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NO DEFENDANT'S BRIEF
No Respondent's Brief Filed

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DONNELL LAKEITH DAVIS,

APPELLANT

APPELLATE CASE NO 2018-000858

RECORD ON APPEAL

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SC Court of Appeals

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State of South Carolina) Court of General Sessions
County of Lexington) Eleventh Judicial Circuit

State of South Carolina,) Transcript of Record
vs.) 2016-GS-32-00114
Donnell Lakeith Davis,)
Defendant.)

April 23rd - 24th, 2018
Lexington, South Carolina

B E F O R E:

The Honorable Eugene C. Griffith, Jr., Judge; and a Jury

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

Bradley P. Pogue, Assistant Solicitor
Lester McGill Bell, Jr., Assistant Solicitor

On behalf of the State of South Carolina

Benjamin A. Stitely, Esquire

On behalf of the Defendant

Stacy S. Johnson
Circuit Court Reporter

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1 (The following proceedings were held April 23, 2018,
2 beginning at 10:46 AM.)

3 **BAILIFF:** All rise. Court is back in session.

4 **THE COURT:** All right. Be seated.

5 All right, Mr. Pogue. Are you ready to call the
6 first case?

7 **MR. POGUE:** Yes, sir, Your Honor.

8 **THE COURT:** All right.

9 **MR. POGUE:** Thank you, Your Honor.

10 The State calls Indictment Number 2016-GS-32-00114,
11 the State of South Carolina versus Donnell Lakeith Davis,
12 indicted for distribution of methamphetamine.

13 **THE COURT:** All right.

14 All right. Ladies and gentlemen of the jury, I'm
15 gonna ask certain questions about this first case that's
16 been called. I'm going to give you some jury instructions,
17 I guess, and education as to what your job will be, but,
18 first and foremost, this indictment has been handed to me
19 by Assistant Solicitor Brad Pogue. He's representing the
20 State, along with some other attorneys and witnesses. The
21 indictment number is 16-GS-32, Indictment 114. This is a
22 document that the criminal justice system uses for the
23 State to tell someone who is accused of a crime what
24 they're accused of. It tells them what to be prepared to
25 come to court to respond to. It's not proof of anything.

1 It's merely the allegations the State says we can prove at
2 trial.

3 All right. The allegations contained here allege
4 that on March 11th of 2015 in Lexington County that
5 Mr. Davis did distribute or try to conspire to distribute
6 or possess with intent to distribute a controlled
7 substance, methamphetamine, in violation of the code
8 section 44-53-375. To those allegations Mr. Davis has
9 pled not guilty. Now that's where the case stands now.
10 So the purpose of our getting together today is to select
11 a jury that can hear this case and be fair and impartial
12 jurors.

13 So I'm gonna ask you questions and what I need you to
14 do is provide me yes or no answers. What I don't need is
15 in answer to does anyone know the lawyers and I know the
16 lawyer sitting over there and he's a lowdown scoundrel
17 because he did this, that and the other. I don't need your
18 opinion. Do you know the lawyers? Yes. Let me ask the
19 next question. Don't give me the explanation because then
20 the people sitting beside you go I wonder which lawyer
21 they're talking about that's a lowdown, dirty scoundrel.
22 So you understand I want my questions answered yes or no
23 because it just keeps everything simple. If I get to a
24 question and I say would that factor cause you not to be
25 fair and impartial and you say yes, then I'm gonna excuse

1 you for that trial.

2 Now understand this. There's civil court going on
3 downstairs. We're in a court of general sessions, which
4 is technically criminal court, so if you don't want to sit
5 on a criminal jury, I've got a place for you to sit. So
6 don't answer my questions in the negative thinking it's
7 gonna get you out of service. Again, I understand being a
8 juror's difficult, but I'm glad to have you. I need your
9 help.

10 So the first question regarding the State versus
11 Donnell Lakeith Davis, is any member of the jury panel
12 related by blood, marriage or close personal friends to
13 him?

14 Mr. Davis, please stand for me. Be seated.

15 Anybody? Would you, please, stand.

16 All right. I read the allegations that alleged that
17 an event happened on March 11th of 2015. Has any member of
18 the jury panel read anything, heard anything, social media
19 or otherwise, television, radio, newspaper, ever heard
20 anything about this case regarding Lexington County and
21 Donnell Lakeith Davis? Please, stand. No one's standing.

22 All right. Mr. Pogue, would you introduce the folks
23 at your table and then, likewise, Mr. Stitely, I'm gonna
24 come back to you and you introduce the folks at your table.

25 **MR. POGUE:** Thank you, Your Honor.

1 My name's Bradley Pogue. I'm an assistant solicitor
2 with the Eleventh Circuit Solicitor's Office. Seated to
3 my right -- or, excuse me, to my left, your right, is
4 Agent Merckle, Mike Merckle, with the Lexington County
5 Sheriff's Department and also the DEA Task Force, and
6 sitting next to him is Scott Purdy, also with the
7 Lexington County Sheriff's Department.

8 **THE COURT:** All right. Mr. Stitely, go ahead and
9 introduce yourself.

10 **MR. STITELY:** My name is Ben Stitely. My office is
11 right there on the corner; Williams, Stitely and Brink,
12 and I represent Mr. Davis.

13 **THE COURT:** All right. Ladies and gentlemen of the
14 jury, is any member of the jury panel related by blood,
15 marriage or close personal friends to any of those four
16 gentlemen just introduced? If so, please stand.

17 (Potential juror stands.)

18 **THE COURT:** Tell me your name, please, ma'am.

19 **POTENTIAL JUROR:** Leslie Weston.

20 **THE COURT:** And, ma'am, which one of these gentlemen
21 are you connected to?

22 **POTENTIAL JUROR:** Ben Stitely is married to my cousin.

23 **THE COURT:** Your cousin?

24 **POTENTIAL JUROR:** Yes, sir.

25 **THE COURT:** How distant of a cousin?

1 **POTENTIAL JUROR:** I know -- I know him quite well.

2 **THE COURT:** Okay. Now would the fact that Mr. Stitely
3 is involved in the case, would that create an issue for you
4 being fair and impartial? Because, like I told you, I've
5 got three other cases I'm gonna try, Judge McMahon has two.

6 **POTENTIAL JUROR:** Mostly likely, no, sir.

7 **THE COURT:** All right. I think I'm gonna stand you
8 aside for this trial, okay? So you stay there with me
9 because I promise I'm gonna come to the next, but you need
10 not answer any more questions on this case.

11 **POTENTIAL JUROR:** Okay. Got it. Thank you.

12 **THE COURT:** All right. Has any member of the jury
13 panel ever been represented by any of the attorneys just
14 introduced? If so, please stand. No one's standing.

15 All right. Potential witnesses in this case -- it
16 doesn't mean they're gonna be called, but they potentially
17 could be called, would be -- y'all met Officer Merckle.
18 Officer Purdy, Beverly Smith, Candy Kyzer.

19 And if you're in the courtroom, any of the witnesses
20 I call, please stand for me. Candy Kyzer, Javan Haygood,
21 Shana Sorrells, Amy Stephens, Jackie Davis, Kayla Davis.

22 Any member of the jury panel --

23 **MR. STITELY:** Ms. Davis is here, Your Honor.

24 **THE COURT:** All right. Ms. Davis is in the back.

25 Okay. Any member of the jury panel related by blood

1 or marriage or close personal friends to any of those
2 witnesses, please stand. No one's standing.

3 Any member of the jury panel or member of your
4 immediate family a member of any of the organizations
5 of which the primary focus would be the war on drugs,
6 citizens against violent crime, bikers against child abuse,
7 MADD mothers, SADD students, any organizations of that
8 type? If so, please stand.

9 (Potential juror stands.)

10 **THE COURT:** I've got one. Tell me your name, please,
11 sir.

12 **POTENTIAL JUROR:** Yes, sir. My name is Clark
13 Kirkland. I'm Juror Number 149 and I work for the South
14 Carolina Attorney General's Office and do those type of
15 cases.

16 **THE COURT:** And, Mr. Kirkland, would that affect your
17 ability to be fair and impartial in this case?

18 **POTENTIAL JUROR:** I don't believe so.

19 **THE COURT:** All right. Well, then I'm gonna stand
20 you aside for this -- you said don't believe or do believe
21 so?

22 **POTENTIAL JUROR:** I do not believe so. I think I can
23 be fair and impartial.

24 **THE COURT:** Okay. That's a proper answer then. I
25 just wanted to make sure I got which answer you gave, so

1 I'll keep you on this case.

2 Any member of the jury panel or member of your
3 immediate family employed in any capacity with the law
4 enforcement community? If so, please stand.

5 (Potential jurors stand.)

6 **POTENTIAL JUROR:** Susan Brantley, Juror Number 33.

7 My husband is in law enforcement and he's also a DRE
8 officer, drug recognition officer.

9 **THE COURT:** And, ma'am, what -- and who's he employed
10 by?

11 **POTENTIAL JUROR:** He's employed by USC.

12 **THE COURT:** South Carolina?

13 **POTENTIAL JUROR:** Yes, sir.

14 **THE COURT:** I'm sorry, Carolina?

15 **POTENTIAL JUROR:** Yeah, yeah.

16 **THE COURT:** Would the fact that your husband's
17 involved in law enforcement affect your ability to be fair
18 and impartial?

19 **POTENTIAL JUROR:** I'm sure it would.

20 **THE COURT:** It would?

21 **POTENTIAL JUROR:** Yes, sir.

22 **THE COURT:** Then I'm gonna send you on the list for
23 Judge McMahon, which will not involve any of that, so thank
24 you so much.

25 **POTENTIAL JUROR:** Yes, sir.

1 **THE COURT:** All right. Did y'all get her number?
2 I'm sorry I didn't call it out to you. I apologize.

3 All right. Ma'am in the black and pink, tell me your
4 name.

5 **POTENTIAL JUROR:** Tonya Brazier, Juror Number 35. My
6 daughter is a deputy for the Richland County Sheriff's
7 Department.

8 **THE COURT:** For Richland County?

9 **POTENTIAL JUROR:** Yes, sir.

10 **THE COURT:** Would that affect your ability to be fair
11 and impartial here?

12 **POTENTIAL JUROR:** No, sir.

13 **THE COURT:** Thank you so much.

14 All right. Ms. Hill, tell me your juror number again.

15 **POTENTIAL JUROR:** 121.

16 **THE COURT:** 121. Ms. Hill, who in your family is law
17 enforcement community?

18 **POTENTIAL JUROR:** My husband is the chief of police
19 for Wagener.

20 **THE COURT:** Of which town?

21 **POTENTIAL JUROR:** Wagener.

22 **THE COURT:** Wagener?

23 **POTENTIAL JUROR:** Aiken County.

24 **THE COURT:** Is that Wagener-Salley?

25 **POTENTIAL JUROR:** Yes.

1 **THE COURT:** Okay. Now would that affect your ability
2 to be fair and impartial in this case?

3 **POTENTIAL JUROR:** No, sir.

4 **THE COURT:** Okay. Thank you so much.

5 **THE CLERK:** Judge.

6 **THE COURT:** Oh, we've got one more. Yes, ma'am.

7 Please stand. I'm sorry.

8 **POTENTIAL JUROR:** I'm Juror Number 261.

9 **THE COURT:** And your name is?

10 **POTENTIAL JUROR:** Wendy Thompson.

11 **THE COURT:** Okay, Ms. Thompson. Who in your family
12 is in law enforcement?

13 **POTENTIAL JUROR:** My brother is an intercity of
14 Atlanta police officer.

15 **THE COURT:** So he's a -- over in Fulton County?

16 **POTENTIAL JUROR:** No. Well, yes.

17 **THE COURT:** Okay. Now would that affect your ability
18 to be fair in this case?

19 **POTENTIAL JUROR:** No, sir.

20 **THE COURT:** Okay. Thank you so much.

21 All right. Yes, sir. Please stand.

22 **POTENTIAL JUROR:** My wife works for Lexington County
23 Sheriff's Department.

24 **THE COURT:** Tell me your name.

25 **POTENTIAL JUROR:** Bernard Troutman.

1 **THE COURT:** Troutman. What does your spouse do for
2 Lexington County?

3 **POTENTIAL JUROR:** She handles forms and records in
4 the front part.

5 **THE COURT:** I think out of an abundance of caution
6 I'm gonna stand you aside for this trial and then perhaps
7 you'll be put on the list for the civil court downstairs
8 later this week, all right?

9 All right. I guess this is important. Judge McMahon
10 will ask a similar question. One thing that we do in the
11 jury trial system is we educate more or less what the
12 laws are and what the burden of proof is and these sort
13 of things. Television, social media creates a lot of
14 misinformation out there, but you as -- if you're picked
15 on a jury, you're gonna have to take an oath to accept the
16 law as instructed by the Court. I am the instructor of
17 the law because that's my job. Jurors answer questions of
18 fact. For instance, what color was the light, the traffic
19 light signal, when the event happened; did this driver have
20 a red light or a green light. That's a perfect example of
21 a question of fact. The judge would say if the person had
22 the green light, they had the right-of-way and they could
23 proceed with caution and due regard for others and all that
24 sort of stuff, and that's giving instructions on the law.
25 That's what the Courts do and the judges do. Juries answer

1 questions of fact.

2 Is any member of the jury not gonna be able to accept
3 an oath to accept the law as instructed by the Court even
4 if you have an understanding of something different? I
5 didn't know that was the law, I thought it was thus and so
6 because on Night Court that's what they said it was.
7 You've got to disregard your misunderstanding and accept
8 the law even if you disagree with it as I'm instructing it
9 because I'm required to instruct the law consistently with
10 the laws handed down by the General Assembly and by the
11 Supreme Court.

12 So is any member of the jury not gonna be able to
13 disregard or set aside any misunderstanding they may have
14 on what the law is and apply the law as instructed by the
15 Court? Is anyone not gonna be able to accept an oath to
16 that effect? If so, please stand. No one's standing.

17 Does any member of the jury panel know any reason
18 whatsoever they can't give both the State and Mr. Davis
19 a fair trial in this matter? Please stand. No one's
20 standing.

21 Anything else, gentlemen?

22 **MR. STITELY:** Nothing from the defense.

23 **MR. POGUE:** Nothing from the State, Your Honor.

24 **THE COURT:** All right. Ms. Counts, get me a list.

25 All right. Here's what's gonna happen next. The

1 computer is gonna generate a list from your number randomly
2 and Ms. Counts will call you up. Sometimes things in this
3 courtroom are hard to describe. When she calls you up, I
4 want y'all to come right to here and turn to look back
5 toward the other jurors and the lawyers and they've got to
6 decide whether they want to seat you or excuse you. And
7 it's -- when I was a lawyer, I did it with the gut. I kind
8 of like the looks of that person, I'll take them. It makes
9 no never mind. All of you will get a chance to serve on a
10 jury if you don't get to sit on this one, okay?

11 All right. Anyway, come here and stand and follow the
12 instructions of Ms. Counts.

13 Are you ready to go as soon as you get your list?

14 **THE CLERK:** Uh-huh.

15 **MR. POGUE:** Five and five?

16 **THE COURT:** Five and five.

17 All right. And once we get done with that, those
18 lucky folks will sit over here, I'll give them some
19 instructions, and then I'm gonna take forty of you randomly
20 and put you on a list and y'all have got to know you're on
21 the list because y'all will then call in tonight and/or
22 report to Judge McMahon's courtroom downstairs tomorrow
23 morning. The rest of you not lucky to get on either jury
24 will also call in and listen to the instructions of what to
25 do and when to come back. My plan and hope is this trial

1 will go forward tomorrow. I've got things this afternoon
2 unrelated to this case that I'm going to do. This trial
3 will take less than a day, so a day to try and it will be
4 over with and perhaps start another one Wednesday and maybe
5 one Thursday or Friday. Judge McMahon has the same hope.
6 He has two short trials. He wants to start one tomorrow
7 and it may go over into Wednesday and then he may need a
8 second jury panel on Thursday morning. So y'all are gonna
9 have to pay close attention to the recording when you call
10 in as to where you're supposed to be and when you're
11 supposed to be there.

12 All right. Are you ready?

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

14 **THE COURT:** All right. Ms. Counts is now in charge.
15 Y'all follow her instructions and I'm gonna go sit down and
16 be quiet.

17 **THE CLERK:** Juror Number 83, Timothy Essig.

18 (Whereupon, Timothy Essig, a white male, was called
19 forward.)

20 **THE CLERK:** What say for the State?

21 **MR. POGUE:** Please present Mr. Essig.

22 **THE CLERK:** What say for the defense?

23 **MR. STITELY:** Please swear Mr. Essig.

24 **THE CLERK:** If you'll have a seat in the jury box,
25 sir.

1 173, Sue Martinez.

2 (Whereupon, Sue Martinez, a white female, was called
3 forward.)

4 **THE CLERK:** What say for the State?

5 **MR. POGUE:** Please present Ms. Martinez.

6 **THE CLERK:** What say for the defense?

7 **MR. STITELY:** Please excuse the juror from the trial
8 of the case.

9 **THE CLERK:** If you'll return to your seat, ma'am.
10 132, Anne Hyer.

11 (Whereupon, Anne Hyer, a white female, was called
12 forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. POGUE:** Please present Ms. Hyer.

15 **THE CLERK:** What say for the defense?

16 **MR. STITELY:** Please swear Ms. Hyer.

17 **THE CLERK:** If you'll have a seat in the jury box,
18 ma'am.

19 Juror 145, Melissa Kates.

20 (Whereupon, Melissa Kates, a white female, was called
21 forward.)

22 **THE CLERK:** What say for the State?

23 **MR. POGUE:** Please present Ms. Kates.

24 **THE CLERK:** For the defense?

25 **MR. STITELY:** Please swear Ms. Kates.

1 **THE CLERK:** If you'll have a seat in the jury box,
2 ma'am.

3 Juror 142, Wayne Jensen.

4 (Whereupon, Wayne Jensen, a white male, was called
5 forward.)

6 **THE CLERK:** What say for the State?

7 **MR. POGUE:** Please present Mr. Jensen.

8 **THE CLERK:** What say for the defense?

9 **MR. STITELY:** Please swear Mr. Jensen.

10 **THE CLERK:** If you'll have a seat in the jury box,
11 sir.

12 Juror Number 65, Precious Cook.

13 (Whereupon, Precious Cook, a black female, was called
14 forward.)

15 **THE CLERK:** What say for the State?

16 **MR. POGUE:** Please present Ms. Cook.

17 **THE CLERK:** Clerk what say for the defense?

18 **MR. STITELY:** Please swear Ms. Cook.

19 **THE CLERK:** If you'll have a seat in the jury box,
20 ma'am.

21 Juror Number 146, Andrew Keese.

22 (Whereupon, Andrew Keese, a white male, was called
23 forward.)

24 **THE CLERK:** What say for the State?

25 **MR. POGUE:** Would you repeat the number, Madam Clerk?

1 **THE CLERK:** 146. What say for the State?

2 **MR. POGUE:** Please present Mr. Keese.

3 **THE CLERK:** What say for the defense?

4 **MR. STITELY:** Please swear Mr. Keese.

5 **THE CLERK:** If you'll have a seat in the jury box,
6 sir.

7 Juror Number 211, Jeremy Pratt.

8 (Whereupon, Jeremy Pratt, a white male, was called
9 forward.)

10 **THE CLERK:** What say for the State?

11 **MR. POGUE:** Please excuse Mr. Pratt for the purposes
12 of this case.

13 **THE CLERK:** If you'll return to your seat, sir.

14 Juror Number 149, Clark Kirkland.

15 (Whereupon, Clark Kirkland, a white male, was called
16 forward.)

17 **THE CLERK:** What say for the State?

18 **MR. POGUE:** Please present Mr. Kirkland.

19 **THE CLERK:** What say for the defense?

20 **MR. STITELY:** Please excuse the juror from the trial
21 of the case.

22 **THE CLERK:** Return to your seat, please.

23 Juror Number 48, Caine Cangialosi.

24 (Whereupon, Caine Cangialosi, a white male, was called
25 forward.)

1 **THE CLERK:** What say for the State?

2 **MR. POGUE:** Please excuse the juror for the purposes
3 of this case.

4 **THE CLERK:** If you'll return to your seat, sir.
5 Juror Number 158, Nathan Lawrence.

6 (Whereupon, Nathan Lawrence, a white male, was called
7 forward.)

8 **THE CLERK:** What say for the State?

9 **MR. POGUE:** Please present Mr. Lawrence.

10 **THE CLERK:** What say for the defense?

11 **MR. STITELY:** Please excuse Mr. Lawrence from the
12 trial of the case.

13 **THE CLERK:** If you'll return to your seat, sir.
14 Juror Number 80, Partha Dutta.

15 (Whereupon, Partha Dutta, an Asian male, was called
16 forward.)

17 **THE CLERK:** What say for the State?

18 **MR. POGUE:** Please present Mr. Dutta.

19 **THE CLERK:** What say for the defense?

20 **MR. STITELY:** Please swear Mr. Dutta.

21 **THE CLERK:** If you'll have a seat in the jury box,
22 sir.

23 Juror Number 87, Roderick Fitzgerald.

24 (Whereupon, Roderick Fitzgerald, a black male, was
25 called forward.)

1 **THE CLERK:** What say for the State?

2 **MR. POGUE:** Please present Mr. Fitzgerald.

3 **THE CLERK:** What say for the defense?

4 **MR. STITELY:** Please swear Mr. Fitzgerald.

5 **THE CLERK:** If you'll have a seat in the jury box,
6 please, sir.

7 Juror Number 7, Alexander Anderson.

8 (Whereupon, Alexander Anderson, a white male, was
9 called forward.)

10 **THE CLERK:** What say for the State?

11 **MR. POGUE:** Please present Mr. Anderson.

12 **THE CLERK:** What say for the defense?

13 **MR. STITELY:** Please swear Mr. Anderson.

14 **THE CLERK:** If you'll have a seat in the jury box,
15 please, sir.

16 Juror Number 140, Jason Jeffers.

17 (Whereupon, Jason Jeffers, a white male, was called
18 forward.)

19 **THE CLERK:** What say for the State?

20 **MR. POGUE:** Please present Mr. Jeffers.

21 **THE CLERK:** What say for the defense?

22 **MR. STITELY:** Please swear Mr. Jeffers.

23 **THE CLERK:** If you'll have a seat in the jury box,
24 sir.

25 Juror Number 163, Ladonna Lorick.

1 (Whereupon, Ladonna Lorick, a white female, was called
2 forward.)

3 **THE CLERK:** What say for the State?

4 **MR. POGUE:** Please present Ms. Lorick.

5 **THE CLERK:** What say for the defense?

6 **MR. STITELY:** Please swear Ms. Lorick.

7 **THE CLERK:** If you'll have a seat in the jury box,
8 ma'am.

9 Juror Number 203, Cynthia Pace.

10 (Whereupon, Cynthia Pace, a white female, was called
11 forward.)

12 **THE CLERK:** What say for the State?

13 **MR. POGUE:** Please present Ms. Pace.

14 **THE CLERK:** What say for the defense?

15 **MR. STITELY:** Please excuse Ms. Pace from the trial
16 of the case.

17 **THE CLERK:** If you'll return to your seat, ma'am.

18 Juror Number 136, Kenneth James.

19 (Whereupon, Kenneth James, a white male, was called
20 forward.)

21 **THE CLERK:** What say for the State?

22 **MR. POGUE:** Please present Mr. James.

23 **THE CLERK:** What say for the defense?

24 **MR. STITELY:** Please swear Mr. James.

25 **THE CLERK:** If you'll have a seat in the jury box,

1 please, sir.

2 One?

3 **THE COURT:** Just one alternate, please.

4 **THE CLERK:** Juror Number 189, Derrick Moore.

5 (Whereupon, Derrick Moore, a black male, was called
6 forward.)

7 **THE CLERK:** What say for the State?

8 **MR. POGUE:** Please present Mr. Moore.

9 **THE CLERK:** What say for the defense?

10 **MR. STITELY:** Please swear Mr. Moore.

11 **THE CLERK:** If you'll have a seat in the jury box,
12 please, sir.

13 **THE COURT:** All right, gentlemen. Are there any
14 matters of law that the Court needs to take up regarding
15 the selection process employed or the composition of the
16 jury?

17 **MR. STITELY:** None from the defense.

18 **MR. POGUE:** None from the State, Your Honor.

19 **THE COURT:** All right.

20 All right, folks. I'm gonna talk to y'all and get
21 y'all on your way. I talked to the lawyers earlier. Can
22 y'all be in the jury room tomorrow morning at 9:30? What
23 the process is, is y'all will report to a room downstairs.

24 Dee, are you gonna show it to them?

25 **BAILIFF:** Yes, sir.

1 **THE COURT:** All right.

2 Y'all report to a room downstairs and they kind of
3 bring you all up in the elevator at the same time and
4 then the jury room is right back in this corner of the
5 courthouse. If y'all get here at 9:15, 9:20, somewhere
6 along in there, and get in that room, they'll get you up
7 here at 9:30 or 9:40 or somewhere along in there and we'll
8 get started, all right?

9 Now, importantly, y'all have got a case to hear. I
10 want you to remember this. Everything you need to decide
11 the case that you need to be presented to consider on the
12 issue of the question of fact, you'll hear in this
13 courtroom all together. We're not gonna piecemeal it.
14 We're not gonna talk to some of you at one time and some
15 of you a different time; thus, I don't want y'all talking
16 about the case until you've heard everything. We should
17 get it done tomorrow, start to finish, unless something
18 unforeseen happens:

19 Now, importantly, y'all get to hear the witnesses
20 from the witness stand right there. And this is my court
21 reporter. She takes down everything we're saying, so
22 y'all get to hear it and see it all at the same time as
23 one group, okay? You get to hear how people say things,
24 how they respond to questions, their voice inflections,
25 their body language, whatever, all of the above. What you

1 need to decide the case you're gonna get in the courtroom
2 under my supervision and on my record and not on Facebook
3 or Instagram or television or any other way of gathering
4 information which a lot of people utilize these days and
5 times. So I'm gonna ask you to please don't talk to
6 anybody about the case. Tell any of your family members
7 yeah, I'm on the jury, I really don't know a whole lot
8 about it other than the name of the case. Don't even tell
9 them the name of the case. There will be several cases
10 going on. Don't put on Facebook I'm in a jury trial, I'm
11 on a jury, because then you're inviting yourself into a
12 conversation; well, what is the case about, the judge
13 said don't talk about it and here you go, you're already
14 talking about it. I just don't want that, okay? Confine
15 your conversation about the case with each other at the
16 end. Until then, talk about the nice rainy day we're
17 getting today and how pretty the weekend was, whatever
18 your hobbies are, where you go church, what kind of car
19 you drive, anything but the case, okay?

20 So I'll see y'all in the morning about 9:30. You're
21 gonna report downstairs. My bailiffs will show you where
22 to go. They're gonna take y'all out and give you a tour
23 of how to get to where you need to be in the morning.
24 Y'all need not call back tonight, just report to the
25 courthouse in the morning, okay?

1 Take them away.

2 (Whereupon, the jury was excused for the day at
3 11:14 AM.)

4 **THE COURT:** All right. Y'all can sit tight because
5 I've got to pull forty from this group to come in and call
6 and I've got to make sure they understand.

7 (Pause in proceedings.)

8 **THE COURT:** All right. Are we ready to -- have we
9 got a pretrial motion of some type?

10 **MR. STITELY:** Judge, just a couple of things that
11 need to be put on the record and then I might have two
12 motions.

13 **THE COURT:** All right. And, for the record, the
14 jury's gone that's hearing this case, they've been
15 departed, and the rest -- the balance of the panel is also
16 gone. It's just Mr. Davis, the lawyers, and the officers
17 from Lexington County.

18 Are you ready to go, Mr. Pogue?

19 **MR. POGUE:** Yes, sir, Your Honor.

20 **THE COURT:** All right. Mr. Stitely, it's your motion.

21 **MR. STITELY:** Judge, just as far as -- for
22 recordkeeping sake, we discussed this case pretrial and
23 the State has a photo lineup. We're not objecting to the
24 photo lineup. They had some comment about some statements
25 that are made on the video. We're not gonna be objecting

1 to any statements made on the video either. I think that
2 would make both a Denno and a Biggers hearing unnecessary.

3 **MR. POGUE:** Yeah, that's correct, Your Honor.

4 Just to clarify, they're not alleging any unduly
5 suggestive characteristics of the photo lineup and they
6 agree that it comports with Neil versus Biggers, as well
7 as Jackson v. Denno with regard to the statements that are
8 made on the tape.

9 **THE COURT:** All right. So there will be no Biggers
10 or Jackson v. Denno issues and the video is very short I'm
11 told?

12 **MR. STITELY:** A couple of minutes long.

13 **THE COURT:** Very well.

14 Okay. Those two issues are agreed to as not gonna be
15 questions for the Court to answer and we'll move forward.

16 **MR. POGUE:** And, Your Honor, this is just for my sake
17 in regards to scheduling of witnesses. I don't know if
18 they're going to be challenging the chain of custody. If
19 I need to have those witnesses up here, I'll have them up
20 here. I just -- I'd rather not bring them up here if he
21 was going to stipulate.

22 **MR. STITELY:** Judge, I'm not gonna stipulate to the
23 chain, but I think we can probably deal with that as we're
24 going.

25 **THE COURT:** Okay. Not stipulated.

1 Okay. Good enough.

2 **MR. STITELY:** I do have one -- I don't want to call
3 it a motion, but this case is a couple years old, and I
4 just got the case recently. There's been a number of
5 motions, a number of letters filed on behalf of Mr. Davis
6 regarding his tenure in the county waiting on trial. I
7 would say that since I got it, and Mr. Pogue said he'd put
8 it up right a way and he's done that, so I would put on
9 the record that if it was not tried for some reason out
10 of the blue he would have a speedy trial argument that
11 I would be making; otherwise, I am not counsel on any
12 previous filings and I don't think a formal motion to
13 dismiss was ever filed. I think it would be rectified by
14 his trial as long as we go forward this week.

15 **THE COURT:** We're going forward this week, all right?

16 **MR. STITELY:** Thank you.

17 **MR. POGUE:** Thank you, Your Honor.

18 **THE COURT:** All right.

19 **MR. STITELY:** The only other thing I have, Judge, is
20 a motion to suppress. It's kind of interesting, but we
21 can handle that -- I don't think I actually need any
22 witnesses other than maybe the officers who are a party
23 to it. It does have to do with their CI, but I don't
24 think we need him for it. I don't know if the solicitor
25 is okay with going forward without him.

1 **THE COURT:** Any problem with that?

2 **MR. POGUE:** We have the CI in the other room.

3 **MR. STITELY:** Okay.

4 **THE COURT:** He's here. Okay.

5 **MR. STITELY:** Judge, this is actually gonna be a
6 motion to suppress and it's kind of interesting because
7 I've never actually gotten this document in this case and
8 I'll let the Court see my copy. I actually have a --
9 okay. It's the body of how they determined to use this
10 individual as a confidential informant. It's a two-page
11 document that's signed by the informant, as well as Officer
12 Merckle and someone else who I can't read their signature.
13 The interesting thing about it, Judge, is it's a document
14 that was prepared for his service to do buys or whatever
15 for them. It actually expressly limits the term to
16 twelve months to provide assistance to law enforcement.
17 It's signed -- it's not notarized, but it's signed by all
18 meaningful parties in August of '13. This transaction
19 happens eighteen months later outside of this contract.

20 Why I think that's interesting, Judge, is the statute
21 in talking about what is required to go forward to get a
22 warrant based on CI information says that an affidavit
23 must be accompanying from the CI that is determined to be
24 reliable by the magistrate. Part of what this document
25 does is it kind of confirms how they use this individual

1 because obviously he has a criminal record and some other
2 stuff and it says he's a paid informant.

3 Judge, I think that this transaction between the
4 sheriff's department, which I guess is the hand of the
5 State in this case, and their CI, was for a very specific
6 term to do business and that's what affords them the
7 opportunity to use him to go forward with a reliable
8 confidential informant as contemplated by the statute.
9 Once we exit the term of that contract, we're no longer
10 bound, and I think we should have a motion to suppress
11 based on the fact that he is outside those bounds and any
12 works done are outside of the scope of his employment and,
13 thus, would not be reliable as defined under the statute.

14 May I pass it up just so Your Honor can see it?

15 **THE COURT:** All right.

16 How does him acting outside scope of promise to be
17 an informant as opposed to not within the bounds of a
18 contract, how does that make him unreliable on its face?
19 It's still the same guy.

20 **MR. STITELY:** Well, actually I think it's -- you know,
21 that's actually an interesting question because the way it
22 talks about using them, and I guess we ultimately have to
23 go forward, there's a case that's dealing with casinos.
24 I'm sorry. There might be a front page, Judge, that I
25 missed, but that's it. That's what I'm talking about, the

1 twelve month one.

2 **THE COURT:** Okay.

3 **MR. STITELY:** It's actually one from a casino case
4 and I could pull the cite, but pretty much what it goes
5 to say is in that case SLED was using CIs and it was a
6 requirement that they had more than just a CI who was
7 reliable, and they actually used the word "reliable",
8 because the statute contemplates a reliable CI as someone
9 who has done a -- sworn something in front of a magistrate
10 and the magistrate in order to get to probable cause says
11 I believe this CI to be reliable, so I can use his
12 information like I would a law enforcement officer's
13 information on the signing of an arrest warrant, search
14 warrant, wiretap, whatever else you'd want to do.

15 So in this case or in cases otherwise, the County went
16 ahead and contracted their CI, included a CI contract with
17 his affidavit about what he's doing so they can provide it
18 to a magistrate to say look, this is a reliable CI that we
19 can rely on his information to get probable cause.

20 **THE COURT:** All right. Now are you representing to me
21 that you believe because he signed this contract and the
22 contract was notarized --

23 **MR. STITELY:** No, it wasn't.

24 **THE COURT:** -- that was an attempt to create him
25 reliability or he's still got to do proper and good work

1 to be reliable in my opinion that's outside the contract?

2 **MR. STITELY:** I don't disagree with you. I think
3 that the statute dealing with CIs and the case law
4 contemplates the scenario where you can present them as
5 a, quote, reliable informant to a magistrate to rely on
6 their testimony like you would a sworn officer.

7 **THE COURT:** Right. I agree with that. This contract
8 doesn't make him reliable in and of itself.

9 **MR. STITELY:** So I would say that any works he does
10 without some kind of proving would -- barring a showing
11 that the police actually did something independently, the
12 warrant itself is gonna have to be dismissed is gonna be
13 my argument on a lack of reliable information.

14 **THE COURT:** All right. I'll hear from Mr. Pogue on
15 that.

16 **MR. POGUE:** Your Honor, I'm not sure if I'm exactly
17 following Mr. Stitely's argument, but I'm not familiar
18 with any case law whatsoever that says that you have to
19 have a written contract within the bounds of the terms
20 of -- the time limit within that contract to be deemed
21 reliable for purposes of issuing an arrest warrant. I
22 believe that he's conducted controlled buys before
23 Mr. Davis and after Mr. Davis for separate defendants,
24 Your Honor. This was somebody that they were intimately
25 familiar with and had deemed extremely reliable in their

1 law enforcement experience. And, in fact, in the contract
2 it even says that, you know, we reserve the right to extend
3 your contract, which they obviously did, Your Honor. I
4 believe, you know, it was all the way up through 2016 was
5 -- you know, was the last one, so.

