.)

7 Q Could Ashley easily have provided you with it?

8 A No, she couldn't.

9 Q But she did?

10 A Yes, she did.

11 Q You're just speculating again, aren't you? You
12 actually have no idea what happened in this situation
13 behind this scene?

14 A I know what they told me that night. I know what she
15 told me that she brought it -- she brought it to me
16 because of the fact that Nancy was there with Jamie's
17 children. I know what I was told that night.

18 Q We heard the tape, ma'am.

19 A Yes, sir.

20 Q You asked her a question, Where is Nancy?

21 A Yes.

22 Q And she said with the kids.

23 A Right.

24 Q There was nothing about well Nancy would have come or
25 anything like that. She was just answering a simple

1 question that you asked her.

2 A The only reason I asked where Nancy was is because I
3 was expecting Nancy to be with her. If I wasn't
4 expecting Nancy to be with her, I wouldn't have cared
5 where she was at. All I cared about was purchasing
6 drugs. And 99 percent of the time when I spoke to
7 Nancy or Ashley, that's all it was about was
8 purchasing drugs.

9 Q Isn't it the truth that you're specifically targeting
10 Nancy, you wanted to get Nancy. And that's why you
11 were disappointed when--

12 A It wasn't that I was wanting to get her or out to get
13 her being revengeful, no, it was not.

14 Q She ever done anything to make you mad?

15 A No, she had not.

16 Q Nothing at all?

17 A No. If anybody ever done anything to make me mad it
18 would be Ashley, not Nancy.

19 Q What did Ashley do to make you mad?

20 A Oh, she sold me fake dope one time. But that was
21 after--

22 Q So you have brought drugs --

23 A -- but that was after --

24 Q -- from her before?

25 A -- that was after this also. I brought that -- I'll

1 even tell you where I bought it at and when if you
2 want me to.

3 Q After this incident?

4 A After this under -- yes, after this buy.

5 Q And were the police with you?

6 A No. No.

7 Q So you working with the police one day--

8 A I done admitted to I was doing that.

9 Q Is your memory from two years ago sound, ma'am?

10 A Yes, it is. But I just admitted to you that I was
11 doing that.

12 Q The --

13 Beg the Court's indulgence for a moment.

14 THE COURT: All right, sir.

15 MR. NEWTON: No further questions of this
16 witness at this time.

17 THE COURT: Redirect examination?

18 MR. CLEVELAND: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. CLEVELAND:

21 Q Tonya, was that amount, the 1.7 grams or half an 8,
22 is that a single use amount of drugs? Could you use
23 that in one fail swoop?

24 A A half a 8-ball?

25 Q Yeah.

1 A Could I use that amount by myself?

2 Q Or typically in the drug world, as you said, do
3 people use those drugs in one shoot?

4 A It's normally if they done that amount of drugs by
5 themselves in one shot, it would kill them.

6 Q Okay. So that -- you testified that it was a small,
7 a relatively small amount of drugs.

8 A Yes.

9 Q But it was more than one use, is that correct?

10 A Yes, sir.

11 Q And that's how you would resell it? Would you split
12 it up or sell the whole amount?

13 A That amount?

14 Q Yeah.

15 A I would sell it out.

16 Q Okay.

17 A I mean, I might do a little bit to get high to be
18 real honest, but that amount, almost all of that
19 would be gone.

20 Q When you made the choice to get out of this
21 lifestyle.

22 A Yes.

23 Q Is that a choice you could have made overnight, just
24 like that?

25 A No, it's not.

1 Q How long did it take you -- do you know anybody in
2 the drug world or just that you've known that has
3 experience with addiction with methamphetamine to
4 change just like that?

5 A Not one person. It's still something I struggle with
6 everyday. But now I choose this life. Not that one.

7 Q Is that a choice you have to make consciously every
8 single day of your life?

9 A Every day you have to make it.

10 Q Did you have a trial for your charges or did you
11 voluntarily enter a plea?

12 A I entered a plea.

13 Q So when you were sentenced, as part of your sentence
14 to go to drug rehab, that was your choice to enter
15 that plea of guilty, is that correct?

16 A Yes, it was.

17 Q No one forced you in March to go to rehab, is that
18 correct?

19 A No, sir. And I chose a longer program than what was
20 require of the State.

21 Q What was required of the State?

22 A The 28 day program at Holmes View.

23 Q Okay. Why did you choose the longer program?

24 A Because I really wanted to change. This program I
25 went to, they help you get a job, they help you

1 re-establish your life.

2 MR. NEWTON: Judge, this is not really
3 responsive to any new substance brought out on
4 cross-examination.

5 THE COURT: Overruled, I'll permit it.

6 Go ahead.

7 BY MR. CLEVELAND:

8 Q You spoke of on cross-examination, your counselor
9 said it would take 18 months -- it could take up to
10 18 months for the human brain to recover?

11 A Fully recover.

12 Q You may have hit on that, that is a full -- that is a
13 full recovery?

14 A A full recovery, yes.

15 Q Are you completely whacked out of it for 18 months
16 until after your use of methamphetamine?

17 A No. No.

18 Q Tell me about, you spoke on cross-examination, about
19 how your cognitive abilities were impaired when you
20 were on methamphetamine. Your ability to perceive
21 things, hear and see, stuff like that.

22 A I was always angry.

23 Q Okay. Was that when you were high or when you
24 were -- is that specifically when you were high or
25 when you weren't?

1 A When I was high.

2 Q Could you tell a difference in the way your demeanor
3 was?

4 A Yes.

5 Q The way you perceived things?

6 A Yes.

7 Q How long would you stay high for typically?

8 A The longest I would stay up would be three days.

9 Q On one dose of methamphetamine?

10 A A shot would last 12 hours.

11 Q Okay. You testified that it was at least the day
12 before when you used methamphetamine?

13 A Yes.

14 Q Before the incident. And in your nine times, roughly
15 that you testified to, that you helped law
16 enforcement, did you ever show up high or close to
17 high?

18 A No, if I was high I wouldn't come. I wouldn't come,
19 I wouldn't call them back, nothing. I wouldn't go
20 because I didn't want to be around them like that.

21 Q Have they ever ask you to come and you ended being
22 high?

23 A Yes.

24 Q At the time and you did not show?

25 A Yes.

1 Q Did you tell them why you didn't show up?

2 A No, I lied. Just told them -- I made up some crazy
3 excuse on why I weren't there. But they knew.

4 Q Did they ask you if you were on methamphetamine when
5 you came to see them or this night in question?

6 A Yes, I'm sure they did.

7 Q What did you tell them?

8 A No. Because I would not go around them high. I
9 wouldn't.

10 Q When you were not high -- okay, so this night in
11 question, based on your recollection, were your
12 cognitive abilities impaired because of
13 methamphetamine?

14 A No.

15 Q Are you confident in your perception, Nancy Haworth's
16 voice, even though at the time that you were still
17 using, that you were talking to Nancy Haworth that
18 night?

19 A Yes, I am.

20 Q If -- would you have asked where Nancy was if this
21 had been a drug deal exclusively with Ashley Timms?

22 A No, I wouldn't. Because it wouldn't have mattered.

23 Q Not even in causal conversation?

24 A Not even in casual conversation.

25 MR. CLEVELAND: That's all the State has.

1 THE COURT: Recross?

2 MR. NEWTON: Very briefly.

3 RECROSS-EXAMINATION

4 BY MR. NEWTON:

5 Q You said it was a difficult choice to stay every day?

6 A Yes, it's something you struggle with, yes.

7 Q Right. You have an extra incentive to stay clean,
8 don't you? That is the fact that you're still on
9 probation?

10 A That and my children and my family is my other
11 reason.

12 Q You get drug tested as a part of probation?

13 A Yes, I do.

14 Q How often?

15 A I don't report but once every three to four months.

16 Q How often do they drug test you?

17 A I've only been drug tested once since December.

18 Q Greenville County probation?

19 A Yes, it is.

20 Q They ever given you drug test more often?

21 A They haven't drug tested me but one time.

22 Q What sort of drug test did they give you?

23 A A urine test.

24 Q Never a hair strand?

25 A No.

1 Q But you are aware if they did drug test you, which
2 they have a right to do.

3 A Yes.

4 Q That if you failed what would happen?

5 A I would violate probation.

6 Q All right.

7 MR. NEWTON: No further questions.

8 THE COURT: Thank you, ma'am, you may step down.
9 You may call your next witness.

10 MR. CLEVELAND: Thank you, Judge. State calls
11 Agent Brett Barwick to the stand.

12 BRETT BARWICK, after being duly sworn, testified
13 as follows:

14 THE CLERK: If you would have a seat and state
15 your name for the record, please.

16 THE WITNESS: My name is Brett Barwick.

17 DIRECT EXAMINATION

18 BY MR. CLEVELAND:

19 Q Agent Barwick, who do you work for?

20 A I work for the Pickens County Sheriff's Office.

21 Q How long have you been employed with the Pickens
22 County Sheriff's Office?

23 A I've been employed with Pickens County for just about
24 12 years now.

25 Q All right. In what capacity did you serve? Just

1 tell us about your law enforcement career, briefly?

2 A Certainly. I began my career as a uniformed patrol
3 deputy. Did that for about a year. After that, I
4 went into the accreditation division where I
5 constructed our policy and procedures manual. And
6 oversaw our accreditation policy. After that I went
7 into CID or Criminal Investigative Division. Which
8 is basically what you hear about detectives - cases.
9 And in 2005 I went into vice and narcotics unit
10 knowns as Special Operations Division.

11 Q What was your education before you got into law
12 enforcement?

13 A I graduated from Clemson University with a BA in
14 history and a minor in psychology.

15 Q Now, moving forward, just kind of cut to the chase,
16 were you on duty the night April -- I mean, March of
17 30th, 2010?

18 A Yes, sir, I was.

19 Q Did you participate in a controlled buy utilizing
20 Ms. Tonya Smith who just testified, as the informant?

21 A Yes, sir, I was part of that transaction.

22 Q Other -- were there other agencies involved other
23 than Pickens County Sheriff's Office?

24 A Yes, sir. We were in the process of working a joint
25 investigation between multiple agencies. Pickens

1 County was involved, Greenville County Sheriff's
2 Office was involved and the State Law Enforcement
3 Division at that time. It's fairly common for us to
4 pull our resources and work multi-jurisdictional
5 cases. That way it's -- methamphetamine doesn't stay
6 within county lines or state lines for that matter.

7 Q Tell me about the name that Tonya, who just
8 testified, provided you. Who did she say that she
9 could buy that from?

10 A She stated Ms. Nancy Haworth.

11 Q Now, did you witness the, I guess, the set up of that
12 deal, the phone calls she made?

13 A I was there. I was part of the origination of the
14 deal. What kind of happens at these deals is we may
15 have three or four agents there, everybody's kind of
16 got a job to do as it starts off, so. Investigator
17 Ayers was with the confidential informant monitoring
18 the cell phone. Myself, I was getting the, what we
19 call the wire or the transmitter, recording device
20 ready. Which means putting up antennas, getting
21 batteries powered, doing these things, getting the
22 type of concealment I was going to use on her person
23 ready. Agent Asbill was counting out money and
24 documenting the serial numbers. So he has to take
25 each bill and he writes out all the numbers on them,

1 so. Before these things, everyone's kind of got a
2 job to do. My part of it was setting the wire up on
3 her. I was there during the entire process, yes.

4 Q Does everybody -- you said everybody has a job. Is
5 everybody kind of coming and going, helping each
6 other out, getting ready for these things?

7 A Yes, sir.

8 Q Kind of standstill?

9 A No, sir. Everybody's kind of looking for a job to do
10 when you got a good group of people there.

11 Q Do y'all have to move expeditiously when you an
12 opportunity to make a deal like this?

13 A Yes. Every deal is different. Drug deals are fluid,
14 they change constantly. But yes, most of them is --
15 it is a timing thing. Methamphetamine is especially.
16 Most people who use methamphetamine get a little
17 paranoid and they worry about every SUV they see with
18 tinted windows. They think that's the police and
19 they have a lot of paranoid issues. So if they have
20 to wait on a drug deal, in other words, if they're
21 there with a brought and they're ready to go and
22 someone takes their sweet time showing up, they
23 automatically think something's going on. So a lot
24 of times we do move pretty quick from the time the
25 phone calls are made and people confirm that they

1 have drugs for us to get there in a safe manner.

2 Q Did you -- did you monitor the wire? And you heard
3 the recording played in court, is that what you heard
4 over the wire?

5 A Yes, sir?

6 Q On the night that's in question?

7 A Yes, sir.

8 Q Did Ms. Smith kind of play the part to that in
9 getting paranoid? She called several times?

10 A Yeah, she did make several phone calls and wanting to
11 know where people were. That's very common in drug
12 transactions. You know, we tried to record phone
13 calls before where we call somebody three times. You
14 know, back to back to back and then they'll answer.
15 But sometimes they won't answer, sometimes they will.
16 Sometimes they call you right back. You know, after
17 you changed your equipment over and getting ready to
18 go do a deal, somebody may call you. And things like
19 that happen. You know, like I said, they're very
20 fluid. Things just happen once these deals start.

21 Q Is there any reason y'all did not record the phone
22 calls?

23 A You know, honestly, it's been such an extended period
24 of time ago, I cannot recall why we didn't get a
25 recording of that one. It could have been a

1 multitude of reasons. Whether it be the recorder
2 wasn't set up or it was a call back. But, you know,
3 it's just one of those things it didn't happen that
4 night. But also this wasn't a deal we were expecting
5 to be a brokerage deal where one person is setting it
6 up and somebody else is delivering.

