

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable William A. McKinnon, Circuit Court Judge

—————
JASON ALAN JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000216

—————
APPENDIX
—————

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MICHAEL BROWN - DIRECT BY MR. THOMAS

11

1 A Yes, sir, I -- I felt good about it.

2 Q Okay. All right. And I think that involved in this
3 case were also charges against a co-defendant who was Cory
4 Catoe?

5 A Correct. I believe that's the applicant's cousin.

6 Q Yes, sir.

7 A He was represented by Brad Rawlinson, and actually
8 he's the one that should be sitting in this seat right now,
9 not me. He's the one that told them we're going to get
10 this stuff suppressed.

11 Q Okay. All right. And so you had some working
12 relationship with his attorney.

13 A (No response)

14 Q I mean y'all -- y'all -- y'all worked together
15 somewhat on this case preparing it or ---

16 A That would be one definition of the word work.

17 Q Okay.

18 A That would be an interesting way to put it.

19 Q Okay. All right. Um ---

20 A I have a habit of not mentioning words when I think
21 someone's making a mistake, when somebody's looking at as
22 much time as Mr. Johnson is.

23 Q Yes, sir. And we'll talk about that, because this
24 started with a plea from Mr. Catoe.

1 A Well, we got ours stay (sic) to a trial. After met
2 Rawlinson (sic) tells him and his cousin he's going to have
3 this stuff suppressed, they jump ship and leave us sitting
4 there.

5 Q Okay. All right. Now, yeah, let's -- that's a little
6 bit out of order but let's talk about that. So you were
7 there that morning for -- to begin the trial.

8 A The plea took place on a Tuesday I think after Judge
9 Alford denied the suppression motion, which doesn't
10 surprise me based on the facts of this case.

11 Q All right. And you said that they kind of jumped
12 ship. Why did they jump ship?

13 A Probation was on the table I think.

14 Q Okay. So ---

15 A And that -- and of course the motion wasn't granted to
16 suppress the evidence.

17 Q Right. And do you remember what your -- your
18 reasoning for the suppression was?

19 A (No response)

20 Q Was it the -- the search warrant?

21 A Illegal search, no search warrant. They had an arrest
22 warrant I believe.

23 Q Okay. All right, let's go back and kind of go --

24 let's go back to when the police showed up at the -- at the

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13

1 hotel room, and do you remember who, if anybody, was
2 staying at the hotel?

3 A The best of my memory is Mr. Johnson, um, -- I can't
4 remember -- there's two other people in the room with him;
5 I can't remember their names.

6 Q And there was a lady there, as well?

7 A Yes, it was six and a half years ago, I can't ---

8 Q I understand. I understand. And I had to go back --
9 I mean it's a huge transcript. It's difficult to follow.
10 Brandi Quinn? Is that her name?

11 A That's it.

12 Q Okay. Now, the police arrived at the hotel room and
13 they had a warrant?

14 A An arrest warrant to the best of my memory.

15 Q For Brandi Quinn.

16 A They also had a search warrant I'm pretty sure or went
17 and got one to the best of my memory.

18 Q Went and got one. Okay. But they had an arrest
19 warrant for Brandi Quinn.

20 A Is that who it was? I can't remember.

21 Q Yeah, yeah. And do you remember -- you remember that
22 -- what happened as far as how that -- arrest warrant was
23 served? She came to the door of the hotel room?

1 A Yeah, she came outside and she walked back inside,
2 which -- well, if she had just stayed outside, we might not
3 be having this conversation.

4 Q Right. And I think you argued that there was a defect
5 in the -- in the search warrant -- in obtaining the search
6 warrant?

7 A If I did, what's ever in the transcript speaks for
8 itself.

9 Q Okay. Okay. I didn't know if you specifically
10 remembered that.

11 A I don't remember.

12 Q Okay. All right. Let me see if this would help.

13 MR. THOMAS - Your Honor, I'm going to refer to
14 pages -- page 199 of the transcript lines 13 through 15 and
15 this goes over to page 201, lines 7 through 10.

16 MR. BROWN - If someone could hand me a copy of
17 the transcript.

18 MR. THOMAS - I'm going to. Your Honor, if I may
19 approach, I'll bring this up.

20 THE COURT - You may.

21 MR. BROWN - Expedite it a little bit.

22 MR. THOMAS - Okay.

23 Q I'll let you -- if you'll look at that, basically 199
24 through 201.

25 A (Witness complies) To 201?

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15

1 Q Yes, sir.

2 A Bear with me. (Pause) Okay.

3 Q All right. Now, you see beginning on page 199 there's
4 a motion to suppress evidence as fruit of the poisonous
5 tree?

6 A Correct.

7 Q And you remember why that motion was made?

8 A Because she's in custody, there's no longer a need for
9 a protective sweep.

10 Q Yes, sir.

11 A There's no threat. And I think they exceeded the
12 reason with them being there with the arrest warrant.

13 Q All right. And you were -- and she was outside.

14 A I think by then, yes.

15 Q All right.

16 A If I remember the tape, I think that's correct.

17 Q And I think if you go further on 201, you start
18 talking about search warrant for probable cause?

19 A For the, uh, yeah, because first glance all he saw was
20 the computers, which is nothing illegal about having
21 computers.

22 Q Okay. All right. And how did that -- and the Court -
23 - if you go over to 221 ---

24 A 221?

25 Q --- 221, lines 16 through 17, ---.

1 A All right, 16 -- correct.

2 Q Then Judge Alford rules that's as admissible?

3 A Shocker, yes.

4 Q Okay. All right. Now, you said -- and let's kind of
5 go back. And we're were talking about the plea offers --
6 here, I'll take that out of your hand, Michael.

7 A Oh.

8 Q So the plea offer, co-counsel for -- or I guess --
9 well, I guess co-counsel -- counsel for the co-defendant,
10 you said that you were kind of left hanging there or
11 holding the ball, because he was making representations
12 that this evidence was going to be suppressed?

13 A The applicant and his cousin were convinced based on
14 Mr. Rawlinson's representation -- I remember having this
15 conversation in the jail -- that they -- evidence was going
16 to be suppressed, the search warrant, the search was going
17 to be suppressed and, uh ---

18 Q And that didn't happen.

19 A In front of Judge Alford with those set of facts, huh!

20 Q Okay. And matter of fact Cory Catoe takes the plea
21 offer?

22 A He bailed.

23 Q Yeah, he bails. That leaves you kind of holding --
24 kind of holding the ball in this situation?

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1 A They -- the second day of trial I think they offered
2 him -- it's in the transcript -- 15 years, and we tried to
3 get through a plea, but I don't think we could.

4 Q All right.

5 A Or I don't think the applicant could -- I can't
6 remember exactly what happened, but he could not get
7 through the plea with Judge Alford.

8 MR. THOMAS - Your Honor, may I approach again?

9 THE COURT - You may.

10 Q I'm going to show you page 166, Michael, and 167 and
11 see if this helps to maybe kind of refresh your memory a
12 little bit.

13 A Is that the plea thing?

14 Q Yes, sir, it is.

15 (WHEREUPON, DOCUMENT HANDED UP)

16 A (Pause). Okay, he got five years suspended upon the
17 service of two. I was incorrect on that.

18 Q Okay. Now, in talking with my client, he had
19 indicated to me that there was an offer on the table prior
20 to this trial, right before trial, for ten ---

21 A It was.

22 Q --- for ten years. Do you remember ---

23 A I think that's correct. I'm -- I'm -- he would
24 remember better than I -- I don't have any -- I don't have
25 any reason to dispute that. I'm pretty sure it was ten

1 years. In my opinion, my humble opinion, I think I
2 could've talked Ms. Colton down to eight.

3 Q Okay. Did ---

4 A I think I conveyed that to him, because that was in my
5 notes that I reviewed.

6 Q All right. And Mr. Johnson indicates to me that he
7 was willing or wanted to accept that ten year plea offer.

8 Do you remember that ---

9 A No.

10 Q --- acceptance, or did you ever convey that ---

11 A No, I have no recollection of anything near that. Mr.
12 Rawlinson was going to get these drugs suppressed, and we
13 weren't going to have to worry about it anymore.

14 Q Okay. All right. Now, ---

15 A While I might add is now suspended for failing to get
16 his hours in, so I would call that a res ipsa loquitur,
17 speaks for itself.

18 Q Okay. Now, you take the unusual step on page 167 ---

19 A 167?

20 Q --- yes, sir --- to move to withdraw.

21 A (Pause) Correct. I had some concerns about his
22 ability to continue, his thought process, also, it was
23 tactful.

24 Q Right.

1 A If a motion was granted, I get -- take a step back
2 after -- this is right after -- if my recollection serves
3 me correct -- that the co-defendant bailed. I was also --
4 in the back of my head was -- didn't know if they'd cut a
5 deal with him to testify against this applicant, which
6 would've buried him. I asked. Nobody said anything, you
7 know, gave me a yes or no answer on that, but that would've
8 been the coup de grace in my opinion of his case if his
9 cousin testifies against him, but obviously he didn't.

10 Q Okay.

11 A So I had some concerns about his decision-making
12 process will be the best way to solve (sic) it -- or say it
13 -- because I didn't think he was making rationale decisions
14 with the facts we were confronted with.

15 Q And -- and all of that kind of fell apart after Judge
16 Alford ruled that the evidence was admissible.

17 A Correct.

18 Q Would there have been any other way to have prepared
19 for that, or do you feel like you were prepared for that
20 happening or ---

21 A I thought it was coming in anyway. I mean I -- I made
22 -- I made what I thought were the best motions available
23 under the facts. I did not feel confident the evidence
24 would get suppressed.

1 Q Okay. And did you talk to Jason about your -- your
2 feelings that this evidence was coming in?

3 A Yeah, oh, yeah. That was why he was adamant he didn't
4 want any plea negotiations.

5 Q Okay. Now, because he thought that the evidence
6 wasn't coming in or he thought the evidence ---

7 A He thought it wasn't coming in based on Mr.
8 Rawlinson's representa ---

9 Q He thought it wasn't coming in.

10 A Based on Mr. Rawlinson's representation of him and his
11 cousin's.

12 Q Okay. Do you feel like that you could have done
13 anything more to have dispelled or have prepared him for
14 the possibility of that evidence coming in?

15 A I'm sure there's something else I could've done; what
16 it is I couldn't tell you right now, but somebody once told
17 me that sign don't say expert legal advice; it says
18 practicing attorney, and 36 years later, I'm still
19 learning.

20 Q Yes, sir, I understand that. So do you think that
21 kind of a reverse thought is that he was fully formed (sic)
22 or intelligently based an intelligent decision not to
23 accept the plea? (sic)

24 A Looking back, I should've crammed it down his throat.

25 Q You should've been more forceful in ---

MICHAEL BROWN - DIRECT BY MR. THOMAS

21

1 A Because that -- that -- the plea I should've crammed
2 down his throat. That was in his best interest. Maybe I
3 wasn't forceful enough.

4 Q Okay. All right.

5 A But I can't -- he's the one that's got to stand up and
6 say the magic words. I don't ---

7 Q Okay. Let me ask you -- let's move on to this kind of
8 what we were talking about in the beginning about this
9 trafficking and this conspiracy to traffic.

10 MR. THOMAS - Your Honor, if I can approach again.

11 THE COURT - You may.

12 MR. THOMAS - I'm going to be referring to pages
13 224 and basically 225 through 226.

14 Q 224 through 226.

15 A 224. (Pause) Okay.

16 Q All right. Kind of comes back to that original
17 question which I didn't really know the answer to. Do you
18 think their failure to charge him for conspiracy to traffic
19 as well as the actual trafficking and the allowance of
20 evidence to come in more based upon a theory of conspiracy,
21 do you feel like that maybe that prejudiced the defendant
22 in any way?

23 A Not a whole lot for the simple fact these people
24 testifying were less than credible. I thought we did a
25 pretty good job on cross ---

1 Q Right.

2 A --- of tearing them all up. Not many of them are
3 believable. I mean you had a 28 year old cruising the
4 parking lot of Fort Mill High School, people like that ---

5 Q Yeah, because it ---

6 A --- in a Camaro.

7 Q It seemed weird to me just from reading it, and I
8 wasn't there, that a lot of this stuff they were getting in
9 was really a conspiracy to trafficking.

10 A I -- I tend to agree with you.

11 Q And that information to me as just the attorney
12 reading the transcript seemed to be very prejudicial.

13 MS. JAMESON - Objection. Testifying and leading.

14 MR. THOMAS - I'm sorry, Your Honor. I'll put it
15 in a form of a question.

16 THE COURT - That'd be great.

17 MR. THOMAS - Yes, sir.

18 Q Michael, do you believe, in your opinion, was the
19 conspiracy evidence -- was it prejudicial to ---

20 A Well, of course, it's prejudicial. I mean putting --
21 tying more dope to him. How effective it was in front of
22 this jury -- but, yes, it was prejudicial, obviously.

23 Q Because what -- what, if anything, were they able to
24 get then introduced through the conspiracy theory? Do you
25 remember?

MICHAEL BROWN - DIRECT BY MR. THOMAS

23

1 A I don't other than a bunch of people doing dope ---

2 Q Do you remember the driver's licenses? Were there
3 anything about -- fake driver's licenses?

4 A Buying, uh -- oh, buying cold medication. That what
5 you talking about? They -- you had to show -- at some
6 point in time you had to start showing your driver's
7 license to buy Dramamine and things of such to get the
8 basic ingredient to cook meth out of. They used the
9 driver's license for that to show that so and so had bought
10 50 -- and I'm paraphrasing -- x number of boxes of cold
11 medication which -- you know, you couldn't take two a day
12 if you had to.

13 Q Right. And they were able -- did they produce the --
14 the -- I guess the records from the different drug stores?

15 A I think -- yes, I think Marvin and his boys had that
16 record there. Marvin Brown.

17 Q Okay. And isn't that more evidence of conspiracy?

18 A I tend to agree with you.

19 Q Did they find fake IDs?

20 A I don't remember one way or the other.

21 Q Okay.

22 A The record -- I mean -- if it's in ---

23 Q But if they had, that would've then been more in line
24 of a conspiracy theory, as well.

25 A Depends on whose fake ID.

1 Q Okay. All right. And do you know why he wasn't
2 charged with conspiracy?

3 A I don't. Ms. Colton can probable answer that
4 question.

5 Q Okay.

6 A I would assume she -- like I said in my argument,
7 she's trying to back-door Lyle evidence in through the
8 conspiracy word and the trafficking statute.

9 Q And that's my question. Did the conspiracy evidence
10 back-door any evidence into the trafficking charge ---

11 A Well, ---

12 Q --- without him being charged ---

13 A --- of course -- of course he can.

14 Q Yeah.

15 A I mean -- if I loan Ms. Colton ten thousand dollars
16 and she tells me she's going to buy meth with it, and she
17 gets popped for trafficking meth, I'm just as guilty as she
18 is under the conspiracy or aiding or abetting or anything
19 in furtherance of. The statute's broad. I mean -- I don't
20 need to tell you that.

21 Q Right. And do you feel that there was anything that
22 you could have done differently to have eliminated any of
23 that conspiracy evidence coming in?

1 A Maybe I should've objected strong, but I laid out what
2 I thought she was trying to do which was back-door Lyle
3 evidence.

4 Q Okay.

5 A My -- my big regret in this case is not cramming the
6 plea offer down his throat.

7 Q Yes, sir. Okay. Now, Michael, let's go on which is a
8 interesting -- interesting issue, which I think that the
9 Supreme Court did rule on, and it's the weight of the
10 drugs.

11 A Yeah.

12 Q And that begins on page 311.

13 A 311?

14 Q Yeah, goes through 312.

15 A Got it.

16 Q Yeah, it goes for quite some time, but let's start
17 there. Um, now, ---

18 A I remember this argument well.

19 Q What was the argument? I mean what was the issue
20 about the drugs?

21 A Meth is a process -- I learned a lot in this trial
22 about how to cook meth.

23 Q Me too.

24 (WHEREUPON, PARTIES LAUGH)

1 A The ingredients you need -- when they busted the
2 applicant and the other people in the motel room, it was
3 still in a cooking stage. My recollection is they were in
4 the process of draining the material out of the cold
5 medication to get to the core ingredient. Ms. Colton asked
6 the judge, and Judge Alford went along with this, is use
7 the entire weight of all the ingredients there, which is --
8 I don't know, it's kind of felonious. I mean if I walk in
9 and bust somebody for crack, and they're sitting there with
10 two grams of cocaine but they have a half gallon of water
11 and a -- you know, a pound of baking soda, I mean is that
12 ten pounds of crack or is it two grams of cocaine? I mean
13 it's kind of the same analogy, but it came in and -- my
14 understanding is since this time, the plurality including
15 South Carolina, is recognized as a valid law.

16 Q But the difference was -- and I think the difference
17 Judge Alford was actually eluding to -- was that the
18 chemicals in the raw -- I think they called it meth oil --
19 was non-consumable ---

20 A Correct.

21 Q --- versus the baking soda -- baking soda in the
22 cocaine is consumable.

23 A I -- I haven't read this, ---

24 Q Okay.

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1 A --- but my memory is that Ms. Colton had -- I don't
2 know -- cases from 15 different jurisdictions. At that
3 point in time which was January of 2012, I think the
4 plurality of other states had ruled that the total weight
5 comes in. It was a novel issue in South Carolina to the
6 best of my recollection as far as meth goes.

7 Q Right. Now, let me take you to page 314, Michael, ---

8 A All right.

9 Q --- specifically lines 15 through 25.

10 A Got you.

11 Q All right. Question, it appears that the solicitor at
12 that point says, well, Mr. Brown could've had a private
13 laboratory to, I guess, extrapolate the methamphetamine and
14 come up with a pure weight of meth and appears at that
15 point to have said that you were negligent in not having
16 done so.

17 A I -- looking back I wish I had done that, however, as
18 it turned out, I believe the Supreme Court just ruled on
19 that a couple of years ago that you can't get that evidence
20 in anyway.

21 Q But I'm curious ---

22 A So it'd been a good idea, but I would've lost.

23 Q But -- well, had you done that ---

24 A I should have looking back.

1 Q --- you might have been able to spurt the whole issue
2 of weight.

3 A I -- I should've done that.

4 Q Okay. Which would've not have produced this case to
5 go to the Supreme Court, but it might've had an effect upon
6 the defendant if the Court had accepted the private ---

7 A I can't answer that. I just know they subsequently
8 ruled that it wouldn't have matter ---

9 Q Okay.

10 A --- on another case, that you can't introduce into
11 evidence what the yield would've been, but I wish I'd have
12 thought of that at the time.

13 Q In reading the transcript, there was a witness, Brandi
14 Quinn, and I don't know if you remember any of this or not,
15 um, you make a statement in there -- and I apologize, I
16 didn't write that page down -- you make a statement in
17 there about her testimony as a possible back-door to Lyle
18 issues.

19 A Uh, I just read that where I argued about, uh, --

20 Q And ---

21 A On the conspiracy issue.

22 Q Right, and it seems to blend all in to this conspiracy
23 versus trafficking issue again, um, --- (pause) -- and also
24 as far as timeline, how did the -- how or why did a
25 timeline fit into a trafficking case?

1 A It didn't. She was -- I mean in my opinion Judge
2 Alford was wrong in letting the evidence in. I mean all
3 you do is back-dooring Lyle evidence which is -- that
4 timeline shows that he was like a career meth -- you know,
5 meth dealer when they should've been -- you know, just --
6 focusing on one act.

7 Q Right. And ---

8 A I mean I think he's wrong on that, but Supreme Court
9 obviously didn't.

10 Q Now, question, on the warrants on a trafficking case,
11 is there a timeline issue? Do you have to have a specific
12 timeline for the trafficking, and if so, is the State
13 limited to that specific timeline at trial?

14 A I would say yes. You can't -- I mean if I sell a gram
15 of cocaine a week, and they put a timeline of two years in
16 there, I'm going away for 25 years without parole.

17 Q Right.

18 A Instead of they indict me for every individual act,
19 distribution of cocaine less than a gram or a gram. I
20 still say that -- back -- is back-dooring Lyle evidence is
21 all that it was doing.

22 MR. THOMAS - Your Honor, may I approach?

23 THE COURT - You may.

24 (WHEREUPON, DOCUMENT HANDED UP)

1 Q Michael, I think this is in the packet. This is the
2 indictment for trafficking and methamphetamine. Is there
3 any timeline in that?

4 A No. That's just two specific days. No, excuse me,
5 between.

6 Q Between.

7 A Yep.

8 Q All right. What does that mean?

9 A Maybe I should've objected to that timeline.

10 Q Does that mean that he was a -- it was a continuous
11 selling of or trafficking in cocaine during that period of
12 time?

13 A You could say that.

14 Q Okay. And I ask because I -- because I don't do a lot
15 of frontline trial work, so I don't really know. So they
16 would -- the way to prove trafficking -- well, I guess
17 would be through sales of a certain ---

18 A Not necessarily.

19 Q Not necessarily.

20 A Trafficking is weight-driven. Sales ---

21 Q Weight-driven.

22 A Sales have nothing to do with it.

23 Q Okay. All right. So would they be alleging in this
24 indictment that during that period of time he was in the

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1 possession of cocaine over a certain -- I mean not --
2 methamphetamine over a certain weight?