6 **THE COURT:** All right. I think y'all are singing out
7 of the same hymn book, but singing it different ways.

8 Mr. Stitely, do you want them to present to me
9 in-camera testimony as to what created the reliability for
10 this informant for the magistrate?

11 **MR. STITELY:** I think as long as I have the right to
12 kind of question him about all the things he does for the
13 sheriff's department, that would be the --

14 **THE COURT:** I think you do.

15 **MR. STITELY:** And really mainly the motion, just to
16 protect it, I envision in the way I read this reliable
17 informant stuff, and Mr. Davis is very keen on this issue,
18 is there seems to be a way, I would call it almost an
19 end-around, where you can get the Court to certify someone
20 as reliable, the Court being a magistrate, and then use
21 their information as a reliable source, and I just want to
22 make sure that I'm pretty much open on cross to go down
23 whatever path I want with this guy and his history with
24 law enforcement.

25 **THE COURT:** I think you've got that. You've got

1 that. They've got to present that he's done this and that
2 and the other -- other cases; the information's been good
3 or bad. If it's good, he's been reliable; if it's been
4 bad, he's unreliable or they wouldn't keep using him.

5 **MR. POGUE:** Your Honor, I certainly believe that
6 Mr. Stitely has the right to explore whatever biases that
7 the confidential informant, you know, may be alleged to
8 have. The only thing I would say as a caveat is I -- you
9 know as long as cross-examination doesn't involve the
10 accusations of things that there's no good faith basis
11 whatsoever to have asked. Do you see what I'm trying to
12 say?

13 **MR. STITELY:** That's fair.

14 **THE COURT:** I agree with you. That's a -- I'm gonna
15 call this a motion in limine.

16 **MR. POGUE:** Or specific cases upon which they don't
17 -- there's no foundation to ask the question.

18 **MR. STITELY:** I wouldn't know any of the specific
19 cases.

20 **THE COURT:** All right. I'm gonna consider this a
21 motion in limine that we're gonna be looking -- you're
22 looking for the reliability posture and you're gonna have
23 some freedom on cross-examination and we'll go forward like
24 a normal case as to where's the information coming from to
25 what quality is it, and I understand. Okay. So that's

1 fair enough.

2 Anything else?

3 **MR. STITELY:** That's all I have today, Judge.

4 **THE COURT:** Okay. Fair enough.

5 **MR. POGUE:** That's all.

6 **THE COURT:** Y'all will be ready to go in the morning,
7 right?

8 **MR. STITELY:** Yes, sir.

9 **MR. POGUE:** Your Honor, we can cover in the morning
10 really quickly as well, I'll go back through -- I'm gonna
11 run the confidential informant's rap sheet and get a more
12 recent one for that one, as well as their one defense
13 witness and the defendant's, and we can just -- if you
14 want to do it beforehand, talk about potential convictions.

15 **MR. STITELY:** We can talk about that real quick.
16 Judge, he does have prior drug offense that, I believe,
17 would be relevant conduct as far as saying he has a felony
18 conviction if he was to testify.

19 **THE COURT:** Okay. Fair enough.

20 And then you're gonna give the CI and the defense
21 witness's potential background checks?

22 **MR. POGUE:** Correct.

23 **THE COURT:** Fair enough. All right.

24 **MR. STITELY:** That's all we've got for today, Judge.

25 **MR. POGUE:** Thank you, Judge.

1 What time in the morning, 9:30?

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

3 (Whereupon, the proceedings were concluded for
4 April 23, 2018, at 11:36 AM.)

5 (The following proceedings were held April 24, 2018,
6 beginning at 9:40 AM.)

7 **BAILIFF:** All rise. Court is now in session. The
8 Honorable Judge Griffith is presiding.

9 **THE COURT:** Good morning.

10 All right. Be seated.

11 Are y'all good to go?

12 **MR. STITELY:** I think before you bring in the jury he
13 wants to go over a couple of things.

14 **THE COURT:** Okay.

15 **MR. POGUE:** Before they come in, I just wanted to make
16 sure that we've got this working properly, Your Honor.

17 **MR. STITELY:** I'm okay, Judge.

18 **MR. POGUE:** I think we're good, Judge.

19 **THE COURT:** Okay.

20 All right, Mr. Pogue. What have we got?

21 **MR. POGUE:** Your Honor, I just wanted to go ahead and
22 go over the -- since the trial matter is not gonna take
23 too very long, the record for impeachment should the
24 Defendant, Mr. Davis, be inclined to testify, as well as
25 the sole defense witness other than the Defendant, Kayla

1 Humphrey Davis, her record for impeachment, just to make
2 sure that we're all on the same page in regard to that.

3 **THE COURT:** Are you on the same page?

4 **MR. STITELY:** We are.

5 **THE COURT:** You've seen the records?

6 **MR. STITELY:** Judge, it's a YOA grand larceny and a
7 false info charge.

8 **THE COURT:** Yeah, he gets those.

9 **MR. POGUE:** There's two grand larcenies from 2008 and
10 two false infos with separate incidents in 2013.

11 **THE COURT:** Fair game.

12 **MR. POGUE:** For the Defendant.

13 **THE COURT:** Okay. What about the witness?

14 **MR. POGUE:** For Ms. Humphrey, there is a 2015 -- or
15 two 2015 breach of fraud with intent, magistrate level
16 offenses, two guilties. There were two forgeries, which I
17 was the prosecutor on those two forgery charge, that was
18 pled in general sessions. She got three years on those
19 and those were in 2016 and then there was an additional
20 giving false info to police charge, Your Honor, from 2016
21 that actually arose -- it was initially charged as an
22 obstruction of justice and it pertained to this case
23 because she was charged with obstruction and harboring
24 the Defendant in Orangeburg. So that charge, should she
25 testify, I believe would be grounds for --

1 **MR. STITELY:** It's her record, Judge.

2 **THE COURT:** Okay. Fair game on all of it.

3 **MR. POGUE:** And I think that's it as far as
4 housekeeping matters, Your Honor.

5 **THE COURT:** Okay. Good. So those are fair game if
6 either of them testify.

7 All right. Anything from you, Mr. Stitely?

8 **MR. STITELY:** No, Judge. We're ready.

9 **THE COURT:** All right. Bring in the jury, please.

10 (Whereupon, the jury enter the courtroom at 9:46 AM.)

11 **THE COURT:** All right, folks. Sorry for a little bit
12 of a delay. Part of it was my fault. I got caught up in
13 traffic.

14 Anyway, we're ready to go. My normal practice is I
15 pick a foreperson about halfway through the trial, so I
16 guess just before lunch I'll figure out which one of y'all
17 looks like the best foreperson. That person presides over
18 the deliberations. They don't get extra candy.

19 Anyway, I eat a little piece of hard candy -- most of
20 the time because Ms. Frick, she's my normal clerk up here
21 in the trial court, she was -- yesterday had to attend to
22 some stuff and so she wasn't here, but she did provide my
23 candy up there as she does regularly. But I provide some
24 for the jurors because I like to eat a piece. So if y'all
25 want a piece of hard candy, enjoy yourself because Lauren

1 put it over here for you.

2 In any event, do you want me to pass up? Because
3 once the jurors pick up on it, when we take a break they
4 can get one going out and get one coming in. Just don't
5 leave your trash in your seat, okay?

6 So a couple of ground rules. Like I told you
7 yesterday, you can't discuss the case during breaks. Now
8 y'all are gonna get to answer questions of fact. Y'all
9 are the judges of the facts, I'm the judge of the law.
10 Part of my job is, and I try to explain this so it makes
11 sense to you, is I've never heard this case before, it's
12 my first time through. The prosecutor knows it and he's
13 got to call witnesses and he's got to try to prove the
14 case beyond a reasonable doubt, so he goes first. The
15 defense team, they don't have anything to prove or
16 disprove. They pled not guilty. They can remain silent
17 and they can wait and see what the State's got and what
18 they testify to before they decide whether they're gonna
19 put up anything. Most of the time they do that. They sit
20 there and wait and see. If they want to put up testimony,
21 they can, but since they're defending they can decide like
22 during a ball game how did the other team do and make a
23 decision then. That's their decision and so if the defense
24 team makes a strategic decision, that's up to them. The
25 State's got their decisions to make because they've to

1 prove the case.

2 Now if something comes up and one of the lawyers
3 says Judge, I object, that's some -- under 403 that's not
4 allowed, well, that's code for me of, you know, I want a
5 ruling on this question before it's answered because once
6 it's answered, if he shouldn't have said it, then maybe it
7 wasn't allowed under the rules of evidence, then how am I
8 gonna fix that when I've got to explain it to you? Well,
9 it's easier when the lawyer jumps up and says I've got an
10 objection or matter of law or what's the question and
11 what's the answer and what's the next question, I've got to
12 hear a little more because I haven't heard what they think
13 is coming because they know what's coming and I don't.

14 So it's kind of like the opposite of a baseball game,
15 a basketball game, a football game where you go back and
16 look at the play and see whether the pass was caught
17 inbounds or out of bounds, you can go back and look and
18 then make the right call. Well, I've got to do it in
19 reverse order. I've got to kind of make the instant replay
20 first, run it through one time and say okay, allow or
21 disallow. I make a call legally as the judge is allowed.
22 Then y'all aren't in here to hear that presentation, y'all
23 come back in and depending on which way I rule, they go
24 on with their questions. So while I'm making my legal
25 decisions, I won't need y'all in here, so I'll say y'all

1 take a break, step in the jury room, stretch your legs or
2 whatever.

3 This case is gonna be over today, so there's not
4 gonna be many of those issues, okay? In the longer trials,
5 that kind of gets kind of cumbersome sometimes because --
6 anyway, the same goes for y'all now. I won't be in the
7 jury room with you -- has that microphone come down or
8 something? Did that used to be that high?

9 **MR. POGUE:** I believe it's been dropped down some,
10 Judge.

11 **THE COURT:** I think so, too. It used to not be in my
12 eyesight. I'm kind of dodging it here. That's weird.
13 Sully can fix that.

14 Anyway, now when y'all go to do y'all's judging,
15 judging the facts, y'all are gonna discuss the testimony;
16 well, this witness said that or that witness said this or
17 this piece of evidence, whatever, y'all get to discuss all
18 of that in the jury room without my help. So when you do
19 your job, I won't be in there helping you; when I do my
20 job, y'all won't be in here helping me. We do our jobs
21 separately, but we work together. So between y'all as the
22 judges of the facts and me as the judge of the law, we work
23 together.

24 So when we need a break, we'll tell the lawyers, okay?
25 So if y'all need a break, y'all get word to me and we'll

1 take a break. Most times the witnesses break up the case
2 pretty easily and we'll take breaks then.

3 So understanding that the State goes first, they're
4 gonna make some opening comments about this is what we
5 think the case will prove, Mr. Stitely goes second, and
6 it will proceed on like that. So you can't discuss the
7 testimony as we go. You wait until the end with my
8 instructions on the law. Keep an open mind.

9 I didn't bring note pads out here today since it's
10 such a short case. If anybody wants a notepad at the first
11 break, get it then, okay? So if y'all want a notepad, get
12 it at the break. If you don't want one, that's fine, too,
13 but there should be some in the jury room. Aren't there?

14 **BAILIFF:** I think so.

15 **THE COURT:** Okay. Good deal.

16 All right. I'm gonna sit down. Y'all stand and
17 Ms. Frick will place you under oath and then they'll give
18 their opening comments.

19 **THE CLERK:** Please stand and raise your right hand.

20 (Whereupon, the jury was duly sworn by the Clerk of
21 Court.)

22 **THE CLERK:** Be seated, please.

23 **THE COURT:** All right, Mr. Pogue. No, Mr. Bell.

24 **MR. BELL:** Thank you, Your Honor. May it please the
25 Court?

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

2 **MR. BELL:** Mr. Stitely.

3 Good morning, my name is Lester McGill Bell, Junior.
4 Unfortunately, my parents showed some mercy and just called
5 me Gill. I was downstairs handling some cases yesterday
6 and so I didn't get to introduce myself. I just wanted to
7 let you know who I am and why I'm standing in front of you.
8 I'm also an assistant solicitor here in Lexington County.
9 Usually I'm relegated to just carrying Mr. Pogue's books
10 around, so I'm happy to have the opportunity to speak to
11 y'all today.

12 On March 11th of 2015, Donnell Davis sold
13 methamphetamine here in Lexington County. Now the thing
14 about meth or methamphetamine is that it's illegal and
15 it's dangerous, so it's not sold on the open market. You
16 can't go to Wal-Mart to buy it, you can't get it off of
17 Amazon with prime shipping; yet it's sold all around us in
18 the shadows. Sometimes it's happening right in front of
19 our face and we simply don't see it. How then was law
20 enforcement able to catch him in the act? Even more, how
21 does the State intend to prove it beyond a reasonable
22 doubt? They're sure not gonna send me to go buy meth.
23 Most of the citizens in this county wouldn't be able to go
24 buy meth because you don't blend into those shadows, you're
25 not equipped with that knowledge, that background, that

1 skill set to blend in with those shadows. There's an old
2 saying; if you have to put on a play in hell, you can't
3 expect angels for actors.

4 You see, law enforcement utilizes what are called
5 CIs, confidential informants, and law enforcement is
6 gonna take the stand and they're gonna tell you all about
7 that process and how they recruit them and how they utilize
8 them. Typically, confidential informants have a criminal
9 history. They may have even sold drugs themselves in their
10 past. Why in the world would law enforcement shake hands
11 with criminals? Because it's that criminal history, that
12 resume, if you will, that enables them to walk the walk and
13 talk the talk in those shadows. It let's law enforcement
14 to get into those dark places to ferret out crime where
15 they otherwise couldn't.

16 In this particular case, law enforcement's gonna tell
17 you they utilized a confidential informant to buy meth from
18 Donnell Davis. That confidential informant is gonna take
19 that stand. His face isn't gonna be blurred, his voice
20 isn't gonna be distorted. He's gonna sit there in front of
21 you and the Bible that he's gonna be asked to swear upon
22 and he's gonna tell you yeah, I have criminal convictions,
23 I used to sell drugs, but I realized I was gonna end up
24 dead or in prison and so I decided to help law enforcement
25 instead. He's gonna tell you about meeting up with law

1 enforcement, going to meet Donnell Davis, giving Donnell
2 Davis a hundred dollars of documented funds in exchange for
3 meth. Again, from Donnell Davis.

4 Now a lot of times it can be hard for individuals to
5 want to take the word of someone with a criminal history,
6 and we understand that, and that's why we make them wear a
7 wire. So not only are you gonna be hearing law enforcement
8 tell you what happened, not only will you hear what the
9 confidential informant will tell you happened, but you're
10 gonna get to see it with your own eyes and hear it with
11 your own ears because of that wire he was wearing.

12 Distribution of methamphetamine is why we're here.
13 Distribution under the law simply means the transfer of an
14 item. It doesn't have to involve money. Selling drugs
15 for free doesn't make you any less guilty. The transfer
16 is what matters. We have to prove it's methamphetamine.
17 We're gonna put a chemist on the stand from SLED. She's
18 gonna tell you that she ran those tests on the substance
19 that Donnell Davis gave the CI and it is, in fact,
20 methamphetamine.

21 Another point of law that I want to mention to you
22 is reasonable doubt. You see, reasonable doubt does not
23 mean beyond all doubt. It simply means that once you've
24 heard all of the evidence you're firmly convinced of the
25 Defendant's guilt. So how do you go about that process?

1 How do you analyze evidence? Well, each one of you were
2 placed on this jury panel because we believed your
3 background, your life experiences, your employment
4 equipped you with good common sense and it's that common
5 sense that we're gonna ask you to rely upon. It's one
6 of our most important attributes as humans.

7 Now common sense is one of those words we use all
8 the time. What exactly does it mean? I want to tell you
9 a real quick story about how I learned about common sense
10 and then I'll let you get on your way. My granddad used
11 to tell me this when I was a little fellow. He was out
12 of Cedar Swamp, which is right outside of Kingstree in
13 Williamsburg, and he said that one day he was driving to
14 the market in Kingstree. All of a sudden he heard a great
15 pow. He started pulling that truck over to the side of
16 the road and realizing he had popped a tire, no power
17 steering, he's struggling against it. Finally he gets it
18 to come to rest at the side of the road. He looks around
19 and catches his breath. Huh. He's parked beside the
20 Williamsburg County Mental Institution. He doesn't think
21 much of it. He get out, pops off the lug nuts off the bad
22 tire, puts them in a spit cup he had in his car and sets
23 them aside so he can get them later. He pulls off the bad
24 tire and throws on a spare. In his haste, he reaches over
25 for that spit cup, hits it, sending those lug nuts off

1 into oblivion never to be seen again as the story went.
2 He starts cussing because that's what he tended to do and
3 after sitting there and cussing for a little bit he hears
4 huh, huh, hum, a man clear his throat, looks up and he
5 sees one of those mental institution patients leaning up
6 against the fence watching the whole thing go down. That
7 patient says, you know, sir, if you took one of your good
8 lug nuts off of each of your three good tires, use those
9 three lug nuts on your bad tire, that at least gives you
10 enough lug nuts on each tire to get to town and get a new
11 set of lug nuts. Granddad thought for a moment and he
12 said darn, that's pretty smart. Say, why in the world
13 are you in a mental institution? Without skipping a beat,
14 that man piped back and said sir, I'm crazy, I ain't
15 stupid. That's common sense. Whether you're an astronaut
16 or a farmer or a mental institution patient, you can still
17 have your good common sense and you should rely upon it.

18 At the end of this trial when you've heard law
19 enforcement, you've heard the confidential informant,
20 you've seen the video yourself, I'm firmly convinced that
21 your common sense will tell you Donnell Davis is guilty of
22 distributing meth in Lexington County.

23 **THE COURT:** Mr. Stitely.

24 **MR. STITELY:** May it please the Court?

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

1 **MR. STITELY:** Good morning. I'm Ben Stitely. We met
2 yesterday. I'm a lawyer across the street at Williams,
3 Stitely and Brink just so you don't get confused. At the
4 table, Ms. Williams is one of our lawyers's, as well. I
5 don't think she's gonna be talking in the trial, but she's
6 here to help me out. And we have an observer from the
7 high school who is shadowing today, so that's who that
8 person is just sitting there just so you know.

9 So it's kind of interesting when you go through and
10 do opening statements. They're exactly that. They're a
11 statement. You haven't heard the case yet. Mr. Bell and
12 I aren't arguing yet, we're just kind of telling you a
13 roadmap, a story. It's kind of funny because whenever I
14 get up in front of a jury, I know what you do. We got to
15 learn what your career is and you see me and obviously I'm
16 a lawyer and people always ask why are you a lawyer and
17 it's actually kind of funny because I'm -- and I'm gonna
18 date myself here, but I'm a big fan of movies and one of
19 my favorite law movies is A Few Good Men. Now the famous
20 scene of that, of course, is Jack Nicholson on the stand
21 and Tom Cruise is yelling at him, did you order the code
22 red. That's not the scene that I think is particularly
23 interesting and why I'm telling this story today. It's
24 the very beginning when Kevin Bacon, he's called Jack in
25 the movie, he's the captain, the prosecutor, and Tom

1 Cruise, who's Danny, are having a conversation and they're
2 talking about a different case and it's an officer or an
3 enlisted man who had a dime bag of oregano on an airplane
4 and the discussion goes, well, your guy's got to go down,
5 Danny. Jack says why? He's like well, he thought he had
6 drugs and Danny's like, Jack, my client smoke a dime bag
7 of oregano. It's a funny little scene. It's interesting
8 because what you're gonna hear in this case today is very,
9 very different than your normal case.

10 Mr. Bell told you that the way that law enforcement
11 -- the way that law enforcement gets into the minds of
12 criminals and gets into those shadowy places, they use
13 criminals. In this case, you're gonna hear from a
14 lifetime, hustler, liar, cheat. Someone who sells drugs
15 in school districts is gonna take that stand because he's
16 reformed. No, it's because he made money. He's paid.
17 He gets paid every time he does something. He looks for
18 targets so he can make money. He used to make money
19 selling drugs. He used to make money receiving stolen
20 goods. He used to make money a lot of ways. Now he's
21 doing it on your tax dollar. Collecting money from the
22 sheriff's department, tax money, to set people up.

23 What's interesting in this case is he picked a target
24 that he wanted to set up and he went to buy drugs from
25 him. Except for he didn't buy drugs. The evidence is

1 gonna come out in this case that he went to Mr. Davis not
2 once, not twice, not three times, but four times. He
3 didn't get drugs. He got something. The chemist is gonna
4 tell you he got something. Crushed up aspirin? This isn't
5 a morality contest. I'm not gonna get up and stand here
6 and say Mr. Davis wasn't in the car. He was. You'll see
7 it. There's a video. I'm not gonna say that he didn't
8 have an interaction with this gentleman. Mr. Haygood is
9 his name. You'll meet him. He did. You're gonna hear
10 that someone who is on the take says hey, buddy, you want
11 to make some money, I need drugs, and my guy's like I
12 like money, so he sells him some fake drugs. It's not a
13 moral -- it's not the happiest place in the world, but
14 we're not here to judge his morality. We're here to
15 judge his criminality beyond a reasonable doubt did he
16 distribute methamphetamine to this person who cheats,
17 lies, steals and sells drugs in school zones. Watch the
18 video. See if you ever actually see my client hand him
19 the bag. You see him pull something out. Look at the
20 bag. Look at the drugs in the video. You'll get a really
21 good picture of the drugs from the video and then you'll
22 see the ones that go to SLED.

23 Common sense. Just remember that. Thank y'all.

24 **THE COURT:** Call your witnesses.

25 **MR. POGUE:** Thank you, Your Honor. The State calls

1 Mike Merckle.

2 (Whereupon, Mike Merckle was duly sworn by the Clerk
3 of Court.)

4 **THE CLERK:** Have a seat, sir. Once you're seated,
5 state your full name; spelling your last on the record.

6 **THE WITNESS:** My name is Michael Merckle,
7 M-E-R-C-K-L-E.

8 MICHAEL MERCKLE,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. POGUE:

12 Q. Good morning, sir.

13 A. Good morning.

14 Q. Where are you currently employed?

15 A. The Lexington County Sheriff's Department.

16 Q. And in what capacity?

17 A. I am a narcotics agent.

18 Q. And how long have you been a narcotics agent with
19 Lexington County Sheriff's Department?

20 A. Approximately between eight and nine years.

21 Q. Okay. How long have you worked in law enforcement in
22 general?

23 A. This July will be nineteen years.

24 Q. Nineteen years. And in what capacities were you
25 employed prior to being a narcotics agent with Lexington

1 County Sheriff's Department?

2 A. I started out as a regular road guy in a uniform, I
3 didn't look quite as handsome as I do today, answering
4 calls; the typical guy in a marked car. I moved my way up
5 to a supervisor on the road where I supervised a squad and
6 then transferred into the gang unit where I -- I worked
7 gangs for close to four years, specifically specializing
8 in biker gangs, and then at which point I moved into
9 narcotics.

10 Q. Okay. A narcotics agent, what exactly is that?
11 Explain to us what your duties are.

12 A. So our duties are basically to go out and try to
13 interrupt the drug sales within our county. Try to keep
14 our community a little safer, if you will, in many
15 different ways. We also do deal with some -- some other
16 facets within the criminal world, criminal organizations.
17 Our gang unit is attached to our -- our narcotics unit.
18 We also deal with some money laundering and, you know,
19 prostitution and those type things. We run the gamut of
20 the crimes that typical road guys wouldn't -- wouldn't be
21 qualified to work.

22 Q. Okay. Are you employed through any other law
23 enforcement agencies?

24 A. I am. I'm assigned to the HIDTA Task Force. It's
25 the DEA task force. It's the High Intensity Drug

1 Trafficking Area Task Force in downtown Columbia, the
2 Columbia district office.

3 Q. What sorts of training have you received over the
4 course of your years that enable you to perform your
5 duties?

6 A. Sure. I've been to multiple narcotic identification
7 classes. I've been to undercover school, which is part
8 of my duties as well. I've been to what they call task
9 force officer school, which is a school that you go to
10 based out of Atlanta for new incoming task force officers
11 for the DEA, to basically train you to become a DEA
12 agent. I have, for lack of a better way to explain it,
13 the same powers as a DEA agent does and we work hand in
14 hand. That's a relationship that we build with the DEA
15 unit in Lexington County so that we work together as
16 partners.

17 Q. Okay. Have you ever testified in court before?

18 A. I have, yes, sir.

19 Q. Have you ever been qualified as an expert witness?

20 A. Yes, sir, I have.

21 Q. And in what particular field of expertise were you
22 qualified?

23 A. Specifically in the manufacturing of methamphetamine,
24 CI management, and trafficking -- overall trafficking and
25 trends of methamphetamine within the United States.

1 Q. Do you know offhand how many times you've been
2 qualified as an expert witness?

3 A. I believe it's five separate occasions.

4 Q. Okay. All right. I'm gonna move to the case that
5 we're here for today. How did you become involved
6 initially in this case?

7 A. I was contacted by an informant that I had signed up
8 and used on many different occasions that the Defendant,
9 Mr. Donnell Davis, was selling methamphetamine and he was
10 able to purchase from Mr. Davis.

11 Q. Okay. And the confidential informant that you
12 received this information from, how did you initially
13 become in contact with this confidential informant?

14 A. So when we develop informants, generally what we call
15 -- there's several different ways that we do that. Either
16 we go out and we actively seek through people that have
17 been arrested for narcotics charges trying to gain
18 information from them, but in this particular case it was
19 one of the -- one of these situations where the informant
20 called the sheriff's department, we have a hotline, and
21 expressed his interest in becoming an informant, which the
22 information was passed to me and I called the informant
23 and we met up with a partner of mine and went over, you
24 know, the background and all that to sign him up.

25 Q. And what's the process of becoming a confidential

1 informant with the Lexington County Sheriff's Department
2 Narcotics Unit?

3 A. Sure. So the process -- it really isn't -- isn't
4 that difficult, to be honest with you. We meet with --
5 in person we meet with the informant, we run a criminal
6 history to see what their background is like, what type
7 of criminal history they do have because many -- many
8 informants we use do have criminal histories. That's
9 just -- you know, that's just how it is. There are some
10 disqualifying convictions and/or even being charged -- or
11 charges, if you will, like sexual assaults, those types,
12 you know, anything that involves children, those types
13 of things. Our supervisors above me, my sergeant, my
14 lieutenant, captain, they are the ones who ultimately grant
15 us the permission and assign us the number that we use for
16 the informant.

17 So we go over their background, we speak to them about
18 who it is they think or know in the area that they could
19 purchase from or whether they can introduce an undercover
20 and whether they're willing to do it and, honestly, we go
21 over a form, you know, which explains the rules, the dos
22 and don'ts as an informant, and we let them know that this
23 is completely voluntary, so.

24 Q. What are the highlights of the dos and don'ts of the
25 confidential informant?

1 A. So the highlights are, you know, first and foremost,
2 to never divulge the fact that you're a confidential
3 informant. That could -- that could definitely become
4 very dangerous for them. We will not, unless directed by
5 the court, divulge that they are confidential informants
6 for the same reason, it can be very dangerous. That they
7 are required to be searched before and after any deal
8 that we -- that has been set up. They're not -- they're
9 required to contact us before setting up any deals.
10 They're required to follow all the laws, state and Federal.
11 If they are arrested for any reason or charged with any --
12 any type of crime while working for us, you know, we can't
13 help them out. They can't carry weapons. They can't carry
14 knives, guns, anything like that. They understand that if
15 they were to what we call pinch our dope or they were to
16 show up with narcotics on their person, if they were to
17 take some of the narcotics that we're purchasing -- they
18 are purchasing for us, that they will be arrested
19 immediately and prosecuted to the fullest extent of the
20 law. So, you know, under no circumstances do we leave any
21 of that out. And they're also told that there is a --
22 there is a very slim possibility that they would have to
23 testify so that their information would at some point
24 become divulged, i.e., where we're at today.

25 Q. And why would someone become a confidential informant?

1 What do they get in return?

2 A. A lot of confidential informants get money. I mean,
3 that's -- that's a lot of times the driving force. We pay
4 for information. We also pay for deals. We pay for the
5 informants to go out and find the information for us to
6 help us identify and target areas of high narcotic
7 activity. We also assist what they call working off
8 charges. I'm sure a lot of people have heard that,
9 especially on TV. We do assist in the way that we make
10 no promises to informants or anybody else that we can get
11 rid of their charges, we can change their charges or that
12 anything would happen with their charges if they are under
13 -- under whatever charges that they're under, but basically
14 we let them know hey, we will talk to the solicitor's
15 office on your behalf, let them know that you provided us
16 this information and did X, Y and Z for consideration, but
17 ultimately it's up to the solicitor's office and the judge
18 as to whether or not they're gonna do anything with your
19 charges. I have no control over that and they understand
20 that when they -- when they sign the form.

21 Q. Okay. And I believe you said it, but who was the
22 confidential informant in this case?

23 A. Our confidential informant was an individual named
24 Javan Haygood.

25 Q. Okay. And did Mr. Haygood have charges pending that

1 he was, quote, trying to work off when he came to see you?

2 A. He did not.

3 Q. Okay. So what was -- how was he -- what was his
4 bargain for exchange, if you will, for being a confidential
5 informant?

6 A. For money. In essence, for money. Yes.

7 Q. Okay. And how was he compensated? Like based upon
8 what?

9 A. Well --

10 Q. Like what were the agreed-upon terms of his -- in
11 regard to how he would be compensated; how much, how often?

12 A. So the amounts are not specified. There's not a
13 specific amount that we -- that we tell them if you do
14 this, we'll pay you that much. It's all based off of
15 performance, information. You know, basically it's just
16 like any other job and I try to let them know that
17 basically this is a job interview. I will be your boss,
18 we are not friends, we are not buddies, we are not gonna
19 hang out after this, I don't know you outside of what we
20 are doing here today, and your performance on getting us
21 the information that we need, i.e., tag information, where
22 people live, their real names, who they can -- you know,
23 how much narcotics they could purchase, if they can
24 introduce somebody in an undercover capacity, all those
25 things come into account as to how much we pay and then

1 ultimately it's up to our supervisor. So, you know, if
2 it's something that is a large amount, if we're gonna pay
3 somebody a lot of money, that would be -- have to have
4 approval status. And a large amount of money I would say
5 would be more than, say, \$300 in a single payment.

6 Q. Okay. And when was it that you first met with
7 Mr. Haygood through the hotline?

8 A. It was in 2013. I believe it was August, so right
9 around there.

10 Q. Okay. And what was the date of this particular
11 incident that we're here for?

12 A. It is March 11, 2015.

13 Q. Okay. So in that year and a half, two years from
14 2013 to the incident date that we're here for today, did
15 Mr. Haygood conduct controlled buys for you as a
16 confidential informant --

17 A. Yes.

18 Q. -- or from other people?

19 A. Yes, sir. He did multiple buys.

20 Q. Okay. All right. Let's go to the events that involve
21 this particular incident.

22 A. Okay.

23 Q. And how did you become -- how did you begin an
24 investigation into Mr. Davis?

25 A. My informant, Mr. Haygood, contacted me and explained

1 to me that there was an individual he knew as -- a street
2 name as Dice was selling meth -- methamphetamine and was
3 able to purchase some methamphetamine from that individual.
4 So several days later I contacted the informant and I told
5 him to set the deal up on that particular day and call this
6 individual he knew as Dice, who I knew previously who that
7 individual was, and that we would conduct that deal on that
8 day.

9 Q. Okay. And this was -- when you first learned of it,
10 that was in March of 2015 as well?

11 A. Correct.

12 Q. Okay. All right. So going to the date of March 11,
13 2015, how did you set up the buy?

14 A. So my partner and I, Agent Purdy, we picked up the
15 informant from a different location, took the informant,
16 Mr. Haygood, to what we would refer to as a secure
17 location, and basically a secure location really could be
18 anywhere where the general public doesn't see us. It
19 could be in the middle of the woods, it could be behind a
20 business, behind a building, just someplace where we can
21 speak to that individual and we can do what we need to do
22 without being -- without too many prying eyes seeing us,
23 especially if we're close to where we're gonna conduct the
24 deal.

25 So once we pick up the informant, we explain to the

1 informant like we do with all the informants, the rules,
2 what we're doing, what we expect the informant to do. We
3 will search the informant's person, if the informant had
4 a vehicle. In this case the informant did not have a
5 vehicle, so we did not have to search a vehicle, but we
6 search the informant; empty their pockets, pat them down,
7 you know, the whole gamut, make sure they weren't carrying
8 anything. If they have money on them, we take the money
9 and hold the money until after the deal is complete. We
10 don't want there to be any question as to where our
11 evidence comes from.

12 Q. Okay. Let me back up just one step. Did you know in
13 advance on March 11, 2015, where the buy was going to take
14 place?

15 A. Oh, yes, sir, I did. I'm sorry.

16 Q. Okay. And where was it supposed to take place?

17 A. At the Village Store, which is an on Platt Springs
18 Road, approximately 5143 Platt Springs Road in the Red Bank
19 area of Lexington County.

20 Q. Okay. And this was put together by the confidential
21 informant? He informed you?

22 A. Correct. Yes. Once I directed the informant to go
23 ahead and set the deal up, the informant set the deal up
24 and it was set to take place at that gas station, the
25 Village Store.

1 Q. Okay. All right.

2 **MR. POGUE:** Permission to approach the witness,
3 Your Honor?

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

5 **MR. STITELY:** No objection to that map.

6 **MR. POGUE:** Your Honor --

7 (State's Exhibit Number 1 was marked for
8 identification.)

9 **MR. POGUE:** Your Honor, permission for the witness to
10 step down?

11 **THE COURT:** Sure.

12 **MR. POGUE:** If you wouldn't mind just stepping down.

13 **THE COURT:** Mr. Stitely, are you okay with him
14 stepping down?

15 **MR. STITELY:** I'm not gonna object to the -- he's got,
16 I think, two maps, Judge. I'm not gonna object to either
17 of them.

18 **MR. POGUE:** Your Honor, that's what I was getting
19 ready to ask, if he recognized this particular location
20 and if it would be objected to, so if we could stipulate
21 to State's Exhibit 1 coming into evidence.

22 **THE COURT:** State's Exhibit 1 is in and then you can
23 use it and Mr. Stitely can use it.

24 (State's Exhibit Number 1, a photograph enlargement,
25 was admitted into evidence.)

1 **MR. POGUE:** Permission to publish, Your Honor?

2 **THE COURT:** Sure.

3 BY MR. POGUE:

4 Q. Agent, do you recognize this particular aerial image
5 here?

6 A. Yes, sir, I do. It's Platt Springs Road.

7 Q. Okay. What is this over here?

8 A. This is gonna be -- let me get my bearings. That's
9 South Lake Drive, so I believe this is the Wal-Mart.

10 Q. Okay. All right. And what is this red flag up here?
11 What is that location?

12 A. So the red flag would be the -- the Village Store.
13 It's really hard to see. It's a tiny little building
14 right here just off of Platt Springs Road. I don't know
15 if anybody is familiar with where that's at, but it's
16 basically in the middle of Red Bank.