7 Q I just want to explain what you mean by brokerage
8 deal?

9 A Yes, yes. We weren't expecting that to be where
10 someone was delivering. Sometimes more painstaking
11 steps are gone through to make sure we record phone
12 calls and stuff if you know that. But, you know, we
13 have a saying, you know, it's dope, things like that
14 happen in drug deals.

15 Q That's what I was getting at. Based on -- leading up
16 to this point in the investigation, did you expect
17 anyone, other than who was on the other end of that
18 phone, to carry out the drug deal later?

19 A No, I expected Ms. Haworth to be there.

20 Q Did you hear this tag number as it was read back to
21 you?

22 A I did.

23 Q What was that tag number on that car?

24 A It was [REDACTED]. Or [REDACTED].

25 Q And that's the tag that's on Chad Ayers reads on the

1 recording, right?

2 A Yes, sir, I think he read it off a couple of times
3 for clarity.

4 Q I want to ask you to look at State's Exhibit 1. Do
5 you recognize that?

6 A Yes, sir, I do.

7 MR. CLEVELAND: Judge, subject to prior
8 stipulation of Defense counsel, State would like to move
9 State's Exhibit No. 1 into evidence.

10 MR. NEWTON: No objection.

11 (WHEREUPON, State's Exhibit No. 1 was admitted
12 into evidence.)

13 BY MR. CLEVELAND:

14 Q Does that report indicate who that tag is registered
15 to?

16 A It does.

17 Q Who was the tag registered to?

18 A South Carolina Plate [REDACTED], registered to one Nancy
19 Haworth.

20 Q What type of vehicle was that?

21 A According to the print out it says it's on a Toyota
22 Camary, four door.

23 Q What year model does it say?

24 A 1995.

25 Q Thank you. Was that the same vehicle that you

1 observed from -- were you situated as detective or as
2 Agent Ayers, not Ayers, I apologize, Agent Asbill
3 testified early.

4 A Yes, sir. Agent Asbill and myself were in my
5 vehicle. We were monitoring the transaction through
6 the receiver in our car. And we were across the
7 street from the Hot Spot. We were on the other side
8 of the four-lane road. In all honesty, we didn't
9 have the greatest view in the world but we were at an
10 elevated position and could see the vehicle pull up.
11 But whether or not I could tell if it was a Toyota
12 Camary from there, I couldn't say.

13 Q Okay. But you did see a vehicle pull up that was
14 consistent with--

15 A Yes, sir --

16 Q -- that description.

17 A Yes, sir. Four door, color, approximate year model,
18 things of that nature were consistent.

19 Q Now, you testified being seven years now with vice
20 and narcotics division, is that right?

21 A Yes, sir, I'm in my seventh year.

22 Q How often in your job description do you encounter
23 people either using -- or do you encounter people
24 that are using methamphetamine?

25 A Pretty regular. I mean, that -- I mean, Pickens

1 County unfortunately, that's one of the larger
2 problems that we have. And a lot of the cases I work
3 are methamphetamine related.

4 Q Are -- you work cases where people sell
5 methamphetamine?

6 A I'm sorry, I couldn't hardly hear you.

7 Q You work many cases where people sale
8 methamphetamine, there are sells involved?

9 A Oh, yes, sir.

10 Q You -- have you developed, I guess based on your
11 training and experience, do you have a pretty good
12 idea of someone you're dealing with is or is not high
13 on methamphetamine?

14 A Yes, sir, there's a distinct -- everybody's reactions
15 are different to things but methamphetamine is very
16 strong central nervous system stimulant. And if
17 someone is high when you're talking with them, the
18 symptoms are very apparent. I mean, there -- it's --
19 it's very noticeable. I don't know of anybody I have
20 met with that was able to conceal it but that doesn't
21 mean that happened. But it's hard a thing for them
22 to hide.

23 Q Based only on your observations that you've had as a
24 narcotics officer, Tonya Smith exhibit any signs of
25 high on methamphetamine when she showed up to work

1 with y'all that night?

2 A I saw no red flags when I talked to her that made me
3 think that she was high on that particular deal or
4 night or other times we worked with her.

5 Q What are some red flags?

6 A You know, you'll get a really increased paranoid.
7 You get -- your body is just -- everybody's familiar
8 with the fight-or-flight syndrome, you know, when you
9 get scared and your body does something, you get all
10 this energy. Well with methamphetamine you just have
11 that for a while it seems like. You just can't hide
12 it. People are fidgety, they're jumpy, it's just
13 really hard to explain it until you see it. But
14 there's a lot of physical energy they're having from
15 them to sit there and have a normal conversation with
16 you or something, it's just very difficult for them
17 to do.

18 Q Tonya didn't exhibit any of that, correct, to your
19 observations?

20 A Not that I saw that night, no, sir.

21 Q On other deals that you work, if people, informants,
22 cooperating individuals show up exhibiting these
23 signs, do you allow them to carry out transactions?

24 A If we knowingly understand someone is impaired or
25 under the influence no, sir, we don't want to do

1 that. There's just too many that can go wrong.

2 Q Do people that are high on methamphetamine or other
3 drugs, can they jeopardize an investigation in your
4 experience?

5 A Yes, sir.

6 Q Okay. Is that a liability for the sheriff's office?

7 A I think it could definitely be considered that, yes.
8 I mean, things -- bad things could happen in those
9 situations, I'm sure.

10 Q Now, under this investigation, is that your voice
11 that appears on the beginning of this tape that we
12 listened to in court today?

13 A Yes, sir. I preambled that which is basically one of
14 our agents, we normally do give a date and a time and
15 a few things. That way when you start the tape
16 you'll understand exactly where it came from.

17 Q And why, just for superfluous review maybe, did you
18 say it was Nancy Haworth and she would have someone
19 else with her at the beginning of that tape?

20 A Well, Nancy and Ashley has a tendency to be together.

21 Q Okay. Well, I mean, as far as this investigation
22 goes?

23 A Well Tonya told us that Ashley may be with her.

24 Q Okay. Very good. Now, after this investigation was
25 complete or not complete but the deal had gone down,

1 did you take possession of the drugs in this case?

2 A Yes, sir, I took possession of them. Once all the
3 agents, everybody met back and Investigator Ayers
4 from Greenville County had turned the methamphetamine
5 over -- the Tylenol bottle with the methamphetamine
6 over to me for my possession.

7 Q All right. I want to show you what's marked as
8 State's Exhibit No. 3, take a look at that. Do you
9 recognize that item?

10 A Yes, sir, I do.

11 Q What is that?

12 A This is a Tylenol, a plastic Tylenol bottle, a small
13 round one. That contained the small -- what's a
14 jewelers bag of methamphetamine of crystal substance.
15 And it was -- it was wrapped up and packaged inside
16 the Tylenol bottle. So it bears my initials and case
17 number and date on the -- on the baggy itself with
18 the crystal substance which was methamphetamine. And
19 also on the Tylenol which was the Tylenol container
20 which was the -- what it was packaged in when we took
21 it.

22 Q All right. Does that, other than the writing on
23 there that you testified to, is that basically the
24 same condition it was on March 30th, 2010?

25 A Yes, sir, it was sealed.

1 Q Did you seal it when you got it?

2 A Yes. When I took possession over it, I took it to
3 our office where I filled out the paper work on it, I
4 sealed it, submitted it into our Pickens County
5 identification division to take to the Greenville
6 Forensic Lab for analysis.

7 MR. CLEVELAND: Your Honor, at this time the
8 State would like to move State's Exhibit No. 3 into
9 evidence. Subject to the prior stipulation.

10 MR. NEWTON: No objection.

11 THE COURT: It would be admitted without
12 objection.

13 (WHEREUPON, State's Exhibit No. 3 was admitted
14 into evidence.)

15 BY MR. CLEVELAND:

16 Q What did y'all do after you took -- tell me how the
17 investigation ended, I guess, is what I want to know.
18 What you took possession of the drugs you testified
19 to, what did the other individuals do?

20 A Yes, sir. Well afterwards we did a debriefing when
21 everyone got back together. Agent Asbill took the
22 statement from Ms. Smith. We did the rest of our
23 duties which was searching the confidential
24 informant, searching the vehicle and tying up all the
25 loose ends on that. Then from there I took that to

1 Pickens where I turned it into ID and they went back
2 to Greenville.

3 Q Was Tonya free to leave after this?

4 A Yes.

5 Q After the end of the investigation?

6 A Yes, sir.

7 Q You are -- it is correct you're still a police
8 officer in Pickens County, would you have let an
9 individual that you suspected to be high on
10 methamphetamine drive a vehicle away?

11 A No, sir, I wouldn't have. But that's not how -- we
12 picked her up, I believe. But no, we wouldn't let
13 her drive a vehicle under that condition.

14 MR. CLEVELAND: Thank you, that's all the
15 questions I have at this time. Please answer any
16 questions Mr. Newton may have.

17 THE WITNESS: Yes, sir.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. NEWTON:

21 Q Was Nancy Haworth arrested right after this
22 transaction?

23 A I'm sorry?

24 Q Was -- when was Nancy Haworth arrested for this
25 charge?

1 A You know, I'm not sure, I'll have to look back on the
2 service of the -- it was sometime -- often times our
3 cases, we have a pretty big time lapse before we
4 actually serve arrest warrants.

5 Q Okay, so several months later?

6 A Sure.

7 Q Now you said that you expected Nancy Haworth to be
8 there. Isn't it true that that expectation is based
9 entirely on simply what you were told by the CI?

10 A Based on a conversation and what investigator
11 observed, yes.

12 Q Okay. So if what she's telling you is not accurate
13 then you shouldn't have expected Ms. Haworth to be
14 there, correct? If she'd given you inaccurate
15 information?

16 A The information that I could speak of today, I got
17 from her, I would have to have that relaid from her
18 and Investigator Ayers.

19 Q Ask you a question though, would you trust -- would
20 you ride in a car with somebody -- somebody else been
21 driving if they had done meth the night before?

22 A I believe I wouldn't be riding in the car with
23 anybody who had done meth. I believe I would be
24 driving.

25 Q You wouldn't feel safe?

1 A I trust myself driving, I don't trust anybody else.
2 Especially who uses drugs at any time.

3 Q Would you expect they would be impaired, the ability
4 to drive a car would be impaired?

5 A Depending on the hour of time that they were off of
6 it. Most of the people I've interviewed and dealt
7 with, the high cycle last anywhere from six to 12
8 hours. Most of them being around 7 or 8. I would
9 assume somebody could operate a vehicle safely. But,
10 you know, like I said, I drive. I don't ride with
11 much at all.

12 Q You testified earlier that you looked for things like
13 red flags. For example, fidgety, jumpy behavior,
14 lots of physical energy, wouldn't you say that the
15 person that we heard on that audio tape sounded
16 fidgety and jumpy?

17 A Yeah, some things come across the tape that way. I
18 was there, I talked with her, I looked at her.
19 It's -- day difference from what I looking for from
20 what you think -- what you seem like you heard on the
21 tape. She wasn't to the level of what I think
22 anybody was high, no, sir.

23 Q Is the sound on the tape distorted in some way?

24 A It's just audio recording, it's not really distorted,
25 no.

1 Q Are we hearing --

2 A It's more than -- I'm sorry go ahead.

3 Q Are we hearing how she actually sounded at the time?

4 A Oh, yes.

5 Q So that tape is an accurate representation of what
6 she sounded like?

7 A What she sounded like it. But it was a lot more than
8 just sound.

9 Q Okay.

10 A People's demeanor.

11 Q Well didn't she admit right there on the stand that
12 she had done meth the day before?

13 A I believe that's what she said, she had done meth the
14 day before.

15 Q You didn't see any sign of that at all?

16 A Hu-huh. Not at that time, no, sir.

17 Q She saying that she's been strung out as many as
18 three days in a row before after doing
19 methamphetamine?

20 A I don't recall that but it's possible.

21 Q When y'all do these drug buys, the money that is used
22 to purchase the drugs, are those marked bills in some
23 way? Are they marked for some special way for later
24 for identification purposes?

25 A Typically we record the serial numbers which is what

1 Agent Asbill was doing. He was writing down all the
2 serial numbers off of the bills itself.

3 Q Why do you do that?

4 A As I was explaining earlier, drug deals are somewhat
5 fluid. The whole thing could change at a moments
6 notice. It might not be a situation where we go in
7 and arrest people right away. A lot of things could
8 change on that. It could be a situation where it
9 could be a traffic stop and safety hazards. Things
10 came up and you want to be able to document who has
11 your money. I mean, if it's going to be three months
12 down the road when an arrest is made, obviously that
13 money is going to be long gone. But if things change
14 and if something that happened more so right away, we
15 would be able to document the funds and show they had
16 it in their pocket from ours to theirs.

17 Q Well why didn't you make an arrest right after this
18 transaction happened? Why did y'all wait several
19 months down the road?

20 A We never do that. Unless it's absolutely necessary.
21 Investigations run what we do long-term
22 investigation. If we did an arrest and ran in as
23 soon as we did one drug deal with someone, then that
24 particular confidential is we call is Burned.
25 Everybody's going to pick up the phone, they're

1 going to say this person's cooperating. And then
2 that person is going to be able to do nothing else.
3 Because we didn't do that, run in right away, we were
4 able to utilize Ms. Smith and she was able to help us
5 and further with many other drug deals. So it makes
6 no sense to run in right away. Unless you don't know
7 the identification of someone or a satisfy reason.
8 But as I say, they're very fluid, things change. In
9 this particular case we we're able to further
10 investigation by not doing that.