3 A No. The trafficking came down to what was caught in
4 the motel room.

5 Q Right.

6 A Everything spun on that. To best of my recollection,
7 that was her big argument; that was my big argument, that
8 it wasn't tested properly for who possessed it. There was
9 involvement testimony about him doing meth with other
10 people and so forth, but the actual trafficking charge, the
11 one weight thing to the best of my recollection was based
12 on what was found in the motel room.

13 Q So why would there be a need for that on or about
14 between August 1st, 2010 and February 27th, 2011?

15 A There shouldn't have been; I should've objected to
16 that.

17 Q Okay. And that is more in line with the conspiracy.

18 A Yes and no. It's overly broad.

19 Q And I guess -- and I don't want to beat this horse to
20 death, but if they had had a specific date that -- of the
21 motel room when they seized actually methamphetamine and
22 they didn't have a timeline, would they have then been
23 allowed to introduce the drive -- the fake driver's
24 licenses and the purchases from the drug stores?

25 A Under Judge Alford's ruling, yes.

1 Q Okay.

2 A He didn't even reference to the best of my memory
3 anything about the indictment. He went off the word
4 conspiracy.

5 Q But there was no allegation of conspiracy.

6 A Well, again, his interpretation of the statute.

7 Q Okay. Is there anything that you think that you
8 could've done differently to have been able to prevent any
9 of that conspiratory elements coming in?

10 A Not -- from a fragmented viewpoint, no. I mean even
11 if I object to the indictment, it's not going to matter,
12 because he let it in through the conspiracy theory of the
13 word conspire in the statute. That was the big argument.
14 The big argument about trafficking was the amount found in
15 the motel room, but that was it. Um, I wish I'd have made
16 him take that -- my big regret ---

17 Q But you didn't object to the indictment.

18 A Say again?

19 Q You didn't object to the indictment.

20 A No, I did not unless it's in the transcript, no.

21 Q Okay. Does the indictment go back to the jury?

22 A I don't remember. I don't think so.

23 Q Okay.

24 A I don't think so. I think they send back a little --
25 the jury find him guilty of this, this, this, this, ---

1 Q Okay.

2 A --- a charge sheet, a jury sheet.

3 Q How was the use of the co-defendant, Catoe, his plea,
4 how was that used at trial or as his participation of the
5 case? Do you remember?

6 A I don't think it was under the obvious fact there was
7 two of them the first day and there was one the next.

8 Q Okay. And I guess there was testimony about Cory
9 Catoe in the trial?

10 A You know, honestly I don't remember. My big fear was
11 he was going to roll on him.

12 Q That he was going to testify.

13 A Yeah. That's his cousin. That'd be the most damning
14 witness again him.

15 Q Right. Did you ever have any information or any idea
16 that Cory Catoe was going accept the drugs as his
17 possession?

18 A No. No, they were going to get those drugs
19 suppressed. Mr. Rawlinson was going to get those drugs
20 suppressed; we were going to be out of here.

21 Q Let me ask you, Michael, if you would turn to page
22 535.

23 A 535?

24 Q Yes, sir.

25 A I don't think mine goes that far.

1 Q Oh, second volume, I'm sorry.

2 MR. THOMAS - May I approach, Your Honor?

3 THE COURT - You may.

4 (WHEREUPON, DOCUMENT HANDED UP)

5 Q This is a big transcript.

6 A Yeah. Got you.

7 Q Okay. This is cross examination of Brandi Quinn?

8 A Correct.

9 Q And I think you asked about that she and other
10 witnesses were just as guilty.

11 A Correct.

12 Q And do you feel like that that question may have -- I
13 mean by asking that would've further implicated the
14 defendant in this crime ---

15 A Oh, no, I do that all the time.

16 Q Okay.

17 A It's been very effective over the years.

18 Q All right.

19 A Prosecution's playing God. My client's got to go to
20 jail for 25 years without parole. They decided him to cut
21 loose and they just -- he alleged in the same involvement.
22 I found that to be very effective over the years in front
23 of juries.

24 Q Okay. And what I didn't quite understand, if you'd
25 look at 548.

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1 A 548?

2 Q Yes, sir, of that transcript.

3 A Got you.

4 Q This thing about the drug addict statement. I didn't
5 really understand that.

6 A It's I'm trying to paint him as a drug addict.

7 Q Right.

8 A The police busted him there; they have this brand new
9 3.2 million dollar lab, or whatever it costs, where they
10 can do DNA and all these forensics and stuff, there's three
11 people in this motel room, there's not one fingerprint
12 attempted to be taken off this bottle, there's not one DNA
13 analysis, nothing to tie this applicant to that bottle
14 where they could've solved this whole issue for the jury by
15 simply doing what that lab does, and that's the way I was
16 trying to paint that as.

17 Q And that never was done.

18 A No, was not. Matter of fact, I believe the jury came
19 back one or twice with questions about that.

20 Q That moves us along to the witnesses, just a bunch of
21 them, Shelley Pettigrew, Amanda Caudle, Christopher Matuse,
22 Cassidy Cooper, Brandi Hager. What, if anything ---

23 MR. THOMAS - And for the Court's information,
24 Your Honor, this I think begins on 613 and runs through
25 763.

1 Q What was the effect, if anything, of those witnesses
2 testifying?

3 A You know, in a strange way I didn't feel that that
4 crowd of debutants was hurting me that bad. The -- I -- I
5 thought most of them looked stupid in front of the jury to
6 be honest with you, non-credible, non-believable. I just
7 didn't see them hurting me that bad.

8 Q They all had deals of some sort?

9 A Well, they all a bunch of drug addicts. You know,
10 half of them would admit they were spaced out at the time,
11 don't remember certain facts. Credibility, I'd rate those
12 people as zero.

13 Q Okay.

14 A Was a little surprised the prosecution put most of
15 them up to be honest with you.

16 Q Any -- do you remember if there was any testimony from
17 those folks about the fake IDs or the purchasing of drugs?

18 A I don't remember. Actually I don't remember fake IDs
19 at all.

20 Q Okay.

21 A I remember the use of -- the records coming in, and
22 they -- I think in between these set of facts in the trial
23 they passed a law where you had to produce your driver's
24 license and that's how they starting getting -- I can't
25 remember. But they -- they did bring records in where

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1 people had bought like 60 doses of this cold medication,
2 which is the core ingredient for meth.

3 Q Let me ask you this just to kind of and kind of trying
4 to wind everything up. I guess Cynthia Mitchum, she was
5 the York County Sheriff's -- from the sheriff's office in
6 the drug analysis?

7 A Was she at the time? Okay.

8 Q Yeah. I'm just -- I think she was. Do you remember
9 anything in particular about that or anything jump out at
10 you?

11 A No, other than ---

12 Q Other than the weight issue that you had.

13 A I'm sorry?

14 Q Other than the weight issue that you had, about the --
15 the meth oil.

16 A No, I mean I don't remember anything specific. I
17 didn't ask her, because I saved it for closing argument. I
18 got all the facts and evidence I needed. I didn't want
19 them to have a chance to respond to it.

20 Q Okay.

21 A Took the facts -- I remember asking her detail about
22 you have this lab, blah, blah, blah, blah, blah, you
23 can do all this. I didn't ask the obvious question, why
24 didn't you do it, saved that for closing argument.

25 Q Okay.

1 MR. THOMAS - Your Honor, may I approach. I just
2 wanted to look at the transcript right fast.

3 THE COURT - You may.

4 (WHEREUPON, MR. THOMAS RETRIEVES TRANSCRIPT)

5 MR. THOMAS - Michael, can I can get that back
6 from you.

7 MR. BROWN - Sure.

8 MR. THOMAS - Your Honor, if I could beg the
9 Court's indulgence just for a second.

10 THE COURT - Certainly.

11 (WHEREUPON, BRIEF PAUSE)

12 MR. THOMAS - Your Honor, may I approach?

13 THE COURT - You may.

14 MR. THOMAS - I just want to put this on the
15 record, Your Honor.

16 Q Look at 890 -- the highlighted part of 890; that's
17 pages 13 through 19.

18 A Okay. (Pause) You talking about Mr. Catoe?

19 Q Yeah, and I guess that kind of ---

20 A Okay.

21 Q --- ties up our answers to earlier question. There
22 was some question about how to deal with the plea of Mr.
23 Catoe, and then I guess the State says that they don't
24 intend to raise that in closing.

25 A Correct.

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1 Q Is that what you remember? Is that what happened?

2 A I don't remember, but she can testify as to why they
3 let him plead to manufacturing.

4 Q Okay.

5 A I assume he was talking about Ms. Colton. I know Ms.
6 Colton ---

7 Q I think so.

8 A Kind of gives you a hint about what I was up against
9 in this trial.

10 Q Yes, sir. And then you had mentioned that there were
11 questions by the jury, and I think those are on pages 958
12 and 960.

13 A 958?

14 Q Yes, sir, and 960.

15 A (Pause) Got you.

16 Q Were there two questions or one ---

17 A Looks like two.

18 Q All right. Do you remember what those were?

19 A Yeah, obviously this 28 grams have to be all at once
20 or accumulative; second question asked was -- who was --
21 what was said about bartering when discussion of
22 distribution or deliver.

23 Q And what -- what -- what did that mean? What was
24 that?

1 A (Pause) Looks like they had a question about the
2 cumulative effect of all the drugs they associated with
3 them, and the second one was I took -- I took to mean they
4 were considering the distribution charge which wasn't
5 charged, which I don't understand that.

6 Q And did you make any -- I mean did you ask for any
7 kind of curative charge or anything about that or ---

8 A I don't remember. Bear with me a second. (Pause)

9 Q Okay. No problem.

10 A (Pause) You know what? Hindsight being 20/20, I
11 should've asked for a clarification on that as to the
12 specific day and time, point in time. I should have.

13 Q Specific day and time of what?

14 A Not -- not this cumulative -- got to find that he was
15 trafficking on this day in question to -- with the State's
16 evidence -- to conform to the evidence they presented.

17 Q All right.

18 A They came back again and wanted to know about, uh -- I
19 forgot, there were three questions later on about the
20 weight and how that was determined.

21 MR. THOMAS - Your Honor, just some housekeeping.
22 I think the only other thing we referred to in examination
23 was the indictment. I believe that's already part of the
24 packet.

25 THE COURT - It is.

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1 MR. THOMAS - Not necessary for me to introduce
2 that. It's in the packet.

3 Michael, if I can get that back from you.

4 (WHEREUPON, MR. THOMAS RETRIEVES DOCUMENT)

5 MR. THOMAS - And we have no further questions,
6 Your Honor.

7 THE COURT - Ms. Jameson?

8 MS. JAMESON - Thank you. May it please the
9 Court.

10 CROSS EXAMINATION

11 BY MS. JAMESON -

12 Q I'm going to start right at the end, Mr. Brown, with
13 what you were just asked about regarding jury charges. You
14 testified you didn't request a jury instruction on
15 distribution or distribution wasn't given. Correct?

16 A I don't remember whether I questioned it or not, but I
17 was kind of taking the approach of all of (sic) nothing.

18 Um, ---

19 Q Do you have a copy of the transcript?

20 MR. THOMAS - I do. Which one you want, the
21 second volume?

22 MS. JAMESON - Second pages, (sic) yeah.

23 Moment's indulgence, Your Honor.

24 A Somehow I think the jury's getting hung up on anybody
25 who conspires, aids, abets, distributes, delivers.

1 Q So your reflection (sic) -- or your recollection that
2 you didn't request manufacturing or distribution?

3 A I don't remember, and to the best of my recollection I
4 did not. I think I had an all or nothing mentality at that
5 point in time.

6 MS. JAMESON - Your Honor, may I approach?

7 THE COURT - You may.

8 Q I'm going to hand you, Mr. Brown, 885, which is during
9 the charge conference. If you'll look at 885 through 887
10 to yourself, I have some questions ---

11 (WHEREUPON, DOCUMENT IS HANDED UP)

12 A All right.

13 Q --- about what you requested the Court to charge.

14 A (Witness complies) Evidently I did request those
15 charges, yeah.

16 Q So you did request distribution of methamphetamine.
17 Correct?

18 A Yeah, I also requested simple possession, too.

19 Q And PWID methamphetamine and manufacturing
20 methamphetamine. Correct?

21 A Correct. I did.

22 Q And the Court did charge distribution of
23 methamphetamine. Correct?

24 A I -- I did it ---

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1 Q If the record reflects that the Court did charge
2 distribution and manufacturing, you wouldn't have any
3 reason to disagree with that. Correct?

4 A No, ma'am.

5 Q You were shown a copy of the indictment by Mr. Thomas.
6 That indictment spans the time period of August, 2010
7 through the date of arrest at the hotel in February of '11.
8 Correct?

9 A Correct.

10 Q So this isn't just about that arrest at the Best West
11 (sic) -- Bestway Inn on February 27th, 2011. Correct?

12 A Not ---

13 Q It's about that whole time period ---

14 A Not according to the indictment. My recollection of
15 the evidence is it was all geared toward that.

16 Q But you testified the State did present evidence of
17 smurfing and kind of going around to different pharmacies
18 to get pills and all the different cooks that different
19 witnesses had seen through that August through February
20 time period?

21 A And I may be wrong; my recollection of that evidence
22 is though (sic) this is like party A here in Clover, party
23 B in Lake Wylie, party C in York. I mean just like various
24 people get together cook this stuff up and smoking it. It
25 wasn't really about a trafficking thing.

1 Q But the State introduced voluminous records of all the
2 different pharmacies that ---

3 A Correct.

4 Q --- that Mr. Johnson and his contacts had been to.

5 Correct?

6 A Correct.

7 Q And presented testimony that this was sort of a
8 organization of getting Sudafed and then bringing it to Mr.
9 Johnson to have him cook at these various places he was
10 living. Correct?

11 A Yes and no. It was -- I mean it was kind of ad hoc at
12 best as my memory -- whatever's in there is in there.

13 That's just my memory.

14 Q Several -- several witnesses testified that he was
15 living at a trailer in Clover for a while and cooked meth
16 there quite a bit with Mr. Catoe. Correct?

17 A I have a recollection of that, yes.

18 Q . And then there was some testimony about he then moved
19 in an apartment with his brother and whether any meth was
20 cooked at that apartment in Rock Hill?

21 A I vaguely remember that, yes.

22 Q And then testimony about cooking meth at Cory Catoe's
23 grandmother's house ---

24 A Oh, yes.

25 Q --- and then lived there for a week or two?

1 A Remember that.

2 Q And then ultimately cooking meth at this Bestway Inn
3 in February of 2011. Correct.

4 A Correct.

5 Q So it did span this entire timeline -- correct? -- the
6 August through February?

7 A Evidently.

8 Q And you challenged this time span numerous times
9 throughout the trial. Correct?

10 A I -- record speaks for itself. I wasn't winning very
11 many rulings with Judge Alford in this trial.

12 Q Do you recall when -- when these various witnesses
13 that were part of the fact witnesses, that were part of the
14 conspiracy, do you recall objecting and asking Ms. Colton
15 to clarify the timeframe that it was within that August to
16 February?

17 A See, I still think -- yes, I do.

18 Q And to clarify that Mr. Catoe was there since he was
19 the co-conspirator?

20 A I think what you had was several different
21 conspiracies going on at the same time, and you can't tie
22 all those together. That's why ---

23 Q Which are objections you made during trial. Correct?

24 A Correct.

1 Q And you tied all of those -- you made Ms. Colton tie
2 all of those -- the State tie all of those to Mr. Catoe as
3 the co-conspirator. Correct?

4 A Well, I didn't think she did.

5 Q But you objected based on that.

6 A I objected, yes. I mean, because my applicant over
7 here gets with person A and B and cooks meth and he -- then
8 my applicant later gets with C and D and cooks meth,
9 doesn't make that all a part of the same conspiracy.
10 Different conspiracies can go on at the same time and
11 they're not part of the same conspiracies.

12 Q But most of the testimony that was presented through
13 the State was not applicant with A and B and then later
14 with C and D. It was applicant with Catoe and whatever
15 various girlfriend he had at the time. Correct?

16 A Pretty much, yes.

17 Q Yeah. Okay. So they limited it mainly to cooks with
18 Catoe and whatever girlfriend he was with.

19 A Uh, pretty much, yes.

20 Q And you objected when they went outside of that
21 timeframe.

22 A To the best of my recollection, yes.

23 Q And Mr. Johnson was arrested and taken into custody at
24 the hotel. Correct?

25 A I'm sorry?

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1 Q Mr. Johnson was arrested at that hotel and taken into
2 custody that day?

3 A Correct.

4 Q So there was never any sort of an alibi defense.
5 Correct?

6 A No. No.

7 Q And I think you testified on direct that your defense
8 was more of he was a drug addict and a user just supporting
9 his own habit, not some ---

10 A It's kind of where the evidence took us. Um, you
11 know, a bunch a people getting around, smoking crack,
12 staying up for a week watching MTV or something like that.
13 There really wasn't a whole lot of evidence of him selling
14 drugs. I kind of liked that a little bit for his defense.

15 Q And you brought that up through several witnesses that
16 they never say money change hands. Correct?

17 A Correct.

18 Q And most of the State's witnesses testified that they
19 were trading Sudafed for some meth. Correct?

20 A Correct.

21 Q And one of the first allegations is regarding the
22 search warrant, and you did object, and there was a lengthy
23 pre-trial motion on that. Correct?

24 A Uh, to the best of my memory, yes.

1 Q And the two grounds were that the initial entry into
2 the hotel was warrantless?

3 A Nah, I think they -- I think so. They had an arrest
4 warrant, and I think they received the scope of that once
5 she was in custody, ie, my fruits of the poisonous tree.
6 They proceeded to search; he had computers there. That's
7 not a grounds to get a warrant.

8 Q So you had the two-fold. You had that the initial
9 entry was without a search warrant, ---

10 A Correct.

11 Q --- and then your other ground ---

12 A Correct. Definitely.

13 Q And your other ground was that the search warrant
14 lacked probable cause because you couldn't initially tell
15 anything nefarious going on with computers. Correct?

16 A Correct.

17 Q But it wasn't just the computers. There was also
18 razors and syringes and tin foil and other drug
19 paraphernalia and drug use items in the hotel during that
20 protective sweep. Correct?

21 A That came into light later. The initial scope of view
22 of the thing was just computer parts and that was it by the
23 first officer on the scene that was established.

24 Q So your memory isn't that he saw those things during
25 the initial protective sweep.

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1 A Saw them later.

2 Q And he also saw some white substance that he thought
3 might be drugs -- correct? -- on the bed?

4 A If it's in -- yeah, if it's in the transcript, it's in
5 there. I don't remember that, but I'm sure it is.

6 Q And Judge Alford turned -- denied your motion to
7 suppress on both grounds.

8 A I'm sorry?

9 Q Judge Alford denied your motion to suppress on both
10 grounds?

11 A Oh, yes.

12 Q And you contemporaneously objected when the drug
13 evidence came in to preserve this. Correct?

14 A Correct.

15 Q And it was addressed in a published Opinion by our
16 Court of Appeals?

17 A Correct.

18 Q Regarding plea offers, I think you said it was ten
19 before trial, but you thought you could've negotiated down
20 to eight possibly?

21 A That's my recol -- now, we didn't -- Ms. Colton and I
22 never discussed eight. To the best of my recollection, I
23 think she'd offered ten or 12. I want to say it was ten.
24 If I'm wrong, I'm wrong, but in my head I think I could've
25 talked her down to eight before trial. I distinctly

1 remember this very well. He and his cousin were adamant --
2 adamant based on Mr. Rawlinson's representation, the
3 evidence was going to be suppressed.

4 Q And you told him you didn't think it was going to be
5 suppressed based on your ---

6 A I told him it wasn't going to be suppressed.

7 Q And that was based on your thirty some odd years of
8 experience?

9 A That and being in front of Judge Alford for 20 plus
10 years.

11 Q And then during trial the offer was 15 years?

12 A I think -- I think that's correct. He could not get
13 through the plea to the best of my memory. Um, that was
14 the -- that was the start of the second day to the best of
15 my memory.

16 Q The plea kind of starts after his co-defendant and he
17 says he wants to withdraw. And ---

18 A After they bailed.

19 Q And I believe your -- your comment on direct was you
20 should've shoved down his throat and forced him to plead.

21 A Yeah, I should've done that. I know that's not
22 technically the way to do it, but it was in his best
23 interest looking -- matter of fact, he finally agreed he
24 told me after it was all said and done; six months after

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1 that wrote me a letter saying he should've listened to me
2 in the first place.

3 Q Should've listened to you that it wouldn't be
4 suppressed and to take the plea offer?

5 A He wrote me a letter apologizing saying that he
6 should've listened to me and taken the plea.

7 Q But it's your client's decision to take a plea or not.
8 Correct?

9 A No question about that, however, over the years --
10 maybe I -- maybe I'm faulting myself for something that's
11 really not my fault. I just always believed that it's one
12 of my jobs is to make him see the light in what's in his
13 best interest. A lot of lawyers will come up her and put
14 the dog and pony show on and the guy gets 25 years without
15 parole. My job is to do what's in the best interest of my
16 client.