17 Q. Okay. All right. And what county is that in?

18 A. It's in Lexington County, South Carolina.

19 **MR. STITELY:** No objection.

20 **MR. POGUE:** Your Honor, I believe State's -- let
21 me get it marked here. This will be State's Exhibit 2
22 and I believe there's no objection to that coming into
23 evidence.

24 **MR. STITELY:** No objection.

25 **THE COURT:** No objection to State's 2.

1 (State's Exhibit Number 2, a photograph enlargement,
2 was marked and admitted into evidence.)

3 **THE COURT:** Just so y'all know, Stacy's keeping up
4 with everything that's said and also when the evidence
5 comes in she's got to keep it numbered and orderly and that
6 way if somebody reads over later what we do, we know what
7 we're talking about. So these two exhibits are in and
8 they'll be in the jury room with you so you can see them
9 now and you'll see them later, too. So they're in evidence
10 and they'll be a part of the case.

11 **MR. POGUE:** Thank you, Your Honor.

12 **THE COURT:** Uh-huh.

13 BY MR. POGUE:

14 Q. Agent, do you recognize this image here?

15 A. I do. That's the Village Store. This would be the
16 gas station off of Platt Springs Road where our -- where
17 the deal took place.

18 Q. Okay. All right. If you want to return to the stand,
19 I'm gonna ask you a few more questions and have you step
20 back down in just a few to explain the events a little bit
21 later on.

22 A. (Witness complies.)

23 Q. So you meet at an undisclosed location. What happens
24 after that?

25 A. , So, like I was saying, we would search the informant

1 to make sure they had not brought any contraband, weapons
2 or anything of that type or money, set the informant up
3 with a recording device and provide the informant with the
4 documented funds that we pull out to make the purchase and
5 the documented funds would be pictures and serial numbers
6 -- pictures of the serial numbers of the money that we're
7 using.

8 Q. Okay. And how much funds did you pull out and mark or
9 have marked in this particular case?

10 A. \$100.

11 Q. Okay. Did you take a photo of the money -- the
12 premarked money that you used in this particular case?

13 A. Yes, sir, I did.

14 Q. Okay.

15 **MR. POGUE:** Permission to approach, Your Honor?

16 **THE COURT:** Sure.

17 (State's Exhibit Number 3 was marked for
18 identification.)

19 **MR. STITELY:** No objection to Number 3, Judge.

20 BY MR. POGUE:

21 Q. I'm handing you up what's marked as State's Exhibit 3
22 and I believe it's stipulated into evidence. Do you
23 recognize that image?

24 A. Yes, sir, I do. This is a picture of the money that
25 I took that we used to make the purchase.

1 **THE COURT:** Okay. State's 3 is in without objection.

2 (State's Exhibit Number 3, a photograph of documented
3 funds, was admitted into evidence.)

4 **THE COURT:** Continue on.

5 **MR. POGUE:** Thank you, Your Honor.
6 Permission to publish, Your Honor?

7 **THE COURT:** Sure.

8 BY MR. POGUE:

9 Q. After you hand the premarked money to the confidential
10 informant -- well, let me ask you this. Prior to handing
11 him anything, what do you do?

12 A. Well, I mean, after we --

13 Q. Is he -- is he searched?

14 A. Oh, yes. I'm sorry. Absolutely. We search the
15 informant before I give anything to the informant
16 whatsoever, so each time we get ready to do a deal the
17 informant is searched. We found, you know, nothing in the
18 informant's pockets, which, you know, once informants start
19 working for us for a while they kind of figure out, you
20 know, what they're allowed to bring and what they're
21 allowed to bring with them. And then I would do what's
22 called a preamble for the recording once we set the
23 recording up, which indicates the date and time, the
24 informant that's being used, as well as what we are
25 preparing to do and what we're trying to purchase and who

1 we're trying to purchase it from. Basically just an
2 overall quick what we're doing.

3 Q. Okay. All right. So you search him, you hand him
4 the funds. What do y'all do next?

5 A. Once the video is rolling and we know that
6 everything's working properly, we got into the van, which
7 I was driving the van, my partner was with me, Agent Scott
8 Purdy, who was in the back of the van, the informant sat
9 in the front seat passenger side and we drove to the
10 Village Store.

11 Q. Okay. So just so I understand, you're in the driver's
12 seat, the confidential informant's in the front passenger
13 seat and you said Agent Purdy is in the back?

14 A. Correct.

15 Q. Why is Agent Purdy in the back?

16 A. Because if we were gonna be in such close proximity,
17 as well as Agent Purdy was there for security purposes in
18 case something went bad, he was fully tacked up, he had
19 his vest on, he was ready to go at a moment's notice just
20 in case, you know, something awful happened.

21 Q. Okay. All right.

22 **MR. POGUE:** And, Your Honor, permission for the
23 witness to step back down?

24 **THE COURT:** Sure.

25 (Whereupon, the witness steps down from the witness

1 stand.)

2 BY MR. POGUE:

3 Q. Agent, as you're approaching the agreed-upon --
4 the Village Store, which is on Platt Springs Road, the
5 agreed-upon location, take us through what happens.

6 A. Sure. So we drove in and we came from this location,
7 we turned into the parking lot, pulled around the gas
8 pumps, and we parked -- I believe it was approximately
9 right here in this spot, face in, you know, nose in, if
10 you will.

11 Q. Okay. Did you know whether the Defendant was there
12 when you arrived at that time or not?

13 A. At that very moment in time, I wasn't -- I wasn't
14 sure that Mr. Davis had shown up, but it was very soon
15 after we parked I knew that he was there.

16 Q. Okay. Was this the daytime or nighttime?

17 A. This was daytime.

18 Q. Okay. Was it cloudy or sunny?

19 A. No, it was fairly sunny. It was a nice day.

20 Q. All right. So you pull in. What happens next?

21 A. The informant got out of the passenger side and was
22 directed by Mr. Davis to come right here where they were
23 parked. Mr. Davis was parked sitting in a white vehicle
24 on the passenger side at the gas pumps.

25 Q. Okay. Now how was he directed by Mr. Davis? I mean,

1 did Mr. Davis -- does he see him get out of the van? Like
2 how does he make contact with him, I guess?

3 A. It appeared to me that his window was down and he
4 kind of hollered at him, you know, kind of waved at him
5 while the informant was getting out of the vehicle. I
6 think the informant was getting ready to text him to let
7 him know that he was there at which point he grabbed his
8 attention and he went ahead and walked over to the car.

9 Q. Okay. And what color was the car the Defendant was
10 in?

11 A. White.

12 Q. And where was the Defendant sitting in the car?

13 A. Mr. Davis, the Defendant, was sitting in the front
14 passenger side in the front seat.

15 Q. Okay. Who was in the driver's seat?

16 A. His -- I would assume, I'm not a hundred percent sure,
17 I assume his girlfriend or wife, Ms. Humphrey, Ms. Davis.

18 Q. Okay. Did you see Defendant sitting in the car?

19 A. I did.

20 Q. Okay. Did you know who the Defendant was? Did you
21 recognize him? Could you identify him?

22 A. I did and I can, yes, sir.

23 Q. Okay. All right. Prior to seeing him in the car,
24 did you know what Mr. Davis looked like from your
25 experience?

1 A. Yes.

2 Q. Okay. So he walks in -- gets into the car. What
3 happens after that?

4 A. The informant got into the back passenger seat just
5 behind Mr. Davis. They did what they did in the car, they
6 exchanged -- at that very moment in time I couldn't see
7 what was going on, I could only hear. The informant exited
8 the vehicle, got back into my vehicle and then we departed
9 at which point we drove past and I could also see Mr. Davis
10 still sitting in the vehicle as the passenger.

11 Q. Okay. So when you pulled back out, you pulled past
12 the car that was still sitting there with the Defendant in
13 it?

14 A. Correct. We would have backed out and then come
15 around and went right back out --

16 Q. Okay.

17 A. -- going back to another secure location so that we
18 could finish what we started.

19 Q. Okay. You can return to your seat.

20 A. Okay. Thank you.

21 Q. So when he returns, this confidential informant,
22 Mr. Haygood, and you leave, what happens after that?

23 A. So as we're driving away, the informant, Mr. Haygood,
24 had the narcotic in his hand, which he handed to me. I
25 held onto the narcotic until we got back to our secure

1 location where once we get back to the secure location I
2 secured the narcotic in a -- I guess a -- in an evidence
3 bag, if you will, put it away and then conducted a physical
4 search of Mr. Haygood again. I searched his entire person
5 making sure he didn't have anything, any money left over,
6 making sure he didn't have any -- any narcotic on him that
7 he was trying to steal from us, if you will, and then
8 recovered the recording device.

9 Q. Okay. Other than the money that you gave him, did
10 the confidential informant have anything on his person
11 when you searched him prior to getting into the car with
12 the Defendant other than -- other than the money?

13 A. Well, actually he didn't even have the money when we
14 searched him.

15 Q. I'm talking about -- after you gave him the money and
16 you leave.

17 A. Oh, right. No. No, he was never out of our sight.
18 I had -- you know, we keep the informants in our sight the
19 whole time. If they have to leave for any reason, we do
20 the whole process over again.

21 Q. Okay. So he was in your sight the entire time after
22 you searched him?

23 A. Yes.

24 Q. Okay. So when he gets back into the car and you go
25 to your secure location and he gives you the drugs, when

1 you searched him did he have anything on his person at that
2 point?

3 A. He did not.

4 Q. Okay. What happens after you search him?

5 A. So after I searched the informant, we recover all of
6 our items, the informant gives -- in this case, he gave a
7 verbal statement to my partner, Agent Purdy, and Agent
8 Purdy wrote the statement out for the informant. There's
9 a couple of reasons why we do that. One is so that the
10 informant's handwriting -- some items of evidence are
11 released prior to trial. We try to keep our informants'
12 anonymity, if you will, as that's the most important thing,
13 their safety, and that's part of why we do the way we do
14 what we do. We have another agent write it out, the
15 informant will read it, we will read it to the informant,
16 they agree that -- if they agree that yes, that's exactly
17 what happened, the informant will sign it at the bottom
18 stating that that is their statement, and I notated in my
19 report that the statement was written by Agent Purdy at
20 the request of the informant. That way we just kind of
21 limit the possibility of figuring out who it is.

22 Q. Just so I understand, you say you don't have the --
23 you don't have the confidential informant write the
24 statement themselves in case whoever it is that they are
25 conducting the controlled buy against may recognize their

.1 handwriting. Is that what you're saying?

2 A. Correct. That is -- yes, sir.

3 Q. All right. And then the signature that they give, is
4 that typically redacted when you send out the report?

5 A. Yes. Once there's an arrest made, we send the report
6 out. We will redact any information that could identify
7 the informant other than a number. Every time we get a
8 new informant, our supervisor assigns them a number. That
9 is who they are in our system and that number follows them
10 throughout their history with us, if you will.

11 Q. Okay. You bagged up the evidence, you had your
12 partner, Agent Purdy, fill out what happened on the form.
13 What happens after that?

14 A. We -- I paid the informant for his services. We
15 dropped the informant off and then left. I went back to
16 my headquarters where I processed the evidence by placing
17 it into a BEST kit and then I submitted to evidence for
18 testing and proper paperwork.

19 Q. What is a BEST kit?

20 A. So a BEST kit is basically a tamper -- I wouldn't say
21 tamper resistant, but readily identifiable if the envelope
22 has been tampered with, so I place it into a bag that's got
23 a special seal on it so if it's pulled or cut or torn open
24 it will be obvious, very obvious, and then our lab knows
25 not to test it, they'll send it back and say this item has

1 been tampered with or hasn't been sealed properly and then
2 we have to figure out what's going on with that. So it's
3 got a number that's listed with it, basically a tracking
4 number, so we know where that item goes.

5 Q. Okay. All right. After you bagged up the evidence,
6 when did you submit it into evidence, into the evidence
7 locker?

8 A. The same day.

9 Q. The same day?

10 A. Yes, the same day. It never left my custody, if you
11 will.

12 Q. Okay. That was gonna be my next question.

13 A. Okay. Sorry.

14 Q. From the time that the confidential informant, Javan
15 Haygood, handed you the drugs when he got back into the
16 van at the Village Store and you took them from his
17 possession, were they in our sole care, custody and
18 control the entire time until you bagged them up and
19 submitted them into evidence at Lexington County Sheriff's
20 Department?

21 A. Yes.

22 Q. Okay. How about a photo lineup? Did you show the
23 confidential informant a photo lineup in this case to see
24 if he could identify the Defendant?

25 A. Yes, sir, I did.

1 Q. Okay. Did you tell him for sure that there would be
2 a picture of the Defendant in the photo lineup?

3 A. No, sir, I did not.

4 Q. Okay. So he didn't know -- he doesn't know whether
5 there is or is not a picture. There could possibly not
6 be a picture of the Defendant?

7 A. Correct. Right. We don't -- we don't say either
8 way. We just ask them to look at six pictures of similar
9 looking people and to identify if they recognize anybody
10 in those pictures.

11 Q. Did you bring that lineup that you showed him to
12 court today?

13 A. Yes, I did.

14 **MR. STITELY:** No objection.

15 **THE COURT:** That's Number 4?

16 **MR. POGUE:** Yes, Your Honor.

17 **THE COURT:** State's 4 without objection is admitted.

18 **MR. POGUE:** Thank you, Your Honor.

19 (State's Exhibit Number 4, a photo lineup, was marked
20 and admitted into evidence.)

21 BY MR. POGUE:

22 Q. Agent Purdy {sic}, of the six photos, was there a
23 picture of the Defendant in those photos?

24 A. Yes.

25 Q. Okay. And who did the confidential informant -- let

1 me ask you this question: When you showed it to him, how
2 long did it take him to choose a photo?

3 A. Long enough to look at each picture and select the
4 one that was Mr. Davis, so I guess I would say three to
5 five seconds. Not long.

6 Q. Okay. And did he select the one that was Mr. Davis?

7 A. Yes, he did.

8 Q. All right. Now after you collected the video from
9 Mr. Haygood, the confidential informant, did you have an
10 opportunity to view and listen to the video?

11 A. Yes.

12 Q. Okay. All right.

13 (State's Exhibit Number 5 was marked for
14 identification.)

15 BY MR. POGUE:

16 Q. I'm handing you what's marked as State's Exhibit 5
17 for ID purposes.

18 A. Okay.

19 Q. Do you recognize that item?

20 A. Yes.

21 Q. What is that?

22 A. This is a disk that would have the deal burned onto
23 it.

24 Q. And how do you know that that's the disk that has the
25 deal burned onto it?

1 A. It was -- I was with you when it was burned the other
2 day.

3 Q. Okay. Whose -- that marking that's on the disk,
4 whose marking is that?

5 A. I believe that would be our informant's, Javan
6 Haygood, signed -- who signed this disk yesterday.

7 Q. Uh-huh.

8 A. I believe it was yesterday. I don't know what the
9 date is. I can't remember.

10 Q. What does the date say?

11 A. Oh, the 18th. I'm sorry. Yeah, on the 18th.

12 Q. Was that done in your presence?

13 A. Yes. Yes, it was.

14 Q. And did you have an opportunity to view the video
15 that was on this disk?

16 A. Yes.

17 Q. And is it the video that took place from March 11,
18 2015, of the controlled buy?

19 A. It is.

20 Q. Okay.

21 (State's Exhibit Number 6 was marked for
22 identification.)

23 BY MR. POGUE:

24 Q. Agent, I'm handing you what's marked as State's
25 Exhibit 6 for identification purposes. Do you recognize

1 that BEST kit?

2 A. Yes, I do.

3 Q. Okay. The BEST kit number that you have in your
4 report that you put the evidence into or that you

5 submitted for testing, does it match the BEST kit number
6 that is on the evidence that I just handed up to you?

7 A. I would have to look at the -- the rest of my report.
8 I didn't bring that part of it --

9 Q. That's fine.

10 A. -- for the evidence portion. But, I mean, my
11 signature's on it and the date matches. Sorry.

12 Q. (Handing.)

13 A. Yes, it does match.

14 Q. The same BEST kit number?

15 A. Yes.

16 Q. And whose handwriting is that on that BEST kit?

17 A. It's my handwriting, my signature. I printed my
18 name and then -- I'm not aware as to whose handwriting is
19 at the top.

20 Q. That would have been somebody who handled it after
21 you?

22 A. Correct. Yes, sir.

23 Q. And just -- just to be completely thorough, I want
24 to have you read what the control number is of the BEST
25 kit --

1 A. Sure.

2 Q. -- into the record that you have in your records and
3 the control -- the BEST kit control number on the item of
4 evidence.

5 A. Okay. In my record on my report it's showing BEST
6 kit number C, Charlie, dash 022131, dated on 3-11-2015,
7 which would have been the date that it was seized and
8 placed into evidence. The number and date on the bag is
9 C, as in Charlie, 022131, which matches, and the date also
10 -- sealed date 3-11-2015 also matches.

11 Q. Okay. And are those numbers unique?

12 A. They are unique. Each number -- each bag is assigned
13 a specific number that's not repeated, so.

14 Q. So it's not repeated?

15 A. No. No, sir.

16 **MR. POGUE:** I beg the Court's indulgence.

17 **THE COURT:** Sure.

18 BY MR. POGUE:

19 Q. Okay. Now you testified earlier that you've been a
20 narcotics agent for nine years?

21 A. Approximately. Yes, sir.

22 Q. Okay. Have you confiscated meth before in a
23 controlled buy?

24 A. Many times.

25 Q. Okay.

1 A. I've also purchased it myself.

2 Q. Hundreds, thousands?

3 A. Hundreds.

4 Q. Okay. All right. Is it common for the drugs to look
5 different three years later than they do the day that you
6 collect them?

7 **MR. STITELY:** Judge, I'm gonna object. He has not
8 been qualified an expert and I think this requires expert
9 testimony.

10 **THE COURT:** You laid a foundation and never offered
11 him as an expert.

12 **MR. POGUE:** Okay. Your Honor, I wanted -- I wanted
13 to make sure that I kept the facts away from the expert
14 testimony so as not to confuse the two for the jury, but
15 at this time the State would actually move to have him
16 qualified as an expert in methamphetamine.

17 **MR. STITELY:** I'd like to voir dire him before you
18 do that, Judge.

19 **THE COURT:** You are allowed that.

20 All right, folks. Let me tell you what's going on.
21 People can testify as to what they saw, what they did,
22 what they heard if they're an actor, a part of it. Some
23 people because of their training and expertise and
24 experience can be qualified in a field of knowledge as
25 an expert and can offer opinions and so that's what's

1 happening now is Officer Merckle -- Agent Merckle has been
2 offered as an expert in the field of methamphetamine --
3 identification?

4 **MR. POGUE:** Correct, Your Honor.

5 **THE COURT:** I mean, you're not offering him as a
6 chemist or any of that sort of stuff?

7 **MR. POGUE:** Correct.

8 **THE COURT:** All right. So to that end, Mr. Stitely.

9 VOIR DIRE EXAMINATION

10 BY MR. STITELY:

11 Q. Detective, what is your educational background prior
12 to becoming a law enforcement officer?

13 A. I graduated high school.

14 Q. Okay. Do you possess a degree in chemistry?

15 A. I do not.

16 Q. Biology?

17 A. No, sir.

18 Q. Anything along those lines?

19 A. No, sir, I don't.

20 Q. Okay. What is the actual chemical makeup of
21 methamphetamine?

22 A. I don't know the chemical makeup specifically.

23 Q. Could you tell me what the physical markers as far
24 as criteria to determine what it would be from a visual
25 inspection?

1 A. I'm not a chemist. No, sir, I couldn't.

2 **MR. STITELY:** Judge, I'm gonna object to any
3 qualification as a meth expert. I think they have a
4 chemist coming. I think she would be the proper
5 witness.

6 **MR. POGUE:** Your Honor, you know, the law in regard
7 to expert testimony in South Carolina is that he clearly
8 has ample experience to testify whether the drugs look
9 different years later than they did when they first
10 collected them. We're not offering anything in regard to
11 chemical makeup.

12 **MR. STITELY:** Judge, I asked him specifically
13 if he could give me the physical characteristics of
14 methamphetamine and he said that's, you know, outside of
15 his specialty. I think he's the wrong person to testify
16 to that.

17 **THE COURT:** I agree with Mr. Stitely, so I'll sustain
18 his objection to qualifying him as an expert because of
19 the identification question.

20 **MR. POGUE:** Okay. Just so I -- permission to
21 approach?

22 **THE COURT:** Sure.

23 (Proceedings held at the bench; not reported.)

24 CONTINUED DIRECT EXAMINATION

25 BY MR. POGUE:

1 Q. Agent, one last question. I just wanted to clarify
2 when the drugs were collected from the Defendant, were
3 they in anybody else's custody other than yours from the
4 time you received them in the car after the buy?

5 A. No, sir.

6 Q. Okay. Prior to you submitting them into evidence,
7 I mean.

8 A. Correct.

9 **MR. POGUE:** No further questions.

10 **MR. STITELY:** May it please the Court?

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

12 CROSS-EXAMINATION

13 BY MR. STITELY:

14 Q. Detective, we've known each other for a while. How
15 would you like to be referred to on the stand?

16 A. Whatever suits you.

17 Q. All right. Real quick, he didn't clarify, this
18 picture, State's Number 2, this isn't the actual day and
19 time, this is like a Google maps pull of the scene,
20 correct?

21 A. Correct. Yes, sir, it is.

22 Q. Okay. So none of these vehicles were the ones in
23 question?

24 A. No, sir. No, none of those vehicles.

25 Q. I just wanted to clear that up for the record.

1 **MR. STITELY:** May I approach the witness, Judge?

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

3 **MR. STITELY:** Can you mark these for me, please?

4 (Defendant's Exhibit Number 1, 2 and 3 were marked
5 for identification.)

6 BY MR. STITELY:

7 Q. Detective, I'm gonna show you three pictures and just
8 ask if you can identify these three pictures?

9 A. All right.

10 Q. You don't have to say what they are, just if you can
11 identify them or not.

12 A. Yes, sir.

13 Q. Okay. So you can identify the images that were in
14 Defendant's for ID 1, 2 and 3?

15 A. Yes, sir.

16 Q. Were you the photographer of these pictures?

17 A. Yes, sir.

18 Q. Okay. Detective Merckle, I guess I'm just gonna ask
19 you a couple questions about CIs in general and then maybe
20 specifically about this particular CI.

21 A. Sure.

22 Q. As you said, in law enforcement you actually can act,
23 and you used the term when you were just talking, as a CI
24 or a UC. You had two different terms that you went
25 through. An undercover --

1 A. Correct.

2 Q. -- which would be what?

3 A. Which would be what I would do, a police officer
4 going undercover.

5 Q. So sometimes rather than using a confidential
6 informant, if you can get integrated, I guess, would be
7 the best way to describe it, you could go in and
8 potentially make a transaction, correct?

9 A. Sure. Absolutely.

10 Q. And as far as being a law enforcement officer, you
11 would probably find that more ideal because you obviously
12 don't have a criminal record?

13 A. Correct.

14 Q. You are a documented hired employee of the County of
15 Lexington?

16 A. Yes, sir, I am.

17 Q. Okay. So I don't get to cross you on those kind of
18 crazy questions. As far as CIs, now let's shift to
19 Mr. Haygood and specifically in his interactions with this
20 case.

21 A. Okay.

22 Q. You said as far as Mr. Davis it was your CI who
23 contacted you and said I've got a hot one, a guy for you,
24 correct?

25 A. Maybe not in those words, but, yes, he told me he had

1 a person that he could buy from.

2 Q. Okay. And he set the deal?

3 A. Correct. After I told him to, correct.

4 Q. Who determined how much money to use on the purchase?

5 A. I do. I did.

6 Q. Okay. And those are those \$20 bills in Number 3?

7 A. Correct.

8 Q. A hundred dollars?

9 A. A hundred dollars, yes.

10 Q. Okay. So he sets up the terms though as far as the
11 place and all that?

12 A. Yes. Yes, sir. Typically -- typically, yes. I
13 mean, it kind of depends, but in most instances the person
14 we're purchasing from usually sets the location.

15 Q. But you're not on the phone, the CI is pretty much
16 the one on the phone or text, however they do it?

17 A. Yes. Yes, sir.

18 Q. Okay. How far ahead of time did you know that this
19 was gonna be your location; do you remember?

20 A. Maybe a couple of hours.

21 Q. Okay. So your reliance for audio-video surveillance
22 is some kind of camera, I take it?

23 A. Correct.

24 Q. Like a pen cam or something?

25 A. Something like that.

1 Q. Okay. Now you meet with the CI shortly beforehand
2 and take him to a secure location you said?

3 A. Correct. Yes, sir.

4 Q. Which could be anywhere just out of the public eye?

5 A. Right.

6 Q. And you said you searched him?

7 A. Yes.

8 Q. Tell me about that search. What kind of search did
9 you do on him?

10 A. Just a typical pat down. Checked -- they empty their
11 pockets out, we pat them down, check their waist, their
12 lower extremities, upper extremities, hats and any kind
13 of bags or anything like that. In this case, they didn't
14 have -- this individual didn't have one, this individual
15 didn't carry a wallet, and checked their socks and, you
16 know --

17 Q. You did check his socks?

18 A. Yes.

19 Q. Okay. Detective Merckle, you've been in the drug
20 game for a few minutes?

21 A. Yes.

22 Q. What is the -- I guess let me put it this way. There
23 are more extensive searches that are done, particularly
24 even if you arrest someone for drugs and they get to the
25 jail, correct?

- 1 A. Oh, sure. Absolutely.
- 2 Q. Okay. What are some of the other less common hiding
3 places that you would find drugs?
- 4 A. Most of those you've got to get naked for.
- 5 Q. All right. Did you --
- 6 A. In the groin area, those types of locations.
- 7 Q. With Mr. Haygood on this occasion, did you go that
8 extensively?
- 9 A. No, absolutely not. No, sir.
- 10 Q. Okay.
- 11 A. I'm not a doctor. I'm not allowed -- you know, we're
12 not allowed to do things like that.
- 13 Q. So it was a -- I'm not gonna call it a cursory search,
14 it was probably more thorough than that, but it wasn't as
15 full a possible search as that can be done?
- 16 A. Oh, correct. Right.
- 17 Q. Okay. And you stated that you did lose sight of your
18 CI at some point when he entered the vehicle as far as more
19 than just seeing he was in a car?
- 20 A. Correct.
- 21 Q. You would not have been able to see his lower half of
22 his body?
- 23 A. I was not able to see his lower half.
- 24 Q. And you did not witness the actual transaction as far
25 as you couldn't see what was happening inside the car; is

1 that correct?

2 A. Correct, not realtime.

3 Q. No. You saw it later on the video?

4 A. Correct, when I reviewed the video, yes, sir.

5 Q. Okay. Did you do a case supplemental report in this
6 case?

7 A. Yes.

8 Q. Do you have your notes in front of you?

9 A. I have my supplement, yes, sir.

10 Q. Okay. And one of the things you talked about, you
11 said that the statement was collected by Officer Purdy,
12 who's your partner?

13 A. Yes, sir.

14 Q. And then memorialized?

15 A. Correct.

16 Q. Okay. As a course of procedure, when you do any case
17 you generate a report to document what happened, correct?

18 A. Yes.

19 Q. And that's your book report as to what happened,
20 correct?

21 A. Correct.

22 Q. Okay. Pretty much the same idea as name, date, what
23 you did and what was collected?

24 A. Yes, sir.

25 Q. On your supplemental report, how did you categorize

1 the substance that was collected from your CI? It's like
2 the third to the bottom line.

3 A. The plastic bag with white powder, is that what
4 you're --

5 Q. Yes, sir.

6 A. Yes, sir.

7 Q. Okay. And then we talked about the BEST kit. There's
8 a bunch of forms that go with that; is that correct?

9 A. Yes. Yes, sir.

10 Q. Okay. And one of them --

11 **MR. STITELY:** May I approach, Your Honor?

12 **THE COURT:** You may.

13 **MR. STITELY:** Sorry, Bradley.

14 I'm gonna show you something and see if you can
15 identify it. We're gonna mark it first. I'm sorry.

16 (Defendant's Exhibit Number 4 was marked for
17 identification.)

18 BY MR. STITELY:

19 Q. I'm gonna show you a form and ask if you can identify
20 it?

21 A. Yes, sir. This would be the same control number that
22 goes with this BEST kit and so, yes, sir, this would have
23 been the form that I -- that I produced, I guess.

24 Q. And pretty much you just -- once again, a paper trail
25 of everything you do?

1 A. Yes. Yes, sir.

2 Q. And there's a signature on it. Would that be yours?

3 A. Yes, sir, that is my signature.

4 Q. Okay. When you were describing the drug evidence in
5 this case, how did you describe it on your evidence form?

6 A. On which evidence? On that one?

7 Q. On any of them, yeah.

8 A. Well, that one -- that one said a white powdery
9 substance believed to be meth, I believe. I believe that's
10 what it said.

11 (Defendant's Exhibit Number 5 was marked for
12 identification.)

13 BY MR. STITELY:

14 Q. Okay. I'll show you another form. This one I don't
15 know if you can identify it or not.

16 A. I don't believe I -- I don't believe I made this
17 form. It may be a form that's populated once you do the
18 evidence. I don't --

19 Q. That has nothing to do with you specifically? You
20 wouldn't have made it?

21 A. I mean, obviously my name's on it, but, yeah, I don't
22 -- I didn't make this form unless it was populated within
23 the program that we use for report writing.

24 Q. All right. Thank you.

25 A. Yes, sir.

1 **MR. POGUE:** Permission to approach, Your Honor?

2 **THE COURT:** Sure.

3 (Proceedings held at the bench; not reported.)

4 (Defendant's Exhibit Number 6 was marked for
5 identification.)

6 BY MR. STITELY:

7 Q. I think this is the last one I have. Can you identify
8 that?

9 A. This would be another form -- you know, evidence --
10 property and evidence voucher which is -- which is made
11 during the process of, you know, putting evidence into
12 the evidence or delivering it to the evidence custodian,
13 if you will. It's all part of the program. Yes, I do
14 recognize the form.

15 Q. Okay. And that was Number 6 for identification. I
16 apologize. And your name, again, appears on this form?

17 A. Yes, sir.

18 Q. And this is pretty much the standard evidence voucher
19 form?

20 A. Correct.

21 Q. Okay. Detective, you never actually conducted any
22 purchase from my client; is that correct?

23 A. Correct.

24 Q. You used your confidential informant?

25 A. Yes, sir.

1 Q. Isn't it true that you actually used this particular
2 informant on four separate occasions to deal with my
3 client?

4 A. I believe so. Yes, sir.

5 Q. The date in question?

6 A. Correct.

7 Q. One on March 25th?

8 **MR. POGUE:** Your Honor, may we approach one more
9 time?

10 **THE COURT:** Sure.

11 (Proceedings held at the bench; not reported.)

12 **THE COURT:** All right. We're gonna take a quick
13 break. Y'all step in the jury room, get something to
14 drink, if you'd like, go to the restroom, and we'll have
15 you back out here in a few minutes. Don't discuss the
16 case.

17 (Whereupon, the jury retires to the jury room at
18 10:59 AM.)

19 **MR. STITELY:** Judge, while we're arguing, do you mind
20 if they take him to the restroom?

21 **THE COURT:** I don't mind a bit.

22 **MR. STITELY:** Okay.

23 **THE COURT:** Do y'all want -- we're still having the
24 sidebar. Do you want it put on the record? I don't care.

25 **MR. STITELY:** You can put it on the record if you

1 want.

2 **THE COURT:** I mean, Stacy's willing to take it down.
3 We're talking right here.

4 **MR. STITELY:** Can we move this though so you can see
5 it?

6 **MR. POGUE:** Your Honor, if the defense intends to
7 offer evidence of other buys and wants to get into what
8 the substance that was obtained from those buys and what
9 it tested as according to SLED, I believe that that -- we
10 would object to, first of all, that evidence coming in
11 because it doesn't do anything other than to confuse the
12 jury as to the issues in this particular case. Those are
13 separate instances, they're separate buys.

14 Your Honor, if he wants to try to impeach the chain
15 of custody on this particular case or wants to inquire
16 into the SLED analyst as to the propriety of her methods
17 of trying to identify that particular substance as being
18 methamphetamine, I think that's fair game. But, Your
19 Honor, I think it's -- under 403, these other buys, which
20 those indictments aren't even called, the State would not
21 even have been allowed to call, they did test positive for
22 a controlled substance, but not methamphetamine.

23 **MR. STITELY:** Judge, I don't intend to ask Detective
24 Merckle what the contents of those other chemical outcomes
25 were. At this point all I'm asking him to do is identify

1 the four dates. I will then ask the chemist because it's
2 -- she's the same chemist for all of them -- if she tested
3 them. I think 403, if I open the door on this particular
4 line, I think that's on me. I think it's relevant in this
5 case, particularly because we have a questionable reliable
6 CI who is out of sight of the officer for some period of
7 time, the officer has now testified that he did a search,
8 but not as thorough a search as possible, and the exact as
9 far as I would -- it's kind of like a backwards 403, we
10 have the exact same fact pattern. This CI sets it up, says
11 I'm gonna hook this guy up, goes to buy from him and I'm
12 gonna have the -- it's -- as far as it goes, it all looks
13 to be the same thing and then miraculously one of them
14 tests positive for something different, which will be an
15 argument later one. I'm not gonna ask Detective Merckle
16 to ID the outcome of these, I'm just getting the four
17 dates from him so I can ask the chemist about that. And
18 just as an aside, I do intend to put all my evidence in
19 of Detective Merckle at the end.

20 **MR. POGUE:** And, Your Honor, again, the relevance of
21 those other three buys and what those substances were in
22 regard to this particular case, haven't -- I mean, he
23 hasn't brought out any facts whatsoever that would suggest
24 that the evidence was exchanged or tampered with. Now if
25 he gets to the confidential informant and the confidential

1 informant says yeah, I switched it out for something else,
2 but at this point he's been searched before, he was
3 searched after, had nothing on his person. Other than
4 having it, you know, stuffed in a bodily orifice, he was
5 searched. So, again, he's just trying --

6 **THE COURT:** Detective Merckle was very careful saying
7 he didn't search there.

8 **THE WITNESS:** That's right.

9 **MR. POGUE:** I mean, I'm thinking -- that was what I
10 caught from it, they searched pretty much everywhere
11 except there.

12 **THE COURT:** And I'm good with that.

13 **MR. POGUE:** And my thing is, Your Honor, I don't
14 think it's -- I don't think it's proper for him to go to
15 talk about these other buys and then parlay that into
16 well, they tested positive for -- these other three buys
17 tested positive for something different than
18 methamphetamine, what happened in this particular case,
19 when there's been nothing that would indicate impropriety
20 in regard to the chain, in regard to the collection or in
21 regard to the Defendant. And it all takes place on video.
22 If it looks like he does something, then there's video
23 they can watch.

24 **MR. STITELY:** And through this witness, Judge, I'm
25 still just laying a foundation. I haven't made that

1 argument yet.

2 **MR. POGUE:** But --

3 **THE COURT:** To be honest with you, it's odd, but I
4 think he can do it because he's the one that can kind of
5 control that door and if he opens it, you can go into all
6 that other, you know, this and that. It allows you a
7 little more freedom, too, but I think he can.

