ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

Appeal from Anderson County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2012-212801

---

THE STATE,

Respondent,

vs.

LORETTA GALLOWAY BRANYON,

Appellant.

---

# FINAL BRIEF OF RESPONDENT

---

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

CHRISTINA T. ADAMS
Solicitor, Tenth Judicial Circuit

100 South Main Street
Anderson, SC 29624
(864) 260-4046

ATTORNEYS FOR RESPONDENT

RECEIVED

MAR 31 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

Appeal from Anderson County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2012-212801

---

THE STATE,

Respondent,

vs.

LORETTA GALLOWAY BRANYON,

Appellant.

---

# FINAL BRIEF OF RESPONDENT

---

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

CHRISTINA T. ADAMS
Solicitor, Tenth Judicial Circuit

100 South Main Street
Anderson, SC 29624
(864) 260-4046

ATTORNEYS FOR RESPONDENT

## TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL ..... 1

STATEMENT OF THE CASE ..... 2

STATEMENT OF THE FACTS ..... 3

ARGUMENT ..... 8

Any issue with the trial judge's cautionary instruction to the jurors indicating that there was no need for them to handle the methamphetamine admitted into evidence was not properly preserved for appellate review because no objection was raised to that instruction during trial and, instead, defense counsel specifically indicated that he had no objection to it. Regardless, even assuming the issue was preserved and the trial judge's cautionary instruction constituted a comment on the facts, that instruction was not improper or prejudicial to Appellant because the trial judge did not comment through the instruction on any facts that were controverted or not readily admitted by Appellant during trial. ..... 8

CONCLUSION ..... 16

## TABLE OF AUTHORITIES

**Cases**:


Commonwealth v. Campbell, 445 Pa. 488, 284 A.2d 798 (Pa. 1971). .....15

Enlee v. Seaboard Air Line Ry., 110 S.C. 137, 96 S.E. 490 (1918). .....11

Hunter v. State, 208 P.3d 931 (Okla. Crim. App. 2009). .....14

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000). .....9

Litchfield Co. of South Carolina, Inc. v. Sur-Tech, Inc., 289 S.C. 247, 345 S.E.2d 765 (Ct. App. 1986). .....12

Norris v. Clinkscales, 47 S.C. 488, 25 S.E. 797 (1896). .....13

Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004). .....11

State v. Arther, 290 S.C. 291, 350 S.E.2d 187 (1986). .....13

State v. Bell, 305 S.C. 11, 406 S.E.2d 165 (1991). .....14

State v. Bonner, 400 S.C. 561, 735 S.E.2d 525 (Ct. App. 2012). .....10

State v. Brown, 402 S.C. 119, 740 S.E.2d 493 (2013). .....10

State v. Ezell, 321 S.C. 421, 468 S.E.2d 679 (Ct. App. 1996). .....11

State v. Fleming, 254 S.C. 415, 175 S.E.2d 624 (1970). .....9

State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005). .....9

State v. Ham, 259 S.C. 118, 191 S.E.2d 13 (1972). .....13

State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005). .....9

State v. Morris, 307 S.C. 480, 415 S.E.2d 819 (Ct. App. 1991). .....9

State v. Norris, 270 S.C. 552, 243 S.E.2d 440 (1978). .....12, 15

State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997). .....11

State v. Pauling, 322 S.C. 95, 470 S.E.2d 106 (1996). .....9

State v. Pruitt, 187 S.C. 58, 196 S.E. 371 (1938). .....12

State v. Rios, 388 S.C. 335, 696 S.E.2d 608 (Ct. App. 2010). .....10

State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004). .....9

State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007). .....11

State v. Simmons, 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009). .....11

State v. Stalvey, 146 S.C. 275, 143 S.E. 817 (1928). .....14

State v. Williams, 266 S.C. 325, 223 S.E.2d 38 (1976). .....10

Turner v. Lyles, 68 S.C. 392, 48 S.E. 301 (1908). .....15

**Other Authorities**:

S.C. Const. art. V, § 21. .....11

## STATEMENT OF ISSUE ON APPEAL

Any issue with the trial judge's cautionary instruction to the jurors indicating that there was no need for them to handle the methamphetamine admitted into evidence was not properly preserved for appellate review because no objection was raised to that instruction during trial and, instead, defense counsel specifically indicated that he had no objection to it. Regardless, even assuming the issue was preserved and the trial judge's cautionary instruction constituted a comment on the facts, that instruction was not improper or prejudicial to Appellant because the trial judge did not comment through the instruction on any facts that were controverted or not readily admitted by Appellant during trial.

