

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Alexander S. Macaulay, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KENNETH W. WHITWORTH,

APPELLANT

APPELLATE CASE NO. 2013-000497

RECORD ON APPEAL

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State of South Carolina	)	Court of General Sessions
	)	
County of Oconee	)	Tenth Judicial Circuit
	)	
State of South Carolina	)	
	)	
vs.	)	Case No. 2011-GS-37-0995
	)	
Kenneth Wayne Whitworth,	)	
	)	
Defendant.	)	

TRANSCRIPT OF RECORD

February 26, 27, 28, 2013

Walhalla, South Carolina

B E F O R E:

The Hon. Alexander S. Macaulay, Judge and a Jury

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

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Assistant Solicitor
Attorney for the State

R. Daniel Day, Esq.
Attorney for the Defendant

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Circuit Court Reporter

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DEFENDANT'S EXHIBITS:

(No exhibits.)

COURT'S EXHIBITS:

(No exhibits.)

* * *

(The exhibits are retained by the Clerk of Court.)

1 (On Tuesday, February 26, 2013, the trial
2 convenes at approximately 11:15 a.m., the
3 defendant not present but represented by
4 counsel, and the following proceedings
5 were had:)

6 (State's Exhibit No. 1, audio CD of phone
7 call, is marked for identification.)

8 (State's Exhibit No. 2, video of drug
9 transaction February 18, 2011, is marked
10 for identification.)

11 (State's Exhibits No. 3, 4, 5, 6, 7, 8, 9,
12 10, 11, 12, and 13, photos, are marked
13 for identification.)

14 (State's Exhibits No. 14, drug BEST pack,
15 is marked for identification.)

16 (State's Exhibit No. 15, booking photo of
17 defendant, is marked for identification.)

18 (State's Exhibit No. 16, drug report from
19 Anderson-Oconee Regional Forensics
20 Laboratory, is marked for
21 identification.)

22 **THE COURT:** All right. Ladies and
23 gentlemen of the petit -- petit jury panel, please give
24 me your attention. We're about to commence another
25 trial of a case. I call on the solicitor to call that

1 case.

2 **MS. SIMMONS:** Thank you, Your Honor. May
3 it please the Court.

4 The State of South Carolina calls
5 2011-GS-37-995, the State versus Kenneth Wayne
6 Whitworth, indictment for distribution of
7 methamphetamine.

8 **THE COURT:** Very good. Thank you, ma'am.

9 The case is entitled the State of South
10 Carolina versus Kenneth Wayne Whitworth, 2011-GS-37-995,
11 charged in an indictment with distribution of
12 methamphetamine.

13 The state will be represented by
14 Ms. Simmons. Ms. Simmons, if you would please stand,
15 introduce yourself and anybody who will be assisting you
16 in the trial of this case.

17 **MS. SIMMONS:** Good morning. My name is
18 Lindsey Simmons. I'm an assistant solicitor here in
19 Oconee County, and I'm employed by your elected
20 solicitor, Chrissy Adams.

21 Sergeant Brandon Long of the Oconee County
22 Sheriff's Office will be assisting me in this case.

23 Thank you.

24 **THE COURT:** All right. Officer, if you
25 would, please, stand so the jury can see you.

1 (Sergeant Long complies.)

2 **THE COURT:** Very good. Thank you very
3 much.

4 The defendant is represented by Mr. Day.
5 Mr. Day, if you would please stand and introduce
6 yourself.

7 **MR. DAY:** Thank you, Your Honor.

8 I'm Danny Day of the Oconee County Public
9 Defender's Office. I'll be representing Mr. Kenneth
10 Whitworth.

11 **THE COURT:** Now, is any member of the jury
12 panel related by blood or marriage, now or formerly, a
13 close personal friend or business associate of the
14 defendant, Kenneth Wayne Whitworth? If so, please
15 stand.

16 (There was no response.)

17 **THE COURT:** Now, I'm gonna read out a list
18 of potential witnesses in this case. As I say, they are
19 witnesses who may be called but do not have to be called
20 in the trial of the case. If they're in the courtroom,
21 if they would, please, stand and look upon the jury.

22 You've seen Sergeant Brandon Long.

23 Lieutenant Jeremy Chapman. In the back there.

24 (Lieutenant Chapman stands.) Sergeant Patrick Merck,
25 Oconee County Sheriff's Office. Sergeant David

1 Philpott, Oconee County Sheriff's Office. Captain Steve
2 Pruitt, Oconee County Sheriff's Office. Agent Meredith
3 Lanford of the Anderson-Oconee Forensics Lab. And
4 Mr. Jameson Clark.

5 Any member of the jury panel related by
6 blood or marriage, a close personal friend, or business
7 associate of any of the potential witnesses in this
8 case? Sergeant Brandon Long, Lieutenant Jeremy Chapman,
9 Sergeant Patrick Merck, Sergeant David Philpott, Captain
10 Steve Pruitt, Agent Meredith Lanford, or Mr. Jameson
11 Clark. If so, please stand.

12 Yes, sir. Your name, please.

13 **PROSPECTIVE JUROR:** Kenneth Porter.

14 **THE COURT:** Yes, sir.

15 **MR. PORTER:** I know Lieutenant Jeremy
16 Chapman. He's an ex-brother-in-law.

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

20 **MR. PORTER:** No, sir.

21 **THE COURT:** Very good. Thank you, sir.
22 Anyone else?

23 (There was no response.)

24 **THE COURT:** Was any member of the jury
25 panel a member of the grand jury that found and returned

1 the indictment in this case, indictment number
2 2011-GS-37-995? If so, please stand.

3 (There was no response.)

4 **THE COURT:** Now, has any member of the jury
5 panel or members of their immediate family or close
6 personal friend been employed by either the 10th Circuit
7 Solicitor's Office, that's Anderson and Oconee County,
8 or Mr. Day? Any member of the jury panel or close
9 personal friend or business associate or -- ever been
10 employed by or represented by the 10th Circuit
11 Solicitor's Office, Anderson and Oconee Counties, or
12 Mr. R. Daniel Day? If so, please stand.

13 Now, this is a separate case, so if you
14 answered before in the other case you have to do it
15 again.

16 All right. Very good. Your name, please,
17 Ms. Abbott.

18 **PROSPECTIVE JUROR:** Betty Abbott. And
19 Mr. Day represented me.

20 **THE COURT:** Has represented you. Would
21 that in any way interfere with your ability to give both
22 the state and the defendant a fair and impartial trial?

23 **MS. ABBOTT:** No.

24 **THE COURT:** Very good. Thank you, ma'am.
25 Yes, sir.

1 PROSPECTIVE JUROR: Mr. Day.

2 THE COURT: All right. Your name, please?

3 MR. DODGINS: James Dodgins.

4 THE COURT: All right. Would that in any
5 way interfere with your ability to give both the state
6 and the defendant a fair and impartial trial?

7 MR. DODGINS: No.

8 THE COURT: Very good. Thank you, sir.
9 Yes, ma'am.

10 PROSPECTIVE JUROR: Crystal Shelton. And
11 I've been represented by Mr. Day.

12 THE COURT: All right. And would that in
13 any way interfere with your ability to give both the
14 state and the defendant a fair and impartial trial?

15 MS. SHELTON: No, sir.

16 THE COURT: Very good. Thank you, ma'am.

17 Oh, by the way, I guess I should explain
18 the reason I have to ask your name each time you respond
19 to each question even though you've responded to earlier
20 questions is that we're keeping a record of everything
21 that's said in the courtroom, so we have to identify who
22 is speaking at the time. So even though you respond to
23 more than one question, each time I'm going to have to
24 ask you if you would, please, give us your name for the
25 record.

1 Now, is any member of the jury panel or
2 members of their immediate family or close personal
3 friends ever been accused of and/or prosecuted for the
4 distribution of illegal drugs? If so, please stand.

5 Any member of the jury panel or members of their
6 immediate family or close personal friend ever been
7 accused of and/or prosecuted for the distribution of
8 illegal drugs? If so, please stand.

9 (There was no response.)

10 **THE COURT:** Has any member of the jury
11 panel formed or expressed an opinion about this case?
12 If so, please stand.

13 Yes, ma'am.

14 **PROSPECTIVE JUROR:** Laura Bergmann.

15 **THE COURT:** Yes, sir -- yes, ma'am.

16 **MS. BERGMANN:** I have custody of my two
17 grandchildren because of meth.

18 **THE COURT:** All right. Well, I'm going to
19 excuse you on the trial of the case. And by the way, I
20 want to thank you for responding. You may be seated.

21 The reason for that is, when I ask the
22 question can you be fair and impartial to both of the
23 parties, that, of course, is to assure that each party
24 or both parties have a fair and impartial jury, ones who
25 can approach their case in a fair manner.

1 But it has a second part, a second purpose
2 in that question. None of you asked to be here. I'm
3 sure that a lot of you would rather be somewhere else
4 than where you've been for the last two days. And the
5 reason I ask the -- or that question has been asked is
6 because you didn't ask to be here and I want to be sure
7 if you are drawn on a jury not only will you be fair and
8 impartial, but I don't want in any way to compromise any
9 principle or idea that you might have. I don't want to
10 put you in a difficult situation where you would have to
11 make a decision that would in some fashion create a
12 problem to you.

13 So I thank you very much.

14 The question is not only that you could be
15 fair and impartial, but it would create a problem in
16 having to do your duty as a juror. So, again, that's
17 the reason I ask the question. So if you do have any
18 reservation whatsoever, do advise the Court.

19 All right. Is any member of the jury panel
20 aware of any interest, bias, or prejudice towards either
21 the defendant or the State of South Carolina? If so,
22 please stand.

23 (There was no response.)

24 **THE COURT:** Does any member of the panel
25 know of any reason whatsoever why he or she could not

1 give both the State of South Carolina and the defendant
2 a fair and impartial trial? If so please stand.

3 (There was no response.)

4 **THE COURT:** Any further questions from the
5 state?

6 **MS. SIMMONS:** No, Your Honor.

7 **THE COURT:** From the defendant?

8 **MR. DAY:** None, Your Honor.

9 **THE COURT:** Very good.

10 Again, we'll draw the jury as we did in the
11 last. Let's have one alternate? From the state, is
12 that...

13 **MS. SIMMONS:** Okay.

14 **MR. DAY:** That's fine.

15 **THE COURT:** And on this, it's five and
16 five?

17 **MS. SIMMONS:** Yes, Your Honor.

18 **THE COURT:** All right. And then two and
19 one on the alternate?

20 **MR. DAY:** Based on -- I thought this would
21 be a ten. It carries up to 30.

22 **THE COURT:** It's a felony -- let's see.

23 (Ms. Simmons and Mr. Day confer.)

24 **THE COURT:** Approach.

25 (There is an off-the-record bench

1 conference in the presence of the jury
2 panel but out of the hearing of the jury
3 panel.)

4 (Said bench conference being concluded,
5 the following proceedings were had:)

6 **THE COURT:** All right. We'll go with five
7 and five, noting the motion of the defendant.

8 All right. As we did before, the clerk is
9 preparing a strike sheet which is a list of -- how many
10 names are we going to have?

11 **THE CLERK:** Twenty-six.

12 **THE COURT:** Twenty-six names, and from that
13 each side or each party will strike five names and then
14 until we have twelve jurors. And then the alternates
15 will be two strikes from the defendant and one strike
16 from the state.

17 All right. By the way, this is a little
18 bit different from the way we used to do the drawing of
19 juries in both Common Pleas and General Sessions. In
20 the old days before computers, we had a -- and I think
21 it's still in the courtroom somewhere. There's a drum
22 and we put each of the jurors' -- potential jurors'
23 names in a capsule and put them all in the drum and we
24 would crank the drum, and then we would have a child who
25 is too young to read or write or a person who was

1 legally blind reach in to the drum and pull out a
2 capsule and then the clerk would call the name in the
3 same way as we do now. The juror whose name is called
4 would come forward, bringing their things with them, and
5 turn and look at the back of the courtroom.

6 The new system is great as long as it
7 works, but sometimes technology can have difficulties,
8 and so -- but I think it's working today so we won't
9 have any problems.

10 All right. Madam Clerk, if you would,
11 please, give us...

12 **THE CLERK:** Ladies and gentlemen, as I call
13 your name, if you would please come forward, bringing
14 your personal belongings.

15 Number 123, Natalie Russell.

16 (White female approaches.)

17 **THE CLERK:** What says the state?

18 **MS. SIMMONS:** Please present the juror.

19 **THE CLERK:** What says the defense?

20 **MR. DAY:** Please seat the juror.

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

23 Number 16, Steven Burkett.

24 (White male approaches.)

25 **THE CLERK:** What says the state?

1 MS. SIMMONS: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. DAY: Please seat the juror.

4 THE CLERK: Sir, if you would, please take
5 a seat in the jury-box.

6 Number 164, Peter West.

7 (White male approaches.)

8 THE CLERK: What says the state?

9 MS. SIMMONS: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. DAY: Please seat the juror.

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

14 Number 32, James Dodgins.

15 (White male approaches.)

16 THE CLERK: What says the state?

17 MS. SIMMONS: Please excuse the juror from
18 the trial of this case.

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

21 Number 169, Scott Williams.

22 (White male approaches.)

23 THE CLERK: What says the state?

24 MS. SIMMONS: Please excuse the juror from
25 the trial of this case.

1 **THE CLERK:** Sir, you have been excused from
2 this case. You may be seated.

3 Number 173, Peyton Wright.

4 (White female approaches.)

5 **THE CLERK:** What says the state?

6 **MS. SIMMONS:** Please present the juror.

7 **THE CLERK:** What says the defense?

8 **MR. DAY:** Excuse Ms. Wright in this case.

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

11 Number 34, Michelle Duncan.

12 (White female approaches.)

13 **THE CLERK:** What says the state?

14 **MS. SIMMONS:** Please present the juror.

15 **THE CLERK:** What says the defense?

16 **MR. DAY:** Excuse Ms. Duncan in this case.

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

19 Number 59, Donna Holbrooks.

20 (White female approaches.)

21 **THE CLERK:** What says the state?

22 **MS. SIMMONS:** Please present the juror.

23 **THE CLERK:** What says the defense?

24 **MR. DAY:** Please seat Ms. Holbrooks.

25 **THE CLERK:** Ma'am, if you would, please

1 take a seat in the jury-box.

2 Number 73, Kyle Jones.

3 (White male approaches.)

4 **THE CLERK:** What says the state?

5 **MS. SIMMONS:** Please present the juror.

6 **THE CLERK:** What says the defense?

7 **MR. DAY:** Please seat Mr. Jones.

8 **THE CLERK:** Sir, if you would, please take
9 a seat in the jury-box.

10 Number 154, Tony Tiller.

11 (White male approaches.)

12 **THE CLERK:** What says the state?

13 **MS. SIMMONS:** Please present the juror.

14 **THE CLERK:** What says the defense?

15 **MR. DAY:** Please seat Mr. Tiller.

16 **THE CLERK:** Sir, if you would, please take
17 a seat in the jury-box.

18 Number 125, Beverly Sanders.

19 (White female approaches.)

20 **THE CLERK:** What says the state?

21 **MS. SIMMONS:** Please present the juror.

22 **THE CLERK:** What says the defense?

23 **MR. DAY:** Excuse Ms. Sanders from this
24 case.

25 **THE CLERK:** Ma'am, if you would, please --

1 you've been excused from this case. You may be seated.

2 Number 106, Kenneth Porter.

3 (White male approaches.)

4 **THE CLERK:** What says the state?

5 **MS. SIMMONS:** Please excuse the juror from
6 the trial of this case.

7 **THE CLERK:** Sir, you have been excused from
8 this case. You may be seated.

9 Number one, Betty Abbott.

10 (White female approaches.)

11 **THE CLERK:** What says the state?

12 **MS. SIMMONS:** Please excuse the juror from
13 the trial of this case.

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

16 Number 170, Christopher Wilson.

17 (White male approaches.)

18 **THE CLERK:** What says the state?

19 **MS. SIMMONS:** Please excuse the juror from
20 the trial of this case.

21 **THE CLERK:** Sir, you have been excused from
22 this case. You may be seated.

23 Number 85, Dennis Macculloch.

24 (White male approaches.)

25 **THE CLERK:** What says the state for cause?

1 MS. SIMMONS: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. DAY: Please seat Mr. Macculloch.

4 THE CLERK: Sir, if you would, please take
5 a seat in the jury-box.

6 Number 93, William Moore.

7 (White male approaches.)

8 THE CLERK: What says the state for cause?

9 MS. SIMMONS: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. DAY: Please seat Mr. Moore.

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

14 Number 137, Crystal Shelton.

15 (White female approaches.)

16 THE CLERK: What says the state for cause?

17 MS. SIMMONS: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. DAY: Excuse Ms. Shelton in this case.

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

22 Number 57, Tony Heaton.

23 (White male approaches.)

24 THE CLERK: What says the state for cause?

25 MS. SIMMONS: Please present the juror.

1 **THE CLERK:** What says the defense?

2 **MR. DAY:** Excuse Mr. Heaton in this case,
3 please.

4 **THE CLERK:** Sir, you have been excused from
5 this case. You may be seated.

6 Number 120, Regina Rogers.

7 (White female approaches.)

8 **THE CLERK:** What says the state for cause?

9 **MS. SIMMONS:** Please present the juror.

10 **THE CLERK:** What says the defense for
11 cause?

12 **MR. DAY:** Please seat the juror.

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

15 Number 70, Eva Johnson.

16 (Black female approaches.)

17 **THE CLERK:** What says the state for cause?

18 **MS. SIMMONS:** Please present the juror.

19 **THE CLERK:** What says the defense for
20 cause?

21 **MR. DAY:** Please seat Ms. Johnson.

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

24 Number 112, Charles Reeder.

25 (Black male approaches.)

1 **THE CLERK:** What says the state for cause?

2 **MS. SIMMONS:** Please present the juror.

3 **THE CLERK:** What says the defense for
4 cause?

5 **MR. DAY:** Please seat Mr. Reeder.

6 **THE CLERK:** Sir, if you would, please take
7 a seat in the jury-box.

8 Number 116, Clarence Roberts.

9 (White male approaches.)

10 **THE CLERK:** What says the state for cause?

11 **MS. SIMMONS:** Please present the juror.

12 **THE CLERK:** What says the defense for
13 cause?

14 **MR. DAY:** Please seat Mr. Roberts.

15 **THE CLERK:** Sir, if you would, please take
16 a seat in the jury-box.

17 And this will be for the alternate.

18 Number 69, Jackie James.

19 (White female approaches.)

20 **THE CLERK:** What says the state?

21 **MS. SIMMONS:** Please excuse Ms. James.

22 **THE CLERK:** Ma'am, you have been excused
23 from this case. You may be seated.

24 Number 79, Laura Kratochvill.

25 (White female approaches.)

1 THE CLERK: What says the state for cause?

2 MS. SIMMONS: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. DAY: I hope I say this right. Excuse
5 Ms. Kratochvill.

6 MS. KRATOCHVILL: Close enough.

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

9 Number 171, Helen Wilson.

10 (White female approaches.)

11 THE CLERK: What says the state for cause?

12 MS. SIMMONS: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. DAY: Excuse Ms. Wilson in this case,
15 please.

16 THE CLERK: Ma'am, you have been excused
17 from this case. You may be seated.

18 Number 17, Laurie Carlton.

19 (White female approaches.)

20 THE CLERK: What says the state for cause?

21 MS. SIMMONS: Please present the juror.

22 THE CLERK: What says the defense for
23 cause?

24 MR. DAY: Please seat Ms. Carlton, please.

25 THE CLERK: Ma'am, if you would, please

1 take a seat in the jury-box.

2 Okay.

3 **THE COURT:** All right. Is there any reason
4 this jury cannot be sworn for the trial of this case,
5 from the state?

6 **MS. SIMMONS:** No, Your Honor.

7 **THE COURT:** From the defense?

8 **MR. DAY:** No, Your Honor.

9 **THE COURT:** All right. Mr. West, I'm gonna
10 ask you to serve as foreman of the jury, so when we come
11 back if you'd sit on the front seat.

12 And, Ms. Carlton, you are the alternate, so
13 you'll always sit on that last seat. Yes, ma'am.

14 Those are the only two reserved seats in
15 the jury-box. Everyone else can sit wherever they want
16 to, but I do need to know who the foreman is and the
17 alternate.

18 All right. With that, I'm going to ask you
19 to go with the bailiff, and he'll show you the jury room
20 that we'll be using during the trial of this case.

21 And just as I told the last jury, you're
22 not to undertake discussion of this case among
23 yourselves in any way, not even personalities or
24 anything like that, because obviously the case, as I
25 said earlier, follows a certain order of things, and you

1 never know what's going to be the most important part of
2 the case. It could be the first witness, the last
3 witness, opening statements, closing arguments, or the
4 charge on the law, so you need to have an open mind
5 throughout.

6 But if you would, please, go with the
7 bailiff and I'll get back to you in a few minutes. I
8 need to take matters up with the attorneys and the
9 balance of the jury panel. Thank you very much.

10 Everyone else remain seated while the jury
11 retires from the courtroom.

12 (Whereupon, the jury leaves the courtroom
13 at approximately 11:45 a.m.)

14 (The jury panel is excused at
15 approximately 11:50 a.m.)

16 **THE COURT:** All right. It's ten of 12:00
17 now. I would suggest we take an early lunch and come
18 back at 1:30 or something like that rather than trying
19 to do opening statements or anything and then break.
20 What does the state say?

21 **MS. SIMMONS:** That's fine, Your Honor.

22 **THE COURT:** Defense?

23 **MR. DAY:** Absolutely, Your Honor. Thank
24 you.