8 **MR. POGUE:** Your Honor, again, just --

9 **THE COURT:** If I'm correct, you couldn't, but I think
10 he can at his own risk. I mean, he gets himself set up
11 there for a guy out there participating in some things
12 maybe he shouldn't, you know, whatever -- however that's
13 colored.

14 **MR. POGUE:** Your Honor, but I guess here's the -- the
15 issue with that is that from the State's standpoint, he's
16 getting into irrelevant evidence that's not proximate to
17 this case whatsoever and now we are having to talk about
18 test results through a SLED analyst who -- again, those
19 indictments weren't called, they would have never been
20 able to have been tried together, joined as a case. That
21 would be -- again, charges that couldn't be tried together,
22 so now we're having to have a chemist who doesn't have
23 that report, doesn't have those chains of custody on those
24 other items to counter his argument. Again, that it's
25 just these three separate incidents when they were all

1 individual buys, took place on different dates, different
2 months, that they thought that they were going to buy or
3 they intended to go buy meth and what he sold them was
4 something different does not make -- or doesn't bear on
5 this particular sale and what this tested positive as and
6 the chain of custody and the propriety of collection and
7 testing in this case.

8 (Proceedings held at the bench; not reported.)

9 **MR. STITELY:** May we approach, Judge, so I can kind
10 of show you where -- I'll show you where I'm going.

11 **THE COURT:** Show me, yeah.

12 **MR. STITELY:** He knows where I'm going.

13 **MR. POGUE:** I know where he's going, Judge. It's
14 just that I don't think he should be able to go there.
15 That's the State's objection.

16 **MR. STITELY:** Well, I just want to at least show
17 Your Honor so it doesn't come as like a shocker and I --

18 **MR. POGUE:** I guess, Your Honor, if -- I mean, if
19 we were talking about separate agencies and separate
20 confidential informants, you know, how far do you stretch
21 that? What's the --

22 **MR. STITELY:** These are the pictures I'm -- sorry,
23 ma'am. These are the pictures I marked 1, 2 and 3. White
24 powder baggy, white powder baggy, white powder baggy.
25 These are the amount of drugs in each of them, even a

1 scale weighing it. And, of course, Form 6, white powder
2 baggy, evidence indicator, white powder baggy, and then --
3 where's the BEST kit? Here's the BEST kit and chemist's
4 report, Judge. Crystal substance, and that is nowhere
5 even close and I'm gonna ask how it got to that. That is
6 not -- A is not B.

7 **THE COURT:** That's your argument obviously.

8 **MR. STITELY:** That's --

9 **THE COURT:** I don't disagree with that.

10 **MR. STITELY:** That's where I'm going.

11 **THE COURT:** And he can argue the same thing.

12 **MR. POGUE:** Yeah. I mean, that's -- and that's the
13 thing is that, Your Honor, these drugs -- I mean, they
14 dry out over three years.

15 **THE COURT:** I've heard testimony in meth cases.
16 There's crystal clear meth, there's one pot meth. They
17 look different, but it's the same chemical structure.
18 I've heard that.

19 **MR. POGUE:** And he can argue that, Your Honor. He
20 can do what he just did. He can use the pictures and say
21 this isn't --

22 **THE COURT:** I think there's plenty -- there's ample
23 room for both of y'all, but I think he could -- I think
24 he's got the same CI, the same analyst, different times,
25 but I think it's fair game, but I think it opens the door

1 for you to maneuver a little bit also. So that's gonna
2 be my ruling.

3 Let's take a break, but your record is protected
4 all the way through this whole line of whatever else he's
5 gonna introduce.

6 **MR. STITELY:** And, Judge, I'm gonna go ahead and
7 introduce evidence.

8 **THE COURT:** Okay. Everything you've submitted you
9 want to --

10 **MR. STITELY:** I can't get Number 5 in through him.
11 He could not identify 5. I think Ms. Kyzer's gonna have
12 to identify 5.

13 **THE COURT:** Okay. So you're gonna put evidence in
14 and that also alleviates a problem for you.

15 **MR. POGUE:** Your Honor, just to -- so we're aware as
16 to what we may need to get as far as on the State's end,
17 is he going to be intending to introduce evidence of these
18 other three buys and SLED reports of these other three
19 buys?

20 **MR. STITELY:** I intend to ask the chemist, the same
21 one, about those other three analyses and try to offer
22 them through her. I intend to.

23 **MR. POGUE:** Your Honor, exactly. I mean, then he's
24 gonna have to -- if he wants to get that in, he's got
25 to get the chain of custody, he's got to get -- he's got

1 to do everything that we have to do if he wants to get
2 those reports in.

3 **MR. STITELY:** And that's why I started with Detective
4 Merckle to ask if he --

5 **MR. POGUE:** I mean, I -- he's ruled that you can. I
6 just want to establish that, but you're gonna have to jump
7 on -- jump through all those hoops.

8 **MR. STITELY:** I've never got to prosecute cases,
9 Judge. It might be fun.

10 **THE COURT:** Do your best. I think you've got to do
11 it.

12 **MR. STITELY:** Yes, sir.

13 **THE WITNESS:** Can I use the restroom?

14 **THE COURT:** You may.

15 **MR. POGUE:** Can we take a quick break, Your Honor?

16 **THE COURT:** We're gonna take about ten minutes
17 because I need a break.

18 (Recess taken.)

19 (Proceedings held at the bench.)

20 **THE COURT:** Y'all come here. I want to make a
21 record of this when Stacy's ready, but Bobby just told me
22 that the black guy, the nicely dressed guy over here,
23 Fitzgerald, he knows the informant by another name and
24 he's figured out who he is. He knows him, friends with
25 him on Facebook, knows he's been accused on Facebook of

1 being a snitch, all this sort of stuff.

2 **MR. POGUE:** Who are you talking about?

3 **MR. STITELY:** One of the jurors knows the informant.

4 **THE COURT:** Fitzgerald, the nicely dressed black man,
5 the one on this end.

6 **MR. POGUE:** Okay. What was that?

7 **THE COURT:** He's a court reporter of some type.

8 **MR. STITELY:** Yeah, Creel.

9 **THE COURT:** He worked with Judge Spence some.

10 **MR. POGUE:** Is that gonna affect his ability to --

11 **THE COURT:** Well, we can ask him that, but I want
12 y'all to know that it was just brought --

13 **MR. STITELY:** I think you need to ask him.

14 **MR. POGUE:** I think so, too.

15 **THE COURT:** As soon as I walked out the door, they
16 told me.

17 **MR. STITELY:** Do you want to tell him that other
18 thing?

19 **MR. POGUE:** Your Honor, I think if he's allowed to
20 go down this road to show that he sold other substances
21 that weren't meth in addition to this time that was meth,
22 that we are -- that we should be allowed latitude to go
23 into evidence of him manufacturing meth and possibly
24 selling meth at other times and other convictions that
25 relate to methamphetamine.

1 **MR. STITELY:** He has a possession.

2 **MR. POGUE:** He has a manufacturing methamphetamine
3 conviction prior to this.

4 **THE COURT:** He does?

5 **MR. POGUE:** Yes.

6 **THE COURT:** Well, if he testifies, you can do that.

7 **MR. POGUE:** I think that should come in. I think --
8 I think I should get to impeach him on the fact that he's
9 manufacturing meth if he's alleging that he's selling
10 something other than meth.

11 **MR. STITELY:** Oh, I don't -- if he takes the stand,
12 I think you can.

13 **THE COURT:** Yeah, I think you've got that. If he
14 doesn't testify --

15 **MR. STITELY:** Especially if he says something like
16 I don't deal with meth, I think you -- he opens the door
17 and says you're lying because obviously you have a
18 conviction for it. I think you can do that.

19 **THE COURT:** I'm certain he can.

20 **MR. STITELY:** I'm not gonna object to that if that's
21 where we're going.

22 **THE COURT:** That's fair. If he testifies, that's
23 fair game.

24 **MR. POGUE:** But what I'm -- in our case in chief, I
25 guess what I'm saying is that -- like, for example, they've

1 got NPLeX records that show buying pseudoephedrine that I
2 may reserve the right to recall him to talk about NPLeX
3 records. I guess what I'm saying is that I feel like, you
4 know, if we knew that this was gonna go into facts outside
5 this indictment, we could have gone into this particular
6 line of defense that we could call the custodian of records
7 for the NPLeX, which is the purchases of pseudoephedrine
8 and all that, how many times he's purchased.

9 **MR. STITELY:** But this isn't a manufacturing case,
10 this is a distribution case.

11 **MR. POGUE:** But it's indicative of somebody that's
12 manufacturing. You're alleging that he didn't sell meth,
13 that he's never sold meth to the CI. That's what your
14 defense is.

15 **MR. STITELY:** To this CI, yes.

16 **MR. POGUE:** You can't talk out both sides of your --
17 I mean --

18 **MR. STITELY:** Well, of course I can. I'm a defense
19 lawyer.

20 **THE COURT:** All right. I think he gets the other
21 three buys. I don't know what -- if he takes the stand,
22 you can talk about his prior record, but I don't -- if he
23 takes the stand, then you need that on rebuttal. I think
24 you can deal with that.

25 **MR. POGUE:** But in my case in chief, you wouldn't

1 allow me to put in evidence of him purchasing
2 pseudoephedrine?

3 **THE COURT:** Unh-unh.

4 (Recess taken.)

5 **BAILIFF:** All rise. Court is back in session.

6 **THE COURT:** All right.

7 All right. Are you ready?

8 **MR. STITELY:** Judge, the juror issue?

9 **THE COURT:** Bring in the juror, please.

10 I think just from what the --

11 **MR. STITELY:** Bradley, do you have your CI here to
12 make sure he can ID him?

13 **MR. POGUE:** Yes.

14 **THE COURT:** The juror is Fitzgerald. Do you know his
15 number?

16 **THE CLERK:** He's Juror Number 87. Roderick
17 Fitzgerald.

18 **THE COURT:** Okay. He's almost employed in any
19 capacity within the walls of a courthouse, isn't he?

20 **MR. STITELY:** Well, he's an independent contractor.

21 **THE COURT:** Still he works for Judge Spence.

22 **MR. STITELY:** Well, he's with Creel, he's not with
23 the State.

24 **THE COURT:** Whatever.

25 **MR. STITELY:** If he has a problem, Judge, we have an

1 alternate.

2 **THE COURT:** Yeah. It's better safe than sorry.

3 **MR. POGUE:** Two things, Your Honor. One, I'd like
4 to get him to --

5 **BAILIFF:** Bring them in?

6 **THE COURT:** No, I want Mr. Fitzgerald.

7 **BAILIFF:** Oh, just him?

8 **THE COURT:** Yeah, just him.

9 (Whereupon, Juror Number 87 enters the courtroom.)

10 **THE COURT:** I didn't realize you were a court
11 reporter. You know why I brought you in here. Bobby told
12 me that you recognized from a -- not a proper name, but
13 now another name, the confidential informant that they've
14 been referring to in the trial. Tell me your relationship
15 with him.

16 **JUROR NUMBER 87:** Grew up playing basketball. We
17 played pickup basketball together, the same high school,
18 and then I haven't seen him in a long time. I'm Facebook
19 friends with a couple guys and they --

20 **THE COURT:** Bottom line, can you still be fair and
21 impartial?

22 **JUROR NUMBER 87:** Yes, sir.

23 **THE COURT:** Are you comfortable with it?

24 **JUROR NUMBER 87:** Yes, sir.

25 **THE COURT:** Have you got any more questions?

1 **MR. STITELY:** No. He says he's fair and impartial,
2 Judge.

3 **THE COURT:** That's good enough.

4 All right. And you keep that to yourself. I mean,
5 of course, your relationship with him. You can't say I
6 knew him in high school and this and that and the other.
7 Y'all have got to judge the case on these facts.

8 **JUROR NUMBER 87:** Yes, sir.

9 **THE COURT:** Fair enough?

10 **JUROR NUMBER 87:** Yes, sir.

11 **THE COURT:** Okay.

12 (Whereupon, Juror Number 87 retires to the jury room.)

13 **MR. POGUE:** Your Honor, if he's gonna be offering
14 evidence that the State wouldn't be typically allowed to
15 offer in this particular trial, I think -- especially
16 evidence of him doing other buys and selling another
17 substance, that I'd like for at least him to stipulate on
18 the record for PCR purposes. I mean, this is a trial
19 strategy.

20 And, secondly, Your Honor, I don't want to -- I'm
21 afraid -- I don't want the jury to feel like the State was
22 hiding anything with regard to these other buys. I don't
23 know if Your Honor's inclined to preface him introducing
24 this evidence in the fashion of the defense is introducing
25 this evidence that the State wouldn't typically be allowed

1 to introduce this type of evidence, but because the defense
2 is offering it, it is allowed.

3 **MR. STITELY:** I don't know that that's the standard
4 though.

5 **MR. POGUE:** Otherwise, it looks like -- I feel like
6 it makes us look like we're trying to hide something.

7 **MR. STITELY:** I think if you say it so much as for
8 the purposes of going forward, the State is only allowed
9 to prosecute events that happened at one date and time at
10 a time.

11 **MR. POGUE:** But when the defense offers something of
12 different dates, then -- I guess that's what I'm trying to
13 say is that we would not be allowed to even talk about it.

14 **MR. STITELY:** I think as long as you prefaced it with
15 the comment that the State is only allowed to try one case
16 at one time. If the defense raises it, they have waived --

17 **THE COURT:** If the defense opens the door.

18 **MR. POGUE:** Okay. That's fine. Your Honor, I'm fine
19 with that.

20 **MR. STITELY:** As long as you can preface it with that
21 comment; that the reason they can't do it is they can only
22 try one case at one time.

23 **THE COURT:** All right. Go get them.

24 **MR. POGUE:** If he opens the door, that's fine by me.

25 **THE COURT:** Yeah.

1 Q. There was one on March 25, 2015?

2 A. Correct.

3 Q. April 21, 2015?

4 A. Yes, sir.

5 Q. And May 19, 2015?

6 A. Yes, sir.

7 Q. Essentially the same scenario, the same CI?

8 A. Yes.

9 Q. Mr. Davis?

10 A. Correct.

11 Q. You search him?

12 A. Correct.

13 Q. Videotape, the same process?

14 A. Exactly the same process.

15 Q. Your case, you would have been working it?

16 A. Yes, sir.

17 Q. Because he's your CI?

18 A. Correct.

19 Q. Okay. Probably Detective Purdy as well?

20 A. Yes. Yes, sir.

21 Q. Okay. You would have followed the same procedures
22 generally?

23 A. Yes, sir.

24 Q. Just different dates, times and places?

25 A. For the most part, yes, sir.

1 Q. Okay. You would have gone through the same procedure
2 of collecting the evidence from the CI?

3 A. Yes, sir. Absolutely.

4 Q. Put it in a bag?

5 A. Correct.

6 Q. Now you as a detective, you don't deal with
7 determining what a substance is. That's someone else
8 who does that?

9 A. Correct. I can only presume or do a presumptive,
10 which we don't do anymore. It's very rare when we test a
11 substance due to some of the dangerous chemicals that are
12 out there these days, but occasionally we will pretest
13 them, which isn't -- isn't definitive.

14 Q. In this case and the other three times, you would
15 have bagged it and sent it to a chemist to deal with?

16 A. Correct. Yes, sir.

17 Q. Okay. That's outside of your purview?

18 A. Yes, sir.

19 Q. And then you would pretty much just get a report
20 back?

21 A. Yes, sir.

22 Q. Okay. The pictures I showed you earlier, State's 1,
23 2, 3, and the forms, 4 and 6, I'm gonna show you them one
24 more time and then I'm gonna offer them into evidence.

25 Number 1, could you tell the jury --

1 **MR. POGUE:** Your Honor, the State would stipulate to
2 those items coming into evidence.

3 **THE COURT:** Okay. Call them out, and they're
4 stipulated to, but I want to number them so I have them.

5 **MR. STITELY:** All right. Number 1 appears to be --

6 **THE COURT:** No, start with this. Exhibits 1 through
7 however many and I want to make a record of what's coming
8 in and then you can talk about them all you want.

9 **MR. STITELY:** Yes, sir. Number 1 is a picture, Judge.
10 Number 2 is a close-up picture of a bag. Number 3 is, I
11 guess, a little bit further picture of the bag tied in a
12 knot. Number 4 is a Form B, which is the evidence
13 submission form which says what the Detective turned in to
14 the lab and signed by him. Number 6 is a property and
15 evidence voucher, which is one of the forms that's
16 generated by the sheriff's department when Detective
17 Merckle puts his stuff into evidence.

18 **THE COURT:** Okay. So 1 through 6 is admitted without
19 objection.

20 **MR. STITELY:** Judge, Number 5 is not. Number 5 is a
21 form created by the evidence person, so I'll have to get
22 to that through her.

23 **THE COURT:** 1, 2, 3, 4 and 6, but not 5, are admitted
24 without objection.

25 **MR. POGUE:** That's correct.

1 **THE COURT:** All right.

2 (Defendant's Exhibit Number 1 through 3, photographs,
3 and Defendant's Exhibit Number 4, a Rule 6 Form B, and
4 Defendant's Exhibit Number 6, a Property and Evidence
5 Voucher, were admitted into evidence.)

6 BY MR. STITELY:

7 Q. Okay. Detective, do you want step down real quick?

8 A. Sure.

9 Q. I'm gonna hand you what's been marked as Defendant's
10 Exhibit Number 1. Could you tell me what that was and how
11 that picture was produced?

12 A. I took this picture of a plastic bag containing a
13 white powdery substance -- what appeared to be a white
14 powdery substance on a digital scale that I was issued.
15 I was issued the scale through our evidence custodians to
16 use to get approximate weights.

17 Q. And was this the item that we're dealing with the
18 March 1st date?

19 A. Well, I'd have to look to see when the pictures were
20 actually taken. I don't remember which picture is which,
21 but these would be pictures from the entire case.

22 Q. Okay. And if they were included along with your
23 evidence sheet, is it fair to say that you -- you didn't
24 manipulate these after this?

25 A. No, absolutely not. No, sir.

1 Q. Okay. And this is -- you called it a scale?

2 A. Yes, sir, a digital scale.

3 Q. And is that an official number or is that just an
4 internal number that you can use for the weight?

5 A. That's just a number I can use. It's not official.
6 The chemist will get an official weight. That's just with
7 the bag and the whole contents that we had.

8 Q. All right. Number 2. Can you tell the jury what
9 Number 2 is?

10 A. So it looks like the corner of a plastic bag
11 containing a white powder substance with a test kit
12 showing blue, which is an indicator on the test kit that
13 it's showing a positive reaction for methamphetamine found
14 within that substance.

15 Q. But this is not the one that we can rely on. We have
16 to go --

17 A. Correct. This is -- this is a precursor test. This
18 is prior to the chemist actually analyzing it in the
19 special ways that they do.

20 Q. Okay. Number 3?

21 A. Another cut corner of what appears to be a little
22 plastic baggy -- possibly a cut corner bag with a white
23 powdery substance tied in a knot.

24 Q. (Handing.)

25 A. The same.

1 Q. And those would have been pictures of what you
2 describe on your Form B, which is your evidence sheet, as
3 the plastic bag with white powdery substance that you said
4 was believed to be meth?

5 A. Correct.

6 Q. And you would have turned this in to an evidence
7 locker?

8 A. Correct.

9 Q. In your BEST kit?

10 A. Yes.

11 Q. And then it's out of your hands?

12 A. Yes.

13 Q. Okay. And Number 6, which is just kind of the -- I
14 guess the sheriff's department form that pretty much
15 memorializes the exact same thing?

16 A. Correct. Yes, sir.

17 Q. Okay. Thank you. You can sit back down.

18 A. All right.

19 Q. Detective, is this pretty much the form that you do
20 in any case?

21 A. Yes.

22 Q. Collect the evidence, take a picture of it, turn it
23 in to the evidence locker?

24 A. Yes, sir.

25 Q. Okay. That's what you're trained to do?

1 A. Yes, sir.

2 Q. A routine procedure?

3 A. Correct.

4 Q. All right. In all -- and if you don't know, let me
5 know, how many times have you paid Mr. Haygood to do work
6 for you?

7 A. I reviewed the file yesterday and we had 103 vouchers,
8 so that would indicate to me that there were 103 different
9 -- different times when he would have received payment for
10 some type of service.

11 Q. But you said it doesn't have to be a purchase?

12 A. Correct.

13 Q. Some was to go scout a location?

14 A. Maybe not -- maybe not that limited, but, you know,
15 provide information that either led to the arrest or the
16 seizure of narcotics or, you know, such.

17 Q. Okay. Do you 1099 them?

18 A. They are advised through the -- you know, myself and
19 any agent that works them that they have to provide this
20 information for tax purposes, any monies that they receive.

21 Q. Because the sheriff's department documents it all?

22 A. Correct.

23 Q. They don't just give you money and say do what you
24 want with it?

25 A. Absolutely not.

1 Q. Okay. And you would have followed that procedure
2 routinely with this particular individual?

3 A. Yes, to a T; checks and balances.

4 Q. Okay.

5 **MR. STITELY:** Thank you, Detective. Those are all
6 the questions I have.

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

8 **MR. POGUE:** Just very briefly, Your Honor.

9 **THE COURT:** Uh-huh.

10 REDIRECT EXAMINATION

11 BY MR. POGUE:

12 Q. Agent Merckle, again, do substances that you collect
13 in your line of work look the same months, years later
14 than they do when you first collect them?

15 **MR. STITELY:** Judge, I'm gonna object. This is the
16 question we dealt with previously.

17 **THE COURT:** Ask it one more time.

18 BY MR. POGUE:

19 Q. Do substances that you collect as a narcotics agent
20 look the same physically -- the physical characteristics
21 of it look the same to you when you collect it as they do
22 months, years down the road?

23 **THE COURT:** He can answer that.

24 A. It's been my experience that, no, they do not look
25 the same. As with any type of item that could be possibly

1 ingested, let's say apples or pies or anything that you
2 want to get, and there's a certain point of when they
3 start to degrade and change the way that they look. Just
4 like with -- you know, it's not a -- it's not a piece of
5 plastic that's gonna stay that way forever, so they do
6 change. My experience is that they change -- could change
7 colors, shape, all types of things.

8 **MR. POGUE:** No further questions.

9 **MR. STITELY:** Nothing further, Judge.

10 **THE COURT:** All right. You can step down.

11 (Witness excused.)

12 **MR. POGUE:** Your Honor, the State would like to
13 reserve the right to re-call Mr. Merckle.

14 **THE COURT:** Sure. And Mr. Stitely can call him if
15 he wants, too.

16 All right, Mr. Bell. Call your witness.

17 **MR. BELL:** Thank you, Your Honor.

18 At this time the State would call Javan Haygood to
19 the stand.

20 **THE CLERK:** Place your left and raise your right.

21 (Whereupon, Javan Haygood was duly sworn by the Clerk
22 of Court.)

23 **THE CLERK:** Have a seat, please, sir. Once you're
24 seated, state your full name; spelling your last, please.

25 **THE WITNESS:** Javan Haygood, H-A-Y-G-O-O-D.

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JAVAN HAYGOOD,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Javan, do you have a nickname?

A. Van.

Q. Van. Okay. Do you mind if I just call you Mr. Haygood?

A. Yeah, that's all right.

Q. Mr. Haygood, where are you from?

A. I'm from Lexington.

Q. Okay. Did you grow up here?

A. Yes, sir.

Q. Okay. How old are you?

A. I'm forty-one.

Q. All right. Did you go to school around here?

A. Yes, sir.

Q. Where at?

A. Lexington County High School.

Q. Did you graduate?

A. Yes, sir.

Q. What year?

A. '95.

Q. And did you do anything after high school as it relates to your education?

1 A. Yes, sir. I have two years of college. Midlands
2 Tech.

3 Q. Okay. And did you end up getting a degree from them?

4 A. No, sir.

5 Q. Okay. You ended up dropping out?

6 A. Yes, sir.

7 Q. Okay. And where are you currently living?

8 A. Sir?

9 Q. Where do you currently live? You don't have to give
10 an address. Just general.

11 A. I live with my girlfriend.

12 Q. Okay. Is that -- and that's here locally?

13 A. Yes, sir.

14 Q. Okay. Now when you dropped out of school at Midlands,
15 how did you start making a living for yourself?

16 A. I had a job.

17 Q. What kind of work did you do?

18 A. I worked at Carolina Wings.

19 Q. And during your time working for Carolina Wings, were
20 you ever using illegal substances?

21 A. No, sir.

22 Q. When did you start using illegal substances?

23 A. I never used illegal substances.

24 Q. Have you ever sold illegal substances?

25 A. Yes, sir, I have.

1 Q. Tell me about that. When did you start doing that?

2 A. I started doing that in I'm gonna say around 2005 I
3 started selling it.

4 Q. And do you still sell today?

5 A. No, sir.

6 Q. When you did stop selling?

7 A. I stopped selling in 2008.

8 Q. Why did you stop selling?

9 A. Because I got caught.

10 Q. Why did that make you stop?

11 A. I didn't think jail was worth it. I didn't think
12 selling drugs was worth spending my life in jail.

13 Q. Now you just told us that you sold illegal drugs. Do
14 you have a criminal history?

15 A. Yes, sir.

16 Q. Does that include a driving under suspension in 1997?

17 A. Yes, sir.

18 Q. A receiving stolen goods in 2005?

19 A. Yes, sir.

20 Q. Do you have a possession of meth in 2007?

21 A. Yes, sir.

22 Q. And do you have a possession with intent to
23 distribute?

24 A. I'm sorry, on 2007, a possession of -- it wasn't
25 meth, it was crack.

1 Q. That's all right.

2 A. Okay.

3 Q. But you did have a possession charge you were
4 convicted of?

5 A. Yes, sir.

6 Q. And in 2008 you were arrested for possession with
7 intent to distribute within proximity?

8 A. Yes, sir.

9 Q. And is that the charge that you were just telling us
10 you said enough is enough?

11 A. Yes, sir.

12 Q. Do you have a criminal history past the conviction
13 for that crime?

14 A. Yes, sir.

15 Q. What do you have?

16 A. I have another driving under suspension.

17 Q. Any other drug offenses?

18 A. Oh, no. No, sir.

19 Q. Any other stealing offenses?

20 A. No. No, sir.

21 Q. So your last conviction up here in big court was the
22 2008 arrest for PWID in proximity?

23 A. Yes, sir.

24 Q. Did you ever start working for law enforcement?

25 A. Yes, sir.

1 Q. When did you start working for them?

2 A. About 2013.

3 Q. How did that come about?

4 A. I wanted to effect change in my community, I wanted
5 to make a difference, I wanted to make up for what I did
6 with me selling drugs and stuff like that, so I -- I
7 contacted law enforcement and wanted to become a CI.

8 Q. Do you recall what year you contacted them?

9 A. I believe it was 2013.

10 Q. At that time, again, did you have any pending charges?

11 A. No, sir, none whatsoever.

12 Q. So were you hoping that they would help you with
13 charges of some sort when you signed up with law
14 enforcement?

15 A. No, sir.

16 Q. Now we're not naive. Were you hoping to get anything
17 out of your arrangement with law enforcement?

18 A. Yeah. I mean, I was hoping to get compensated in
19 some way.

20 Q. When you called law enforcement, did you end up
21 meeting with any agents?

22 A. Yes, sir.

23 Q. Who did you meet with?

24 A. Detective Merckle and Detective Paige.

25 Q. And is that Paige Barnes you're referring to?

1 A. Yes, sir.

2 Q. Okay. And did you sit down and talk to them about
3 becoming a confidential informant?

4 A. Yes, I did.

5 Q. Did you read over a contract telling you what you
6 could and couldn't do?

7 A. Yes, sir.

8 Q. Did you end up signing with them and agreeing to be
9 a confidential informant?

10 A. Yes, I did.

11 Q. Did you end up acting on that agreement? Did you go
12 out and work for law enforcement?

13 A. Yes, I did.

14 Q. And can you estimate on how many occasions you
15 assisted law enforcement?

16 A. At that time, I'm gonna say fifty plus.

17 Q. And when you say fifty plus, are you specifically
18 referring to doing what we call controlled buys?

19 A. Yes, sir.

20 Q. And that's when you go and wear a wire and buy
21 narcotics for law enforcement?

22 A. Yes, sir.

23 Q. And you've done fifty or more of those for law
24 enforcement?

25 A. Yes, sir.

1 Q. Okay. What agents were you working with primarily
2 going through those buys?

3 A. Detective Merckle and Detective Purdy.

4 Q. At some point did you turn law enforcement on to a
5 Donnell Davis?

6 A. Yes, sir.

7 Q. Can you tell me how you came to know about Donnell
8 Davis?

9 A. I met him through a mutual friend.

10 Q. And through meeting him, did you ever hang out in
11 person with him?

12 A. Yes, sir. Shortly. For a brief -- brief time.

13 Q. And where did that encounter happen?

14 A. At a hotel.

15 Q. And how close in proximity did you get to Mr. Davis
16 that -- on that occasion?

17 A. Within arm's length.

18 Q. Within arm's length you said?

19 A. Yes, sir.

20 Q. Were you able to see his face?

21 A. Yes, sir.

22 Q. Did he have hood on, a mask, a hat, anything that
23 would obstruct your view of his face?

24 A. No, sir.

25 Q. Could you clearly see him?

1 A. Yes, sir.

2 Q. After meeting him on that occasion, did he ever make
3 further contact with you?

4 A. Yes, sir.

5 Q. How did that come about?

6 A. He called me through our mutual friend's phone and he
7 let me know -- oh, I'm sorry. That's -- that's how I met
8 him.

9 Q. So you said he called you through your mutual friend's
10 phone, so it was a number that you associated with somebody
11 else?

12 A. Yes, sir.

13 Q. So you answered it thinking it would be that person?

14 A. Yes, sir.

15 Q. But he was on the other side?

16 A. Yes, sir.

17 Q. Who was on the other side?

18 A. He was.

19 Q. What did he indicate to you?

20 A. He -- he just let me know that whatever I needed that
21 he could get it for me pertaining to --

22 Q. And how did you take that to mean?

23 A. He was pertaining to drugs.

24 Q. Did you tell anybody about that conversation?

25 A. Yes, sir.

1 Q. Who?

2 A. I let Detective Merckle know.

3 Q. And as a result of telling law enforcement, did y'all
4 start coming up with the idea of doing a controlled buy on
5 Mr. Donnell Davis?

6 A. Yes, sir.

7 Q. Did you take part in a controlled buy on March 11,
8 2015?

9 A. Yes, sir.

10 Q. Who did you meet with that day from law enforcement?

11 A. Detective Merckle and Detective Purdy.

12 Q. Where did you meet with them at?

13 A. In the Red Bank area around Wal-Mart.

14 Q. And did they take you anywhere from there?

15 A. Yes, sir.

16 Q. Where to?

17 A. They took me to a -- they took me to a -- this --
18 like I said, it's an abandoned house off of Platt Springs
19 Road.

20 Q. And you spoke further with them about what y'all were
21 intending to do that day?

22 A. Yes, sir.

23 Q. What did they do with you when you got to that second
24 location?

25 A. They wired me up with a mic and a camera.

- 1 Q. Did they search you at all?
- 2 A. Yes, sir. They patted me down.
- 3 Q. And was that usual based on your fifty plus buys and
4 experience?
- 5 A. Yes, sir. Every time.
- 6 Q. On this particular occasion, did they find anything
7 on you?
- 8 A. No, sir.
- 9 Q. Now on March 11, 2015, to be clear, who was it that
10 you were going to buy drugs from that day?
- 11 A. From Donnell. Donnell Davis.
- 12 Q. And did you know what you were expecting to buy from
13 him?
- 14 A. Yes, sir.
- 15 Q. What was that?
- 16 A. A gram of meth.
- 17 Q. And did you have a telephone conversation with
18 Mr. Davis about that anticipated purchase?
- 19 A. Yes, sir.
- 20 Q. And when did that take place?
- 21 A. It took place before -- before I met with Detective
22 Merckle.
- 23 Q. And what was the price for that meth?
- 24 A. A hundred dollars.
- 25 Q. And who set that price?

1 A. He did.

2 Q. When you say "he", who was that?

3 A. Donnell Davis.

4 Q. And how was it decided where y'all would be meeting
5 that day?

6 A. He let me know where to meet.

7 Q. I just want to be clear because we have a record here.
8 When you say "he", is that Donnell Davis?

9 A. I'm sorry. Yes, sir. Donnell Davis. He let me know
10 where he wanted to meet at.

11 Q. And where was that that he wanted to meet on March
12 11th?

13 A. The Village Store on Platt Springs Road.

14 Q. Mr. Haygood, are you able to see this picture okay?

15 A. Yes, sir.

16 Q. Does this appear to be the Village Store that y'all
17 met at that day?

18 A. Yes, sir, it is.

19 Q. Referring to State's 2. After getting wired up with
20 law enforcement that day, did they cut you loose or did you
21 drive with them somewhere?

22 A. I rode with them.

23 Q. Where did y'all go?

24 A. To the Village Store.

25 Q. Now when you pulled up, did you recall seeing

1 Mr. Davis as y'all were pulling up?

2 A. No, sir.

3 Q. Did you know he was there at that particular time?

4 A. No, sir, not until I got out of the van.

5 Q. Once you pulled up, what did you do next?

6 A. I went to text him to let him know I was there, but
7 as I was texting him I realized he was already parked in
8 at the store -- at the Village Store.

9 Q. Where did you see him parked?

10 A. At the gas pump.

11 Q. Was he driving a vehicle?

12 A. No, sir, he was in the passenger seat.

13 Q. What did you do at that point?

14 A. I went to the car and got in the back seat.

15 Q. And when you approached the car to get in the back
16 seat, what side of the vehicle did you pass by?

17 A. On the passenger side.

18 Q. And who was seated in that position?

19 A. Donnell Davis.

20 Q. And did you have the opportunity to clearly see him?

21 A. Yes, sir.

22 Q. Any doubt in your mind that that was Donnell Davis?

23 A. None whatsoever.

24 Q. Does he have a nickname that he goes by?

25 A. Yes, sir.

1 Q. What is that?

2 A. Dice.

3 Q. And is that the same person that you saw previously
4 in the hotel room you talked about earlier?

5 A. Yes, sir.

6 Q. And no doubt the same people?

7 A. Yes, sir.

8 Q. And did the voice match the person on the phone that
9 called and said they could hook you up with something?

10 A. Yes, sir.

11 Q. And, again, who was that?

12 A. Donnell Davis.

13 Q. Anybody else in the vehicle?

14 A. Yes, sir.

15 Q. Do you know who?

16 A. I believe it was a girlfriend.

17 Q. Where was she seated?

18 A. In the driver's seat.

19 Q. And what side of the vehicle did you get into?

20 A. I got on the passenger side.

21 Q. On what side?

22 A. The passenger back seat.

23 Q. Rear passenger?

24 A. Yes, sir.

25 Q. So that would be behind where who was seated?

1 A. Behind Donnell Davis.

2 Q. And when you got inside of the vehicle, what happened
3 next?

4 A. I told him -- I apologized for taking so long and I
5 just let him know that I was picking up my son from
6 softball practice and then we made the purchase.

7 Q. When you say you made the purchase, I want you to
8 really walk us through it. Most of us haven't seen this
9 before, so how did it happen?