## STATEMENT OF THE CASE

In January of 2011, Appellant Loretta Galloway Branyon was arrested after law enforcement officers executed a search warrant at her residence and discovered illegal drugs. In April of 2011, the Anderson County grand jury indicted Appellant for one count of possession of methamphetamine with intent to distribute. On August 13, 2012, a jury trial was commenced in the Anderson County court of general sessions with the Honorable R. Lawton McIntosh, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a ten-year term of imprisonment for the possession of methamphetamine with intent to distribute conviction. Furthermore, the trial judge found that Appellant violated the terms of a previously-imposed probationary sentence based on the conviction, revoked her probation, and sentenced her to a concurrent term of imprisonment of ten years for the probation revocation. Subsequently, Appellant timely filed a notice of appeal.

## STATEMENT OF FACTS

Around 2:20 p.m. on January 13, 2011, Officer Marty Robinson, a narcotics investigator for the Anderson County Sheriff's Office, executed a search warrant along with several other officers at Appellant Loretta Galloway Branyon's residence in search of methamphetamine and methamphetamine-related materials. (R. p. 22; pp. 26-28; p. 35; p. 60). Upon entering the residence, Officer Robinson located Appellant seated on a couch next to two pocketbooks, Charles Simpson seated on a chair near the front door, and a digital scale with what appeared to be drug residue on it on a table directly inside of the entrance. (R. pp. 35-36; p. 46; pp. 62-63; p. 68). In response, he detained Appellant and Simpson, searched the pocketbooks, and found multiple bags of an off-white glass-like substance that subsequently field-tested positive for methamphetamine, $4,033 in cash, another digital scale, Appellant's identification, and some drinking straws inside. (R. pp. 35-37; p. 45; p. 62). The officers then searched the remainder of the residence, located another digital scale along with three pipes used for smoking methamphetamine in a bedroom, secured the evidence, and placed Appellant under arrest. (R. pp. 37-38; pp. 49-50).

Following Appellant's arrest, the bags of the glass-like substance discovered in the search of her residence were submitted to the Anderson-Oconee Regional Forensic Laboratory for analysis. (R. p. 51; p. 86). Thereafter, Meredith Lanford, a forensic chemist and an expert in the forensic examination of drugs, examined the contents of the bags. (R. pp. 88-89). Upon analysis, she determined that the substance inside of the bags consisted of 6.18 grams of methamphetamine. (R. pp. 91-93). Subsequently, Appellant was indicted for possession of methamphetamine with intent to distribute, and she proceeded to trial. (R. p. 2; p. 167).

At the outset of trial, the trial judge presented some preliminary instructions to the jurors. (R. pp. 3-16). During those instructions, the trial judge explained to the jurors their role in the trial and cautioned them not to interpret anything he said during trial as a comment on the facts, instructing:

> Now, your purpose as jurors is to find facts. In fact, in the vernacular of the attorneys, we say that you are the sole judges of the facts. If at any time during this case I do anything, say anything or make some type of gesture to you that indicates to you that I have a feeling one way or the other as to how you are to find facts, I'm going to ask you and I'm also going to tell you to disregard them.
>
> I can tell you that I have absolutely no feeling one way or the other as to how you find the facts, or as to how this case is supposed to end up. That is purely up to you.
>
> The state of South Carolina's Constitution does not allow any trial judge to have an opinion on the facts. We are referees in the sense that we make sure the process is followed. We are also instructors. We will instruct you on the law at the end of this case.
>
> That being said, the law that makes you the finders of the facts makes me the instructor of the law. If in this case when I charge you what the law is, you may not like it. You may say, 'I think it should be something else' or 'I wish that it was something else.' It would be improper for you to try to change the law as I ultimately give it to you. You must apply the law, as I charge it to you in this case, to the facts as you find them to be. When you do that, you will have performed your duties as jurors.

(R. pp. 10-11). Thereafter, the solicitor and defense counsel presented their opening statements to the jury. (R. pp. 17-21). During his opening statement, defense counsel asserted:

> They are going to show you approximately seven grams that they found in this house. That's what happened. So if you decide that an addict should go to prison for a long, long, long, long, period of time because she had this in her possession, then you find her guilty.