11 Q Against other people?

12 A I'm sorry?

13 Q Against other people?

14 A Yes.

15 Q How many other people?

16 A Quite a few.

17 Q What does quite a few mean?

18 A Well we just issued Indictments for 26 people in
19 another case.

20 Q That she help set up?

21 A She was involved in the early goings in this case
22 that evolved into a lot more. But if we had ran in
23 on that, then she would have got burned and we would
24 not have been able to proceed forward with the way we
25 went. It's kind of like -- you look at a situation,

1 as again it gets fluid, things change as they go. If
2 we had made this arrest right then it might have
3 prevented us from doing something down the road.

4 Q Okay. So when she testified earlier that she had
5 help set up nine other people, that just was not
6 true?

7 A No, it had nothing to do with her. She may did seven
8 or eight but the events that led up one to two to
9 three on down the road. Let me explain it this way,
10 start over.

11 Q Well let me rephrase my question, I think you
12 misunderstood. My question was how many buys did the
13 CI here help set up?

14 A Oh yeah, something what she testified to would be
15 right. I don't know the exact number. The actual
16 physical buy she did herself will probably be
17 somewhere in that area.

18 Q Okay. I guess what you were talking about before,
19 those arrestees led to other cases?

20 A Yes, sir.

21 Q Okay.

22 A As I said, it just kind of evolves as it goes. And,
23 you know, one small case can turn into two, can turn
24 into four and the next thing you know you can be in a
25 pretty major trafficking case. And that's how these

1 things work.

2 Q Okay. You said, I believe you said correct me if I'm
3 wrong, that if somebody -- if a CI shows up to do a
4 buy under your supervision and they're high on
5 methamphetamine, you won't do anything with them on
6 that day?

7 A Right.

8 Q Is that true?

9 A Right. If I can tell, if I understand or know that
10 somebody's high, yeah, I'm not going to do that.

11 Q Okay. So I'm just -- so do you mean to say that
12 sometimes they show up to these buys, the CI you're
13 going to use, and they're obviously high as a kite?

14 A In all honesty, I've had very few times that that's
15 ever happened that I had anybody show up under the
16 influence. We've had a few things found of people
17 when we search cars and search them but most of the
18 time when they're actually coming to meet us, most
19 people generally don't want to come high when they
20 meet with law enforcement.

21 Q And the circumstances that they have in the past, did
22 you arrest those people and charge them?

23 A Arrest them for what? For being high?

24 Q Did you search them to see if any drugs are on them?

25 A We search them --

1 Q Or in their vehicles?

2 A Uh-huh. Anybody we come in contact with like that.

3 If we plan on doing a deal we search the person, we
4 search the vehicle. Anybody who's riding with them,
5 a passenger or somebody like that. Everybody in
6 there is searched.

7 Q Okay. So in those rare circumstances where people
8 have shown up high to do undercover work and maybe
9 you did find drugs on them, did you charge them?
10 With another crime of possession.

11 A I never had someone show up with drugs that I found
12 on them. On my search.

13 Q Okay. But are you aware that some of your CIs are
14 working with you one day and getting high the next
15 day?

16 A Yes, sir. I mean, you -- you hope that people can
17 get their life right in one fall swoop and they can
18 put all this behind them. But yeah, we've heard
19 stories and we have other CI's that may tell us that
20 somebody else has initially used and stuff like that.
21 I mean, it's unfortunately people are human and they
22 fall sometimes, you know. Even when they're trying
23 to do the right things. But I've heard stories of
24 that.

25 Q Did she tell you that she had gotten high on

1 methamphetamine the day before?

2 A You know, I really didn't have a lot of contact with
3 Ms. Smith as this went on. Investigator Ayers was
4 mostly her point of contact. He was mostly the
5 officer who did most of the briefings and spoke with
6 her.

7 MR. NEWTON: No further questions at this time.

8 THE COURT: Any redirect?

9 MR. CLEVELAND: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. CLEVELAND:

12 Q You testified as to red flags, Tonya is that, the way
13 she's acting on that tape, is that a red flag?

14 A Obviously, it did not spur my interest at the time.
15 I mean, Tonya, when she was in the earlier days, she
16 was a little more, I guess, say a little more high
17 strung than she is now.

18 Q Basically what I'm getting at is what, to the
19 untrained ear, what may sound spastic to you, does
20 that sound like someone high on methamphetamine on
21 that tape?

22 A No. I had contact with her that day. I saw her, I
23 talked to her, I saw her body language. I mean, I
24 saw her face, her pupils, the whole nine yards. She
25 wasn't high.

1 MR. CLEVELAND: Thank you, no further questions.

2 MR. NEWTON: Nothing further.

3 THE COURT: Thank you, you may step down.

4 You may call your next witness.

5 MR. CLEVELAND: Judge, at this time the State
6 would like to, pursuant to our early stipulation, enter
7 State's Exhibit No. 5. Which is the drug report and
8 publish that to the jury.

9 MR. NEWTON: No objections and subject to my
10 initial caveat about it.

11 THE COURT: Absolutely.

12 MR. CLEVELAND: Ladies and gentlemen of the
13 jury, the drugs -- we have reached an agreement that the
14 drugs in this case are drugs, it is methamphetamine. To
15 that effect we're going to put in the report that comes
16 from the Greenville County Crime Lab where it was tested
17 and certified to be 1.46 grams of methamphetamine. That's
18 the only reason I'm putting in this report. It's got
19 Ashley Timms and Nancy Haworth's name but this is just
20 because they were the people investigated. This piece of
21 paper along does not mean that Ashley Timms or Nancy
22 Haworth owned this methamphetamine. All that's saying is
23 that this is this bag is indeed methamphetamine. That's
24 all we're saying.

25 MR. NEWTON: I agree.

1 THE COURT: Agreed upon stipulation, thank you.

2 MR. CLEVELAND: And entered into evidence, Your
3 Honor?

4 THE COURT: It's admitted into evidence.

5 (WHEREUPON, State's Exhibit No. 5 was admitted
6 into evidence.)

7 MR. CLEVELAND: At this time the State rests,
8 Your Honor.

9 THE COURT: State rests.

10 Mr. Newton.

11 MR. NEWTON: Defense calls Ashley Timms.

12 MR. CLEVELAND: Pardon me for a minute, Judge.
13 May we approach?

14 THE COURT: All right.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury but out of the hearing of
17 the jury.)

18 MR. NEWTON: Your Honor, I move for a directed
19 verdict.

20 THE COURT: All right, let me, ladies and
21 gentlemen, let me ask you to step back in the jury room
22 for a few minutes while I discuss with the lawyers a
23 matter of law. It shouldn't be long.

24 (WHEREUPON, the jury left open court at
25 approximately 3:20 p.m.)

1 MR. NEWTON: Your Honor, I move for a directed
2 verdict on the basis the only evidence whatsoever tying
3 Ms. Nancy Haworth to this drug transaction is the
4 testimony of someone who said she recognized her voice on
5 the phone. After admittedly doing meth the day before.

6 THE COURT: All right, I really think that goes
7 to veracity of believability to the weight of the
8 evidence. Therefore, would be a matter for the jury.

9 MR. NEWTON: Okay, thank you, Your Honor.

10 THE COURT: Would deny your motion.
11 Have you discussed with you client her right to
12 testify?

13 MR. NEWTON: Now would be a good time.

14 THE COURT: All right, let me go ahead and do
15 that then.

16 Ms. Haworth, we have now reached a stage in the
17 proceedings where you would have the right to present your
18 defense. You have the right to claim all the protections
19 given to you by the Fifth Amendment to the Constitution of
20 the United States of America. Which states in part as
21 follows, No person shall be compelled in any criminal case
22 to be a witness against himself or herself. This means
23 you cannot be required to testify. You do have the right
24 to testify though. However, no one can make you testify.
25 This is a personal right that you have and no one can

1 waive that right except you. If you do decide to testify
2 though you would be subject to the same rules that govern
3 other witnesses that may be examined or cross-examined on
4 any relevant issue in the case. And if you have any
5 convictions involving dishonesty, false statements or
6 crimes punishable by imprisonment for more than one year
7 and a Court determines that the probative value of this
8 evidence outweighs its prejudicial effect to you, the
9 State would be able to introduce your record to attack
10 your credibility. If you decide to testify, the decision
11 on your part must be made freely and voluntarily with the
12 knowledge and protections given to you by the Fifth
13 Amendment. If you decide not to testify, I will instruct
14 the jurors that they cannot give that fact, the fact that
15 you didn't testify, any consideration whatsoever. And
16 there's to be absolutely no prejudice to you because you
17 do not testify. It's left entirely up to you what you
18 wish to do though. You can discuss this with anybody,
19 your family, friends as well as your attorney. Have you
20 understand thus far what I've said?

21 MS. HAWORTH: Yes, sir.

22 THE COURT: Have you made a decision about what
23 you want to do? Have you decided whether you want to
24 testify or not?

25 MR. NEWTON: Your Honor, I may need to discuss

1 Honor.

2 MR. NEWTON: No, Your Honor.

3 THE COURT: All right, let's bring the jury in.

4 (WHEREUPON, the jury came into open court at
5 approximately 3:50 p.m.)

6 THE COURT: Welcome back, ladies and gentlemen.

7 I know that I told you it shouldn't be long. And I
8 apologize. I think we are now ready to resume the case.
9 If you would recall, the State has rested. It's now
10 the -- the Defendant now has an opportunity to put forward
11 any defense if the Defendant decides to do so.

12 You may call your first witness.

13 MR. NEWTON: The Defense calls Ashley Timms to
14 the stand.

15 THE CLERK: Place your left hand on the Bible,
16 raise your right.

17 ASHLEY TIMMS, after being duly sworn, testified
18 as follows:

19 THE CLERK: If you would have a seat, state your
20 name for the record, please.

21 THE WITNESS: May name is Ashley Timms.

22 DIRECT EXAMINATION

23 BY MR. NEWTON:

24 Q Ashley, how are you this afternoon?

25 A I'm great. How are you?

1 Q Fine. Do you know Ms. Nancy Haworth?

2 A Yes, sir.

3 Q How do you know her?

4 A I've known her since I was 18 years old. She's
5 pretty much been a mother to me. You know, for five,
6 six years, every since I was 18. She's been there
7 for me when no one else has.

8 Q How old are you now?

9 A I'm 23.

10 Q What do you mean she's been there for you, could you
11 elaborate a little more on that?

12 A/ My father is -- he's a drug addict and he is not
13 there for me. My mom is pretty much the same way,
14 has not been there for me. So I pretty much have no
15 family. And she's -- she's been there, you know,
16 through the hardest times in my life, through my
17 grandmother's death. Which she passed away the day
18 after Christmas so, you know, that's been hard. She
19 just helps me out, you know. Just...

20 Q Okay, do you live with her or did you at one time?

21 A Yes, sir.

22 Q How long did you live with her?

23 A For four or five years.

24 Q What time period was that?

25 A From when I was 18 to just a few months ago. Well

1 not even a few months ago.

2 Q Do you realize or know why she's in court today,
3 don't you?

4 A Yes, sir.

5 Q You know what she's charged with?

6 A Yes, sir.

7 Q Were you charged with the same crime?

8 A Yes, sir.

9 Q What's the status of your case?

10 A Meaning --- what's the status?

11 Q Well is it still waiting on a trial?

12 A No, I'm pleading guilty.

13 Q Have you already pled guilty?

14 A Yes, sir.

15 Q When did you do that?

16 A This morning.

17 Q Okay, have you been sentenced yet?

18 A No, sir.

19 Q All right. I believe you've sat through most of the
20 trial, haven't you?

21 A Yes, sir.

22 Q So far. Okay. Do you know Ms. Tonya Smith?

23 A Yes, sir.

24 Q How do you know her?

25 A I met her through friends, you know, friends of

1 pretty much through Nancy's brother and other people.

2 Other so called friends.

3 Q Okay. Isn't it true that Nancy had a drug problem at
4 one time?

5 A Yes, sir.

6 Q Are you aware that she actually went to court in 2009
7 and pled guilty to a charge of possession of
8 methamphetamine?

9 A Yes, sir.

10 Q She received -- do you know what sentence she
11 received of that?

12 A I believe it was six months house arrest and two or
13 three years probation.

14 Q Is she still on that probation?

15 A No, sir, she completed probation.

16 Q She successfully completed?

17 A Successfully completed.

18 Q She was never violated, was she?

19 A No, sir.

20 Q Do you know if she was given drug tests during the
21 time of her probation?

22 A Yes, sir.

23 Q Okay. And she was on probation in March 30th of
24 2010, wasn't she?

25 A Yes, sir.

1 Q Have you ever done drugs with Tonya Smith before?

2 A Yes, sir.

3 Q About how many times?

4 A I would say maybe 10 or more.

5 Q Okay. And so she was well acquainted with you?

6 A Yes, sir.

7 Q Y'all were doing drugs together?

8 A Yes, sir.

9 Q Did you ever buy any drugs from her?

10 A Yes, sir. Not big amounts, it would just be
11 something personal for myself.

12 Q This is from Tonya Smith?

13 A Yes.

14 Q What sort of drugs would you buy from her?

15 A Methamphetamine.

16 Q Did you ever sell any drugs to her, to Tonya Smith?

17 A Like she stated it was -- I did but it was fake. It
18 wasn't real so I guess you could say--

19 Q One time?

20 A Yes, sir.

21 Q Was she mad about that?

22 A Oh, I'm sure she would -- she were.

23 Q Do you remember approximately when that was?

24 A No, sir, I can't recall.

25 Q Well, I mean, was it before March 30th of 2010?

1 A Oh yeah, definitely.

2 Q How long before?

3 A I would say maybe a month or so before.

4 Q Okay. The house that you were living in with Nancy,
5 was that a owned house or rental house or what?

6 A Rental.

7 Q Y'all were renting?

8 A Yes, sir.

9 Q Were both of you helping pay the rent?

10 A Yes, sir.

11 Q Was anybody else living there with you?

12 A Yes. It was Nancy's nephew and her brother had
13 stayed there for, you know, a few weeks.

14 Q Okay. How long did the nephew stay there?

15 A Until -- until we moved to an apartment. And we both
16 got separate apartments.

17 Q What's his name?

18 A David Shirley.

19 Q Did you and Nancy share the same cell phone?

20 A Yes, sir.

21 Q Who had it in their possession most of the time?

22 A Me.

23 Q What percentage of the time would you have the cell
24 phone in your possession?

25 A Probably 97 percent of the time because I always have

1 to have a phone in my hand.