10 A. Okay. Well, like I said, I got in the back seat, I
11 apologized for taking so long, I made the purchase of --
12 I mean, I told him that I was -- I apologize.

13 Q. You're fine. Take your time.

14 A. I apologize. Okay. I got in the back seat, I
15 apologized for taking so long, told him I was picking up
16 my son from softball practice, then we proceeded to make
17 a drug transaction.

18 Q. So let's break it down. When you got in the back,
19 did you have to ask for it?

20 A. No, sir. He had it ready for me.

21 Q. Okay. And did you hand him anything in exchange?

22 A. Yes, sir. I handed him a hundred dollars.

23 Q. And who provided you with that money?

24 A. Detective Merckle.

25 Q. And you handed it forward?

1 A. Yes, sir. I handed it forward to Donnell Davis.

2 Q. And did Donnell take it from you?

3 A. Yes, he did.

4 Q. Did he give you anything in exchange?

5 A. Yes, sir. He gave me a gram of meth.

6 Q. Now how did he give it to you? What form was it in,
7 was it packaged? Tell me about that.

8 A. It was a white substance in a plastic baggy.

9 Q. Have you bought suspected meth before during those
10 previous fifty buys?

11 A. Yes, sir.

12 Q. And did anything seem out of the ordinary with the
13 meth that was given to you that day?

14 A. No, sir.

15 Q. Do you have any other conversation while you were in
16 the vehicle?

17 A. I asked him could he get Molly.

18 Q. Is Molly another illicit substance?

19 A. Yes, sir, it is.

20 Q. What was his response to that?

21 A. He said he would let me know.

22 Q. Okay. Did he tell you to call you --

23 A. Yes, sir.

24 Q. -- or to call him? Excuse me.

25 Did the female say anything during your interaction

1 inside of that vehicle?

2 A. No, sir.

3 Q. All of the conversation about the transaction and the
4 potential purchasing of Molly came from who?

5 A. Donnell Davis.

6 Q. Did you exit the vehicle at some point?

7 A. Yes, sir.

8 Q. Where did you go?

9 A. I got back in the van with Detective Merckle.

10 Q. Did you go anywhere in between leaving the vehicle
11 with the meth and going back to the agents in the van?

12 A. No, sir. I went straight back to the van.

13 Q. Can you estimate how long it took you to get from
14 that car to the van?

15 A. Maybe about two seconds.

16 Q. Okay. Now once you got back in the van, who did you
17 meet with?

18 A. Detective Merckle and Detective Purdy.

19 Q. What happened at that point?

20 A. I handed them the controlled substance.

21 Q. And did they pat you down again?

22 A. Yes, sir, when we got back to the meeting spot.

23 Q. Did they strip your recording equipment off of you?

24 A. Yes, sir.

25 Q. Did they ask you to give a statement as to what

1 happened?

2 A. Yes, sir.

3 Q. Did you?

4 A. Yes, sir.

5 Q. Did you write it yourself?

6 A. No, sir.

7 Q. Did you tell them what to write?

8 A. I told -- yes, sir.

9 Q. Do you recall who was writing it for you?

10 A. Detective Purdy was writing.

11 Q. To be clear, did you have a chance to review what he
12 wrote down?

13 A. Yes, sir.

14 Q. And was it accurate to what you told him?

15 A. Yes, sir.

16 Q. Were you also asked to do a photo lineup?

17 A. Yes, sir.

18 Q. Did they ask you to do it at that time?

19 A. Yes, sir.

20 **MR. BELL:** Permission to approach the witness?

21 **THE COURT:** Sure.

22 BY MR. BELL:

23 Q. Who presented you with it?

24 A. Detective Merckle.

25 Q. And at the time that they presented you with the

1 lineup, were they intimidating you in any manner?

2 A. No, not -- none whatsoever.

3 Q. Were they withholding any needs from you like food,
4 water, using the restroom?

5 A. No.

6 Q. Cranking the heat up in the vehicle on you?

7 A. No.

8 Q. Making you uncomfortable in any manner?

9 A. No.

10 Q. Do you recognize what's been marked as State's 4?

11 A. Yes, sir.

12 Q. And what is that?

13 A. Donnell Davis.

14 Q. Is this what they showed you in the vehicle?

15 A. Yes, sir.

16 Q. Is this the same lineup?

17 A. Yes, sir.

18 Q. Whose signature is down here at the bottom?

19 A. That is mine.

20 Q. And what is the date right here?

21 A. That is 3-11-15.

22 **MR. BELL:** Your Honor, at this time the State would
23 seek to enter State's 4 into evidence.

24 **MR. STITELY:** I believe the lineup is in, Judge.

25 **MR. POGUE:** Yeah, I believe that's in.

1 **MR. BELL:** It's the lineup, Your Honor.

2 **THE COURT:** It's all ready in.

3 **MR. BELL:** Oh, it is already in. I apologize.

4 **THE COURT:** It came in -- it kind of came in rapidly,
5 but it was in.

6 **MR. BELL:** Okay.

7 **THE COURT:** That's all right.

8 **MR. BELL:** In the interest of time, permission to
9 publish, Your Honor?

10 **THE COURT:** Sure.

11 BY MR. BELL:

12 Q. Now the individual that is circled on that lineup, is
13 that the person that handed you the meth that day?

14 A. Yes, sir.

15 Q. And is that Donnell Davis?

16 A. Yes, it is.

17 Q. When they handed you the lineup, did they have their
18 finger on any particular selection?

19 A. No, sir.

20 Q. Did they make any sort of maneuver to try to encourage
21 you to pick one person over another?

22 A. No, they didn't.

23 Q. How long did it take you to make your selection on
24 that lineup?

25 A. Maybe about four or five seconds.

1 Q. Any hesitation at all?

2 A. No.

3 Q. Do you stand by your decision after seeing it today?

4 A. Yes, sir.

5 Q. I want to show you what's been marked as State's 5.

6 Do you recognize that CD?

7 A. Yes, sir.

8 Q. Do you know what's on it?

9 A. Yes, sir.

10 Q. What's on it?

11 A. That's the video that I had whenever I made the buy.

12 Q. And have you had a chance to review that video in
13 its entirety?

14 A. Yes, I have.

15 Q. And does it fairly and accurately reflect things as
16 they went down on March 11, 2015?

17 A. Yes, it does.

18 Q. Whose signature is this on the CD?

19 A. That is my signature.

20 **MR. BELL:** Your Honor, at this time the State would
21 seek to admit State's 5.

22 **MR. STITELY:** No objection.

23 **THE COURT:** State's 5 is in without objection.

24 (State's Exhibit Number 5, a CD/DVD, was admitted
25 into evidence.)

1 **MR. BELL:** Permission to publish State's 5?

2 **THE COURT:** And this is the one you said was ninety
3 seconds or so?

4 **MR. POGUE:** No.

5 **MR. STITELY:** It's a couple of minutes long, Judge.
6 It's not terribly long.

7 **MR. BELL:** Wishful thinking, Your Honor.

8 **THE COURT:** I'll just tell the jury sometimes videos
9 are an hour long, so this is very good.

10 (Whereupon, State's Exhibit Number 5 was played for
11 the Court and jury.)

12 BY MR. BELL:

13 Q. Mr. Haygood, who was wearing the camera in that
14 video?

15 A. That was me.

16 Q. And were those the agents, Purdy and Merckle, that
17 you indicated earlier that were with you?

18 A. Yes, sir.

19 Q. There's some multiple conversation that's hard to
20 hear on the speakers in here, but you mentioned that the
21 conversation had to deal with -- did you call it Molly?

22 A. Yes, sir.

23 Q. When you got back into the van, did you relay any of
24 that information to law enforcement about Molly?

25 A. Yes, I did.

1 Q. Do you remember what you told them?

2 A. I told them that he was charging \$30 for it -- for
3 the Molly.

4 Q. And is that the information that you had just gotten
5 when you were inside the vehicle?

6 A. Yes, sir.

7 Q. And who told you that information?

8 A. Donnell Davis.

9 **MR. BELL:** I guess I need to --

10 **MR. STITELY:** Just those?

11 **MR. BELL:** Yeah.

12 **MR. STITELY:** No objection.

13 **MR. BELL:** Permission to approach the witness, Judge?

14 **THE COURT:** Sure.

15 (State's Exhibit Number 7 and 8 were marked for
16 identification.)

17 BY MR. BELL:

18 Q. Sir, I'm showing you what's been marked for ID as
19 State's 7. Do you recognize that photograph?

20 A. Yes, sir.

21 Q. And what is that photograph taken from?

22 A. That's from the -- taken from the Village Store.

23 Q. And is that from the video we just watched?

24 A. Yes, sir.

25 Q. And does this fairly and accurately reflect what's

1 on the video?

2 A. Yes, sir.

3 Q. It's simply stopped in motion?

4 A. Yes, sir.

5 Q. Who is in that picture?

6 A. Donnell Davis and Kayla Humphrey.

7 Q. And where is Donnell Davis seated?

8 A. In the passenger seat.

9 Q. And in State's 8, is that also a still shot from the
10 video?

11 A. Yes, sir.

12 Q. And what are we looking at here?

13 A. We're looking at the meth that I got -- that I
14 purchased. I'm sorry.

15 Q. And purchased from who?

16 A. Donnell Davis.

17 Q. And this still shot, does that fairly and accurately
18 reflect what's in the video?

19 A. Yes, sir.

20 **MR. BELL:** At this time the State would seek to admit
21 7 and 8.

22 **MR. STITELY:** No objection.

23 **THE COURT:** 7 and 8 admitted without objection.

24 (State's Exhibit Number 7 and 8, photographs, were
25 admitted into evidence.)

1 **MR. BELL:** Permission to publish?

2 **THE COURT:** Sure.

3 BY MR. BELL:

4 Q. Mr. Haygood, I want to go ahead and let you know in
5 advance it's okay to talk about what I'm about to ask you
6 about, okay? We've discussed it here in court. Did you
7 take part in any other buys from Mr. Donnell Davis?

8 A. Yes, I did.

9 Q. And who were you with when you conducted those buys?

10 A. Detective Merckle and Detective Purdy.

11 Q. And did you wear a wire in those cases?

12 A. Yes, I sure did.

13 Q. And in those cases did you buy controlled substances
14 from him?

15 A. Yes, I did.

16 Q. Or at least what he represented as controlled
17 substances?

18 A. Yes.

19 Q. And in those cases, what did you believe you were
20 purchasing from him?

21 A. Meth. Methamphetamines.

22 Q. Did you turn over those controlled substances to law
23 enforcement?

24 A. Yes, I did.

25 Q. And in each of those other three cases, who was the

1 one that provided you with the controlled substance or
2 what you thought was a controlled substance?

3 A. Donnell Davis.

4 Q. And did he also set up those appointments you might
5 call them?

6 A. Yes, sir.

7 Q. Did he tell you where to meet him?

8 A. Yes, sir.

9 Q. And what time?

10 A. Yes, sir.

11 Q. Aside from wearing a wire and actually conducting the
12 transaction with Donnell Davis, did you have any further
13 involvement in those cases?

14 A. No, sir.

15 Q. Anything to do with the evidence after it was handed
16 off to law enforcement and so forth?

17 A. No, sir.

18 **MR. BELL:** I beg the Court's indulgence.

19 **THE COURT:** Sure.

20 BY MR. BELL:

21 Q. I don't mean to be silly, Mr. Haygood, but there's
22 been some questioning on former witnesses about what kind
23 of searches you went through when you helped conduct these
24 buys. Did you ever agree to cavity searches?

25 A. No, sir.

1 Q. Do you know what a cavity search is, Mr. Haygood?

2 A. Yes, sir.

3 Q. Okay. Would you have signed up to be a confidential
4 informant if that was part of the deal?

5 A. Yes, sir.

6 Q. Okay. Well, that's great.

7 Did they -- did they conduct cavity searches on you?

8 A. No, sir.

9 Q. Okay. Now how long would you estimate that you were
10 in the vehicle on the video that we just watched inside of
11 Donnell Davis' vehicle?

12 A. I would say maybe about a minute, a minute and a half
13 maybe.

14 Q. During that time did you remove any articles of
15 clothing?

16 A. No, sir.

17 Q. Attempt to withdraw anything from a hidden body
18 orifice?

19 A. No, sir.

20 **MR. BELL:** Thank you, Mr. Haygood.

21 **THE WITNESS:** All right.

22 **MR. STITELY:** Judge, I told Mr. Bell we may have a
23 slight in-camera issue before I cross, if possible.

24 **THE COURT:** Okay. Let's deal with that before we --
25 would it be --

1 **MR. STITELY:** We may have to elicit testimony from
2 him.

3 **THE COURT:** I understand what you're saying. Would
4 this be a good time to --

5 **MR. STITELY:** It will take less than three minutes to
6 do that. I can't envision cross being terribly long, but
7 if you want to break --

8 **THE COURT:** I'd rather get through with him.

9 All right. Here's what we're gonna do so y'all
10 know what I'm doing. I'd like him to be done with his
11 testimony and then we go to lunch and that's kind of why
12 I was asking.

13 So y'all step in the jury room. I'll give you about
14 five minutes and be right back in here and then we'll
15 finish up and go to lunch and we'll come back and finish
16 this afternoon, okay?

17 Don't discuss the case. Step into the jury room.

18 (Whereupon, the jury retires to the jury room at
19 12:12 PM.)

20 **THE COURT:** All right. Go ahead and proffer.

21 **MR. STITELY:** Judge, if it please the Court, I
22 want to ask a couple of questions in camera to
23 determine whether or not I would like to argue possible
24 admissibility. Specifically there are items that show up
25 on his record that may have been disposed of a different

1 way, but I think may be impeachable depending on what his
2 answers are.

3 **THE COURT:** Okay.

4 EXAMINATION (In-Camera)

5 BY MR. STITELY:

6 Q. Mr. Haygood, in 2010 you were charged with a
7 distribution, March of 2010, on Warrant M300223. Why was
8 that case dismissed?

9 A. I don't recall.

10 Q. Was it dismissed as part of a plea bargain that you
11 made later that year in your plea to the proximity charge
12 from 2008?

13 A. I don't recall. I'm trying to figure out what you're
14 talking about.

15 Q. Have you ever been charged with distribution?

16 **THE COURT:** Didn't he testify on direct that he had
17 been?

18 **MR. STITELY:** The convictions that were in there was
19 a prox, a couple of possessions. This is a distribution
20 warrant, Judge, that was charged after he specifically
21 in direct said he stopped selling, in 2010, and there's
22 distribution charge two years later.

23 **MR. BELL:** Can I see the record you're looking at?

24 **MR. STITELY:** It's the one that Bradley gave me last
25 night. It's not on there. I pulled the judicial index.

1 That's why I'm asking. It was dismissed with a plea.

2 **MR. BELL:** He pled in 2010 to a proximity, so that's
3 the accompanying --

4 **MR. STITELY:** No, it's an actual warrant that was
5 served March of 2010. He was in jail for it and then it's
6 dismissed.

7 BY MR. STITELY:

8 Q. Do you recall going to jail in March of 2010?

9 A. No, sir.

10 **MR. STITELY:** Judge, I probably will at some point
11 ask for a moment's break to go down to the clerk's office
12 and pull that file if it still exists. It's nol-prossed.
13 The warrant number is M300223, March 2010.

14 **THE CLERK:** Give it to me again. M3 --

15 **MR. STITELY:** 00223. It looks like it was done with
16 a nol-pros on his plea to other warrants and that plea was
17 in October of 2010. October 4, 2010. That warrant that
18 he actually pled to looks like it was -- that was the 2008.
19 There was a separate arrest from 2010 as well. That was a
20 2008 warrant he ultimately pled to. The warrant number on
21 that, Hope, was --

22 **THE CLERK:** I have the one -- the M300223.

23 **MR. STITELY:** That's the one that he was arrested in
24 March of 2010 that was dismissed later that year.

25 **THE CLERK:** Was it dismissed September 23, 2010?

1 **MR. STITELY:** That's it. I'm trying to get a copy
2 of that, if we can.

3 **THE CLERK:** It was indicted, Your Honor. I can pull
4 it during the lunch break or do you need it right now?

5 **MR. STITELY:** Just depending on how this goes and
6 then if you want to take a quick minute break, she can
7 pull it and we can do it after lunch. I'll cross after
8 lunch. Whatever's easiest.

9 **MR. BELL:** Well, we've still got argument on this
10 point. It's by no means over.

11 Your Honor, certainly -- if he's done presenting on
12 that?

13 **MR. STITELY:** That one. I've got one more.

14 **MR. BELL:** Go ahead.

15 **MR. STITELY:** Sorry.

16 BY MR. STITELY:

17 Q. Mr. Haygood, were you arrested in March of 2014 for
18 possession of marijuana in the town of Lexington?

19 A. Yes, sir, I was.

20 Q. What happened with that charge?

21 A. I don't recall.

22 Q. Do you remember the facts and circumstances of that
23 case?

24 A. No.

25 Q. Okay. At that time you were working as a

1 confidential informant though, correct?

2 A. Yes. Yes, I was.

3 Q. And, in fact, you were working under a contract with
4 the County?

5 A. Yes, sir.

6 Q. And you were arrested March 28th of 2014 for
7 possession of marijuana?

8 A. I believe so. I'm not -- I'm not exactly sure of the
9 exact date.

10 Q. Did you ever smoke marijuana, Mr. Haygood?

11 A. No, sir.

12 Q. Why did you possess marijuana?

13 A. It was my -- it was my grandmother's -- my
14 mother-in-law's. I'm sorry. I was holding it for her.

15 **MR. STITELY:** Judge, I don't think that's gonna be
16 admissible if that's the situation on that one, but we
17 will have an argument on the other one when we get the
18 court file.

19 **MR. BELL:** He's welcome to get the court file, Your
20 Honor, but the case was dismissed and as far as we know
21 it's gonna come from the 2008 arrest anyway, but even so
22 it was dismissed. We don't use dismissals against people
23 in front of a jury.

24 **MR. STITELY:** But for, Judge, his testimony in direct
25 was that he stopped selling drugs in 2018 {sic}. This

1 shows an arrest in March of 2010 for distribution.

2 **MR. BELL:** Arrest is not proof, Your Honor.

3 **MR. STITELY:** I don't -- I don't disagree that it's
4 not proof, but it would be a direct contradiction if
5 that's what the arrest warrant says and I can't get --
6 if the clerk can get it, we can take a look at it real
7 quick.

8 **THE COURT:** All right. How long would it take you
9 to go get that?

10 **THE CLERK:** Run down the stairs and go straight to
11 it.

12 **THE COURT:** Go get it for me, please.

13 **THE CLERK:** All right, sir.

14 **THE COURT:** All right. We'll stand at ease.

15 (Pause in proceedings.)

16 **THE COURT:** All right, Stacy. This is just for the
17 record of him using this as impeachable evidence, which
18 I'm gonna deny. I sustain the objection by the State,
19 but for his record, the indictment is --

20 **MR. STITELY:** The warrant, ma'am, was M300223. The
21 Indictment Number was 2010-GS-32-01715. It indicates it
22 was nol-prossed per plea to other charges.

23 **THE COURT:** All right.

24 **MR. STITELY:** Thank you, Hope.

25 **THE CLERK:** You're welcome.

1 correct?

2 A. Yes, sir.

3 Q. And some driving charges, correct?

4 A. Yes, sir.

5 Q. And you said that this case in the year of 2013 you
6 decided to call the sheriff's department and sign up as
7 CI; is that correct?

8 A. Yes, sir.

9 Q. And you said you did that why?

10 A. Because I wanted to effect change in the community
11 and I wanted to make up for some of the wrongdoings that I
12 did as far as me selling drugs.

13 Q. Okay. And you wanted to make money?

14 A. I was expecting to get a little bit of compensation,
15 but that wasn't the reason I did it.

16 Q. That's fine. How much compensation did you receive
17 from the County of Lexington in the past couple of years
18 doing this?

19 A. I got -- I received a hundred dollars per -- per
20 controlled buy.

21 Q. Did you file a 1099 as an independent contractor with
22 the government declaring your earnings?

23 A. No, sir.

24 Q. So you took money, but you didn't file taxes on it;
25 is that fair?

1 A. I guess not.

2 Q. Did Detective Merckle tell you that you have to go
3 ahead and declare to the government when you're making
4 money on the taxpayers' dollar?

5 A. No, sir.

6 Q. He didn't tell you that?

7 A. (No verbal response.)

8 Q. Okay. You stated that in this case Mr. Davis called
9 you and said he could get you what you wanted; is that
10 correct?

11 A. No, sir.

12 Q. All right. What happened? How did you get first in
13 contact with Mr. Davis?

14 A. He called me off of somebody else's phone.

15 Q. What date was that?

16 A. I don't recall.

17 Q. Did he call you on your cell phone?

18 A. Yes, sir.

19 Q. Who's your cell phone provider?

20 A. I've had plenty of cell phone providers since then.
21 At the time it was T-Mobile.

22 Q. Okay. Did you get a copy of the T-Mobile bill to
23 show where this phone call was made?

24 A. No, sir.

25 Q. Do you think it would help refresh your memory as to

1 when these contacts were made if you had done that?

2 A. Yes, sir.

3 Q. Okay. So you said he called you from someone else's
4 phone?

5 A. Yes, sir.

6 Q. All right. How long had you been in the CI'ing
7 business when you talked to Mr. Davis?

8 A. I believe two years.

9 Q. Is it possible there was word out on the street that
10 people knew that you were someone they could deal with?

11 A. What do you mean? I mean --

12 Q. Did people know?

13 A. Did people know what? Was I -- that I was a CI?

14 Q. Yes.

15 A. No.

16 Q. Okay. Do you have any record whatsoever of this
17 alleged phone call from Mr. Davis saying he was your man?

18 A. No, sir.

19 Q. Okay. Let me ask you a couple of questions. You
20 said that the detective -- or sorry, not detective, but
21 the deal was for one gram of meth for \$100; is that
22 correct?

23 A. Yes, sir.

24 Q. Now -- and I apologize if I don't really know, but
25 you said you used to sell drugs, correct?

1 A. Yes, sir.

2 Q. What would happen if you shorted someone
3 significantly on a drug transaction?

4 A. I mean, it all depends on the person.

5 Q. Okay.

6 A. You can't -- I can't necessarily speak for somebody
7 else.

8 Q. All right. Is it good practice to say you're buying
9 a gram and only get .6?

10 A. No.

11 Q. Okay. As a drug seller and a drug buyer, how do you
12 check that kind of stuff?

13 A. A lot of people put it on a scale and weigh it out.

14 Q. Okay. Did you weigh it out in this case?

15 A. No, sir.

16 Q. Did you check it?

17 A. No, sir.

18 Q. All right. How much drugs did you actually get that
19 day?

20 A. I'm not sure. I just made a buy and I handed it over
21 when I got back in the van.

22 Q. I'm gonna show you a picture that is in evidence as
23 Defendant's Exhibit Number 3.

24 **MR. STITELY:** May I approach, Your Honor?

25 **THE COURT:** Sure.

1 BY MR. STITELY:

2 Q. Do you recognize what's in that picture?

3 A. Yes, sir.

4 Q. What is it?

5 A. A picture of a white substance.

6 Q. Is that the drugs that you got from Mr. Davis?

7 A. I'm not sure.

8 Q. Okay. State's Number 8, that was the picture?

9 A. Yes, sir.

10 Q. Would you have any reason to believe that the drugs
11 that you gave Detective Merckle were swapped at any point
12 by him?

13 A. No, sir.

14 Q. Is there any reason to believe that what you gave him
15 was something different than what he took a picture of?

16 A. No, sir.

17 Q. I'll approach one more time. Defendant's Number 1,
18 do you recognize that?

19 A. Yes, sir.

20 Q. What was it?

21 A. A white substance.

22 Q. How would you classify that substance if you had to
23 describe it?

24 A. I don't -- I don't understand the question that
25 you're asking. What you mean how would I classify it?

1 Q. Was it a rock, was it a bar? What was it?

2 A. Powder substance.

3 Q. Powder substance?

4 A. Yes, sir.

5 Q. Are you sure about that?

6 A. I believe so.

7 Q. Was the substance that you received from Mr. Davis a
8 powder substance?

9 A. Yes, sir.

10 Q. Without a doubt in your mind?

11 A. I believe so.

12 Q. Okay. The other times that you dealt with Mr. Davis,
13 the same thing, a white powder substance?

14 A. Yes, sir.

15 Q. The same in your mind?

16 A. I believe so.

17 Q. Are you still a CI for the County?

18 A. No, sir.

19 Q. Did they have to pay you to come here today?

20 A. No, sir.

21 Q. That's part of the deal that you signed when you said
22 you'd agree to potentially be a witness in court?

23 A. What do you mean? I didn't make any deal.

24 (Defendant's Exhibit Number 7 was marked for
25 identification.)

1 BY MR. STITELY:

2 Q. Mr. Haygood, I'm gonna hand you two pieces of paper
3 and see if you recognize them. They're been marked as
4 Defendant's 7. Do you recognize that?

5 A. Yes.

6 Q. What is this?

7 A. This is the contract that I signed.

8 **MR. STITELY:** Your Honor, I'd offer Number 7 into
9 evidence. Do you want to look at it?

10 **MR. BELL:** No objection.

11 **THE COURT:** 7's in without objection.

12 (Defendant's Exhibit Number 7, a CI contract, was
13 admitted into evidence.)

14 BY MR. STITELY:

15 Q. So that was the deal you signed with the -- I guess
16 the sheriff's department. It also references potentially
17 working for the solicitor's office or whatever.

18 **MR. BELL:** Objection, Your Honor. Objection to
19 classification as a deal. The witness has called it a
20 contract. It's been testified to previously as a contract.

21 **MR. STITELY:** I'll rephrase.

22 **THE COURT:** It is what it is. You can rephrase.
23 Don't editorialize what the document is.

24 **MR. STITELY:** Okay.

25 BY MR. STITELY:

1 Q. This is the contract you signed -- your participation
2 agreement?

3 A. Yes, sir.

4 **THE COURT:** It is okay if Stacy staples it?

5 **MR. STITELY:** Yes. Please do.

6 Thank you. That's all I the questions I have.

7 **THE COURT:** Any redirect?

8 **MR. BELL:** Briefly. Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. BELL:

11 Q. Mr. Haygood, do you care what's in the bags --

12 A. No, sir.

13 Q. -- that are given as part of these transactions?

14 A. No, sir.

15 Q. Is your job to facilitate the transaction and let law
16 enforcement do the rest?

17 A. Yes, sir.

18 Q. But in this particular case on March 11th, throwing
19 all the smoke aside, what was it that Donnell Davis
20 represented to you that he was selling you on that day?

21 A. I was told that it was gonna be meth.

22 Q. The contract that you signed, did we testify about
23 that earlier? Did you tell the jury that you signed a
24 contract earlier?

25 A. Yes, sir, I did.

1 Q. And is that the contract that you were referring to?

2 A. Yes, sir, that's the one.

3 Q. And does that contract specifically state that if you
4 get in trouble you'll be given no consideration from law
5 enforcement or the solicitor's office?

6 A. Yes, sir.

7 Q. Does it also tell you that you'll have no expectation
8 of privacy while working for law enforcement?

9 A. Yes, sir.

10 Q. That means they can search you whenever they want?

11 A. Yes, sir.

12 Q. Regardless of this phone call and whether or not you
13 keep records of your phone calls, who showed up at that
14 gas station at the Village Store on March 11th?

15 A. Donnell Davis did.

16 Q. And did he say that he would be at that particular
17 Village Store when he was there?

18 A. Yes, sir.

19 Q. And did he have on him what he said he would have on
20 him?

21 A. Yes, sir, he did.

22 Q. And he did sell that to you for what he said he would
23 sell it to you for?

24 A. Yes, he did.

25 Q. And you're referring to that white bag?

1 A. Yes, sir.

2 Q. Do you know what a 1099 is?

3 A. No, sir.

4 Q. Do you know what a photo lineup is?

5 A. Yes, sir, I sure do.

6 Q. Who did you pick out of that photo lineup?

7 A. Donnell Davis.

8 **MR. BELL:** No further questions.

9 **MR. STITELY:** Nothing additional.

10 **THE COURT:** All right. You may step down.

11 (Witness excused.)

12 **THE COURT:** We can go to two. Is that enough time
13 for us to get everything done?

14 **MR. POGUE:** I believe so, Your Honor.

15 **THE COURT:** All right. We're gonna take a lunch
16 break until 2:00. Y'all step in the jury room and get
17 whatever you need and be back in at 2:00. I'm gonna try
18 to start at 2:00 sharp, so you've got about an hour and
19 fifteen minutes give or take a few minutes. I'm going by
20 that clock, so.

21 You can't talk about the case. I'll see you back in
22 the courtroom at 2:00.

23 (Whereupon, the jury was excused for lunch at
24 12:37 PM.)

25 **THE COURT:** All right. We'll stand at ease until

1 2:00.

2 **MR. BELL:** Thank you, Judge.

3 **MR. STITELY:** Thank you, Judge.

4 (Whereupon, a luncheon recess was taken.)

5 **BAILIFF:** All rise.. Court is back in session.

6 **THE COURT:** Be seated.

7 (Whereupon, the jury returns to the courtroom at
8 2:01 PM.)

9 **THE COURT:** All right. Call your next witness,
10 please.

11 **MR. BELL:** Thank you, Judge.

12 The State calls Agent Scott Purdy.

13 **THE COURT:** Did y'all sequester the witnesses or did
14 we just happen to sequester them?

15 **MR. STITELY:** No motion remains, Judge.

16 **MR. BELL:** We did it as a matter of form, Judge.

17 **THE COURT:** Just for y'all's observation, sequester
18 means each side or both sides ask to keep the witnesses
19 outside the courtroom and they testify without the benefit
20 of hearing others' testimony and thus far that's what
21 happened is the investigator can stay in here in the
22 courtroom because he's the witness for the State, the
23 Defendant can stay in the courtroom at all times and, of
24 course, he's here, but all other witnesses sometimes are
25 staged outside so they don't get to hear each others'

1 testimony and the Court enforces it, so that's been done
2 in this case so we'll keep doing it.

3 **MR. STITELY:** Judge, just to make sure, Ms. Kyzer
4 has been here, but we, of course, don't have a problem
5 with that.

6 **THE COURT:** Okay.

7 **MR. BELL:** She's just a chain witness, Your Honor.

8 (Whereupon, Scott Purdy was duly sworn by the Clerk
9 of Court.)

10 **THE CLERK:** Once you're seated, state your full name;
11 spelling your last on the record, please.

12 **THE WITNESS:** Detective Scott Purdy, P-U-R-D-Y.

13 SCOTT PURDY,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BELL:

17 Q. Who are you employed by?

18 A. Lexington County Sheriff's Office.

19 Q. What specific unit within the sheriff's department do
20 you work for?

21 A. I work for the Narcotics Enforcement Team.

22 Q. How long have you been there with the department
23 overall?

24 A. Just about six years.

25 Q. Any prior law enforcement experience to the sheriff's

1 office?

2 A. Yes, sir. I have another total combined of about
3 six years with two other agencies.

4 Q. So in total, how long have you been in law
5 enforcement?

6 A. A little over twelve years.

7 Q. Now you mentioned the Narcotics Enforcement Team. Is
8 NET short for Narcotics Enforcement Team?

9 A. Yes, sir.

10 Q. And what sort of duties go into being with the NET
11 Team -- or NET? Excuse me.

12 A. When assigned to the NET Team, we are responsible
13 for working complaints of a narcotics nature in the county.
14 We work with other municipalities inside the county that
15 are smaller that don't have the capacity to have a full
16 narcotics unit, so we have different people from different
17 departments all working together inside the county and
18 then individually we're assigned cases of either complaints
19 of -- we have a tip line, we have a website and people can
20 call in and make complaints about their neighbors or people
21 that they think are dealing drugs, and then on the other
22 side of that we also go out and make our own cases by
23 buying drugs from dealers and making cases that way.

24 Q. So what would you say your overall objective is as
25 part of the NET?

1 A. Controlling the drug problem in Lexington County,
2 making arrests for narcotics violations.

3 Q. You mentioned a part of that means buying drugs as
4 you put it. Does that include controlled buys?

5 A. Yes, sir.

6 Q. And briefly tell us, again, what is a controlled buy.

7 A. Controlled buys are either buys that ourselves as
8 agents will go out in an undercover capacity and make
9 purchases from -- from people suspected to be dealers and
10 then we also employ confidential informants that are
11 citizens for one reason or another that work with us to
12 go out and make those deals as well. You have to have a
13 certain level of knowledge of the street and knowledge of
14 drugs and knowledge of different people that controlled --
15 confidential informants sometimes have that we don't have
16 access to.

17 Q. How many buys have you taken part in overall in your
18 law enforcement career?

19 A. Oh, man.

20 Q. Just ball park?

21 A. To be quite honest, no idea.

22 Q. More than ten?

23 A. Yes, sir. I'd say probably around a hundred.

24 Q. And have you utilized confidential informants in some
25 of those buys?

1 A. Yes, sir.

2 Q. Would you say it's a minority or a majority of those
3 buys?

4 A. The majority of those are buys done with confidential
5 informants.

6 Q. Did you take part in a controlled buy that was
7 conducted on March 11, 2015?

8 A. Yes, sir, I did.

9 Q. Was a confidential informant utilized in that
10 controlled buy?

11 A. Yes, there was.

12 Q. Who did you work that case with?

13 A. Agent Merckle, who was my partner at the time.

14 Q. And who would have been considered the lead agent
15 between the two of you?

16 A. Agent Merckle.

17 Q. Who was the confidential informant that was utilized
18 for that particular buy?

19 A. A gentleman by the name of Javan Haygood.

20 Q. Now was that gentleman recruited because he had a
21 squeaky clean record?

22 A. No, sir.

23 Q. Did he have a criminal record?

24 A. To my knowledge, yes, sir, he did.

25 Q. And, again, is that uncommon or common with your CIs?

1 A. It's more frequent that they will have a criminal
2 record and that's how they typically get to know people
3 that are selling drugs as by being around them in one
4 shape or another at one time being involved with them.

5 Q. On March 11, 2015, did you tell Mr. Haygood who he
6 was gonna be buying dope from?

7 A. No, sir.

8 Q. How did y'all get that information?

9 A. From my understanding, he -- he had made arrangements
10 -- he had been contacted by this gentleman and he had made
11 arrangements to make -- to make a deal.

12 Q. And did y'all meet up with Mr. Haygood that day?

13 A. Yes.

14 Q. Who was with you?

15 A. Agent Merckle.

16 Q. And what process did y'all put Mr. Haygood through
17 when he met with you?

18 A. Well, we'll pick them up someplace inconspicuous.
19 We take them off to where they can't be seen for their
20 protection, they're searched, they're wired with some
21 kind of audio/video recording equipment depending on the
22 situation that they're going in to. They're given
23 instructions and kind of give us an idea what they're --
24 what they're going into if it's something they've set up
25 on their own. We give them currency that's been documented

1 by us so that we have -- we have the amounts written down
2 and usually photographs of the money. The recording
3 devices are activated and we test to make sure the
4 equipment's working properly and then we take them to the
5 area where they're supposed to be making the deal and we
6 drop them off and then we monitor that deal on-going live
7 through the audio side of it and then once the deal is
8 done and everyone is safe, he's picked back up again, he
9 turns the drugs over as evidence, we collect the recording
10 equipment, he's searched again and then he tells us in his
11 words what happened and then we prepare a statement based
12 on what he said went on.

