

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Fairfield County

Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT.

V.

DAVID ALLEN TINDAL, JR.

APPELLANT.

APPELLATE CASE NO. 2018-001213

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)	GENERAL SESSIONS
County of Fairfield)	2018-GS-20-103
)	
STATE OF SOUTH CAROLINA,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
DAVID TINDAL, JR.,)	
)	
DEFENDANT,)	

May 31, 2018
Winnsboro, South Carolina

BEFORE:

THE HONORABLE THOMAS A. RUSSO, JUDGE; and a jury.

APPEARANCES:

RILEY MAXWELL, SOLICITOR
Attorney for the State

WILLIAM FRICK, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

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1 THE COURT: I had the clerk, Mr. Frick, pull up Mr.
2 Tindal's file and I've got his bail proceeding form or his
3 bond paperwork.

4 It does indicate on the back of the bond paperwork
5 here that it has an acknowledgment by the Defendant. It
6 states a couple of things, I understand if I violate any
7 condition of this order, a warrant will be -- for my
8 arrest will be issued. And it also proceeds to mention I
9 understand and have been informed that I have a right and
10 obligation to be present at trial and should I fail to
11 attend court, the trial will proceed in my absence. It
12 has been explained to me that if I fail to appear before
13 the Court as required, a warrant for my arrest will be
14 issued. That appears to have been signed by Mr. Tindal.

15 I notice, obviously, he wasn't here for jury
16 selection process. Have you heard from him?

17 MR. FRICK: Your Honor, I've not heard from him
18 today. Obviously, you saw he was here in the courtroom
19 yesterday.

20 THE COURT: Right. And we talked about a plea offer,
21 which he had rejected and then we informed him that his
22 case would be tried beginning this morning.

23 MR. FRICK: Yes, sir. Before he left, I told him to
24 be back here this morning by 9:30 so we could pick a jury.
25 He had been here every day this week to my knowledge

1 because I had -- he was creeping up on the trial list, so
2 I had him come in Tuesday and Wednesday.

3 The communication that I've had is through his
4 girlfriend, who's actually a codefendant in this case, but
5 she has been the point of contact during my representation
6 of Mr. Tindal. I spoke with her yesterday after we
7 adjourned court to make sure that the information was
8 conveyed to him that he needed to be here this morning.
9 She said she would make sure he's here.

10 I attempted to call that number again morning. Got
11 no answer on that number. If she -- I have been checking
12 my phone to see if I've gotten any messages from my
13 secretary downstairs and I've received nothing from her
14 that we received any call or information from Mr. Tindal.

15 THE COURT: Okay.

16 MR. FRICK: So I don't know where he is at this time.

17 THE COURT: Okay. Solicitor?

18 MR. MAXWELL: Just additionally for the record, we
19 did have roll call last Wednesday. Mr. Frick and
20 Mr. FitzSimmons were present. Mr. Tindal was present, and
21 one of the things I said was stay in touch with your
22 attorney throughout the end of this week, through Thursday
23 or Friday, because your case could be called for trial and
24 it could proceed without you being present if you fail to
25 stay in contact or don't appear.

1 THE COURT: Okay. All right. Well, it appears that
2 Mr. Tindal has been notified of his need to be present and
3 that if he was not present that the case would proceed in
4 his absence.

5 Obviously, that was indicated by Mr. Maxwell
6 informing all of the defendants at roll call last week
7 that their cases would go forward, whether or not they
8 appeared, and then it also is acknowledged here and signed
9 by the Defendant on his bond paperwork that he was
10 notified and informed that the case would proceed in his
11 absence. And so, we will proceed.

12 Hopefully, he'll turn up, but if not, we'll proceed.

13 Anything else we need to take up before we bring the
14 jury out?

15 MR. MAXWELL: I'd like just a short break so we can
16 proceed from there.

17 THE COURT: Anything from the Defense other than a
18 break before we get started?

19 MR. FRICK: That's it.

20 THE COURT: All right. Let's just take a few minutes
21 and then we'll get started.

22 MR. MAXWELL: Thank you, Your Honor.

23 (WHEREUPON, a short break was taken.)

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

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OPENING STATEMENT:

MR. MAXWELL: Good afternoon, ladies and gentlemen. My name is Riley Maxwell. I represent the State of South Carolina in this case. I do want to thank you for your cooperation this week. I know there's other things you'd rather be doing, but this is an important case. It's an important case to Fairfield County. It's an important case to your community. It's an important case to the Fairfield County Sheriff's Office. It's an important case to the Solicitor's office. And it's an important case to David Tindal.