2 Q How about the vehicle, did you share the same
3 vehicle?

4 A Yes, sir. The vehicle had been mine, at the time it
5 was her name. Which is in my name now but it's
6 always been my vehicle.

7 Q As a matter of fact she couldn't legally drive?

8 A Oh, she had no license, you're right.

9 Q How long had she been without a license?

10 A As long as I've known her.

11 Q Okay. So she just wasn't driving?

12 A No, sir.

13 Q So you would always do the driving?

14 A Yes, sir.

15 Q All right. Calling your attention specifically to
16 March 30th 2010, did Tonya Smith call your cell
17 phone?

18 A Yes, sir.

19 Q Where were you at the time?

20 A I was at Becky Moore's house.

21 Q Who is Becky Moore?

22 A She's just another person that sold drugs.

23 Q Okay. I suppose in those days you knew a lot of
24 people who sold drugs, didn't you?

25 A Yes, sir.

1 Q I guess y'all all know each other?

2 A Yes, sir.

3 Q Are you on drugs? Are you -- you gave up meth,
4 didn't you?

5 A Yes, sir.

6 Q Okay. Has your appearance or anything changed,
7 physical condition changed since you gave up meth?

8 A Oh yes.

9 Q How so?

10 A I was 119 pounds now I'm 155. And there are people
11 in this courtroom that can vouch for that.

12 Q How tall are you?

13 A 5'7.

14 Q So you're 5'7 and you weighed 119 pounds?

15 A Yes, sir.

16 Q Was that due to the methamphetamine?

17 A Yes, sir.

18 Q Okay. Were you inside of Becky Moore's house or out
19 in the yard?

20 A I was outside some of the time. Because like I said
21 we were waiting for Nancy's nephew, Jamie, to come
22 get the kids. Because we'd had them for a week. And
23 he told us to meet him there. But I was in the house
24 some of the time, too.

25 Q So y'all were there waiting?

- 1 A Waiting for him to come pick up his kids.
- 2 Q Why did y'all have the kids?
- 3 A Just -- they were just spending a week with us.
- 4 Q Okay. And by us you mean?
- 5 A Nancy and I.
- 6 Q How old are those kids? Or were they?
- 7 A At that time they were two and three.
- 8 Q Who would take care of the kids at that time?
- 9 A You mean?
- 10 Q Between you Nancy?
- 11 A Where we were at that point in time?
- 12 Q No, when they stayed with you? Spent about a week
- 13 with you?
- 14 A Yeah, both of us.
- 15 Q Okay. Nancy was already off meth at that time?
- 16 A Yes, sir.
- 17 Q Okay. She had already gone to court in 2009, was on
- 18 probation?
- 19 A Yes, sir.
- 20 Q Getting cleaned up.
- 21 A Uh-huh.
- 22 Q However, isn't it true that people knew her from
- 23 earlier days like Tonya Smith who was a drug user?
- 24 A Yes, sir.
- 25 Q They thought they could call her up and get drugs

1 from her?

2 A Yes, sir.

3 Q Now, you were still doing it at that time, weren't
4 you?

5 A Yes, sir.

6 Q Okay. Was Nancy even aware that you got this phone
7 call?

8 A She had no clue as to what I was doing.

9 Q Okay. I mean, okay, she saw that maybe you got a
10 phone call?

11 A Yeah, she saw me get a phone call but I get plenty of
12 phone calls, so.

13 Q Was she standing there to hear the conversation?

14 A No, sir.

15 Q Where was she?

16 A Outside with the kids. They were riding the little
17 three wheeler and playing basketball.

18 Q How did she see that you got a phone call?

19 A I was outside at that time and then I went into the
20 house.

21 Q Okay. So you took the call and went inside the
22 house?

23 A Yes, sir.

24 Q What did you discuss on the phone?

25 A It was Tonya discussing that she was looking for

1 work, as she says.

2 Q Did you know what that meant?

3 A Yes, sir. Meaning she wanted methamphetamine.

4 Q Did you have any to give to her at the time?

5 A I did not.

6 Q Did you know somebody there who did?

7 A Yes, sir.

8 Q Who was that?

9 A Becky Moore.

10 Q How old is Becky Moore?

11 A In her 40's, late 40's.

12 Q Does she have what you might describe as a raspy
13 voice?

14 A Yeah.

15 Q All right. How many times did you talk back and
16 forth to Tonya Smith on this occasion.

17 A She blew my phone up. It was way more than three
18 times. It was probably six, seven, eight. I mean,
19 she was blowing the phone up.

20 Q Now, the drugs were coming from Becky Moore, right?

21 A Yes, sir.

22 Q You just kind of arranged that?

23 A Yes, sir.

24 Q So how -- tell the jury how--

25 A She just--

1 Q Did you go to Becky Moore and say--

2 A Yeah, we were there, you know, picking the kids up.

3 And I got the phone call. So she just, the lady I

4 refer to as Becky Moore, just happened to have it.

5 And she gave me what Tonya wanted and had me take it

6 to the Hot Spot on 123 where I gave the drugs to her

7 and got the money. And then I took it back to Becky

8 Moore.

9 Q Did you keep any of that money yourself?

10 A No, sir.

11 Q Who did you give it all to?

12 A Becky Moore.

13 Q Okay. So why would you do something like that? I

14 mean, without getting anything out of yourself?

15 A I mean, because I was doing -- she would -- she did

16 drugs with me. Because at the time, like I said, I

17 was doing drugs then. So she would, you know, she'd

18 smoke some with me. That's basically what I got out

19 of it.

20 Q Basically, just doing a fellow druggie a favor?

21 A Yes, sir.

22 Q She might return the favor some day.

23 A Yes, sir. Now I wish I hadn't.

24 Q Okay. Did you tell Nancy Haworth you were taking

25 drugs over there to deliver to Tonya Smith?

1 A I was going -- I said I was going to the Hot Spot to
2 get some drinks and get some blow juices. You know,
3 the drinks for kids, blow juice for the two kids.

4 Q So that's what you told Nancy?

5 A Yes, sir.

6 Q You didn't tell her the truth?

7 A No, sir.

8 Q So she had no knowledge of that phone conversation
9 nor what you were doing, correct?

10 A Not that I know of.

11 Q All right. Now, Tonya had testified that she made
12 the initial call and then a call came back later
13 saying they don't have a full 8-ball, only half of
14 it. Was that you talking or was that Becky Moore?

15 A It had to have been me because I just don't remember.
16 I mean, she may have heard Becky Moore in the
17 background stating she didn't have that whole amount.

18 Q Okay.

19 A But I answered the phone to that call. She could
20 have heard her in the background. I mean...

21 Q So you say you answered the phone, to the best of
22 your memory, what exactly did Tonya Smith say?

23 A She said she wanted half a 8-ball -- I mean, she
24 wanted an 8-ball. And so I was talking to the lady
25 Becky, who said that she did have the whole amount,

1 she only had half 8.

2 Q Okay.

3 A And that could have been the raspy voice -- I mean,
4 my voice doesn't sound raspy but she may have well
5 heard her in the background. But I did answer the
6 phone when the whole 8-ball, half 8, issue was going
7 on.

8 Q So it was you having the entire conversation, you and
9 Becky Moore, while Nancy was outside in the yard?

10 A Yes, sir.

11 Q Positive about that?

12 A Yes, sir.

13 Q Okay. So --

14 A Nancy had the phone later -- earlier in the day but
15 during this time, when all this incident happened, I
16 am 100 percent I had the phone.

17 Q You're 100 percent certain you're the one that took
18 that call?

19 A Yes, sir.

20 Q Arranged the deal?

21 A Yes, sir.

22 Q Then drove it out there yourself?

23 A Yes, sir.

24 Q Had you been yelling before you took that phone call?

25 A Yes --

1 Q Had you been raising your voice, was your voice sore
2 or anything like that?

3 A Yeah, it actually was.

4 Q Why is that?

5 A These are two -- these kids are very rowdy and I was
6 just frustrated that I was being lied to by their
7 dad, you know. And they were just at one time trying
8 to run up the rode and I had -- I was just -- I had
9 to holler at them, you know. Not being mean to them
10 or anything, you know, just -- but that could have
11 been -- I could have been yelling.

12 Q Okay.

13 A Also when you smoke methamphetamine your voice
14 goes -- it does mess with your throat.

15 Q Well if it was you who took the calls, how do you
16 explain people saying it sounded like two different
17 people, how do you explain that?

18 A Maybe because of people in the background. I know
19 Becky was in the background at one time. And she has
20 two sons. And I think there was one other person
21 there. You know, I didn't even know the one female
22 that was in the house, I didn't even know her. But
23 if you're on the phone with someone and you hear a
24 bunch of people talking in the background, you
25 know...

1 Q Well, it is possible that it was really your voice
2 all along, that maybe for one reason your voice
3 sounded different initially than it did later?

4 A Yes, sir, that's very possible.

5 Q What could that difference had been. Why would that
6 be the case?

7 A I was smoking meth.. And that makes your -- I don't
8 know, if you -- I'm pretty sure you've never done it
9 but if you smoke meth, you know, it bothers your
10 throat and it will make you--

11 Q You mean you were smoking meth right then and there?

12 A In the house with her.

13 Q Inside with Becky Moore?

14 A Yes. When Nancy and the kids were outside playing.

15 Q So -- okay. So you were smoking right there in the
16 house with Becky Moore?

17 A Yes, sir.

18 Q Then the call came in while you were on the phone?

19 A I mean, I had been previously then I believe I was
20 outside when the call came or -- and then went in
21 with Becky and then she had called back. She had
22 called back and that's when I was talking to Becky
23 about the whole situation.

24 Q Well, how long was it that you smoked the meth before
25 the call came in, do you have any idea?

1 A Probably 10, 15 minutes. .

2 Q Okay. So you smoked some meth with Becky Moore, 10,
3 15 minutes later, Tonya Smith is calling you on the
4 phone looking for meth?

5 A Uh-huh.

6 Q Okay. And so you think that could have been your
7 voice just sounding different because you just
8 smoked, is that what you're saying?

9 A It could have been, yes, sir..

10 Q Okay. How long does that last, that effect on your
11 voice after you smoke methamphetamine?

12 A Depending on how much you smoke it gets worst. I
13 mean, usually like a day. You know, it will be
14 different the next day depending on how much you were
15 smoking.

16 Q But my question is, how do you explain your voice
17 could have sounded different like half an hour later?

18 A I don't know. Yelling at the kids, smoking meth.

19 Q Okay.

20 A Not to mention...

21 Q Okay, but you're positive it was you on the phone?

22 A Yes, sir, I know I had the phone. I mean, I keep the
23 phone in my hands 24/7.

24 Q Okay.

25 A And because I was also calling Jamie--

1 MR. CLEVELAND: Judge, not responsive.

2 THE WITNESS: I'm sorry?

3 BY MR. NEWTON:

4 Q If you need to explain something, go ahead.

5 MR. CLEVELAND: There wasn't a question, Judge.

6 BY MR. NEWTON:

7 Q You were saying --

8 THE COURT: Hold on one second.

9 Was there an objection? I didn't hear it.

10 MR. CLEVELAND: Yes, I object it non-responsive
11 testimony, Judge. She answered the question.

12 MR. NEWTON: I think she was adding something to
13 what she had said earlier.

14 THE COURT: Ask her a question. Go ahead and
15 start, ask her a question that you want answered.

16 BY MR. NEWTON:

17 Q You were talking about your voice?

18 A Yes. And I had been yelling with the father of kids,
19 Jamie.

20 Q Okay.

21 A Because he kept lying, lying and lying. And I was
22 getting pretty hostile. And I was yelling pretty
23 harshly to him on the phone. That I had been doing.

24 Q All right.

25 A That's another reason why I had the phone was because

1 I was trying to locate the father of the kids.

2 Q You're not just making this up to protect Nancy?

3 A No, sir, I have no reason to protect her.

4 Q Are y'all living together now?

5 A No, I recently started living with my aunt due to all
6 of this. It's just for the best for both of us.

7 Q Okay.

8 A The aunt of -- my grandmother that just died, that
9 side of the family, that aunt.

10 Q Okay.

11 A Which probably is going to be temporary.

12 Q So you have no motivation to lie to protect her?

13 A No, sir.

14 Q Is your memory sometimes a little fuzzy from those
15 days? A little hazy, maybe?

16 A Maybe a little back from three, four, five years ago.
17 But not -- no, not really.

18 Q Well from 2010, two years ago?

19 A No.

20 Q Did you ever have what could be described as a
21 lesbian relationship with Nancy Haworth?

22 A No, sir.

23 Q Anything of that sort whatsoever?

24 A No, sir.

25 Q Why would somebody think that you were having such a

1 relationship?