25 **THE COURT:** All right. I'm not going to

1 advise the jury at this point about the fact that the
2 defendant is not here, but I do have a charge on it at
3 the time that the defendant might appear.

4 But, first of all, I need Mr. Darby. Can
5 we ask the bailiff to return to the courtroom? I need
6 to get him to put on the record that the defendant was
7 called.

8 (The bailiff enters the courtroom.)

9 **THE COURT:** All right. If you would,
10 please, sir, raise your right hand.

11 (Whereupon, the bailiff is duly sworn.)

12 **THE COURT:** Would you give us your name for
13 the record, please?

14 **THE BAILIFF:** James Darby.

15 **THE COURT:** All right. Mr. Darby, what is
16 your position here at the Oconee County courthouse?

17 **THE BAILIFF:** Bailiff.

18 **THE COURT:** All right. And were you given
19 the name of Kenneth Wayne Whitworth to call?

20 **THE BAILIFF:** Yes, sir.

21 **THE COURT:** And did you do that?

22 **THE BAILIFF:** Yes, sir.

23 **THE COURT:** And where did you do it and how
24 many times did you do it?

25 **THE BAILIFF:** The front steps of the

1 courthouse, three times.

2 **THE COURT:** And was there any response?

3 **THE BAILIFF:** No response, sir.

4 **THE COURT:** Very good. Anything from the
5 state?

6 **MS. SIMMONS:** No, Your Honor.

7 **THE COURT:** From the defense?

8 **MR. DAY:** No, Your Honor. Thank you.

9 **THE COURT:** Very good. Thank you very
10 much, Mr. Darby.

11 **THE BAILIFF:** Yes, sir.

12 **THE COURT:** All right. I've looked at the
13 bond of the defendant, Kenneth Whitworth, also known as
14 Kenneth Wayne Whitworth, who is indicted on indictment
15 number 2011-GS-37-995 which is -- also, his bond is on
16 warrant number N-138098-99 and that bond provides that
17 -- that the above named defendant be released from
18 custody on the condition that he will personally appear
19 before the designated court at the place, date, and time
20 required to answer the charge made against him and do
21 what shall be ordered by the Court and not depart the
22 state without the permission of the Court and be on good
23 behavior.

24 The defendant was advised that he is to
25 appear at the term of General Sessions -- Court of

1 General Sessions beginning on Monday, November the 14th,
2 2011, and if no disposition is made during this term
3 that the defendant shall appear and remain throughout
4 each succeeding term of court until final disposition is
5 made of his case unless otherwise ordered by the Court,
6 and which -- notice was not initialed by the -- or,
7 actually, signed by the defendant, but further
8 acknowledged by the defendant that I have -- that I
9 understand and have been informed that I have a right
10 and obligation to be present at trial and should I fail
11 to attend the court that the trial will proceed in my
12 absence. Signed Kenneth Whitworth, September the 22nd,
13 2011.

14 I find that the defendant is -- did not
15 appear as was the condition of his bond and that he
16 understood and agreed to answer in his absence and his
17 trial will be held in his absence.

18 I might note further I have reviewed notes
19 from the last term of court, I think, and that those
20 notes reflect that the defendant was put on notice
21 personally in the presence of this Court as to this term
22 of court and that he would be tried in his absence and
23 if found guilty sentenced in his absence.

24 All right. Anything further from the
25 state?

1 MS. SIMMONS: No, Your Honor.

2 THE COURT: Anything from the defendant?

3 MR. DAY: No, Your Honor.

4 THE COURT: All right. And just to be
5 sure, then, Mr. Day, you have tried to contact the
6 defendant?

7 MR. DAY: I have, Your Honor.

8 THE COURT: And have you had any success?

9 MR. DAY: I have not.

10 THE COURT: Very good. All right. When
11 was the last time you made an effort to find your
12 client?

13 MR. DAY: This morning.

14 THE COURT: This morning which would be
15 February the 25th?

16 MR. DAY: Yes, sir -- 26th.

17 THE COURT: 26th.

18 MR. DAY: Right.

19 THE COURT: 26th. All right. Very good.

20 All right. The defendant shall be tried in
21 his absence. I will instruct the jury at the
22 appropriate time that that matter cannot -- that the
23 fact the defendant did not testify or put up evidence or
24 even appear are not factors to be considered by the jury
25 in any way during deliberations.

1 All right. Let's ask the jury to join us;
2 and then we will excuse them for lunch. Is 1:30 enough
3 or do you want to -- 1:30 enough?

4 MS. SIMMONS: That's plenty of time.

5 THE COURT: All right. Is that...

6 MR. DAY: That will be fine, yes, Your
7 Honor.

8 THE COURT: All right. So then y'all can
9 get your -- how about the exhibits? Have you gotten
10 your exhibits marked yet?

11 MS. SIMMONS: Yes, Your Honor. There's one
12 that I think there will be some proffered testimony or
13 some debate about later, but everything is marked and
14 ready.

15 THE COURT: All right. And your
16 equipment's all operating?

17 MS. SIMMONS: I'm going to confirm that
18 very soon.

19 THE COURT: Okay. Very good. All right.
20 Ask the jury to join us.

21 (Whereupon, the jury enters the courtroom
22 at approximately 11:58 p.m.)

23 THE BAILIFF: The jury is in, sir.

24 THE COURT: All right. Very good.

25 Mr. Foreman, ladies and gentlemen of the

1 jury, it's twelve o'clock now. I'm gonna suggest that
2 we take a lunch break now and come back rather than try
3 to start the trial and then break, and so I'm gonna
4 suggest you go to lunch.

5 Would 1:30 be enough time, do you think,
6 Mr. Foreman? Check with your jury to be sure.

7 All right. That's good enough. So 1:30 if
8 you'll come back -- but, again, please do not undertake
9 discussion among yourselves in any way -- and we'll
10 begin the trial at that time.

11 Now, well, let me say something else.
12 Mr. Foreman, one of the things that I'll be telling you
13 in a minute or when we come back with the preliminary
14 instructions, wait until everybody is ready to come back
15 at the same time. The reason for that, as I will
16 explain to you, you must make your decision based on the
17 testimony and the evidence from this witness stand and
18 other evidence and exhibits that are introduced in the
19 courtroom, so it's absolutely essential that everybody
20 hear the same thing at the same time. So if somebody is
21 not quite ready to come back just wait, wait until we're
22 all together.

23 So with that, I'll excuse you until 1:30,
24 and I'll see you back at that time and we'll start the
25 trial.

1 Again, everyone else remain seated while
2 the jury retires from the courtroom.

3 Now, Mr. Bailiff, have you showed them how
4 to get back?

5 **THE BAILIFF:** Yes, sir.

6 **THE COURT:** Good. Very good. I'll see you
7 at 1:30.

8 (Whereupon, the jury leaves the courtroom
9 at approximately 12:01 p.m.)

10 **THE COURT:** All right. Anything from the
11 state before we take a break?

12 **MS. SIMMONS:** Judge, we do have -- there is
13 some potential debate on exhibit 15 if you want to hear
14 that now.

15 **THE COURT:** All right. What is it?

16 **MS. SIMMONS:** What would potentially be
17 state's exhibit 15 is, Your Honor, because the defendant
18 did not appear for trial I did get a copy of his booking
19 photo from the Oconee County Detention Center and the
20 state would seek to admit that through Captain Steve
21 Pruitt who is the custodian of records for the Oconee
22 County Detention Center. I believe it's my obligation
23 to prove identification to the jury, and I believe that
24 I need that photo in order for the jury to see that the
25 person who was arrested is indeed on the -- on the

1 videotape evidence that the witness will be referencing.

2 **THE COURT:** All right.. Mr. Day.

3 **MR. DAY:** Your Honor, I would think that
4 certainly pictures considered and described as a picture
5 of him being arrested would certainly in this case be
6 very prejudicial to the defendant. I am not aware of
7 any rule which says that the defendant has to have a
8 likeness of himself within the courtroom during his
9 trial and we would object to that, Your Honor.

10 The state has the burden of proof of
11 identifying the defendant, that's true. They also have
12 other pictures that they say through their confidential
13 informant that says that's him.

14 **THE COURT:** All right. Will the CI be
15 testifying?

16 **MS. SIMMONS:** Yes, Your Honor.

17 And, Judge, certainly the booking photo I
18 would redact it and take all indications that it is a
19 booking photo, and Captain Pruitt would only testify
20 he's the custodian of records for the sheriff's office.

21 **THE COURT:** Of course, that's the date he's
22 talking about there. Was this photo made
23 contemporaneously with his arrest on these charges?

24 **MS. SIMMONS:** Yes, Your Honor. He was
25 arrested on July the 31st, and it's my understanding

1 that this photo is from that booking date.

2 **THE COURT:** All right. Any help you might
3 give the Court on that. Of course, I will charge the
4 jury that they cannot consider an arrest or indictment
5 as evidence of guilt, but we might see -- if there is
6 some other way to identify the individual, I think I
7 might be more comfortable with that.

8 **MS. SIMMONS:** Your Honor, Sergeant Long met
9 with him at the time of his arrest, so he could testify
10 that the person that he arrested on the charge is the
11 person that's in the videotape if you'll be more
12 comfortable with that.

13 **THE COURT:** All right. Well, let's proceed
14 with that unless you can find something that is
15 dispositive of the issue when we -- all right. But I
16 will see what I can find.

17 **MS. SIMMONS:** Thank you, Judge.

18 **THE COURT:** Very good. Thank you.

19 I might note that on the question of
20 strikes I have not been able to find anything that
21 suggests that other than what is provided in
22 Section 14-7-1110 where they enumerate the offenses that
23 are subject to strikes of ten for the defendant and five
24 for the state. They say all others other than those
25 enumerated above have the five and five. I might note

1 just for the record and, of course, it is a part of the
2 record that the defendant only exercised five strikes.

3 MR. DAY: All I had.

4 THE COURT: Well, I don't know.

5 All right. So we'll proceed at 1:30.

6 MS. SIMMONS: Thank you, Your Honor.

7 MR. DAY: Thank you.

8 (There is off-the-record discussion.)

9 THE COURT: All right. Very good. See you
10 at 1:30.

11 (A lunch recess is taken at approximately
12 12:07 p.m.)

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AFTERNOON SESSION

(The trial reconvenes at approximately 1:45 p.m., the defendant not present but represented by counsel, and the following proceedings were had:)

THE COURT: Thank you very much. You may take your seats, please.

May I see counsel before we begin?

(There is an off-the-record bench conference.)

(Said bench conference being concluded, the following proceedings were had:)

THE COURT: All right. Is there anything from the state before we bring the jury back?

MS. SIMMONS: No, Your Honor.

THE COURT: From the defense?

MR. DAY: No, Your Honor. Thank you.

THE COURT: Madam Clerk?

THE CLERK: Yes, sir. I'm ready.

THE COURT: All right. There you go. Thank you.

All right. Let's ask the jury to join us, please.

(Whereupon, the jury enters the courtroom at approximately 1:47 p.m.)

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

3 Madam Clerk, if you would, please, swear
4 the jury.

5 (Whereupon, the jury is duly sworn.)

6 **THE CLERK:** Please be seated.

7 **THE COURT:** Mr. Foreman, and ladies and
8 gentlemen of the jury, I'm sure that as I said earlier
9 each of you now fully appreciates that this court, the
10 Court of General Sessions for Oconee County, exists for
11 purposes of resolving questions of alleged criminal
12 conduct arising between the State of South Carolina and
13 the defendants.

14 One of the most important aspects of your
15 duty as a jury lies essentially in the oath that you
16 have now taken to well and truly try and determine the
17 facts of the case. That oath in a very essential way
18 says that you are the sole judges of the facts in this
19 case.

20 Obviously, any case tried in court will
21 involve a question about what happened or how something
22 came to happen or who if anyone did anything in a
23 particular occurrence or circumstance. From this point
24 forward then, no one concerned with this trial has the
25 right to decide any question of fact in this trial or

1 the truth of it except you, the jury.

2 The facts then are for your resolution and
3 your decision and yours alone, and after you hear all
4 the evidence in the case then it will be your duty by
5 your mutual and joint discussions to determine the case
6 or the truth of the case by deciding the weight and
7 believability of each part of the evidence and by
8 applying the law of the case thereto.

9 Now, as the trial judge, I am the judge of
10 the law in the case. It is also my responsibility,
11 among other duties, to preside over this trial, to rule
12 on the admissibility of evidence offered during the
13 progress of the trial and state to you, the jury, the
14 law applicable to the case.

15 The Constitution of South Carolina mandates
16 that I as the trial judge cannot directly or indirectly
17 comment about the facts in the case. The process of a
18 verdict then is simply that you, the jury, first
19 determine what is the truth of the facts and then apply
20 to that true state of facts that principle of law
21 applicable and by that process determine and report to
22 this Court your final verdict in the case, speaking the
23 truth of the case as you determine it.

24 Now, I will more fully and completely state
25 to you the principles of law applicable to the issues in

1 this case before it is submitted to you for your
2 decision. However, there are certain principles of law
3 applicable to the framework of every case in General
4 Sessions court. I will now outline several of these
5 basic principles to you for your guidance.

6 First, the defendant has entered a plea of
7 not guilty to the charges contained in the indictment.
8 The indictment in the case is not evidence. It is
9 simply the written instrument that contains the charge
10 or charges against the defendant and it serves as the
11 formal document by which this case is processed into
12 this court.

13 The plea of not guilty places upon the
14 state the burden of proof. As to what is meant by the
15 term "burden of proof," the defendant is presumed in law
16 innocent of all charges contained in the indictment.

17 The burden of proof requires the state to
18 prove guilt beyond a reasonable doubt and, therefore,
19 consistent with that burden, the defendant or the
20 alleged accused shall be presumed to be innocent and
21 that presumption of innocence is sufficient to compel a
22 verdict of not guilty or a verdict of acquittal unless
23 the jury concludes -- you, the jury, concludes that the
24 state has satisfied its obligation to prove the
25 defendant guilty beyond a reasonable doubt.

1 The term "reasonable doubt" means the kind
2 of doubt that would cause a reasonable person to
3 hesitate to act.

4 Now, I instruct you and emphasize that the
5 fact the defendant did not appear or has not appeared is
6 not a factor to be considered by you in any way in your
7 deliberations and in your consideration on the question
8 of whether the state has proven the defendant is guilty
9 or not guilty of the charge in the indictment. It must
10 not be considered by you in any manner whatsoever. The
11 defendant has the Constitutional right to remain silent,
12 and the assertion of this right must not be considered
13 by you in your deliberations. The defendant may also
14 waive his right to be present at trial.

15 I repeat: Under your oath you are to draw
16 no conclusion whatsoever from the fact the defendant in
17 this case is not present or did attend or has attended
18 the trial.

19 Now, the case will be opened by the
20 solicitor after which the same opportunity will be
21 afforded to the defense to make an opening statement.
22 When all of the evidence has been received by the Court,
23 counsel for the state and for the defendant will state
24 to you their respective positions after which the Court
25 will more clearly state the law applicable in the case.

1 Now, obviously, all parts of the case are
2 important. You do not know which witness in a case will
3 most impress you, whether the first witness or the last
4 witness. In reaching your final conclusion, you will
5 need the guidance of the judgment of the other jurors.
6 You will need the guidance of the principles of law that
7 will be stated to you by the Court.

8 For all these reasons then, if we have a
9 recess period or when you retire to the jury room or
10 during an overnight or meal recess, the Court instructs
11 you that you must not undertake to discuss this case
12 among yourselves until the case is finally given to you
13 for your deliberation nor are you to discuss this case
14 with anyone or permit anyone to discuss the case with
15 you. If they should try to do so, report them so that I
16 might take the appropriate action.

17 Now, the verdict in this case must be the
18 unanimous verdict of all twelve members of the jury.

19 And there are a few other things I need to
20 state before we begin.

21 As I mentioned earlier, although I am the
22 only person who can tell you what the law is, you and
23 you alone are the only ones who can determine the facts.
24 I do not have the right to indicate how I may feel about
25 the evidence presented, and throughout this trial my

1 intention will be to act impartially towards each party.

2 Second, from time to time an attorney may
3 object to some bit of testimony or evidence which the
4 other side seeks to present. As in sports or business
5 or any other structured activity, there are certain
6 rules that both sides must obey in presenting evidence.
7 Now, these rules have a definite purpose. They ensure
8 that the information you receive is the most trustworthy
9 and reliable evidence available.

10 An objection is the procedure we use for an
11 attorney to call a possible violation of the rules to
12 the Court's attention, and for this reason you should
13 not hold an attorney's objection against his client or
14 her client nor should you conclude from my ruling on the
15 objection I favor one side or the other.

16 Finally, I would ask that you pay the
17 closest attention possible to the evidence presented to
18 you. And I notice that when you came back the first
19 time that you had some pads or notepads. I will ask
20 that you do not take notes for if the note taker makes
21 an error his notes or her notes can be more detrimental
22 than helpful during your deliberations. The time-tested
23 system is for each of you to listen carefully, and I'm
24 sure you will do that.

25 The reason that I suggest that jurors do

1 not take notes, as I have mentioned earlier, you must
2 make your determination and your decision on the
3 testimony from this witness stand and the evidence and
4 other exhibits -- or exhibits and other evidence
5 introduced in this courtroom. That requires that you
6 pay very careful and close attention not only to what is
7 -- what is being testified to or offered but also the
8 manner it's presented. In other words, you need to
9 concentrate on the witness as well as the evidence
10 that's being produced.

11 And we have a tendency if we are trying to
12 take a note, which is, what is it, what we think we
13 hear. In other words, we are concentrating on the
14 spelling, on the way the sentence fits into the overall
15 state of things, as well as semantics or -- and all
16 other things than what we might, what is it, want to be
17 concentrating on which is, as I say, the actual
18 testimony itself.

19 And the most dangerous part of it is if
20 when we're writing down what we think we hear, we miss
21 something and it can change the entire meaning of the
22 note. And I use as an example the word "not." In other
23 words, if the testimony or the -- includes the word
24 "not" and we miss it, it changes entirely what the
25 statement is supposed to be or which was said.

1 Now, I would suggest that as in everything
2 else that you must do as a jury, which is a unanimous
3 conclusion as to what the truth of the matter is, that
4 you rely on each other. If there is a question, well,
5 did the witness say this or did the witness say that,
6 use the collective recollection of the entire jury to
7 come to a conclusion because that's what you do as a
8 jury. You don't -- a verdict is not the decision of one
9 person but is of all twelve. So I would suggest that
10 you do not take notes.

11 Now, having said all that, I do take notes.
12 And it's not one of those things "do as I say, not as I
13 do." We have entirely different, entirely different
14 functions in this courtroom. You and you alone are the
15 only ones that can determine the value of the testimony,
16 the weight of the testimony. I am not concerned at all
17 about the evidence and testimony and exhibits or
18 whatever. I am only concerned about the procedure that
19 is followed. There are certain things that have to be
20 done during the trial of a case, and what I'm doing is
21 just jotting down what is done, not the significance of
22 it. The significance is for you and you alone.

23 So, therefore, I will be taking notes, but
24 please understand that it is -- you need to concentrate
25 on what's happening. I'm only, what is it, making a

1 record of what has occurred, not the importance of it.
2 That is for you.

3 And with that, I'll recognize the solicitor
4 for her opening statement.

5 MS. SIMMONS: Thank you, Your Honor. May
6 it please the Court.

7 THE COURT: Madam Solicitor.

8 MS. SIMMONS: Mr. Day.

9 OPENING STATEMENT

10 MS. SIMMONS: Good afternoon. As I told
11 you this morning, my name is Lindsey Simmons, and I'm a
12 prosecutor here in Oconee County.

13 Today I am charged with proving to you that
14 the defendant, Kenneth Whitworth, is guilty of
15 distribution of methamphetamine. I'm required to prove
16 this beyond a reasonable doubt. You'll be charged at
17 the end of the case by the judge that reasonable doubt
18 is not without all doubt, it is a reasonable doubt, and
19 reasonable doubt is something that you will find using
20 your common sense. It is my burden to prove
21 Mr. Whitworth committed this crime beyond a reasonable
22 doubt, and it is a burden that I welcome.

23 Over the next afternoon, possibly into
24 tomorrow, you're gonna hear from a number of witnesses.

25 First and most importantly, you're gonna

1 hear from Jamie Clark. He is what is called a
2 confidential informant. He is gonna tell you on
3 February 18th of 2011 he bought methamphetamine from
4 Kenneth Whitworth. Mr. Clark is not perfect. Most
5 confidential informants aren't. He does have a criminal
6 record for shoplifting, and he doesn't have a driver's
7 license, but he's got no ax to grind, and he's here just
8 to tell you the truth. He set up the deal with this
9 defendant. This defendant was the only person who took
10 part in this distribution of methamphetamine. The
11 defendant sold him a bag of methamphetamine for \$50.

12 You're also gonna hear from Brandon Long
13 who is the narcotics agent that monitored this
14 transaction and set up the deal using the confidential
15 informant Mr. Clark. Sergeant Long is gonna tell you
16 how these things work, how you get confidential
17 informants, and how drug surveillance works and just
18 generally how the undercover drug enforcement business
19 is.

20 You're also gonna hear from Patrick Merck
21 and Meredith Lanford who were involved in the -- in the
22 taking in of the evidence that was obtained in this case
23 and the subsequent chemical testing of that evidence to
24 determine if methamphetamine was present.

25 Most importantly, we have videotape

1 evidence for you to review. When Mr. Clark went to this
2 transaction to buy methamphetamine from Kenneth
3 Whitworth, he had a camera in his key fob. Technology
4 allows us to videotape transactions using his key chain.