17 Q And you told your client the suppression motion
18 wouldn't be granted, and it was in his best interest to
19 take a plea.

20 A I told him in my humble opinion we had a snowball's
21 chance in hell of that suppression motion being granted.

22 Q And when he moved to withdraw his plea after it
23 started, you asked for him to be evaluated. Correct?

24 A Asking him what?

25 Q Asked for the Court to have him evaluated?

1 A Yeah, I -- I do remember that, yes.

2 Q And I believe you testified on direct you made this
3 motion to -- because it wasn't reasonable for him to turn
4 down the plea offer?

5 A Well, it's that too, and some of it was tactical. Um,

6 ---

7 Q Can you ---

8 A --- if I get a delay in a trial, it gives me more time
9 to maneuver. The co-defendants bail; the jury's already
10 been picked; they've seen one person bail out. The
11 implication by nature -- I don't care how you twist, turn
12 or burn it -- is that, oh, well, he pled guilty, maybe the
13 other guy -- you know, it just was a bad set of facts for
14 the applicant at that time.

15 Q But the trial hadn't started at that point. Right?

16 A I believe it had; at least motions had.

17 Q But anything in front of the jury. You hadn't had ---

18 A I don't remember.

19 Q --- opening statements or the jury hadn't seen Mr.
20 Catoe (sic) sitting at the table for the actual trial?

21 A I don't remember. Well, whatever's in the transcript.
22 I thought they had, but maybe I'm wrong.

23 Q Did you have any concern's about Mr. Johnson's
24 competency other than turning down this favorable plea
25 offer?

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

2 Q And you were able to communicate with him and he
3 appeared competent?

4 A Oh, yeah.

5 Q He could assist you in his defense?

6 A Yeah. I considered that tactical more than ---

7 Q If the record reflects you did challenge the State
8 being able to go forward on conspiracy, do you have any
9 reason to dispute that?

10 A I'm sorry?

11 Q If the record reflects -- you testified on direct you
12 don't think that you challenged the conspiracy, that it was
13 trafficking based on that day in February and you should've
14 challenged the time span of the conspiracy.

15 A I should've challenged the timeframe they gave in the
16 indictment, yes.

17 Q If the record reflects you did several times, do you
18 have any reason to dispute that?

19 A If I did I don't remember. I mean again, six and a
20 half years ago, I've had there surgeries since then, so my
21 memory's not too keen on all that.

22 Q Regarding the gross weight of the methamphetamine, you
23 did argue that the total weight of the liquid should not
24 count towards the meth. Correct?

25 A Adamantly.

1 Q And you preserved these objections for appeal?

2 A Correct. In my opinion I did.

3 Q And it was addressed on the merits by the Court of
4 Appeals. Correct?

5 A Yeah, I don't think -- I don't remember them saying I
6 didn't properly preserve any issues. I remember that
7 reading the Opinion. That was not one of the issues.

8 Q Do you recall questioning witnesses about whether the
9 meth in that during cooking stage was usable?

10 A I'm sure I did.

11 Q And I think when you were questioned by Mr. Thomas,
12 you said that you should've had the drug evidence tested by
13 a private facility to determine the actual percentage of
14 meth. Correct?

15 A I should've done that, because I have a feeling -- and
16 I don't know this -- I have a feeling that that number
17 would've come lower than what the police were giving me,
18 which I would've (sic) think would've had serious
19 ramification of their credibility in front of the jury and
20 the collateral effect in my humble opinion that would've
21 been, well, maybe the cops are out to nail this guy, blah,
22 blah, blah, take the argument a step further, but, I mean,
23 I didn't.

1 Q But Judge Alford already ruled that it was any mixture
2 thereof, so you wouldn't have been able to go into that
3 with -- with the jury.

4 A Well, -- I mean the Supreme Court said we can't have
5 done it that anyway two years after-the-fact, but I
6 should've tried. Because the collateral effect I think
7 would've helped the applicant make a point.

8 Q And you testified it might go to the overall weight.
9 Do you recall how much was pulled out and tested by York
10 County?

11 A I don't. I think it was 60 grams in the bottle or 60
12 gram of weight.

13 Q And that wasn't all of the meth oil and meth that was
14 in the liquor bottle, was it? They just extracted some ---

15 A I don't think so.

16 Q --- some, because it wasn't safe to take all of it?

17 A Yeah, I don't -- I think you're right, no.

18 Q And, ultimately, the only weight that was submitted to
19 the jury was 28 to a hundred grams. Correct?

20 A No. I think he charged over a hundred, didn't he?

21 Q If the State withdrew and asked the jury not to be
22 charged with more than a hundred grams, would that surprise
23 you?

24 A I -- my recollection is that he was going to charge a
25 hundred plus. If he did, he didn't.

1 Q And he was convicted of 28 to a hundred grams. Right?

2 A I don't think it mattered. I think he was looking at
3 25 years without parole on one and 30 without parole on the
4 other. I mean as a practical matter to the applicant.

5 Q Did you ask the State to redact any of the video
6 evidence that came in?

7 A That -- I'm sorry -- that ---

8 Q Did you ask the State to redact any of the video
9 evidence that came in?

10 A I thought I did. Thought we redacted some of it.

11 Q And what video was that? Can you tell us more about
12 that video?

13 A It was a video at the scene where they arrested, uh,
14 at the motel room. Um, that's the one I remember. Had
15 some prejudicial things in it to the best of my memory.

16 Q And those were redacted out. Correct?

17 A My recollection, yes. I don't think there was much of
18 an argument about that.

19 Q Because the State consented and redacted out what you
20 wanted redacted out.

21 A I -- that's my recollection. We really didn't argue
22 about that a whole lot.

23 Q And Brandi Quinn -- do you recall when the State
24 alleged she became involved in this conspiracy or when she
25 linked up with Mr. Johnson?

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1 A I don't.

2 Q They had a romantic relationship. Correct?

3 A I guess so, yeah.

4 Q And -- and she was in the hotel when -- she was who
5 the arrest warrant was for. Correct?

6 A Yeah, that's who the arrest warrant was for.

7 Q Do you recall if she testified regarding watching Mr.
8 Johnson cook methamphetamine?

9 A I remember that.

10 Q And used methamphetamine?

11 A Correct.

12 Q And do you recall objecting to this testimony saying
13 it was Lyle evidence the State was trying to back-door in
14 against your client?

15 A I -- I do. Correct.

16 Q And the Court overruled that and said it was in
17 furtherance of the conspiracy and would come in.

18 A Correct.

19 Q Do you know if the State called all of their potential
20 witnesses in furtherance of the conspiracy?

21 A I don't think they did. I think they -- well, I don't
22 know that. They had a list; they didn't call everybody on
23 the list. I'll leave it like that.

1 Q Regarding the term drug addict, you testified that was
2 your defense strategy was to show that Mr. Johnson was a
3 drug addict. Correct?

4 A That was tactical, yes. If I could get -- that's why
5 I asked for the charge on simple possession of meth. My
6 thoughts some of the evidence they were getting into was
7 overkill, because a lot that stuff just sounded like meth
8 parties. I mean no monies changing hands; he's cooking a
9 pot up; everybody's staying high for a week sitting around
10 watching whatever. You know, I mean that was the extent of
11 a lot of that testimony, so I was trying to convey the fact
12 to the jury, look, this guy is no big dope dealer; he's no
13 trafficker; he's sitting around -- he cooks this stuff up
14 for people to party with it, and that's the picture I was
15 trying to paint.

16 Q And I believe you testified with most of these fact
17 witnesses that were presented by the State in furtherance
18 of the conspiracy, you cross examined them pretty
19 vigorously on their own motivations and interests.

20 A I thought so, yes. I mean they getting a free -- free
21 pass.

22 Q And -- and almost all of them had charges that they
23 were trying to hope to work out a better deal for
24 cooperation.

1 A Well, yes. See, the Sixteenth Circuit Solicitor's
2 Office has a policy that you have no formal agreement til
3 after you testify, but ---

4 Q Do you recall bringing up the charges they were
5 facing, the potential sentences they were looking at?

6 A I would've done that, yes.

7 Q And for the one that didn't have any charges, Cassidy
8 Cooper, you brought up that her boyfriend who was
9 significantly over -- older and had gotten her addicted to
10 meth, um, ---

11 A Is this the guy that was cruising ---

12 Q --- she was hoping to help him.

13 A Is this the guy in the camaro that was cruising the
14 parking lot?

15 Q Yes.

16 A I distinctly remember him. Yes, yes. He stuck out in
17 my mind in this trial.

18 MS. JAMESON - Moment's indulgence, Your Honor.

19 THE COURT - Certainly.

20 Q Do you recall whether you elicited any testimony in
21 front of the jury that this liquor bottle with the meth oil
22 wasn't dusted for fingerprints for DNA?

23 A Oh, yeah.

24 Q Do you recall bringing that up ---

1 A I -- you know what? -- let me take that back. I don't
2 -- no, I wouldn't have done that. I would've set it up for
3 closing argument where they can't -- if I ask a question,
4 they're going to tell me. I set it up what they could do
5 in that lab. I didn't ask, did you test this bottle. I
6 saved that for closing argument, what they could've done.
7 That's what I would've done.

8 Q Do you recall bringing that up in closing?

9 A Say again?

10 Q Do you recall bringing that up in closing?

11 A Of course I did. That was one of my main arguments in
12 this case. That, look, you got three people in here; you
13 charged this guy with trafficking; you got this brand new
14 lab over there, which I think I went in some detail with
15 with the lab person about all the things this beautiful lab
16 can do and all you -- why didn't they test it.

17 Q To be able to extrapolate out the percentage of meth,
18 a chemist would've had to finish making the meth --
19 correct? -- finish the procedure?

20 A That's correct. That's correct.

21 Q So the allegation is you didn't ask someone to
22 privately make some meth?

23 A That I didn't ask someone to what?

24 Q You didn't ask a private chemist to finish the process
25 of making the meth.

MICHAEL BROWN - RE-DIRECT BY MR. THOMAS

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1 A No. I wish I would have for the -- more of a
2 collateral issue with me that if I -- I -- no -- I'm almost
3 sure that would've come back less than what the officer was
4 testifying based on my prior knowledge or my prior
5 experience with these cases. I think that would influence
6 the jury to look at some of their testimony in a different
7 light. The collateral effect would've been more beneficial
8 than the actual test.

9 Q And that would've been beneficial to the jug that was
10 collected on February 27th, 2011.

11 A Maybe.

12 Q Not the conspiracy from August through February.

13 A Correct.

14 MS. JAMESON - No further questions, Your Honor.

15 THE COURT - Any redirect?

16 MR. THOMAS - Your Honor, if it please the Court,
17 just a couple.

18 THE COURT - Certainly.

19 RE-DIRECT EXAMINATION

20 BY MR. THOMAS -

21 Q Michael, counsel's asked you a lot of questions about
22 this conspiracy and your objections to the conspiracy and
23 those type of things. That still leaves in the records
24 from -- or the records and the testimony in regards to

1 purchasing the drugs from the drug stores, the pharmacy
2 records.

3 A Right.

4 Q And also the -- um, any testimony that there would've
5 been about the fake IDs.

6 A Uh, yes, yeah.

7 Q Okay.

8 A Conceivably -- conceivably, yes.

9 Q So had you objected to the introduction of those
10 items, it could've made a difference in this trial?

11 A No.

12 Q You don't think so.

13 A No.

14 Q Okay. You don't think that'd help to support their
15 allegations about the trafficking in meth?

16 A No, I don't, because a lot of that evidence went where
17 they were cooking up -- and I -- I think I went through
18 this in pretty good detail with these witnesses -- so he
19 went and bought all this and he got two grams of meth --
20 and we're talking about 28 grams, too. Okay? Indirectly I
21 was making a point to the jury that, hey, it's the same
22 thing that's going on in this motel room; they got two or
23 three grams of meth. And I couldn't say it obviously,
24 because the Judge was going to chew me out, but I'm making
25 the point.

1 Q Right.

2 A And maybe I was outthinking myself by doing it that
3 way, but that was my thought process at the time.

4 Q Okay. And the State asked you about -- this thing
5 about the -- what he was found guilty of and the weight and
6 those kind of things.

7 A Yeah, that always bothered me.

8 Q But it would've made of a (sic) difference if he had
9 been charged with 10 to 28 grams rather than 28 to a
10 hundred.

11 A I think he got convicted of 28 to a hundred, did he
12 not?

13 Q Think so.

14 A And I think 28 to a hundred and a hundred over, I
15 think -- to the best of my recollection at the time was
16 one's 25 years without parole; the other one's 30 years
17 without parole, of course a five year difference, but we're
18 not talking zero to ten versus 25 without parole. And if
19 I'm wrong on that, I'm wrong, but it is what it is.

20 Q Okay.

21 A But my recollection is it really wasn't that much.

22 Q All right. And the State asked you about this thing
23 about the plea ---

1 A Matter of fact I think he was looking at -- wasn't he
2 looking at ten to 30? I think Alford gave him 28 if my
3 memory serves me right. So he was looking at 30 anyway.

4 Q Okay. And ---

5 A Maybe that's why I said that, no difference.

6 Q And you testified about the plea and, you know, that
7 you made a motion to have him evaluated and all -- all
8 those kind of things, and I guess underlying all of this
9 would've been there was still some confusion on his part in
10 regards to, um, what he believed and what he -- what he was
11 thinking in regards to the -- to the evidence being
12 suppressed. There was still confusion about the plea,
13 whether he should he should accept it or not and go to
14 trial?

15 A The confusion on his behalf and his cousin's behalf
16 was listening to Mr. Rawlinson firmly convinced that that
17 evidence was going to get suppressed. I told him in no
18 uncertain terms and no uncertain language in my humble
19 opinion that was not going to happen. That's where the
20 confusion was. Once that didn't happen and his cousin
21 bailed, that's when we started talking plea.

22 MR. THOMAS - Your Honor, that's all the questions
23 I have?

24 THE COURT - Any re-cross?

25 MS. JAMESON - No, Your Honor. Thank you.

1 THE COURT - Any objection to excusing Mr. Brown?

2 MR. THOMAS - No, Your Honor, none.

3 THE COURT - Thank you, Mr. Brown.

4 MR. THOMAS - Your Honor, if it please the Court,
5 we'd call Mr. Johnson to the stand.

6 THE COURT - Well, we've been going about an hour
7 and twenty minutes. Let's take a break, --

8 MR. THOMAS - Okay.

9 THE COURT - --- take ten minute break and the
10 Court will be back in session at 1:15.

11 MR. THOMAS - All right, thank you, Your Honor.

12 THE COURT - Certainly.

13 (WHEREUPON, RECESS TAKEN)

14 THE COURT - Please be seated.

15 All right, Mr. Thomas, call your next witness.

16 MR. THOMAS - Your Honor, if it please the Court.
17 If I could have just a minute, Your Honor.

18 THE COURT - Certainly.

19 (WHEREUPON, BRIEF PAUSE)

20 MR. THOMAS - Your Honor, if it please the Court,
21 we'd call Jason Johnson to the stand.

22 THE COURT - All right.

23 JASON JOHNSON, AFTER BEING FIRST DULY SWORN,

24 TESTIFIES AS FOLLOWS -

1 DEPUTY CLERK - Please have a seat in the witness
2 stand.

3 MR. THOMAS - May it please the Court.

4 THE COURT - Yes, sir.

5 DIRECT EXAMINATION

6 BY MR. THOMAS -

7 Q Mr. Johnson, could you please state your name for the
8 record?

9 A Yes, Jason Johnson.

10 Q All right, Mr. Johnson, you're currently being housed
11 in South Carolina -- I mean the South Carolina Department
12 of Corrections?

13 A Yes, sir.

14 Q Okay. And what institution are you at?

15 A Lee County.

16 Q Lee County. And you're serving time for what?

17 A Trafficking in methamphetamine.

18 Q How many years did you get?

19 A Twenty-eight, no parole mandatory.

20 Q What's your max-out date?

21 A I'm not sure; I think it's 2037 or 8, somewhere around
22 there.

23 Q Long time?

24 A Yeah.

JASON JOHNSON - DIRECT BY MR. THOMAS

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1 Q Okay. And you're here today for a post-conviction
2 relief?

3 A Yes.

4 Q You and I talked about a post-conviction. Do you
5 understand what you're asking for is a new trial?

6 A Yes.

7 Q And that's what you want is a new trial.

8 A Yes.

9 Q And you -- we talked about this, there's a certain
10 exposure that comes along with that? If they tried you and
11 convicted you, you could get less time, more time? You
12 understand that?

13 A Yes.

14 Q You willing to accept that risk?

15 A Yes.

16 Q You want to go forward today?

17 A Yes, I do.

18 Q All right. Mr. Johnson, you were arrested when? Do
19 you remember?

20 A I think it was like February of 2011 maybe?

21 Q All right, sir. And did you make bond?

22 A No, I didn't have a bond; they actually denied it.

23 Q So you were -- you stayed in the county jail?

24 A Yes, sir.

25 Q And who represented you?

1 A At first it was Melissa Inzerillo until she tried to
2 get me to cooperate with Marvin Brown, and I turned her
3 down and fired her.

4 Q Okay. So she was retained?

5 A No, she was court-appointed.

6 Q Court appointed. Okay.

7 A And I had to go back in front of Alford at that time
8 as well.

9 Q And then you were appointed who?

10 A Michael Brown.

11 Q Michael Brown. And in the scheme of things between
12 when you were arrested and you went to trial, when was
13 Michael appointed?

14 A It was about three months into it when I went back in
15 front Alford to fire -- tell him, I -- you know, with the
16 deal with Melissa Inzerillo, so I mean it was shortly after
17 then or then, that day.

18 Q Okay. Now, with you in the county jail, how many
19 times -- how many times did you meet with Michael?

20 A I think maybe once, twice maybe.

21 Q Okay. Do you feel like you had enough time to really
22 talk with him about this case?

23 A Absolutely not.

JASON JOHNSON - DIRECT BY MR. THOMAS

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1 Q Did you understand the charges against you and -- what
2 -- what are called the discovery, what evidence the State
3 had against you?

4 A To an extent. I really didn't know I mean the real
5 extent until the second day of trial.

6 Q Okay. A complicated case?

7 A Yes.

8 COURT REPORTER - He needs to speak up.

9 MR. JOHNSON - Okay. I'm a little nervous. I'm
10 sorry.

11 MR. THOMAS - That's okay. You need the (sic)
12 water?

13 MR. JOHNSON - Yes, sir, please.

14 MR. THOMAS - Your Honor, may I approach?

15 THE COURT - You may.

16 Q And, Michael -- I mean -- not Michael, but, Jason, you
17 know as we talked about, I'm not going to ask you anything
18 that you don't know the answer to.

19 (WHEREUPON, MR. THOMAS GIVES MR. JOHNSON WATER)

20 A Thank you.

21 Q I want you to tell the truth today. So when you
22 worked with Michael Brown, how was he going to defend you?
23 Did he talk about what your defenses were going to be?

24 A Not really. I guess he was geared up that, you know,
25 I was going to take a plea. I'm not sure.

1 Q Okay. And we'll talk about the plea in just a few
2 minutes, but I want to talk about your preparation for
3 trial. Did you understand -- I mean he had to have a
4 theory of defense. How did -- what did he tell you, if
5 anything?

6 A I mean I was in -- a lot of times I was in lock-up in
7 jail and I -- you know, man, I really didn't speak to him.
8 I might've spoke to him once or twice and that was maybe
9 when he came and visited. As far as phone calls? No.

10 Q What'd you think was going to happen when you went to
11 Court?

12 A Well, I mean I really didn't think they had evidence
13 to, you know, going through what they did, but ---

14 Q Now, you and I talked about the plea offers, and what
15 was your understanding about any plea offers?

16 A Well, it come -- you know, I didn't -- at first it was
17 -- I don't know -- I don't even think I had a plea until
18 that Friday before the trial, and then it was ten years,
19 and I asked him, you know, okay ten years, will they drop
20 the charges against my two co-defendants which was Cory and
21 Brandi, and could you go ask Ms. Colton would she do that,
22 and he was like -- you know, it was already 5:30, 5:00
23 o'clock and he said, well, yeah, and he left and never came
24 back, and Monday I start trial, you know, and that ten
25 years is gone; it was over with then.

JASON JOHNSON - DIRECT BY MR. THOMAS

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1 Q Okay.

2 A So I mean that was pretty much the extent of that.

3 Q So did he -- do you know if he ever talked to the
4 State about that?

5 A Well, I mean clearly I don't -- you'd have to ask Ms.
6 Colton, because it was Friday and then we started trial on
7 that Monday.

8 Q All right. Did you tell him -- you told Michael
9 though that you would accept ten years as a plea offer?

10 A Yes.

11 Q And you had -- you indicated to me that you had
12 certain understandings about your co-defendant, Mr. Catoe.

13 A Yeah, I mean to my understanding he was going in front
14 of the Judge at the time we got the pleas and he was -- I
15 mean I don't know what he had going on, but I know that he
16 was -- to my understanding he was going in front of them to
17 tell the Judge, you know, that was his stuff, the evidence
18 was his, I really had no part in it, and, you know, that
19 didn't never happen. You know, they were -- some -- some -
20 - I mean they wanted me, basically.