2 A Because we were together all the time. I mean, she's
3 like a mom to me. But, you know, I'm grown and I can
4 do what I want, you know. But, you know, I help her.
5 You know, I took Nancy took her doctor appoints, she
6 didn't drive. I took her everywhere she needed to
7 go, you know. I did things for my family, for her
8 family. And any doctor appointments she had any --
9 anytime she needed to go to the store or anything I
10 took her. So, I mean, of course, I'm going to be
11 with her a lot..

12 Q Okay.

13 A But it was -- it was never anything like that. She's
14 like a mom to me. A mom that I don't have right now.

15 MR. NEWTON: No further questions at this time.

16 Answer any questions the prosecutor has for you.

17 THE WITNESS: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. CLEVELAND:

20 Q Good afternoon, may I call you Ashley?

21 A Yes, sir.

22 Q You testified that Nancy was like a mother?

23 A Yes, sir.

24 Q You don't have. How did that relationship come
25 about?

1 A I met her through my -- she was my step-mom, my Dad's
2 ex girlfriend, I was living with her at the time.
3 And I had met -- that's how I met Nancy. And I'm
4 staying at my step-mom's and she was just living a
5 life and she was out of control.

6 Q Who was your step-mom?

7 A Gina Cox.

8 Q And you met Nancy. Isn't it true that Nancy took you
9 under her wing?

10 A Yes, sir.

11 Q Isn't it true that beginning five years ago, even
12 when you were an adult, on your own, Nancy gave you
13 the love and affection that you did not receive from
14 your mom or step-mom?

15 A Yes, sir.

16 Q And isn't it true that continuously, up until today,
17 Nancy still gives you that love and affection?

18 A Yes, sir.

19 Q That you didn't get from your family?

20 A Yes, sir.

21 Q Now, isn't it true that y'all lived together for that
22 entire time until you just moved out a few months
23 ago?

24 A Yes, sir.

25 Q You testified it was for the best, why is that?

1 A Because us both having the same charges, I just felt
2 it was best that we just -- just didn't live
3 together.

4 Q Well, now--

5 A For being co-defendants is what I'm trying to get at.

6 Q Now you would agree with me that you were arrested on
7 this charge back in 2010, correct?

8 A Yes, sir.

9 Q As a matter of fact, would you disagree if I told you
10 it was --

11 A April 16th.

12 Q April 16th of 2010 --

13 A Yes, sir, I have that in my papers over there.

14 Q All right. Did you separate -- you still lived
15 together after you were arrested and charged with the
16 same incident, is that correct?

17 A Yes, sir.

18 Q And as a matter of fact, isn't it true that you
19 changed your address during that time and you still
20 lived with Nancy?

21 A Yes, sir, that is true.

22 Q What made it different a few months ago that wasn't
23 different on April 16th, 2010?

24 A It's 2012, I've grown up a lot since then. I've been
25 to prison for probation violation and I've woken up.

1 You know, I woke up a lot. I've grown a lot, I've
2 grown up a lot in two years.

3 Q Isn't it true that Nancy Haworth is a bad influence
4 on you?

5 A No, it's not.

6 Q Is it true that you're a bad influence on Nancy
7 Haworth then?

8 A No, it's not.

9 Q Wouldn't you agree with me that someone that acts
10 like your mother would be a good person to be a good
11 person to be around during a time of need like this
12 for you?

13 A Yes, sir, I would.

14 Q Then why did you move away from the person you know
15 as your mother?

16 A Because of the simple fact that I didn't want to hurt
17 her and her case in any way. I didn't want --
18 because plain as day, I did it.

19 Q Okay.

20 A And I didn't want -- I just...

21 Q But you'll agree with me, I didn't mean to cut you
22 off, Ashley. You can say whatever you need to.
23 You'll agree with me that nothing's changed in this
24 case between March 30th, 2010 and today; is that
25 correct?

1 A Meaning?

2 Q Meaning none of circumstances have changed. The
3 incident happened the same way it happened, there's
4 been no new -- no new evidence, no new involvement in
5 this case, it is the same as it is was the day you
6 were arrested; isn't that correct?

7 A Yes, but there's no drugs or anything like that and
8 that's what's changed.

9 Q Okay. Now, back in 2010, what kind of work did you
10 do, if any?

11 A I was working at Nannie's Restaurant. Then I was --
12 then from Nannie's I got a job at -- I went from KFC
13 to Nannie's. Then I got a job at Burger King.

14 Q What kind of work was Nancy doing?

15 A She's disabled.

16 Q Who paid for the cell phone?

17 A Who paid for it?

18 Q Yes.

19 A That number's been around for -- Nancy probably paid
20 for it.

21 Q Isn't it true that Nancy had that phone number before
22 you started living with her?

23 A No.

24 Q When did Nancy get that phone?

25 A Probably four and a half years ago. The phone number

1 is still the same to this day.

2 Q Do you now have your own phone?

3 A Yes, sir. A government phone that I get from food
4 stamps.

5 Q Now, I want to -- I want to go towards this day in
6 question.

7 A Okay.

8 Q You'll agree with me that you never mentioned Becky?
9 Is it Becky?

10 A Becky.

11 Q You were in the courtroom, correct, when this tape
12 was played, correct?

13 A Yes, sir.

14 Q You'll agree with me that you never mentioned Becky
15 Moore on that tape, isn't that correct?

16 A Yeah, there was no reason for me. Why would I? I
17 mean...

18 Q Yes or no?

19 A No, I didn't.

20 Q And you will agree with me that you did mention Nancy
21 on that tape, though, however?

22 A Yes, for the simple fact she asked where she was.

23 Q Now, when -- on that tape did you hear when Tonya
24 said -- referred to you as y'all, they. Who were you
25 talking when she said, They and y'all on that tape?

1 A The two kids, Nancy and myself.

2 Q Okay. Not Becky Moore?

3 A No, sir.

4 Q You testified that you only sold fake drugs to Tonya,
5 earlier?

6 A Yes, sir.

7 Q But isn't it true -- I mean, isn't your testimony
8 today that you sold these drugs to her on that
9 occasion?

10 A Well beside this occasion, the only other time I sold
11 her drugs was when I sold her fake drugs.

12 Q And isn't it true that that was way before this
13 incident, correct?

14 A Yes, sir..

15 Q So it's your testimony to this jury now that --
16 well -- that this transaction that we heard on this
17 tape, went off without a hitch; would you agree?

18 A What do you mean it went off without a hitch.

19 Q Tonya took the drugs without question. There was no
20 question as to whether the drugs were fake or real,
21 isn't that correct?

22 A Yeah.

23 Q You think it's strange that Tonya wouldn't question
24 those drugs when your testimony is you sold fake
25 drugs to her before this incident?

1 A Why would it would be any question when she was
2 setting me up? She wouldn't care if it was fake or
3 real.

4 Q Now, you don't get in trouble for selling fake drugs,
5 though, do you?

6 A Yes, you can.

7 Q Do you have knowledge that you get in more trouble or
8 more trouble for selling methamphetamine?

9 A I mean, I don't know more or less but you can -- if
10 you have fake drugs -- fake methamphetamine in your
11 possession you do get in trouble for it.

12 Q But you admit that this was not fake drugs that night
13 in question?

14 A It was not, no.

15 Q Now, it's -- how well did you know this Becky Moore?

16 A I know her pretty well. I met her through Jamie, who
17 I refer to the father of the kids, his girlfriend,
18 Crystal.

19 Q Where was her house?

20 A On--

21 Q Roughly, I don't know need to know the address?

22 A You go up Kay Drive and it's where that bridge is,
23 you go down that road.

24 Q Okay. Now, so I'm clear, I want to go over what
25 happened that night, your testimony. You were

1 admittedly smoking drugs around Nancy's two young
2 nephews?

3 A No, sir. I was in the house, the kids were outside.

4 Q Are the kids not allowed in the house?

5 A No, they were allowed in the house, they wanted to
6 play outside.

7 Q Okay. You agree with me that it was March, so it was
8 dark at that time this transaction went down?

9 A Yes, sir. But they have spot lights because they
10 have basketball -- they have -- she also has
11 grandkids and there are spotlights all around the
12 house. So you can clear as day see.

13 Q All right. Now, so you were doing -- do you agree
14 with Tonya's statement that is your perception can be
15 effected by the use of methamphetamine?

16 A Yeah.

17 Q Okay. And you testified that you were the one that
18 did -- that took all the phone calls, that is
19 correct?

20 A Yes, sir.

21 Q And you testified that smoking meth and yelling at
22 Jamie on the phone could cause your voice to change,
23 is that correct?

24 A Yes, sir.

25 Q Wouldn't you agree with me that you were yelling

1 about Jamie on that tape to Tonya when y'all were in
2 the car?

3 A Would I agree that I was yelling about Jamie, yes?

4 Q Yeah.

5 A Yeah, I probably was. I was quite mad that night.

6 Q Now, you said 24/7, 100 percent of the time you had
7 that phone with you? I believe you said 99 percent
8 of the time, is that correct?

9 A Yes, sir.

10 Q But -- and that you were sure you had the phone
11 because you had the phone 24/7, I believe was your
12 exact words?

13 A Yes. Meaning I always have to have a phone in my
14 hand.

15 Q But you also testified that Nancy had the phone
16 earlier during the day?

17 A During the day, yes, sir. She had -- I mean, it
18 was -- she used the phone too but during that -- at
19 night, during that night, that whole period while we
20 were there, I had that phone in my possession.

21 Q Okay, you said the phone 99 percent of the time, you
22 said you had the phone 24/7, then you said Nancy had
23 the phone all day. Which one was it? It can't be
24 both.

25 A Okay. Most of the time I had the phone but she is

1 able to use the phone because it's both of our
2 phones. So we'll just say 50/50. Or the first 12
3 hours of the day she had it, the last 12 hours of the
4 day I had it.

5 Q Okay. So stating that you had it 99 percent of the
6 time --

7 A 50/50, we'll say 50/50.

8 Q Okay, that was incorrect?

9 A Yeah.

10 Q You also -- you also admitted to -- it is your
11 testimony, isn't it true, that there was a complete
12 stranger in the house?

13 A Yes, sir.

14 Q At that time. So it is your testimony that you were
15 smoking methamphetamine around a complete stranger in
16 the house?

17 A It was -- she has two sons--

18 Q Did you know the person?

19 A I didn't know the person in the house. She has two
20 sons. This person I didn't know was with her older
21 sons. Because they have a bedroom. It's like a
22 three bedroom house and the two boys have their own
23 rooms.

24 Q As someone who admitted to using drugs, are you
25 cautious around who you use your drugs around?

1 A I mean, yeah.

2 Q You scared of getting caught?

3 A I mean, yeah. But, I mean, I was just smoking with
4 Becky Moore so at that point I was not scared of
5 getting caught.

6 Q So if it was you and Nancy and this other person --
7 you testified that there could be other people in the
8 background, was that this other unknown woman?

9 A Two boys and their female friend playing XBOX, having
10 the music up loud.

11 Q Okay.

12 A I mean, the boy's are -- I mean, yes --

13 Q And it's your testimony that could account for
14 Tonya's perception that someone--

15 A It could have. It could have.

16 Q Okay -- XBOX, thank you.

17 A No, Becky Moore's voice or the loudness in the
18 background, yes, sir.

19 Q But it's also your testimony that Becky Moore never
20 picked up that telephone, correct?

21 A No. But she was talking right here in my ear in the
22 background.

23 Q Nancy ever give you any money in addition to the love
24 and affection she gave you?

25 A If I needed cigarettes, you know, if I needed a beer,

1 if I needed new clothes, yes, she would.

2 Q Okay.

3 A Shampoo, conditioner, my necessities, food, yes, sir.

4 Q You characterize the stuff that a mother would give a
5 daughter?

6 A Yes, sir.

7 Q But Becky on this night in question, did -- she gave
8 you nothing for running?

9 A She smoked meth with me.

10 Q All right. You testified earlier back then you were
11 scared of getting caught, is that correct?

12 A At the point -- you asked if at the point I was
13 smoking was I afraid of getting caught. No, I was
14 not with Becky Moore, no.

15 Q Were you afraid of getting caught with drugs in
16 general?

17 A Yes. Yes, sir, who wouldn't be?

18 Q So it's your testimony that you cared enough to do a
19 favor for this Becky by running drugs for her for
20 free even though you were scared of getting caught
21 with drugs?

22 A Yeah, I made a mistake, yeah.

23 MR. CLEVELAND: Beg the Court's indulgence for
24 just a moment.

25 THE WITNESS: I'm sorry?

1 MR. CLEVELAND: I was talking to the Judge.

2 BY MR. CLEVELAND:

3 Q Isn't it true that the police caught you red-handed?

4 A I'm sorry?

5 Q Isn't it true the police caught you red-handed
6 selling this meth, correct?

7 A They didn't catch me with the meth. I mean, they got
8 it in their possession.

9 Q You would agree--

10 A From audio/video.

11 Q You would agree that the State has against you about
12 March 30th, 2010, is overwhelming, is that correct?

13 A Yes, sir.

14 Q Is that why you pled guilty to it?

15 A Yes, because I am guilty.

16 Q And you testified you pled guilty this morning,
17 correct?

18 A Yes. Because they did not get to me yesterday.

19 Q Now, you don't want anything to happen to Nancy, do
20 you?

21 A No, I don't but I'm not protecting her.

22 MR. CLEVELAND: No further questions.

23 THE COURT: Any redirect?

24 MR. NEWTON: Very briefly, Judge.

25 THE COURT: Certainly.

REDIRECT EXAMINATION

1
2 BY MR. NEWTON:

3 Q Clear up a possible confusion. I think I'm the one
4 that asked you how often, initially, y'all had the
5 phone. Whether she had it more or you. I thought
6 you said 90 percent of the time you had it?