5 So you are actually going to see from the
6 time he leaves, being wired up by the -- by the
7 sheriff's department officers, he's driving the car, the
8 actual transaction; and his drive back to meet with
9 them. Some of it will be dark, it did occur at
10 nighttime, but I submit to you that you are going to see
11 videotape evidence that this transaction did occur. You
12 will not be resting solely upon Jamie Clark's word.

13 You also will be seeing still photos
14 captured from the videotape in this case, and all the
15 parties we offer are gonna identify to you that this
16 person that sold methamphetamine on February 18th, 2011
17 is the person they know as Kenneth Whitworth. There's
18 clear pictures of this defendant. It is clear that a
19 drug deal occurred on February 18th, 2011.

20 At the end of this trial, I'm gonna ask you
21 to find Kenneth Whitworth guilty of distribution of
22 methamphetamines. Again, I appreciate your time. We're
23 gonna make the most efficient use of your time that we
24 possibly can, and I will be back to speak to you at
25 the end of this case to discuss everything with you

1 further.

2 Thank you.

3 **THE COURT:** Mr. Day.

4 **MR. DAY:** Thank you, Your Honor. May it
5 please the Court. Madam Solicitor.

6 OPENING STATEMENT

7 **MR. DAY:** As I said before, I'm Danny Day.
8 I'm representing Mr. Whitworth.

9 And as the judge said, we all have
10 different roles to play. Yours, of course, is the most
11 important. You get to make all of the decisions, as to
12 the facts of this case, as to the ending of this case,
13 and everything. So you're gonna have to look, listen,
14 make like you're at a railroad crossing. Stop, look,
15 and listen, because that's what I want you to do.

16 As this case is going on, I want you to
17 every now and then, as you're listening, I want you to
18 stop and say exactly what are they talking about?
19 Because it's the evidence that you're gonna have to
20 determine. You're gonna have to see the evidence which
21 would be sufficient to convince you to find a person
22 guilty of a crime. It's your job, that's what you're
23 sworn to do, and that's what everybody expects you to
24 do.

25 You're also gonna be charged with the fact

1 you must not only listen, you must determine what is not
2 there. What do you expect to see? As you hear and they
3 tell you what they're saying, are they showing that to
4 you? Are they saying the evidence is as clear -- and I
5 believe that's the word that the solicitor used -- is it
6 clear as to the evidence which they say they are
7 submitting to you? I ask you to look at all of this.
8 Does it seem to be right? Is it not all there?

9 It all comes down to like a puzzle, get all
10 the pieces of the puzzle. They've got to put them all
11 together, and that's what the solicitor wants you to do.
12 She says I'm gonna present you with the pieces and you
13 get to put it all together with my help and make a
14 determination. I'm saying to you, look and make sure
15 all those pieces are there. If those pieces aren't
16 there, then the state has failed, the state and all its
17 power.

18 And that's all we're asking you to do.
19 Look at that evidence. Is it all there? Does it seem
20 right? Is there something missing? Is there something
21 that causes you to pause? Does it give you pause as to
22 the evidence that's been presented? And that's all that
23 can be asked of you.

24 I know none of you sent in a letter to the
25 clerk saying I sure would like to serve a week-long jury

1 duty, but you're here and it is so important. The judge
2 will tell you how important it is, because he is
3 absolutely correct, this is an extraordinary, important
4 function of being a citizen.

5 Thank you for being here. I wish we
6 weren't taking up all your time, but it's too important
7 not to. Just look to make sure it's all there.

8 Thank you.

9 **THE COURT:** All right. You may call your
10 first witness.

11 **MS. SIMMONS:** Thank you, Your Honor. The
12 state calls Jamie Clark.

13 Whereupon,

14 **JAMESON CLARK,**
15 being first duly sworn, is examined and testifies as
16 follows:

17 **THE CLERK:** Please be seated.

18 **THE COURT:** You may proceed.

19 **DIRECT EXAMINATION**

20 **BY MS. SIMMONS:**

21 Q. Good afternoon, Mr. Clark. Could you state
22 your full name for the record?

23 A. Jameson Howard Clark.

24 Q. And how old are you, Mr. Clark?

25 A. 39.

1 Q. And what level of education do you have?

2 A. 11th grade.

3 Q. And do you work anywhere?

4 A. Yes. I'm a carpenter.

5 Q. Where do you live currently?

6 A. in Walhalla.

7 Q. And have you ever been convicted of any crime
8 before?

9 A. Yes, ma'am. Shoplifting.

10 Q. And did you have a valid driver's license on
11 February 18th, 2011?

12 A. No, ma'am.

13 Q. Have you worked as a confidential informant for
14 the Oconee County Sheriff's Department before?

15 A. Yes, ma'am.

16 Q. How many times do you estimate you've worked as
17 an informant?

18 A. About 11.

19 Q. What do you do when you cooperate as an
20 informant?

21 A. I purchase drugs.

22 Q. Did you do that for money or because you were
23 in trouble?

24 A. For the money.

25 Q. Do you know Kenneth Whitworth?

1 A. Yes.

2 Q. How long do you estimate you've known him?

3 A. Ten, 15 years maybe.

4 Q. Do you know him by a nickname also?

5 A. Yes, ma'am.

6 Q. What is the nickname?

7 A. Cockney (phonetic).

8 Q. Is Mr. Whitworth present in court today?

9 A. No, he's not.

10 Q. Over the course of your cooperation with the
11 sheriff's department, did you have occasion to purchase
12 illegal drugs from Kenneth Whitworth?

13 A. Yes.

14 Q. Do you remember purchasing them on February
15 18th of 2011?

16 A. Yes.

17 Q. Okay. And did that happen in Oconee County?

18 A. Yes, ma'am.

19 Q. How did that distribution get set up?

20 A. A phone call.

21 Q. Okay. And when did you initially call him?
22 Were you by yourself or with law enforcement?

23 A. No. I was with law enforcement.

24 Q. What did you talk about on the call?

25 A. Just setting the deal up, just pick up the...

1 Q. Is there any like drug language that was used?
2 What do you normally talk about when you call somebody?
3 Do you call somebody up and say I need methamphetamine,
4 or is it more casual than that?

5 A. It's more casual.

6 Q. And whose number did you call?

7 A. I called Kenneth's phone.

8 Q. And have you had a chance to review state's
9 exhibit one prior to court today, that being the phone
10 call that you made?

11 A. Yes, ma'am.

12 Q. And have you reviewed the audiotape of the
13 transaction that occurred that day?

14 A. Yes, ma'am.

15 Q. Is that a fair and accurate representation of
16 the phone call you made and the audiotape of the
17 transaction that occurred on February 18th?

18 A. Yes, ma'am.

19 Q. Okay. And this is state's exhibit one. Is
20 this what you recognize reviewing?

21 A. Yes.

22 MS. SIMMONS: Judge, at this point in time
23 we would ask to publish state's exhibit one to the jury
24 and move it into evidence. It has been provided to
25 Mr. Day.

1 MR. DAY: No objection, Your Honor.

2 THE COURT: Without objection, state's
3 exhibit number one will be admitted and published to the
4 jury.

5 (State's Exhibit No. 1, previously marked
6 for identification, is received in
7 evidence.)

8 (State's Exhibit No. 1 is published to the
9 jury but not transcribed.)

10 BY MS. SIMMONS:

11 Q. Mr. Clark, is that a fair and accurate
12 representation of the phone call you made?

13 A. Yes.

14 Q. And when you use the word "ice," what drug are
15 you referring to?

16 A. Methamphetamine.

17 Q. Okay. And with the discussion of "decent," is
18 that a discussion of -- what is it that you're
19 discussing?

20 A. The quality.

21 Q. After you made that phone call, were you
22 briefed by law enforcement?

23 A. Yes.

24 Q. And were you wired and searched?

25 A. Yes, ma'am.

1 Q. Who searched you?

2 A. Brandon.

3 Q. Brandon? Sergeant Long?

4 A. Brandon is Sergeant Long. I'm sorry.

5 Q. And how thorough did he search you?

6 A. Very.

7 Q. Inside your clothes?

8 A. Yes. Everywhere, top to bottom.

9 Q. Where was the camera and audiotape placed on
10 you?

11 A. I had the camera in a little key device and the
12 wire was hooked to my side.

13 Q. Where did you go to meet the defendant?

14 A. At his home.

15 Q. Did you know that as where -- as his place of
16 residence?

17 A. Yes, ma'am.

18 Q. Is that in Oconee County?

19 A. Yes.

20 Q. How did you get there?

21 A. I drove.

22 Q. Was it your car?

23 A. No.

24 Q. Where did you get the car?

25 A. Mr. Long set it up for me to have a vehicle to

1 drive.

2 Q. Okay. Would it be -- would it be normal for
3 you to drive to his house?

4 A. Yes.

5 Q. Would he have thought it would be weird if you
6 showed up on foot or on a bicycle?

7 A. Yeah. Be kind of strange.

8 Q. What happened when you got to the house?

9 A. I made the purchase and left.

10 Q. Was anybody else present in the home that you
11 saw?

12 A. No.

13 Q. Okay. What did he say during the course of the
14 deal in the house?

15 A. Just kept it brief. I was in and out in just a
16 few minutes.

17 Q. What did he charge you?

18 A. \$50.

19 Q. Okay. And what did he give you in return?

20 A. The methamphetamines.

21 Q. What was the methamphetamine packaged in?

22 A. A baggy, a sandwich baggy.

23 Q. And how much money did you receive from the
24 sheriff's department for conducting this deal?

25 A. \$80.

1 Q. And the transaction we've been discussing that
2 you were wired for, is it on audio and videotape?

3 A. Yes, ma'am.

4 Q. Did you have a chance to review state's exhibit
5 two before court today, the videotape of the
6 transaction?

7 A. Yes.

8 Q. And is it a fair and accurate representation of
9 what took place that day?

10 A. Yes, it is.

11 Q. Okay.

12 MS. SIMMONS: Judge, at this time we would
13 move into evidence state's exhibit two and ask to
14 publish it to the jury. And this has been previously
15 provided to Mr. Day.

16 MR. DAY: No objection, Your Honor.

17 THE COURT: All right. Without objection,
18 state's exhibit number two is admitted into evidence and
19 may be published to the jury.

20 (State's Exhibit No. 2, previously marked
21 for identification, is received in
22 evidence.)

23 BY MS. SIMMONS:

24 Q. And the videotape, does it go from the point
25 you were wired to the point you come back to meet with

1 law enforcement?

2 A. Yes, ma'am.

3 (State's Exhibit No. 2 is published to the
4 jury but not transcribed.)

5 **BY MS. SIMMONS:**

6 Q. Was the tape we just watched a fair and
7 accurate representation of what went on that day?

8 A. Yes, it is.

9 Q. And the darkness on the way there and on the
10 way back, were you driving?

11 A. Yes, I was driving.

12 Q. Okay. And where was the tape when you were
13 driving, the videotape while you were driving?

14 A. It was dangling from the ignition.

15 Q. So it was on the ---

16 A. The ignition while on the key chain.

17 Q. Okay. The part of the video where you can see
18 -- see what's going on, what kind of discussion went on
19 when you were in the house?

20 A. Just the purchase of the -- of the
21 methamphetamines.

22 Q. What did he do to get the methamphetamine ready
23 for you while you were standing there?

24 A. He had to cut it out of another bag.

25 Q. And I want to show you what has been...

1 (Ms. Simmons and Mr. Day review exhibit.)

2 BY MS. SIMMONS:

3 Q. I want to show you what's been premarked as
4 state's exhibit nine. Do you recognize the person in
5 this photograph?

6 A. Yes.

7 Q. And who is that?"

8 A. That's Kenneth Whitworth.

9 Q. Okay. And what part of the video is that from?
10 What part of the video is that shot from?

11 A. That is purchasing it in his living room, him
12 just handing it to me.

13 Q. And what's in his hand?

14 A. Methamphetamines.

15 Q. Okay. Where did you go for the debriefing in
16 this case?

17 A. Back to the schoolhouse.

18 Q. Did you make any stops along the way?

19 A. No.

20 Q. Did you make any stops on the way there?

21 A. No.

22 Q. Were you searched, wired, and debriefed at the
23 school?

24 A. Yes.

25 Q. Who did you turn the drugs in to?

1 A. Officer Long.

2 Q. Once you received the drugs from Kenneth
3 Whitworth, did you alter, examine, or change them in any
4 way?

5 A. No.

6 Q. Did you try to -- other than trying to tie them
7 up, but...

8 A. No. Just give it to them when I got there.

9 Q. Okay. And is there any doubt in your mind that
10 on February 18th, 2011 Kenneth Whitworth sold you
11 methamphetamine?

12 A. Is there any doubt?

13 Q. Right.

14 A. No. He sold it to me.

15 MS. SIMMONS: Please answer any questions
16 Mr. Day may have.

17 Mr. Day, do you need this? (Refers to
18 overhead projection device.)

19 MR. DAY: Yes.

20 MS. SIMMONS: Okay.

21 CROSS-EXAMINATION

22 BY MR. DAY:

23 Q. All right. Mr. Clark, I've got a few questions
24 if I may. Let me make sure I understand it. You said
25 you were doing this for the money?

1 A. Right.

2 Q. How much were you paid each time you did it?

3 A. \$80.

4 Q. How much?

5 A. Eighty.

6 Q. \$80. Okay. And you say you did this how many
7 times?

8 A. Ten, 11 times.

9 Q. Okay. And that money that was given to you by
10 the sheriff's department to do this, did you receive a
11 1099 form for tax purposes?

12 A. No, sir.

13 Q. No. Did you declare it on any taxes?

14 A. No, sir.

15 Q. Now, on this particular day of February the
16 18th y'all met somewhere. Where was it you met?

17 A. At the schoolhouse in Salem.

18 Q. Okay. And how did you get there?

19 A. I had a ride. Actually, he had picked me up
20 there (pointing).

21 Q. Okay. Had a ride where?

22 A. Brandon had picked me up and we met with Jeremy
23 with another vehicle to get our thing going.

24 Q. Okay. And he picked you up where?

25 A. At my -- close to my residence.

1 Q. And y'all drove over, you rode with him, you
2 rode over to near the school, and was that
3 Tamassee-Salem?

4 A. Yes, sir.

5 Q. And that's where all of this started with the
6 video and the discussion you said about making the phone
7 call, etc?

8 A. Yes, sir.

9 Q. Whose phone did you use to make the phone call?

10 A. I had used my phone.

11 Q. Once you got -- you said they wired you up or,
12 gave you the camera?

13 A. Yes, sir.

14 Q. And did they have a -- did they have a
15 microphone on you?

16 A. Yes.

17 Q. Where was the microphone?

18 A. It was attached right in here (indicating).

19 Q. And did all of that and then you headed off,
20 you said, down the road toward Mr. Whitworth's house?

21 A. Correct.

22 Q. Was this time like the other times, no driver's
23 license?

24 A. Yes.

25 Q. Matter of fact, when did you last have a

1 driver's license?

2 A. About five years ago.

3 Q. Okay. Is that from today, going from today or
4 from ---

5 A. Yes, sir.

6 Q. --- back in '11?

7 A. Sir?

8 Q. Was that five years before 2011 or five years
9 before now?

10 A. It's been about five years, period.

11 Q. Altogether? Okay.

12 A. By a week.

13 Q. So probably back in 2009 approximately?

14 A. Yeah.

15 Q. Now, this vehicle that you had, was it your
16 vehicle that you were driving?

17 A. No.

18 Q. Do you know whose vehicle it was?

19 A. No.

20 Q. And who provided that vehicle?

21 A. Yeah. Brandon Long, Officer Long.

22 Q. Okay. Now, in listening to the phone call

23 on there, there was never any mention of any money,

24 never heard anything about how much it's gonna cost, how

25 much money you've got to bring or anything; is that

1 correct?

2 A. Yeah, I believe there was some money mentioned.

3 Q. So you're saying in that -- in that phone call
4 mentioned \$50?

5 A. Oh, when I -- when I had called him?

6 Q. Yes.

7 A. No.

8 Q. Okay. So there's no mention of money?

9 A. No, sir.

10 Q. And Mr. Whitworth you claim to be the other
11 person on the end of that phone message never mentioned
12 any money?

13 A. No.

14 Q. Okay. Now, you said you then -- I think your
15 testimony was you headed off with the idea you were
16 going to purchase half a gram?

17 A. Right.

18 Q. Is that correct?

19 A. Yes, sir.

20 Q. And it was -- when you got it, I think you said
21 it was in a little baggy?

22 A. Correct.

23 Q. All right. And that's the baggy with the
24 Ziploc top?

25 A. It was in a smaller -- it was purchased in a

1 smaller baggy.

2 Q. So this bag would not be what it was in?

3 A. It was -- we had -- had put it into a different
4 bag after we met, the evidence bag.

5 Q. No, I'm not talking about this big thing here.
6 I'm not trying to confuse you. I'm not talking about
7 this big old thing here. I'm talking about this little
8 baggy right here.

9 A. When I got back from -- to Officer Long, it was
10 the smaller baggy, but they'd put it into a different
11 baggy, an evidence bag or whatever.

12 Q. All right.

13 THE COURT: Make sure. Has that been
14 marked into evidence?

15 MR. DAY: Has not.

16 BY MR. DAY:

17 Q. Okay. I'm looking at state's exhibit number
18 nine which is a picture which you identified, and just
19 to make sure I understand it, you're saying that's
20 Mr. Whitworth and he's holding something in his hand?

21 A. Right.

22 Q. And what is that he's holding?

23 A. That's methamphetamine.

24 Q. They may not be able to hear you. You may need
25 to speak up.

1 A. Methamphetamine.

2 Q. And that at the end of his finger there is what
3 we're talking about?

4 A. Correct.

5 Q. Okay. And that's in the baggy that you're
6 speaking of?

7 A. The smaller baggy.

8 Q. And that's what he handed to you. Right?

9 A. Yes, sir.

10 Q. Okay. Now, your testimony is then that after
11 he did that, you took this little baggy and then you
12 left?

13 A. Correct.

14 Q. All right. Now, watching the video there,
15 again, I never heard anything about money.

16 A. I had to lay the money on his little table
17 while he was taking it out of the other baggy.

18 Q. All right. I never heard anything like here's
19 your money, is this enough, do I owe you anything more.
20 Nothing about money. I mean, I listened to it, you
21 listened to it, and you've listened to it more times
22 probably than I have.

23 A. He saw the money. He knew it was the correct
24 price for the amount for the purchase and...

25 Q. And that's what you're saying?

1 A. Yes, sir.

2 Q. But there was never a single word passed
3 between you about money, was there?

4 A. Between me and Mr. Whitworth? No.

5 Q. All right. And on the video showing that,
6 which showed him there, you said he was cutting it out.
7 How was he -- how was he weighing it?

8 A. With a scale.

9 Q. Digital scales?

10 A. Yes.

11 Q. All right. I think you said something about
12 that, that he was cutting it out and weighing it. And
13 you were supposed to get a half a gram?

14 A. Correct.

15 Q. Is that what you got?

16 A. It looked to be. That's what was supposed --
17 what it was supposed to have been.

18 Q. I'm sorry. I didn't understand you.

19 A. Yes, sir. That's what it was supposed to have
20 been.

21 Q. Okay. And, now, as you drove up there in the
22 car provided for you, on the way there the sound that we
23 were hearing apparently was the -- and correct me if I'm
24 wrong -- the key chain apparently just rattling with the
25 other keys?

1 A. Correct.

2 Q. Or something, whatever was hanging from it?

3 A. Right.

4 Q. Okay. But on the way back you played the
5 radio?

6 A. The radio was going prior.

7 Q. You're saying you had the radio playing on the
8 way there?

9 A. It was on both ways, which you could hear it in
10 the background.

11 Q. Okay. And you said something about -- let me
12 look here and make sure. You said as you were -- I'm
13 looking at a partial transcript that when you arrived
14 back and were speaking with Officers Long and Chapman
15 that you said when he handed it to me it was untied, I
16 was trying to tie it coming up the road?

17 A. Trying to keep it from falling out, yes.

18 Q. Okay. How were you trying to do that?

19 A. With my hand.

20 Q. Okay. Driving down the road?

21 A. Yeah. I had my hand on my knee, trying to fix
22 it so it didn't dump out.

23 Q. All right. Okay. So you were trying to make
24 repairs and you're heading back?

25 A. Correct.

1 Q. Okay. Okay. When you began your testimony,
2 the solicitor asked you about your criminal record and
3 you acknowledged that you did have a shoplifting
4 offense; is that correct?

5 A. Yes, sir.

6 Q. All right. And that occurred while you were
7 still working with the sheriff's department?

8 A. Yeah. Prior.

9 Q. Okay. Well, as I understand, that was in 2012?

10 A. In '12.

11 Q. And this was 2011?

12 A. Yeah.

13 Q. So you're still working with the sheriff's
14 department?

15 A. Yes, I was.

16 Q. All right. And what happened with that case?
17 You said you were convicted. Pay a fine, have to go to
18 jail, what?

19 A. I believe I paid a fine.

20 Q. Okay.

21 MR. DAY: I believe those are all the
22 questions I have. Thank you so much.

23 MS. SIMMONS: Judge, just one followup
24 question.

25 THE COURT: Certainly.

1 REDIRECT EXAMINATION

2 BY MS. SIMMONS:

3 Q. Based on your work as an informant, what is the
4 going rate for a half a gram of methamphetamine?

5 A. It'd be \$50.

6 MS. SIMMONS: Okay. Thank you.

7 MR. DAY: Nothing further, Your Honor.

8 THE COURT: All right. You may step down.

9 Thank you, sir.

10 MS. SIMMONS: Your Honor, may this witness
11 be excused?

12 THE COURT: Any objection?

13 MR. DAY: I have no objection, Your Honor.

14 THE COURT: All right. Without objection,
15 the witness may be excused.

16 (Whereupon, the witness is excused from the
17 witness stand.)