21 Q So it was your understanding that -- that the truth
22 was Mr. Catoe -- this was Mr. Catoe's drugs.

23 A Yes, to my understanding.

24 Q All right. And it was your understanding that Mr.
25 Catoe was going to accept responsibility for the drugs.

1 A That was my understanding, as well.

2 Q And did that have any play, if any, in whether or not
3 you pursued or accepted a plea offer?

4 A Yeah, I mean of course.

5 Q Okay. And you had initially at this trial accepted
6 the plea offer?

7 A Well, at that time I'm not sure whether it was ten
8 years or was it -- I mean I -- no, I'm not sure. I can't
9 really recollect. All that happened so fast.

10 Q Okay. But were you surprised when what your
11 understanding about Mr. Catoe didn't take place?

12 A Yes, because it term (sic) spun around and got me, you
13 know, yes, of course.

14 Q All right. And were you confused about all of this
15 when tried (sic) to make a decision about to accept the
16 plea or go to trial?

17 A Yes.

18 Q Did you talk to Michael about that?

19 A I mean -- I don't remember. I mean I'm sure I talked
20 to him, because I mean -- you know, at one point in time he
21 wanted to get me a mental evaluation and all that, you
22 know, I mean so -- but -- I don't remember.

23 Q Do you feel like that Michael was keeping you informed
24 so you could make decisions or ---

25 A No.

1 Q Do you feel like that you had the information that you
2 needed to make a decision about trial or plea?

3 A No. If he -- I mean, you know, if been proper
4 research done I would've, you know, it'd been different.
5 It would've been outcome that, well, we're not geared up
6 and, okay, we think we're going to get all this evidence
7 suppressed and blah, blah, blah and then, you know,
8 according to my understanding, you know, he's accepting
9 this stuff and then something else happens, so I mean ---

10 Q Do you believe that this evidence was going to be
11 suppressed?

12 A Well, it -- I mean, you know, I was -- I didn't know -
13 --

14 Q Okay.

15 A --- either way.

16 Q All right. But would it be fair to say that you were
17 confused?

18 A Well, that confused me I mean afterwards, because if
19 he's saying one thing and you got another lawyer saying
20 another thing, I mean who -- I'm not a -- I mean -- I know
21 nothing about the law. It's like reading hieroglyphics,
22 you know, I mean.

23 Q Do you understand this trial?

1 A Yeah, I understand where it got me pretty much. You
2 know, I understand that for some reason they had it out to
3 get one person I mean.

4 Q You understand that you got 28 years.

5 A Yeah, for -- for -- I mean meth to get high off of,
6 not no -- you know. And it was also proven in the trial in
7 the transcript is the evidence that's -- is stating it.
8 You know, they tested this, and it was only a gram out of
9 this 900 grams what Ms. Colton originally weighed this
10 bottle up as, 900 grams, and then, you know, that -- there
11 was only a gram and a half maybe tops at the most of usable
12 methamphetamine.

13 Q Jason, how do you think Michael could've better
14 represented you? What do you think that he should've done
15 for you?

16 A He should've prepared the case. I mean he should've
17 come in there and visited with me and let me know, hey,
18 this is what -- what we got -- that's -- you know, he
19 didn't do any of that. You know, I appreciate what he done
20 for me, but he didn't -- he didn't represent me -- I mean
21 to the fullest. I guess -- I don't know whether it's
22 because it's pro bono or what.

23 Q So you feel like that -- that you had no input into
24 this trial?

25 A No, not really.

1 Q During the trial or before the trial did you consult
2 with Michael about what was happening?

3 A I mean no more than, you know, hey, you know, this is
4 what's going on today or whatever, but no. Halfway through
5 the trial I mean he's like, yeah, we're getting smashed,
6 and I was like, what? So that's about to the extent of
7 that.

8 Q Now, you had a number of witnesses that appeared on
9 behalf of the State to speak against you. Did you know
10 those people?

11 A Not really. Now, Brandi was in jail with a couple of
12 those females, but she was the co-defendant that Jen Colton
13 had testify against me and Cory from the get-go. All
14 right. And she was back there and she's talking amongst
15 these people and then, you know, I mean it was -- none of
16 those was my co-defendants. All of them had dope charges,
17 prior drug charges and all of them were still in jail or
18 still out there catching all kind of charges.

19 Q Right.

20 A You know, I mean their credibility should've never
21 been on the stand. I mean I know I'm not a saint but geez.

22 Q Did you -- and that's my next question. Did you talk
23 to Michael before the trial about these witnesses?

24 A No, because I mean we didn't -- I didn't know that
25 they had this huge list that they just put together, which

1 some of them, you know, I knew were dummies. I seen like
2 personal family members -- I know they're not coming to
3 trial to testify on me and if -- you know, but we didn't
4 get that til like Tuesday. Trial start Monday, we get that
5 Tuesday, and I was like what?

6 Q Tuesday the week before?

7 A No, of the trial.

8 Q Tuesday the day after the trial started.

9 A Yeah, and then it's like boom, this -- this is crazy.

10 (WHEREUPON, WITNESS LAUGHING)

11 Q And by receiving that Tuesday, were you able to sit
12 down with your attorney and talk about these people or you
13 being able to provide him any information, that you might
14 could provide?

15 A Some and -- yeah. Like -- as far as like Brandi. She
16 was -- she was a co-defendant. She was around ---

17 Q Brandi was something that you had a relationship with.

18 A Shelley. You know, she was -- but none of those
19 people -- she -- she hand-picked a -- you know.

20 Q And do you think Michael was effective in his cross
21 examination of those people?

22 A I thought he did a good job on that, yeah, because if
23 they're going to lie, they're going to lie regardless, you
24 know.

25 Q But you felt like that they were lying on the stand.

JASON JOHNSON - DIRECT BY MR. THOMAS

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1 A Yeah, of course. They just didn't up and -- yeah.

2 MR. THOMAS - Your Honor, if I could beg the
3 Court's indulgence just for a second.

4 THE COURT - Sure.

5 Q Now, Jason, a lot of this stuff is really technical
6 and legal stuff that you not being a lawyer you may or may
7 not understand, and that concerns me as far as your ability
8 to sit down with Michael and talk about it. Did you ever
9 at any time either during the trial or before the trial sit
10 down with Michael and talk about this evidence and his
11 chances of what's going to be suppressed and what these
12 people were going to testify to?

13 A No.

14 Q Did you ever sit down and talk with Michael about the
15 differences in regards to conspiracy and the trafficking in
16 methamphetamine?

17 A No.

18 Q Did you understand at all anything about these charges
19 against you?

20 A I mean -- no, not really. I mean I know trafficking
21 and whatever, but no.

22 Q Did you understand the seriousness of these charges,
23 what you were facing with going to trial?

24 A Yeah and no.

1 Q And how -- how was that? What was yes and what was
2 no?

3 A Well, I mean yeah, okay, they -- well, you know, you
4 lose you can get this much, but then I'm -- I'm also going
5 off the fact that, hey, you know, well, evidence is going
6 to be suppressed, because, de, de, de, de, de and -- you
7 know, that was um ---

8 Q Why did you think the evidence was going to be
9 suppressed?

10 A Well, I mean we had this nice paper that the dude
11 wrote up and like -- I don't know if -- motion, whatever it
12 is, you know, couple of pages. It's like, I'm thinking,
13 man, okay, and then when -- when -- my understanding when
14 Cory was accepting responsibility for everything and, you
15 know, letting those people know that, then it went -- that
16 whole thing shifted, you know, so ---

17 Q And based upon that, by the time all this shifted, you
18 were just stuck?

19 A Oh, yeah, I was hit. They -- like Michael said, they
20 jumped the ship and took off.

21 Q Okay. Had you known more information, would you have
22 accepted the plea offer?

23 A Of course.

24 Q Now, Jason, I know you're a pretty quiet fella ---

JASON JOHNSON - DIRECT BY MR. THOMAS

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1 A And matter of fact -- excuse me -- I think I even
2 asked Jennifer Colton that Monday could I -- you know, go
3 into a plea, she's like huh-uh.

4 Q Could you do what?

5 A Could I plea to something whatever, you know, and she
6 was like, no.

7 Q Okay. So by the time you got concerned it was too
8 late.

9 A Yeah.

10 Q Now, you and I talked about your case and gone over
11 these things, and we talked about this question, which is,
12 you know, is there anything that -- this is your day in
13 Court. You've been waiting for a long time to get here.
14 Is there anything that I may have inadvertently left out or
15 anything that I have failed to bring to the attention of
16 the Court or anything that you would like to bring to the
17 attention of the Court?

18 A Not that I mean I can think of, no.

19 Q Okay. Nothing further?

20 A (No response)

21 Q All right.

22 MR. THOMAS - Your Honor, that's all we have.

23 THE COURT - Ms. Jameson?

24 MS. JAMESON - May it please the Court.

25 CROSS EXAMINATION

1 BY MS. JAMESON -

2 Q Mr. Johnson, you testified that your co-defendant
3 struck a deal and then you were kind of stuck at that
4 point. Correct?

5 A Yes, ---

6 Q I need you to answer.

7 A --- ma'am. Yes, ma'am.

8 Q But you were going to plead before your co-defendant.
9 Correct?

10 A No, I was not, and I got threw into that up front --
11 in front of him.

12 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
13 REGARDING RETRIEVING TRANSCRIPTS WHICH WAS NOT REPORTED)

14 A To my knowledge Cory was going to testify first or
15 plead first and we both went up to the bench and Alford
16 picked me right off the bat, so I mean ---

17 Q So when you say Alford picked you, you're
18 acknowledging that the Court was going to take your plea
19 first.

20 A No, I was acknowledging that the Court was going to
21 take Cory's plea, and once they took Cory's plea I would've
22 been shifted to the side.

23 MS. JAMESON - Your Honor, may I approach?

24 THE COURT - You may.

1 Q I'm going to hand you a copy of the transcript. If
2 you'll look at page 153 and then the pages after that, I
3 have a few questions to ask you about those.

4 (WHEREUPON, DOCUMENT HANDED UP)

5 A (Witness complies)

6 Q Did you read 153 to 155?

7 A Yes, ma'am.

8 Q So your plea started before Judge Alford first.
9 Right? And then on 155, you say, Your Honor, I'd to
10 withdraw my plea. Correct?

11 A Yes, ma'am.

12 Q And then your co-defendant starts his plea and
13 successfully pleads guilty. Correct?

14 A Yes, ma'am.

15 Q You testified that you never discussed the likelihood
16 that the drugs would be suppressed with Mr. Brown. Right?

17 A I mean not until, yeah, right at the trial.

18 Q But I'm a little confused, because you also testified
19 you were told by two different attorneys two different
20 things. Your co-defendant's attorney told you the drugs
21 would be suppressed, and Mr. Brown told you they wouldn't
22 be suppressed.

23 A (Indicating yes)

24 Q So you did discuss that with Mr. Brown.

25 A Yeah, right at the trial ---

1 Q And you knew Mr. Brown ---

2 A --- and that could've been the morning or whatever day
3 you're speaking of.

4 Q And you knew Mr. Brown thought the drugs weren't going
5 to be suppressed and they would come in against you at
6 trial. Correct?

7 A Could you say that again?

8 Q Mr. Brown advised you he didn't think Judge Alford
9 would grant the suppression motion. Correct?

10 A Yes, and I -- you know, I -- honestly I thought that
11 Mr. Brown was just trying to run me under the gun and send
12 me to trial, I mean send me on to take a plea and be done
13 with it, you know, being he was pro bono. That's -- that
14 was my thoughts.

15 Q But you were being told something different by your
16 co-defendant's attorney; he told you the drugs would be
17 suppressed. Correct?

18 A Correct.

19 Q And you decided to listen to your co-defendant's
20 attorney.

21 A I mean it's -- it's -- I'm listening to a lawyer.

22 Q And -- but you listened to your co-defendant's lawyer
23 instead of your own lawyer. Right?

24 A No, I listened to both lawyers, you know, I'm -- I
25 mean -- who's to say, you know -- never mind.

1 Q Well, Mr. Brown told you he thought it was in your
2 best interest to accept a plea offer based on what he told
3 the Court. Right?

4 A Yes, ma'am. Mr. Brown also did no research in my case
5 barely at all, so I mean why would I hold him in
6 credibility to anything that he said. (Pause) Because I
7 didn't feel like he had the best interest -- I mean if he's
8 not, you know, doing any type of research, not coming to
9 see me, not speaking to me, why would I go off -- based --
10 I mean base anything off what he says?

11 Q So your testimony to this Court today is in the more
12 than six months he represented you he only saw you one or
13 two times?

14 A Yes. I think he come to the jail twice.

15 Q So it was two times; it wasn't once.

16 A You just said once or twice. Correct?

17 Q Well, you testified once or twice.

18 A Once or twice, so, okay, so once or twice. It was two
19 times.

20 Q Was it one -- one time or was it two?

21 A I think it might've been twice.

22 Q You testified Michael didn't talk to you about all
23 these witnesses who were going to come testify about the
24 buying of the pseudoephedrine and the cooking of the meth.
25 He didn't tell you about that?

1 A We didn't know til pre-trial motions, because Ms.
2 Colton said she didn't give out the witness list until, you
3 know, trial started.

4 Q But you wrote letters to some of these female co-
5 defendants about them testifying and about Brandi
6 testifying.

7 A Not -- not at -- maybe Brandi, because I knew one of
8 them was in the jail with Brandi. She wrote me, and that
9 was the whole set-up ploy by thing, (sic) you know, but ---

10 Q And some of these -- some of these letters, jailhouse
11 letters that you wrote to these female co-defendants, those
12 were introduced at trial. Correct?

13 A Yes. That's why I think that whole thing was a, you
14 know, -- you know, -- so I guess the same way that the --
15 the -- you know, attorneys office picks -- handpicks their
16 people I mean, you know, it -- you know, here, send this
17 guy some letters, you know, you know him? -- send him some
18 letters, you know, hey, we'll cut you a deal, whatever.

19 Q But you were writing letters and your letters were
20 what were introduced.

21 A But -- no, no. Those letters were going both ways.

22 Q But yours were introduced at trial.

23 A Okay, hers were too.

24 Q And I think you testified that Michael did a good job
25 of cross examining these witnesses. Correct?

1 A Yes, ma'am.

2 Q So are you withdrawing that allegation number 11 that
3 he didn't properly cross examine these witnesses?

4 A I mean from when -- when was this from? Because I
5 just -- he just asked me did he -- you know, I said I
6 thought he did a good job on those witnesses.

7 Q So you think he did a good job ---

8 A So you must ---

9 Q --- regarding those witnesses?

10 A I mean -- yeah, because I mean really their
11 credibility -- you know, he shot all that down. That was a
12 good thing about it, but if -- if they're gunning for me
13 already -- I already been in front of Alford three times.
14 First off, initially, I guess I made him mad. Well, you
15 know -- well, he denied the bond and I guess I made him --
16 he was pissed when -- he kicked me out of the courtroom
17 when I told him I didn't want Melissa Inzerillo to
18 represent me, and then, you know, a year later I go to
19 trial back in front of him. Again, that was the third time
20 in front of that man.

21 Q You testified Michael should've prepared the case and
22 visited with you more. Correct?

23 A Of course.

24 Q What specifically did you want him to do to prepare
25 your case better?

1 A I mean just like he was talking about the State had
2 all this money for analysis and all that. I mean he didn't
3 -- he didn't do any of that either. You know, he could've,
4 you know. He didn't speak to no witnesses on my behalf or
5 anything like that. I mean he could've done that, as well.

6 Q And you haven't had the drugs analyzed before coming
7 in here today.

8 A Have I?

9 Q Yeah, have -- have you or your attorney ---

10 A No, how am I gonna -- no, I mean -- I don't even think
11 they got those drugs anymore. I mean I'm sure they threw
12 that away, you know, eight years ago.

13 MS. JAMESON - Moment's indulgence, Your Honor.

14 THE COURT - Certainly.

15 MS. JAMESON - No further questions, Your Honor.

16 THE COURT - Any re-direct?

17 MR. THOMAS - Yes, Your Honor, if it please the
18 Court just one or two.

19 RE-DIRECT EXAMINATION

20 BY MR. THOMAS -

21 Q The State attorney asked you about this plea and plea
22 offer to you and to Cory and that it ended up where Alford
23 wanted you to go first, Judge Alford wanted you to go first
24 and Cory to do second, and the fact that Cory went second

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1 didn't alter anything about whether or not Cory was going
2 to accept responsibility of these drugs.

3 A Well, I know at that point when I -- you know, I was
4 under the impression then that Cory was going first, and
5 like when you say when we got up there, I was like, whoa,
6 wait a minute, you know, because they're telling, (sic)
7 well, we're going to get Cory out of the way and, you know,
8 but you probably be all right, but I don't know.

9 Q Okay. How long were you in the county jail?

10 A A year.

11 Q Okay. And during that year, did you have any idea
12 what was going on with your case?

13 A No.

14 Q Now, you received the witness list you said Tuesday --

15 -

16 A Yeah.

17 Q --- after your case started on Monday.

18 A Yeah, because it was her -- she said it was her
19 policy. I mean I got something printed out from one of
20 them lawyers and said that, you know, it was her policy
21 that whatever witnesses or whatever evidence they got, the
22 State has got, they not going to present that until the day
23 of trial. You know, you not going to get no State witness
24 list or pre-trial evidence, whatever it's called, you know
25 what I mean.

1 Q Who told you that?

2 A I got a printed letter from Jen Colton to either
3 Cory's attorney or either mine through e-mail.

4 Q Saying what?

5 A Saying that, you know, that they're not going --
6 they're not sending out any pre-trial evidence or whatever
7 evidence they got on us, you know, they're not -- we're not
8 going to know about any of that or witnesses or anything of
9 that nature until trial -- I mean the day of trial started.
10 And I guess that's with, you know, started pre-trial
11 motions. I'm not sure though.

12 Q So how were you going to go over that with Michael?

13 A Well, you're not. I mean -- but at the same time, my
14 lawyer could've also, you know, ---

15 Q Do you know if Michael ever got a chance to talk to
16 these witnesses before they took the stand?

17 A No, sir.

18 MR. THOMAS - No further questions, Your Honor.

19 THE COURT - Any re-cross?

20 MS. JAMESON - No, Your Honor.

21 THE COURT - You're excused, sir. Have a seat
22 back over there.

23 MR. JOHNSON - Yes, sir.

24 MR. THOMAS - Your Honor, if I could beg the
25 Court's indulgence just for a second.

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1 THE COURT - Certainly.

2 MR. THOMAS - Your Honor, if it please the Court,
3 that's the applicant's case.

4 THE COURT - All right. Would you like argument?

5 MS. JAMESON - The State has an additional
6 witness.

7 THE COURT - I'm sorry?

8 MS. JAMESON - The State has a witness to present.

9 THE COURT - Oh, I apologize. I think -- yeah,
10 Ms. Jameson, please.

11 MS. JAMESON - The State would call Assistant
12 Solicitor Jennifer Colton to the stand.

13 JENNIFER COLTON, AFTER BEING FIRST DULY SWORN,
14 TESTIFIES AS FOLLOWS -

15 DEPUTY CLERK - Please have a seat in the witness
16 stand.

17 DIRECT EXAMINATION

18 BY MS. JAMESON -

19 Q Good morning, Ms. Colton. When did you start
20 investigating or when did you become involved with Mr.
21 Johnson's case?

22 A Probably before the arrest warrant was issued. I was
23 familiar with Mr. Johnson. We had put together a
24 methamphetamine investigating team with Nick Shifferle.
25 His name was one that kept coming up along with several

1 other -- a lot of individuals in the county, but up until
2 the arrest which was not -- that really wasn't a product of
3 that investigation. It just road officers happen to come
4 upon Brandi Quinn and knew that she had arrest warrants and
5 found methamphetamine bottle. That was when that case
6 first started coming to my attention.

7 Q But you were already as part of this meth
8 investigation team investigating Mr. Johnson at that time.

9 A We were familiar with Mr. Johnson and anybody that was
10 involved in the diversion of Sudafed -- pseudoephedrine
11 into methamphetamine. His name was familiar. His name was
12 also familiar to the drug unit because they had -- he'd
13 been -- I think it was a joint federal investigation
14 several years before that that Mr. Johnson was involved in.
15 We were all aware that he was involved in methamphetamine
16 in York County.

17 Q And that was the State's theory of the case was a
18 conspiracy from August to when he was arrested at the
19 motel, not just -- he wasn't indicted for trafficking just
20 on this arrest. Right?

21 A No, he was not. When -- when -- when he was arrested
22 with the methamphetamine, the bottle at the hotel with
23 Quinn and Cory Catoe, we had already been accumulating
24 pseudoephedrine purchase records, had developed numerous
25 informants that -- you know, that we knew -- we knew

1 basically who the main players were and who was
2 manufacturing meth, and the whole goal was to prevent
3 people from making meth in York -- York County. They
4 happened to have caught him with that, but we were able to
5 utilize the information that we had been gathering and
6 collecting on all these individuals against Mr. Johnson.