Now, Mr. Tindal has been charged with distribution of methamphetamine. He sold methamphetamine. This is an operation conducted by the Fairfield County Sheriff's Office. It's what they call a controlled buy operation.

What that means is they have a person working as an agent of the sheriff's department going out into the community, and in this case, meeting Mr. Tindal at Mr. Tindal's residence and making a purchase of methamphetamine.

The informant, who you will hear from, is in this kind of underworld of methamphetamine use and methamphetamine distribution and so forth, but those are the people that you have to deal with in order to catch the people putting the methamphetamine out on the street.

1 So the informant's name is Kristin Levister. You'll
2 hear directly from her. She meets with law enforcement,
3 says she can go to Mr. Tindal's house, make this purchase.
4 They search her. They equip her up with some audio and
5 video recording equipment. She goes to Mr. Tindal's
6 house. She meets Mr. Tindal. There's some other people
7 there, but she deals directly with Mr. Tindal.

8 She buys methamphetamine from Mr. Tindal, gives him
9 the money that she was provided by the Fairfield County
10 Sheriff's Office narcotics investigators. She then leaves
11 that residence, meets back up with the sheriff's deputies,
12 hands over what she bought from Mr. Tindal.

13 All of that that I just described is on video, and
14 you're going to see that video in just a little while. It
15 clearly shows Mr. Tindal. It clearly shows what he's
16 doing inside his residence.

17 It clearly shows him handling what was later
18 analyzed -- and you'll hear from the analyst that tested
19 it, says it's methamphetamine. You'll see him handling
20 the drugs in this case. You'll see him weighing it out on
21 a digital scale and handing it to the informant and taking
22 the money from the informant and her leaving. You'll see
23 that video.

24 It's the State's burden to prove this case beyond a
25 reasonable doubt, and what we will show you in the next

1 little while -- this will not be a very long case,
2 hopefully, by the end of the day, maybe a little bit into
3 tomorrow, we'll be done. But over the next couple of
4 hours, we'll show you it's clear evidence, evidence beyond
5 a reasonable doubt that David Tindal distributed
6 methamphetamine back on December the 20th of 2017.

7 Again, thank you for your cooperation this week. I
8 just please ask you to use your common sense in evaluating
9 this evidence. At the very end of this case, I'll ask you
10 to find Mr. Tindal guilty of this case. Thank you, ladies
11 and gentlemen.

12 THE COURT: Thank you.

13 Mr. Frick.

14 MR. FRICK: Thank you.

15 OPENING STATEMENT:

16 MR. FRICK: There's a great old blues song and an old
17 saying that I like that some of y'all may know, some of
18 y'all may not know, and it's something in the milk ain't
19 clean. The State has got to prove to you that the milk is
20 clean. What I'm here to tell you is once you see what the
21 State provides you, something in the milk ain't clean.

22 The State has got to prove to you beyond a reasonable
23 doubt. Now, if any of y'all have ever served on a civil
24 jury, what they've got to show you is a much lower burden
25 of proof. It means it's more likely than not something

1 happened. Maybe Mr. Tindal did something. It's possible
2 he did. There's a scintilla of evidence more that he did
3 than he didn't. That's not at all what this burden is.

4 This burden is there's no other reasonable
5 explanation other than he did exactly what the State
6 accuses him of doing. It is the highest burden of proof
7 that we have in our country. It is put upon the
8 government intentionally because they have the resources
9 to levy a charge against an individual, and they have the
10 burden to prove those allegations.

11 The person who is accused has absolutely no burden to
12 prove themselves innocent. I'll say that again. You have
13 no burden to prove you didn't do something. They've got
14 to prove you did it.

15 How does that happen? As you briefly heard and
16 you're going to hear again and again and you probably
17 already have some inkling, that comes from y'all.
18 Witnesses will get on this stand. Evidence will come in
19 through testimony and introduction.

20 I believe there's going to be a video you're probably
21 going to get to see, all from the State attempting to show
22 their side of the story, but guess what, ladies and
23 gentlemen, just because it gets introduced, just because
24 it gets put in front of you doesn't mean you have to
25 believe everything that you see. You get to determine

1 that. You get to determine what you want to believe, and
2 you can believe part of something somebody says or part of
3 what you see, all of what you see or hear or go ain't none
4 of that true and determine that that has no credibility.
5 That is y'all's province and y'all's province alone.
6 You're what we call the judge of the law.