18 THE COURT: Call your next witness.

19 MS. SIMMONS: The state calls Sergeant
20 Brandon Long.

21 Whereupon,

22 BRANDON LONG,

23 being first duly sworn, is examined and testifies as
24 follows:

25 THE CLERK: Please be seated.

1 **THE COURT:** You may proceed.

2 **MS. SIMMONS:** Thank you, Judge.

3 DIRECT EXAMINATION

4 **BY MS. SIMMONS:**

5 Q. Sergeant Long, where are you employed?

6 A. Oconee County Sheriff's Office.

7 Q. And how long have you been employed in law
8 enforcement?

9 A. For approximately 15 years.

10 Q. What division are you currently assigned to?

11 A. I'm a sergeant in the narcotics and vice
12 division.

13 Q. And how long have you been there?

14 A. Since 2007.

15 Q. What kind of training and education do you have
16 in the narcotics and vice division?

17 A. I've got numerous classes on methamphetamine,
18 everything from conferences to clandestine lab certified
19 which enables us to go in and actually break down
20 methamphetamine labs.

21 Q. And tell us a little bit about how undercover
22 drug transactions work.

23 A. Basically what happens is we'll get -- get with
24 an informant, and sometimes they'll make phone calls,
25 sometimes they'll already have it lined up. We get with

1 the informant, we'll search them, make -- to where we
2 know they didn't bring drugs to the transaction. We'll
3 stick what we call a transmitter on them to where we can
4 hear what's going on, for their safety as well as the
5 collection of evidence. If it's a situation where we
6 can, we'll use video for evidence collection. We
7 provide them with the documented funds. They go
8 straight to where they're gonna purchase the drugs from.
9 We tell them not to make no stops there, no stops on the
10 way back, try to keep out as many people from the
11 transaction as we can.

12 Q. And how do you get these informants?

13 A. Different ways. Sometimes somebody in jail
14 will want to talk to us for assistance with their --
15 assistance with their charges. Sometimes we'll have
16 people just call in to the office. There's just several
17 different ways.

18 Q. So some informants work because they have
19 pending charges and some work for money?

20 A. Yes, ma'am.

21 Q. Okay. Do these informants sign a formal
22 agreement with you?

23 A. Yes, ma'am.

24 Q. And do you do your best to abide by those
25 agreements?

1 A. Yes.

2 Q. But do they cover every possible event or
3 scenario?

4 A. No, ma'am.

5 Q. Why most times do you not do the drug deal
6 yourself?

7 A. Because of this being a small county and the
8 fact that most of us have been here for a while, like,
9 I've been here 15 years, most of the drug dealers and
10 stuff know me, and I can't just walk up in there and buy
11 drugs for them -- from them, so that's why we have to
12 use informants.

13 Q. Were you working on February 18th of 2011?

14 A. Yes, ma'am.

15 Q. What area of the county were you working in?

16 A. Up towards the Salem area.

17 Q. Okay. Everything you did that day was in
18 Ocone County?

19 A. Yes, ma'am.

20 Q. Okay. What address did you conduct an
21 undercover operation at?

22 A. 256 Crestwood Drive.

23 Q. And is that -- whose residence is that known to
24 you as?

25 A. Kenneth Whitworth's.

1 Q. Okay. Where is that as far as in relation to
2 the area of Salem?

3 A. If you go down Main Street in Salem and turn on
4 Crestwood Drive, you'll pass the high school and then
5 the ball field right there beside the high school and
6 the next residence on the right is the residence the
7 incident occurred at. So it's right beside the school
8 there.

9 Q. Did you supervise an undercover transaction
10 with the -- regarding Mr. Whitworth that day?

11 A. Yes, ma'am.

12 Q. Who was your informant?

13 A. Jamie Clark.

14 Q. And how many times have you used Mr. Clark?

15 A. Approximately 11 times.

16 Q. Have you found him to be reliable and provide a
17 lot of information thus far?

18 A. Yes, ma'am.

19 Q. Okay. Did you make any promises in exchange
20 for his cooperation?

21 A. No, ma'am.

22 Q. Did you provide money in exchange for his
23 cooperation?

24 A. Yes, ma'am.

25 Q. How much did you give him?

1 A. \$80.

2 Q. Based on your training and experience, was
3 Mr. Clark under the influence of alcohol or drugs that
4 day?

5 A. No, ma'am.

6 Q. Did he have a driver's license?

7 A. No, ma'am.

8 Q. And tell us, tell me why you allowed an
9 unlicensed person to drive to do this transaction?

10 A. Because Jamie at the time lived in the Five
11 Forks area. There was no way we could say he was -- if
12 we'd have put him out right there near the residence and
13 made him walk, it would look funny. I mean, he ain't
14 gonna walk 30 minutes to buy drugs. And it was common
15 as we have to kind of sit back and weigh the situation
16 we got versus letting him drive a mile or two to make
17 the drug transaction and get a drug dealer off of the
18 street versus no driver's license.

19 Q. Who wired Jamie that day?

20 A. I did.

21 Q. Okay. Tell me about how you wired him.

22 A. We put the transmitter on hi/s side.

23 Q. And did you search him?

24 A. Yes, ma'am.

25 Q. Tell me how extensively you searched him.

1 A. Very good. We search in their shoes. We make
2 them take their shoes off. We search their socks. Make
3 them take everything out of their pockets, turn their
4 pockets inside out. Check their waistline. If they've
5 got a hat on, we check their cap line around the hat and
6 make sure that there's no drugs. Anywhere that we can
7 think of where drugs may be hidden we check to make sure
8 that they ain't bringing drugs or nothing like that
9 where anybody can be set up.

10 Q. Where did you place the camera in this
11 situation?

12 A. It was on a -- kind of like a key fob, like a
13 remote to unlock your car. It looked like one of them.

14 Q. And did you monitor this transaction from start
15 to finish?

16 A. Yes, ma'am.

17 Q. How did you do that?

18 A. By audio.

19 Q. Why do you tape the informant driving and them
20 driving back? Why do you tape the whole transaction?

21 A. To show they didn't make no stops along the
22 way.

23 Q. How much money was Mr. Clark provided that day?

24 A. \$50.

25 Q. And were those documented funds?

1 A. Yes, ma'am.

2 Q. Were those funds ever recovered?

3 A. No, ma'am.

4 Q. Okay. How did the transaction progress?

5 A. Well, when we first met up and made the phone
6 call, he arranged to purchase half a gram. And then
7 from there he was searched, wired, given \$50 in
8 documented funds. He went to 256 Crestwood Drive, went
9 inside of -- basically, when he -- when he got there,
10 they went inside of -- Kenneth sat down on the couch and
11 was cutting the methamphetamine out from the baggy.
12 Jamie laid the \$50 on the table. After Kenneth wrapped
13 the baggy up, you could see, which you've seen on the
14 video, Kenneth actually handing the baggy of
15 methamphetamine to Jamie. Jamie then left, came back,
16 met with us, turned the methamphetamine over to me.

17 Q. Have you reviewed the tape of the transaction
18 in this case?

19 A. Yes, ma'am.

20 Q. And reviewed the taped phone call?

21 A. Yes, ma'am.

22 Q. Are both of those fair and accurate
23 representations of what went on that day?

24 A. Yes, ma'am.

25 Q. Okay. Based on your investigation and what you

1 heard on the tape and what went on that day, what
2 happened?

3 A. A drug deal.

4 Q. Okay. And the videotape was made by you as you
5 had wired the CI for the video?

6 A. Yes.

7 Q. And who was known to you to appear on that
8 tape?

9 A. Kenneth Whitworth.

10 Q. Okay. I want to show you what has been
11 premarked as state's exhibits 3 through 13.

12 (Ms. Simmons and Mr. Day review exhibits.)

13 **BY MS. SIMMONS:**

14 Q. I'm going to show you what's been marked
15 state's exhibits 3 through 13. Can you look at these?
16 Are these still images you were able to capture from the
17 videotape in this case?

18 A. Yes, ma'am.

19 **MS. SIMMONS:** Judge, we would move to admit
20 state's exhibits 3 through 13 and publish them to the
21 jury.

22 **MR. DAY:** No objection, Your Honor.

23 **THE COURT:** All right. Did you say the --
24 they've been identified, but are they marked -- I mean,
25 are they admitted?

1 MS. SIMMONS: We would move to admit these
2 at this time.

3 THE COURT: Any objection?

4 MR. DAY: No, Your Honor.

5 THE COURT: All right. Without objection,
6 they may be published. Excuse me. State's exhibits 3,
7 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13?

8 MS. SIMMONS: Yes, Your Honor.

9 THE COURT: Very good. Admitted into
10 evidence.

11 (State's Exhibits No. 3, 4, 5, 6, 7, 8, 9,
12 10, 11, 12, and 13, previously marked for
13 identification, are received in
14 evidence.)

15 BY MS. SIMMONS:

16 Q. Sergeant Long, are these still photos you
17 captured from the undercover drug transaction?

18 A. Yes, ma'am.

19 Q. And what is happening here?

20 A. Kenneth Whitworth is handing the
21 methamphetamine to the informant.

22 Q. And here?

23 A. The same.

24 Q. Do you still recognize that person?

25 A. Yes. That's Kenneth Whitworth.

1 Q. And this last photograph, what is happening
2 there?

3 A. He's handing the baggy of methamphetamine. You
4 can see the baggy of methamphetamine at the tip of his
5 hand when he's handing that actually to the informant.

6 Q. Okay. Thank you very much. Based on your
7 training and experience, is it common for there to be
8 little discussion of drugs on a tape like this?

9 A. Yes. You ain't gonna -- you ain't gonna hear
10 drug dealers sit there and say I'm selling you this
11 illegal methamphetamine. I mean, it just -- it ain't
12 gonna happen.

13 Q. Did you maintain audio surveillance of the CI
14 up to the time of the debrief?

15 A. Yes, ma'am.

16 Q. Did he make any stops along the way?

17 A. No, ma'am.

18 Q. Okay. Who did the confidential informant turn
19 these drugs in to?

20 A. Myself.

21 Q. Okay. What kind of drugs did they appear to be
22 based on your training and experience?

23 A. Methamphetamine.

24 Q. Are methamphetamine and ice the same thing?

25 A. Ice is a smokeable form of methamphetamine.

1 Q. Are the terms commonly interchangeable?

2 A. Yes, ma'am.

3 Q. Where did you turn the methamphetamine in?

4 A. Into a BEST pack and into evidence to be sent
5 off and be tested.

6 Q. Okay. When did you do that?

7 A. On February the 19th, 2011.

8 Q. Where were the drugs between the 18th and the
9 19th?

10 A. In my possession.

11 Q. Did you alter them in any way during that time?

12 A. No, ma'am.

13 Q. I'm gonna show what has been premarked as
14 state's exhibit 14. Inside this larger bag is a smaller
15 bag. Do you recognize the smaller bag in this case?

16 A. Yes.

17 Q. And how do you know -- how do you mark these
18 items when you turn them into evidence?

19 A. I don't mark them.

20 Q. Do you complete paperwork, though, that
21 attaches it?

22 A. Oh, yeah. Yeah. We do chain of evidence
23 custody saying it's from me to evidence and then from
24 evidence to the lab where it's actually tested.

25 Q. And is your signature on the BEST pack

1 anywhere?

2 A. Yes. It's right here. Well, it's folded, but,
3 yes, it's on there. Actually, it's -- well, it's got
4 the date on it.

5 Q. Do you recognize that as your handwriting?

6 A. Yes.

7 Q. And is this the case number associated with
8 this Kenneth Whitworth case?

9 A. Yes.

10 Q. And so you turned it into evidence in the
11 smaller bag?

12 A. I turned it in, in the bag with the zip across
13 it. The smaller bag that's in here was the baggy from
14 the actual deal.

15 Q. Okay. So just -- that's a confusing point.
16 Just to make sure, you put the baggy from the actual
17 deal into a smaller bag that was into the BEST pack that
18 was into the bigger bag?

19 A. All right.

20 Q. Sorry.

21 A. The little baggy right here is what Jamie got
22 from Kenneth. When he brought it back to me, I put it
23 in this bigger baggy which is right here which has the
24 zip on it. That's what I did in the car when you heard
25 me telling Jeremy give me the -- give me a baggy because

1 it looks like this bag may be leaking or have a hole in
2 it, and I put it in that then. When we get back to the
3 office is when I actually -- or on the 19th when I came
4 back to the office to do my paperwork on it is when we
5 sealed it in the BEST pack and turned it into evidence.

6 Q. Thank you. Just a lot of bags there. So you
7 turned state's exhibit 14 into evidence for testing?

8 A. Yes, ma'am.

9 Q. And that is the drugs you received from Jamie
10 Clark?

11 A. Yes, ma'am.

12 Q. What did you eventually arrest the defendant
13 for?

14 A. Distribution of methamphetamine.

15 Q. Okay. And when was the warrant served?

16 A. July 31st, 2011.

17 Q. Did you have occasion, once Mr. Whitworth was
18 arrested, did you have occasion to see him?

19 A. Yes, ma'am.

20 Q. Okay. The person that was arrested in this
21 case the person that is in the photographs and
22 videotape?

23 A. Yes, ma'am.

24 Q. Do you recognize him as Kenneth Whitworth?

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

1 **MS. SIMMONS:** Please answer any questions
2 Mr. Day may have.

3 CROSS-EXAMINATION

4 **BY MR. DAY:**

5 Q. All right, sir. Let's make sure. Let's see.
6 Eleven or 12 times, put him on the highway, no license,
7 in somebody else's car. Is that correct?

8 A. Yes, sir.

9 Q. All right. And you said he's reliable?

10 A. Yes, sir.

11 Q. Has he testified in court before?

12 A. No, but the information he gives me has checked
13 out.

14 Q. But he's never testified in court?

15 A. Not other than today, no.

16 Q. Right. That's what I mean. Okay. And as I
17 understand it, your testimony is that Mr. Clark went to
18 Mr. Whitworth's house and Mr. Whitworth -- apparently
19 saying that he got methamphetamine from him, there was
20 never any discussion of any money of any kind, there's
21 nothing showing on the video of any money?

22 A. Actually, if you go back and watch, you'll see
23 on the coffee table when he first gets there there's no
24 money on it, and then toward the end of it when he turns
25 the camera around again you'll be able to see money on

1 the table.

2 Q. Okay. And you're saying that's the money that
3 appeared while Mr. Clark was there?

4 A. Yes.

5 Q. Okay. And you're saying that Mr. Whitworth --
6 I'm gonna...

7 MR. DAY: All right, Solicitor, how do I
8 turn this thing on?

9 MS. SIMMONS: Can I help you, Mr. Day?

10 MR. DAY: You most certainly may.

11 (Ms. Simmons assists with projection
12 equipment.)

13 MR. DAY: Well, that was too easy.

14 MS. SIMMONS: Okay.

15 MR. DAY: Okay. I'd like to have one of
16 these, myself.

17 BY MR. DAY:

18 Q. Let's see here. Now, you testified ---

19 THE COURT: Which one is that?

20 MR. DAY: I'm sorry. I believe that's
21 number nine. Yes, Your Honor.

22 THE COURT: Very good.

23 BY MR. DAY:

24 Q. In this one I believe you identified it as
25 Mr. Whitworth holding up the baggy, showing the meth

1 there at the end of his fingertips; is that correct?

2 A. No. I said he was handing it. He was in the
3 process of handing the baggy of methamphetamine.

4 Q. Right. But he's holding it in his left hand?

5 A. Yes, that would be his left hand.

6 Q. Okay. And that's how he's handing it to
7 Mr. Clark?

8 A. Yes.

9 Q. Okay. And I'm looking at number eight here.
10 Is that the same thing?

11 A. No. That's Jamie's hand. You can see, if you
12 look at it, the hand right there is coming this way, and
13 there's no way Kenneth's gonna be able to...
14 (demonstrating)

15 Q. Right. So you're saying that's the informant's
16 hand reaching for it?

17 A. That's -- probably so.

18 Q. Okay. And looking at number 12, again it's the
19 same thing. You say that's the informant Mr. Clark's
20 hand. It looks like he's just reaching there towards
21 Mr. Whitworth?

22 A. Up top, yes. That's what it looks to me like.

23 Q. Okay. All right. So these are pictures of
24 showing the -- you say it was an actual exchange of the
25 drugs?

1 A. Yes.

2 Q. And that Mr. Whitworth is a person who you say
3 apparently is in the business of doing it, but he uses
4 defective materials?

5 A. Defective?

6 Q. He's using baggies that are torn off?

7 A. Well, what's commonly used is corner-cut bags.
8 Like say if you went to the grocery store and bought
9 sandwich baggies, what they'll do is cut -- let's see.
10 Can I use one of them Kleenexes kind of to show what I'm
11 trying to explain here?

12 Q. Here, I'll help you because Robin's kind of got
13 her hands busy right now.

14 A. Basically, say if this is a sandwich baggy,
15 they'll take the corner and tear it off like this, put
16 your drugs down in it, and then it's rolled up kind of
17 like this and you got your drugs down here, and they'll
18 just take it and tie a knot in it, and that's what holds
19 your drugs (demonstrating).

20 Q. Okay. So if he's handing him the drugs, and
21 they certainly in those pictures aren't tied up, but
22 he's handing him an open bag apparently of approximately
23 a half a gram of methamphetamine?

24 A. Well, it looked -- to me, it looks like he's
25 fiddling with it. He must have just have not got it

1 tied good. I mean, tying it that way, it ain't ---

2 Q. You're guessing, aren't you?

3 A. --- super secure.

4 Q. You're guessing, aren't you?

5 A. Well, you asked me what I thought and I'm
6 telling you.

7 Q. All right. But you're guessing as to what you
8 thought he's doing, because you weren't there.

9 A. No, but I seen him handing drugs.

10 Q. All right.

11 A. I mean, it...

12 Q. And this half a gram, according to this
13 wonderful program I found on the internet says that a
14 half a gram is 0.017639980975 of an ounce, less than
15 one -- less than two/hundredths of an ounce. That sound
16 correct? And, now, on that you can guess. I don't
17 mind.

18 A. That's probably somewhere in the neighborhood.

19 Q. Okay. All right. And with that, according to
20 Mr. Clark you got a half a gram, and it came back -- and
21 matter of fact, I think you put on your case report
22 that -- in part of your case report where it talks about
23 confiscation and seizures, a total value of drugs \$50,
24 .50 grams of methamphetamine. Does that sound about
25 right?

1 A. Yes. I estimate it.

2 Q. Okay. And I think that's the same one in which
3 you account for the moneys that were used?

4 A. Yes.

5 Q. Okay. And what you demonstrated there to me is
6 what you said you thought he did, which was a good
7 demonstration, by the way, that when you did that you
8 showed how it was rolled up, etc., and tied a little
9 knot in it?

10 A. Yes, sir.

11 Q. Okay. And that's the way you believe in the
12 normal course of events that's what would be given to
13 the CI?

14 A. Yes.

15 Q. Okay. And then when you got back, y'all talked
16 about the fact that he said, oh -- let's see. He says
17 and on your notes from the tape, 19 minutes and 45
18 seconds into the video: The CI meets back with Sergeant
19 Long and Sergeant Chapman. And the CI says when he
20 handed it to me it was untied, I was trying to tie it
21 coming up the road. That's what he told you?

22 A. Yes.

23 Q. And I believe you said it looked like it had a
24 tear in it.

25 A. (There was no response.)

1 Q. And that would be a tear as opposed to using
2 scissors to cut off a piece of a baggy like you just
3 demonstrated?

4 A. Well, I didn't examine it that good. I mean,
5 it was dark. We was in my vehicle. I don't believe
6 I even had the interior light on. All I knew was the
7 bag was leaking and I was trying to get it in something
8 else because I didn't want to get it on me or on my
9 hands.

10 MR. DAY: I believe that's all the
11 questions I have. Thank you, sir.

12 THE COURT: Redirect.

13 MS. SIMMONS: Judge, just a couple
14 followups.

15 REDIRECT EXAMINATION

16 BY MS. SIMMONS:

17 Q. Sergeant Long, did you actually weigh the drugs
18 before you put them in, or do you just estimate based
19 on ---

20 A. I just estimate.

21 Q. Are they subsequently turned into the lab for
22 testing and for weight?

23 A. Yes. The lab makes the actual weight of them.

24 Q. Based on the course of your employment, is it
25 common sometimes to get shorted?

1 A. Oh, yes.

2 Q. Okay. And in laymen's terms, what does that
3 mean?

4 A. Basically, say if you -- if say I was a drug
5 dealer and I was selling to you, you, you and you. If I
6 shorted you, you, you, and you a little bit, that gives
7 me more to sell, meaning I make more money.

8 Q. And the car that Mr. Day referenced in his
9 cross-examination, it was provided by you. Is that
10 correct?

11 A. Yes.

12 Q. Okay. And are those cars owned by the
13 sheriff's office or are they rentals?

14 A. No. Just rentals.

15 MS. SIMMONS: Nothing further. Thank you.

16 MR. DAY: No further questions, Your Honor.

17 THE COURT: All right. You may step down.

18 Thank you, sir.

19 (Whereupon, the witness leaves the
20 witness stand.)

21 THE COURT: You may call your next witness.

22 MS. SIMMONS: We call Lieutenant Jeremy
23 Chapman.

24 Whereupon,

25 JEREMY CHAPMAN,

1 being first duly sworn, is examined and testifies as
2 follows:

3 **THE CLERK:** Please be seated.

4 **THE COURT:** You may proceed.

5 **MS. SIMMONS:** Thank you, Your Honor.