7 Q So when you said main players, Mr. Johnson was a main
8 player?

9 A Correct.

10 Q Who else were the main players that you ---

11 A Boozer, (phonetic) um, he'd got -- he got -- he'd been
12 prosecuted a few years before that. Gah, I can't tell you
13 all the ones we prosecuted. Manny (phonetic) Hinson was
14 another individual that was manufacturing meth. Mike
15 Williams. They're all just different components of -- you
16 know, different -- we called them sells, different sells of
17 people that were manufacturing meth with different groups
18 of smurfs, the individuals like Brandi and some of the
19 other individuals that testified that were assisting in
20 procuring pseudoephedrine from various pharmacies and then
21 diverting that to be converted by Mr. Johnson and Mr. Catoe
22 into methamphetamine.

23 Q What was the relationship between Mr. Johnson and Mr.
24 Boozer?

1 A Oh, gosh, I -- I think Boozer, if I recall correctly,
2 he cooked -- he cooked methamphetamine a little bit
3 different than Mr. Johnson. My understanding from our
4 investigation was that he taught Mr. Johnson how to cook
5 methamphetamine and then slipped into Boozer's position
6 after Boozer went to prison as far as being the meth cook
7 involved with utilizing all those smurfs and under links to
8 collect meth -- or Sudafed for them and divert it to -- to
9 the processing of meth.

10 Q And so your indictment for trafficking methamphetamine
11 spanned August 1st, 2010 through February 27th, 2011, the
12 date of the arrest at the Bestway Hotel.

13 A Correct.

14 Q And it wasn't based on just the methamphetamine that
15 was cooking in that bottle on February 27th, 2011.

16 A Absolutely not.

17 Q It was based on a conspiracy with Catoe as well as the
18 other witnesses who testified.

19 A Correct. And such a -- the crux of our prosecution
20 was to -- to go after Mr. Catoe and Mr. Johnson at the same
21 time, and we were limited by Judge Alford. We didn't
22 really argue about it on the record, because we agreed with
23 Judge Alford not to go into anything or any aspects of the
24 conspiracy that did not absolutely involve times where
25 Johnson and Catoe were cooking together. Judge Alford was

1 concerned about us deviating the span and I guess the
2 extent of the conspiracy that it -- despite -- if Mr. Catoe
3 was there cooking it by himself but he was in Mr. Johnson's
4 house or vice versa, we weren't going to talk about that
5 because they weren't both physically present when it
6 occurred. Now, I -- I believe -- my understanding under
7 the conspiracy law and conspiracy evidence in the case
8 laws, I could've come into that information because -- got
9 into that and presented it to the jury because aid, abet,
10 conspire. I didn't, because Judge Alford wanted to limit
11 it, and we discussed that with Mr. Brown in chambers, and
12 Mr. Brown was very adamant about that, and Judge Alford
13 agreed with him about limiting the scope, so it wasn't a
14 matter of us presenting too big of a scope of the -- in
15 conspiracy. We restricted ourselves from adding too much,
16 therefore, you don't see much objecting on the record,
17 etcetera, because we didn't present all the evidence that
18 we had to or could have, I guess, is a better way, sorry.

19 Q So your case was limited based on timeframe, so August
20 just to that February you weren't allowed to go into any of
21 kind of the lined up of the conspiracy before August?

22 A I don't remember if we did -- I think we would have --
23 I think cross of the line of what's innocuous and what's
24 not innocuous. Certainly we could've talked about things
25 like how Mr. Johnson got involved in the business, how did

1 Boo -- how did Catoe get involved in it, how long have they
2 known -- you're permitted under the case law to talk about
3 not just the agreement which is the conspiracy, but how
4 that entire agreement came into effect and how the parties
5 knew each other and the inception of the conspiracy; that's
6 permissible. We limited how much evidence of that we put
7 in, but certainly, and the case law's clear, that the
8 entire history -- history of the conspiracy including
9 evidence of a conspiracy that pre-dates the allegations of
10 the indictment is always permissible. We just had to be
11 very cautious about it, because the honest answer is, I
12 didn't want Judge Alford to get mad about it.

13 Q How did the purchasing records fit into this
14 conspiracy?

15 A Okay. The purchasing records -- often times -- and in
16 this particular case it was certainly prevalent that groups
17 of -- for lack of a better terms -- this is what the feds
18 have always called them -- smurfs -- are the individuals
19 that go and purchase pseudoephedrine to divert it to a meth
20 cook to turn into methamphetamine and ultimately get traded
21 -- it's rarely money -- but usually they get part of the
22 methamphetamine back as compensation. The pseudo records -
23 - through the pseudo records -- we had been accumulating
24 them for some time and some of them had already been put in
25 spreadsheets -- for example, Walmart -- but others

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1 Detective Schifferle would have to go and actually collect
2 the physical records that were signatures and they would
3 check an ID and the ID numbers and driver's license numbers
4 would all be entered into a large database. We were able
5 to determine that groups of individuals such as Brandi
6 Quinn or Christopher Matusz and Cassidy Cooper who
7 testified -- Shelley Pettigrew, Jason Johnson and Cory
8 Catoe would go to stores and say, for example, a group of
9 three and there would 15 minute intervals before it -- they
10 purchased pseudoephedrine, and the next person would go in.
11 Some of those we were able to get videos on. I don't
12 recall if we ever had videos of Mr. Johnson's, but we were
13 able to get videos of all three individuals. That was the
14 example, going in and purchasing at various times, and then
15 they would go back after three and a half days, because the
16 pharmacy's limited how much pseudoephedrine you could buy
17 in a month and also within a 24 hour period or a 48 hour
18 period, and so they would wait til the time expired. We
19 also had evidence of them attempting to buy more
20 pseudoephedrine and the pharmacy's declining to sell it,
21 because it exceeded the amount purchased for that month.
22 We were able to determine based on that how much was being
23 diverted based on those smurfing groups, and then the
24 individuals that testified against Mr. Johnson basically
25 were just there for a matter of evidence that they had, you

1 know, been -- that person that purchased it, what it was
2 being actually diverted -- diverted to which was
3 methamphetamine, and that kind of goes along the lines with
4 the fake IDs. Often times IDs were being utilized. In a
5 prior case that Mr. Johnson had that he was arrested for
6 possession of methamphetamine, the officers had taken
7 pictures -- they had -- of laminating machines and
8 computers and some IDs in the -- in the various stages of
9 being produced, they recovered fake IDs, one belonging to
10 Mr. Catoe, one belonging -- or several belonging to Mr.
11 Johnson using different names, and I think one was Allen
12 Johnson. I can't remember the -- at least two or three
13 aliases that were used, but Mr. Johnson's picture was on
14 it. We were able to line those fake IDs back to the
15 particular purchase with whatever particular store. That's
16 how we knew it was Mr. Johnson that had been utilizing it,
17 because his face was on that -- that ID.

18 Q So these fake IDs and the equipment to make the fake
19 IDs as well as the purchasing records, those were related
20 to the overall conspiracy and the agreement to get the
21 methamphetamine and use it to -- as part of a cook.

22 A To the get pseudoephedrine and use it front of the
23 cook, yeah. You -- you can't manufacture the
24 methamphetamine without the pseudoephedrine from the
25 pharmacies. They were being utilized to obtain the

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1 pseudoephedrine in order to allow it to be cooked by Mr.
2 Johnson and Mr. Catoe.

3 Q And this all went to the conspiracy to produce and
4 then you use more methamphetamine in this group?

5 A Correct. Correct.

6 Q Do you recall Mike and co-counsel for the co-
7 defendant, Catoe, they objected to the drugs coming and
8 moved to suppress based on a search warrant. Correct?

9 A Correct.

10 Q And do you recall what those two grounds were?

11 A I don't. I don't remember what the grounds were. I
12 don't remember what I argued. I will say that the reason
13 why we wanted to go with the entire conspiracy was there's
14 always a chance things can get suppressed. I didn't -- I
15 don't know what Judge Alford was going to do, so we
16 intended to put our best case forwarded. That was the
17 conspiracy. That was the best way to proceed on it, so if
18 -- had -- had those items been suppressed, we still
19 would've gone forward under conspiracy and done it exactly
20 the same way as far as the historical conspiracy against
21 Mr. Johnson.

22 Q So the trafficking -- he was indicted for trafficking
23 more than a hundred grams. Correct?

24 A Yeah, I believe he was, yes.

1 Q Do you recall how many grams were recovered from the
2 liquor bottle that was found in the hotel room on February
3 27th?

4 A I think it was under a hundred; I don't recall.

5 Q So he was indicted truly based on not just that bottle
6 but all of the meth he had cooked from August to February.

7 A He was indicted for all the meth that had been cooked
8 throughout the history of the conspiracy. Finding the meth
9 was just the icing on the cake, I guess. Finding the meth
10 oil in the hotel room's the icing on the cake. Had it been
11 suppressed, I could've gone forward -- and I -- I don't
12 want to go too much into my trial strategy of what I -- I
13 think that -- I think that it was clear from the record
14 that the amount of meth oil that was recovered from the
15 room, we could've established that was well over a hundred
16 grams in and of itself. That was an unnecessary avenue to
17 take, because when the officers removed the portion for
18 sampling, that was a smaller portion of the entire bottle.
19 I think -- I've done it before in other trials -- if that
20 was all I had to go on, I could've made the argument to the
21 jury that clearly that was more than a hundred grams, made
22 expert testimony -- used expert testimony testify to the
23 weight of liquid in that same type of bottle. It wasn't
24 necessary because the crux of our prosecution was

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1 conspiracy. That bottle was simply evidence of the
2 existence of the conspiracy.

3 Q And officers couldn't take the entire sample out
4 because of the vola -- the volatile nature.

5 A Volatility of it, absolutely.

6 Q Do you recall plea negotiations in this case?

7 A Some of them I know -- I know on the record there's a
8 -- one point that the plea with Mr. Catoe and Mr. Johnson -
9 - I can't remember what Catoe pled to. I think it was
10 second offense for an insignificant amount of years. Mr.
11 Johnson's offer I believe was a cap of 18.

12 Q Do you recall how long Mr. Johnson was given to
13 consider these plea offers?

14 A As long as he -- I will say this. He was given as
15 much time as he wanted. Mike -- Mike had asked me on
16 several occasions to consider a ten year offer, to consider
17 a better plea offer. It was always a case of Mr. Johnson
18 not wanting a plea offer. We were also reviewing his jail
19 tapes and letters that he sent to other co-defendants that
20 the jail had intercepted, and in them it had always said
21 the State's trying to give me 25 years; I am not taking any
22 plea. There was never any indication that he wanted to
23 plea. I was always amenable to offering him some type of
24 plea offer. It wasn't the type of plea offer that he
25 wanted. It certainly, you know, wouldn't have been a five

1 year sentence or probation or walking out of there, and I
2 think that was one of the conversations I had with Mr.
3 Brown. It just wasn't to his liking. You know, there's
4 always a risk of going to trial. It was never a case and
5 the State said I'm absolutely not going to give him a plea
6 offer. It was more, um, we can never come to an agreement
7 that Mr. Johnson was willing to accept. The cap of 18
8 years, Mr. Johnson backed out of that deal. I don't
9 necessarily think it was Judge Alford's insistence that it
10 goes first. I would've tried to make that plea go first,
11 because Mr. Johnson had the more serious record. Mr. Catoe
12 was not willing to cooperate against Mr. Johnson, and so I
13 would not have pled Mr. Catoe first and given him the
14 opportunity to claim all the drugs, but even if he had,
15 that wouldn't have changed my decision to go after Mr.
16 Johnson. If Mr. Catoe claimed the drugs, it actually
17 would've helped us had he testified, because then I
18 could've simply said, yes, they're both guilty, because
19 they're both involved in a conspiracy and the hand of one
20 is the hand of all, but, um -- that never came -- that plea
21 offer never came to fruition.

22 Q And I believe you -- you answered my next question,
23 but culpability between Mr. Johnson and his co-defendant,
24 Mr. Catoe, can you expand on that a little bit?

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1 A Based on our investigation and the testimony and what
2 -- well -- and both and I don't know exactly how much got
3 testified to or not -- it was my perspective that Mr.
4 Johnson was orchestrating everything and essentially Mr.
5 Catoe, you know, was his assistant, but they both agreed to
6 do it together, but do I think that Mr. Johnson had more
7 pull over Mr. Catoe? I do. I think Mr. Catoe was a little
8 bit soft and that certainly Jason was driving the entire
9 thing, but Mr. Johnson had a worse record than Mr. Catoe
10 and had previously been incarcerated in federal prison for
11 this, so obviously as far as the head and according to
12 everyone -- everyone that testified and everyone we spoke
13 to that had been part of this ring that procured
14 pseudoephedrine and benefited with the use of meth or
15 returned meth by Mr. Johnson, it was always clear that it
16 was Mr. Johnson was the lead guy in this -- involved in
17 this.

18 Q You testified Mr. Johnson was orchestrating
19 everything. Did that continue when he was detained pre-
20 trial?

21 A I believe it -- he did. He tried to -- through some
22 of the intercepted letters, he tried to contact some of the
23 people that -- that would've been testifying against him.
24 I don't know if he was aware of that or not. Certainly he
25 was concerned about it. He was certainly concerned about

1 Brandi testifying against him, the co-defendant that it was
2 in the hotel and had made insinuations that she better not
3 do that to, I believe, Mandy Caudle, Amanda Caudle, among
4 others. So there was some -- some concern about that.

5 Q Regarding witnesses, when do you think you gave Mr.
6 Brown an indication of what witnesses you were -- you were
7 going to call in furtherance of the conspiracy?

8 A Mr. Brown had all those pseudo -- pseudoephedrine
9 logs. He had two -- I think two bankers -- full bankers
10 boxes of every pseudoephedrine log, and it would've
11 contained the information on anybody that ever bought it,
12 and I turned that over to Mike fairly early on in the inves
13 -- in the prosecution before it was even a trial, because
14 it's Rule 5, and I have to turn it over to him, so he was
15 aware of all that. What I did that I didn't have to do
16 with Mr. Brown is I had compiled a spreadsheet of listing
17 the names of everyone that I thought was a smurf, everyone
18 that I thought was involved and everyone that could be a
19 potential witness in this trial because they bought
20 pseudoephedrine that ultimately was diverted -- to be
21 converted into methamphetamine by Mr. Johnson. He was
22 aware of a list -- and it could -- I think it was a list of
23 maybe 25, 30 people that potentially we could've put
24 together. That was my personal work product, and I turned
25 that over to Mike and I didn't -- I didn't have to do that,

1 but he had a list of all those names, and he was aware.
2 Now, did I specifically tell him who was going to be there
3 and who was going to testify? No, but he had a good
4 indication of who would. Any of those witnesses could've
5 been called by the State. I think made the fact that I
6 gave it to him -- Mike was aware of that. Any lawyer
7 would've been aware of that, but it ultimately was my
8 decision on who I called out of that list and who I didn't
9 call out of that list.

10 Q And you didn't end up calling all 25 or 30 witnesses.

11 A I did not. I did not.

12 Q Why did you not?

13 A I -- I picked -- I picked the ones that -- well,
14 first, the trial lasted an entire week. It was kind of
15 unnecessary at that point in time. I picked those that I
16 thought would be the best witnesses, the most direct
17 witnesses that wouldn't cloud it and allow for an argument
18 of being outside the scope of conspiracy. I wanted to make
19 sure that I -- that we kept it as clean and as neat and
20 concise as possible, so I opted to call those that I
21 thought would be the most directly related to the
22 conspiracy and not deviate with too much information that
23 could be deemed by the Judge as extraneous and cause a
24 mistrial.

1 Q Do you recall discussions with Mike regarding
2 redactions of the cruiser video of the arrest?

3 A I do.

4 Q What did Mr. Brown ask you to redact out of that
5 video?

6 A We asked Mr. Brown and his firm to provide us a list
7 of anything that he wanted redacted from that tape. There
8 was incidents of Mr. Johnson speaking about his prior
9 record. There was some mention of some white supremacist
10 ideology on that video. We were concerned about that
11 tainting the jury. I would've removed it regardless of
12 whether Mike asked me or not, but he did, and we removed
13 exactly what he wanted it, whatever particular timeframes
14 he wanted to try to keep the entry of that as clean as
15 possible, as well.

16 Q And anything he asked you to redact, you did redact.

17 A I did, absolutely.

18 Q And you actually redacted or were intending to redact
19 some of those comments regarding white supremacist ideology
20 and prior records without Mike asking?

21 A Yes, that -- we would've done that regardless.

22 MS. JAMESON - Moment's indulgence, Your Honor.

23 THE COURT - Certainly.

24 Q These witnesses you did call in furtherance of the
25 conspiracy, almost all of them had prior records. Correct?

1 A Cassidy Cooper might've been the only one that didn't,
2 but I -- if they didn't have pending charges, they had
3 other things on their record.

4 Q And do you recall, did Cassidy Cooper's long-term
5 boyfriend have charges she was hoping to help him work off?

6 A Yeah, he did. Yeah, I think he was incarcerated the
7 time.

8 Q And you asked most of these witnesses about their
9 pending charges. Correct?

10 A Correct.

11 Q And do you recall whether Mr. Brown did, as well?

12 A I'm certain he did with all or most of them. He
13 wouldn't have not unless I got it all -- unless I got that
14 out on direct, which is, you know, my habit of making sure
15 their entire record's there, but I think Mr. Brown harped
16 on it a little bit. He certainly did in closing is my
17 recollection. He pounded them pretty hard.

18 Q Do you recall there being an argument that Mr. Brown
19 had opened the door to some prior bad act evidence by using
20 the term drug addict?

21 A I don't remember that specifically. I think -- I
22 don't even necessarily think that -- he -- I'm certain he
23 did, but I don't think it was him initially. It would've
24 come in regardless. I think that was the entire thing,
25 everyone there was addicted to using methamphetamine. It

1 was obvious that everyone in the room at the time was high.
2 I think the State may have presented some -- some evidence
3 that they were using methamphetamine in the room. It was
4 very clear there was methamphetamine residue; there were
5 scales found in the room; there was paraphernalia found
6 inside the room. It -- you know, that -- that wasn't --
7 and that wasn't a State secret that everybody there was
8 using methamphetamine and addicted to methamphetamine.

9 Q As well as other drugs for some of the witnesses.

10 A Yes.

11 Q There was discussion about addiction to Heroine?

12 A Correct.

13 Q And synthetic Heroine pills?

14 A Correct.

15 Q Cocaine?

16 A Probably.

17 Q Why did you ask the Court to only charge the jury with
18 trafficking 28 to a hundred grams when he was indicted for
19 more than a hundred?

20 A I think that was more to alleviate any confusion, um -
21 - you know, we did have the charging conference and -- and
22 we spoke in chambers, as well. Because the particular
23 bottle and the sample -- because of that -- weight of that
24 evidence, um, the jury could've made a decision based on
25 possession by trafficking at that point in time. They

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1 could've made -- for trafficking by manufacturer at that
2 time. They could've made the decision on entire scope of
3 the conspiracy. There really wasn't -- in my opinion,
4 there wasn't going -- there shouldn't have been a lesser
5 included offense based on just finding that methamphetamine
6 bottle, but, you know, obviously the -- Judge Alford
7 disagreed with that, but the hundred grams or more I
8 would've had to make the argument that it looks --
9 basically there's more in the bottle than what they
10 sampled. It was unnecessary. Mr. Johnson had two prior
11 drug convictions, so as far as sentencing, he didn't face a
12 day less by me going forward with 28 to a hundred than he
13 did over a hundred grams. It just limited the confusion to
14 the jury as far as the scope of lesser included offenses
15 that they got. If we'd proceeded on over the hundred
16 grams, he would've got -- he would've got a jury charge on
17 28 to a hundred. He might've got a jury charge on ten to
18 28, then he certainly would've got the jury charge on
19 manufacturing which carries up to 15 years, so those
20 would've been all things that went back to the jury. They
21 would've had to make a determination of which category he
22 falls under and it just was -- it was completely
23 unnecessary to the State's prosecuting of the case in my
24 opinion. If they're going to find him guilty of over 28,
25 they were going to find him guilty of over a hundred and it

1 wouldn't have had any difference on the mandatory minimum
2 he was facing.

3 MS. JAMESON - Moment's indulgent, Your Honor.

4 (Pause) No further questions, Your Honor.

5 MR. THOMAS - Your Honor, beg the Court's
6 indulgence just one second. (Pause)

7 CROSS EXAMINATION

8 BY MR. THOMAS -

9 Q Good morning.

10 A Hi.

11 Q Just a couple of questions. I heard you testify about
12 manufacturing and trafficking and conspiracy. Why wasn't
13 he charged with all that?

14 A Because we -- strategically it didn't make any sense
15 to go forward with lesser included offenses when he was
16 going to get that charge from the Judge anyway.