7 The judge sits up here kind of as a referee to make
8 sure the game gets played right and to tell you the rules
9 of the game. Mr. Maxwell and I are here to advocate for
10 our sides, but in the end, it all comes down to what y'all
11 see and what y'all determine to be credible evidence. And
12 I suggest to you that what the State will prove to you is
13 going to look like something, but it ain't necessarily
14 something. And it doesn't become something until they
15 have proven to you beyond a reasonable doubt, no other
16 explanation that Mr. Tindal did what he did or what they
17 accused him of doing. And I suggest to you they cannot
18 reach that burden of proof.

19 The milk is not clean, ladies and gentlemen, for
20 Mr. Tindal. Not guilty. Thank you.

21 THE COURT: Thank you, sir.

22 MR. MAXWELL: The State calls Ross Sparks.

23 DIRECT EXAMINATION:

24 BY MR. MAXWELL:

25 Q State your name for the record, please.

1 A Ross Lee Sparks.

2 Q And Lieutenant Sparks?

3 A Yes.

4 Q And Lieutenant Sparks, where are you employed?

5 A Fairfield County Sheriff's Office.

6 Q How long have you been with the sheriff's office?

7 A Twenty-three years.

8 Q How long have you been in law enforcement?

9 A Twenty-three years.

10 Q And you're a lieutenant at the sheriff's department
11 currently?

12 A Currently, yes.

13 Q What are your duties as lieutenant with the sheriff's
14 office?

15 A I am the lieutenant of -- we work drug cases for
16 narcotics. We do buys, purchase drugs for -- submit cases
17 for the sheriff's office, criminal cases for drugs.

18 Q Are you familiar with the term controlled buy?

19 A Yes, I am.

20 Q What does that mean?

21 A A controlled buy is a person that when they come to
22 us, we make sure they are -- we search the vehicle --

23 Q First of all, start over. Who are you referring to,
24 they come to us? Who are you referring to?

25 A A confidential source. They come to us -- when they

1 come to us, we search them, make sure they have no drugs
2 on them at all. If they got vehicles, we search the
3 vehicles.

4 We turn around and give them -- they tell us who they
5 can buy from. We identify the person they're going to try
6 to buy from. We give them money to purchase the drugs,
7 government funds. And when they go buy -- make contact
8 with the person, they get the drugs, make the purchase,
9 bring them back to us. We get the drugs. I've got an
10 evidence guy, he gets the drugs. At that time, we turn
11 around search the person and vehicle again, make sure they
12 have no drugs on them. And we make a case from there.

13 Q Does the sheriff's office deal with numerous
14 confidential informants?

15 A Yes, we do.

16 Q Are there varying reasons why a person becomes a
17 confidential informant?

18 A Say it one more time.

19 Q Is there various reasons why a person agrees or
20 becomes a confidential informant?

21 A Yes, they do.

22 Q Are you familiar with the confidential informant in
23 this case?

24 A Yes.

25 Q What's her name?

1 A Ms. Levister.

2 Q Is her first name Kristin Levister?

3 A Kristin Levister, yes.

4 Q And in this case, what's the reason why Ms. Levister
5 became or was the control -- excuse me, the confidential
6 informant in this case?

7 A She came to us because Mr. Tindal had got her sister
8 back on methamphetamine.

9 MR. FRICK: Objection, Your Honor.

10 MR. MAXWELL: Let me rephrase that and clear that up.

11 MR. FRICK: We need to address that outside the
12 presence of the jury, Your Honor.

13 THE COURT: All right. Let me get the members of the
14 jury, step back to the jury room, please. Have no
15 conversation. I'll bring you right back out.

16 (Whereupon, the jury left the courtroom at 12:22
17 p.m.)

18 THE COURT: All right.

19 MR. FRICK: Your Honor, I believe the response to the
20 solicitor's question was she agreed do this because
21 Mr. Tindal got her sister hooked back on methamphetamine.
22 That is highly objectionable. That's, at least, 404(b).
23 It is certainly 403. It's not relevant to this case, but
24 it is much more prejudicial than probative, and I'm afraid
25 that's a bell that's unring already, and I'm going to ask

1 for a mistrial.