6 DIRECT EXAMINATION

7 **BY MS. SIMMONS:**

8 Q. Lieutenant Chapman, where are you employed?

9 **THE COURT:** Mr. Chapman, if you would,
10 please, give us your full name for the record.

11 **THE WITNESS:** Jeremy Edward Chapman.

12 **THE COURT:** Thank you, sir.

13 **THE WITNESS:** Yes, sir.

14 **MS. SIMMONS:** Thank you. I apologize.

15 **BY MS. SIMMONS:**

16 Q. Lieutenant Chapman, where are you employed?

17 A. Oconee County Sheriff's Office.

18 Q. And how long have you been there?

19 A. Approximately nine years.

20 Q. How long have you been employed in law
21 enforcement?

22 A. Approximately nine years.

23 Q. You are the lieutenant of the narcotics
24 division?

25 A. Yes. Starting this January.

1 Q. What does that entail?

2 A. Supervisor of all narcotics and vice
3 operations.

4 Q. And what training and education do you have?

5 A. I graduated the academy in 2004. I've been to
6 several clandestine lab trainings, specific skills which
7 is -- which allows me to be an instructor for the
8 sheriff's office, undercover investigations class, and
9 several other classes that go along with that.

10 Q. Briefly, how do undercover transactions work?

11 A. Basically what we do is through the use of
12 informants we send -- send informants in, and we provide
13 the money, we will wire them up with audio/video if at
14 all possible, the best way we can, and send them in
15 somewhere where -- either they come to us and let us
16 know that somebody is selling drugs or, you know, if
17 somebody calls in a complaint, you know, we might use
18 somebody to do that, also.

19 Q. Were you working on February 18th, 2011?

20 A. Yes, I was. I assisted Sergeant Long.

21 Q. Okay. In assisting Sergeant Long, did you
22 assist an undercover drug operation?

23 A. Yes.

24 Q. Did all the events regarding that operation
25 occur in Oconee County?

1 A. Yes, ma'am.

2 Q. Based on your law enforcement training and
3 experience, was the confidential informant that was used
4 under the influence of drugs or alcohol that day?

5 A. No, ma'am.

6 Q. And has he given you reliable information in
7 the past?

8 A. Yes.

9 Q. What were you in charge of on this particular
10 deal?

11 A. On this deal, at that time I was still sergeant
12 in narcotics, same as Sergeant Long, and we just
13 basically worked together. He was actually the case
14 agent on this case, and I was just there to assist him
15 any way possible. We don't do any type of drug deals
16 like that by ourselves. We always have somebody with us
17 for safety standpoints.

18 Q. Were you in charge of the search and wiring of
19 the -- search of the car in this case?

20 A. Yes. In this case I was searching the car.

21 Q. Tell me a little bit about the car.

22 A. The car, Brandon had -- Sergeant Long had got
23 the car. He was actually going to pick the informant
24 up. So I drove the car to the location myself and him
25 determined, which would be the school there in Salem. I

1 met him there. The car was searched by me. Every time
2 we use a vehicle we always search to make sure there's
3 nothing in the car illegal, which includes anything --
4 guns, drugs, anything like that.

5 Q. How thorough was the search?

6 A. The search is very thorough. We look under
7 seats, glove compartments, any -- any concealable place
8 that we may find.

9 Q. Any baggies present in that car before you left
10 that day?

11 A. No, ma'am.

12 Q. Okay. Why do you use rental cars?

13 A. In this case, like Sergeant Long has said, he
14 didn't have his license or anything and it would have
15 been strange for him to show up, so we have to use
16 rental cars that we -- that we get from any rental
17 company or anything like that. We use them.

18 Q. Did you monitor this transaction with Sergeant
19 Long?

20 A. Yes, I did.

21 Q. Have you reviewed the tape of the transaction?

22 A. Yes, ma'am.

23 Q. Do you personally know Kenneth Whitworth?

24 A. Yes. I know him.

25 Q. Do you recognize Kenneth Whitworth on the still

1 photos and videotape?

2 A. Yes, ma'am.

3 Q. What happened after the transaction?

4 A. After the transaction the informant left and
5 met back with us, and as Sergeant Long debriefs him I'm
6 in there with them, and as soon as that's over with I go
7 back and search the vehicle again.

8 Q. When you searched the car before and after the
9 transaction, were there any results?

10 A. Before, no. After, there was some
11 methamphetamine in the floorboard. I immediately called
12 Sergeant Long to -- and he collected it. I guess it's
13 where the baggy wasn't tied and might have spilled out.

14 Q. From what you saw, was the baggy leaking a
15 little bit?

16 A. Yes.

17 Q. I'm gonna show you what has been marked as
18 state's exhibit nine. Do you recognize this person?

19 A. Yes, ma'am. That's Kenneth Whitworth.

20 MS. SIMMONS: Please answer any questions
21 Mr. Day might have.

22 THE WITNESS: Yes, ma'am.

23 CROSS-EXAMINATION

24 BY MR. DAY:

25 Q. Sergeant Chapman, I'm just going back and

1 looking at my notes from all of your reports, etc. I
2 can't find anything about meth on the floorboard.
3 That's never mentioned.

4 A. That I couldn't tell you.

5 Q. True? It's not in there?

6 A. (The witness nods head up and down.)

7 Q. Is that correct?

8 A. It may be correct, yes.

9 Q. Okay. What happened to this methamphetamine
10 that was on the floorboard?

11 A. I brought it to Sergeant Long's attention and
12 he collected it.

13 Q. All right. And then what happened to it? You
14 don't know?

15 A. That was in Sergeant Long's possession.

16 Q. Okay. Because he didn't say anything about it
17 being on the floorboard, either. Now we've got some
18 meth in the floorboard of a rental car. Correct?

19 A. Correct.

20 Q. Okay.

21 A. That's why we search before and after.

22 Q. Okay.

23 MR. DAY: That's all the questions I have.
24 Thank you, sir.

25 THE COURT: Re-examine?

REDIRECT EXAMINATION

BY MS. SIMMONS:

Q. Lieutenant Chapman, the meth that was on the floorboard, was it on the driver's side?

A. Yes. It was directly underneath the steering wheel.

Q. Was that consistent with your informant saying that the bag was leaking?

A. Right. Correct.

MS. SIMMONS: Thank you very much.

MR. DAY: No more questions.

THE COURT: All right. You may step down.

(Whereupon, the witness leaves the witness stand.)

THE COURT: Counsel approach.

(There is an off-the-record bench conference.)

(Said bench conference being concluded, the following proceedings were had:)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, you've been there for a little over an hour. I think it would be a good time to take an afternoon break, so I'm gonna ask you to retire to the jury room. Now, I understand you have some smokers. If you would, go with the bailiff. And, of course, no

1 one can talk to you and you can't talk to anyone else
2 about this case at all and no one is to contact you at
3 all.

4 So when you're ready to come back,
5 Mr. Foreman, just knock on the door, and when everybody
6 is ready to come back we'll reconvene.

7 Very good. Everyone else remain seated
8 while the jury retires from the courtroom.

9 (Whereupon, the jury leaves the courtroom
10 at approximately 3:26 p.m.)

11 **THE COURT:** All right. Anything from the
12 state before we take a break?

13 **MS. SIMMONS:** No, Your Honor.

14 **THE COURT:** From the defense?

15 **MR. DAY:** No, Your Honor.

16 **THE COURT:** Very good.

17 (A recess is taken at approximately
18 3:27 p.m.)

19 (The trial reconvenes at approximately
20 3:50 p.m., the defendant not present but
21 represented by counsel, and the following
22 proceedings were had:)

23 **THE COURT:** All right. Are you ready to
24 proceed?

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

1 **THE COURT:** State ready to proceed?

2 **MS. SIMMONS:** Yes, Your Honor.

3 **THE COURT:** All right. Ask the jury to
4 join us, please.

5 (Whereupon, the jury enters the courtroom
6 at approximately 3:50 p.m.)

7 **THE COURT:** All right. Let the record
8 reflect the jury and alternate are in the jury-box.

9 Mr. Foreman, ladies and gentlemen of the
10 jury, we will now proceed with the state's case.

11 Madam Solicitor.

12 **MS. SIMMONS:** Thank you, Your Honor. We'd
13 call Sergeant Patrick Merck.

14 Whereupon,,

15 PATRICK MERCK,
16 being first duly sworn, is examined and testifies as
17 follows:

18 **THE CLERK:** Please be seated.

19 **THE COURT:** All right. You may proceed.

20 DIRECT EXAMINATION

21 **BY MS. SIMMONS:**

22 Q. Sergeant Merck, where are you employed? I'm
23 sorry. Sergeant Merck, please state your full name for
24 the record.

25 A. John Patrick Merck.

1 Q. M-E-R-C-K?

2 A. Yes, that's correct.

3 Q. Now, where are you employed?

4 A. The Oconee County Sheriff's Office.

5 Q. And how long have you been there?

6 A. A little over 16 years.

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

8 A. Evidence technician.

9 Q. What kind of training and education is
10 necessary for that position?

11 A. Training at the academy for certification, then
12 additional training in crime scene processing, evidence
13 collection, maintaining evidence, processing evidence,
14 and such as that.

15 Q. And are those your current job duties?

16 A. Yes, ma'am, they are.

17 Q. In front of you is what has been premarked as
18 state's exhibit 14. Can you identify this item?

19 A. Yes, ma'am, I can.

20 Q. Okay. When was it received by you?

21 A. February 21st, 2011.

22 Q. Where did you receive it from?

23 A. One of our temporary storage lockers in the
24 evidence department.

25 Q. Who had placed it in the temporary evidence

1 facility?

2 A. By Sergeant Brandon Long.

3 Q. Is that how officers generally turn evidence
4 in?

5 A. Yes, ma'am.

6 Q. When you took it from the temporary evidence
7 locker, what did you do with the drugs, well, with the
8 evidence?

9 A. Once we take them out, we mark the items and
10 then log each item into evidence and put a bar code with
11 a unique identifier on the item of evidence itself.

12 Q. And what did you subsequently do with the item?

13 A. It's placed in storage in the evidence
14 department.

15 Q. Did you do anything else with the item, take it
16 anywhere else later?

17 A. Yes, ma'am. To the Anderson-Oconee Regional
18 Forensics Lab for analysis.

19 Q. When did you do that?

20 A. March 2nd, 2011.

21 Q. Who did you leave it with on that day?

22 A. Meredith Lanford.

23 Q. Is that who also conducted the chemical
24 testing?

25 A. Yes, ma'am.

1 Q. Has this exhibit been in your care, custody, or
2 control except for the time that it was at the lab for
3 testing?

4 A. Yes, ma'am, it was.

5 Q. And is it the same item that was in the bag
6 when it was turned in to you, remnants of that item
7 still in the bag as of today?

8 A. Yes, ma'am, they are.

9 Q. Does evidence sometimes becomes scattered
10 during the testing process within the bag?

11 A. Yes, ma'am, it does.

12 Q. Okay. And when was the evidence returned to
13 you?

14 A. January 6th of 2012.

15 Q. Okay. And so just to recap, Sergeant Long
16 turned the drugs in to a locker and you retrieved them
17 from the locker and they went to the lab from there?

18 A. Yes, ma'am, that's correct.

19 Q. And the time the drugs were in your care,
20 custody, and control, did you open the BEST pack or
21 tamper with them in any way?

22 A. No, ma'am, I did not.

23 MS. SIMMONS: Please answer any questions
24 Mr. Day may have.

25 THE WITNESS: Yes, ma'am.

1 CROSS-EXAMINATION

2 BY MR. DAY:

3 Q. Sergeant Merck, I might have just missed the
4 date there. You took them to the lab, and you got them
5 back when from the lab?

6 A. My records show January 6th of 2012.

7 Q. January 6th? Oh, okay.

8 A. Well, that's -- that's when I actually logged
9 those back in. I entered it -- could have received
10 those a day or two prior to that.

11 Q. Okay. And what you received, you've got it
12 there in front of you. You received a larger baggy with
13 a smaller baggy inside; is that correct?

14 A. Yes, sir. This, this item here?

15 Q. Yes, sir.

16 A. I actually received this, this bag here, back
17 from the lab sealed up in -- in this larger bag.

18 Q. Okay.

19 A. This is the way I received it from the lab.

20 Q. All right. In the BEST pack?

21 A. It's in this, this bag here.

22 Q. Right. But what you received originally was a
23 Ziploc bag with a smaller baggy inside that Ziploc
24 that's inside of this ---

25 A. No, sir.

1 Q. --- sealed pack?

2 A. What I originally received in the actual BEST
3 kit is this bag with a blue design on it that's inside
4 this larger bag. This is actually in the manila
5 envelope, sealed up in the manila -- the manilla
6 envelope with the chain of custody and those pieces of
7 paper.

8 Q. Oh, all right, sir. So you never -- never saw
9 a smaller baggy with alleged drugs in it inside of a
10 larger Ziploc?

11 A. Yes, sir. This smaller bag here is sealed up
12 in this inner bag with the blue design on it.

13 Q. Okay. So you never actually got to hold what's
14 inside of all those bags there that would have been
15 received by Sergeants Chapman and Long?

16 A. Not the actual bag with the drugs in it, no,
17 sir. I didn't have hands on that. It was sealed up in
18 this inner bag.

19 Q. That's what I was confused on.

20 A. I don't ever lay hands on -- on the actual drug
21 items.

22 Q. Okay.

23 A. They're sealed up in -- in this bag before they
24 ever get to me. I make sure of that.

25 Q. Okay. I'm sorry. I was confused for some

1 reason on that. Okay. Thank you.

2 A. You're welcome.

3 MR. DAY: That's all the questions I have.

4 REDIRECT EXAMINATION

5 BY MS. SIMMONS:

6 Q. Just one clarification, Sergeant Merck. The
7 smaller bag -- there's two smaller bags inside the bag
8 that was sealed and given to you?

9 A. Correct.

10 Q. And you don't tamper with those bags at all;
11 you only deal with the sealed bag?

12 A. Correct.

13 MS. SIMMONS: Okay. Thank you very much.

14 MR. DAY: We have no objection to him being
15 excused, Your Honor.

16 THE COURT: All right. You may be excused.
17 Thank you very much, sir.

18 (Whereupon, the witness is excused from the
19 witness stand.)

20 THE COURT: Call your next witness.

21 MS. SIMMONS: We call Agent Meredith
22 Lanford.

23 Whereupon,

24 MEREDITH LANFORD,

25 being first duly sworn, is examined and testifies as

1 follows:

2 **THE CLERK:** Please be seated.

3 **THE COURT:** You may proceed.

4 DIRECT EXAMINATION

5 **BY MS. SIMMONS:**

6 Q. Agent Lanford, please say and spell your full
7 name for the record.

8 A. Meredith Lee Lanford, L-A-N-F-O-R-D.

9 Q. Thank you very much. Agent Lanford, where are
10 you employed?

11 A. I am employed with the Anderson-Oconee Regional
12 Forensics Laboratory.

13 Q. How long have you been employed there?

14 A. I have been employed there about seven years.

15 Q. What do you do at the forensics lab here?

16 A. I am a forensic chemist.

17 Q. What do forensic chemists do?

18 A. My primary job function is to analyze evidence
19 that's brought to our laboratory for any kind of
20 controlled substances.

21 Q. And do you have specialized training to conduct
22 that analysis?

23 A. Yes, I do.

24 Q. Tell me about your training and education.

25 A. I graduated from Clemson University with a

1 bachelor's in science degree in chemistry. I then went
2 on to complete the forensic certificate program at
3 Greenville Technical College. I was certified and
4 trained as a forensic chemist first with the Charleston
5 police laboratory, which was my former employer, as well
6 as with my current laboratory.

7 I received training in the area of forensic
8 drug chemistry from the Drug Enforcement Administration,
9 and I am a member of the American Chemical Society as
10 well as the Clandestine Laboratory Investigating
11 Chemists, and on a yearly basis I attend training in
12 forensics and we also complete a yearly proficiency test
13 exam.

14 Q. How often do you analyze substances for the
15 presence of controlled substances?

16 A. Every day.

17 Q. How many times, estimate, over the course of
18 your career?

19 A. Over 5,000.

20 Q. And how many times have you testified in court
21 as an expert in your area?

22 A. Thirteen times.

23 MS. SIMMONS: Judge, at this time I would
24 move to declare Agent Lanford as an expert in forensic
25 drug chemistry.

1 MR. DAY: No objection, Your Honor.

2 THE COURT: Voir dire?

3 MR. DAY: No, Your Honor.

4 THE COURT: All right. The witness will be
5 recognized as a forensic -- drug chemist, is that the
6 terminology you used?

7 MS. SIMMONS: An expert in forensic drug
8 chemistry.

9 THE COURT: All right. Forensic drug
10 chemistry.

11 Mr. Foreman, and ladies and gentlemen of
12 the jury, as you've noted, witnesses are usually limited
13 to testifying to only what they know of their own
14 knowledge or exercise of their own senses, in other
15 words, what they might see or hear, taste, something of
16 that nature. However, if a witness by reason of
17 background, training, and experience has expertise in a
18 certain area, then that witness will be permitted to
19 also give their opinions based on their study and their
20 review of other people's facts.

21 Now, the only thing is, you have to
22 remember expert witnesses like lay witnesses or other
23 witnesses, their testimony is for your evaluation just
24 as any other testimony or evidence, but this witness is
25 going to be permitted to give her opinion as a forensic

1 drug chemistry -- chemist.

2 All right. You may proceed.

3 MS. SIMMONS: Thank you, Your Honor.

4 BY MS. SIMMONS:

5 Q. Agent Lanford, tell me about the composition of
6 methamphetamine.

7 A. Most often we see methamphetamine as a crystal
8 like substance, but you can also see it as a powder
9 substance, a rock substance of different colors. It
10 just depends on how methamphetamine is made.

11 Q. Is the street name for methamphetamine "ice"?

12 A. Yes, it is.

13 Q. Okay. In front of you is what has been
14 premarked as state's exhibit 14. Can you identify
15 state's exhibit 14?

16 A. Yes, I can.

17 Q. How can you identify the item?

18 A. It has our lab stickers on it as well as my
19 initials.

20 Q. When was the item marked and received by you in
21 the lab?

22 A. It was received by me on March 2nd, 2011.

23 Q. And who did you receive it from?

24 A. From Patrick Merck.

25 Q. Did the item remain in your care, custody, and

1 control the entire time it was at the lab?

2 A. Yes, it did.

3 Q. Is the item today -- when you test an item, do
4 you remove it from the three or four packages we've been
5 discussing?

6 A. Yes, I do.

7 Q. Okay. Is it common for the evidence to scatter
8 in the packages over the testing process?

9 A. Yes, ma'am, very common.

10 Q. When a sample of drugs is turned in to you, are
11 some of the drugs consumed during the testing process?

12 A. Yes, they are.

13 Q. What is left in the bag now, is that what was
14 not consumed in testing?

15 A. Yes.

16 Q. What purpose did the drugs -- did the exhibit
17 come into your possession?

18 A. It came in my possession to -- in order to
19 determine if a controlled substance was present.

20 Q. Before testing do you weigh the exhibit?

21 A. We do, but I remove all packaging so I'm only
22 weighing the actual substance.

23 Q. The bags are not included in that?

24 A. No. The bags are not included in that.

25 Q. And what is -- based on your expert opinion,

1 what is the weight of state's exhibit number 14?

2 A. 0.34 grams.

3 Q. And did you subsequently conduct chemical
4 testing on this item?

5 A. Yes, I did.

6 Q. How does the chemical testing process work on
7 methamphetamines?

8 A. The first thing that I do is I perform two
9 screening tests in order to narrow down what kind of
10 controlled substance may be present. I then perform two
11 confirmatory tests on the instruments in the lab in
12 order to exactly determine what controlled substance is
13 present if any is present at all.

14 Q. From your testing were you able to form an
15 expert opinion as to what state's exhibit number 14 is?

16 A. Yes, I did.

17 Q. And state that opinion.

18 A. I found that it contained methamphetamine.

19 Q. What do you base your opinion on?

20 A. On my specific analytical test that I
21 performed.

22 Q. And did you also issue a report based upon your
23 findings on state's exhibit 14?

24 A. Yes, I did.

25 Q. And is state's exhibit 16 also in front of you?

1 A. Yes, it is.

2 Q. And is that a fair and accurate representation
3 of the report you produced in this case?

4 A. Yes, it is.

5 Q. And when did you return all the items to
6 Sergeant Patrick Merck?

7 A. I returned them on January 6, 2012.

8 MS. SIMMONS: Judge, at this time the state
9 would move into evidence state's exhibits 14 and 16.

10 THE COURT: Any objection?

11 MR. DAY: No objection, Your Honor.

12 THE COURT: State's exhibits 14 and 16 are
13 admitted into evidence.

14 (State's Exhibits No. 14 and 16, previously
15 marked for identification, are received
16 in evidence.)

17 MS. SIMMONS: Thank you, Your Honor.

18 Agent Lanford, please answer any questions
19 Mr. Day may have.

20 CROSS-EXAMINATION

21 BY MR. DAY:

22 Q. Ms. Lanford, if I may, just a couple questions.
23 Did you find any foreign substances as part of your
24 testing?

25 A. I did find what's called dimethyl sulfone also

1 in with the methamphetamine.

2 Q. And what was that?

3 A. It's called dimethyl sulfone.

4 Q. Okay.

5 A. It's a chemical commonly used in pharmaceutical
6 production. It looks a lot like methamphetamine.

7 That's why they use it as a cutting agent.

8 Q. And do you remember what percentages or portion
9 that would have been?

10 A. We do not determine what percentage of the drug
11 is present because according to our protocol we're not
12 having to do that. We just simply have to find out if
13 the controlled substance is present.