7 A Yeah.

8 Q But did you mean just in general or you were talking
9 about that specific day when you answered that
10 question?

11 A In general I mostly have the phone.

12 Q Okay, that's what I--

13 A Like I have it right now in my purse.

14 Q That's what I thought you mean.

15 A But that night, if we want to be precise, we'll say
16 50/50 that night?

17 Q On that particular day?

18 A Yeah, the day. She had it during the day, I had it
19 at night. But the majority of the time it's
20 90 percent me because I always have it. I have to
21 have a phone.

22 Q Okay.

23 A It's sitting in my purse right now.

24 MR. NEWTON: All right, thank you, no further
25 questions.

1 MR. CLEVELAND: Just briefly.

2 RECROSS-EXAMINATION

3 BY MR. CLEVELAND:

4 Q Do you mean y'all share the phone you have in your
5 purse right now?

6 A No, she has her own phone. The same 546 number that
7 was called on before. I have a government phone for
8 food stamps and I have a Sky Mobile phone.

9 Q Okay. Which one do you have in your purse?
10 Nancy's --

11 A Sky Mobile, my phone. I don't have Nancy's phone, I
12 have my phone.

13 Q Why would you feel the need to clarify if you have it
14 in your purse right now when asked about y'all
15 sharing a phone?

16 A Because we're no longer sharing a phone. I was just
17 stating that I have a phone on me 24/7.

18 Q Okay, I'm sorry.

19 MR. CLEVELAND: No further questions.

20 THE COURT: Thank you, ma'am, you may step down.

21 THE WITNESS: Thank you.

22 MR. NEWTON: The Defense calls Nancy Haworth to
23 the stand.

24 THE CLERK: Place your left hand on the Bible,
25 raise your right.

1 NANCY HAWORTH, after being duly sworn, testified
2 as follows:

3 THE COURT: Thank you, ma'am. If you would have
4 a seat, state your full name for the record, please.

5 THE WITNESS: Nancy Haworth.

6 THE CLERK: May have to get a little closer to
7 the microphone.

8 THE WITNESS: Nancy Haworth.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. NEWTON:

12 Q Ms. Haworth, how are you?

13 A I'm good.

14 Q Are you feeling a little nervous?

15 A Yes, sir.

16 Q Have you ever testified in court before?

17 A No, sir.

18 Q Ms. Haworth, is it safe to say that you've had a hard
19 life in some ways?

20 A Yes, sir.

21 Q It is true that you had a drug addiction problem for
22 a while?

23 A I did.

24 Q And that included methamphetamine, didn't it?

25 A Methamphetamine.

1 Q All right. Isn't it true that you pled guilty in
2 2009 to possession of methamphetamine?

3 A Yes, I did.

4 Q And you got six months house arrest and two years
5 probation for that, didn't you?

6 A Yes, sir.

7 Q Okay. Did you take your probation seriously?

8 A I sure did.

9 Q And did you know part of probation was getting drug
10 tests?

11 A Yes, sir.

12 Q All right.

13 A I even went to drug classes for like a year and a
14 half.

15 Q Was that part of your probation?

16 A Yes, sir.

17 Q Okay. So this was in 2009. So March 30th of 2010,
18 you were still on probation, correct?

19 A Correct.

20 Q Were you still going to drug classes, all of that?

21 A Yes.

22 Q At the time. Were you serious about getting your
23 life turned around?

24 A Yes.

25 Q You feel that you have, that you've give up meth?

1 A Yes.

2 Q Okay. But you knew a Tonya Smith from the old days
3 of drug use, didn't you?

4 A Yes.

5 Q And isn't it true that y'all occasionally did drugs
6 together, sold drugs back and forth, is that true?

7 A True.

8 Q Okay. So she was aware of that and knew that you use
9 to be in that business, didn't she know that?

10 A Uh-huh.

11 Q Okay. So she thought she could call you up and get
12 stuff from you, didn't she think that?

13 A Yes, sir.

14 Q She didn't know you had already been to court and on
15 probation, didn't she?

16 A No, sir.

17 Q Okay. I guess she hadn't been keeping up in contact
18 with you, to not know that?

19 A No, it had been a while really since I'd heard from
20 her.

21 Q Okay.

22 A Because I really use to buy from her.

23 Q Okay. So it was a mutual back and forth thing?
24 Whoever had it at the time or?

25 A Right.

1 Q Did you ever have what could be called a lesbian
2 relationship with Ashley Timms?

3 A No, sir.

4 Q What was the nature of your relationship?

5 A Well she didn't have a good relationship with her
6 mother, you know, like a mother should. And, you
7 know, she had her step-mom, you know. So things
8 weren't going right there so I offered her to come
9 and stay at my house, you know. She helped me out,
10 you know, I helped her out, you know. That's all it
11 was.

12 Q Okay. Do you regret the old days of drug use?

13 A Yes, I regret them.

14 Q All right. You don't ever intend to go back to that,
15 do you?

16 A No, I don't not. It does mess you life up. It
17 really does.

18 Q What's wrong with your eye? Why are you wearing and
19 eye patch today?

20 A I had my eye lashes tore off when I was 8 years old,
21 so I get a lot of infection in it and it drains. So
22 I have to wear it or it paralyzes this eye.

23 Q Okay. Okay. So when were you arrested for the
24 charge that we're here for today?

25 A It was like April, I'm not sure of the exact date.

1 Probably a couple of weeks into April.

2 Q Okay. And you were surprised by that? They showed
3 up and arrested you for, is that how it went down?

4 A No, that's not how it went down.

5 Q Well how did it go down.

6 A They called me on the telephone and told me and
7 Ashley that they was coming by to pick us up. They
8 needed to talk to us. So they took us down 123 and
9 said that we had sold a bag --

10 MR. CLEVELAND: Your Honor, I'm going to object,
11 this is all hearsay.

12 THE COURT: All right, I'll sustain the
13 objection.

14 BY MR. NEWTON:

15 Q It is safe to say that the police called you and told
16 you you were under arrest?

17 MR. CLEVELAND: Objection, leading.

18 BY MR. NEWTON:

19 Q You were contacted by the police, weren't you?

20 A To turn myself in.

21 Q Okay. Did you do that?

22 A Yes, sir.

23 Q Okay, Ms. Haworth, one final question. Are you
24 guilty of what you're on trial for here today, are
25 guilty of that or not? Did participate in that drug

1 transaction?

2 A I'm not guilty. Did not participate in it.

3 Q Did you take any of those phone calls to arrange the
4 deal?

5 A No, I did not.

6 MR. NEWTON: Thank you, no further questions.

7 THE COURT: Cross-examination.

8 MR. CLEVELAND: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. CLEVELAND:

11 Q Now, Ms. Haworth, did you -- you testified, isn't it
12 true, you said that you took your probation
13 seriously?

14 A Yes, sir.

15 Q And isn't it true that you were drug tested during
16 that probation?

17 A Yes, sir.

18 Q Did you ever fail any drug tests?

19 A I failed one when they came out to the apartment.

20 Q So you failed -- what was the nature of that failure?

21 A Marijuana.

22 Q Was there any other drugs that you tested positive
23 for?

24 A Excuse me?

25 Q Were there any other drugs that you tested positive

1 for?

2 A No, sir.

3 Q You didn't test positive for Benzodiazepines on the
4 same date?

5 A No, that shows up for the Trazodone that I am on for
6 sleep at night.

7 Q But the fact that you were not prescribed marijuana,
8 you would agree with me that that was on May 19th,
9 2010?

10 A I believe so, I'm not sure of the date.

11 Q Do you agree with me that it was after March 30th,
12 2010?

13 A Yes.

14 Q Now, but didn't you -- did I understand your
15 testimony correctly that on March 30th, 2010 you were
16 already off drugs and keeping your life straight,
17 getting your life straight?

18 A Yes.

19 Q Marijuana's a drug, you would agree we me, wouldn't
20 you?

21 A Yes.

22 Q Now, how long did you do methamphetamine?

23 A Basically on and off for probably the past seven,
24 eight years.

25 Q Seven or eight years?

1 A Uh-huh.

2 Q Is that until today's date or that's up until?

3 A Up until -- well I was counting up until today's date
4 but probably since 2003, 2002 until 2009.

5 Q All right. Were you around a lot of people during
6 that time that smoked methamphetamine?

7 A Yes, I was.

8 Q Could you tell when someone was on methamphetamine
9 based on your exposure?

10 A Yes, sir.

11 Q Now, isn't it true, your testimony is you were
12 getting your life straight on March 30th, 2010,
13 correct?

14 A Correct.

15 Q Could you tell that Ashley Timms was still using
16 methamphetamine on that date?

17 A Yeah, I could tell, you know, a little bit but not
18 like it use to be. So I wasn't really sure but --
19 especially people that smoke it. I don't smoke, I
20 don't shoot up. And you can tell a big difference in
21 people that does smoke or shoot up.

22 Q But wouldn't you agree with me that hanging around
23 people that still use methamphetamine is not the way
24 to get your life straight, as you testified to, on
25 that date?

1 A No, it's not the way. But I know a lot of people
2 that's on it. My brother was on it. But I'd stay
3 away from them, you know, when they was smoking.

4 Q But didn't you share an apartment or residence with
5 Ashley Timms?

6 A Yes, sir.

7 Q Didn't you share a cell phone?

8 A Yes.

9 Q With Ashley Timms? Didn't you share a vehicle with
10 Ashley Timms?

11 A Yes.

12 Q It is fair to say then since y'all lived and drove
13 everywhere together, you were together all the time
14 around that point in time?

15 A Basically.

16 Q And you can tell she was smoking methamphetamine,
17 correct?

18 A I was thinking she was, I really couldn't tell. But
19 yeah, she...

20 Q But you testified earlier that you tried to stay away
21 from people that did it. So which one was it? Did
22 you -- isn't it true that you would voluntarily still
23 stay around people that smoked methamphetamine on
24 this day in question, March 30th, 2010?

25 A Not now. My brother was one of them.

1 Q On March 30th, 2010, isn't it true that you still
2 lived with and stayed around Ashley Timms even though
3 you knew or had a strong suspicion that she was still
4 using methamphetamine?

5 A Not around me.

6 Q When was she not around you?

7 A She's not around me 24/7.

8 Q You know Tonya Smith?

9 A Yes, I do.

10 Q How long have you known Tonya?

11 A My brother introduced me to her. I'd say, I don't
12 know, three or four years.

13 Q Isn't it true over that time period you talked to
14 Tonya on a pretty regular basis?

15 A I wouldn't say on a regular basis.

16 Q Isn't it true that you at least talked to Tonya
17 several times a month per se?

18 A Maybe a couple times a month.

19 Q Isn't it true that y'all spoke on the phone as well
20 as met face to face during that time you knew her?

21 A Yes, a couple times.

22 Q A couple of times?

23 A (The witness nods.)

24 Q I believe your testimony, you'll agree, was you
25 bought more from her than she bought from you. How

1 often was that?

2 A I know I went to her house once and bought some from
3 her. And she probably came to my house a couple of
4 times and brought me dope.

5 Q So over, it is my understanding that over those years
6 there was only a couple of times that you bought and
7 sold methamphetamine from Tonya?

8 A Yes. I didn't really know Tonya that well. She
9 would be over at my brother's house. I mean, I
10 didn't know her, you know, my brother be talking to
11 her. But I didn't know her, you know. It'd be like
12 somebody I met on the street.

13 Q You agree she had your cell number, didn't you?

14 A Yes.

15 Q Now, you testified that you helped Ashley and Ashley
16 helped you during the last five years. And that's
17 all it was? Is that your testimony, did I say that
18 correctly?

19 A Yes, sir.

20 Q That's -- so it is your testimony that you were not
21 like a mother to her?

22 A I believe I was like a mother to her. I tried to
23 help her.

24 Q Okay.

25 A And even though I don't think I was a very good-

1 example.

2 Q You say you don't think you were a very good example
3 because you were the one that got her started on
4 drugs or some other reason?

5 A No, I didn't get her started on it. She was already
6 on drugs. I don't think I ever got her started on
7 the drugs. But it was any good for her to be around
8 me, you know, if I wasn't doing the right thing.

9 Q Isn't it true that you weren't doing the right thing
10 on March 30th, 2010?

11 A I didn't do nothing wrong. I don't know -- I don't
12 know what went on that day. I mean, we went to Becky
13 Moore's to meet my nephew hoping to get the kids.

14 Q You -- who primarily paid the rent for y'all's
15 residence?

16 A I did.

17 Q Who primarily paid for the phone?

18 A I did. Or she did sometimes.

19 Q You bought her toiletries, necessities, food, is that
20 not correct?

21 A (The witness nods.)

22 Q Wouldn't you agree she owes you a debt of gratitude
23 for all the good treatment you've given her over the
24 last five years?