2 MR. MAXWELL: Your Honor, what we were getting at was
3 Ms. Levister is a paid informant. Ms. Levister did
4 confirm to me yesterday that was her motivation for
5 working with law enforcement. I did not intend to ask her
6 --

7 THE COURT: Is she going to testify to that?

8 MR. MAXWELL: I think she can testify to it because
9 that's exactly what she told me. I really didn't intend
10 to ask her that question, but I still think we can strike
11 that from the jury, disregard that answer. They're going
12 to see the evidence. I think they can weigh the evidence
13 beyond the answer to that question.

14 MR. FRICK: Judge, I don't think it matters what the
15 solicitor's intent was, that's what the testimony was and
16 that's what the jury heard. That's the concern I've got.
17 Now, whether Ms. Levister is going to testify to that or
18 not, I think is another matter that we would need to take
19 up.

20 THE COURT: I know.

21 MR. FRICK: And the solicitor did make me aware so I
22 would not open up that door myself. So I guess my concern
23 is the testimony of saying get her hooked again, implying
24 it was my client who got her hooked the first time is my
25 concern.

1 THE COURT: Anything further?

2 MR. MAXWELL: Your Honor, while it could be
3 prejudicial to Mr. Tindal, he's charged with selling
4 methamphetamine. All Mr. Sparks said is maybe on another
5 occasion, he sold methamphetamine to somebody else. I
6 just don't see based on what he's charged with the jury
7 giving that too much weight where we'd have to declare a
8 mistrial. I think jury can ignore that and go forward
9 with the evidence they're going to hear in regards to this
10 case of him distributing methamphetamine.

11 MR. FRICK: Your Honor, just to clarify my position,
12 I believe that is clearly 404 evidence then as the
13 solicitor has phrased that. I do not believe a curative
14 instruction can fix that, and that is why I'm asking for a
15 mistrial.

16 THE COURT: All right. Can you find that response?

17 (Complies.)

18 I'm going to overrule the motion for a mistrial. I
19 think I'll let the case proceed and I'm going to instruct
20 the jury to -- I'm going to strike that last response and
21 instruct the jury to disregard that last response and then
22 you continue with your examination.

23 All right.

24 MR. FRICK: Your Honor, just to protect myself on the
25 record, I understand your ruling --

1 THE COURT: I note your exception.

2 MR. FRICK: I just want to clarify that I do not
3 believe that striking or a curative instruction can
4 correct that.

5 THE COURT: All right, sir.

6 All right. Bring the jury back in.

7 Just so everyone is aware, no comments about any
8 activity other than this instance.

9 THE WITNESS: Yes, Your Honor.

10 (WHEREUPON, the jury enters the courtroom.)

11 THE COURT: All right. I'm going to sustain the
12 objection to that last response. Ladies and gentlemen,
13 I'm striking that last response from the record. You're
14 to disregard that response and we'll pick up with the
15 direct examination.

16 MR. MAXWELL: Thank you, Your Honor.

17 BY MR. MAXWELL:

18 Q Lieutenant Sparks, was Ms. Levister given anything to
19 go perform this controlled buy from Mr. Tindal?

20 A Yes, she was a paid informant.

21 Q What amount of money was she paid?

22 A Forty dollars.

23 Q Is the payment of that for her going to purchase
24 these drugs from Mr. Tindal?

25 A Yes, it was.

1 Q Where did Ms. Levister go -- well, let me jump back a
2 second. You mentioned a second ago about a controlled buy
3 operation?

4 A Uh-huh.

5 Q The day this happened -- what is the date this
6 happened?

7 A 12/20/2017.

8 Q And before the buy, did Ms. Levister meet with you or
9 other investigators from your unit?

10 A Yes. We met at a predetermined location.

11 Q And at that location, what occurred?

12 A When Ms. Levister came up, we searched her vehicle --
13 well, we talked to her first, told her what is she going
14 to do. We searched her -- Ms. Cooper, Investigator Cooper
15 searched her because she's a female -- searched her to
16 make sure she had nothing on her, wired her with audio and
17 video equipment.

18 Myself and Investigator Burroughs searched her
19 vehicle before she left, and we monitored her when she
20 tells us, you know, if you're going left, turn on what
21 street you're going on. And from there, she went to [REDACTED]
22 [REDACTED].