(R. p. 21).

Subsequently, during trial, Officer Robinson testified about his discovery of the individual bags of methamphetamine, the large quantity of cash, the digital scale, and Appellant's identification in the pocketbooks that were found next to Appellant on the couch. (R. pp. 36-37). Furthermore, based on his narcotics training and experience, Officer Robinson noted that methamphetamine users typically carry methamphetamine in an amount less than a gram, usually do not carry large quantities of money or drugs, and usually have something to facilitate the ingestion of methamphetamine while individuals who intend to distribute methamphetamine are usually in possession of methamphetamine in multiple bags along with money and scales. (R. pp. 27-28; pp. 34-35).

Following Officer Robinson's testimony, Lanford testified about her analysis of the drugs discovered in the search of Appellant's residence and indicated that the five bags taken during the search contained a total of 6.18 grams of methamphetamine. (R. pp. 88-89; pp. 91-93). While she was testifying, the solicitor asked her to remove the bags of methamphetamine from a sealed evidence bag, and defense counsel directed Lanford to show the individual bags of methamphetamine to the jury one by one during his cross-examination of the witness. (R. pp. 91-93). However, defense counsel did not question or challenge Lanford during cross-examination about the accuracy of her analysis or the correctness of her identification of the tested substances as methamphetamine.[1] (R. p. 93).

Thereafter, the State rested its case, and the trial judge subsequently instructed the jury on the applicable law. (R. pp. 94-121). As part of his jury charge, the trial judge

[1] At the outset of Lanford's testimony, defense counsel stipulated to her qualifications as an expert in the field of forensic examination of drugs. (R. p. 87).

again instructed the jurors that they were the sole finders of fact and were to disregard anything he said that indicated to them that he had an opinion as to how they were to find the facts in the case. (R. pp. 97-98). Additionally, the trial judge instructed the jury on the elements of the offense of possession of methamphetamine with intent to distribute and of the lesser-included offense of simple possession of methamphetamine. (R. pp. 111-116).

Following the trial judge's jury instructions, the solicitor and defense counsel presented their closing arguments to the jury. (R. pp. 123-147). During defense counsel's closing argument, defense counsel indicated to the jury that Appellant was an addict, argued that the quantity of drugs found was small and was an amount an addict would use, conceded that there was evidence presented establishing that Appellant was a user of methamphetamine and was using methamphetamine in the back room of her residence, and acknowledged that Appellant had the drugs. (R. pp. 138-139; pp. 144-145). Furthermore, while arguing that Appellant possessed the methamphetamine for use instead of for distribution, defense counsel conceded to the jury that it could convict Appellant of possession of methamphetamine because she was in possession of it, stating: "If you find her guilty of possession, I can understand that because she had it. . . . She had this for her own use and she was going to use it." (R. pp. 143-146).

At the conclusion of the closing arguments, the jury retired from the courtroom. (R. p. 147). Thereafter, the solicitor noted that the sealed evidence bag containing the individual bags of methamphetamine had been opened during trial and asked the trial judge to instruct the jury not to open the bags. (R. p. 148). In response, the trial judge asked the jurors to return to the courtroom and instructed them as follows:

> Madame Forelady and Ladies and Gentlemen, one matter was brought to my attention. It's a very appropriate point for housekeeping matters. When you g[e]t back in deliberations, we are going to send these exhibits back with you, which will include the baggies of drugs. What I would instruct you is – that unless you feel it to be absolutely critical, – they are in a big baggie, what they call a Best baggie. You can take those smaller bags out but do not open the smaller bags. I don't think that there is any need to. Just remember that's methamphetamine and you don't need to have it on your fingers. It's accounted for going in, it's accounted for coming back out. So just don't handle it that way. Other than that, we are going to send this evidence back with you, and the verdict form. Once that gets back in there with you, you may begin your deliberations.

(R. pp. 149-150). Following the trial judge's supplemental instruction, the jury once again retired from the courtroom, and the trial judge inquired of the parties if there were any objections to his instruction to the jury on handling the methamphetamine. (R. p. 150). Both the solicitor and defense counsel affirmatively indicated that there were none. (R. pp. 150-151).