14 Q. Okay. And you went to Clemson?

15 A. Yes, I did.

16 MR. DAY: Thank you, ma'am. I appreciate
17 it. No more questions.

18 THE COURT: Re-examine?

19 REDIRECT EXAMINATION

20 BY MS. SIMMONS:

21 Q. Agent Lanford, just to be clear, your final
22 finding was a finding of methamphetamine?

23 A. Yes, it was.

24 MS. SIMMONS: Okay. Thank you very much.

25 Judge, we would ask that Agent Lanford be

1 excused.

2 MR. DAY: No objection, Your Honor.

3 THE COURT: Without objection, the witness
4 may be excused. Thank you very much, ma'am.

5 (Whereupon, the witness is excused from the
6 witness stand.)

7 THE COURT: All right. You may call your
8 next witness.

9 MS. SIMMONS: Judge, I beg the Court's
10 indulgence for one moment. May I check with the court
11 reporter, please?

12 (Ms. Simmons and the court reporter review
13 exhibits.)

14 MS. SIMMONS: Judge, at this time the state
15 would rest.

16 (The state rests.)

17 THE COURT: Mr. Foreman, and ladies and
18 gentlemen of the jury, it's just a little bit after
19 4:00, but we still have -- the state's rested. We still
20 have more to do in this case, and ultimately we have to
21 have the argument by counsel and, of course, the charge
22 on the law and that alone can take some time.

23 It's usually my policy to recess each day
24 about five o'clock. The reason for that is it seems
25 that these days and times that we have two worlds. One

1 begins early in the morning and goes to about 5:00 and
2 another one starts about 5:00 and seems to go on
3 forever. And rather than -- I don't think we can --
4 well, we talk about even complete the trial of the case.
5 We've completed the state's case, but we haven't
6 completed everything before five o'clock, but I don't
7 want to give the case to you at that time because you
8 need to spend some time obviously in your deliberations.

9 So rather than break the case -- plus I
10 have some matters I need to take up with the attorneys
11 before we do conclude the trial of the case. I'm going
12 to excuse you for the balance of the day and then ask
13 you to come back.

14 When would you like to start in the
15 morning? Y'all know when you have -- how far you have
16 to come and what you need to do. And by the way, this
17 is not a unanimous verdict, just a consensus as to what
18 time you'd like to start.

19 (Members of the jury confer.)

20 **THE FOREMAN:** Nine o'clock, Your Honor.

21 **THE COURT:** Nine o'clock? Very good. All
22 right. So we'll come back at nine o'clock. Come back
23 to the jury room and at that time we'll complete the
24 case. I think we can complete it tomorrow.

25 All right. With that, you will be excused.

1 And let's see, I've got about -- I've got so many -- not
2 so many but some juries out. I'm trying to be sure that
3 you did hear my instructions about not to discuss it
4 with anybody and if anybody insists on discussing it
5 with you to, what is it, tell them that you can't, and
6 if they need it explained to them I'll be glad to do
7 that. I'll be here at 8:30. So the main thing is, do
8 not let anybody interfere with the proper resolution of
9 the case. I do thank you for that, and I'll see you in
10 the morning at nine o'clock.

11 Everyone else remain seated while the jury
12 retires from the courtroom.

13 (Whereupon, the jury leaves the courtroom
14 at approximately 4:10 p.m.)

15 **THE COURT:** All right. Do we have any
16 charges from the state?

17 **MS. SIMMONS:** No, Your Honor.

18 **THE COURT:** Anything from the defense?

19 **MR. DAY:** No, Your Honor.

20 **THE COURT:** All right. The state has
21 rested?

22 **MS. SIMMONS:** Yes, Your Honor.

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

25 **MS. SIMMONS:** No, Your Honor.

1 **THE COURT:** Anything from the defense, I
2 mean, as far as the state's case?

3 **MR. DAY:** We would move, Your Honor, for a
4 directed verdict of acquittal in they have failed to
5 meet the threshold of evidence necessary in order to
6 prove the defendant's guilt beyond a reasonable doubt.

7 **THE COURT:** Of course, it's for the jury to
8 determine whether or not it's beyond a reasonable doubt.
9 I do find that pursuant to the rule, I think it's 19,
10 that sufficient evidence has been presented in order for
11 the jury to make that determination. So I'm gonna have
12 to deny your motion for a directed verdict.

13 Obviously, I'm not here to weigh the
14 evidence, only to determine whether there is any
15 evidence, and it seems there is sufficient evidence to
16 go forward. All right. Motion denied.

17 **MR. DAY:** Thank you.

18 **THE COURT:** Anything else?

19 **MS. SIMMONS:** No, Your Honor.

20 **THE COURT:** All right... Nine o'clock okay?

21 **MS. SIMMONS:** That's what it is.

22 **MR. DAY:** Yes, Your Honor.

23 **THE COURT:** Well, let's face it, they've
24 been pretty good. They've, you know, been patient with
25 us today and all.

1 So, and I also want to thank you for the
2 way you tried your case. You certainly, what is it,
3 presented it in a straightforward fashion, and I think
4 that's appropriate.

5 All right. With that, I'll see you at nine
6 o'clock in the morning. And if you do have any charges,
7 please let Mr. Bowman know.

8 **MS. SIMMONS:** Can we send them -- it can be
9 an email if we have any?

10 **THE COURT:** Please.

11 **MS. SIMMONS:** Thank you.

12 **THE COURT:** Oh, wait a minute. And also I
13 have prepared a proposed verdict form, if you'd like to
14 come forward, please. Well, let Mr. Bowman give it to
15 you. I don't think there's any lesser-included. It's a
16 distribution, so it doesn't have weight or anything like
17 that.

18 (Ms. Simmons and Mr. Day review verdict
19 form.)

20 **MS. SIMMONS:** No objection from the state,
21 Your Honor.

22 **THE COURT:** Very good.

23 **MR. DAY:** None from the defense, Your
24 Honor.

25 **THE COURT:** All right. Well, you'll have

1 that for -- you can keep those for your arguments.

2 Do you anticipate any direct presentation?

3 **MR. DAY:** Your Honor, I have weighed the
4 possibility of having my expert review the testimony of
5 the expert from the state and put forth a presentation
6 that I think would last no longer than two to three
7 days. However, we found we don't have enough money to
8 pay him so we just decided not to do anything. I do not
9 anticipate putting up anything.

10 **THE COURT:** Well, that means, of course,
11 that the state will open and the defense will close.

12 **MR. DAY:** And, Your Honor, we'd ask that
13 they open in full.

14 **THE COURT:** Well, they have to.

15 **MR. DAY:** Very good. I didn't want to mess
16 up and sit down and let her start talking again.

17 **THE COURT:** It's my reading of the rules
18 that the Rules of Civil Procedure apply to criminal
19 cases unless there is a variance. I've forgotten what
20 rule it is. And, of course, the Rules of Civil
21 Procedure do provide that the party having the opening
22 and the burden of proof does open fully, the law and
23 evidence. All right. Very good.

24 **MS. SIMMONS:** Thank you, Judge.

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

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THE COURT: Thank you.

(Whereupon, at approximately 4:20 p.m., the
trial is recessed to the following day,
Wednesday, February 27, 2013 at 9:00 a.m.)

1 (On Wednesday, February 27, 2013, the
2 trial reconvenes at approximately
3 9:18 a.m., the defendant not present but
4 represented by counsel, and the
5 following proceedings were had:)

6 **THE COURT:** All right. Anything from the
7 state before I bring the jury back?

8 **MS. SIMMONS:** No, Your Honor.

9 **THE COURT:** Anything from the defendant?

10 **MR. DAY:** None, Your Honor.

11 **THE COURT:** All right. Mr. Day, I will
12 recognize you for defense and you will rest; is that
13 right?

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

15 **THE COURT:** All right. And we've already
16 taken care of the motions.

17 **MR. DAY:** Yes, sir. I don't know of
18 anything that's changed since the last motion.

19 **THE COURT:** All right. Now, that's just
20 it. There has been no further testimony, but the motion
21 for directed verdict by the defendant is denied.

22 All right. Then we'll go to the jury.

23 **MS. SIMMONS:** Yes, Your Honor.

24 **THE COURT:** All right. Ask the jury to
25 join us, please.

1 (Whereupon, the jury enters the courtroom
2 at approximately 9:19 a.m.)

3 **THE COURT:** All right. Let the record
4 reflect that the jury and alternate are in the jury-box.

5 Mr. Foreman, ladies and gentlemen of the
6 jury, the state has rested, and I will now recognize
7 Mr. Day for the defendant.

8 **MR. DAY:** Thank you, Your Honor. May it
9 please the Court. The defense rests, Your Honor.

10 (The defense rests.)

11 **THE COURT:** Very well. There are a few
12 things I need to mention first.

13 Under our laws in South Carolina, a
14 defendant may be tried even if the defendant does not
15 attend the trial, but the fact that the defendant is not
16 present may not be considered against the defendant in
17 any manner whatsoever.

18 The defendant has a Constitutional right to
19 remain silent, to put up no evidence, and require the
20 state to meet its burden of proof beyond a reasonable
21 doubt. The assertion of the Constitutional right not to
22 testify or present any evidence or even attend the trial
23 must not be considered by you in your deliberations.

24 Under the oath you took, you are to draw no
25 conclusion whatsoever from the fact that the defendant

1 in this case did not testify or put up evidence or even
2 attend his trial. As I stated, the defendant is not
3 required to prove his innocence. The burden of proof
4 remains upon the state to prove guilt beyond a
5 reasonable doubt.

6 Now, with that, I will recognize the
7 solicitor for her closing argument. And as I say, these
8 are true arguments, not like the opening statements.
9 They will be -- each side will try to persuade you as to
10 their view of the facts. Of course, the ultimate
11 decision is yours and yours alone.

12 I recognize Ms. Simmons for her closing
13 argument.

14 **MS. SIMMONS:** Thank you, Your Honor. May
15 it please the Court. Mr. Day.

16 CLOSING ARGUMENT

17 **MS. SIMMONS:** Good morning, ladies and
18 gentlemen.

19 Thank you again for your attention over the
20 last couple of days. I've paid note that you're all
21 paying attention and that you have carefully considered
22 the facts as presented in this case.

23 It's been my obligation to prove to you
24 that the defendant, Kenneth Whitworth, distributed meth
25 on February 18th, 2011. The elements of that are that I

1 have to prove to you that it occurred in Oconee County,
2 which the officers testified that; that it occurred on
3 February 18th, 2011, you heard multiple people give you
4 that date; and that the defendant distributed
5 methamphetamine -- and a chemist told you it was
6 methamphetamine -- to an undercover operative, and the
7 undercover operative testified as to the distribution,
8 and you saw the videotape and the photographs.

9 I do want to mention to you that
10 distribution of methamphetamine, while there is
11 testimony that this transaction was a \$50 half-a-gram
12 transaction, the act of distribution is complete when
13 you transfer an illegal drug to another party. You
14 actually can be convicted of distribution of a
15 controlled substance without money exchanging hands.
16 The law in South Carolina, even if I gave you
17 methamphetamine I could be found guilty of distribution
18 of meth.

19 I have to prove this to you beyond a
20 reasonable doubt. I would submit to you that that's not
21 beyond all doubt. Use your common sense. Be
22 reasonable. Reasonable doubt is found using your common
23 sense. I do believe we have proved this beyond a
24 reasonable doubt.

25 The defense talked to you in their opening

1 about puzzle pieces and that you need to put all the
2 puzzle pieces together. I submit to you all the pieces
3 have been presented to you, they can be put together,
4 and I trust that you can do that during the course of
5 your deliberations.

6 This is my final opportunity to speak to
7 you. The defense will speak to you after I've finished.
8 So at this point I have to anticipate a little bit what
9 they're gonna talk to you about. I expect a little bit
10 of a smokescreen from them, trying to get you to lose
11 track of the fact that there is substantial video and
12 photographic evidence in this case.

13 You may hear about the fact that the CI
14 does not -- the confidential informant, CI as they're
15 known, doesn't have a driver's license and he does have
16 a conviction for shoplifting. I submit to you that
17 during the course of an undercover drug operation you
18 kind of have to pick the lesser of the two evils.
19 Sometimes you have to use an informant who may have a
20 shoplifting conviction or not have a driver's license in
21 order to -- to get someone who's distributing dangerous
22 methamphetamine to -- to people. I submit it's the
23 lesser of the two evils and it's common practice.

24 You may also hear about the infamous
25 leaking bag. Yes, the bag was leaking when it was given

1 to the informant. He tried to tie it up. He told the
2 officer as soon as he got back, I tried to tie this bag,
3 it's untied, it's leaking. He was very forthcoming.
4 You saw him hand the bag to the officer, and the officer
5 actually had to re-bag it in order to quit -- make it
6 stop leaking. The confidential informant did the
7 absolute best he could to deliver the product back to
8 the officer in the condition that it was given to him.

9 A small amount of methamphetamine did leak
10 into the floorboard. The informant was holding it at
11 the -- at the steering wheel, but I submit to you that
12 Sergeant/now Lieutenant Chapman finding the small amount
13 of methamphetamine in the floorboard shows you he was
14 doing his job. He was being thorough. He found these
15 tiny bits of methamphetamine that had dropped out of the
16 bag, because he was doing what he was supposed to do,
17 searching the car after the incident.

18 But if you remember in the video you
19 actually see the informant hand the bag to the officer,
20 and that bag looks substantially similar to the one that
21 you saw the defendant hand the informant in the
22 transaction.

23 There's not a lot of discussion about drugs
24 on the tape. We've talked about that. The officer
25 talked to you about it. It would be extremely uncommon

1 for me to be able to present to you a tape where the
2 defendant goes here is your illegal methamphetamine.
3 That scenario never happens. I will submit to you there
4 is discussion in the taped phone call about a half a
5 gram. They're not talking about M&M's or rock candy.
6 They're talking about methamphetamine. And you see him
7 in the video. He's weighing it out. He's packaging it.
8 He's handing it to the -- to the informant. You're just
9 not gonna hear a lot of drug discussion. You have to
10 use the totality of the circumstances to figure out what
11 happened.

12 Any argument that you will hear on all
13 those things, I submit to you, are just defense
14 arguments that are going to be tailored to taking your
15 attention away from our case. I'd ask that you keep the
16 evidence that we have submitted to you in the forefront
17 of your mind and think about it during the course of
18 your deliberations.

19 You heard from Sergeant Long. He told you
20 how drug deals work, how we get informants, some are
21 paid, as in this situation, some have pending charges.

22 He talked to you about the thoroughness of
23 the searching, the thoroughness of the wiring, that they
24 actually do video and audio. And you had to sit through
25 that excruciating black part of the drive there and the

1 drive back because they want to present to you as much
2 as they can to show you there was no stop on the way
3 there, stop on the way back. This is a controlled
4 environment as humanly possible.

5 He told you that the defendant -- I mean,
6 informant was thoroughly searched before and after. The
7 car was thoroughly searched before and after. They made
8 video and audio surveillance of the deal, and he stayed
9 as close as he could to the deal without actually
10 driving by the defendant's house.

11 The confidential informant, the informant
12 in this case is Jamie Clark. He may not be the ideal
13 guy that you guys want to have over for dinner tonight,
14 but he was truthful with you, he has no ax to grind, and
15 he was honest. You can't find the most upstanding
16 member of the society to be a confidential informant.
17 He has no motive to lie. The judge is going to talk to
18 you about credibility of witnesses. And you observed
19 his credibility, his demeanor, and the information he
20 gave to you. That is for you to judge, and I submit
21 that you will find that he was credible in his
22 testimony.

23 Most of what is evidence in this case we
24 all know is the phone call, the videotape, and the still
25 photos. This evidence is hard evidence of a crime.

1 It's hard evidence of the defendant's guilt. This case
2 does not rely solely on the testimony of Jamie Clark,
3 because it's on tape.

4 I want to briefly go over now just the
5 highlights of the videotape and audiotape evidence that
6 you've seen.

7 (A portion of State's Exhibit No. 2, the
8 video, is played.)

9 There the informant testified to you that
10 he is getting the drugs out of the bigger bag that he
11 had and that he is weighing it out using scales.

12 (A portion of State's Exhibit No. 2, the
13 video, is played.)

14 There is the hand-to-hand delivery of the
15 methamphetamine.

16 (A portion of State's Exhibit No. 2, the
17 video, is played.)

18 That's consistent with what the officer saw
19 on the tape, it's consistent with what the informant
20 told you, and it's consistent with what you see at the
21 end of the video that's handed to the officer.

22 There is also the taped phone call we'll
23 briefly review, that the defendant -- the informant
24 testified he knows Kenneth Whitworth, he knows his
25 number, and he made this phone call to him, setting up

1 the deal. This is where you will hear some discussion
2 of drugs.

3 (A portion of State's Exhibit No. 1, audio
4 phone call, is played.)

5 That phone call discussed a half a gram and
6 it also discussed the quality of the methamphetamine as
7 "decent."

8 I submit to you that those two items are
9 indisputable evidence of the defendant's guilt in this
10 case.

11 You'll also have in the jury room the still
12 photographs of the -- that were taken by law enforcement
13 from the videotape. There's, I believe, 13 of them and
14 you'll have them in the jury room, a lot better quality
15 than showing it to you on this presenter for your
16 consideration. I submit to you that is also very
17 persuasive evidence in this case.

18 Just to review a little more of the
19 testimony you've heard from law enforcement, you did
20 hear from Sergeant Merck who testified to you about the
21 integrity of the evidence process in these cases, that
22 he doesn't tamper with anything, these things end up in
23 three or four bags when they're returned to him, that
24 everything is sealed, and he does everything he can to
25 make sure the integrity of the chain of custody in these

1 cases is kept intact.

2 You also heard from Meredith Lanford. She
3 was the expert witness in this case that testified to
4 you that the final amount of methamphetamine in this
5 case was, I believe, .334 -- beg your indulgence for one
6 second. You'll have this with you. And she'll tell
7 you .34 was the final amount of the methamphetamine in
8 this case.

9 She'll tell you that -- she told you that
10 -- the weight of the case, but this is not an offense
11 based on the weight. I submit to you if he sold .01
12 grams of methamphetamine it would still be distribution
13 of methamphetamine.

14 Officer Long told you it's not uncommon to
15 get shorted. The CI thought he was getting a half a
16 gram, he got .34, but we also learned that that's pretty
17 common. If you short everybody, it's more for you or
18 more that you can sell to other people and make money.

19 And I would also bring to your attention
20 she also testified to you that she takes the drugs out
21 of the bag when she analyzes them. So you're gonna see
22 that original little baggy in here, but there's nothing
23 in it. It's just she's placing it back in the bag.

24 You're also gonna see what appears as not
25 being an astounding amount of drugs left in this -- in

1 this bag. Methamphetamine is crystal stuff that's kind
2 of hard to see. But don't be expecting to see exactly
3 what you saw on that videotape because she did testify
4 that part of the drug was consumed during the testing
5 process and she had unpackaged it. But you'll have this
6 for your consideration in the jury room and you can see
7 what methamphetamine looks like and that it was present
8 in this case.

9 Ladies and gentlemen, in summary, I would
10 submit to you that this is not a vast conspiracy against
11 Kenneth Whitworth. Everyone in this case identified
12 Kenneth Whitworth. The informant said he'd known him
13 ten to 15 years. The officer told you I recognize the
14 person that's in that video as Kenneth Whitworth and
15 it's also the person that I arrested for this offense.
16 Identity in this case is not in question.

17 Kenneth Whitworth was selling drugs. He
18 got caught. It's that simple. It's on tape. Videos
19 and photographs and phone calls don't lie. You don't
20 have to solely base your decision in this case on
21 witness testimony. You have physical evidence to
22 consider.

23 I submit to you, go into the jury room,
24 look at that evidence, deliberate carefully, and I
25 believe at the end of the day you'll use your common

1 sense, and I would ask that you find the defendant
2 guilty of distribution of methamphetamine.

3 Again, I thank you for your time.

4 **THE COURT:** Mr. Day.

5 **MR. DAY:** Thank you, Your Honor. Madam
6 Solicitor.

7 CLOSING ARGUMENT

8 **MR. DAY:** Ladies and gentlemen of the jury,
9 there isn't a whole lot I can say, is there? You can
10 see the handicap I've had, except there are some
11 questions that you've still got to answer.

12 One is, this is a distribution case in
13 which the evidence that the state has put up saying that
14 he came in there and bought drugs, even though the one
15 thing that's missing in all this is that the money went
16 from the sheriff's department to Mr. Clark and yet
17 there's nothing to show that it went from Mr. Clark to
18 Mr. Whitworth.

19 But what you did hear, Mr. Clark and
20 Mr. Whitworth have known each other for ten, 15 years.
21 Now, just between me and you, do you think this is the
22 first time in ten or 15 years that the two of them ever
23 discussed drugs? The only time? These are a couple of
24 users. That's why he came to the house. Didn't come
25 there for any distribution. These were a couple of

1 users. They apparently have done this a lot of times.
2 They've shared drugs.

3 Because the first thing Mr. Clark did when
4 he got back in the car was start talking about -- when
5 he got back, oh, the thing tore, I was trying to tear
6 this -- put this little baggy back together that I had.

7 Well, at least a third of it disappeared.
8 I have a feeling I know where that went. I don't think
9 it went on any floorboard. I think it went home with
10 Mr. Clark or in that ten minutes, approximately ten
11 minutes that he spent driving back, he decided to use it
12 then.

13 Was this a distribution? A couple of guys
14 who knew each other. And no question, a couple of
15 users. But is that enough to be a distribution?
16 Because on that tape, audio or video, you never saw any
17 money pass hands. You've heard the testimony. You got
18 to watch it. These were a couple of users. And is that
19 a distribution, which is what must be proven?