17 Q Right.

18 A So if I was going to prosecute Mr. Johnson, I wouldn't
19 have got after him for all these individual distributions
20 and manufacturings; I would go after him for the
21 trafficking because it would -- it involves the entire
22 scope of that. It was unnecessary. Now, had we not been
23 successful in prosecuting him for the trafficking by
24 conspiracy, I believe I could've gone -- we could've gone

1 forward on each of those individual elements, because
2 they're separate crimes.

3 Q Right.

4 A That conspiracy is one encompassing, so it was -- it
5 was -- it was prosecutorial discretion to do it.

6 Q And that's what confused me is that there -- they are
7 separate crimes.

8 A Correct.

9 Q And it appeared to me, and even in listening to
10 testimony, you know, we're talking about that we were going
11 to -- we were going to base trafficking on the amount of
12 drugs that were manufactured or sold or whatever during
13 this period of this timeline because we've been watching
14 him, and we had pharmacy records.

15 A Right.

16 Q How in the world would you ever know how much he
17 either made or sold or used?

18 A I think Detective Schifferle testified -- well, him
19 personally?

20 Q Right.

21 A Or the entire group?

22 Q Yeah, the entire group.

23 A Based upon the theoretical yields of methamphetamine,
24 but we've -- we had of evidence of them produce -- people
25 testified. The individuals testified to what it was being

1 diverted for. Every time they purchased pseudoephedrine,
2 where did it go? It went to Mr. Johnson and Mr. Catoe.

3 Q Well, wouldn't that be a speculative ---

4 A Not when you -- it's direct evidence; the witness has
5 testified to that.

6 Q Which witnesses?

7 A I don't recall. I -- I believe that's the only reason
8 why we're allowed to talk about it, but Judge Alford -- I
9 mean certainly that -- it -- the purpose of having those
10 witnesses were to testify to the diversion of the
11 pseudoephedrine to Mr. Johnson ---

12 Q Right.

13 A --- to cook, so as to the conspiracy.

14 Q Right. So not necessarily specific amounts because
15 they would even been higher or whatever in regards to them
16 being able to testify as to what specific amounts of
17 anything went into ---

18 A We knew exactly -- well, we knew exactly what went
19 into it, because you can -- because you know the amount of
20 pseudoephedrine that was purchased.

21 Q All right. And I'm sorry, I'm just confused about
22 that.

23 A That's one the record that the pharmacy keeps is how
24 much -- that's how they're able to block people if they buy
25 more than a certain amount of boxes of pseudoephedrine,

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1 they know based on the milligrams involved in those pills,
2 particular pills, how much pseudoephedrine's being
3 purchased by that individual at each point in time.

4 Q It just seems to me to be so speculative, especially
5 when you've got 28 years or even more riding on that. And
6 -- (pause) ---

7 MR. THOMAS - Your Honor, beg the Court's
8 indulgence just for a second.

9 THE COURT - Sure.

10 Q So you've got -- as far as the State's prosecution,
11 you've got a trafficking charge, but you're saying that
12 this trafficking offense or crime occurred between these
13 two different dates. Are you saying that the trafficking
14 crime occurred ---

15 A It was ---

16 Q --- when they seized the drugs from the ---

17 A No, it was a ---

18 Q --- hotel?

19 A --- a continuing on-going criminal enterprise to
20 manufacture methamphetamine ---

21 Q Okay.

22 A --- between Mr. Johnson and Mr. Catoe. That agreement
23 to do it -- the boxes are irrelevant. The amount of boxes
24 of pseudoephedrine that's been converted is irrelevant.
25 The -- you know, at that point in time that agreement is

1 the crime. Whether it's trafficking, whether it's
2 manufacturing, whatever tier within trafficking, that's
3 based upon how much pseudoeph -- or how much
4 methamphetamine is recovered or theoretically could be
5 recovered or the theoretical yield from those
6 pseudoephedrine boxes. It could've been I've seen Mr.
7 Johnson -- I could've had a witness go up and say I've seen
8 Mr. Johnson cook methamphetamine and what he did, we had
9 like five grams of powder left over. Just because I don't
10 have that particular weight, it goes as evidence of the
11 conspiracy. The crime is to traffic -- it -- by
12 conspiracy, it's the agreement between Mr. Catoe. All
13 those other little incidents are evidence of the extensive
14 of that conspiracy. Okay? Had Mr. Johnson and Mr. Catoe
15 had a conversation and said we're going to get these many -
16 - x amount of boxes and we're going to make, you know, a
17 kilo of methamphetamine, he could still be prosecuted and
18 potentially convicted of conspiracy to traffic over a -- in
19 a kilo just based on the agreement alone whether or not he
20 had the drugs.

21 Q Right. Now, I understand that.

22 A Right.

23 Q Yeah. And I guess my confusion is, in reading the
24 transcript, I -- it appeared to me that the conspiracy
25 theories allowed the introduction of the IDs, the fake IDs

1 and the purchases of the drugs from the pharmacies to come
2 in when they would not have been able to come in under the
3 trafficking theory?

4 A Trafficking includes conspiracy.

5 Q Okay.

6 A When you say you're asking me would they ---

7 Q But then why are they separate crimes?

8 A Are you asking -- they're -- I -- I don't know why the
9 legislators decided to make it a conspiracy and not a --
10 you know, a separate crime of that. Perhaps -- I don't
11 know why. I have no idea. I'm -- not a legislator -- I
12 know that the trafficking has conspiracy language it.
13 Historically, the ability for the State to prosecute under
14 that statute is well-established in case law, have done it
15 on crack charges for -- it's well established.

16 Q So in this case he could've been charged with
17 manufacturing, ---

18 A (Indicating yes)

19 Q --- conspiracy and trafficking. That's three separate
20 crimes.

21 A Yes.

22 Q And he could've been tried in this case and sentenced
23 to consecutive sentences on all three of those crimes.

24 A In my opinion, yes.

25 Q Potentially.

1 A Yeah, I think he could have.

2 Q But he wasn't. He was only charged with trafficking.

3 A Correct. And it is in my discretion to try to -- to
4 elect the charge that I wanted to proceed on, absolutely.

5 Q In the indictment, to some extent it's all about
6 notice. I mean you have to have notice of what you're
7 being charged with.

8 A Correct.

9 Q Even in the world of Gentry, you still have to have
10 notice ---

11 A Correct. Yes.

12 Q --- of what the charges are against you.

13 A Correct.

14 Q Now, Mr. Catoe -- do you -- has he been charged again?
15 Do you know if he's been arrested again?

16 A I couldn't tell you.

17 Q Okay.

18 A I have no idea.

19 Q Okay. All right. Now, you said that -- I guess your
20 basis -- one of the reasoning for prosecuting on 28 to a
21 hundred, rather a hundred or greater was based upon the
22 fact that there was some concern about the weight of the
23 methamphetamine?

24 A Wasn't because -- it wasn't because of the concern on
25 the weight. It was because he would've gotten lesser

1 included offenses. I think it would've confused the jury.
2 Certainly 28 to a hundred is a lesser included offense than
3 a hundred, ---

4 Q Right.

5 A --- so we opted to proceed under the 28 to a hundred
6 rather than the over a hundred.

7 Q Okay. But really what you had -- of course, that
8 decision -- that's already been decided it was -- was meth
9 oil. I think several -- that's what they were calling it?

10 A Correct.

11 Q The meth -- the methamphetamine suspended in some sort
12 of solution of battery acid and all this other stuff.

13 A Correct. It had been -- the chemical process to
14 convert the pseudoephedrine was already completed. The
15 meth was now suspended in meth oil and had to go under
16 another chemical process to actually crystalize the
17 methamphetamine. It had not gotten to that stage.

18 Q Yeah, I've learned a lot about cooking meth.

19 A I did too.

20 (WHEREUPON, ATTORNEYS LAUGHING)

21 Q I know. Now, the other thing that kind of caught my
22 attention was the thing about the witness list. Um, so you
23 provided a witness list after the trial started?

24 A Pre-trial with voir dire, it's standard practice that
25 we give a witness list. Michael turned his witness list in

1 with their voir dire, etcetera. We do it morning of trial.
2 That's just -- that's not my policy. It's just standard --
3 standard practice, ---

4 Q I ---

5 A --- unless the Judge asks for them early.

6 Q Yeah.

7 A I mean there was a lot of names on there. There was
8 the -- and I don't just put the name of people I intend to
9 call as a witness. I put the name of anybody whose name
10 could possibly come up in trial, because my experience with
11 our circuit judges is they want to insure that there's
12 nobody on the jury that is aware of anybody whose name that
13 comes up that could possibly be prejudicial or biased or
14 anything else towards anybody else, so that's really more
15 of a -- it's more of a formality.

16 Q And I -- I -- and I understand that. And I guess the
17 only way Michael would be able to kind of extrapolate who
18 could be a potential witness would've been in the banker
19 boxes of ---

20 A No.

21 Q --- the information that you provided?

22 A It would've been in the spreadsheet of work produce
23 that I gave to Michael Brown.

24 Q Oh, okay.

25 A Yeah.

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1 Q I remember you saying that it was provided.

2 A Yes. It absolutely was. It -- we took -- we'd gone
3 through and we knew exactly who we were going to use and
4 what pseudo records we were going to attempt to enter in,
5 so rather than -- and, honestly, we could've done it this
6 way. We could've given him the banker's box and said go
7 figure out who's involved in this conspiracy. I had
8 already done it. I have a good working relationship with
9 Mike, and out of professional courtesy, I told him exactly
10 who -- what records we were -- out of those thousands and
11 thousands of pages of records, I told him specifically
12 which records we were going to attempt to enter into
13 evidence against Mr. Johnson and that happened well beyond
14 a week before trial even began.

15 Q And that was going to be next question.

16 A Yes.

17 Q How did you extrapolate from all of that ---

18 A Yes.

19 Q -- you know, who's going to say what.

20 A Yeah.

21 Q Okay. Were there any Miranda issues in this case? Do
22 you remember?

23 A I don't recall.

1 Q Or were there any Miranda issues taken into -- and I -
2 - taking into consideration in regards to the redaction, I
3 guess, is part ---

4 A I am -- if there were, I'm certain I researched them.

5 Q Okay.

6 A Um, I don't -- I don't recall if we had that. We
7 obviously would've -- I just don't remember if there was a
8 Denno hearing; I don't remember. I don't -- if there were,
9 nothing that Mr. Johnson or Mr. Catoe said was particularly
10 damaging, you know, and so I -- certainly -- I'll say this.
11 Based on my experience with Judge Alford, had there been
12 and had he caught that, he would've -- he would've
13 addressed that with us, but I don't remember if we
14 specifically engaged in a conversation about that.

15 MR. THOMAS - Your Honor, if I could beg the
16 Court's indulgence. (Pause)

17 Q Let me ask this one last question my client had asked
18 me about. Do you remember any testimony at trial or any
19 indication that there was a lesser amount of meth, that
20 there was a gram and a half or two grams of
21 methamphetamine?

22 A If there was, it would be in the drug report. I don't
23 recall if any finished product was recovered from the room.
24 There may have been residue on the scales. I don't
25 remember if I entered them in evidence or not. If it -- if

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1 it's in the transcript, it's in the transcript. I don't
2 recall.

3 MR. THOMAS - Your Honor, for the Court's
4 information, it looks like on 309 --

5 Q There was some talk about -- some testimony about how
6 much methamphetamine could be obtained from a box of
7 pseudoephedrine.

8 A I'm certain there was probably a lot of testimony
9 about that.

10 Q Right. Which I think says you can get 2.4 to 3.6
11 grams from a box.

12 A Probably. I think the federal yield is point -- one
13 gram equals .92 grams of methamphetamine.

14 MR. THOMAS - Your Honor, we have no further
15 questions.

16 THE COURT - Any re-direct? I'm sorry, any re-
17 direct?

18 MS. JAMESON - Yes, briefly, Your Honor.

19 RE-DIRECT EXAMINATION

20 BY MS. JAMESON -

21 Q Ms. Colton, Mr. Thomas asked you about indictments and
22 whether they were notice documents. Correct?

23 A Correct.

24 Q And here the indictment gave Mr. Johnson notice that
25 he was going charged with trafficking methamphetamine

1 including conspiring to sell between August 1st, 2010 and
2 February 27th, 2011. Correct?

3 A That's correct.

4 Q And any sort of testimony regarding the yield in that
5 bottle, that would've just been from the arrest on February
6 27th, 2011.

7 A Correct.

8 Q Not the entire span of August to February.

9 A No.

10 MS. JAMESON -- No further questions?

11 MR. THOMAS - Your Honor, just one more if I may.

12 THE COURT - Okay.

13 RE-CROSS EXAMINATION

14 BY MR. THOMAS -

15 Q But there never was any evidence of any actual sales,
16 were they?

17 A It depends on what your definition of sale is. If
18 it's for cash, I don't recall. If it was for trading for
19 finished product, I believe there was, and it's still
20 distribution regardless and still considered trafficking if
21 he simply just gave it somebody else and even including Mr.
22 Catoe. That would still be, you know, viable, dispensing
23 or distribution. It wouldn't particularly fall into the
24 category of sale, but it would -- but it would fall under
25 any of those. It's such a -- trafficking is such a wide

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1 range of things you can be guilty of, aid, abet, conspire,
2 etcetera. So when you proceed under that notice document
3 and saying that you trafficked, it's engaging -- you're on
4 notice that you engaged in any of those activities. The
5 triggering mechanism is the amount -- the amount, and that
6 was certainly above ten grams.

7 MR. THOMAS - No further questions, Your Honor.

8 THE COURT - Ms. Jameson?

9 MS. JAMESON - No, Your Honor, thank you.

10 THE COURT - Any objection to excusing Ms. Colton?

11 MR. THOMAS - None, Your Honor.

12 MS. JAMESON - No, Your Honor.

13 THE COURT - Thank you, Ms. Colton. You're
14 excused.

15 MS. JAMESON - The State has no additional
16 witnesses to call.

17 THE COURT - Counsel, I guess I should go ahead
18 and put this on the record. I mean I -- since testimony
19 was Ms. Inzerillo originally represented the defendant, my
20 brother, Mark McKinnon, is an attorney in the Sixteenth
21 Circuit Public Defender's Office, and to the best of my
22 knowledge he had no involvement whatsoever in this case,
23 but apparently the public defender's office was involved
24 with Mr. Johnson, so ---

25 MR. THOMAS - And we have no objection.

1 MS. JAMESON - Thank you, Your Honor.

2 THE COURT - All right, counsel it's now 12:30.

3 Do you want to go ahead and make your arguments and be
4 done, or do you want to take a break and come back?

5 MR. THOMAS - I'll be glad to go ahead and make
6 them. Your Honor, mine's going to be very, very short.

7 THE COURT - Okay.

8 MS. JAMESON - Agreeable with the State, Your
9 Honor.

10 THE COURT - All right.

11 MR. THOMAS - Your Honor, if it please the Court.

12 I normally actually don't make a last argument just
13 because, you know, we don't have a jury and I think the
14 Court's able to understand everything without some of the
15 lawyers standing up here and talking. Just to kind of hit
16 one or two points, Your Honor, I have problems with this
17 whole concept of, one, the plea. It's kind of a reversed
18 situation where you say a plea is entered into freely,
19 voluntarily, knowingly and intelligently given, but I think
20 we've got a trial. And I think that in this case my
21 client's confused about what's going on. He testifies that
22 he thought there was a plea offer, that that was going to
23 be conveyed to the State, that he thought that he had
24 information that the drugs were going to be suppressed and
25 that Mr. Catoe was going to accept responsibility for this

1 and also that he met with Michael on two different
2 occasions, he's not out on bond, he is in the county jail.
3 And as a result, I don't think that there was an
4 intelligent decision or fully advised decision about
5 whether to take the plea or go to trial. I'm not really
6 sure that he understood what was going on. He says that he
7 understood what the gravity of the situation is, but I'm
8 not really sure that he did, and I think Michael even on
9 the stand said I wish I had conveyed or I should have
10 forced him to take the plea and I -- nobody can force you
11 to take it, but it raises the question of whether or
12 whether or not there was enough information given since
13 there were two attorneys for my client to make the right
14 decision.

15 THE COURT - Okay, but there -- there weren't two
16 attorneys for your client.

17 MR. THOMAS - No, there weren't two attorneys, but
18 there were two -- two attorneys for two -- an attorney for
19 each co-defendant and they were related to -- not the
20 attorneys but the defendants were related to each other.
21 Yes, sir. And second one is what really concerns me is
22 this whole concept of manufacturing and the conspiracy and
23 the trafficking. They seem to blend altogether, and I
24 don't understand why the State, although Ms. Colton did a
25 good job trying to explain it, I don't understand why they

1 were -- are charged with these, and it appears that even
2 though Michael made some objection in the record in regards
3 to conspiracy, that he failed to let in -- to make the
4 objection and allow this stuff to come in, especially about
5 Sudafed sales or the purchases from the drug stores and
6 also the fake IDs. And you've got this timeline in the
7 indictment of a conspiracy to sell or traffic, and all of
8 that basically kind of back-doors a number of these Lyle
9 issues and other issues as well to present to the jury a
10 pattern of -- of conspiracy, not necessarily trafficking,
11 but it opens the door to allow you to get these huge volume
12 of information from all these drugs stores. And these
13 information, well, they had a laminating machine and they
14 found a couple of driver's license with my client's
15 pictures on them with other names, and we've lost the focus
16 really of the methamphetamine that was seized in the, um --
17 in the motel room, and I don't understand why the State had
18 to ice the cake almost. You know, they had methamphetamine
19 that was seized out of a room with three people in that
20 room, and then what you've got to do in that -- that
21 methamphetamine -- that whole meth oil weighs eight or
22 nine hundred grams, and then what you've got to do is try
23 to prove your case by allowing all this other stuff in. I
24 think counsel was ineffective for not objecting to those
25 portions of it.

1 THE COURT - Mr. Thomas, now, but the statute does
2 permit evidence of conspiracy under the offense of
3 trafficking.

4 MR. THOMAS - Yes, sir.

5 THE COURT - So before you can argue Mr. Brown is
6 ineffective, don't you have to show me that -- that that's
7 wrong, ---

8 MR. THOMAS - Well, ---

9 THE COURT - What's -- what's your support under
10 the case law from the proposition that evidence was not
11 properly admitted?

12 MR. THOMAS - Well, I think -- and I understand --
13 I understand exactly what the Court's saying -- I think --
14 and I have looked at the cases; I can't find anything
15 directly on point. I think that there are other charges
16 for a reason. Now, do I particularly have cases that point
17 out those specific reasons? No. But I think that if your
18 case -- this whole case -- and it really -- it sounds too
19 much more like a conspiracy -- there's got to be a
20 distinction between the two or you wouldn't have conspiracy
21 and -- to traffic and trafficking. I just think that
22 counsel was in -- part of that is -- of the ineffectiveness
23 was allowing to -- or not objecting to the introduction of
24 the -- the photo -- well, the -- the IDs and the records.
25 Under the conspiracy theory, had he done that, then those

1 issues would've been -- could've gone up on appeal, and as
2 such, they weren't really preserved.

3 THE COURT - Thank you, Mr. Thomas.

4 MR. THOMAS - Yes, sir. Thank you.

5 THE COURT - Yes, sir. Ms. Jameson?

6 MS. JAMESON - May it please the Court.

7 Your Honor, I'm going to just briefly run through
8 each of these issues to make sure we touch on all of them.
9 The first allegation is that Mr. Brown was ineffective for
10 failing to object to the search warrant. He clearly did on
11 two different grounds, both the initial warrant list entry
12 into the room, and that there wasn't probable cause; it was
13 fruit of the poisonous tree. Those were properly argued to
14 Judge Alford. They were preserved for appellate review.
15 He made proper contemporaneous objections, and they were
16 addressed on appeal in a published opinion affirming Judge
17 Alford's offer, so the State would submit that allegation
18 is completely meritless and the record and the appellate
19 record show that there's no merit to that allegation.

20 Regarding plea offers and counsel's
21 ineffectiveness in advising him regarding plea offers, Mr.
22 Brown testified he timely conveyed all plea offers to Mr.
23 Johnson, advised him to accept them and that Mr. Johnson
24 turned them down because he thought that the drugs would be
25 suppressed based on the advice of his co-defendant's

1 attorney. Mr. Johnson made a knowing decision to listen to
2 co-defendant's counsel rather than his own attorney simply
3 because he liked the advice better. He thought he would
4 get off and these drugs wouldn't come in. He understood --
5 he testified he understood the gravity of the situation.
6 He simply turned down these plea offers, and it's not due
7 to any ineffectiveness of Mr. Brown. Mr. Brown gave some
8 testimony that in hindsight he wished he had forced these
9 pleas -- the plea offer down his throat. Your Honor, I'd
10 submit that if he had done so, we'd be here with a PCR
11 application being filed against him for coercing him into
12 accept a plea. That's not proper to force your clients to
13 accept plea offers, and here Mr. Johnson made a knowing and
14 voluntary decision to turn down the plea offers from the
15 State and proceed forward to trial.