23 Q Are y'all able to see what's going on once she leaves
24 y'all's presence with the recording equipment?

25 A Negative.

1 Q In this case, were y'all able to hear what was going
2 on?

3 A Yes.

4 Q Through some kind of equipment she was equipped with?

5 A Yes.

6 Q Where did Ms. Levister go after she left y'all's
7 presence?

8 A She left us and went to [REDACTED] [REDACTED] [REDACTED] and -- it's
9 right down from the sheriff's office.

10 Q And how did she travel?

11 A She was in her own vehicle.

12 Q Was she the only one that was in that vehicle when
13 she left the meeting location?

14 A Uh-huh.

15 Q And is that a residence she ended up at?

16 A Yes.

17 Q I think you said [REDACTED] [REDACTED] [REDACTED]

18 A Yes.

19 Q Is that location in Fairfield County?

20 A Yes, it is.

21 Q Do you know if that is the residence of Mr. Tindal?

22 A Yes, it is.

23 Q Was there any issues with hearing what was going on
24 that you're aware of while she was out of the presence of
25 law enforcement?

1 A Negative. We monitored her -- the call. We call her
2 and we monitor, make sure she was all right. We don't
3 send nobody in unless we can hear the conversation going
4 on. Because if something happen, we go in to protect the
5 person.

6 Q In that case, nothing like that came up in this case?

7 A Right.

8 Q Did she return back to the meeting location?

9 A Yes, she did.

10 Q Who was there when she came back?

11 A Myself, Ms. Cooper and Investigator Burroughs.

12 Q And did she have methamphetamine with her at that
13 time?

14 A Yes, she did.

15 Q Did she provide that to y'all?

16 A Yes, she did.

17 Q Who took that from her?

18 A Investigator Burroughs.

19 Q Was the recording equipment cut off at that point in
20 time?

21 A Yes, it did.

22 Q Did y'all take that into evidence to download and put
23 on a disc and so forth?

24 A Yes, we did.

25 Q And later on, did y'all actually view that video?

1 A Yes, we did. We do not charge anybody unless we can
2 see what's going on.

3 Q Okay.

4 MR. MAXWELL: Beg the Court's indulgence one moment.

5 (Pause.)

6 No further questions of this witness, Your Honor.

7 THE COURT: Cross.

8 MR. FRICK: Thank you, Your Honor.

9 CROSS-EXAMINATION:

10 BY MR. FRICK:

11 Q Lieutenant Sparks, in this particular case,
12 Ms. Levister was being paid?

13 A Yes.

14 Q You said \$40?

15 A Yes.

16 Q And there are other ways folks can become an
17 informant, correct?

18 A That's correct.

19 Q They can work off their own charges?

20 A Correct.

21 Q And that wasn't the case here, though?

22 A That wasn't the case.

23 Q Okay. To your knowledge, was that the only
24 transaction she conducted that day?

25 A Yes.

1 Q And y'all prearranged this or how did this come
2 about? I mean, did she say I can go buy from this guy?

3 A Yes.

4 Q Y'all don't suggest to her?

5 A No, no, no.

6 Q Okay. So when she or any CI comes, y'all don't
7 propose a target?

8 A Negative.

9 Q They give you the target, correct?

10 A Correct.

11 Q And in this case, Ms. Levister gave you Mr. Tindal as
12 a target?

13 A Correct.

14 Q Okay. When she met with y'all, I know y'all meet at
15 a location that's different from where she's going, do you
16 have any idea about how far away she was from this
17 residence, the target residence?

18 A When she made the purchase?

19 Q No, no, no, when y'all met up with her, they checked
20 her and checked the car and wired her up?

21 A How far we was from?

22 Q From Mr. Tindal's house?

23 A Well, I knew where his house was at.

24 Q Right.

25 A So --

1 Q Where would y'all meet?

2 A At the training center at our office.

3 Q So y'all met at y'all's office?

4 A Uh-huh.

5 Q With Ms. Levister?

6 A Uh-huh.

7 Q Got her ready to go. And then she heads into town to
8 conduct this transaction?

9 A Correct.

10 Q And y'all are out on Old Airport Road?

11 A When we met.

12 Q Okay. All right.

13 A When she made the purchase, it was at the sheriff's
14 office, less than 150 yards from the house.

15 Q Okay. I mean, it's over there besides the strawberry
16 patch, right?

17 A Right.

18 Q Mr. Tindal's place, right?

19 A Yes.

20 Q So from Old Airport Road to the strawberry patch,
21 basically?

22 A Right. About eight miles, seven-and-a-half miles.

23 Q All right. In the video, she's got -- it accurately
24 depicts whatever occurred on her ride there, back and
25 during the transaction?