20 And in this case the state is telling you
21 that the distribution is based for the most part on the
22 fact that money exchanged hands, and yet that portion is
23 still missing. It's not there.

24 The solicitor says I'm looking for a
25 smokescreen from you. I'm not doing any smokescreen.

1 By gosh, you could see all what's going on right up
2 here. It's as almost as if you were there.

3 Don't let anybody kid you. I, for one,
4 being a criminal defense lawyer, love videos. You can
5 see what happened. I don't have to listen to what he
6 says or somebody else says over here. I don't have to
7 listen to anything. I can look at it and hear it as if
8 I was there. It makes life so much easier.

9 Don't get me wrong. I'm one of those --
10 I've had people come up and say I ain't done none of
11 this, no, sir, they're lying through their teeth. Well,
12 let me show you the video, let's go to the video. Oh.
13 Uh-oh.

14 So we've got a video, and that's their
15 case. Look at the video and see if you find that in
16 fact this meets all of the requirements, which the judge
17 will charge you that all of the requirements must be
18 met. All the elements of a crime must be proven, each
19 single one, beyond a reasonable doubt for the person to
20 be found guilty.

21 In this case there are some -- there's some
22 gaps. They just don't -- just don't seem to be there.
23 Something's missing. That's what you have to decide.
24 That's why they pay you the big bucks to go back there
25 and do this. But I want you to look at that. There

1 isn't any smokescreen or anything. Look and see.

2 The thing about drugs on the floorboard,
3 popping up at the last second? Nah. Mr. Clark did
4 that. I wonder if Mr. Clark could have passed a drug
5 test. I'm wondering.

6 Because let's face it, you don't think that
7 they're gonna send somebody off the street, they say
8 "here." Some guy comes in and says, oh, I want to go
9 out and buy drugs for you, I want to be a good
10 Samaritan, I want to help my community, I want to buy
11 drugs, help you make cases. Okay. When you get out of
12 church tomorrow, how about come on over to the house and
13 we'll set you up and send you out to someone we think is
14 selling drugs. Okay. Who is it? I don't think it's
15 gonna be somebody he doesn't know. I don't think
16 somebody is gonna walk up to someone who is suspected of
17 selling drugs and a stranger knock on the door and say,
18 hey, I want to buy some drugs. It's people in the
19 business, people who are in that lifestyle.

20 Mr. Clark comes in here acting like I'm
21 just a good guy going out and trying to do this.
22 They're paying me a little money, which of course he's
23 not gonna declare on any taxes or anything. But he's
24 going to try to do what he thinks is right, apparently,
25 but how does he know about this? Because he's a

1 druggie. He's involved some way. Otherwise, he
2 wouldn't be doing it.

3 And he sits up there on the stand and acts
4 like Mr. Goodie-two-shoes is doing this because he wants
5 to help his community. And at least 11 times they put
6 him on the highway driving around when the State of
7 South Carolina said don't you do that. He has no regard
8 for the law. We know that. We know he's a thief.

9 All of those things have to go into your
10 consideration as part of your deliberation as to what
11 went on here. Something's missing. Something is
12 missing.

13 In going back and looking over it, you'll
14 get to see all the evidence here and you'll have to make
15 your decision. Like I said, it's not gonna be easy, but
16 I do want you to make sure you consider everything.
17 Make sure it all is there. As the solicitor said, all
18 the pieces of the puzzle. And if one is missing -- I
19 don't care if it's a thousand-piece puzzle -- if one is
20 missing, the state has failed. And that's what you've
21 been sworn to do is to protect that.

22 I ask you to look at that, make your
23 decision. No one can question it. As the judge tells
24 you, the only place in this entire country that is
25 inviolate -- your bedroom is not inviolate. Anywhere in

1 your home, your business, your car, the government can
2 listen to what you're doing and watch you, but back in
3 that jury room not a single person in this country is
4 allowed to know what you're doing back there. They
5 can't listen, they can't look, can't even question
6 unless you want to talk about it. It's that important.

7 I appreciate the fact that you were here.
8 I appreciate your attention. All of you have listened.
9 Like I said, it's interesting. And like I said, you got
10 to see so much of it right here. Go back there and make
11 sure it's all there. See if you can fill in all those
12 missing pieces.

13 Thank you.

14 JURY CHARGE

15 **THE COURT:** Mr. Foreman, ladies and
16 gentlemen of the jury, as jurors in this case you have
17 certain functions and responsibilities to perform which
18 are entirely different and separate and distinct from
19 those of mine as the trial judge.

20 I am prohibited by the Constitution of our
21 state from charging you on the facts of this case. I'm
22 also prohibited from discussing the facts of the case
23 with you or in any way intimating what my feelings, if
24 any, are about the facts of this case.

25 It is your responsibility and yours alone

1 to pass upon all issues of fact presented in the case.
2 I would, therefore, charge you that if during the course
3 of the trial or during my charge you have been given or
4 left with an impression or feeling that I do have a
5 personal feeling about the facts of the case, I would
6 specifically instruct you to disregard that feeling or
7 impression. Moreover, you are the sole judges of what
8 the testimony was and not the argument of counsel.

9 It is also your duty and yours alone to
10 weigh the testimony and evidence in the case and to pass
11 upon the credibility or believability of the witnesses.
12 In this connection, you have the right to believe all
13 that a witness tells you or disbelieve all that a
14 witness tells you. You have the right to believe a part
15 of what a witness tells you and to disbelieve a part of
16 what a witness tells you. You have the right to take
17 into consideration any bias or prejudice or interest you
18 feel the witness might have in the case. I say this
19 merely to emphasize that the weight you see fit to give
20 to the testimony, to credibility of the witness, as well
21 as all the issues of fact are for your determination.

22 As judges of the facts you are the sole
23 judges of the credibility; that is, the believability of
24 the witnesses who have testified in this case. In
25 passing upon their credibility, you may take into

1 consideration many things; such as the appearance and
2 manner of the witness on the stand, sometimes referred
3 to as the demeanor of the witness, was the witness
4 forthright or hesitant, was the witness's testimony
5 consistent or did it contain discrepancies, what was the
6 ability of the witness to know the facts about which he
7 or she testified, did the witness have a cause or a
8 reason to be biased and prejudiced in favor of the
9 testimony he or she gave, was the testimony of the
10 witness corroborated or made stronger by other testimony
11 and evidence or was it made weaker or impeached by such
12 other testimony and evidence. As jurors you have the
13 right to believe a small portion of a witness's
14 testimony and discard the larger or vice versa. You may
15 believe all of a witness's testimony or none.

16 The Rules of Evidence ordinarily do not
17 permit witnesses to testify to opinions or conclusions.
18 An exception to this rule exists for a witness we call
19 expert witnesses. A witness who by education and
20 experience has become expert in some art, science,
21 profession, or calling may state an opinion as to the
22 relevant and material matter in which the witness claims
23 to be an expert and may also state the reason for that
24 opinion.

25 You should consider any expert's opinion

1 received in evidence in this case and like any other
2 evidence give it the weight you think it deserves. If
3 you decide that the opinion of an expert witness is not
4 based on sufficient education and experience or if you
5 conclude that the reasons given in support of the
6 opinion are not sound or that the opinion is outweighed
7 by other evidence, you may disregard the opinion
8 entirely. An expert's testimony is to be given no
9 greater weight than any other witness's testimony simply
10 because the witness is an expert. Further, you're not
11 required to accept an expert's opinion even though it's
12 not contradicted.

13 I instruct you and emphasize that the fact
14 the defendant did not testify, put up evidence, or even
15 appear are not factors to be considered by you in any of
16 your deliberations and in your consideration of the
17 question of whether the state has proven the defendant
18 is guilty or not guilty of the charge in the indictment.
19 It must not be considered -- it must not be considered
20 by you in any manner whatsoever. A defendant has the
21 Constitutional right to remain silent and that assertion
22 of this right must not be considered by you in your
23 deliberations. The defendant may also waive his right
24 to be present at trial.

25 I repeat: Under your oath you are to draw

1 no conclusion whatsoever from the fact that the
2 defendant in this case did not testify, present
3 evidence, or even attend the trial. The fact that the
4 defendant did not testify should not even be discussed
5 by you in the jury room.

6 The burden of proof, as I have stated to
7 you, is on the state. The burden is not -- the
8 defendant is not required to prove his innocence. The
9 burden of proof remains on the state to prove guilt
10 beyond a reasonable doubt.

11 Throughout this entire process you have but
12 one single objective, and that is to seek the truth
13 regardless from what witness the testimony may have
14 come.

15 Now, by the same Constitution and law that
16 makes me the finders of the facts -- makes you the
17 finders of the facts and evidence as I have discussed
18 with you, I am as the trial judge made the sole and only
19 instructor on the law. You must accept as correct the
20 law which I charge and apply it to the evidence as you
21 find it and reach a verdict. If I should make an error
22 in the law as I instruct it to you, there is another
23 time and place that error can be considered and, if
24 necessary, corrected, but for the purposes of this case
25 today you must accept the law as I charge it to you to

1 be the correct law. And, finally, I charge you in this
2 regard, that you, nor for that matter I, should not be
3 concerned with what the law ought to be but rather what
4 I charge you the law to be.

5 Now, the defendant has pled not guilty to
6 this indictment and that plea puts the burden on the
7 state to prove the defendant guilty. A person charged
8 with committing a criminal offense in South Carolina is
9 never required to prove himself innocent.

10 I charge you that it is an important rule
11 of law that the defendant in a criminal trial, no matter
12 what the seriousness of the charge may be, will always
13 be presumed innocent of the charge for which the
14 indictment was issued unless the guilt has been proven
15 by evidence satisfying you of that guilt beyond a
16 reasonable doubt.

17 This presumption of innocence does not end
18 when you begin your deliberations, but it accompanies
19 the defendant throughout the trial until you reach a
20 verdict of guilt based upon evidence satisfying you of
21 that guilt beyond a reasonable doubt.

22 Presumption of innocence is like a robe of
23 righteousness placed about the shoulders of the
24 defendant which remains with the defendant until it has
25 been stripped from the defendant by evidence satisfying

1 you of the defendant's guilt beyond a reasonable doubt.

2 Presumption of innocence is not a mere
3 legal theory. It's not a legal phrase. It is a
4 substantial right to which every defendant is entitled
5 unless you, the jury, are satisfied from the evidence
6 that the defendant's guilt is beyond a reasonable doubt.

7 Now, what is a reasonable doubt under the
8 law? A reasonable doubt is the kind of doubt that would
9 cause a reasonable person to hesitate to act.

10 Now, there are two types of evidence which
11 are generally presented during a trial, direct evidence
12 and circumstantial evidence.

13 Direct evidence is the testimony of a
14 person who claims to have actual knowledge of a fact,
15 such as an eyewitness. It is evidence which immediately
16 establishes the main fact to be proved.

17 Circumstantial evidence is proof of a chain
18 of facts and circumstances indicating the existence of a
19 fact. It is evidence which immediately establishes
20 collateral facts from which the main fact may be
21 inferred.

22 Circumstantial evidence is based on
23 inference and not on personal knowledge or observation.
24 It is proof that does not actually establish the fact in
25 question but asserts or ascribes something else from

1 which you may reasonably infer the truth of the fact or
2 at least reasonably infer an increase in the probability
3 the fact is true.

4 For the circumstantial evidence to be
5 sufficient to warrant the finding of a fact, the
6 circumstances must lead to that fact with reasonable
7 certainty.

8 Facts and circumstances should be
9 considered in light of ordinary experience and common
10 sense. The existence of a fact cannot be based on
11 speculation, surmise, or conjecture.

12 The law makes absolutely no distinction
13 between the weight or value to be given to either direct
14 or circumstantial evidence nor is a greater degree of
15 certainty required of -- required of circumstantial
16 evidence than of direct evidence.

17 You should weigh all of the evidence in the
18 case. After weighing all of the evidence, if you're not
19 satisfied of the guilt of the defendant beyond a
20 reasonable doubt you must find the defendant not guilty.

21 In order to establish criminal liability,
22 criminal intent is required. For example, the mental
23 state required to be proven by the state for a
24 particular crime may be purpose, intent, or criminal
25 knowledge. Criminal intent must be given -- excuse me

1 -- must be proven by the state beyond a reasonable
2 doubt.

3 Criminal intent is always a matter that
4 must be determined by you, the jury, from the
5 circumstances surrounding the situation. There's no way
6 to prove intent to a mathematical certainty. There is
7 no medical science -- or no way medical science can
8 dissect a person's brain and determine what the person
9 had in mind. So the law says that criminal intent may
10 be inferred from the circumstances shown to have
11 existed. This is how a determination of whether or not
12 the element requiring intent was present.

13 It is not necessary to establish intent by
14 direct and positive evidence. Intent may be established
15 by inference in the same way as any other fact, taking
16 into consideration the acts of the parties and the facts
17 and circumstances of the case.

18 Criminal intent is a mental state, a
19 conscious wrongdoing. It is up to you to determine what
20 the defendant intended to do based on the circumstances
21 shown to have existed. Criminal intent is a state of
22 mind that operates jointly with an act or omission in
23 the commission of a crime. Criminal intent is a mental
24 state.

25 Criminal liability is normally based upon

1 the concurrence of two factors, an evil meaning mind and
2 an evil doing hand. A person who causes a particular
3 result is said to act purposely if he consciously
4 desires that result, whatever the likelihood of that
5 result happening from his conduct. A person is said to
6 act knowingly if he is aware that the result is
7 particularly certain to follow from the conduct,
8 whatever his desire may be as to the result.

9 Now, suspicion, however strong, is not
10 enough to sustain a conviction. The evidence presented
11 by the state must be substantial evidence that tends to
12 prove the guilt of the defendant beyond a reasonable
13 doubt.

14 Now, the indictment in this case,
15 2011-GS-37-995, charges the defendant, Kenneth Wayne
16 Whitworth, with the distribution of methamphetamine
17 pursuant to Section 44-53-375(B) of the Code of Laws of
18 South Carolina.

19 I remind you that the fact the defendant
20 was arrested and charged and indicted in this case is
21 not evidence in this case and cannot be considered by
22 you as evidence of guilt in this case nor does it create
23 any presumption or inference of guilt. An indictment is
24 simply the formal written instrument which contains the
25 charge made against the defendant. It is the formal

1 document by which the case is brought into the court.

2 The defendant is charged with distribution
3 of methamphetamine. The state must prove beyond a
4 reasonable doubt that the defendant distributed
5 methamphetamine. Distribute means to deliver or to
6 actually constructively or attempt to transfer a drug
7 other than by administering or dispensing. Delivering
8 means to actually constructively or attempt to transfer
9 a drug. A transfer can involve an exchange for money, a
10 barter, or a gift. There does not have to be anything
11 given in exchange for the drugs for a transfer to be --
12 to constitute distribution.

13 If you have a reasonable doubt of the
14 defendant's guilt after considering all of the evidence,
15 then you must find the defendant not guilty. On the
16 other hand, if you have no reasonable doubt of the
17 defendant's guilt after considering all of the evidence,
18 then you must find the defendant guilty.

19 Mr. Foreman, ladies and gentlemen of the
20 jury, you've been selected as fair and impartial jurors
21 sworn to impartially try and determine the facts of this
22 case, and when you comply with your oath to do so then
23 no one will have the right to criticize your verdict and
24 you will have fully discharged your duty as jurors.

25 You should not be influenced by opinions or

1 expression of opinions, if any, which you may have heard
2 on the outside, but you are to decide this case
3 according to the testimony that you have heard from the
4 lips of the sworn witnesses along with other evidence
5 that may have been introduced.

6 You must not consider as evidence any
7 statement of counsel made during the trial. However, if
8 counsel for the parties have stipulated to any fact or
9 any fact may have been admitted by the counsel, you will
10 regard that fact as being conclusively proved to you as
11 to the party or parties making the stipulation or
12 admission.

13 As I said earlier, you are the judges of
14 the facts in this case and you are to determine only if
15 the defendant is guilty or not guilty based upon the
16 testimony and evidence presented in the trial after
17 applying the law as I have given it to you.

18 If from the evidence you have a reasonable
19 doubt as to whether or not the defendant is guilty, it
20 is your duty to acquit him and write the two words "not
21 guilty."

22 Under the oath you took, you swore to try
23 this case based only and solely on the testimony,
24 evidence, and law presented and heard in the courtroom.
25 It is your duty to lay aside all bias or prejudice or

1 sympathy you may have in reaching your verdict. . You
2 have no friends to reward or enemies to punish in this
3 case.

4 I might note that the word "verdict" comes
5 from the Latin term *veredicto* which means to speak the
6 truth. Abide by your oath and return a verdict which
7 speaks the truth.

8 Mr. Darby, if you would, hand this form to
9 the foreman.

10 (The bailiff complies.)

11 **THE COURT:** Mr. Foreman, ladies and
12 gentlemen of the jury, I prepared a verdict form for you
13 to use in your deliberations.

14 As I mentioned earlier, whatever the
15 verdict is of the jury it must be unanimous. That means
16 all twelve members of the jury must agree to that
17 verdict.

18 Now, Mr. Foreman, of course, you will be
19 the one who completes the verdict form.

20 As you'll notice, it says indictment number
21 2011-GS-37-0995, distribution of methamphetamine,
22 whatever the verdict is: We, the jury, unanimously find
23 on the indictment number 2011-GS-37-0995 that the
24 defendant, Kenneth Wayne Whitworth, is either guilty of
25 distribution of methamphetamine or not guilty. Whatever

1 the unanimous verdict is, of course, Mr. Foreman, you
2 would check the appropriate line.

3 Now, once the verdict form has been
4 completed, if you would, please, sign on the line above
5 your name and knock on the door and return and we'll
6 receive your verdict.

7 Mr. Darby, may I have the verdict form
8 back.

9 **THE BAILIFF:** Yes, sir.

10 (The bailiff complies.)

11 **THE COURT:** Now, I'm gonna have to ask you
12 to retire to the jury room one more time without
13 beginning your deliberations. There are some matters I
14 need to take up with the attorneys, but once -- that
15 should just take a minute or two.

16 The bailiff will bring in the verdict form
17 together with the exhibits that have been admitted into
18 evidence. Once you receive the verdict form and the
19 evidence, begin your deliberations. Once you have
20 reached your verdict, and that verdict must be
21 unanimous, and you have completed the verdict form,
22 knock on the door and we will return and receive your
23 verdict.

24 With that, I'll ask you to retire to the
25 jury room with the bailiff. Do not begin your

1 deliberations until I send the verdict form and the
2 evidence in, but once you get it that will begin your
3 deliberations.

4 Madam Alternate, I'm gonna have to ask you
5 to stay with us.

6 **THE ALTERNATE JUROR:** All right.

7 **THE COURT:** Thank you, ma'am.

8 (Whereupon, the jury leaves the courtroom
9 at approximately 10:00 a.m.).

10 **THE COURT:** All right. Any exceptions or
11 requests from the state?

12 **MS. SIMMONS:** No, Your Honor.

13 **THE COURT:** Any exceptions or requests from
14 the defendant?

15 **MR. DAY:** None, Your Honor. Thank you.

16 **THE COURT:** All right. Very good. Look
17 over the exhibits, be sure everything goes back that is
18 supposed to and nothing that is not supposed to does not
19 go back.

20 (Ms. Simmons and Mr. Day review exhibits.)

21 (There is off-the-record discussion.)

22 (Whereupon, the alternate juror is
23 excused.)

24 (The trial is in recess at approximately
25 10:03 a.m., awaiting a verdict.)

1 (The trial reconvenes at approximately
2 10:52 a.m., the defendant not present but
3 represented by counsel, and the following
4 proceedings were had:)

5 **THE COURT:** All right. It's my
6 understanding the jury has a question. Anything from
7 the state before we bring the jury back?

8 **MS. SIMMONS:** No, Your Honor.

9 **THE COURT:** From the defense?

10 **MR. DAY:** No, Your Honor.

11 **THE COURT:** Ask the jury to join us,
12 please.

13 (Whereupon, the jury enters the courtroom
14 at approximately 10:52 a.m.)

15 **THE COURT:** Mr. Foreman, I understand the
16 jury has a question?

17 **THE FOREMAN:** Yes, Your Honor. There's a
18 few of us have a concern that there was a sound of a
19 motorcycle both before, during, and after the exchange,
20 and that did sound like the motorcycle came very close
21 to the window of the vehicle, and we would like to hear
22 that again to see if there could have been time for an
23 exchange of some sort at that point.

24 **THE COURT:** Very good. So you want the
25 video replayed?

1 **THE FOREMAN:** Not entirely. I think about
2 -- was it about two minutes before they got there, I
3 think? It was right about where we hear the -- it
4 sounded at first like a chain saw, which a couple of us
5 thought what's a chain saw doing running in the middle
6 of the night, and then we realized we heard a
7 motorcycle.

8 **THE COURT:** All right. Would the solicitor
9 know where to locate that?

10 **MS. SIMMONS:** Is it two minutes before the
11 exchange?

12 **THE FOREMAN:** It seems like it was just
13 shortly, yeah, before he got to the place. Then when he
14 -- shortly after he walked in he -- they have heard it
15 outside.

16 **MS. SIMMONS:** Okay.

17 **THE FOREMAN:** And then shortly after he
18 left, it became especially loud shortly after he left
19 the home.

20 **MS. SIMMONS:** I'm gonna start at about
21 seven minutes, and if that's not far enough back just
22 raise your hand, okay?

23 **THE FOREMAN:** Try that. Yes, ma'am.

24 **THE COURT:** Very good. Thank you, sir.

25 (The requested portion of State's Exhibit

1 No. 2, the video, is played.)

2 **THE FOREMAN:** Thank you, Your Honor.