25 A No.

1 MR. CLEVELAND: That's all I have.

2 THE COURT: Anything on redirect?

3 MR. NEWTON: No, Your Honor, nothing further.

4 THE COURT: Thank you, ma'am, you may step down.

5 MR. NEWTON: Defense rests.

6 THE COURT: Defense rests.

7 Anything in reply from the State?

8 MR. CLEVELAND: Nothing further in reply, Your
9 Honor.

10 THE COURT: Okay. Ladies and gentlemen, you've
11 heard all of the evidence that's going to be presented in
12 the case. There's not going to be anymore testimony, not
13 going to be anymore documents, no more evidence received.
14 The only thing that remains to be done now is for the
15 attorneys to make their closing arguments to you and for
16 me to tell you about the law that applies in this case.
17 Estimate that may take an hour, hour and a half. So we've
18 decided, since the other jury's coming back in the morning
19 anyhow, that we may as well come back in the morning and
20 finish this tomorrow morning. Rather than keep you here
21 until 6:30 or so to begin deliberations.

22 But between now and then, I'm getting ready to
23 ask you to do something that's really hard to do. It
24 might be one of the hardest things you've ever done. When
25 you leave here and go home, you're going to see family,

1 friends, loved once, and, of course, everybody is going to
2 ask you what kind of case you're on. And what's it about.
3 And I'm asking you to tell them you can't tell them. If
4 you start down that road, then you run the risk that one
5 of several things is going to happen. That they're going
6 to tell you, Oh, let me tell you what I heard. I heard
7 how about that case. And remember I told you the only
8 evidence you can consider in this case is what you've
9 heard in the courtroom, what you've seen in the courtroom.
10 Not what happens out of courtroom. Or they're going to
11 tell you what they think about these kinds of cases.

12 Well both sides in this case have selected you,
13 ladies and gentlemen, what they believe to be fair and
14 impartial jurors. After it's all said and done, you reach
15 a verdict in this case, if one side or the other will
16 learn later that you were talking to somebody about the
17 case before the verdict was reached and they're going to
18 think that that influenced your decision. That influenced
19 the decision of the jury. And they're going to think they
20 didn't get a fair shake because of that. One side or the
21 other. And I have had it happen. And it gets really
22 messy when it happens. Got real unhappy people when they
23 find out jurors have been talking to people about the case
24 outside the courtroom. So I'm going to ask you to,
25 please, tell your family, friends and loved ones, the

1 hardest thing you've ever done, I'm not going to tell you
2 this case. Once it's over with, of course, you can tell
3 them anything you want to tell them.

4 Anybody have a problem with being back in the
5 jury room at nine o'clock in the morning?

6 There was no response.

7 Ladies and gentlemen, see you at nine o'clock in
8 the morning. . You're excused.

9 (WHEREUPON, the jury left open court at
10 approximately 4:53 p.m.)

11 THE COURT: Let's talk about some things. Does
12 anybody have any specific request to charge that they
13 would like?

14 Of course, you want to renew your motion?

15 MR. NEWTON: Yes, sir.

16 THE COURT: You move for a directed verdict?

17 MR. NEWTON: Yes, sir.

18 THE COURT: Any additional reasons, grounds?

19 MR. NEWTON: No, same reasons as before.

20 THE COURT: All right, I understand the motion
21 and I deny the motion. Okay. . .

22 MR. NEWTON: Thank you.

23 THE COURT: Any specific request to the charges?

24 MR. CLEVELAND: Judge, just charge the statute
25 is all I request. Maybe define the legal definition of

1 aid, abet and conspire. That's all the State requests.

2 THE COURT: All right, one of the things I made
3 notes, specific ones that aren't normally charged would
4 seem to me that we need to tell the jury about the record
5 of a witness. Even though we got some testimony that one
6 of the witnesses had a criminal conviction. Same thing
7 with the Defendant, purpose of those. Limitations on it.
8 The definition of distribution, aiding and abetting,
9 constructive presence, those are the ones that come to
10 mind. Anybody thinks of any others, let me know. There's
11 no lesser included in this case, it's just guilty or not
12 guilty. Anybody think they couldn't complete their jury
13 arguments with a total time of 20 minutes each?

14 MR. NEWTON: I should be able to do that, 20
15 minutes, that's fine.

16 THE COURT: Twenty-five?

17 MR. CLEVELAND: I hope I can, just to --

18 THE COURT: Twenty-five, okay. All right.
19 Anything else we need to take care of?

20 MR. CLEVELAND: None from the State.

21 MR. NEWTON: No, Your Honor.

22 THE COURT: All right, Court's adjourned until
23 nine o'clock tomorrow morning.

24 MR. CLEVELAND: Thank you, Your Honor.

25 MR. NEWTON: Thank you, Judge.

(WHEREUPON, the proceedings were concluded for
the day to be reconvened on February 29, 2012.)

1 All right, again, the burden of proof is on the
2 State to prove their case beyond a reasonable doubt. And
3 if the whole case boils down to the testimony of a person
4 who was lying her head off to the police the whole time,
5 there's ample reasonable doubt as to guilt in this case.
6 Thank you.

7 THE COURT: Thank you, Mr. Newton.

8 Mr. Cleveland.

9 CLOSING STATEMENT

10 MR. CLEVELAND: Thank you, Your Honor, may it
11 please the Court.

12 Good morning, ladies and gentlemen. I'd like to
13 thank y'all again for bearing with us. It took a little
14 longer than we anticipated, I just want a little bit more
15 of your time if y'all will lend me y'all's ears I would
16 really appreciate it. Nancy Haworth in this case is
17 charged with distribution of methamphetamine. And the
18 Judge will charge you on what the law of this land is on
19 distribution of methamphetamine. And it's something like
20 this. That she did, on the date in question here in
21 Pickens County, distribute, dispense, deliver, aid, abet
22 or conspire to distribute, dispense or deliver a quantity
23 of crystal meth.

24 What does all that mean? The law dictionary
25 defines aiding and abetting as to assist or facilitate in

1 the commission of a crime. Or to do something to promote
2 it's accomplishment. To play a role in the commission of
3 a crime. It defines conspiracy as An agreement by two or
4 more persons to commit an unlawful act coupled with the
5 intent or taking a positive step in furtherance of that
6 illegal act.

7 Ladies and gentlemen, there's no question that
8 Nancy Haworth was the one that actually delivered this
9 methamphetamine. But the credible evidence that's been
10 presented to you over the course of this trial is that she
11 aided, abetted and or conspired with Ashley Timms to sell
12 that meth. As a matter of fact, she was part of the cog
13 in the wheel. Part of the chain of commerce. She was who
14 the order was placed to for the meth. Just because of the
15 circumstances she had the kids so she send Ashley to go
16 deliver.

17 I like to think about that law that I just spoke
18 to you now about to the BMW manufacturing plant but this
19 case this falls more simple now that we've shined some
20 light on it. Any of y'all ever ordered from a catalog.
21 Let's say L.L. Bean, for example. Call L.L. Bean, pick
22 out a shirt or a jacket from L.L. Bean, you order it and
23 you pay for it. Now, L.L. Bean hired UPS or Fed Ex or the
24 mail to actually delivery that jacket to you. And UPS is
25 responsible for delivering that jacket to you. But who's

1 responsible for distributing that jacket? Where did that
2 jacket come from? It came from L.L. Bean. If you had a
3 problem with that jacket, you're not going to go to UPS,
4 you're going to go back to the source of the catalog, L.L.
5 Bean. Just like the source of this dope was Nancy
6 Haworth.

7 Now, I told y'all also, at the beginning of this
8 trial, it was my job to prove this case beyond a
9 reasonable doubt. And I would do that by credible
10 testimony. It was all y'all's jobs to use y'all's common
11 sense to determine the credibility of each witness that
12 took that witness stand who -- the size of their demeanor,
13 listen to what they have to say, listen to how they
14 respond to a question. And think about their testimony,
15 what incentive that they have to tell the truth, what
16 incentive they may have to tell a lie.

17 Now, I submit to you that Tonya Smith is indeed
18 the most credible witness in addition to the police that
19 we've heard in this case. Because as much as the Defense
20 wants you to believe she had a reason to lie, she has no
21 reason to lie, ladies and gentlemen. She describe to you
22 her struggle with methamphetamine, her lengthy process to
23 overcome it and her daily battle some years later to
24 overcome her addiction to methamphetamine and the steps
25 that she has took to get it. But she's already gone

1 not Nancy that had the connection to get the drugs or it
2 was not Nancy that answered the call. That it was, you
3 know, I was there and I answered it, she thought it was me
4 so I set up the deal. What does your common sense tell
5 you, ladies and gentlemen? I shot that deer. That was
6 Nancy's deal. Nancy's dope.

7 Now, Nancy's testimony, Ashley's testimony is
8 simply not credible, ladies and gentlemen. She's looking
9 out, Ashley's looking out for the woman because she's
10 looked to her as a mother for the last four and a half
11 years, five years. She's looking out. We got her
12 red-handed. She hadn't been in much trouble, she's going
13 to take the fall for this because she knows she got
14 red-handed -- or we got her hands to look out for Nancy,
15 the real brains, real string behind this operation.

16 Now, been some mention made of fingerprints on
17 this bottle. We had testimony that at least three people
18 touched this both in a short time. Ashley, Tonya and Chad
19 Ayers. I don't know what good that would have done.
20 However, truth in this case, the real -- what happened in
21 this case boils down to credibility and common sense.
22 Ladies and gentlemen, Tonya Smith on March 30th, 2010,
23 called her friend Nancy to buy some dope. Nancy set up
24 the deal to sell that dope. Because she had her kids she
25 sent her friend, Ashley, to deliver. To the surprise of

1 everybody involved. It was Nancy's car, it's registered
2 in her name. Nancy's phone number that was used. And
3 Tonya testified that it was Nancy's voice that answered
4 the phone. Chad Ayers, who heard the first phone call,
5 testified that was distinctly different voice from the
6 voice that he heard in the car and the voice that he heard
7 on those later phone calls, which was Ashley.

8 Furthermore, we've got testimony that Ashley
9 sold fake dope to Tonya some point in time. If she sold
10 it before like Ashley said she did, there's no way Tonya
11 would have gone through with that deal. She'd gotten fake
12 dope from Ashley. She wouldn't have even talked to
13 Ashley. What we've got is a specific story of the police,
14 of the informant that was recorded and written down on
15 March 30th, 2010. Tonya gave her statement that night,
16 the police has got their story. That story has been the
17 same since the event occurred. And that story is the
18 truth. Not some story that we heard for the first time in
19 court yesterday, ladies and gentlemen. Proof in this case
20 is Tonya's testimony. The proof in this case is what the
21 police backed up. The proof is that Nancy Haworth
22 distributed methamphetamine on March 30th, 2010. And I
23 want to ask you to find her guilty of that charge. Thank
24 you.

25 JURY CHARGE

1 THE COURT: Thank you, Mr. Cleveland.

2 Ladies and gentlemen, I remind you that the fact
3 that the Defendant was arrested, charged and indicted in
4 this case is not evidence in this case and cannot be
5 considered by you as evidence of guilt. Nor does it
6 create any presumption or innocence of guilt. Once again,
7 this document is simply the formal written instrument
8 which contains the charges made against the Defendant and
9 it is the document by which this case is brought into
10 court. As you know, the Defendant has pled not guilty to
11 this Indictment. And this plea puts the burden on the
12 State to prove the Defendant guilty.

13 A person charged with committing a criminal
14 offense in South Carolina is never required to prove
15 himself or herself innocent. I charge you that it is an
16 important rule of law, that a Defendant in a criminal
17 trial, no matter what the seriousness of the charge may
18 be, will always be presumed to be innocent of the crime
19 for which the Indictment was issued, unless guilt has been
20 proven by evidence that satisfies you of that guilt beyond
21 a reasonable doubt. And this presumption of innocence
22 does not end when you begin your deliberations, but it
23 accompanies the Defendant throughout the trial. Until you
24 reach a verdict of guilt based on evidence that satisfies
25 you of that guilt beyond a reasonable doubt. The

1 presumption of innocence is like a robe of righteousness
2 placed about the shoulders of the Defendant, which remains
3 with the Defendant until it has been stripped from the
4 Defendant by evidence that satisfies you of the
5 Defendant's guilt beyond a reasonable doubt.

6 The presumption of innocence is not mere legal
7 theory, it is not just a legal phrase, it's a substantial
8 right to which every Defendant is entitled unless you, the
9 jury, are satisfied from the evidence of the Defendant's
10 guilt beyond a reasonable doubt. A reasonable doubt is
11 the kind of doubt that would cause a reasonable person to
12 hesitate to act. Some of you may have served on juries in
13 civil cases where you were told it was necessary to
14 prove a fact is more likely true than not true. Such as
15 by the greater weight or the preponderance of the
16 evidence. But in criminal cases the State's proof must be
17 more powerful than that. It must be beyond a reasonable
18 doubt. Prove beyond a reasonable doubt is prove that
19 leaves you firmly convinced of the Defendant's guilt.
20 There are a very few things that we know of though in this
21 world with absolute certainty. And in criminal cases the
22 law does not require proof that overcomes every possible
23 doubt. If based on your consideration of the evidence you
24 are firmly convinced that the Defendant is guilty of the
25 crime charged, you must find the Defendant guilty. On the

1 other hand, if you think there's a real possibility that
2 the Defendant is not guilty, you must give the Defendant
3 the benefit of the doubt and find the Defendant not
4 guilty.