Thereafter, the jury began its deliberations before returning thirteen minutes later with a verdict of guilty for possession of methamphetamine with intent to distribute. (R. pp. 151-152). The trial judge then sentenced Appellant to concurrent ten-year terms of imprisonment for the conviction and for a violation of a probationary sentence that Appellant was serving at the time of her conviction. (R. pp. 151-152; p. 155; p. 164).

## ARGUMENT

**Any issue with the trial judge's cautionary instruction to the jurors indicating that there was no need for them to handle the methamphetamine admitted into evidence was not properly preserved for appellate review because no objection was raised to that instruction during trial and, instead, defense counsel specifically indicated that he had no objection to it. Regardless, even assuming the issue was preserved and the trial judge's cautionary instruction constituted a comment on the facts, that instruction was not improper or prejudicial to Appellant because the trial judge did not comment through the instruction on any facts that were controverted or not readily admitted by Appellant during trial.**

Appellant contends the trial judge violated the mandates of the South Carolina Constitution by commenting to the jury on the facts of the case. In support of that contention, Appellant maintains that the trial judge's statement to the jurors that the substance admitted into evidence was methamphetamine and that they did not need to get it on their fingers improperly intimated to the jurors that the methamphetamine was, in fact, methamphetamine and that Appellant would not have intended to use it due to the fact it was so dangerous that you would not want to have it on your fingers. Initially, any issue with the trial judge's cautionary instruction to the jury is not preserved for appellate review because no objection was raised to the instruction during trial and, instead, defense counsel specifically indicated to the trial judge that he had no objection. However, even if the issue was somehow preserved for appellate review despite the lack of a trial objection, the trial judge committed no error in giving the cautionary instruction to the jury because that instruction did not discuss any facts that were controverted or not admitted by Appellant and there was no dispute that the substance admitted into evidence was methamphetamine, the jurors did not need to have it on their fingers, and methamphetamine was inherently dangerous. Accordingly, the trial judge's instruction was not erroneous or prejudicial and did not violate the mandates of the South Carolina Constitution. Appellant's conviction should be affirmed.

## A. Issue Preservation

In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000); see, e.g., State v. Pauling, 322 S.C. 95, 100, 470 S.E.2d 106, 109 (1996) ("Having denied the trial judge an opportunity to cure any alleged error by failing to contemporaneously object to the charge, Appellant is procedurally barred from raising these issues for the first time on appeal.").

Unless an issue is properly raised to and ruled upon by the trial judge, that issue cannot be raised for the first time to an appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005); see State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) ("If a party fails to properly object, the party is procedurally barred from raising the issue on appeal."). Such a rule exists because there is no basis for appellate review of an issue where an objection and the grounds for the objection are not stated in the record and the trial judge was not presented with an opportunity to first address that objection in the trial court. State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991). As a result, appellate courts in South Carolina will not consider any issues that were not properly presented to and passed upon by the trial judge. State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970).

In the case sub judice, Appellant's appellate issue with the trial judge's instruction to the jurors that there was no need to handle the methamphetamine during their deliberations was not properly preserved for appellate review because that issue was never raised to or ruled upon by the trial judge. Specifically, just before the jurors retired to begin their deliberations, the trial judge cautioned them to avoid directly handling the methamphetamine admitted into evidence, and defense counsel raised no objection to the trial judge's cautionary instruction. See State v. Williams, 266 S.C. 325, 335, 223 S.E.2d 38, 43 (1976) ("The rule in this State is firmly established that failure to object to a charge, or failure to request an additional charge when the opportunity is afforded, constitutes a waiver of any right to complain on appeal of an alleged error in the charge. . . . [T]he right to have the law declared may be waived by the parties and, ordinarily, silence in the face of an omission from, or error in the charge amounts to waiver."). Instead, when asked if he had any objection to the cautionary instruction, defense counsel affirmatively indicated that he did not. See State v. Brown, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (holding that Brown's issue with a jury instruction was not preserved for appellate review where Brown explicitly stated to the trial judge that he had no objection to the instruction); State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) ("Even after the trial court specifically asked if there were any objections to the charges given, Rios responded, 'None.' By failing to contemporaneously object to the jury charges, Rios has waived his right to allege error on appeal."). Accordingly, as defense counsel not only did not raise an objection to the trial judge's cautionary instruction but specifically indicated that he had no objection to it, Appellant's appellate issue with that instruction was not preserved for appellate review and cannot properly be raised or addressed for the first time on appeal. See State v. Bonner, 400 S.C. 561, 564,

735 S.E.2d 525, 526 (Ct. App. 2012) ("It is well settled that issues not raised and ruled on in the trial court will not be considered on appeal."); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."). Appellant's conviction should be affirmed.