16 Regarding failing to have him evaluated after he
17 made the motion, Mr. Brown testified that he had no reason
18 to believe that Mr. Johnson wasn't competent, he was able
19 to assist him in his defense, he knew what was going on.
20 Applicant testified he knew what was going on, so there's
21 no deficiency in counsel. Mr. Brown testified he merely
22 made that motion as a delay tactic to buy his client some
23 additional time. Additionally, no prejudice can be shown,
24 because Mr. Johnson has not been evaluated and not come in
25 here and shown the Court that he wasn't competent to go

1 forward, so we'd ask the Court to deny that third
2 allegation.

3 Regarding the fourth allegation that he failed to
4 challenge both the conspiracy to traffic and trafficking
5 meth, the indictment is for trafficking, which as Your
6 Honor pointed out, includes conspiracy language, so he was
7 properly charged pursuant to the statute, was on notice
8 that the State could go forward based on conspiracy, and
9 the State would submit that based on the timeframe, it's
10 clear they were going forward based on the conspiracy
11 elements. And, also, Mr. Brown thoroughly objected to this
12 and said that the State needed to go forward only on
13 trafficking and that it wasn't fair, essentially, objected
14 to this numerous times throughout trial, and Judge Alford
15 allowed the State to proceed forward on a conspiracy
16 theory, so Mr. Brown was effective in regards to this.
17 Additionally, as Ms. Colton testified, case law does
18 support that the State can go forward under a conspiracy
19 theory for trafficking. State v. Harris, which is a case
20 from our Court of Appeals from 2000 discusses that, as well
21 as, State v. Wilson, which is a case from our Supreme Court
22 from 1993, clearly set forth that it's proper for the State
23 to proceed forward in this manner, so we'd ask you to deny
24 that allegation.

1 Regarding allegation number five that he failed
2 to argue against the gross weight of the methamphetamine
3 which consisted of the meth oil, again, he did object. He
4 properly preserved these objections when the mason jar came
5 in, and it was preserved on appeal and found to be proper
6 in a published opinion, so that allegation is simply
7 without merit.

8 Regarding allegation number six that he failed to
9 have the drug evidence tested, again, it's irrelevant here,
10 because our Court of Appeals has already determined in a
11 published opinion in this case that it's any mixture
12 thereof. Additionally, no prejudice can be shown, because
13 he hasn't had that done here today, so it's speculative
14 what sort of yield would come from that. The Court doesn't
15 even think we need to get there, because the Court of
16 Appeals has affirmed that it is any mixture thereof within
17 our statute, so that allegation is also without merit.

18 Regarding the failure to effectively argue the
19 redaction of the video evidence, both Mr. Brown and Ms.
20 Colton testified that the video was thoroughly redacted.
21 Ms. Colton testified she redacted even more than Mr. Brown
22 asked for, and applicant has failed to show what
23 prejudicial information came in before the jury that wasn't
24 redacted out.

1 Regarding the Lyle evidence pertaining to Brandi
2 Quinn, she was allowed to testify regarding the conspiracy,
3 so this wasn't Lyle evidence or prior bad acts. This was
4 evidence of the conspiracy; the State was allowed to get
5 into this evidence, and that allegation is without any
6 merit, and we'd ask the Court to deny it.

7 Failing to effectively challenge the timeline,
8 again, Mike repeatedly challenged the timeline. The record
9 is chocked full of instances. Every witness that
10 testified, he made Ms. Colton clarify that both
11 conspirators, Catoe and Mr. Johnson, were present for it,
12 and it was within the timeline, so that allegation is
13 blatantly refuted by the record the State would submit.

14 Regarding opening the door to the term drug
15 addict being used, Judge Alford cautioned Mr. Brown that he
16 was potentially opening the door and that the State could
17 potentially walk through, and the State didn't. The State
18 didn't delve into any of the testimony regarding Mr.
19 Johnson being a drug addict, but even if he -- even if they
20 did, Mr. Brown testified he made a strategic decision to
21 bring up that Mr. Johnson was a drug addict, because he was
22 hoping that the jury would not see him as this mastermind
23 the State tried to portray him as but see him as a drug
24 user, and that's why he asked for the lesser includeds of
25 possession and PWID meth. And there can't be any

1 prejudice; it was clear that all these witnesses, the
2 smurfs, the girlfriends, all where addicted to various
3 drugs, including methamphetamine, as well as others, so
4 there's no prejudice from there.

5 And then regarding allegation number 11, the
6 State submits that that's been withdrawn. Mr. Johnson
7 conceded that he thought Mr. Brown did a good job of cross-
8 examining all these witnesses; the record supports that.
9 So the State would submit that allegation either has been
10 withdrawn or if it's not, there isn't any merit to it.

11 We'd ask you to deny all 11 of these allegations
12 and the allegation in full.

13 THE COURT - Thank you, Ms. Jameson. Anything in
14 reply, Mr. Thomas?

15 MR. THOMAS - Nothing further, Your Honor.

16 THE COURT - Thank you, counsel. I'll take this
17 matter under advisement, and I'll let you know.

18 MS. JAMESON - Thank you, Your Honor.

19 (END OF TRANSCRIPT)

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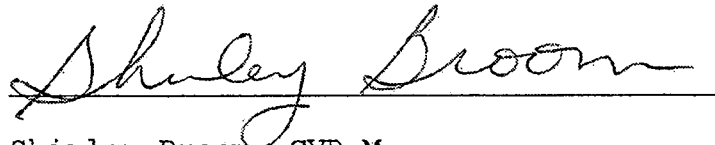
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 131 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Jason A. Johnson vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on July 30th, 2018, and provided by me this the 5th day of April 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
 Jason Alan Johnson, SCDC #231457,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No. 2016-CP-46-03388

ORDER OF DISMISSAL

DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, S.C.

2018 AUG 30 AM 10:52

FILED-RECEIVED

This matter comes before the Court by way of an application for post-conviction relief filed on November 16, 2016, by retained counsel Tommy A. Thomas, on behalf of Jason Alan Johnson (Applicant). The State (Respondent) served its return on October 17, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened July 30, 2018, at the Moss Justice Center in York County. Applicant was present at the hearing and represented by counsel Thomas. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General's Office appeared on behalf of the State. After a review of the record and all evidence presented, this Court finds Applicant failed to meet his requisite burden of proof and denies this application with prejudice.

PROCEDURAL AND FACTUAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. On February 27, 2011, Applicant and two co-defendants (Brandi Quinn and Corey Seth Catoe) were arrested at a Best Way Inn in Rock Hill, South Carolina when law enforcement arrived to effectuate an arrest warrant against Quinn for malicious injury to personal property. When officers

knocked on the door, Quinn opened the door then stepped back into the room, causing officers to follow her into the room to complete the arrest. Officers noticed a large quantity of computers in various stages of disassembly and items traditionally associated with illegal drug activity strewn throughout the room. Officers then detained Applicant and Catoe and located a large glass bottle being used to make methamphetamine, commonly referred to as a shake-and-bake laboratory, which was still in the process of making useable methamphetamine. Applicant and Catoe were taken into custody.

During its June 2011 term, the York County Grand Jury indicted Applicant for trafficking in methamphetamine (more than 100 grams) (2011-GS-46-01752) as a third drug offense. The indictment covered the time period from August 2010 through the day of Applicant's arrest on February 27, 2011, covering the time period the State alleged Applicant and Catoe were the masterminds behind a wide-scale methamphetamine production throughout York County. Michael L. Brown, Jr., was appointed to represent Applicant. Assistant Solicitor Jennifer Colton of the Sixteenth Circuit Solicitor's Office prosecuted the case. On January 23, 2011, Applicant, alongside co-defendant Corey Seth Catoe, proceeded to a jury trial in the York County Court of General Sessions before the Honorable Lee S. Alford, circuit court judge. Applicant and Catoe moved to suppress the evidence recovered from the motel room, arguing the officer's entry into the room was warrantless and unlawful because Quinn had already been arrested and that the search warrant subsequently obtained lacked probable cause.

Halfway through the motion to suppress hearing, Applicant's co-defendant Catoe pled guilty to manufacturing methamphetamine as a first offense and was sentenced to five years imprisonment suspended upon the service of two years imprisonment and two years probation.

Applicant initially accepted a plea offer to the lesser-included offense of trafficking methamphetamine (28 to 100 grams) for a cap of eighteen years imprisonment, but immediately moved to withdraw his plea before it was accepted by the court. The court continued forward with Applicant's motion to suppress hearing, denying the motion at the conclusion of the hearing.

Applicant then argued the State needed to elect which conduct it was going forward on over the six month period. The State responded that it was proceeding forward on a conspiracy to traffic methamphetamine between Applicant and Catoe over the six month time period, not merely the arrest from the motel room, and that it planned to tie everything together through the testimony of numerous co-conspirators. The trial court cautioned the State that it must show an agreement and link the activities to the conspiracy. Applicant objected to the State proceeding forward on a conspiracy theory, arguing that he was not indicted for conspiracy, but acknowledged the statute specifically covers conspiracy to traffic.

Applicant then proceeded to trial, during which the State presented testimony from Quinn and the officers who arrested Applicant in the motel room, as well as numerous co-conspirators who testified to the wide-scale operation where Applicant and Catoe had numerous people purchase pseudoephedrine to be used to make methamphetamine. During trial, Applicant argued the entire volume recovered from the glass bottle in the motel room should not contribute towards the weight of methamphetamine, as it was not in a finished state and most was unusable waste product. After hearing arguments from both parties, the Court ruled the total amount of the methamphetamine mixture would qualify towards the threshold amounts from trafficking.

At the conclusion of testimony, the jury convicted Applicant of trafficking methamphetamine (28-100 grams). Judge Alford sentenced Applicant to twenty-eight years imprisonment.

Applicant filed a timely notice of appeal and was represented by Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant argued: argued (1) the trial court erred denying his motion to suppress based on an initial warrantless entry and the subsequent warrant was obtained without probable cause, and (2) the trial court erred in determining the total weight of the liquid was counted towards weight of methamphetamine pursuant to the statute and prohibiting counsel from arguing to the jury that the total weight did not count as methamphetamine. Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence in a published opinion. State v. Johnson, 420 S.C. 10, 763 S.E.2d 36 (2014). Applicant then petitioned for rehearing, and following the denial of his petition, petitioned for certiorari to the South Carolina Supreme Court. The Supreme Court granted certiorari, and following briefing and oral argument, dismissed certiorari as improvidently granted. The remittitur was returned to the circuit court on November 18, 2015.

ALLEGATIONS RAISED

On November 16, 2016, Applicant, through counsel Thomas, filed an application for post-conviction relief, alleging "ineffective assistance of counsel" without any supporting facts or specific instances of counsel's ineffectiveness. The State made its return on April 5, 2017, requesting an evidentiary hearing. Thereafter, on July 18, 2018, Applicant, through counsel

Thomas, served an amended application with the following specific allegations of ineffective assistance of counsel:

1. Counsel failed to effectively object to an invalid search warrant and the introduction of evidence pursuant to this warrant.
2. Counsel failed to adequately advise Applicant regarding plea offers and to communicate Applicant's acceptance of a plea offer.
3. Counsel moved to have the Applicant's mental health evaluated but failed to follow through on this motion; no evaluation was performed.
4. Counsel failed to challenge the trial of Applicant for both conspiracy to traffic and trafficking in methamphetamine.
5. Counsel failed to effectively argue against the introduction of the gross weight of the methamphetamine which consisted of meth oil.
6. Counsel failed to have the drugs in evidence tested by a private facility to determine the actual weight of the drugs.
7. Counsel failed to effectively argue for the redaction of all video evidence.
8. Counsel allowed the witness, Brandi Quinn to testify to certain matters which allowed the state to introduce evidence which would otherwise have been objectionable under Lyle.
9. Counsel failed to effectively challenge the time line and span of the conspiracy.
10. Counsel opened the door by the use of the term drug addict which put Applicant's character into issue.
11. Counsel failed to properly cross exam witnesses.
 - a. Shelly Pettigre
 - b. Amanda Caudle
 - c. Christopher Matuse
 - d. Cassidy Cooper
 - e. Brandy Hager

Applicant proceeded forward on the allegations in his amended application at the evidentiary hearing.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

During the evidentiary hearing, Applicant called trial counsel Michael L. Brown, Jr. (counsel) to testify first. Counsel testified he has been practicing law for thirty-six years and was appointed to represent Applicant. He testified he thinks he was the second attorney to represent Applicant. He testified he believed he had sufficient time to prepare the case and was ready for trial. He testified Applicant was charged with trafficking in methamphetamine following his arrest on February 27, 2011, in a motel room in along with two others when law enforcement came to issue a valid arrest warrant on one of the room's occupants. He testified the room contained a large bottle of unfinished methamphetamine product and the trial court ruled the entire portion could be used towards the weight for trafficking over his objection. He testified he did not have an independent laboratory extrapolate out the methamphetamine from the mixture to determine the percentage of methamphetamine contained in the mixture, which he acknowledged could have been useful in his argument to the trial court. However, he later conceded the trial court ruled that the entirety of the mixture would count regardless of the purity of the methamphetamine within the mixture and the Court of Appeals affirmed this ruling in a published decision.

Counsel testified the indictment covered the time period from August 2010 until the date of Applicant's arrest in the motel room and the State was proceeding forward on a conspiracy theory. Applicant initially testified he should have objected to the State proceeding forward on such a large time span beyond the February 27th arrest, but later acknowledged that he did so object at the outset of trial and repeatedly throughout trial. He also acknowledged that the trafficking statute includes conspiracy and that he repeatedly objected to the State proceeding forward on this theory. Counsel testified his defense strategy was to show Applicant was merely a drug user, not

an elaborate mastermind as the State was attempting to portray him. He testified he did not object to any references to Applicant being a drug addict based on this trial strategy. He testified he also argued that there were two other people in the motel room who could have been the possessors of the methamphetamine mixture in the bottle and the State failed to test the bottle for fingerprints or DNA despite having a technologically advanced laboratory at their disposal. He argued all the co-conspirator witnesses called to testify by the State were "less than credible" and that he believes he did a good job of cross examining them to establish their self-interested motives. He testified the evidence regarding fake identification production and records of pseudoephedrine purchases were admitted as part of the conspiracy over his objections. He testified he thinks this evidence, as well as the testimony of Quinn and other co-conspirators, was impermissible Lyle testimony, which he unsuccessfully argued to keep out to the trial court.

Counsel testified he discussed suppression of the evidence from the motel room with Applicant, but advised him suppression would not be likely based on the facts of the case and the law. He testified the basis for the suppression motion was officers had entered the motel room after Quinn's arrest had been effectuated without a search warrant and the subsequent warrant lacked probable cause. Counsel testified he thoroughly argued the suppression motion to the trial court, made contemporaneous objections to the introduction of the evidence at trial, and the issues pertaining to the search warrant were preserved for appellate review.

Counsel testified the State offered Applicant a plea for ten years imprisonment before trial and for a second offer for more time during the suppression motion. He advised Applicant that a plea offer would be in Applicant's best interest. However, he testified co-defendant Catoe's attorney repeatedly told Applicant and Catoe the suppression motion would likely be successful.

Counsel testified Applicant initially accepted the State's plea offer on the second day of trial, but quickly withdrew his plea based on a faulty assumption the suppression motion would be successful. He testified he moved to have Applicant evaluated once he withdrew his plea purely as a delay tactic to allow Applicant additional time to consider the State's plea offer and to determine if Catoe was going to testify against Applicant. He testified he did not have any competency concerns about Applicant other than his inability to rationally consider the State's plea offer due to his false sense of confidence the evidence would be suppressed. Counsel testified he thinks Applicant made a mistake in not accepting the State's plea offer and in hindsight, he should have "shoved the offer down [Applicant's] throat" and forced him to accept it. He characterized his inability to force Applicant to accept the State's plea offer was his biggest regret. He later acknowledged it is not his choice whether a client accepts a plea offer and it was Applicant's voluntary decision to ignore his advice and continue forward with trial rather than accept a favorable plea offer from the State. He testified co-defendant Catoe elected to forego trial and accept a favorable plea offer from the State for a minimal term of imprisonment.

Counsel testified there was video footage of the arrest at the motel from the law enforcement cruisers and he requested the State redact certain portions of the video. He testified the State redacted all portions he requested.

Counsel testified at first that he did not request jury instructions on any lesser-included offense, but later acknowledged he did request jury instructions on lesser weights of trafficking, distribution, manufacturing, possession with intent to distribute, and possession, and that the trial court agreed to charge all but possession with intent to distribute and possession.

Applicant testified next on his own behalf. He testified he was incarcerated for the entire time prior to trial. He testified he was originally represented by Assistant Public Defender Melissa Inzerillo but that he fired her because she wanted him to cooperate with law enforcement. He testified counsel was then appointed to represent him. He testified he only met with counsel once or twice and did not have enough time to discuss the case with him. He testified he did not realize the extent of the State's case until the second day of his trial. However, he acknowledged he understood the serious nature of the charges.

Applicant testified counsel never discussed defenses with him and counsel was "geared up" for him to accept the State's plea offer. Applicant testified the State offered him a ten year sentence the Friday before trial and Applicant responded he would accept the offer if the State dismissed the charges against Quinn and Catoe. Applicant testified the drugs belonged to Catoe but he was willing to accept responsibility. He testified he originally accepted a plea offer during pre-trial but then decided he did not want to plead guilty once he saw that the trial court wanted him to plead guilty first before Catoe. He testified he was confused about whether to accept the plea offers and he could not recall if he spoke to counsel about whether to accept the offers. He testified he does not think counsel kept him up to date regarding plea offers and the suppression motion. He elaborated that if counsel had done proper research regarding suppression, counsel would have known the evidence would not likely be suppressed. He testified he was confused as to the suppression because two lawyers were saying different things. He elaborated that counsel informed him the drugs likely would not be suppressed, but co-defendant Catoe's attorney told him the drugs likely would be suppressed. He acknowledged that he ultimately listened to Catoe's attorney rather than his own attorney. He testified he thought the evidence would be suppressed

because a written motion had been filed in advance of the suppression motion. He testified counsel did not speak with him during the trial until halfway through when counsel told Applicant "we're getting smashed."

Applicant testified the bottle recovered from the motel room contained only one to one-and-a half grams methamphetamine and the total weight of the mixture should not have been used against him. Applicant testified all the witnesses who testified against him were not credible and he did not know all of the witnesses. He acknowledged he and some of the female witnesses wrote letters back and forth while incarcerated. He testified counsel did a good job of cross-examining these witnesses.

Respondent called Assistant Solicitor Jennifer Colton, who prosecuted Applicant's case. She testified she had been assisting local law enforcement with investigations into methamphetamine trafficking in York County, including investigations into Applicant and his co-conspirators, well before Applicant's February 27, 2011, arrest. She testified officers had been compiling records of pseudoephedrine purchases from Applicant and his co-conspirators, which were eventually provided to counsel and used during Applicant's trial in furtherance of the conspiracy. She testified these records were voluminous and took up at least two full banker's boxes. She testified as a courtesy to counsel, she compiled an easier-to-read spreadsheet of all this data and provided this to counsel. She testified this was provided well in advance of trial, and the co-conspirator witnesses who testified were listed in this material, so counsel was aware of all potential witnesses before trial. She testified the investigation into Applicant and his co-conspirators likely would have continued longer, but once an arrest warrant was obtained for Quinn and Applicant's subsequent arrest, indictments were sought for the entire timeframe of the

conspiracy (August 2010 until Applicant's arrest on February 27, 2011). Colton testified the trafficking indictment was not based solely on the bottle found in the motel room, but all acts in furtherance of the conspiracy. She testified it was her prosecutorial discretion to indict Applicant for trafficking under a conspiracy theory rather than for conspiracy outright. She elaborated that even if the trial court had granted Applicant's motion to suppress the evidence found in the motel room, she still would have proceeded forward on the trafficking indictment based on all other evidence in furtherance of the conspiracy. She testified counsel objected to the State proceeding forward on a conspiracy theory and the trial court significantly limited the evidence she intended to present to only those times when Applicant and Catoe were acting together in concert within the specific time period alleged in the indictments (August 2010 to February 27, 2011). She testified that in addition to the testimony of co-conspirators, she used the pseudoephedrine purchase records and fake identification cards Applicant and his co-conspirators used to bypass pseudoephedrine purchase limits.

Colton testified counsel moved to suppress the evidence collected from the motel room based on grounds that the initial entry into the room was warrantless and beyond the scope necessary for Quinn's arrest and that the subsequently obtained search warrant lacked probable cause. She testified there was always a chance the trial court would suppress the evidence collected from the hotel room, and in the event that happened, she would still proceed forward because the indictment was based on conspiracy for the entire time period of August 2010 until February 27, 2011. She testified the trial court denied this motion and counsel contemporaneously objected to preserve this issue for appellate review.

Colton testified counsel also objected to the entire weight of the bottle recovered from the hotel room being used to meet the weight requirements for trafficking methamphetamine, arguing the entire mixture was mainly comprised of waste product that would not yield useable methamphetamine. Colton testified the entire volume of the mixture within the bottle was not collected by law enforcement due to safety concerns. She testified the chemical process had already completed when the bottle was recovered and the methamphetamine was suspended in methamphetamine oil. However, she reiterated the indicted amount of trafficking more than 100 grams was based on Applicant's actions during the pendency of the conspiracy, not simply the amount recovered from the bottle. She testified she cited to the statute and legal authority to support her position that the entire mixture counted towards the total weight for trafficking and the trial court ultimately agreed with her argument. She testified counsel contemporaneously objected to preserve this issue for appellate review and the Court of Appeals affirmed the trial court's ruling in a published opinion.