13 Q. On this occasion, did y'all search him beforehand?

14 A. He was searched beforehand, yes, sir.

15 Q. Was anything recovered off of him that he wasn't
16 supposed to have?

17 A. No, sir.

18 Q. Did y'all drive him to the destination?

19 A. Yes, sir.

20 Q. Did he get out of the van?

21 A. He did.

22 Q. During the actual course of this controlled buy, did
23 you actually have eye contact of what was happening?

24 A. I did not.

25 Q. Why not?

1 A. So -- excuse me -- we all have our own roles and in
2 this particular role, I was there as security where that
3 if something were to go wrong, it's real world, it's drug
4 dealing, sometimes people are robbed, sometimes people are,
5 you know, driven -- you know, they get in the car and they
6 drive off or whatnot, so I was actually in the back of the
7 van, I was wearing identifiable sheriff's department stuff
8 so that if -- if it breaks bad as we say, I could be there
9 and jump out and do what I need to do to help out, so I
10 was keeping myself from being seen because of that.

11 Q. Can you estimate based on your recollection how long
12 it took for Mr. Haygood to leave the van and then come back
13 to the van?

14 A. It was just a few minutes.

15 Q. And you were sort of in the prone position in the back
16 of the van during that time?

17 A. Yes, sir. I was laying down on my back.

18 Q. And that was to stay out of sight?

19 A. Yes, sir.

20 Q. When he came back to the van, did he indicate that he
21 was able to purchase?

22 A. Yes, he did.

23 Q. And did he hand over what he had purchased?

24 A. Not right at that time. We drove away from that
25 location first. But, yes, once we got down the street, he

1 turned over -- it's typically while we're moving, but, you
2 know, we try to get out of that area just in case -- you
3 never know if someone's got somebody watching to see what
4 kind of vehicle they get into. But he got back in the van,
5 we noted the time. He -- as we were leaving, I believe he
6 turned the drugs over to Agent Merckle and then he was
7 taken to another spot where we collected the equipment and
8 searched him again and prepared a statement.

9 Q. And did the post-buy search render anything unusual?

10 A. No, sir.

11 Q. Did he still have the money on him that he initially
12 left the van with?

13 A. No.

14 Q. Did you take part in the writing of a statement?

15 A. Yes, sir.

16 Q. And tell me about your involvement in that statement.

17 A. So any cases that I'm involved with what we do is we
18 have them give a breakdown of what happened, so that --
19 excuse me -- so that a statement can be prepared. I
20 don't typically allow my informants to write their own
21 statements because as part of discovery when an arrest is
22 made it's turned over and I'd rather the statement be in
23 my handwriting than in an informant's handwriting, so
24 they'll tell me what happened, I write the statement in my
25 handwriting, I notate that in the statement, I then read it

1 to the informant and make sure that everything that they
2 told me is included and everything that's written down is
3 accurate and then they sign it as being what happened.

4 Q. And were those protocols followed in this particular
5 case with Mr. Haygood?

6 A. Yes, sir.

7 Q. And you wrote down what he told you to write down?

8 A. Correct.

9 Q. And you provided him an opportunity to review that?

10 A. Correct.

11 Q. And did he signature that statement?

12 A. He did.

13 Q. Were you present when a photo lineup was issued?

14 A. I would have been there, yes, sir.

15 Q. And do you recall any intimidation being done by
16 Agent Merckle?

17 A. No, sir.

18 Q. Any other sort of coercive tactics?

19 A. No, sir.

20 Q. Did Mr. Haygood hesitate at all his selection?

21 A. No, sir. He -- he looked over it and made his choice.

22 Q. Did he make a selection?

23 A. He did. Yes, sir.

24 Q. And are you aware of who the identify of that
25 selection was?

1 A. The Defendant.

2 **MR. BELL:** Thank you, Agent.

3 **THE COURT:** Cross?

4 **MR. STITELY:** Briefly.

5 CROSS-EXAMINATION

6 BY MR. STITELY:

7 Q. Detective, just a question. Who gets to pick who
8 gets to play laying prone in the back of the van and who
9 gets to be the driver?

10 A. Well, I wish I could say more often than not it's a
11 fair choice, but it's typically me laying in the back of
12 the van.

13 Q. Fair enough. And you were wearing like a sheriff's
14 department outfit?

15 A. Yeah, I was --

16 Q. He called y'all tacked up.

17 A. Yes, sir. I was wearing my street clothes, but I had
18 a tactical vest on.

19 Q. Okay. And he was wearing the dinosaur T-shirt?

20 A. His famous dinosaur T-shirts, yes, sir.

21 **MR. STITELY:** Okay. That's the only questions I
22 have.

23 **MR. BELL:** Nothing further, Your Honor.

24 **THE COURT:** All right. Step down.

25 **THE WITNESS:** Thank you, sir.

1 (Witness excused.)

2 **MR. POGUE:** Thank you, Your Honor.

3 The State calls Candy Kyzer to the stand.

4 (Whereupon, Candy Kyzer was duly sworn by the Clerk
5 of Court.)

6 **THE CLERK:** Have a seat, please, ma'am. Once you're
7 seated, state your full name; spelling your last.

8 **THE WITNESS:** Candy Kyzer, K-Y-Z-E-R.

9 CANDY KYZER,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. POGUE:

13 Q. Hey, Ms. Kyzer, how are you?

14 A. I'm fine.

15 Q. Good. Where are you currently employed?

16 A. With the Lexington County Sheriff's Department.

17 Q. And what is your job there at the Lexington County
18 Sheriff's Department?

19 A. I'm an evidence custodian.

20 Q. What is that? What is an evidence custodian?

21 A. We keep all of the evidence that's turned in by the
22 deputies or investigators or the narcs and we keep it
23 until it's needed for testing or for court purposes or to
24 be released.

25 Q. Okay. And when evidence is submitted to the evidence

1 room to the evidence custodian, what happens with that
2 evidence? Is it -- can anybody just walk in? Is it
3 secured at all?

4 A. We -- it's just a -- first of all, actually there's
5 four of us in there now. It's Sergeant Novack, myself,
6 Beth Holliman and Aaron Antley. We all have -- our prox
7 cards let us in and we're the only ones that's allowed
8 into the office. It does have a security alarm so only --
9 only us can have access to it.

10 Q. And when someone's submits -- when an officer submits
11 evidence to the evidence room or to the evidence custodian,
12 what happens with that evidence? How do y'all keep track
13 of it?

14 A. We have a system, a computerized system, that once
15 the deputies or investigators input it into the system we
16 go back and verify that everything that they have turned
17 in is correct. Once that is done, then we accept it and
18 it prints out barcode labels. Those labels actually
19 identify the case number, a PR number, and the location
20 where it is to be stored at that time.

21 Q. Okay. And so do you know at all times where a piece
22 of -- an item of evidence may be in regard to a box or a
23 room or are you able to locate it?

24 A. Yes.

25 Q. Okay. And does anybody other than the four people

1 that you mentioned who are evidence custodians have access
2 to that?

3 A. Only the evidence custodians.

4 Q. Okay. And did Agent Merckle submit an item of
5 evidence to you for testing in this particular case on an
6 incident involving the Defendant from March 11, 2015?

7 A. He actually placed a BEST kit in the locker.

8 Q. Okay. And what is the locker?

9 A. We have lockers of various sizes that when we are not
10 in the office that the deputies or investigators can place
11 items in. Once they place the item into the locker,
12 there's a button on the outside on their side that they
13 have to press to make sure that it's locked, then on our
14 side we have a key that only our evidence custodians have
15 access to that can open our side of the locker to get the
16 item out.

17 Q. Okay. All right. For this particular case from
18 March 11, 2015, do your records indicate the -- what item
19 was submitted into the locker by Agent Merckle?

20 A. I have a BEST kit that was turned in by Detective
21 Merckle.

22 Q. Okay. And what was the BEST kit number that was
23 submitted on the 11th?

24 A. It's BEST kit number C-022131.

25 Q. Okay. And after Agent Merckle put that into the

1 locker, what happened to it after that?

2 A. One of the other evidence custodians, Beth Holliman,
3 got it out of the locker and she signed it in and then
4 stored it in our drug lab temp box until -- that's where
5 it goes until it's ready for it to be tested.

6 Q. Now how do you know that?

7 A. We actually came up with a system that we store the
8 BEST kits in a separate location, so we just came up with
9 a location called drug lab temp box for the testing
10 purposes.

11 Q. Okay. And who was it that retrieved it from the
12 locker?

13 A. Beth Holliman is the one that retrieved it from the
14 locker.

15 Q. Okay. And how do you know that it was Beth Holliman
16 that retrieved it?

17 A. We can generate chain of custody reports and property
18 records.

19 Q. What is a chain of custody report?

20 A. The chain of custody report actually starts from the
21 day that it's submitted. It shows that Agent Merckle is
22 the one that turned it in and it shows that he turned it
23 into the locker and then after that that Beth Holliman
24 got it out of the locker and stored it into the drug lab
25 temp box and then after that I retrieved it from there.

1 Q. Okay. And the tracking system that have you, is that
2 done manually, is it done electronically? How does that
3 work?

4 A. Each time an item is to be tested or moved out for
5 some purpose, we have to sign it out. So it's a
6 computerized chain of custody report.

7 Q. Okay. All right. And after Ms. Holliman put it into
8 the BEST kit box to be stored in evidence, what happened
9 to the BEST kit after that?

10 A. I pulled it out and took it to SLED for testing.

11 Q. And when did you pull it out and take to it to SLED
12 for testing?

13 A. On June the 13th of 2016.

14 Q. Okay. All right. And when you say you took it
15 there, like did you personally transport it to the SLED
16 office?

17 A. Yes, I did.

18 Q. Okay. And during the time that you took it out of
19 evidence and transported it to the SLED office, was it in
20 your sole care and custody and control the entire time?

21 A. It was.

22 Q. Okay. Was it sealed?

23 A. Yes, it was.

24 Q. Okay. Did it -- was there anything about the BEST
25 kit or the seal that appeared to be tampered with in any

1 form or fashion whatsoever?

2 A. No, there wasn't.

3 Q. Okay. When you got to SLED, what did you do with it?

4 A. I hand -- we go in and we actually are assigned a
5 specific evidence custodian there for them to check in
6 our items, so I handed it over to one of the evidence
7 custodians there.

8 Q. Okay. All right. I beg the Court's indulgence.

9 **MR. POGUE:** Permission to approach, Your Honor?

10 **THE COURT:** Sure.

11 BY MR. POGUE:

12 Q. I'm handing you what was marked as State's Exhibit
13 Number 6. Could you take a look at that and tell me
14 whether that is the item of evidence that you transported
15 to SLED for testing that was submitted on March 11, 2015?

16 A. It is.

17 Q. And how are you able to determine that?

18 A. The BEST kit number. There's a unique number that's
19 on each one of the BEST kits. It starts with a C and
20 then it has numbers after that. That is what is on our
21 computerized system as being this item.

22 **MR. POGUE:** Thank you, Ms. Kyzer.

23 No further questions, Your Honor.

24 **MR. STITELY:** May it please the Court?

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

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CROSS-EXAMINATION

BY MR. STITELY:

Q. Hey, Ms. Kyzer. How are you?

A. I'm fine. How about you?

Q. Good. I've been talking about you all day, so now I get to talk to you. First I want to show you something that I previously marked as Defense Exhibit Number 5.

MR. STITELY: Judge, may I approach?

THE COURT: You may.

BY MR. STITELY:

Q. Can you identify this document?

A. Yes, I can.

Q. And what is that?

A. It's a property report. Our computer actually is able to generate different reports and this actually gives us all the information about this particular item. It gives us the case number, our PR number, where it's located -- or stored at, who turned it in, where it came from and any kind of notes of that particular item.

Q. Okay.

MR. STITELY: Your Honor, I'd offer Defense Exhibit 5.

MR. POGUE: No objection, Your Honor.

THE COURT: No objection.

(Defendant's Exhibit Number 5, a property report, was admitted into evidence.)

1 BY MR. STITELY:

2 Q. Was the item indicated in the notes? How was the
3 item that came into your lab described?

4 A. It's the notes field. It's BEST slip with plastic
5 bag containing white powder.

6 Q. Okay. Thank you. Tell me just briefly, if you don't
7 mind, about your evidence room. You describe it as a
8 secure room. What do you mean by that?

9 A. It has -- all of the doors -- all of the doors
10 actually have a prox code system and only certain people's
11 prox codes let them into the main door to the evidence
12 room. We also have a security alarm that when we're not
13 there it's turned on at night and in the afternoons.

14 Q. Is it a climate-controlled space?

15 A. Some of it is. Our -- actually the outside part of
16 the warehouse is not climate-controlled.

17 Q. Okay. Where you keep the drugs, what's that area
18 like?

19 A. It's climate-controlled.

20 Q. Okay. So where these would have been held is
21 climate-controlled?

22 A. Yes.

23 Q. Meaning there's air-conditioning?

24 A. Yes.

25 Q. Or a heater? Whatever --

1 A. Yes.

2 Q. Okay. You don't have anything to do with the
3 collecting of evidence?

4 A. No, I don't.

5 Q. You don't go out to the scene?

6 A. No..

7 Q. You weren't hiding out in the back of that van?

8 A. No..

9 Q. Okay. Is your procedure pretty much standard in any
10 and every single case you're involved in?

11 A. Pretty much.

12 Q. Specific to this case, do you recall what you brought
13 over to SLED on June 13th of 2016?

14 A. I took over -- well, in this case, I took over a BEST
15 kit.

16 Q. Okay. Did you take any other BEST kits with you that
17 same date and time that you signed out of your locker that
18 day?

19 A. I did.

20 Q. Okay. Was one marked as C-021956?

21 A. Yes.

22 Q. One marked as C-021994?

23 A. Yes.

24 Q. And one marked as C-022000?

25 A. Yes.

1 Q. Is there any reason in your mind why they would have
2 been treated any differently as far as security than the
3 one we talked about earlier with the solicitor?

4 A. No.

5 Q. They wouldn't have been left open where someone could
6 have touched them?

7 A. No.

8 Q. Same procedures; the officer drops them, locked area,
9 y'all grab it, a different locked area, you take it to
10 SLED?

11 A. Right.

12 Q. Okay. Standard procedure for all cases with the
13 sheriff's department?

14 A. Right.

15 Q. And that's pretty much the end of your involvement
16 in the case, correct?

17 A. That's correct.

18 Q. Do you take them out of the bag and play with them
19 at all?

20 A. No.

21 Q. Okay. I say play. Manipulate in any way, shape or
22 form?

23 A. No.

24 Q. Do you change the packaging of the items inside the
25 BEST kit from when they were put in there until they're

1 brought to SLED?

2 A. No, I don't.

3 Q. You don't do anything with it except for transport
4 it from A to B?

5 A. That's correct.

6 Q. And then you bring it to court?

7 A. Yes.

8 **MR. STITELY:** Okay. Thank you, ma'am.

9 **THE COURT:** All right. You may step down.

10 (Witness excused.)

11 **MR. POGUE:** Your Honor, the State calls Jackie Davis.

12 (Whereupon, Jackie Davis was duly sworn by the Clerk
13 of Court.)

14 **THE CLERK:** Once you're seated, state your full name;
15 spelling your last.

16 **THE WITNESS:** Jackie Davis, D-A-V-I-S.

17 JACKIE DAVIS,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. POGUE:

21 Q. How are you doing, Ms. Davis?

22 A. Good. How are you?

23 Q. Good to see you.

24 Where are you currently employed?

25 A. The State Law Enforcement Division.

1 Q. And what is that also known as?

2 A. SLED.

3 Q. Okay. And how long have you been with SLED?

4 A. Since February of 2015.

5 Q. Okay. And in what capacity are you employed at SLED?

6 A. I am a forensic technician in the evidence log-in.

7 Q. Okay. And what does that entail exactly?

8 A. Whenever the officers bring evidence in, I log it
9 in and transfer it to a secure area until the analyst
10 requests it.

11 Q. Okay. And does -- is that a secure location?

12 A. Yes.

13 Q. Okay. Does anybody -- can anybody just walk in who
14 works at SLED and access that -- those drugs?

15 A. No. There are three technicians who have access to
16 it and two supervisors and that's it.

17 Q. Okay. Did you receive an item of evidence for testing
18 on this particular case from March 11th of 2015?

19 A. Yes. Can I look at my notes?

20 Q. Yes. Certainly.

21 A. I did.

22 Q. Okay. And what was the BEST kit number of the item
23 of evidence that was submitted for testing in this case?

24 A. I do not have the BEST kit number on my --

25 **MR. POGUE:** Permission to approach, Your Honor?

1 **THE COURT:** Sure.

2 BY MR. POGUE:

3 Q. Let me ask it this way. Is that the item of evidence
4 that was submitted to you on -- in June of 2016?

5 A. It is.

6 Q. Okay. And how do you know that?

7 A. Because when we log in evidence, we give it a unique
8 lab number and this lab number matches what I have on my
9 chain of custody.

10 **MR. POGUE:** And, Your Honor, I apologize. For the
11 record, I have handed her up what's marked as State's --
12 or what's entered as State's Exhibit Number 6.

13 **THE COURT:** Okay.

14 BY MR. POGUE:

15 Q. What is the lab number on that particular BEST kit?

16 A. It is L16-08084.

17 Q. Okay. And are those unique numbers?

18 A. Yes.

19 Q. Okay. So they don't repeat?

20 A. No.

21 Q. Okay. All right. And what did you -- or what
22 happened when it was submitted on June 13, 2016? What
23 happened to the evidence after that?

24 A. This was logged in, given its unique lab number and
25 then we transferred it back to the secure evidence room

1 where there are two locks and two cameras and we kept it
2 there until the analyst requested it.

3 Q. Okay. And when did the analyst request it?

4 A. 11-15-2016 at 10:00 in the morning.

5 Q. Okay. And how'd it get from the secure location to
6 the analyst's lab?

7 A. I went and pulled it and gave it to her.

8 Q. Okay.

9 A. Actually, I transferred it to her. Everything is
10 done electronically so we can keep up with each individual
11 piece of evidence.

12 Q. That was gonna be my next question. Do you generate
13 or keep track of what they call chain of custody on these
14 items?

15 A. Yes. Once we pull a piece of evidence that the
16 analyst has requested, we have a barcode with our name on
17 it, we scan it, we scan this piece of evidence and we save
18 it to the computer and then we actually scan the analyst's
19 barcode and scan this and save it. That way it shows who
20 has what piece of evidence.

21 Q. Okay. And just for housekeeping purposes, who was it
22 that you submitted it to for testing?

23 A. Shana Sorrells.

24 Q. Okay. And according to your chain of custody, what
25 happened to it after Shana conducted the analysis on it?

1 A. Shana did her analysis and then on 12-6-16 she
2 brought it back down and gave it to a coworker of mine,
3 Doris Yarborough, and she transferred it back into the
4 secure evidence room and we kept it there until we
5 returned it to the agency.

6 Q. Okay.

7 **MR. POGUE:** No further questions, Your Honor.

8 **THE COURT:** Any cross?

9 **MR. STITELY:** You said it's in evidence. I don't
10 think you offered it. I just wanted to make sure.

11 CROSS-EXAMINATION

12 BY MR. STITELY:

13 Q. Hi, Ms. Davis.

14 A. Hello.

15 Q. My name's Ben Stitely. I don't think we've met.

16 A. I don't think we have.

17 Q. Okay. Is SLED's procedure pretty much the same on
18 every piece of drug evidence that comes in?

19 A. Correct.

20 Q. No reason to believe it would have been any different
21 on any other piece of evidence brought by Ms. Kyzer?

22 A. No.

23 Q. Do you have notes in front of you about everything
24 she brought over on June 13th of 2016 or only this one
25 bag?

1 A. Just this one bag.

2 Q. Is there any reason in your mind to believe that if
3 she testified she brought four items that any different
4 procedures would have been taken care of at SLED?

5 A. No, it's all done the same way.

6 Q. It's kind of like at the hospital where the nurse
7 comes and she scans her barcode, the drugs, the patient's
8 barcode?

9 A. Exactly.

10 **MR. STITELY:** Thank you, ma'am.

11 **THE COURT:** You may step down.

12 **THE WITNESS:** Thank you.

13 (Witness excused.)

14 **MR. POGUE:** Your Honor, the State calls Shana
15 Sorrells.

16 (Whereupon, Shana Sorrells was duly sworn by the
17 Clerk of Court.)

18 **THE CLERK:** Have a seat, please, ma'am. Once you're
19 seated, state your full name; spelling your last, please.

20 **THE WITNESS:** Shana Sorrells, S-O-R-R-E-L-L-S.

21 SHANA SORRELLS,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. POGUE:

25 Q. Good afternoon, Ms. Sorrells. Where are you

1 currently employed?

2 A. I'm currently employed at the State Law Enforcement
3 Division, more commonly known as SLED.

4 Q. And what do you do at SLED?

5 A. I am a forensic chemist in the drug analysis
6 department.

7 Q. Okay. What exactly is that? Explain to the jury
8 what those duties are.

9 A. Okay. Well, in the drug analysis department, we
10 take in samples from outside agencies, submitting agencies,
11 and we look for any controlled or uncontrolled substances
12 that are in these powder substances, crystal substances,
13 whatever is submitted to us.

14 Q. Okay. All right. And how long have you been
15 employed in that capacity?

16 A. I have been in the drug analysis department for
17 four years.

18 Q. Okay. And prior to drug analysis, were you also
19 employed at SLED?

20 A. Yes, I was.

21 Q. And in what department were you employed in addition
22 to -- or prior to becoming an analyst for drugs?

23 A. I was employed eight years as a toxicologist.

24 Q. Okay. All right. And what sort of education -- or
25 let me ask you this. How long were you employed as a

1 toxicologist?

2 A. Eight years.

3 Q. Okay. So how long total have you been at SLED?

4 A. Twelve years.

5 Q. Okay. And what sort of training and education have
6 you received along the way of -- you know, prior to
7 becoming a crime lab chemist and while -- continuing
8 education while you've been there?

9 A. I received my bachelor's degree in chemistry from
10 the University of South Carolina. I also received my
11 master's degree, more specifically in analytical chemistry,
12 from the University of South Carolina. I was given
13 extensive in-house training and multiple seminars in the
14 field of toxicology where we analyzed blood and urine for
15 the presence and absence of drugs, alcohol and other
16 poisons, and then when I switched over to the drug
17 analysis, I was given another extensive in-house training
18 under a senior drug chemist. I attended the DEA seminar
19 where I was trained further in drug analysis and I have
20 attended multiple conferences.

21 Q. Okay. And have you ever had substances alleged to
22 have been methamphetamine submitted to you for testing?

23 A. Yes, I have.

24 Q. Could you guess how many times you've tested
25 substances for methamphetamine?

1 A. Probably close to fifteen hundred.

2 Q. Okay. All right. And have you been able to identify
3 any of those substances as methamphetamine?

4 A. Yes, I have.

5 Q. Okay. Have you ever testified before as an expert
6 witness?

7 A. Yes, I have.

8 Q. How many times have you testified as an expert
9 witness?

10 A. Thirty-seven.

11 Q. And in what fields of expertise were you qualified
12 to testify as an expert witness?

13 A. Toxicology, pharmacology, chemistry, biology and
14 drug analysis.

15 **MR. POGUE:** Your Honor, at this time the State would
16 present Ms. Sorrells as -- to be qualified as an expert
17 in the field of drug analysis.

18 **THE COURT:** Any voir dire?

19 **MR. STITELY:** Just briefly.

20 VOIR DIRE EXAMINATION

21 BY MR. STITELY:

22 Q. What's your background in pharmacology?

23 A. It's just the training that we go through in
24 toxicology. It's part of the in-house training and part
25 of the studies that we do as a toxicologist.

1 submitted in and I know it's mine because it has my
2 initials and date on it.

3 Q. Okay. And Ms. Davis was talking to us about lab
4 numbers. What is the lab number -- or let me ask you
5 this. What is a lab number?

6 A. A lab number is a specific number as you can see here
7 that is assigned to every case that comes through the door
8 at SLED. As soon as it comes in, it is logged in by our
9 log-in department and they give it a specific number with
10 a specific barcode that can be traced back to that case.

11 Q. Okay. And what is the lab number that you assigned
12 to this particular case?

13 A. This is L16-08084.

14 Q. Okay. And what was the SLED -- what was the BEST kit
15 unique identifying number that was submitted to testing for
16 you -- that you that assigned that lab number to?

17 A. The BEST kit that it was assigned to was C-022131.

18 Q. Okay. Did you perform an analysis on that particular
19 item of evidence that was submitted to you for analysis?

20 A. Yes, I did.

21 Q. Okay. And what were the results of your analysis?

22 A. The results of my analysis -- what was submitted to
23 me was just a plastic corner bag that contained a
24 crystal-like substance and I was -- upon analysis, I
25 discovered methamphetamine that was found in the sample

1 with a weight of 0.63 grams.

2 Q. Okay. When you received the BEST kit, was it sealed?

3 A. Yes, it was.

4 Q. Okay. Did it appear to have been tampered with in
5 any form or fashion?

6 A. No, it did not.

7 Q. Had it been -- had it had any appearance of tampering,
8 would you have made a note of that in your case file?

9 A. Photos would have been taken of the BEST kit. Photos
10 would have been taken and they would have been attached
11 to the file to our LIMS system, but when an evidence bag
12 comes in we actually write on their seal intact. If it
13 had not been messed with, it would have been sealed intact
14 or seal not sealed properly.

15 Q. Okay. When you received the item for testing, did
16 you -- again, I believe you testified that you've seen --
17 tested methamphetamine I think fifteen hundred times; is
18 that correct? Did I recall that right?

19 A. Plus or minus, yes.

20 Q. When you received this item for testing, did it
21 appear any different than the other items before you
22 performed the analysis? Had it been previously submitted
23 and tested positive for methamphetamine?

24 A. Methamphetamine is -- is a strange drug. It can
25 come in crystal form, powder form, it will come in a hard

1 brick-like substance sometimes, and we are now seeing it
2 more and more in tablet form. You can also get it in
3 liquid form. So it's hard to say that yes, this looked
4 like meth when it came in because meth has so many
5 different forms and colors that it actually comes in as.

6 Q. And as a drug analyst, do items of evidence that are
7 submitted for testing, drugs in particular, do they ever
8 change over the course of time in their appearance?

9 A. They do. There are differing factors that can change
10 the appearance. Time, heat. Especially South Carolina
11 summers is a big thing. That if it's sitting in the back
12 of a trunk being transported, the heat can get to them.
13 Cutting agents can change it because cutting agents that
14 are mixed in with the meth can actually deteriorate over
15 time and change colors. It's like tablets that you find
16 sitting in your cabinet, they were originally white and
17 over time you open them up three, four, five years later
18 and they kind of have a dingy off-white, kind of a brownish
19 color to them, and those are additives in the tablets.
20 The same things can happen with different types of
21 methamphetamine, so there are a lot of factors that go
22 into the colors of what your crystal or powder is gonna
23 look like.

24 Q. Okay. And I believe you testified that you tested
25 this on June 16, 2016; is that right? I'm sorry, June 13,

1 2016.

2 A. I -- I don't believe I gave those numbers.

3 Q. I apologize. Do you have your report with you?

4 A. I do have my report with me, yes.

5 Q. What is the date that you tested it according to
6 your report?

7 A. The date that it says -- okay. The date that --
8 the date on my report is different from the date that I
9 actually tested it. The date on the report is the date
10 that it came into the lab, so the report says that it was
11 brought into the lab on June 13, 2016, but based off of
12 when I cut into the BEST kit and when I sealed it, it was
13 not tested by me until November 15, 2016.

14 Q. And I apologize for asking you a confusing question.
15 I was looking at a different date than you were looking at
16 when it was submitted as well.

17 So if the drugs were collected over a year prior to
18 the time that you tested it, would that be enough time for
19 drugs to appear significantly different than when they were
20 first collected?

21 A. It could. I mean, things -- things break down over
22 time, so it could have been a factor, yes.

23 Q. Do they ever gain or lose weight than what they would
24 have initially weighed as?

25 A. You don't -- you don't really ever see it where it

1 gains weight. It will -- it could lose weight over time.
2 If there had been moisture present in the original sample,
3 if it's been sitting there the moisture is gonna evaporate
4 and it can lose weight over time, but we've never really
5 seen it -- or actually never done a study where we've
6 noticed where it has gained weight over time.

7 Q. But it's not uncommon for it to weigh less than it
8 was when it was originally collected?

9 A. That's correct, yes.

10 Q. All right.

11 **MR. POGUE:** I beg the Court's indulgence.

12 Your Honor, at this time the State would move item
13 State's Exhibit 6 into evidence.

14 **MR. STITELY:** No objection.

15 **THE COURT:** No objection. State's 6 is in.

16 (State's Exhibit Number 6, a BEST kit, was admitted
17 into evidence.)

18 BY MR. POGUE:

19 Q. Ms. Sorrells, I think you indicated that you brought
20 your report from your analysis that you performed on the
21 substance?

22 A. Yes, I did.

23 Q. Okay. And what were the results that you indicated
24 in your report with that particular BEST kit lab number?

25 A. The results were that methamphetamine was found in

1 the sample tested with a net weight of 0.63 grams.

2 Q. Okay. And how -- what is the confidence level or
3 how confident are you as that being methamphetamine?

4 A. The confidence level that we say is 99.7 percent
5 because you can have some atmospheric variations in your
6 balance, but we say that 99.7 percent of the time that we
7 weigh it it's gonna be 0.63 grams. Now that .3 percentage
8 could make it be 0.64 or 0.62, but it will never really
9 vary from that 0.63 grams.

10 Q. So just to clarify for my purpose and for the jury's
11 purpose, when you talk about the confidence level that's
12 in your report, that pertains to the weight, not the
13 identification of the substance?

14 A. That confidence level is pertaining to the weight,
15 not the identification. That is correct.

16 Q. And you said you brought a copy of your report with
17 you?

18 A. Yes, I did.

19 (State's Exhibit Number 9 was marked for
20 identification.)

21 **MR. POGUE:** Thank you.

22 Your Honor, I believe the report I've had marked as
23 State's Exhibit 9. At this time, Your Honor, the State
24 would move to have that entered into evidence.

25 **MR. STITELY:** No objection.

1 **THE COURT:** State's 9 is in without objection.

2 (State's Exhibit Number 9, SLED drug analysis report,
3 was admitted into evidence.)

4 **MR. POGUE:** I beg the Court's indulgence.

5 **THE COURT:** Sure.

6 BY MR. POGUE:

7 Q. Just as a quick housekeeping matter, how often are
8 the machines calibrated that help you determine the
9 identity of a substance?

10 A. All right. Hold on. Let me -- let me see if I
11 understand you correctly. Well, first off, the only thing
12 that really gets calibrated is our balances for the
13 weights, and those get calibrated weekly and, of course,
14 if the calibration doesn't pass, you can't use that
15 balance, that balance is out of service. The instruments
16 which we used for this analysis, the gas chromatography
17 mass spectrometer is -- well, it's not so much calibrated
18 as it is tuned to show that the instrument is working
19 properly. In this case, a tune is also done weekly.

20 Q. So every week you make sure that the -- there's
21 quality control measures that are done to tune the
22 equipment?

23 A. That is correct.

24 **MR. POGUE:** No further questions, Your Honor.

25 **THE COURT:** All right.

CROSS-EXAMINATION

BY MR. STITELY:

Q. Ms. Sorrells -- is it Miss, Agent? I don't want to call you by the wrong title.

A. You can just go with Ms.

Q. Ms. -- and it's Sorrells or --

A. Sorrells.

Q. Okay. Hi. I'm Ben Stitely. I don't think we've met before. A couple of questions for you. If you don't know, please tell me. I'm gonna ask you about the pharmacology side of this. What is the chemical formula for meth?

A. If I remember correctly, it is C10H15N.

Q. So that's carbon fifteen parts, hydrogen --

A. Carbon, ten parts, hydrogen -- or sorry. Ten parts carbon, fifteen parts hydrogen and a nitrogen.

Q. Okay. So that's pretty much in theory you have a molecule made up of three atoms; carbon, hydrogen and nitrogen, and those are the numbers that make up meth?

A. Yes.

Q. Okay.

A. Sorry. It's --

Q. No problem.

A. There's more that goes into it than just the numbers that -- that make it up. It's also the chemical

1 structures, how they bind and how they form.

2 Q. Connection points and all that?

3 A. Yes.

4 Q. Believe it or not, before I was a lawyer I actually
5 studied microbiology and cell science, so.

6 When you testify about a drug that you have
7 analyzed --

8 A. Yes.

9 Q. -- specifically meth, you said it was different
10 because it comes in a number of different formats; is that
11 correct?

12 A. That is correct.

13 Q. You said it could be a crystal, a powder, a liquid
14 or recently you have even seen tablets?

15 A. We're seeing it more and more. We've seen them for
16 a while, I guess.

17 Q. And for the jury's sake, a tablet would be like you
18 take an Advil, correct? Like a pill?

19 A. Yes, a pill form.

20 Q. Okay. They make those with like a press. They would
21 put it into something and --

22 A. That is correct.

23 Q. Okay. When you are creating your document, and I
24 don't -- he took it away from you.

25 **MR. STITELY:** May I approach, Your Honor?

1 **THE COURT:** Sure.

2 BY MR. STITELY:

3 Q. State's Number 9, your report.

4 A. Yes.

5 Q. Along with labeling what the substance is, you
6 describe the substance, correct?

7 A. Yes.

8 Q. And in this one specifically, how did you describe
9 the substance?

10 A. It was described, again, as a plastic corner bag was
11 the packaging that it was submitted in containing crystal
12 substance. So in this case, it was -- the structure was
13 very crystalline in nature.

14 Q. And you've seen the BEST kit, Number 6?

15 A. Yes.

16 Q. And the drugs that we're talking about is the stuff
17 in it?

18 A. Yes.

19 Q. The solicitor asked you the question can things
20 change over time and you said that has a lot to do with
21 storage?

22 A. Yes.

23 Q. How does SLED maintain their evidence?

24 A. It is maintained in a locked vault.

25 Q. In the back of a car?

1 A. No.

2 Q. Okay. Exposed to the elements?

3 A. No.

4 Q. Okay. So as far as -- as he called it, quality
5 control, is it something you would assume that when items
6 come to you from the sheriff's department they maintain
7 their condition as they sit in your lab or lockers or
8 whatever?

9 A. Not necessarily, no. Because it's not just the
10 outside conditions. It's, again, if there had been
11 moisture in it. A big thing we see a lot of times is if
12 there's moisture in it that by the time you actually get
13 into a courtroom what you originally described as, let's
14 say, a crystal substance for this case, it's now liquid
15 in the bag because now that thing has absorbed whatever is
16 in there, but that's because it's been sitting over time.
17 So even when it's in a controlled environment, depending
18 on what additives are mixed in with the drugs, it can
19 change over time.

20 Q. Do we know what additives were located within this
21 substance? Do you do that much of an analysis?

22 A. No, we do not. Some additives can be detected using
23 the gas chromatography mass spectrometer, but we do not --
24 we do not specifically go in and see what percentage of
25 those -- of that additive is.