**B. Propriety of the Trial Judge's Instructions to the Jury**

In reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). When reviewing the trial judge's jury instructions, the appropriate test involves determining what a reasonable juror would have understood the charge to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004). "A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007); see State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal.").

Pursuant to the South Carolina Constitution, trial judges in South Carolina "shall not charge juries in respect to matters of facts, but shall declare the law." S.C. Const. art. V, § 21. The purpose of that constitutional requirement is "to prevent the trial Judge from intimating to the jury his opinion of the case[,] what weight or credence should be given to the evidence[,] and participating in any manner with the jury's finding of fact." Enlee v. Seaboard Air Line Ry., 110 S.C. 137, 146, 96 S.E. 490, 492 (1918). As a result, a trial judge "must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of the witnesses, the guilt of the accused, or as to the **controverted** facts, for the jury are the sole judges of the facts and

the credibility of the witnesses[.]" State v. Pruitt, 187 S.C. 58, 61, 196 S.E. 371, 373 (1938) (emphasis added). If a trial judge erroneously comments on the facts during trial, a defendant is entitled to a new trial **if** the erroneous comment was prejudicial to the defendant. Litchfield Co. of South Carolina, Inc. v. Sur-Tech, Inc., 289 S.C. 247, 253, 345 S.E.2d 765, 768 (Ct. App. 1986). However, when a trial judge comments on a fact that is not in dispute during a jury instruction, the instruction is **not** erroneous and does not violate the mandates of the South Carolina Constitution. State v. Norris, 270 S.C. 552, 553, 243 S.E.2d 440, 440 (1978).

In the case at bar, the trial judge's cautionary instruction to the jurors directly before they began their deliberations to "[j]ust remember that's methamphetamine and you don't need to have it on your fingers" did not constitute an impermissible comment on the facts and resulted in no prejudice to Appellant because there was no dispute in Appellant's case that the substance being submitted to the jury was, in fact, methamphetamine. Critically, during trial, expert testimony was presented establishing that the bags taken from Appellant's pocketbooks contained methamphetamine, and the expert's testimony was not rebutted, challenged, or disputed in any way by Appellant. Moreover, during his remarks to the jury during his opening statement and closing argument, defense counsel admitted as a matter of trial strategy that Appellant was in possession of the methamphetamine while trying to convince the jury that Appellant possessed it with the intention of using it as opposed to distributing it. Accordingly, assuming the trial judge's cautionary instruction could be interpreted as a comment on the facts, the trial judge did not err or prejudice Appellant by cautioning the jurors to avoid handling the methamphetamine during their deliberations since it was an uncontroverted and admitted fact that the substance found in Appellant's pocketbooks

was methamphetamine. See State v. Arther, 290 S.C. 291, 296, 350 S.E.2d 187, 190 (1986) ("[A]ppellant contends that the trial judge impermissibly commented on the facts in his jury charge by referring to appellant's statement as a 'confession.' Appellant's statement did constitute a confession that he stole money from the victim. **When facts stated in a charge are not in dispute, the instruction is not erroneous.**" (emphasis added)); see also Norris v. Clinkscales, 47 S.C. 488, 517-518, 25 S.E. 797, 807-808 (1896) (instructing that the constitutional provision prohibiting trial judges from commenting on the facts would **not** be violated by a trial judge commenting on an undisputed fact or an admitted fact).