1 A Correct.

2 MR. FRICK: Okay. Thank you, sir. That's all the
3 questions I have.

4 MR. MAXWELL: Just very briefly.

5 REDIRECT EXAMINATION:

6 BY MR. MAXWELL:

7 Q You weren't aware of any problems with the video
8 downloading and viewing it and so forth, were you?

9 A Correct.

10 Q You're not aware of any problems?

11 A No, no problems.

12 MR. MAXWELL: No further questions.

13 THE COURT: Anything further of this witness?

14 MR. FRICK: No, sir.

15 THE COURT: Thank you, sir. You may step down.

16 MR. RILEY: May we approach, Your Honor?

17 THE COURT: Yes, sir.

18 (Whereupon, there was a bench conference.)

19 THE COURT: All right. Ladies and gentlemen, we're
20 going to break for lunch at this time. It is 12:35. I'm
21 going to ask you to be back here at 1 o'clock -- excuse
22 me, not 1 o'clock, 2 o'clock, that gives you about an
23 hour-and-a-half for lunch.

24 Now, when you leave here, please do not allow anyone
25 to talk with you about the case. Don't discuss the case

1 those differences are and, you know, be open mind about
2 everything as you go through that process, but when the
3 dust settles, everyone has their thoughts and opinions.
4 No one person's carries any more weight than anyone else.

5 If you recall when we took the break, we were on the
6 State's case, so we will pick up where we left off and
7 recognize the State for its next witness.

8 MR. MAXWELL: Your Honor, the State calls Kristin
9 Levister.

10 THE COURT: All right. Please have Ms. Levister come
11 in.

12 KRISTIN LEVISTER, after being duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION:

15 BY MR. MAXWELL

16 Q Would you state your name for the record, Ms.
17 Levister?

18 A Kristin Nicole Levister.

19 Q And make sure you speak loud enough for these people
20 to hear you or speak in that microphone so everybody can
21 hear you, okay?

22 A Kristin Nicole Levister.

23 Q Sounds good. Thank you. And Ms. Levister, are you
24 from Fairfield County?

25 A Yes, sir.

1 Q Ms. Levister, back in December of 2017, did you agree
2 to work with the sheriff's office as a narcotics
3 confidential informant?

4 A Yes, sir.

5 Q And, specifically, on December 20th of 2017 -- let me
6 first ask you this. Do you know David Tindal?

7 A Yes, sir, I knew D.J.

8 Q Does he go by D.J. you said?

9 A Yes, sir.

10 Q D.J. Tindal?

11 A Yes, sir.

12 Q That's his nickname? Is D.J. and David the same
13 person?

14 A Yes.

15 Q That you're aware of. Okay. On December 20th of
16 2017, did you agree to go be a confidential informant on a
17 case involving D.J. Tindal with the Fairfield County
18 Sheriff's Office narcotics investigators?

19 A Yes, sir.

20 Q On that day, did you meet up with them prior to going
21 to make this purchase and do this transaction? Did you
22 meet with the investigators that day?

23 A Yes, sir.

24 Q What do you remember them doing when you met with
25 them physically? What kind of things did they do to

1 prepare you?

2 A Video and audio.

3 Q Did they provide you something to record --

4 A Yes, sir.

5 Q -- what was going on?

6 A Uh-huh.

7 Q Did they search you?

8 A Yes, to make sure I had nothing on me. I kept Jay's
9 phone here --

10 Q Who is Jay?

11 A Mr. Burroughs.

12 Q Is he one of the investigators?

13 A Yes, sir. Where he could hear everything that was
14 going on. And on the key chain was a camera that I had to
15 hold like this so it could be seen, that way it was seen
16 what was bought, purchased and took straight back to them.

17 Q How did you travel from the meeting location to where
18 you met Mr. Tindal?

19 A I drove a friend of mine's Jeep.

20 Q Was that Jeep also searched prior to leaving the
21 investigators? Do you remember that?

22 A I don't think it was searched, but the camera, I kept
23 it on the drugs the whole time where they seen it wasn't
24 bothered.

25 Q Other than what you were provided by law enforcement,

1 did you have anything on you or with you when you left?