1 Q. Can you tell the jury what percentage of that
2 substance was meth?

3 A. No, I cannot.

4 Q. What is the threshold to say it is meth?

5 A. There is no threshold to say that there is meth. If
6 meth is present upon the analysis, then meth is reported.

7 Q. What if someone had, say, meth on their fingers and
8 touched something, would that possibly be enough to make
9 your test positive for meth?

10 A. We do get residues all the time. A lot of times when
11 that happens -- when you say that they touch it, they're
12 touching the outside of the bags. We don't test what's on
13 the outside of the bags, we take what's in out, but we do
14 get a lot of stuff submitted where it is just a residue on
15 it where it is swabbed.

16 Q. Okay. But if it has any percentage it hits positive
17 for meth, you can write in your report that it's meth
18 positive, correct?

19 A. That is correct.

20 Q. Let me ask you is your procedure pretty much standard
21 in all cases you do?

22 A. Yes, it is.

23 Q. Do you have with you the items that were delivered
24 in total by Ms. Kyzer on June 13th which were tested by
25 you on November 17th as it related to this case?

1 A. I do -- I do know that there were other stuff
2 submitted, but I do not have them with me, no.

3 Q. Would your report be any different for those or would
4 it pretty much look the exact same?

5 A. The results would be different.

6 Q. But the reports would be the same? You could identify
7 them if I showed them to you?

8 A. The reports would be similar, yes.

9 **MR. STITELY:** Let me mark three reports, Judge.

10 **THE COURT:** Okay.

11 (Defendant's Exhibit Number 8, 9 and 10 were marked
12 for identification.)

13 **MR. STITELY:** And, Your Honor, may I approach the
14 witness?

15 **THE COURT:** Sure.

16 BY MR. STITELY:

17 Q. Ma'am, I'm gonna hand you what I've marked as
18 State's Number 8. Could you take a look at it and see
19 if you could identify it? Or Defendant's Number 8.
20 Sorry.

21 A. Yes, this appears to be a report that I submitted,
22 yes.

23 Q. Okay. And that's -- obviously that didn't come
24 out of your folder, but that would appear to be your
25 signature?

1 A. That is my signature.

2 Q. Done up in the same format you would do?

3 A. Same format.

4 Q. Do you recall doing other tests?

5 A. I do not actually recall these specific, but I do
6 know that I have done other tests on this case.

7 Q. Okay.

8 **MR. STITELY:** Your Honor, I'd offer Defendant's
9 Number 8 into evidence.

10 **MR. POGUE:** Your Honor, I don't think I'm gonna
11 object to him putting in these other reports, but --
12 that's fine by the State, but I think he at least needs
13 to identify the collection date or the incident dates
14 that are seen in the report.

15 **MR. STITELY:** I'll do that, Judge. It's written on
16 them. I'll go through them and --

17 (Defendant's Exhibit Number 8, a SLED drug analysis
18 report, was admitted into evidence.)

19 BY MR. STITELY:

20 Q. All right. What was the date it indicated was the
21 collection date, I guess the incident date, from the
22 sheriff's department?

23 A. The incident date was -- and this is from the report.
24 This is not something that we put on our report, but it
25 is March 25, 2015.

1 Q. And I'm gonna show you some other ones, but the case
2 number that says your case, you're referring to the
3 sheriff's department's case, correct?

4 A. Yes. When we say your case number, that is the
5 sheriff's case.

6 Q. And does the case number identified in Number 8
7 match the case number identified in State's Number 9?

8 A. Yes, it does.

9 Q. Okay. And that would be you relying on the
10 information you received from Lexington County, correct?

11 A. Right. Yes.

12 Q. You don't assign that number?

13 A. No, we do not.

14 Q. Okay. I'm gonna show you what's been marked as
15 Defendant's Number 9. The same question. Can you
16 identify it?

17 A. Yes, it is another one of my reports.

18 Q. What is the incident date?

19 A. The incident date is April 21, 2015.

20 Q. And it indicates the same case number as the other
21 ones we've been talking about?

22 A. Yes, it does.

23 Q. Okay.

24 **MR. STITELY:** And so I'd offer Number 9 into
25 evidence.

1 **MR. POGUE:** No objection.

2 **THE COURT:** No objection. Number 9's in.

3 (Defendant's Exhibit Number 9, a SLED drug analysis
4 report, was admitted into evidence.)

5 BY MR. STITELY:

6 Q. And Number 10, the same question, ma'am.

7 A. Yes. Again, this is another one of my reports with
8 the incident date being May 19, 2015, and it is the same
9 case number.

10 Q. Okay.

11 **MR. STITELY:** Your Honor, I'd offer Number 10.

12 **THE COURT:** Any objection to 10?

13 **MR. POGUE:** No objection, Your Honor.

14 **THE COURT:** 10 is in without objection.

15 (Defendant's Exhibit Number 10, a SLED drug analysis
16 report, was admitted into evidence.)

17 BY MR. STITELY:

18 Q. And these are the only copies -- and I know you don't
19 have them, so if you don't mind I'm just gonna ask you a
20 couple of questions while we're sitting right here.

21 A. Okay.

22 Q. What -- in Defendant's Number 8, how did you -- how
23 did you identify the substance you tested in Number 8?

24 A. With the plastic corner bag containing -- it was a
25 plastic corner bag containing a powdery substance.

1 Q. Okay. And was it meth?

2 A. No, it was not.

3 Q. You said it was something else?

4 A. It's Trazodone.

5 Q. And Trazodone is an antidepressant?

6 A. It's an antidepressant and a sleep aid, yes.

7 Q. Like a sleeping pill?

8 A. Yes.

9 Q. Okay. And Defendant's Number 9, what did you identify
10 the appearance of the substance as?

11 A. I had another plastic corner bag containing a powdery
12 substance.

13 Q. And what did it identify as?

14 A. It was also Trazodone.

15 Q. Okay. And in Number 10, what did it identify as?

16 A. I, again, had another plastic corner bag containing
17 powder substance, but in this case no controlled substance
18 was detected.

19 Q. And just for clarification's sake, that doesn't mean
20 there was nothing there, you just didn't have a controlled
21 substance that tagged in your gas spectrometry?

22 A. That's correct.

23 Q. Did I say that right?

24 A. Huh?

25 Q. Gas spectrometry?

1 A. Gas chromatography mass spectrometry.

2 Q. Got it. My bad.

3 Okay. So obviously there was something in those
4 bags, but they just didn't hit as meth on your radar.

5 A. That's correct.

6 Q. And if there was any quantity of meth in them, you
7 would have indicated meth found?

8 A. That's correct.

9 Q. Do you use the same testing procedures?

10 A. Yes, we do.

11 Q. You do pretty much the same thing every time?

12 A. For the most part, yes, we do.

13 Q. On a drug examination case.

14 A. On a -- on a normal drug examination, yes, we do.

15 Q. Okay. Was there anything outside the norm on this
16 particular drug analysis?

17 A. No, there was not.

18 Q. Okay. You don't have anything to do with the
19 collection of evidence?

20 A. No, I do not.

21 Q. You can't say who gave who what, what day, where it
22 was recovered aside from what shows up on the bag?

23 A. No, I cannot.

24 Q. You don't have anything to do with the investigation,
25 making the case or anything like that?

1 A. No, I do not.

2 **MR. STITELY:** Thank you so much, ma'am. I
3 appreciate your time.

4 **MR. POGUE:** Just a few questions, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. POGUE:

7 Q. Ms. Sorrells, is Trazodone a prescription drug?

8 A. Yes, it is.

9 Q. Is it legal to possess Trazodone if you don't have
10 a prescription?

11 A. I don't know if I'm qualified to answer that one.

12 Q. Well, let me ask you this. Can anybody other than
13 a pharmacy dispense under our laws Trazodone?

14 A. No, they cannot.

15 Q. Okay. I'm handing you State's Exhibit 6, Defendant's
16 Exhibit 2 and Defendant's Exhibit 3.

17 A. Okay.

18 Q. In regard to Defendant's Exhibit 2 and Defendant's
19 Exhibit 3, if that was how the drugs looked when they
20 were collected and you obviously see how they look now
21 in State's Exhibit 6, does that indicate to you any
22 improprieties in regards to how a substance can change
23 over the course of time?

24 A. I mean, it's definitely -- according to the pictures,
25 it is much more of a white than it is in this picture,

1 which, again, could be due to the length of time it took
2 when it was collected to when I tested it. And I really
3 can't tell from the pictures anything more from it; the
4 consistency, the thickness, if it was wet. I can't
5 determine that from the pictures.

6 Q. Is it uncommon for a substance though to be -- to
7 have moisture when if it was white to get darker over the
8 course of time?

9 A. It can, yes.

10 Q. Have you seen that before?

11 A. We have.

12 Q. Okay. If an item of evidence was submitted for
13 analysis that was believed to be methamphetamine that
14 looked like the pictures in Defendant's 2 and 3, is there
15 anything about the way that that drug appears that would
16 indicate to you that it was not possibly meth?

17 A. I don't want to make that call as a scientist and
18 I've seen so many different -- different powders,
19 different crystals that I would look at and be like
20 there's -- there's no way that this is what this drug is
21 and it comes out to be that drug. So based off of these
22 pictures, I would not be comfortable answering that
23 question.

24 Q. Okay. I just wanted to make sure -- I actually asked
25 the question in a very poor way. Let me rephrase the

1 question.

2 A. Okay.

3 Q. Taking a look at those pictures, you couldn't say --
4 you couldn't take a look at those pictures and tell me
5 whether or not that substance could be meth? It could be,
6 it could not.

7 A. Right. I couldn't tell you looking from these
8 pictures that those were meth.

9 Q. Is that why you do an analysis on it?

10 A. That is, yes.

11 **MR. POGUE:** No further questions, Your Honor.

12 **THE COURT:** Anything else?

13 **MR. STITELY:** I actually do have some, I guess,
14 recross.

15 **RE CROSS EXAMINATION**

16 **BY MR. STITELY:**

17 Q. He asked you if it's possible things can change, but
18 you can't say definitively in this case it did change?

19 A. No, I cannot. No.

20 Q. And just looking at Number 2 and 3, you can't tell
21 if that's -- just from looking at a picture, you couldn't
22 tell me that's baby powder or Trazodone or some unknown
23 white powder substance, can you?

24 A. Looking at the pictures, no, I could not.

25 **MR. STITELY:** Thank you, ma'am.

1 **THE COURT:** All right. You may step down.

2 (Witness excused.)

3 **MR. POGUE:** Your Honor, at this time the State rests.

4 **THE COURT:** All right.

5 All right, folks. I've got a couple things to put
6 on the record. Y'all step in the jury room and take a
7 short break and then once I get done I'll take a short
8 break and have y'all back in here probably in
9 fifteen minutes, okay? Don't talk about the case yet.

10 (Whereupon, the jury retires to the jury room at
11 3:06 PM.)

12 **THE COURT:** All right.

13 **MR. STITELY:** Your Honor, at this time the Defendant
14 would make a motion for directed verdict that the evidence
15 in the light most favorable to the State is insufficient
16 at this point to proceed to the jury for an ultimate
17 verdict.

18 **THE COURT:** I understand your motion. I think
19 there's ample evidence for the case to get beyond the
20 directed verdict motion at this time. The State, in the
21 light most favorable to it, has presented sufficient
22 evidence to clear that hurdle.

23 **MR. STITELY:** That's the only motion I have, Judge.
24 I would ask you to go through the colloquy with my client
25 regarding his testimony at this time.

1 **THE COURT:** Okay.

2 All right. Mr. Davis, stand up, please. A couple
3 of questions for you. I have a couple of questions for
4 you. You can stay right there. You understand that
5 Mr. Stitely has been representing you. You've sat
6 through the trial and have been listening. You have
7 an opportunity now during this portion of the case to
8 testify or to not testify. Have you been discussing that
9 issue as to whether or not you want to present testimony
10 or not with Mr. Stitely?

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

12 **THE COURT:** You've talked to him about it?

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

14 **THE COURT:** All right. Now do you understand if
15 you choose to not testify, then I'm going -- or would be
16 allowed and required to instruct the jury that your not
17 testifying cannot be used against you in any way. As a
18 matter of fact, I will instruct the jury in basically
19 my last little portion of my instructions that the jury
20 would only consider deciding guilt or innocence on the
21 evidence presented and they could not even discuss during
22 deliberations why you decided to take the stand or not
23 take the stand. Why you chose to exercise your right
24 to remain silent would be off limits during their
25 deliberations. Do you understand that that would be the

1 instruction from the Court?

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

3 **THE COURT:** All right. Now have you had enough time
4 to discuss with Mr. Stitely whether you want to testify
5 or not?

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

7 **THE COURT:** Do you need any more time now with him
8 now?

9 **THE DEFENDANT:** No, sir.

10 **THE COURT:** If you do, I'll give it you to.

11 **THE DEFENDANT:** No, sir.

12 **THE COURT:** So you understand your right to present
13 or not?

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

15 **THE COURT:** Are you comfortable with it?

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

17 **THE COURT:** Fair enough.

18 All right. Y'all let me know what he's gonna do.

19 **MR. STITELY:** Judge, he's not gonna testify.

20 **THE COURT:** Okay.

21 **MR. STITELY:** And we discussed -- I explained to
22 him -- for the record's sake, I told him about his priors
23 that we talked about before, as well as that if he was to
24 get up there and say I've never touched drugs he would be
25 opening himself up to the possibility of cross-examination

1 on that exact topic.

2 **THE COURT:** All right. Are you gonna call any
3 witnesses?

4 **MR. STITELY:** I am not, Judge.

5 **THE COURT:** All right. Well, that's creates some
6 more work for Lauren.

7 All right. Do y'all want about ten minutes to kind
8 of get you --

9 **MR. STITELY:** I'm ready whenever you are, Judge.
10 He would like to use the restroom, so that would be
11 appreciated.

12 **THE COURT:** Well, Stacy needs a break, so we're gonna
13 take ten minutes.

14 **MR. POGUE:** If I could have ten or fifteen minutes,
15 Your Honor.

16 **MR. STITELY:** And my understanding is because I put
17 exhibits in I have to go first, I don't get the last
18 argument; is that correct?

19 **MR. BELL:** I believe -- Your Honor, I believe the
20 State would still open essentially, it's supposed to be
21 on the facts, and then defense would have an opportunity
22 and then the State could reply to whatever the defense
23 put up.

24 **THE COURT:** Yes. The Beatty rule is the State opens
25 in full, you respond, then they get a brief reply. Is

1 that right?

2 **MR. POGUE:** That's correct. That's my understanding.

3 **MR. STITELY:** For the record, I would object to that,
4 as always, being an unconstitutional element, but I've
5 never won that argument.

6 **THE COURT:** Well, now, see, that's when the rule
7 changed. It used to be they opened just on the law, you
8 had to spill your beans and then they could close you
9 down. It's totally different now. They only get an
10 opportunity to reply to your argument, not to fully
11 destroy it. They've got to put all their arguments
12 out there upfront in opening.

13 **MR. STITELY:** I understand, Judge. I just
14 always thought the Defendant should get the last word
15 considering he's the one on trial.

16 **THE COURT:** Now your partner, Mr. Williams, makes
17 that funny argument, too, and I've never given it to him.
18 He just walked in.

19 **MR. STITELY:** Thank you, Judge.

20 (Recess taken.)

21 **BAILIFF:** Come to order. Court's back in session.

22 **THE COURT:** Y'all be seated.

23 Are you ready to bring in the jury? Here's the
24 verdict form.

25 (Whereupon, the jury return to the courtroom at

1 3:26 PM.)

2 **THE COURT:** All right. What we're ready to do --
3 as y'all know, the State's rested. That means they've
4 presented all the evidence they want to in their case in
5 chief. The defense is given an opportunity to decide --

6 **THE DEFENDANT:** The defense would rest at this time
7 and renew all previous motions.

8 **THE COURT:** The motions are already on the record.
9 The Court's gonna consistently rule the same way.

10 We're now ready for closing arguments. So I told
11 you the first witness may be longer and the second witness
12 would be a little quicker, and that's how it generally
13 works in most trials. In closing arguments or closing
14 summaries, the parties are given an opportunity to
15 summarize what they believe the case has proven or not
16 proven. So give your careful attention to the lawyers
17 and after they finish summarizing, I'll then give you my
18 instructions on the law. Now depending on how long or
19 lengthy they are is to whether we take a break between
20 their summaries and my instructions. We'll decide that
21 then, all right?

22 **MR. STITELY:** Judge, I didn't know if you wanted to
23 appoint a foreman at this point before we --

24 **THE COURT:** I'm working on that, so you do your job.

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

1 **THE COURT:** All right, Mr. Pogue.

2 **MR. POGUE:** Thank you, Your Honor. May it please
3 the Court?

4 I just first want to thank you for being very
5 attentive, very attentive. As far as juries go, and I've
6 seen a number of them, y'all have been very attentive and
7 y'all paid very close attention to the evidence that's
8 been presented and that's not always the case and I just
9 wanted to thank you for, you know, the attention that
10 you've devoted to this case as it's an important case,
11 just like all of the cases that we try.

12 I also want to thank y'all for and apologize for
13 being a disruption to your lives. I know that it's not
14 easy to be snatched out of your every day routine to have
15 to come up here to listen to testimony and see exhibits
16 and arguments by attorneys that you don't ever care to
17 hear from again probably after we get done, but you're
18 obviously vital to this process and you're indispensable
19 to our system and, frankly, as the judge said, if we just
20 pulled people off the streets that didn't have jobs and
21 didn't have responsibilities, then we're probably not
22 getting the best people for our jury pools. So, again
23 -- and if you do get a -- I think you probably will end
24 up getting a check for your services. If you have a
25 complaint about the amount, just know that I have nothing

1 to do with that. I would give you much more if it was up
2 to me, but it's not.

3 It is not our job as prosecutors to use slick legal
4 reasoning and arguments or slight of hand to convince you
5 of a defendant's guilt. It's our job as prosecutors to
6 present you with compelling evidence that convinces of
7 you a defendant's guilt. That is what we have done. The
8 Defendant in this case is charged with distribution of
9 methamphetamine. That's -- well, what exactly is that?
10 What do we have to prove? Well, the law in South Carolina
11 says that we have to essentially prove two things. One,
12 that the person delivered, or I should say distributed,
13 (which the law also defines as either deliver or transfer
14 as Mr. Bell told you earlier in opening arguments, so
15 essentially we have to for the first prong just show that
16 an item was delivered or transferred to another party.
17 The second element that we have to prove is that that item
18 was methamphetamine or had methamphetamine in it, any
19 portion of it, and we have to prove that to you beyond a
20 reasonable doubt.

21 Well, what have you been presented with today?
22 You've heard testimony from Agent Merckle in regards to
23 what happened, about how they met prior to conducting the
24 buy, they searched him, he had nothing on his person.
25 Other than doing a cavity search he said he was thoroughly

1 searched from head to toe. You had the confidential
2 informant who also indicated the same thing. Everything
3 that they testified to you also saw on video. It was
4 corroborated. You got to see it with your own eyes.
5 That's why they put videos on confidential informants
6 because, frankly, I wouldn't trust, and I wouldn't expect
7 you to trust what somebody who has a lengthy criminal
8 record says happened if you couldn't actually see it
9 happen. It would be hard to get beyond a reasonable
10 doubt, but in this particular case you got to see what
11 happened.

12 As I mentioned, the CI in this particular case -- I
13 keep saying CI, confidential informant, Mr. Haygood, he
14 was searched prior to this transaction, okay? He had
15 nothing on his person. Even if he wanted to switch out
16 whatever it was that the Defendant gave him for something
17 else that he believed would have tested positive, even
18 if he wanted to do that, he wouldn't even have the
19 opportunity to do it. You saw the video. He literally
20 gets out of his car, walks -- the Defendant's car and
21 walks ten feet, gets into the van and hands Agent Merckle
22 the drugs. He didn't have time to take off his clothes
23 and get drugs out of an orifice of his body. That's just
24 not reasonable. Even if the Defendant was inclined to do
25 that, he didn't have a chance. So it also begs the

1 question why would the confidential informant even care
2 to do that. He testified that he got paid prior to them
3 even leaving that day. He could care less whether --
4 whatever it was, what it tested positive for or what it
5 didn't test positive for. He'd already done his job. Why
6 does he care enough to go through all of that trouble to
7 switch out drugs? Does that make sense to you? Does that
8 seem reasonable to you? That's what you've got to ask
9 yourself.

10 The defense may also try to claim that because the
11 confidential informant's contract that he initially signed
12 when he went on to agree to conduct controlled buys for
13 the NET Team, it had a term of twelve months. Now they
14 continued operating under that agreement, you know, they
15 continued to conduct controlled buys I believe Agent
16 Merckle said for a year or two past that expiration of
17 twelve months. There is no law whatsoever that requires
18 you to have a written contract to conduct controlled buys
19 that can be brought forth for prosecution in a trial.
20 There's no law whatsoever that requires that. In fact,
21 they didn't have to have a written agreement even upfront.
22 They could have just agreed orally. The reason why they
23 do those contracts is to protect the Lexington County
24 Sheriff's Department from liability and so that the
25 confidential informant is aware of what his duties and

1 expectations are and the repercussions if he deviates
2 from those -- those guidelines.

3 The only evidence that we have in this case of
4 anybody being a liar or a cheat, and I need to also
5 preface this, the Judge mentioned this, we are only
6 limited, the State, in presenting evidence that pertains
7 to the indictment that it -- for the transaction that
8 occurred on March 11, 2015. We are not permitted to go
9 into and enter in or offer evidence that relates to other
10 dates that are not relevant to this particular date. Now
11 the defense has offered to do that and they in their
12 defense are given latitude to put forth that evidence.
13 But, again, in putting forth that evidence the only thing
14 that they've done to establish a liar or a cheat is the
15 Defendant.

16 They had an agreement. You heard the -- or had an
17 understanding, the CI testified, that he believed that he
18 was going to purchase methamphetamine from him on all four
19 occasions. So he gave him methamphetamine on the first
20 occasion, the next three transactions were Trazodone,
21 which is illegal to possess and illegal to sell, Trazodone,
22 which would still be, again, a criminal offense, and the
23 last one wasn't even a controlled substance at all. I
24 don't know if it was flour or sugar or what.

25 So the only person that's been established through

1 evidence as dishonest is the Defendant. Four different
2 buys and three different substances. Again, we don't
3 even know what the last one was. However, the only
4 offense or the only report that you are concerned with
5 when you go back there to deliberate this case is the
6 report that pertains to the substance that was collected
7 on March 11th of 2015, which is what the incident date
8 is right here. All of the other three are irrelevant to
9 your deliberations in regard to whether this substance
10 was methamphetamine. This report says that it was
11 methamphetamine that was collected on that particular
12 date, March 11, 2015. I just didn't want you to get
13 confused with the other reports that were in there that
14 the defense has tried to offer -- or has offered I should
15 say.

16 They don't put preservatives in drugs or at least
17 not that I've ever been aware of. If you put a piece of
18 bread in a bag and you leave it for two years -- this is
19 actually three years later now, I guarantee you it's not
20 gonna look the same, especially if it's, as they say,
21 organic bread and not the bread that has all the
22 preservatives in it that you buy from the store. It's
23 gonna look different. It's gonna have a lot of mold on it,
24 it's gonna change color, it's gonna change consistency.
25 Drugs are no different. And you heard the chemists from

1 SLED testify that it's not uncommon for the drugs to get
2 darker, especially if you have moisture that's been
3 introduced into the drugs.

4 I have a good example of that, I think, that my
5 co-counsel brought to my attention. Have you ever gone
6 to like an old diner and you see sugar that's been
7 probably sitting there for -- you know, I'm sure the
8 food's great, they're the places that have the best
9 food, but, you know, they all have like the little sugar
10 cannisters that sit on the counter. Well, if they've
11 been sitting there for a while, that sugar is not in
12 powder form anymore, it's in hard little rocks that when
13 you dump it out it goes clump and cracks into other
14 pieces when you try to pour it out. The same thing,
15 again, when you're dealing with drugs. When you have
16 moisture or time elapses, it changes consistency, it
17 changes colors. It even kind of gets darker in some of
18 those diners I've seen. Like the sugar used to be white
19 sugar and now you've got brown sugar. I don't think
20 that's where brown sugar comes from, but you get the
21 point.

22 I said that we had to prove those two elements to
23 you, that he transferred and that it was meth; that we
24 had to prove those elements to you beyond a reasonable
25 doubt. What is beyond a reasonable doubt? If you listen

1 to the Judge, which I urge you to pay close attention to
2 his charge that he gives you after I'm done and after
3 Mr. Stitely's done, he will tell you that proof that is
4 beyond a reasonable doubt is proof that leaves you, quote,
5 firmly convinced of the Defendant's guilt. The law does
6 not require us, being the State, to prove the Defendant's
7 guilt beyond all possible doubt. The law does not require
8 that or to create a doubt as they like to say. We just
9 have to prove his guilt beyond all reasonable doubt.

10 In other words, just because you can imagine that
11 maybe some aliens came down or there's just some
12 inexplicable way that the drugs got swapped out for some
13 other drugs, that's not possible doubt I would posit -- I
14 mean, that's not reasonable doubt I would posit to you,
15 that's creative doubt. You know, our minds can wander
16 and, you know, there's very few things in life that we
17 know with absolute certainty. But, again, that's why
18 the law requires us to prove someone's guilt beyond all
19 reasonable doubt. In other words, and I believe it's also
20 phrased that way in the jury charge as well, that proof
21 beyond a reasonable doubt is proof that would leave,
22 again, a person firmly convinced of the Defendant's guilt.

23 Common sense. The Judge is also gonna talk to you
24 about common sense. It will be the most valuable tool
25 that you have back there when you go into the jury room

1 to deliberate. They make you leave a lot of things at
2 the door -- or at the door of the courthouse, at the door
3 of the jury room. They used to not let you take your cell
4 phones in the courtroom. I think they actually let you
5 bring your cell phones in there now. But one thing they
6 do let you take back there is your common sense and I urge
7 you to use it. The reason why you folks were chosen for
8 this jury is because you struck us as people who possessed
9 good old-fashioned common sense.

10 I'm not gonna belabor the point because I'm confident
11 that you're able to recognize "BS" as they say when you
12 smell it. Do not let the defense insult your intelligence.
13 Again, that's why we chose you for this jury because we
14 believed that you were folks who are able to see through
15 the cloud and this is what it looks like. I mean, this
16 is -- and I have my notes over here because I wanted to
17 make sure that I cover everything that the defense counsel
18 may try to bring up -- because this is what it looks like
19 when you're caught dead to rights. What else is he gonna
20 argue? Well, I'm gonna have to argue that somehow they
21 switched the drugs because you see everything that takes
22 place on video.

23 So, again -- and no offense to Mr. Stitely, who I
24 know very well, but, you know, he's just trying to do the
25 best with what he's got. Please focus on anything else

1 other than what you're here to deliberate. Focus on the
2 fact that he didn't file a 1099 for the -- even though he
3 testified I think he didn't even know what a 1099 was --
4 focus on the fact that he didn't pay taxes on that, focus
5 on this, focus on that. Don't focus on what's on the
6 video, don't focus on what the chemist tells you that
7 substance is. But listen to what the Judge tells you
8 about common sense.

9 The last thing I want to leave you with, as a jury
10 you took an oath that you would render a verdict in this
11 case; that you would listen to the evidence and that you
12 would render a verdict in this case. You have a duty
13 to render a verdict in this case. In fact, the word
14 "verdict" is actually Latin for to speak the truth.
15 That's what the Latin definition of the word "verdict" is.
16 So, essentially, you have a duty to go back there and
17 speak the truth. I think after you've seen and heard all
18 of the evidence in this case that's been presented, you
19 should be firmly convinced of the Defendant's guilt.
20 Again, no opportunity to switch out the drugs. Every --
21 every single link in the chain of custody was accounted
22 for. No tampering. Everybody testified there was no
23 tampering whatsoever with the BEST kit. The BEST kit
24 item numbers match, the lab number from the report
25 matches the control number for the -- for the BEST kit.

1 Everything matches. Use your common sense, go back there
2 and render a verdict of guilty, which is the verdict that
3 speaks the truth. Thank you.

4 **THE COURT:** All right, Mr. Stitely.

5 **MR. STITELY:** If it please the Court?

6 **THE COURT:** Uh-huh.

7 **MR. STITELY:** Once again, thank you very much for
8 listening. My name is Ben Stitely. My office is right
9 across the street. It's interesting because I've tried
10 everything from speeding tickets that lasted twenty
11 minutes to a death penalty trial that took the better
12 part of six weeks and, fortunately, y'all have only had
13 to listen for about a day to what I have to say. And
14 if you don't like things I say, I apologize. I'm
15 representing my client and at the end of the day he's
16 the one on trial.

17 One of the interesting adages that I've always heard
18 is there's only two certainties in life. The solicitor
19 was saying that you have to talk about what a reasonable
20 doubt is. He said that you never have certainties. Well,
21 my dad always told me there were two certainties in life;
22 death and taxes. I guess unless you're the witness taxes
23 don't count, but reasonable doubt is what the Judge will
24 tell you is the kind of doubt that makes a reasonable
25 person hesitate to act when making an important decision.

1 The solicitor said your job is to seek a verdict, to tell
2 the truth, and what your job is, as the Judge tells you,
3 is to be the truth-seeker, the seeker of the facts, of
4 what the facts are in the case according to the law.

5 One of the other interesting words that comes in the
6 case is "deliberate" and that's what the Judge is gonna
7 tell you to do when you go back there, to deliberate, to
8 think, and if there is a deliberation that takes place
9 that someone has to say, well, let me think about that,
10 that does seem reasonable or unreasonable, that is what
11 we call reasonable doubt.

12 As I warned you from the beginning, I'm not gonna
13 get up here and say my client is an angel. This is not a
14 morality jury. You're not judging him; what he did was
15 right or wrong. What you're trying to determine is
16 exactly what the solicitor said, did beyond a reasonable
17 doubt the State prove that he distributed methamphetamine,
18 not something else, on that date and time, March 11, 2015.
19 Did my client sell meth? One of the things the solicitor
20 said which was particularly interesting is why would that
21 CI say he did and why does he care? He cares because he
22 wanted money. What other incentive do you have except to
23 keep the State on the hook to pay your bills and if you
24 gave them bad drugs the first time, do you think they're
25 gonna want to use you again? No, they're not. You want

1 to talk about a motive to make something up, a motive to
2 do something, he told you I'm reformed, I only sold drugs
3 in schools districts because -- well, that was before I
4 learned better. No, I want to make money and if I brought
5 them bad drugs the first time, if I couldn't prove I had
6 my hook on this guy, they wouldn't use me, I wouldn't get
7 paid. Why would he lie? I think that's a pretty fair
8 reason. If someone told you that if you don't do a good
9 job this time, we're not gonna use you in the future,
10 you're gonna do your best to make sure you bring them the
11 goods.

12 Number 6, this brown crystal that the chemist tested,
13 as she put in her report, a crystal that tested positive
14 for meth. I was gonna play the video, but we've got a
15 pretty good picture, State's Number 8, the white powder.
16 Defendant's Number 3, a picture taken by the detective, a
17 white powder. Every witness said what we were given is
18 what went in this bag. Tell me where this bag is inside
19 the BEST kit. This is a little sealed Ziploc bag with
20 some crystal in it. This is the evidence he said he put
21 in the bag.

22 It's not my job to tell you how it happened. All I
23 can tell you is you have to find beyond a reasonable doubt
24 my client distributed methamphetamine to that person on
25 that day, a person who's been proven to be a liar, a

1 cheat, a drug dealer. This is a picture, this is what
2 they tested. You have to say this is the exact same
3 thing. This bag is supposed to be this in exactly the
4 same format, the same bag. Look at them close. You'll
5 get to carry them, touch them, look at them. The reason
6 I put the other three pieces of evidence in there because
7 it's important. White powder, white powder, white powder.
8 And the officer's statement, plastic bag, white powder.
9 The evidence report, white powder. The voucher, white
10 powder. Crystal.

11 The solicitor tried to use some analogy of sugar.
12 Sugar's crystal. It doesn't change. It didn't become a
13 rock from powder. The chemist was very clear. We get it
14 in powder, we get it in crystal, we get it in liquid, we
15 get it in tablets. Do you think she just messed up, wrote
16 the wrong thing on her report?

17 It's not my job to prove anything. It's never the
18 Defendant's job to prove a thing. People say well, why
19 do you have to argue at all? I don't. The Judge told
20 you beforehand we don't even have to show up for trial.
21 The State would have to prove to you beyond a reasonable
22 doubt every single element of the crime. The burden rests
23 solely on the State and if you have one reasonable doubt,
24 a doubt that causes you to hesitate to act and to think
25 about it, that's the standard, and if they haven't met

1 it he's found not guilty. That is our justice system.
2 That's how it was designed and that's the way it's
3 operated for more than two hundred years. It's not my
4 job to prove. My job is simply to point out the facts,
5 point out the evidence holes. Why didn't the State put
6 in the picture of the bag? Their officer took it.
7 Y'all watched that video. If you can't see it clearly in
8 State's Number 6, watch it and you tell me if that bag
9 that you saw in that video is this tiny sealed little
10 baggy that's in this BEST kit. If you're firmly convinced
11 that that's exactly what happened, you've got to find him
12 guilty, that's your job as a jury, but if you reasonably
13 think that something might be different, that there might
14 have been some reason that gentleman who took the stand
15 had a reason to lie, if something could have happened that
16 messed up this testing, you have to find him not guilty.

17 I appreciate y'all listening. I wish I got the last
18 argument. The State gets to go again, that's the rules.
19 You won't hear from me again. Thank you once again for
20 your service.

21 **MR. POGUE:** Defense counsel mentioned money as
22 being the CIs motive for switching out the drugs as he
23 mentioned. Well, if the defense attorney was listening,
24 he would have heard the Defendant {sic} testify that he
25 got paid that day before they had -- long before, over

1 a year, before they knew what was actually in that bag.
2 Whether he got paid or not had nothing to do with what
3 was in that bag and what it tested positive for. He had
4 already gotten paid. And if you listened closely, you'll
5 also hear the defense attorney argue that the CI went out
6 and purchased a hundred dollars worth of meth so that he
7 could predict that this guy was gonna sell him something
8 different, the Defendant, and get a hundred dollars as
9 payment for getting the right substance. So, in other
10 words, he paid a hundred dollars to get the meth so he
11 could swap it out and make a good buy and get paid a
12 hundred dollars. Again, if that seems reasonable to you,
13 if that makes sense to you, then go back there and find
14 him not guilty. If somebody who is established as a liar
15 and the substances that they sell after this can -- try
16 to lie again and say what I sold him the first time wasn't
17 meth, go back there and find him not guilty if that's
18 reasonable doubt to you.

19 The chemist testified that it is not uncommon at all
20 for substances to come in looking one way and -- or,
21 excuse me, be collected looking one way and when she gets
22 them look completely different. She testified that they
23 can change color, that it's not uncommon for them to
24 change color and it's not uncommon for them to change
25 texture, that it happens in her experience all the time.

1 Thank you, Your Honor.

2 **THE COURT:** Uh-huh.

3 All right, folks. I'm gonna go ahead and give you
4 my instructions. I don't think the lawyers were too
5 lengthy, so I'm gonna go ahead and start.