3 **THE COURT:** Is that enough?

4 **THE FOREMAN:** Yes.

5 **THE COURT:** Very good. All right. If you
6 would, please, retire to the jury room and continue your
7 deliberations.

8 Everyone else remain seated while the jury
9 retires from the courtroom.

10 (Whereupon, the jury leaves the courtroom
11 at approximately 11:05 a.m.)

12 **THE COURT:** Anything further from the
13 state?

14 **MS. SIMMONS:** No, Your Honor.

15 **THE COURT:** From the defense?

16 **MR. DAY:** No, Your Honor.

17 **THE COURT:** Very good. We'll stand at ease
18 until we get a verdict.

19 (The trial is in recess at approximately
20 11:06 a.m., awaiting a verdict.)

21 (The trial reconvenes at approximately
22 11:25 a.m., the defendant not present but
23 represented by counsel, and the following
24 proceedings were had:)

25 **THE COURT:** All right. Ask the jury to

1 join us, please.

2 (Whereupon, the jury enters the courtroom
3 at approximately 11:25 a.m.)

4 **THE COURT:** Mr. Foreman, I understand the
5 jury has reached a verdict?

6 **THE FOREMAN:** Yes, we have, Your Honor.

7 **THE COURT:** If you would, pass it up to the
8 bailiff.

9 (The foreman complies.)

10 **THE COURT:** Madam Clerk, if you would,
11 please, publish the verdict.

12 **THE CLERK:** In the matter of the State of
13 South Carolina versus Kenneth W. Whitworth on indictment
14 number 2011-GS-37-995, distribution of methamphetamine:
15 We, the jury, unanimously find on indictment number
16 2011-GS-37-995 that the defendant, Kenneth Wayne
17 Whitworth, is guilty of distribution of methamphetamine.

18 Ladies and gentlemen of the jury, if this
19 was your verdict and remains your verdict, please
20 indicate so by raising your right hand.

21 (Whereupon, each member of the jury raises
22 their right hand.)

23 **THE CLERK:** Let the record reflect that all
24 members of the jury have raised their right hand.

25 **THE COURT:** Very good. Thank you, ma'am.

1 Is there anything from the jury before I
2 dismiss them, from the state?

3 **MS. SIMMONS:** None, Your Honor.

4 **THE COURT:** From the defense?

5 **MR. DAY:** None, Your Honor. Thank you.

6 **THE COURT:** Mr. Foreman, ladies and
7 gentlemen of the jury, I am never -- the Court is never
8 interested in a verdict, only how that verdict is
9 reached. And although it looks like I'm doing
10 everything else up here except paying attention, I've
11 developed a certain knack hopefully of keeping up with
12 what's going on in the courtroom, and I noticed
13 throughout the trial that all of you without exception
14 paid very careful and close attention to the testimony
15 and the evidence and the argument of counsel as well as
16 the Court's instructions, and I do -- I know that you
17 have reached a verdict that's in accordance with your
18 consideration of the facts and the evidence, and having
19 done so, you've performed your duties in a very
20 admirable way as jurors should under our system of
21 justice.

22 As I told the alternate when I dismissed
23 her, our system only works because citizens are
24 involved. We could not have the system of justice that
25 we have in South Carolina and the United States if we

1 did not have citizen participation, and I thank you for
2 it. The County of Oconee as well as our system of
3 justice here in the State of South Carolina owes you a
4 debt.

5 I wish there was something more I could do
6 for you. If you do remember when I qualified the entire
7 jury panel I did ask if anybody had served on a jury in
8 the last three years. At least you won't have to serve
9 for another -- be called for another three years.

10 But I do hope that your service has not
11 been without some benefit because, as I say, it's the
12 most important -- well, it's not me, but Winston
13 Churchill who was the prime minister of Great Britain
14 during the Second World War said that no greater duty
15 can a citizen perform in peacetime than that as a juror,
16 because that is the very backbone and the foundation of
17 our judicial system, and I thank you for your
18 participation.

19 I do hope that your service hasn't been
20 without some benefit and you do understand how important
21 it is. As I say, we have all the protections in the
22 world, literally, in our system and that's the way it
23 needs to be. And I think that you -- obviously, with
24 the time and the attention that you gave to the facts,
25 to include the question that you asked, obviously showed

1 that you took your duties seriously, and I thank you for
2 it.

3 All right. Anything else from the state?

4 **MS. SIMMONS:** No, Your Honor. Thank you.

5 **THE COURT:** From the defense?

6 **MR. DAY:** No, Your Honor. Thank you.

7 **THE COURT:** Madam Clerk, do you have
8 anything for the...

9 **THE CLERK:** If you need a statement before
10 you receive the statement with your check, if you'll
11 have your employer call our office we will be more than
12 happy to provide whatever information they need. If you
13 need something today, I have the statements, copies
14 ready, we'll just need to have you go to the Clerk's
15 Office to get that, so -- and they're located -- our
16 office is located on the first floor.

17 **THE COURT:** All right. You are excused,
18 and this does complete your service.

19 I might note, sometimes juries don't
20 realize or jurors don't realize how effective you've
21 been, but we've been able to dispose of several cases by
22 resolution rather than trial. And you can see a trial
23 is a rather involved sort of process, and if we had to
24 try every case there'd be just no way we could do it.
25 We just don't have the time or the -- well, to be very

1 candid with you, the ability to do it economically. So,
2 but when a jury is available to be drawn for deciding
3 the case, it's amazing how people who have not been able
4 to resolve their differences or reach some sort of
5 resolution come together. So you serve even though you
6 have not served on every jury.

7 And with that, as I say, this completes
8 your service this week, and I thank you very much.

9 And I hope you have a -- it looks like a
10 better day today than it has been yesterday. Enjoy the
11 sunshine. So, again, I thank you. And do have a good
12 week.

13 All right. That's it. The jury may retire
14 from -- I guess if you left anything in the jury room,
15 do get that, but you'll still be excused.

16 All right. Except, let's see, I do need to
17 see you, Mr. Foreman.

18 (There is off-the-record discussion.)

19 (Whereupon, the jury is excused and leaves
20 the courtroom.)

21 **THE COURT:** All right. Madam Solicitor.

22 **MS. SIMMONS:** Your Honor, if I may present
23 the sentencing sheet to Mr. Day?

24 **THE COURT:** All right.

25 I believe the indictment did charge third

1 or more offense?

2 **MS. SIMMONS:** Yes, Your Honor. I have the
3 certified convictions if you'd like me to pass them
4 forward. I have the defendant's prior record, as well.

5 **THE COURT:** Very good. Thank you.

6 **MS. SIMMONS:** Judge, it's my reading of the
7 Code that this is a serious offense, but it is not
8 violent.

9 (Documents tendered to the Court.)

10 **THE COURT:** All right. Madam Solicitor.

11 **MS. SIMMONS:** Yes, Your Honor.

12 The defendant's prior record: In 1989 he
13 was sentenced for petit larceny, burglary second, and
14 grand larceny. In 1991, assault and battery, and
15 assault and battery high and aggravated nature. In
16 1997, driving under the influence second offense and
17 driving under suspension. There's a DUI from 1999. In
18 2002, simple possession of marijuana.

19 In 2005, I prosecuted Mr. Whitworth for
20 possession of methamphetamine as well as PWID
21 methamphetamine. He received a five-year sentence in
22 2005.

23 **THE COURT:** Let's see. 2005?

24 **MS. SIMMONS:** I'm sorry. His court date
25 was February 27th, 2006.

1 **THE COURT:** So there's a 2005 indictment?

2 **MS. SIMMONS:** Yes, Your Honor. In 2006 he
3 was sentenced to the five years. It looks like he was
4 paroled in 2008.

5 And, Judge, in 2011 he began to pick up the
6 charges that he was on trial for.

7 For the Court's information, there are two
8 other pending distributions.

9 **THE COURT:** All right. But these are the
10 two that you are using, the 2005 indictment, the 2006
11 indictment? I saw that the sentences were concurrent on
12 the same day?

13 **MS. SIMMONS:** Yes, Judge, they were
14 sentenced on the same day. They were just different
15 incident dates. I also attached the indictments.

16 **THE COURT:** I understand that. I saw the
17 copy of the warrant -- I mean, of the indictment, as
18 well.

19 All right. Mr. Day.

20 **MR. DAY:** Your Honor, we'd ask the Court to
21 consider the fact that he pled guilty to his two prior
22 charges under the statute on the same date and ask that
23 this particular conviction be considered no more than a
24 second.

25 **THE COURT:** But they were at different

1 times. In other words, they only got him into court for
2 a series of offenses rather than a serial offense.

3 **MR. DAY:** Yes, sir, but that's what we want
4 you to do.

5 **THE COURT:** Well, I mean, do you have any
6 authority for that? I understand if it's a serial sort
7 of event where you have a continuing exercise or
8 whatever, that that would be treated as a single
9 offense. However, if you've got distinctive offenses as
10 in this case, one was March the 8th, 2005, and another
11 January the 25th, 2006, obviously it would be somewhat
12 unrelated.

13 **MR. DAY:** Well, we would ask the Court to
14 consider the fact that apparently he had it in his mind
15 at all times and therefore it would be a serial offense
16 in that he seemed he just could not stop doing it.

17 **THE COURT:** When he left the premises of
18 wherever it was on March the 8th, 2005, it was in his
19 mind that when January the 25th, 2006 came he was going
20 to continue the process?

21 **MR. DAY:** I'm just saying it never left his
22 mind in March until January he apparently did it again.

23 **THE COURT:** I understand.

24 All right. What is the maximum sentence on
25 -- the maximum and minimum sentences on distributing

1 methamphetamine third offense?

2 **MS. SIMMONS:** Judge, the minimum sentence
3 is ten years. The maximum sentence is 30 years. I
4 would respectfully ask that you consider the maximum
5 sentence based upon his prior record and the fact that
6 he hasn't been out of jail for too very long for the
7 same type offense.

8 **THE COURT:** He did get five years in 2006?

9 **MS. SIMMONS:** Yes, Your Honor.

10 **THE COURT:** And how long did he serve? Do
11 you have any idea?

12 **MS. SIMMONS:** His criminal history shows
13 his probation status -- or his parole status activated
14 in 2008. So it looks like he served about three of
15 that.

16 **THE COURT:** All right. Anything else?

17 **MS. SIMMONS:** No, Your Honor.

18 **MR. DAY:** No, Your Honor.

19 **THE COURT:** I'm going to put his prior
20 record in the envelope with the sentence.

21 **MS. SIMMONS:** Thank you, Your Honor.

22 (Whereupon, the sentence is sealed by the
23 Court.)

24 **THE COURT:** All right. We will stand in
25 recess until, what, two o'clock, Mr. Day?

1 MR. DAY: Yes, sir.

2 THE COURT: All right.

3 MS. SIMMONS: Judge, just for the record,
4 we would ask that you order the clerk to issue a bench
5 warrant for Mr. Whitworth.

6 THE COURT: Certainly.

7 MS. SIMMONS: Thank you.

8 THE COURT: All right. We'll stand at ease
9 until two o'clock.

10 (Whereupon, the trial concludes at
11 approximately 11:42 a.m.)

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1 (On Thursday, February 28, 2013, the
2 hearing convenes at approximately
3 10:55 a.m., the defendant being present
4 and represented by counsel, and the
5 following proceedings were had:)

6 **THE COURT:** All right. Madam Solicitor, if
7 you would, please, for the record state your case that
8 we have. This is for the sentencing, but if you would
9 just so we'll have a -- be clear as to which case we're
10 on..

11 **MS. SIMMONS:** Yes, Your Honor.

12 We are here today on 2011-GS-37-995, State
13 vs. Kenneth Wayne Whitworth, indictment for distribution
14 methamphetamine third offense. Mr. Whitworth was
15 convicted in his absence yesterday, a bench warrant was
16 issued, then the sentence sealed. He was picked up by
17 the Oconee County Sheriff's Office yesterday and is
18 present in court for sentencing.

19 **THE COURT:** Just again for the record, what
20 was the prior record that the defendant had?

21 **MS. SIMMONS:** Judge, beg the Court's
22 indulgence for one moment.

23 Judge, his prior record dates back to 1989.
24 He -- grand larceny, burglary second, and petit larceny.

25 **THE COURT:** Is that all the ones that -- is

1 that '89?

2 **MS. SIMMONS:** The offense dates were 1989.
3 They were pled in 1991. He also in 1991 has a
4 conviction for assault and battery, and assault and
5 battery high and aggravated nature.

6 **THE COURT:** Are those two different
7 convictions? Assault and battery, and assault and
8 battery high and aggravated?

9 **MS. SIMMONS:** Yes, Judge. It looks like it
10 occurred on the same day, and he received a YOA sentence
11 also in 1991. He did that YOA sentence, and it looks
12 like he -- his parole was revoked in 1993, and his YOA
13 probation was revoked in 1996. In 1997 he has a driving
14 under the influence and a driving under suspension
15 conviction. In 2002, simple possession ---

16 **THE COURT:** Just a moment.

17 **MS. SIMMONS:** I'm sorry, Judge.

18 **THE COURT:** DUI, DUS was when?

19 **MS. SIMMONS:** 1999 was his court date.

20 **THE COURT:** Okay. Disposed of at the same
21 time?

22 **MS. SIMMONS:** Yes, Your Honor.

23 **THE COURT:** Okay. Anything else?

24 **MS. SIMMONS:** Simple possession of
25 marijuana in 2002.

1 **THE COURT:** All right.

2 **MS. SIMMONS:** And, Judge, he was convicted
3 on two separate drug offenses in February of 2006. They
4 were from separate times. I believe 2005 and 2006 were
5 the arrest dates. He was sentenced in 2006 to five
6 years on those cases, and it looks like he was paroled
7 in 2008 on those cases.

8 **THE COURT:** What were the charges in the
9 2005 and 2006 convictions?

10 **MS. SIMMONS:** Possession of methamphetamine
11 and possession with intent to distribute
12 methamphetamine.

13 **THE COURT:** But they were separate offenses
14 from 2006 and -- 2005 and 2006?

15 **MS. SIMMONS:** Yes, Your Honor.

16 **THE COURT:** But disposed of at the same
17 time in court, 2006?

18 **MS. SIMMONS:** Yes, Your Honor.

19 **THE COURT:** Are you Kenneth Wayne
20 Whitworth?

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

22 **THE COURT:** If you would, please, sir,
23 raise your right hand.

24 (Whereupon, the defendant is duly sworn.)

25 **THE COURT:** Thank you, sir.

1 Now, you've heard the solicitor state your
2 record of prior convictions; is that correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Those are the correct statement
5 of your convictions?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. All right.

8 By the way, let the record reflect that
9 I've opened the sealed sentence of Kenneth Wayne
10 Whitworth dated February the 27th, 2013, on indictment
11 number 2011-GS-37-995.

12 Anything you have to say on behalf of
13 Mr. Whitworth, Mr. Day?

14 MR. DAY: Your Honor, Mr. Whitworth is a
15 lifelong resident here in Oconee County. His family is
16 here.

17 On the charges that he was tried on, he
18 actually turned himself in when he found out there was a
19 warrant for his arrest, and he came to the sheriff's
20 department and turned himself in and then made bond.

21 And based upon that, Your Honor, why he did
22 not appear in court, he tells me that he was scared,
23 took the advice of someone he shouldn't have and did not
24 appear. It was his intention to come back, but they
25 picked him up walking down the highway. He never left

1 the county or attempted to run away.

2 **THE COURT:** Well, he's not -- the sentence
3 doesn't reflect any exercise of his Constitutional
4 rights to not only not attend his trial but also not,
5 obviously, to have any evidence presented on his behalf.

6 Well, I think just for the record, also, I
7 think that I -- let's see, that the bond -- well,
8 actually, what is it, you appeared in court on -- what
9 was the date?

10 **MS. SIMMONS:** I think it was the February
11 term of court and it was the Thursday of that term.

12 (There is off-the-record discussion.)

13 **MS. SIMMONS:** I'm sorry, this is the
14 February term. It was the January term of court and it
15 was on a Thursday.

16 **THE CLERK:** So it was January the 31st.

17 **THE COURT:** January the 31st, 2013, you
18 appeared in court at that time?

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

20 **THE COURT:** And I think I put you under
21 oath.

22 And I was the presiding judge?

23 **MS. SIMMONS:** Yes, Your Honor.

24 **THE COURT:** I put you under oath and
25 advised you of your right to attend your trial, but if

1 you failed to attend the trial at the next term of court
2 that you would be tried in your absence. Do you
3 remember that?

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

5 **THE COURT:** Also, that if you were found
6 guilty in your absence that you would be sentenced in
7 your absence. Do you understand that?

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

9 **THE COURT:** All right. Do you have
10 anything to say, Mr. Whitworth, before I pronounce the
11 sentence?

12 **THE DEFENDANT:** I'd just like to throw
13 myself and plead the mercy of the Court, you know, for
14 what I've done. And I'm very sorry for what I have
15 done. I really truly mean that. I just -- I got scared
16 and confused and took the advice of someone, and I'm old
17 enough to know that the advice I took should not have
18 been took, but I just -- I'd like to apologize to the
19 Court for putting y'all through this trouble, and I'm
20 very, very sorry.

21 **THE COURT:** Well, as I understand, the
22 maximum sentence is 30 years?

23 **MS. SIMMONS:** Yes, Your Honor.

24 **THE COURT:** All right. Anything else?
25 Would law enforcement have anything to offer the Court

1 at this time?

2 **SERGEANT LONG:** No, sir.

3 **THE COURT:** Well, looking at the -- one of
4 the things the Court always considers in passing
5 sentence or invoking the sentence of the Court is the
6 record. Although you do not have an extensive record,
7 the problem with your record is that apparently it does
8 involve two separate meth offenses. At some point we
9 need to learn that meth is not something that we need to
10 have in our community; and if we don't learn that,
11 sometimes we have to be protected from our own selves
12 from continuing to do things that would be detrimental
13 to not only the community as a whole but individuals and
14 families.

15 All right. Anything else, Mr. Whitworth?

16 **THE DEFENDANT:** No, sir.

17 **THE COURT:** On February the 27th, 2013, I
18 imposed the following sentence on indictment number
19 2011-GS-37-995 as to the defendant, Kenneth Wayne
20 Whitworth: The defendant is committed to the State
21 Department of Corrections for a term of 30 years
22 provided upon the service of 25 years and payment of
23 costs and assessments applicable the balance is
24 suspended with probation for five years. The defendant
25 be given credit for any time served by the State

1 Department of Corrections. Special conditions of the
2 sentence are that he undergo drug and alcohol testing
3 and treatment, substance abuse counseling as directed,
4 to include ATU while incarcerated, and pay \$500 to the
5 Clerk of Court during the probation.

6 THE DEFENDANT: Thirty years?

7 THE COURT: Good luck to you, sir.

8 MR. DAY: It's suspended to 25.

9 THE DEFENDANT: Oh, my god.

10 (Whereupon, the hearing concludes at
11 approximately 11:06 a.m.)
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1 CERTIFICATE OF THE COURT REPORTER

2
3 I, Brenda Cooley, do hereby certify that
4 the foregoing is a true and accurate transcript of
5 record of the proceedings had and the evidence
6 introduced in the hearing of the captioned case, pages 3
7 through 172, inclusive, relative to appeal, in the Court
8 of General Sessions for Oconee County, Walhalla, South
9 Carolina, on the 26th, 27th, and 28th days of February
10 2013.

11 I do further certify that the foregoing
12 transcript was prepared with the aid of the stenographic
13 notes and audio recording provided by the court reporter
14 assigned to the proceedings, Robin Sue Hild, FCRR, RPR,
15 Circuit Court Reporter for the State of South Carolina.

16 I do further certify that I am neither of
17 kin, counsel, nor interest to any party hereto.
18
19

20 July 1, 2013

21
22 Brenda Cooley

23 Brenda Cooley

24 Court Reporter (Retired)
25

DOCKET NO. 2011-37 00995

WITNESSES

B E Long, Oconee Co Sheriff's Dept.

Case: 30-0/109
[Signature]

ARREST WARRANT NUMBER

N138099

ACTION OF GRAND JURY

True Bill

[Signature: Devin B. Hudson]

Foreperson of Grand Jury

Date: NOV -7-2011

VERDICT

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

NOV 07 2011

Term

THE STATE

vs.

Kenneth Wayne Whitworth

LSS

Indictment for

Distribution Of Methamphetamine - 3rd Or Sub.
Offense

SC Code: 44-53-0375(B)(3)
CDR Code: 3200

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

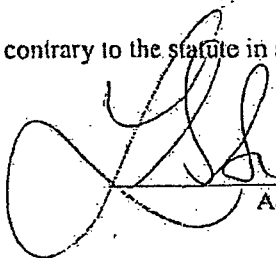
INDICTMENT

At a Court of General Sessions, convened on NOV 07 2011, the Grand Jurors of Oconee County present upon their oath:

Distribution Of Methamphetamine - 3rd Or Sub. Offense

That on or about February 18, 2011 in Oconee County, South Carolina, the Defendant, **Kenneth Wayne Whitworth**, did distribute, dispense, deliver or otherwise aid, abet, attempt, or conspire to distribute, dispense, or deliver a quantity of Methamphetamine, a schedule II controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such not having been authorized by law, all in violation of Section 44-53-375, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided,

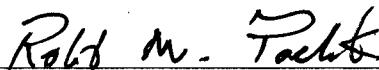

ASSISTANT SOLICITOR

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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."

August 19, 2013



Robert M. Pachak
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

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

CS
RECEIVED

AUG 19 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KENNETH W. WHITWORTH,

APPELLANT

APPELLATE CASE NO. 2013-000497

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of August, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 19th day of August, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022