2 A No, sir.

3 Q The meeting with them?

4 A No.

5 Q Did they provide you with money to buy these drugs?

6 A Yes, sir.

7 Q Did you -- where did you travel from? Where did you
8 travel to? Where did you go to meet Mr. Tindal at?

9 A His home across from the strawberry patch.

10 Q Do you know what street that is?

11 A [REDACTED].

12 Q [REDACTED]. Okay. Describe what happened when you got
13 there?

14 A Okay. I walked in. A couple different people were
15 there hanging out. Casey and D.J. were arguing.

16 Q All right. Tell me who you're talking about, who's
17 Casey?

18 A D.J.'s girlfriend.

19 Q Is that Casey Smith?

20 A Uh-huh.

21 Q Okay.

22 A They were arguing really bad. He was packing himself
23 to leave. I asked for a gram, gave him the money.

24 Q Where did you meet Mr. Tindal? Where in the house?

25 A He got me to walk to his bedroom with him.

1 Q Okay.

2 A Because he kept his stuff in the closet, so he had to
3 go in there to get it.

4 Q Describe what happened once you went into the bedroom
5 where Mr. Tindal was?

6 A He opened the closet door, reached down, got the ice,
7 methamphetamine.

8 Q Say that again. What do you mean referring to as
9 ice?

10 A Methamphetamines.

11 Q Okay.

12 A But a stronger version.

13 Q Okay.

14 A He got out digital scales and baggies. It was a big
15 piece. He weighed what the gram was. I gave him the
16 money. He gave me the drugs, and I told him I was in a
17 rush, I had to go, and I left. And I drove back to the
18 storage facility at the dead end where I went back with
19 the investigators.

20 Q At any point -- on the way from where you met with
21 law enforcement to where you met Mr. Tindal at his
22 residence, did you go anywhere else?

23 A Oh, no.

24 Q On the way -- once you left Mr. Tindal's to where you
25 went back and met with law enforcement, did you go

1 anywhere else?

2 A No, sir, I was --

3 Q Did you go straight there and straight back?

4 A Yes, sir.

5 Q How much money did you provide Mr. Tindal, do you
6 remember?

7 A It was a gram, he charged me \$60.

8 Q Did you provide the money that the sheriff's office
9 provided you to Mr. Tindal?

10 A Yes, sir.

11 Q And you've already mentioned this, the entire time
12 you left law enforcement's presence, the video recording
13 was on as best you know?

14 A And the audio.

15 Q Okay.

16 A It was never shut off until I got back to them.

17 Q And since then, have you had a chance to view the
18 recording?

19 A Yes, sir.

20 Q Of that -- of those activities?

21 A Yes, sir.

22 MR. MAXWELL: Your Honor, the State would offer the
23 video that Ms. Leveler is referring to as State's Exhibit
24 No. 1?

25 THE COURT: Any objection?

1 MR. FRICK: No objection, Your Honor.

2 THE COURT: Okay. No objection, State's 1.

3 (WHEREUPON, State's Exhibit No. 1 was admitted into
4 evidence.)

5 MR. MAXWELL: And the State would go ahead and ask to
6 publish that video.

7 THE COURT: That's fine.

8 MR. FRICK: Your Honor, if it's all right, I'll stand
9 over there so I can see.

10 THE COURT: Wherever you need to be, that's fine.

11 (Whereupon, the video was played for the jury.)

12 BY MR. MAXWELL:

13 Q Ms. Levister, when that video ends, are you back with
14 law enforcement --

15 A Yes.

16 Q -- at that point in time? Who cut that device on?
17 Was it you -- who cut it on and off, you or law
18 enforcement?

19 A Law enforcement.

20 Q And when you got back there, what did you do with
21 what Mr. Tindal had given you?

22 A I handed it straight to them with the camera facing
23 on it where you could see it wasn't bothered.

24 Q Well, do you recall in what kind of container
25 Mr. Tindal gave you?

1 A It was in a baggie.

2 Q Can you describe it in any way?

3 A It was in a baggie about that big because they asked
4 me to get a gram, about \$60, so it had to be about like
5 that to contain that much.

6 Q And I heard on the video I think the word Tink Tink.
7 What does that mean?

8 A That's my nickname for D.J.

9 Q D.J. --

10 A We worked together, so I called him Tink Tink.

11 Q Tink Tink and David Tindal are all the same person?

12 A David Tindal, Jr. is the same person.

13 Q And again, did you go anywhere after you left
14 Mr. Tindal's house?

15 A No.

16 Q And that video, does that include all your activities
17 from the time you left law enforcement until the time you
18 got back to law enforcement?