Colton testified Applicant always maintained he was not interested in any plea offers from the State unless it was for a term of less than five years imprisonment, which the State was not willing to offer based on Applicant's prior record and lack of cooperation. She testified co-defendant Catoe received a more favorable plea offer from the State because he was not as culpable as Applicant and did not have as significant of a prior record as Applicant. She testified Applicant turned down two plea offers, including one during the suppression hearing. She testified Applicant appeared to be competent and was the mastermind behind the operation, continuing to orchestrate things while incarcerated, including trying to dissuade witnesses from testifying against him.

Colton testified a video made from the police cruisers present when Applicant was arrested at the motel and she introduced it a trial subject to Applicant's redactions. She testified counsel made a list of all redactions he wanted and she complied with every suggested redaction. She testified she also voluntarily redacted other potentially damaging information to Applicant from the video, including his comments pertaining to his white supremacist ideology.

Colton testified Quinn and the other co-conspirators testimony was offered as to Applicant's role in the conspiracy, not evidence of prior bad acts or Lyle evidence as Applicant now suggests. She testified counsel objected numerous times throughout the trial when he believed the testimony strayed away from the time frame in the indictment or when Catoe was not present with Applicant. She testified the trial court made it clear that she must stay within the time limits and parameters of the conspiracy when eliciting testimony from the co-conspirators. She testified everyone who testified was a methamphetamine user and counsel vigorously cross-examined all witnesses regarding their drug use and self-interested motivations in testifying against Applicant.

Colton testified that although Applicant was indicted for trafficking in methamphetamine more than 100 grams, she asked the trial court to only charge the jury on trafficking in methamphetamine 28 to 100 grams to alleviate any confusion regarding the sample recovered from the bottle found in the motel room. She elaborated the trial court was already going to charge the lesser-included amount for trafficking. She testified the trafficking amounts could have been established from the amount recovered from bottle or the total amount of methamphetamine made during the course of the conspiracy, or a combination thereof. She testified the sentencing range was the same for trafficking in methamphetamine more than 100 grams and trafficking in

methamphetamine 28 to 100 grams, so she made the decision to reduce any possible confusion for the jury from having so many lesser-included options.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting

Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden of proof and had not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant:

Allegation: Ineffective assistance of counsel for failing to effectively object to an invalid search warrant and the introduction of evidence pursuant to this warrant

Applicant asserts counsel was ineffective for failing to effectively object to the search warrant obtained for the Best Way Inn motel room rented by Brandi Quinn where Applicant was arrested alongside Quinn and co-defendant Catoe and for failing to object to the introduction of the evidence seized from this motel room during Applicant's trial. This Court finds this allegation is directly refuted by the record and wholly without merit. Counsel objected to the search warrant and moved to suppress the evidence obtained from the motel room based on both the initial warrantless entry into the motel room, arguing the arrest of Quinn had concluded and there was no

reason for officers to enter the motel room, and the search warrant, subsequently obtained after the officers had conducted a protective sweep of the room during the initial entry, was lacking probable cause. The trial court conducted a lengthy and thorough pre-trial hearing and denied Applicant's motion to suppress. Counsel then contemporaneously objected when the evidence was introduced during the State's case, thereby preserving the issue for appellate review. On appeal, Applicant's appellate counsel again challenged the search warrant, arguing the trial court erred in denying Applicant's motion to suppress. The Court of Appeals affirmed the trial court's ruling, finding exigent circumstances justified the protective sweep of the motel room and probable cause existed to justify the issuance of the search warrant. State v. Johnson, 410 S.C. 10, 763 S.E.2d 36 (Ct. App. 2014). This Court finds Counsel properly challenged the search warrant and preserved the issue for appellate review, and therefore, Applicant cannot establish any deficiency of counsel. Moreover, as the Court of Appeals properly affirmed the trial court's ruling as to the search warrant, Applicant cannot establish any requisite prejudice. This Court finds this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to properly advise Applicant regarding plea offers

Applicant asserts counsel was ineffective for failing to properly advise Applicant regarding plea offers. Applicant testified he was willing to accept a plea offer if the State would dismiss all charges against Quinn and Catoe, but later testified he rejected plea offers from State against counsel's advice because he believed the motion to suppress would be granted based on advice from Catoe's counsel. Counsel testified he advised Applicant of all plea offers and advised Applicant it was in Applicant's best interest to accept the State's plea offers because the suppression motion would not likely be successful based on the facts of the case and current law.

Additionally, the record shows Applicant began a plea colloquy with the court but then asked to withdraw his plea and continue forward with his trial, even after Catoe accepted a favorable plea offer from the State. This Court finds Applicant has failed to meet his requisite burden of establishing any deficiency of counsel, as counsel timely conveyed all plea offers to Applicant, advised him it was in his best interest to accept a plea offer from the State, and Applicant made a knowing and voluntary decision to ignore the advice of counsel and proceed to trial with the hope that the suppression motion would be granted or he would be acquitted. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to follow through on his motion to have Applicant evaluated

Applicant asserts counsel was ineffective for failing to have Applicant evaluated after moving to have him evaluated during pre-trial motions. The record establishes that following Applicant's failed attempt to enter a guilty, counsel moved to have Applicant evaluated based on his purported concerns about Applicant's competency following his rejection of the plea offer. (Tr. pp. 167-169). Counsel simultaneously moved to be relieved as counsel. The trial court denied both motions, noting:

Well it may be difficult, Counselor, but I don't see any need to relieve you. You're well prepared, we're ready, we put a lot of time this afternoon in this case already got the jury coming in and hear this case so we need to proceed on with it. I haven't seen anything to indicate that he is not competent and understands what's going on and be able to assist you once we actually get started with the trial and pretrial for that matter. And so the fact that you all don't have no meeting of the minds on how to proceed in this, wouldn't mean that he would need a mental evaluation and he would not require it. Often times attorneys and a defendant are not in agreement on how to proceed on a case but we need to proceed on today with the trial.

(Tr. 168-169).

When questioned at the evidentiary hearing as to why he moved to have Applicant evaluated, counsel testified he had no concerns about Applicant's competency but was merely trying to delay the proceedings to give Applicant additional time to consider plea offers and determine whether Catoe was going to testify against him. This Court finds this testimony credible and finds Applicant has failed to establish any deficiency of counsel. Moreover, this Court finds Applicant has failed to establish any prejudice, as he failed to present any evidence that he was not competent to proceed forward with his trial. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to challenge the State proceeding forward on both conspiracy to traffic and trafficking

Applicant asserts counsel was ineffective for failing to challenge the State proceeding forward on theories of conspiracy to traffic methamphetamine and trafficking methamphetamine. Essentially, Applicant argues the State should have only been able to present evidence pertaining to the methamphetamine recovered from the motel room during his arrest on February 27, 2011, because he was indicted for trafficking in methamphetamine and not specifically for conspiracy to traffic in methamphetamine.

Counsel initially testified he should have objected based on these grounds, but eventually acknowledged that he did challenge the State proceeding forward on both theories at trial and that he continuously objected to the State's conspiracy theory throughout Applicant's trial. Assistant Solicitor Colton testified the State's theory was always based on Applicant's continuous conspiracy to traffic methamphetamine with co-defendant Catoe from August 2010 until the date of his arrest on February 27, 2011. She also testified Applicant was properly indicted for the entire time frame and the indictment included conspiracy language. This Court finds this allegation is

without merit, as counsel continuously objected to the State proceeding forward under a conspiracy theory at trial. Moreover, this Court finds Applicant was properly indicted for his role in the conspiracy over the proper time period. This Court finds Applicant has failed to meet his burden of establishing any ineffectiveness of counsel and that this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to effectively argue against the introduction of the gross weight of the methamphetamine which consisted of meth oil

Applicant asserts counsel was ineffective for failing to effectively argue the total weight of the methamphetamine mixture recovered from the bottle recovered at the motel where Applicant was arrested should not be considered for purposes of meeting the weight requirements from trafficking because the mixture contained unusable methamphetamine oil. This Court finds this allegation is directly refuted by the record and with wholly without merit. Counsel specifically objected to the entire weight of the mixture being used and the trial court ultimately ruled the weight of the entire mixture could be used over counsel's objections.

Counsel then contemporaneously objected when the evidence was introduced during the State's case, thereby preserving the issue for appellate review. On appeal, Applicant's appellate counsel again challenged the trial court's ruling that the entire mixture could be used to meet the threshold weight requirements for trafficking. The Court of Appeals affirmed the trial court's ruling, finding the statute explicitly provided the weight of all the mixture that contained methamphetamine should be used. State v. Johnson, 410 S.C. 10, 763 S.E.2d 36 (Ct. App. 2014). This Court finds Counsel properly challenged the weight argument and preserved the issue for appellate review, and therefore, Applicant cannot establish any deficiency of counsel. Moreover,

as the Court of Appeals properly affirmed the trial court's ruling as to the weight issue, Applicant cannot establish any requisite prejudice. This Court finds this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to have the drug evidence tested by a private facility to determine the weight of the drugs

Similar to the allegation immediately proceeding this one, Applicant also asserts counsel was ineffective for failing to have an independent laboratory analyze the mixture and extrapolate out the exact amount of methamphetamine within the mixture. As discussed above, the Court of Appeals ruled in a published opinion that the entire mixture containing methamphetamine counted towards the total weight. Therefore, any such testing would have been fruitless and would have had no impact on Applicant's trial. This Court finds this allegation is denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to effectively argue for the redaction of all video evidence

Applicant argues counsel was ineffective for failing to effectively argue for the redaction of all video evidence. Counsel and Assistant Solicitor Colton both testified the video evidence was fully redacted to comply with all requests made by counsel. Applicant has failed to present any additional material he wanted redacted from the video and similarly failed to present the video to this Court to argue how additional redaction would have yielded a different result. Therefore, Applicant has failed to meet his requisite burden of proof and this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to object to testimony from Brandi Quinn to acts that were objectionable under Lyle

Applicant argues counsel was ineffective for failing to object to the testimony of co-conspirator Brandi Quinn regarding other acts that Applicant submits were improper pursuant to Lyle. Applicant argues the testimony of Quinn beyond the events surrounding his arrest on February 27, 2011, was improper evidence of prior bad acts and therefore, was inadmissible. This Court finds this allegation is without merit, as the testimony from Quinn (and the numerous other co-conspirators) was admissible to establish the conspiracy between Applicant and Catoe to traffic in methamphetamine. See State v. Wilson, 315 S.C. 289, 294, 433 S.E.2d 864, 868 (1993) (“The State is entitled to prove the whole history of the conspiracy, from its commencement to its conclusion, as well as overt acts done in furtherance of the conspiracy since from those overt acts, an inference may be drawn as to the existence and object of the conspiracy. Further, the State is permitted great latitude in the introduction of circumstantial evidence to establish the existence of a conspiratorial agreement. Accordingly, we find no error in using evidence of the amount of drugs involved in various transactions as proof of the scope of the conspiracy for the purpose of establishing the elements of the crime of conspiring to traffic under S.C. Code Ann. § 44-53-370(e)(1) & (2) (Supp.1992).”) (internal citations omitted). Accordingly, as the testimony was proper, this Court finds counsel was not ineffective for failing to object and this allegation is denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to effectively challenge the timeline and span of the conspiracy

Applicant argues counsel was ineffective for failing to effectively challenge the timeline and span of the conspiracy. Applicant was indicted for his role in a conspiracy to traffic more than

100 grams of methamphetamine throughout York County between August 2010 and February 27, 2011. The record conclusively establishes counsel objected repeatedly to the State proceeding forward on a conspiracy theory and any testimony beyond the scope and time limit of this conspiracy. Assistant Solicitor testified based on these objections and the trial court's ruling, she was limited in the presentation of evidence in furtherance of the conspiracy. Additionally, Applicant has not specifically argued what additional arguments counsel could have made to further limit the timeline or scope of the conspiracy. This Court finds this argument is without merit and must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for opening the door to the use of the term drug addict which put Applicant's character in issue

Applicant argues counsel was ineffective for using the term drug addict, which opened the door to the State admitting evidence of Applicant's character. The record reveals that the trial court admonished counsel about potentially opening the door to evidence of Applicant acting as a drug dealer during periods outside the indictment timeframe by arguing Applicant was merely a drug addict feeding his habit. (Tr. pp. 548-551). However, the State never walked through the open door and kept all evidence narrowly confined to the time frame as set forth in the indictment. Therefore, Applicant cannot establish any ineffectiveness of counsel, and this allegation must be denied and dismissed with prejudice.

Allegation: Ineffective assistance of counsel for failing to properly cross-examine co-conspirator witnesses

In his amended application, Applicant alleges trial counsel was ineffective for failing to properly cross-examine numerous witnesses who all testified in furtherance of the conspiracy between Applicant and Catoe to manufacture and traffic methamphetamine. However, during the

evidentiary hearing, Applicant conceded counsel did a good job of cross-examining these witnesses. Additionally, the record establishes counsel thoroughly examined all witnesses regarding their own self-interested motives in testifying against Applicant. This Court finds this allegation is without merit and must be denied and dismissed with prejudice.

CONCLUSION

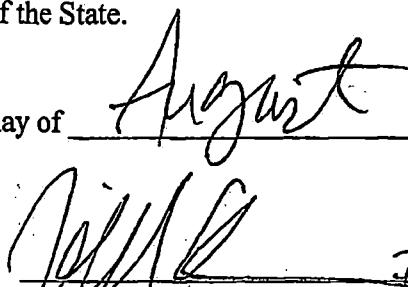
Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this allegation is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 29 day of August, 2018.


WILLIAM A. MCKINNON

#2761

York, South Carolina

Presiding Judge
Sixteenth Judicial Circuit

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1147

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP4603388

Jason Alan Johnson		South Carolina State Of	
--------------------	--	-------------------------	--

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: Order of Dismissal
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/William A. McKinnon

2761

8/29/2018

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

1148

This judgment was entered on August 30, 2018, and a copy mailed first class or placed in the appropriate attorney's box on August 30, 2018, to attorneys of record or to parties (when appearing pro se) as follows:

Tommy Arthur Thomas PO Box 88 Irmo, SC 29063

Megan Harrigan Jameson PO Box 12519 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

IN THE COUNT OF COMMON PLEAS
 DOCKET NO.: 2016-CP-46-3388

JASON ALAN JOHNSON #231457,))
)
 Applicant,)
)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

NOTICE OF MOTION AND MOTION
 TO ALTER OR AMEND

FILED-RECEIVED
 2018 SEP 14 AM 11:37
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

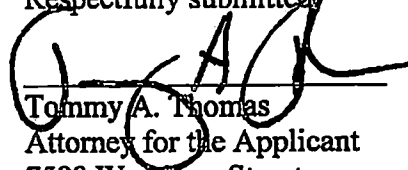
PLEASE TAKE NOTICE that the Applicant, through his undersigned attorney will move before the Honorable William A. McKinnon, to alter or amend the judgment entered in this action on August 29, 2018. A copy of the Order of Dismissal was received by the undersigned attorneys on September 5, 2018.

COMES NOW the Applicant, by and through his undersigned attorney, and submits the following:

1. That the Attorney for the Applicant mailed a copy of this Court's Order to Applicant at Lee Correctional Institution on September 5, 2018.
2. That the Attorney has been unable to speak with his client due to the ongoing lock-down situation at Lee.
3. That the Attorney for the Applicant is having surgery on September 13, 2018 and is unable to determine whether a Motion to Alter or Amend is necessary in this action until he is able to speak with his client.
3. Counsel would like to preserve Applicant's right to alter or amend the Order of Dismissal, if necessary.

For the above reasons, the Applicant would like to preserve his right to Alter or Amend the Court's Order and would respectfully request that this Court allow counsel to discuss these concerns with the Applicant to determine if all issues raised at trial are adequately addressed in the Order of Dismissal.

Respectfully submitted



Tommy A. Thomas
Attorney for the Applicant
7588 Woodrow Street
Irmo, SC 29063
(803) 732-5507

September 12, 2018
Irmo, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

JASON A. JOHNSON,)
 Applicant,)

DOCKET NO.: 2016-CP-46-3388

v.)

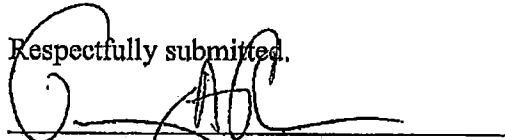
MOTION TO
 DISMISS 59 (e)

STATE OF SOUTH CAROLINA,)
 Respondent.)

The Applicant filed a Notice of Motion and Motion to Alter or Amend on September 14, 2018 to allow counsel to properly review the Order of Dismissal. Counsel had been unable to review the Court's Order with the Applicant do to the Institution being on lock down. In addition, counsel was scheduled for surgery.

The Applicant now wishes to dismiss this Motion as he feels that the Order of Dismissal adequately addresses all issues.

Respectfully submitted.


 Tommy A. Thomas
 Attorney for Appellant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

November 15, 2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 JASON A. JOHNSON,)
)
 Applicant,)
)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2016-CP-46-3388

ORDER

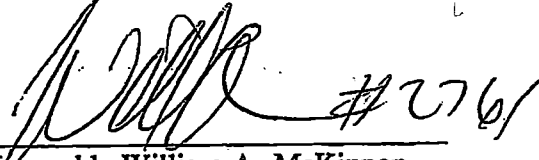
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 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

This matter is now before the Court pursuant to the Applicant's Motion to Dismiss 59 (e). That an Order of Dismissal in the above referenced case was received by counsel on September 5, 2018. A timely Notice of Motion and Motion to Alter or Amend was filed with the Court. The purpose of the Motion was that Counsel had been unable to speak with his client due to the ongoing lock up status at Lee Correctional Institution and counsel was scheduled for surgery and wanted to protect his client's ability to alter or amend the court's order as necessary.

Counsel has now reviewed the order and spoken with his client and is informed and believes that there is no necessity to alter or amend the court's order.

THEREFORE, based on counsel's Motion to Withdraw 59 (e), the Court dismisses the Motion for 59 (e) and as such the Court's Judgment entered on August 29, 2018 is hereby made final as of the date of this Order.

AND IT IS SO ORDERED.


 The Honorable William A. McKinnon
 Judge of the Sixteenth Judicial Circuit

January 15, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on June 16, 2011, the Grand Jurors of York County present upon their oath:

TRAFFICKING METHAMPHETAMINE

That on, about or between August 1, 2010 and February 27, 2011, in York County, South Carolina, the Defendant, Jason Alan Johnson AKA Convict, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of 100 grams or more of methamphetamine, as defined and otherwise limited in Sections 44-53-110, 44-53-210(b)(4), 44-53-210(d)(1), or 44-53-210(d)(2), all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976) as amended.

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2011 NOV 23 PM 12:59
DAVID J. ...
CLERK OF COURT
YORK COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

1154

WITNESSES

DEU / Allen

DOCKET NO. 2011-GS-46- 01752

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

June 16, Term 2011

I hereby appear in my own proper person and plead guilty to the within indictment or to

Note
Confession pursuant to Affidavit in McCarty
[Signature]

Defendant

THE STATE

vs.

JASON ALAN JOHNSON
AKA
CONVICT

Witness:
[Signature]
C.C.C. R.I.S. AND G.S.

[Signature]
Specialist

ACTION OF GRAND JURY
TRUE BILL

[Signature]
Foreperson of Grand Jury
6/16/11

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 1/27/2012

Indictment for

TRAFFICKING METHAMPHETAMINE

SC Code: §44-53-375
CDR Code: 0368

Jal

General Sessions Tracking Sheet Direct Indictment

Name: Jason Alan Johnson
AKA:
Addr:

DIRECT IND. NO# 2011GS4601752
Date of Arrest: February 27, 2011
Date of Offense: February 27, 2011
Date Rev by Clerk
Magistrate

SSN# [REDACTED]
Sex: M Race: W
DOB: [REDACTED]
DL# /

Counts: 01 Code: 0368

Traffic Meth.

Indictment # 2011GS4601752
Arresting Officer: Lee Allen
Arresting Agency:

Disposition Information

- 1. Transmitted to SOL & SCCA: *1-27-2012*
- 1. Disp Received by Clerk:
- 2. Date of Disposition:

- Disposition
- 1. Guilty Plea
 - 2. Trial - guilty
 - 3. Trial - not guilty
 - 4. Dism/Not Pros/Pros Ended Explain: _____
 - 5. Judicial Commitment Explain: _____
 - 6. Judicial Dismissal
 - 7. Remanded Explain: _____
 - 8. Dismissed at Prelim
 - 8. No Bill
 - 9. Failure to Appear Explain: _____
 - 10. Other Explain: _____

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 2011 NOV 23 PM 12:59

Judge: *2113 Alford* Court Reporter: *Wanda Nelson*
 Defense Atty: *Milla Brown* Solicitor: *J Cotton*
 Counts: *01* Code: *349* *Traffic Meth 28 gms more 3rd offense*
 Sentence: *20 yrs CFTS*