In arguing that the cautionary instruction was improper, Appellant contends – for the first time on appeal – that the trial judge erroneously intimated to the jury that the substance admitted into evidence was methamphetamine, which Appellant asserts was an issue that should have been left solely for the jury to resolve. However, as defense counsel readily admitted to the jury that the substance in Appellant's possession was methamphetamine and no challenge was raised to the identity of the drugs during trial, the fact that the drugs taken from Appellant's pocketbooks were methamphetamine was uncontroverted and admitted. See State v. Ham, 259 S.C. 118, 136, 191 S.E.2d 13, 21 (1972) ("The trial judge instructed the jury, as a matter of law, that the drug Librium was a depressant and the appellant excepted to this charge and alleges that such was erroneous. We disagree. The only testimony in the record was that the drug Librium was a depressant. No testimony was offered by the appellant contradictory of this evidence. Where facts in [a] criminal prosecution are admitted or proved without contest, [the] court may assume their truth in conducting trial and charging [the] jury without infringing [on the] rule against comment[s] on [the] weight of evidence. A trial judge

may assume that a fact established by uncontradicted evidence has been proved." (citations omitted)). Accordingly, the trial judge's cautionary instruction was neither erroneous nor prejudicial to Appellant due to the fact that it identified the substance as methamphetamine.

Furthermore, in challenging the trial judge's cautionary instruction on appeal, Appellant contends that the trial judge erroneously commented on the facts by cautioning the jurors that they did not need to have the methamphetamine on their fingers. In support of that contention, Appellant maintains that the trial judge's remark established that methamphetamine was so dangerous that you would not want it on your fingers, which she alleges would have caused the jury to believe that she would not have possessed such a dangerous substance for her own use. Initially, the trial judge's remark would not and could not reasonably have been construed as a comment on Appellant's intentions in regard to the methamphetamine in any way. See State v. Bell, 305 S.C. 11, 16, 406 S.E.2d 165, 168 (1991) ("The test to determine the propriety of the trial judge's charge is what a reasonable juror would have understood the charge to mean."); cf. State v. Stalvey, 146 S.C. 275, 277, 143 S.E. 817, 817 (1928) (rejecting Stalvey's contention that the trial judge's comment indicating he had never seen a particular defense raised during his time as a judge could be inferred as a disparaging remark regarding that defense). Instead, when given a reasonable interpretation, the trial judge's instruction merely conveyed to the jury that there was no need for them to handle the evidence, which was an indisputable fact since the jury had no legitimate reason to directly handle the methamphetamine in Appellant's case. However, even if the trial judge's remark could be construed as indicating that methamphetamine was dangerous, the fact that methamphetamine is dangerous is a matter of common knowledge and is known by

ordinary citizens as well as both methamphetamine dealers **and** users. See Hunter v. State, 208 P.3d 931, 933 (Okla. Crim. App. 2009) ("It is common knowledge that methamphetamine is a destructive drug which causes social problems as well as damage to its users."); see also Commonwealth v. Campbell, 445 Pa. 488, 493, 284 A.2d 798, 800 (Pa. 1971) ("It is a matter of widespread common knowledge that the use of drugs has a deleterious effect upon and is dangerous to the user[.]"). Accordingly, the trial judge's cautionary instruction was neither erroneous nor prejudicial to Appellant as it did not touch upon any controverted or disputed facts relevant to Appellant's case. See Norris, 270 S.C. at 553, 243 S.E.2d at 440 ("[W]here the facts stated in a charge are not in dispute, the instruction is not erroneous."); see also Turner v. Lyles, 68 S.C. 392, 401, 48 S.E. 301, 305 (1908) (holding that a comment on the facts is not reversible error unless the comment is on a fact in issue and there are reasonable grounds for supposing the jury may have been influenced by the comment in a manner prejudicial to the defendant). Appellant's conviction should be affirmed.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

CHRISTINA T. ADAMS
Solicitor, Tenth Judicial Circuit

BY: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 31, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

Appeal from Anderson County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2012-212801

---

THE STATE,

Respondent,

vs.

LORETTA GALLOWAY BRANYON,

Appellant.

---

**CERTIFICATE OF COUNSEL**

---

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and 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."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

CHRISTINA T. ADAMS
Solicitor, Tenth Judicial Circuit

BY: _____
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 31, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

Appeal from Anderson County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2012-212801

---

THE STATE,

Respondent,

vs.

LORETTA GALLOWAY BRANYON,

Appellant.

---

**PROOF OF SERVICE**

---

I, Angela S. Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Charles W. Whiten, Jr.
Post Office Box 716
Anderson, SC 29622

I further certify that all parties required by Rule to be served have been served.
This 31st day of March, 2014.

ANGELA S. BENNETT
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

RECEIVED
MAR 31 2014
SC Court of Appeals