5 Ladies and gentlemen, I tell you that you are to
6 consider only the competent evidence before you. You're
7 to consider only the testimony presented from the witness
8 stand and any exhibits that may have been made a part of
9 the record in this case. And any stipulations made by the
10 attorneys. I also have the additional duty, ladies and
11 gentlemen, to charge you or tell you about the law that
12 applies in this case. As I previously told you, I am the
13 sole judge of the law of this case and it is your duty to
14 accept the law and apply the law as I now state it to you.
15 If you have any idea what the law is or what the law
16 should be and it disagrees with what I tell you, you must
17 abandon that idea because you are required to accept the
18 law and apply the law as I state it to you.

19 As I've told you before, in every case tried in
20 Court before a jury, the jury becomes the sole and
21 exclusive judges of the facts of a case. A trial Judge
22 such as myself cannot intimate, state or comment on or
23 make any statement to a trial jury about the facts of the
24 case. Since you, the jury, are the sole judges of the
25 facts in this case, you're not to infer from anything that

1 I've said or anything that I have done during this trial,
2 ruling on the admissibility of the evidence or otherwise,
3 that I have an opinion about the facts of the case. As
4 I've told you before, the law does not permit me to have
5 an opinion on the facts of the case. This is a matter
6 solely for you. It is your duty to determine the effect,
7 the value, the weight and the truth of the evidence
8 presented during this trial.

9 They're two types of evidence generally
10 presented during a trial, direct evidence and
11 circumstantial evidence. Direct evidence is the testimony
12 of a person who claims to have actual knowledge of a fact
13 such as an eye witness. It is evidence which immediately
14 establishes the main fact to be proven. Circumstantial
15 evidence is proof of a chain of facts and circumstances
16 indicating the existence of a fact. It is evidence which
17 immediately establishes collateral facts from which the
18 main fact may be inferred. And circumstantial evidence is
19 based on inference and not on personal knowledge or
20 observation. The law, though, makes absolutely
21 distinction between the weight or the value to be given to
22 either direct or circumstantial evidence. Nor is a
23 greater degree of certainty required of circumstantial
24 evidence than of direct evidence.

25 You should weigh all the evidence in this case.

1 After weighing all of the evidence, if you're not
2 convinced of the guilt of the Defendant beyond a
3 reasonable doubt, you must find the Defendant not guilty.
4 Necessarily, ladies and gentlemen, you must determine the
5 credibility of the witnesses who have testified. This
6 simply means the believability. It becomes your duty as
7 jurors to analyze, to evaluate the evidence and to
8 determine what evidence convinces you of its truth. In
9 determining the believability of witnesses who have
10 testified, you may believe one witness over several
11 witnesses or several witnesses over one witness. You may
12 believe a part of the testimony of a witness and reject
13 the remaining part of the testimony of that very same
14 witness. You may believe the testimony of a witness in
15 its entirety or reject the testimony of a witness in its
16 entirety. And you may consider whether the witness has
17 exhibited to you any interest, any bias, prejudice or
18 other motive in the case.

19 During this trial, ladies and gentlemen, there
20 has been evidence presented concerning the past criminal
21 record of a witness. I tell that you that a person who
22 has a past criminal record is competent to testify during
23 a trial. Past record does not effect the ability of that
24 witness to testify. The past record maybe only considered
25 by you, if at all, in determining the witness'

1 believability. Remember you're the sole judges of the
2 facts in this case. And of the believability of any and
3 all of the witnesses. You also heard evidence of the
4 Defendant has a prior criminal record. Other than the one
5 for which the Defendant is now on trial. This evidence
6 may be considered by you if you conclude it true. Only in
7 deciding whether the Defendant's testimony is believable
8 and for no other purpose. You must not consider the
9 Defendant's prior record as any evidence of the
10 Defendant's guilt for the charge that we're trying today.

11 The Defendant is charged with distribution of
12 methamphetamine. The State must prove beyond a reasonable
13 doubt that the Defendant distributed methamphetamine.
14 Distribute means to deliver or to actually or
15 constructively or to attempt to transfer a drug other than
16 administering or dispensing it. Deliver means to
17 actively -- or excuse me, to actually, constructively or
18 to attempt to transfer a drug. And to transfer can
19 involve an exchange for money or barter or gift that does
20 not actually have to be anything given in exchange for
21 drugs for a transfer to constitute distribution.

22 Under the laws of this state, a Defendant may be
23 tried -- excuse me, let me restate that. A person who is
24 present at the scene of a crime and intentionally or
25 through a common plan, aided, abetted or assisted in the

1 commission of that crime through some overt act is guilt
2 as an accomplice. To be liable as an accomplice the
3 Defendant must have knowledge of the criminal conduct.
4 Mere presence at the scene of the crime is not sufficient
5 to establish guilt as an accomplice. Intentionally means
6 willfully intending the result which actually occurs. A
7 person may be constructively present at the commission of
8 a crime even though that person is some distance away from
9 the actual scene. If it is shown beyond a reasonable doubt
10 that the person played a role in the commission of the
11 crime as a result of some prior arrangement.

12 Ladies and gentlemen, in just a moment you will
13 retire to your jury room to begin your deliberations. For
14 there to be a verdict in this case, the verdict must be
15 unanimous. Meaning all 12 of you must agree on a verdict.
16 And the verdict can take one of two forms. The verdict is
17 either guilty or not guilty. When the jury reaches a
18 verdict, a unanimous verdict, I'm going to ask the
19 foreperson, Ms. Goodson, if she would on the Indictment,
20 write either guilty or not guilty. And then sign your
21 name as foreperson of the jury and date the document.

22 I'm going to ask you now to go to your jury room
23 but do not begin deliberations yet. When I'm ready for
24 you to begin deliberations, I'll send to the jury room the
25 verdict form and the exhibits. Hopefully this going to be

1 in just a couple of minutes. And at that time I'll ask
2 our alternate juror to step back out of the jury room and
3 then you will begin deliberations. So, ladies and
4 gentlemen, if you'd, please, retire to your jury room.

5 (WHEREUPON, the jury left open court at
6 approximately 10:15 a.m.)

7 THE COURT: Any exceptions to the charge from
8 the State?

9 MR. CLEVELAND: Not from the State.

10 THE COURT: From the defense?

11 MR. NEWTON: Your Honor, one of the comments the
12 prosecutor made in his closing argument when he told the
13 jury that the mere fact that it was a phone shared by --
14 shared with Ms. Nancy Haworth and her vehicle was enough
15 by itself to bring back a verdict of guilty. I would move
16 that they be instructed that that is not the law. That's
17 not the case. As a matter of law that is not sufficient
18 in and of itself.

19 THE COURT: Solicitor.

20 MR. CLEVELAND: Judge, I think providing someone
21 with a car and a phone is certainly an overt act of the
22 charge to constitute aiding and abetting. She couldn't
23 have gotten to the Hot Spot and she couldn't have made the
24 deal, if the jury is to believe her, without a phone that
25 was paid for by Ms. Haworth.

1 THE COURT: Okay.

2 THE ALTERNATE: Thank you, sir.

3 THE COURT: Yes, sir, thank you for serving.

4 (WHEREUPON, deliberations began at

5 approximately 10:30 a.m.)

6 THE COURT: All right, we'll be at ease until we
7 hear from the jury.

8 MR. CLEVELAND: Thank you, Judge.

9 (WHEREUPON, court was in recess awaiting a
10 verdict.)

11 THE COURT: I understand the jury has reached a
12 verdict. Is the State ready for the verdict?

13 MR. CLEVELAND: State's ready, Your Honor.

14 THE COURT: Defense to ready to receive the
15 verdict?

16 MR. NEWTON: Yes, sir Your Honor.

17 THE COURT: All right, bring the jury in.

18 (WHEREUPON, the jury came into open court at
19 approximately 11:50 a.m.)

20 THE COURT: Welcome back, ladies and gentlemen.

21 Ms. Goodson, let me ask you a question. As
22 foreperson for the jury, has the jury reached a verdict in
23 the case?

24 MS. GOODSON: Yes, sir, we have.

25 THE COURT: Did you write on the Indictment

1 words either guilty or not guilty?

2 MS. GOODSON: Yes, sir, I did.

3 THE COURT: Did you sign your name?

4 MS. GOODSON: Yes, sir, I did.

5 THE COURT: Would you, please, pass the verdict
6 form up, the Indictment.

7 And Mr. Clerk, would you publish the verdict.

8 VERDICT

9 THE CLERK: Your Honor, this is docket number
10 2010-GS-39-1484, the State vs. Nancy Haworth, Indictment
11 for distribution of methamphetamine. The verdict is
12 guilty.

13 Is this your verdict and still your verdict? So
14 say you all by raising your right hand.

15 (WHEREUPON, all the members of the jury raised
16 their right hand.

17 THE CLERK: Thank you, very much.

18 THE COURT: Anything from the Defense before the
19 jury is discharged?

20 MR. NEWTON: No, Your Honor.

21 THE COURT: From the State?

22 MR. CLEVELAND: Nothing from the State, Your
23 Honor.

24 THE COURT: Ladies and gentlemen, I want to
25 thank for your service. When we selected you to serve on

1 time, I will not be here, not planning on tomorrow or the
2 next day. Just for your information. If you need
3 anything from me regarding this case.

4 THE COURT: Well, somebody else from your office
5 could be here in the event there was a need to reconsider
6 the sentence by either of you. Because I don't think
7 anybody is going to like what I'm going to do. Anything
8 else?

9 MR. CLEVELAND: Well, Judge, I would just add if
10 you were considering sentencing her to a fine and no jail
11 time for a third offense for three decades of selling
12 drugs would be a slap in the face of justice. I tell just
13 about everybody -- Mr. Newton sitting here saying she's
14 not a threat to society when she's just been convicted of
15 distributing a poisonous, illicit drug on the streets of
16 Pickens County, Judge. I think that's a slap in the face
17 of the justice system. And to sentence her to no jail
18 time on her third offense, which is really her fourth
19 offense, would not be justice.

20 THE COURT: I'm not going to sentence her to no
21 time.

22 MR. CLEVELAND: All right.

23 THE COURT: Ms. Haworth, I sentence you to the
24 Department of Corrections for a period of 15 years,
25 suspended upon the service of three years, five years

1 probation. Substance abuse counseling, random drug
2 testing. Good luck to you. You may reconsider the
3 sentence before the end of the week. Thank you, so much.

4 MR. CLEVELAND: Thank you, Your Honor.

5 MR. NEWTON: Thank you, Your Honor.

6 (WHEREUPON, the proceedings were concluded.)
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1 THE COURT: Ms. Haworth, I have no choice in my
2 mind but to sentence you to the Department of Corrections
3 for a period of 10 years, give you credit for any time
4 served. Good luck to you, Ms. Haworth.

5 MS. BENTLEY: Thank you, Judge.

6 MR. NEWTON: Thank you, Your Honor.

7 (WHEREUPON, the proceedings were concluded.)
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217

WITNESSES

Charles Brett Barwick

Pickens County Sheriff's Office

4/18/2010

ARREST WARRANT NUMBER

M520153

TRUE BILL

ACTION OF GRAND JURY

Date FEB 15 2011

Jayne W. Long
Foreperson of Grand Jury

VERDICT

Guilty

Sandra C. Goodson 2-29-12
Foreperson of Petit Jury Date:

DOCKET NO. 2010-GS-39-1484
WDR

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 15 2011 TERM 2010

THE STATE

vs.

NANCY HAWORTH

Indictment for

3200

DISTRIBUTION OF METHAMPHETAMINE

VIOLATION § 44-53-0375(b)(3)

JHE

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

INDICTMENT FOR
DISTRIBUTION OF METHAMPHETAMINE

At a Court of General Sessions, convened on

FEB 15 2011

the Grand Jurors of Pickens

County present upon their oath:

That NANCY HAWORTH did in Pickens County, on or about the 30th day of March, 2010, distribute, dispense, deliver, or aid abet, or conspire to distribute, dispense or deliver to an undercover operative a quantity of Methamphetamine, a schedule II controlled substance, such distribution not having been authorized by law. This is in violation of § 44-53-375 of the South Carolina Code of Laws (1976) as amended.

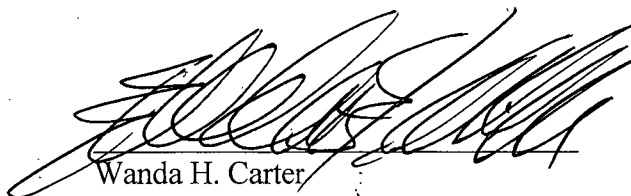
Against the peace and dignity of the State, and contrary to the statute in such case made and provided:


SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 25th, 2013



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Pickens County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

JUN 25 2013

THE STATE,

RESPONDED **SC Court of Appeals**

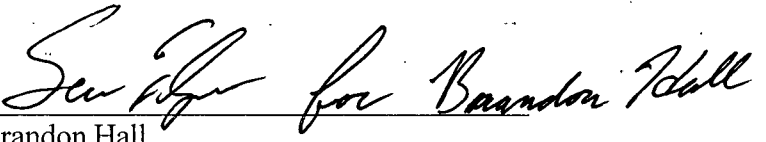
V.

NANCY HAWORTH,

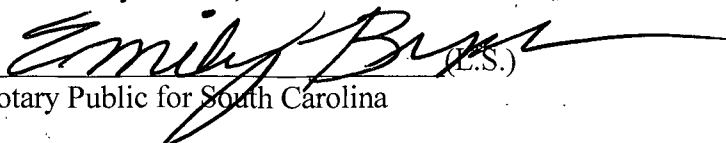
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 25th day of June, 2013.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 25th day of June, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.