6 First off, your name back here, what's your name?

7 **JUROR:** Tim.

8 **THE COURT:** Tim what?

9 **JUROR:** Tim Essig.

10 **THE COURT:** Essig?

11 **JUROR:** Yeah.

12 **THE COURT:** Would you be my foreperson?

13 **JUROR:** Sure.

14 **THE COURT:** Does anybody have an objection to him
15 being the foreperson? It's unanimous. You just won.
16 See how easy that was?

17 **JUROR:** Great.

18 **THE COURT:** All right. Congratulations.

19 **JUROR:** Thanks.

20 **THE COURT:** All right. My instructions won't be too
21 lengthy, but, Mr. Essig, what you're gonna do is preside
22 over deliberations. Just start a discussion. Everybody's
23 got an equal vote, okay?

24 Anyway, Mr. Essig, I guessed wrong when my law clerk
25 and I were trying to figure out who you were, and I

1 guessed wrong.

2 The State of South Carolina has charged the
3 Defendant, Mr. Davis, with one count of distribution of
4 methamphetamine. Y'all bear in mind that he has pled not
5 guilty and by that plea requires the State to prove its
6 case and each and every element of its case. They must
7 prove their case beyond a reasonable doubt, and I'll
8 define that momentarily.

9 Mr. Davis comes into court clothed with a presumption
10 of innocence and this presumption continues throughout the
11 case and entitles him to a verdict of not guilty until it
12 is dispelled by the evidence satisfying you twelve of his
13 guilt beyond a reasonable doubt. I remind you, again, the
14 State must prove each element beyond a reasonable doubt.

15 Now the constitution which makes you the finders of
16 fact, makes me the instructor of the law, and I'll explain
17 to you. Y'all must accept the law as I am giving it to
18 you and so if I make an error in instructing the law to
19 you, there's another time and a place to consider whether
20 there was an error and if it was how to correct it and
21 then how to proceed from there. For the purposes of a
22 trial, y'all's findings of fact will not be questioned
23 with a unanimous verdict because twelve people reaching
24 a unanimous verdict is considered to be within the bounds
25 of our constitutional law, so the constitution appoints

1 you twelve as the judges of the fact.

2 Now the State has the burden of proof, as I told
3 you. The Defendant has no burden whatsoever as he comes
4 to court resumed innocent. Now as jurors and judges of
5 the fact, necessarily, you must make an evaluation as to
6 what you find what evidence was believable or credible.
7 In judging the credibility and believability of witnesses
8 who testify, y'all may use anything in your collective
9 common sense and common judgment that you deem appropriate.
10 Some matters in passing upon credibility, and I'll read
11 off a few to you, may be ways y'all already utilize in
12 your everyday lives. In passing upon credibility, you
13 can consider the manner and appearance of a witness, how
14 they testified, what their body language was, were they
15 straightforward in answering, were they hesitant in
16 answering, how did a witness come to know the facts to
17 which he or she testified to, what was their ability to
18 recollect the facts to which they testified to, is there
19 some reason one witness would want to give testimony which
20 would help or hurt one side or the other? In other words,
21 was a witness biased or prejudiced in any way toward one
22 side or the other, was the testimony of a witness
23 strengthened or weakened by other testimony or other
24 evidence introduced? You, as a group, may believe the
25 testimony of any witness. You can believe part of the

1 witness's testimony and you can disagree the rest. You
2 can believe one witness against a couple or a couple
3 against one. You may believe part of the witness's
4 testimony and disbelieve the rest. It is your decision
5 collectively to evaluate the believability of the evidence
6 that has been presented. Now the fact that testimony
7 is not controverted does not mean you must accept it as
8 true. You still gauge the credibility of the witness who
9 provided it.

10 Now our rules of evidence normally do not allow a
11 witness to testify as to their opinions. There's an
12 exception to that rule, and that's where we have expert
13 opinions, and we had expert testimony in this case. An
14 expert becomes an expert in a field, art or science
15 because of their training, their education, their
16 expertise and experience in the area and if they have
17 enough and they can be qualified as an expert in one
18 particular field, then they can offer opinions in that
19 field. Now if you conclude that the reasons an expert
20 gave in support of their opinion are not sound or their
21 opinion is outweighed by other evidence, you can disregard
22 the expert's opinion. An expert's opinion is to be given
23 no greater weight than the other regular witnesses simply
24 because they're an expert. You're not required to accept
25 an expert's opinion even though it's not contradicted.

1 Now as a group of jurors, you're the sole factfinders
2 and y'all, as I have observed, listened closely to the
3 evidence presented. Weighing evidence is entirely a
4 mental process. You weigh the evidence using your good
5 judgment and your common/sense. There are two types of
6 evidence presented normally during a trial. There's
7 direct evidence and there's circumstantial evidence.
8 Direct evidence is testimony of a person who asserts a
9 claim to have actual knowledge of the facts, such as an
10 eyewitness. Circumstantial evidence is slightly
11 different. It is proof of a chain of facts and
12 circumstances indicating the existence of another fact.
13 Our law makes no distinction between the weight or value
14 to be given to either direct or circumstantial evidence.
15 There's no greater degree of proof required for
16 circumstantial evidence than that of direct evidence.
17 I tell you to the extent the State relies upon
18 circumstantial evidence, all of the circumstances must be
19 consistent with one another and when taken together point
20 conclusively to the guilt of the accused beyond a
21 reasonable doubt, and if the circumstances merely portray
22 his behavior as suspicious, then the proof has failed.
23 So I instruct you that after weighing all of the evidence,
24 whether it be direct or circumstantial or any combination,
25 if you're not convinced of his guilt beyond a reasonable

1 doubt, you're required to find him not guilty.

2 What is a reasonable doubt? A reasonable doubt is
3 defined as this. It is the kind of doubt which would
4 cause a reasonable person to hesitate to act. Reasonable
5 doubt may arise from evidence which is in the case or
6 from a lack or absence of evidence in the case. Proof
7 beyond a reasonable doubt is proof that leaves you firmly
8 convinced of the Defendant's guilt. It is the kind of
9 doubt which you can assign a reason if the assignment can
10 be done reasonably and convincingly. A reasonable doubt
11 -- I'm sorry. I instruct you that the Defendant is
12 charged -- is entitled to every reasonable doubt which
13 may arise in the case. What that means is if you have
14 doubt about anything, you will be required to resolve that
15 doubt in his favor. The very fact that y'all engage in a
16 full and free discussion of whether or not a reasonable
17 doubt exists or not, guilt or innocence, does not in and
18 of itself, having that conversation, create a reasonable
19 doubt. You make the determination as to whether or not a
20 reasonable doubt exists as to his guilt.

21 Now criminal intent is a necessary element that
22 must be proven by the State beyond a reasonable doubt.
23 Criminal intent is a matter to be determined from you --
24 or by you, the jury, from the circumstances surrounding
25 the situation. Criminal intent is a state of mind that

1 operates jointly with an act or an omission in the
2 commission of a crime and is a mental state of conscious
3 wrongdoing, so it's up to you to determine what the
4 Defendant intended to do based upon the circumstances
5 shown to have existed and the State must prove intent
6 beyond a reasonable doubt just as they must prove every
7 element of the distribution of meth charge.

8 Distribution of meth is defined under our code
9 section 44-53-375. That statute reads a person who
10 manufacturers, distributes, dispenses, delivers, purchases
11 or otherwise aids, abets, attempts or conspires to
12 manufacture, distribute, dispense, deliver or purchase
13 or possess with intent to distribute or deliver
14 methamphetamine is guilty. In order to prove this, the
15 State must prove beyond a reasonable doubt that Mr. Davis
16 distributed methamphetamine. Distribute means to deliver
17 or to actually or constructively attempt to transfer a
18 drug other than by administering or dispensing. Deliver
19 means to actually or constructively attempt to transfer
20 the drug. A transfer can involve an exchange for money,
21 a barter or gift. There does not have to be anything
22 given in exchange for the drugs for a transfer to
23 constitute distribution. Simply giving of drugs from
24 one person to another with or without exchange of any
25 compensation would constitute a distribution.

1 Now, importantly, Mr. Davis elected to not testify.
2 And I tell you that it's important you realize that him
3 claiming or collecting his constitutional right to remain
4 silent is his, that's his decision, and it's not ours to
5 question. I tell you that you must not consider that in
6 any way in your deliberation in considering the guilt or
7 innocence of him in this case. It must not be considered
8 by you in any manner whatsoever. He has the constitutional
9 right to remain silent and the assertion of this right is
10 not to be considered in deliberations, so you're to draw
11 no conclusions whatsoever from the fact that he chose to
12 not testify. So the fact that he chose to not testify
13 should not even be discussed during deliberations. The
14 burden is upon the State to prove distribution of meth
15 with its facts it's presented.

16 So as I tell y'all -- those are my instructions. I
17 tell you this. I told you early on you'd get everything
18 you need to decide the case here in the courtroom
19 collectively as a group; the sworn testimony, the evidence.
20 Every piece of evidence was agreed to, it all came in,
21 y'all get all that in the jury room, and so my instruction
22 to you is to go to the jury room and discuss the case,
23 discuss whether the State's met its burden of proof, make
24 findings of fact and consider only the evidence which has
25 been presented, the testimony which has been presented

1 and the instructions that I've given to you and ignore or
2 disregard anything that wasn't presented to you or any
3 outside influences. It's our job to make certain that a
4 fair trial is conducted and thus far we've done that.
5 It's your job to make certain that your verdict is fair
6 and just and unanimous. I'm certain y'all will do that.

7 Now I have the opportunity to ask the lawyers
8 momentarily were my instructions full and complete and
9 they may have an idea that I glossed over one aspect of
10 my instructions, and if I did, I'm gonna call you back in
11 here and say I glossed over this one aspect, I'd like to
12 instruct you a little more fully on that aspect, so I'm
13 gonna ask them as soon as I step y'all in the jury room.

14 Don't begin your deliberations until the evidence
15 comes to you because I may bring you back in here for more
16 instructions. I will tell you if you have any questions,
17 write them down, we'll try to answer them. And I read
18 this instruction to you, I've done it numerous times.
19 I've had jurors come back and say that's tough to handle
20 all the law you threw at us. It's like getting a drink of
21 water through a firehose. I understand that. The lawyers
22 do, too, because it's something I do, you know, several
23 times a month. If you need the instructions again, I'll
24 give them to you again. If you have one aspect of --
25 judge, give us that reasonable doubt definition, let's

1 have it, or the meth definition or what distribution of
2 meth is, then I may give you that portion of the
3 instructions, just that portion, to read and to have in
4 the jury room if you need it. So if you need a question
5 answered, further instructions, let me know.

6 And once you begin your deliberations, we're on your
7 time. If y'all want a break, y'all take a break. If you
8 want to step outside and get fresh air, it's y'all's time
9 and we're gonna be here waiting on you, and that's fine.
10 Just let the bailiff know we're gonna step outside or
11 we're gonna stand down a minute. The important thing is
12 if one person wants a break, stop deliberations, let them
13 have a break, y'all just relax until they get back because
14 it's got to be discussed with all twelve in the room,
15 okay?

16 Now you're our alternate, correct? I think you are.
17 Aren't you my alternate? I think that's right. Who is it?

18 **THE CLERK:** Derrick Moore.

19 **THE COURT:** Okay. You're gonna go to the jury room
20 with them and once I get the instructions done, then I'll
21 pull you out and you'll be free to go, all right?

22 So y'all step in the jury room and don't begin to
23 discuss the case until I get the evidence back there to
24 you, okay?

25 (Whereupon, the jury retires to the jury room at

1 4:06 PM.)

2 **THE COURT:** Any objection to the instructions?

3 **MR. STITELY:** No objection, Judge.

4 **THE COURT:** All right.

5 **MR. POGUE:** None from the State, Your Honor.

6 **THE COURT:** Good enough.

7 Did you see the verdict form?

8 **MR. STITELY:** I did, Judge. We have no problem with
9 it.

10 **THE COURT:** All right. Y'all make certain you agree
11 with Stacy what's in because I'm agreeing with her already,
12 so y'all inventory your evidence.

13 **MR. STITELY:** We checked it, Judge. I just moved it
14 around, but it was all there right before we started.

15 **THE COURT:** Okay.

16 **THE COURT REPORTER:** Everything's in.

17 **THE COURT:** All right.

18 **MR. BELL:** Judge, this is a courtroom laptop. It's
19 been stripped of internet capability. There's nothing on
20 it except the audio player. I don't know if you intend to
21 send it back with them or let them to come out here and
22 watch if they want.

23 **THE COURT:** I'm gonna have the bailiff tell them if
24 they need the video player, they can have it.

25 **MR. STITELY:** I'm good with that, Judge.

1 (Whereupon, the exhibits and the verdict form was
2 submitted to the jury at 4:08 PM.)

3 (Whereupon, the alternate juror was excused at
4 4:08 PM.)

5 (Recess taken.)

6 **THE COURT:** Are y'all ready?

7 **MR. STITELY:** Yes, sir.

8 **MR. POGUE:** Yes, sir.

9 **THE COURT:** All right. Go get the jury for me,
10 please.

11 (Whereupon, the jury returns to the courtroom at
12 4:39 PM to report its verdict.)

13 **THE COURT:** All right. Mr. Essig, have y'all reached
14 a verdict?

15 **FOREPERSON:** Yes, sir.

16 **THE COURT:** Was it unanimous?

17 **FOREPERSON:** Yes, sir.

18 **THE COURT:** Very well. All right.

19 **THE CLERK:** Proceed, Your Honor?

20 **THE COURT:** Yes, ma'am.

21 **THE CLERK:** Indictment 2016-GS-32-00114, the State
22 versus Donnell Davis. We, the jury, find as the follows.
23 Distribution of mari -- excuse me -- distribution of
24 methamphetamine, guilty. And it is so signed by the
25 foreperson the 24th day of April, 2018.

1 Mr. Foreman, ladies and gentlemen of the jury, if
2 this is your verdict, please indicate, each of you, by
3 raising your right hand:

4 All hands raised, Your Honor.

5 **THE COURT:** Anything for the jury?

6 **MR. STITELY:** Poll, please, sir.

7 **THE COURT:** Poll by number?

8 **MR. STITELY:** That's fine. Thank you, Judge.

9 **THE COURT:** All right.

10 **THE CLERK:** As I call your juror number, if you'll
11 hold your hand up where I can recognize you. I will ask
12 you as to the verdict, was this your verdict and is it
13 still your verdict. At that time give me your response,
14 please.

15 Number 83. As to the verdict, was this your verdict
16 and is it still your verdict?

17 **JUROR:** Yes, ma'am.

18 **THE CLERK:** Number 132.

19 **JUROR:** Yes, ma'am.

20 **THE CLERK:** As to the verdict -- please hold your
21 hand up. I knew who he was.

22 **JUROR:** I'm sorry.

23 **THE CLERK:** Thank you, ma'am.

24 As to the verdict, was this your verdict and is it
25 still your verdict?

1 **JUROR:** Yes..

2 **THE CLERK:** 145. As to the verdict, was this your
3 verdict and is it still your verdict?

4 **JUROR:** Yes, ma'am.

5 **THE CLERK:** 142. As to the verdict, was this your
6 verdict? Is it still your verdict?

7 **JUROR:** Yes, ma'am.

8 **THE CLERK:** 65. As to the verdict, was this your
9 verdict? Is it still your verdict?

10 **JUROR:** Yes, ma'am.

11 **THE CLERK:** 146. As to the verdict, was this your
12 verdict? Is it still your verdict?

13 **JUROR:** Yes, ma'am.

14 **THE CLERK:** 80. As to the verdict, was this your
15 verdict? Is it still your verdict?

16 **JUROR:** Yes, ma'am.

17 **THE CLERK:** 87. As to the verdict, was this your
18 verdict? Is it still your verdict?

19 **JUROR:** Yes.

20 **THE CLERK:** Number 7. As to the verdict, was this
21 your verdict? Is it still your verdict?

22 **JUROR:** Yes, ma'am.

23 **THE CLERK:** 140. As to the verdict, was this your
24 verdict? Is it still your verdict?

25 **JUROR:** Yes, ma'am.

1 **THE CLERK:** 163. As to the verdict, was this your
2 verdict? Is it still your verdict?

3 **JUROR:** Yes, ma'am.

4 **THE CLERK:** 136. As to the verdict, was this your
5 verdict? Is it still your verdict?

6 **JUROR:** Yes, ma'am.

7 **THE CLERK:** All jurors polled, Your Honor.

8 **THE COURT:** All right. Anything further?

9 **MR. STITELY:** Nothing further from the jury, Judge.

10 **THE COURT:** Okay. Y'all notice the alternate stayed
11 around and waited on you. Do you see him out there? I
12 told him he could stay or go and he could wait and see what
13 y'all did and he wanted to stay.

14 All right. We've got a busy week this week, so y'all
15 need to report back in the morning at 9:45. I've got
16 another trial to tee up. Judge McMahon started his trial
17 today, so he's got thirteen people working. The balance
18 of those forty and the twenty-four and there's a group of
19 y'all coming back in the morning to try to get another
20 case up. And I'm telling you this because while y'all
21 were out I got an e-mail from Court Administration, but
22 each county only gets allotted a certain number of weeks
23 to move cases and we're all overloaded, but one thing
24 we're short on is court reporters. And Ms. Johnson
25 generally is assigned to me when I'm in Lexington. She

1 and I work together quite a good bit, but Court
2 Administration is not hiring us enough court reporters
3 and so we lose court weeks sometimes because of the
4 scarcity of them. I got an e-mail ten minutes after
5 y'all started deliberating from Court Administration.
6 Lexington has two weeks of court like this because there's
7 a courtroom going on downstairs with guilty pleas with
8 Judge Cooper. Y'all don't even know it's going on, but
9 they're doing pleas downstairs one right after the other
10 and we're up here doing trials. The week of May 21st had
11 two weeks and they cancelled my week for that, so we lost
12 it, and so as administrative judge, I told y'all that's
13 what I did, we've got to call the cases while we've got
14 jurors available and court reporters available, so I
15 apologize for the imposition on your time, but I need you
16 because the resources are limited and Lexington County has
17 got a pretty heavy docket, as do the other counties, so I
18 need y'all to come back in the morning at 9:45 and see
19 about picking another jury.

20 Now I told the alternate y'all may get excused by
21 the lawyers, they're thinking y'all have already served
22 on a jury, I want a fresh juror who didn't serve at all.
23 They'll know who you are because the lawyers keep up with
24 that, so there's no black magic to picking a jury. So
25 y'all might get excused because y'all were on the first

1 jury, I don't know, but I need you back anyway, okay?

2 So 9:45 in here. Well, you'll be in the hall or in
3 here because I've got to do one matter at 9:30 and so
4 y'all will be in here fairly quickly and we'll get started
5 on another shorter case. It may be four or five witnesses
6 I was told, so I'll see y'all in the morning. Y'all need
7 not call in tonight, y'all just come back at 9:45, okay?

8 Thank you.

9 **THE CLERK:** Your Honor, can I get the foreman to
10 sign?

11 **THE COURT:** Yeah.

12 Mr. Tim, come on over here. I'll get you to sign
13 the indictment for me to formalize it.

14 **FOREPERSON:** Okay.

15 **THE COURT:** So y'all are free to go.

16 (Whereupon, the jury was excused at 4:45 PM.)

17 **THE COURT:** Are you ready?

18 **MR. STITELY:** Yes, sir.

19 **THE COURT:** All right.

20 **MR. STITELY:** Judge, I'm gonna make my motions.

21 **THE COURT:** Okay. Go ahead.

22 **MR. STITELY:** I didn't officially make it, but it
23 would be a -- after I rested, there would have been
24 another directed verdict motion.

25 The other one, Judge, I make a motion to set aside

1 the jury's verdict and to grant a new trial as the
2 evidence in its toll was insufficient for a finding of
3 guilt.

4 **THE COURT:** Respectfully, I understand your motion,
5 but there was evidence to get past directed verdict. It
6 was a question of the fact for the jurors to answer, they
7 unanimously reached it and so, respectfully, I decline to
8 grant that motion for a new trial.

9 **MR. STITELY:** Do you want us at the podium or at the
10 table?

11 **THE COURT:** Wherever you want to be.

12 **MR. STITELY:** We'll stay here, Judge.

13 **THE CLERK:** Do you have the sentencing sheet?

14 **MR. POGUE:** We've got it.

15 **THE CLERK:** Okay.

16 **THE COURT:** All right. Mr. Pogue, give me the prior
17 record. And I heard the facts, so you don't have to go
18 too heavily into that.

19 **MR. POGUE:** Thank you, Your Honor.

20 In 2003, he had an assault and battery and disturbing
21 school -- I apologize, Your Honor. Those were not
22 convictions for our purposes.

23 In 2008, he had a grand larceny. He actually had two
24 of them that he received a YOA; one was a 1,000 to 5,000
25 and he got a YOA not to exceed five years and the other

1 one was over ten thousand, which was a YOA not to exceed
2 six because obviously that one carries ten years. There
3 was also an assault and battery of a high and aggravated
4 nature from 2008. That was also a YOA, concurrent
5 sentence. That was pled down from assault and battery
6 with intent to kill. In 2009, he had a parole revocation
7 on that YOA. In 2010, he had a possession of meth. That
8 was pled down from a possession with intent to distribute
9 meth, which was one of the priors that, Your Honor, we
10 would use to enhance to a third offense. In 2013, he had
11 a driving under suspension, two giving false info's and a
12 criminal domestic violence. In 2014, he had a
13 manufacturing meth first, which he received a five-year
14 sentence suspended to thirty months' probation. I believe
15 he's still currently on probation for that charge, Your
16 Honor.

17 **THE COURT:** Okay.

18 **MR. STITELY:** Judge, if it please the Court, you
19 heard his record. It's really not that substantial. I've
20 only been involved in this case for two weeks. I wasn't
21 there for any of the negotiations as far as a plea. By
22 the time I got it, you heard, Your Honor, the offer was
23 ten, which is the minimum. I'm asking you to give him the
24 minimum, Judge.

25 I would have liked to have thought -- he's been in

1 jail for two and a half years. I would have liked to have
2 thought this could have been pled out. He was arrested
3 back in 2015. I believe after the May transaction. They
4 do a search warrant on May 25th I want to say. I think
5 that's right. Either way, he was arrested back in May of
6 2015, I believe, Judge. He's been in jail ever since,
7 maybe sometime right around then. I would have liked to
8 have thought it could have been pled to a second. His
9 only priors as far as drugs go is a possession that's
10 nine years old and he does have the manufacturing, which
11 he had a five-year suspended sentence. If you were to
12 revoke the five year sentence, probation isn't here, but
13 he would have already maxed that out. So I'd ask you just
14 to maybe write probation revoked, terminate, and to give
15 him the minimum.

16 Judge, I don't think that this is a ten-year kind of
17 case. Even in the best light, it's a hundred dollars,
18 .63 grams. Less than a gram, a hundred dollars, and he's
19 facing ten years. That's the statutory minimum. I don't
20 know if it's 65 or 85, it depends on what they do with
21 that prior manufacturing. I think there's a fair chance
22 it might be the 65, but I can't decide what they're gonna
23 do.

24 So either way, Judge, even in his best case scenario
25 he's looking at four more years if you give him the

1 minimum unless you can somehow think of a way to go below
2 that, so we'd ask you to give him the minimum.

3 His wife is here, his mother's here. His family has
4 been very responsive to me. Like I said, I've only known
5 him for a couple of weeks. He has maintained to me
6 nonstop that the stuff he sold that guy was that fake
7 stuff and he was just trying to make a little bit of
8 money, and that was stupid, but that's what the jury has
9 said and here he is.

10 **MR. POGUE:** Your Honor, the State does have a
11 response, and I just wanted to address on the record as
12 well, is the charges that he currently still has pending
13 as well at the appropriate time, whatever Your Honor would
14 like.

15 **THE COURT:** What's he still got on the books?

16 **MR. POGUE:** Your Honor, he still has three other
17 distributions of counterfeit substances as obviously they
18 did not test positive as methamphetamine, which is what
19 they were originally indicted for before the analysis came
20 back. He also has -- after they did the buys, they went
21 and they did a search warrant on his house and they found
22 acid generators, reaction vessels, and charged him with
23 manufacturing meth, third offense, disposal of meth waste,
24 altering pseudoephedrine, as well as PWID marijuana and
25 he also had a stolen motorcycle on that he received --

1 I think he received a stolen goods charge on that. I
2 believe receiving stolen goods is a magistrate level and
3 that may not be pending anymore. Subsequent to that,
4 Your Honor -- or prior to that he has an ID fraud case
5 from a separate incident as well that's still pending that
6 I got because I had all his other charges.

7 Your Honor, just in regard to having spoken to Agent
8 Merckle and Purdy about this particular individual --
9 first of all, I may add, Your Honor, too, he is also in
10 SLED's gang database. He's listed as Blood, an OG. I was
11 e-mailed from SLED in regard to that information after the
12 fact. Mr. Gill Bell was the one that actually prosecuted
13 him on the 2014 manufacturing meth. He was in prison --
14 or, you know, jail most of the times that you see the gaps
15 in his record.

16 So, Your Honor, the State would just ask for something
17 other than the minimum considering that we offered the
18 minimum -- a plea to the minimum, he rejected it, and we
19 even offered it again last week, he rejected it again.
20 Your Honor, we believe that he is a -- you know, that he
21 is a detriment to society and has been for a while.

22 **THE COURT:** Anything else?

23 **MR. STITELY:** No, Judge.

24 **THE COURT:** Do we have -- Ms. Frick, do you see when
25 he was -- was it May 21st or --

1 **MR. STITELY:** It was May -- the search warrant was
2 executed, it looks like he was arrested, and there's a
3 magistrate charge from about that date, Judge, but I can't
4 -- he never had a bond. He's been in jail the whole time.

5 **THE COURT:** Uh-huh.

6 **THE CLERK:** This warrant, Your Honor, has --

7 **MR. POGUE:** Your Honor, just to clarify, too, that
8 the search warrant was in May and he was arrested and
9 bonded out in May on the manufacturing; however, he failed
10 to show for appearances and that's why he's in jail on a
11 bench warrant, not because he's been in -- and that didn't
12 happen until -- that was in May when he got arrested on
13 the manufacturing and distributions. He didn't show up
14 for an appearance, I believe, in September or October,
15 absconded, and they had to bring SLED agents and the
16 sheriff's department from Orangeburg to the location in
17 Neeses where they believed he was and Ms. Humphrey --
18 again, I think I told you about that. He just climbed
19 out the back window.

20 **THE COURT:** Yeah, that was one of her charges.

21 **MR. STITELY:** I apologize. I didn't represent him
22 back then, so I don't know all of it.

23 **MR. POGUE:** He's been in jail since December of 2015
24 on that bench warrant, Your Honor, and has had three
25 separate motions to vacate that bench warrant that were

1 all denied, one of which was by Your Honor.

2 **MR. STITELY:** So I apologize. He must have spent a
3 little bit of time and he must have got out, Judge. Once
4 again, I didn't know too much about that, so.

5 **MR. POGUE:** That's true, Your Honor. I wouldn't
6 expect him to know all of that.

7 **THE COURT:** Okay. I'm gonna give him a sentence --
8 he gets credit for any days he's served. Will y'all allow
9 me to supplement this order once it's verified, the number
10 of days? Whatever they are is what he gets.

11 **MR. STITELY:** Yes, sir.

12 **THE COURT:** I don't -- whatever they -- y'all count
13 them up and whoever counts them I'm good with as long as
14 y'all agree. And can we do that before -- by the end of
15 the week?

16 **MR. STITELY:** We'll have it done before you send the
17 order out, Judge.

18 **THE COURT:** Okay.

19 All right. Considering the prior record, the
20 testimony and everything, the sentence is fifteen years.
21 He gets days earned since then under 24-13-40.

22 Good luck.

23 **MR. STITELY:** Thank you, Judge.

24 **MR. BELL:** Thank you, Judge.

25 **MR. POGUE:** Thank you, Your Honor.

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(Whereupon, the proceedings were concluded at
4:54 PM.)

C E R T I F I C A T E

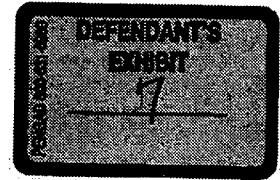
1
2
3 I, Stacy S. Johnson, Official Court Reporter for
4 the Eleventh Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a true,
6 accurate and complete transcript of record of all the
7 proceedings had and the evidence introduced in the hearing
8 of the captioned case in Circuit Court on the 23rd - 24th
9 days of April, 2018.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor have an interest to any party hereto.

14
15 October 15, 2018

16
17 Stacy S. Johnson
18 STACY S. JOHNSON
19 CIRCUIT COURT REPORTER
20
21
22
23
24
25



I understand that Deputies/Agents will be collecting evidence of criminal activity that may be later used for prosecution in court. **I am fully aware of and freely give my consent to the audio and/or video recording of any and all conversations I may have during the time I am cooperating with the Lexington County Sheriff's Department.** Further, if I am provided housing or admitted to a government provided home, I understand, agree, and consent to being subject to video and/or audio monitoring and recording anytime and anywhere on the provided premises. I fully understand that I have **no reasonable expectation of privacy** in this housing provided by or arranged through the government and such may be searched at anytime by law enforcement officers. Further, I understand that I have **no reasonable expectation of privacy** and waive such in any conversations I may have in the course and scope of my involvement with LCSD as a confidential informant.

I also waive any reasonable expectation of privacy in my person, vehicle, and like places while I am working in the role as a confidential informant and that I give up any right to privacy and may be searched at any time by law enforcement officers. I agree to participate willingly and fully in any requested search of my person, papers, and effects. By signing below, I am knowingly and voluntarily consenting to these searches including but not limited to my person and/or government provided housing.

I understand that I may never search, nor participate in a search, of any suspects, persons, buildings, papers, or vehicles during my association with the Lexington County Sheriff's Department.

I understand that I may never make, nor attempt to make, a custodial arrest of any person while I am cooperating with the Lexington County Sheriff's Department.

I understand that I will not carry a firearm or any other weapon while cooperating with the Lexington County Sheriff's Department.

I understand that I will be required to testify in court by the Lexington County Sheriff's Department, the Eleventh Circuit Solicitor's Office, or other competent authority if so requested. I agree to be available and to cooperate should my testimony be requested. Further, I agree to maintain contact with the Lexington County Sheriff's Department and to be entirely truthful when speaking with agents, deputies, prosecutors, or the court.

I understand that I will be arrested and prosecuted if I engage in any illegal activity outside the scope of my cooperation with the Lexington County Sheriff's Department. I understand that I will receive no special consideration for any crimes (past, present, or future) I may commit. I may not participate or engage in any other illegal activity.

For valuable consideration received, I agree to release, hold harmless, and not to sue the Lexington County Sheriff's Department, Sheriff James R. Metts, his deputies, agents, or other law enforcement officers, and any others similarly situated for any injury to my person or property regardless of severity. Further, I understand the risks involved in the operation in which I have agreed to cooperate and assume these and all other risks up to, and including great bodily injury or death. I fully intend for my heirs and assigns to be so bound.

I understand that the **Eleventh Circuit Solicitor's Office** has the sole authority to determine the disposition of my criminal charges, (if any); that no other individual or agency has the authority to make promises or representations concerning my criminal charges; that the only promise law enforcement is authorized to make to me is to make my cooperation with law enforcement known to the Solicitor's Office and the court.

I understand that I have 11 days/weeks/months (circle one) to provide assistance to law enforcement, and that law enforcement may elect to renew this agreement.

I understand that I will be responsible for any and all applicable local, state and federal taxes due on any monies paid to me.

I understand that I will not divulge that I am working as an informant for this agency unless ordered by a court or other competent authority.

I understand that I shall not, under any circumstances, participate in an act of violence; participate in any act that constitutes obstruction of justice (e.g., perjury, witness tampering, witness intimidation, entrapment, or the fabrication, alteration, or destruction of evidence); participate in any activity designed to obtain information by an unlawful method (e.g. breaking and entering, illegal wiretapping, illegal opening of the mail, trespass amounting to illegal search, etc.); initiate or instigate a plan or strategy to commit a federal, state, or local offense. Also, I understand that if I am asked by any person to participate in any of the prohibited conduct listed in above, or if I learn of plans to engage in such conduct, I must immediately contact a deputy or agent of ECSD or the Eleventh Circuit Solicitor's Office.

By signing below, I understand that I may be giving up important rights that I would otherwise have under the law.

JAVAN HAYGOOD 8-3-13
Informant Name (printed) Date

Michael Meschke 8-3-13
Deputy Name (printed) Date

Javan Haygood 8-3-13
Informant Signature Date

[Signature] 8-3-13
Deputy Signature Date

Sworn to and subscribed before this:

_____ day of _____, 20__

Notary Public for South Carolina
My commission expires: _____

WITNESSES

Lexington County Sheriffs Department

M. S. Merckle

Law Enforcement Case #: 15004399

BPP

ARREST WARRANT NUMBER

2015A3210200853

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 1-14-14

VERDICT

Guilty

Foreperson of Petit Jury

Date:

4-24-18

DOCKET NO. 2016GS3200114

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JANUARY TERM 2016

THE STATE

vs.

Donnell Lakeith Davis

CDR #: 3200

Indictment for

Distribution of Methamphetamine

§ 44-53-0375(B)

DONALD V. MYERS, SOLICITOR

10 - 30 years

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

INDICTMENT/CASE#: 2016GS3200114

Donnell Lakeith Davis

A/W#: 2015A3210200853

AKA:

Date of Offense: 3/11/2015

Race: Sex: M Age: 29

S.C. Code § : 44-53-0375(B)(3)

DOB: 1988 SS#:

CDR Code #: 3200

Address: David Ln

City, State, Zip: Lexington, SC 29073

DL#: SID#: SC01807598

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Distribution of Methamphetamine, 3rd Offense

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3200

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor-1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

[Signature] 102096
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-49 to be calculated and applied by the State Department of Corrections. *28 months plus 14 days*

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL \$876

Clerk of Court/ Deputy Clerk *Lisa Cover*

Court Reporter: *J. Johnson*

SCCA/217 (07/2016)

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

prmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel, §Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge *J. Johnson*

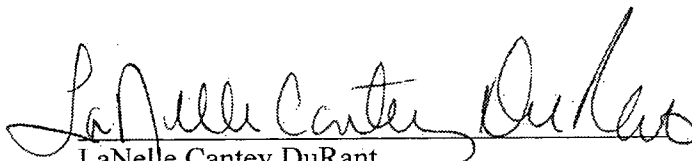
Judge Code: *2159*

Sentence Date: *4-24-18*

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in cursive script that reads "LaNelle Cantey DuRant". The signature is written in black ink and is positioned above the printed name and title.

LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

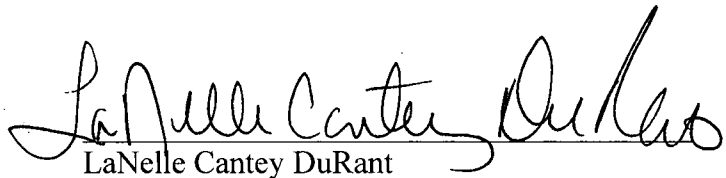
ATTORNEY FOR APPELLANT

This 17th day of April, 2019.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of April, 2019.

RECEIVED

APR 17 2019

SC Court of Appeals