19 A Yes, sir, it did.

20 Q Is that an accurate depiction of what happened at
21 Mr. Tindal's house?

22 A Yep, I was in and out quick.

23 (Rewinding video.)

24 Q Is that gentleman on the screen, is that D.J. Tindal?

25 A (There was no response).

1 Q You have to answer verbally?

2 A Yes.

3 Q What is that in Mr. Tindal's hand right there?

4 A It's ice, methamphetamine.

5 Q What is he doing on the table here?

6 A He's breaking one sack down he had and the other sack
7 on the shelf -- at the beginning of the video, he entered
8 the closet. The bag he pulled out is the bag in his hand.
9 That bag sitting on that shelf over there on the top is
10 the big bag.

11 Q The bag of what?

12 A Ice.

13 Q Methamphetamine. Do you know what this device is?
14 You can't see it in this part, but it kind of comes in and
15 out --

16 A Digital scales.

17 Q With the blue light on it, is that what you're
18 referring to?

19 A That's the scales.

20 Q Did he use that?

21 A To make sure it was exactly one point --

22 Q This device here that's kind of blurry?

23 A Yes, sir.

24 Q Is that him using the scale weighing it out?

25 A (There was no response.)

1 Q Answer verbally, please.

2 A Yes.

3 Q I'm sorry?

4 A Yes, sir.

5 Q What did he just drop on the floor there?

6 A The baggie.

7 Q Is that what he gives you the methamphetamine in?

8 A Uh-huh.

9 Q In his hand now?

10 A Yes, sir.

11 Q When you were talking as you were leaving the house
12 and as you were talking in the car, who were you talking
13 to?

14 A Jay to let them know where I was located --

15 Q The investigator --

16 A -- and I was on my way back --

17 Q I'm sorry.

18 A -- and I was at the stop light.

19 Q Were you talking to the investigators over the live
20 wire?

21 A Yes, sir.

22 Q Ms. Levister, were you made any promises to come here
23 today?

24 A No, sir.

25 Q You're under subpoena to come here today, correct?

1 A (Nods in the affirmative.)

2 MR. MAXWELL: No further questions, Your Honor.

3 CROSS-EXAMINATION:

4 BY MR. FRICK:

5 Q So Ms. Levister, were you working off charges at this
6 time?

7 A No, sir. D.J. had got my little sister --

8 MR. FRICK: Objection, Your Honor.

9 THE COURT: Hold on. Come over here.

10 (There was a bench conference.)

11 BY MR. FRICK:

12 Q You were being paid to do this, correct?

13 A When I got back, I was. I was given \$40, but that
14 was never the intention.

15 Q Okay. But you were, in fact, paid?

16 A Yes.

17 Q You received \$40 for doing this, correct?

18 A Yes, but never asked for it.

19 Q And you went to law enforcement and said you could do
20 this, correct?

21 A Yes.

22 Q Okay.

23 A You would for your sister, too.

24 Q And it wasn't law enforcement that said hey, can you
25 go get David Tindal. You said you could go get him?

1 A That's right.

2 Q Where did you meet law enforcement on that day? On
3 that 20th day, where did you meet them?

4 A I called. They told me to meet them at a storage
5 building.

6 Q Which storage building? Are you talking about the
7 place over here near Bi-Lo or what?

8 A By where the old taco restaurant used to be across
9 the street.

10 Q Okay. Where the Mexican restaurant is now?

11 A (Nods in the affirmative.)

12 Q Okay. So the one over here near Bi-Lo? That's what
13 I call it.

14 A No, not that one that far down. Up a little bit
15 more.

16 Q Up a little bit more?

17 A There's a dirt road beside it that cuts through.

18 Q But back towards this side of town, correct?

19 A Uh-huh.

20 Q And then you came from that side over here near the
21 strawberry patch where Mr. Tindal's house was?

22 A I made a right right there by Bannisters and a left
23 and then a right and was at D.J.s.

24 Q Okay. When you came in the house -- I know solicitor
25 asked you, you said D.J. was there and Casey was there.

1 There were a couple of other folks in there. Did you
2 recognize them?

3 A Yes, Sabrina and them was there.

4 Q Did you know them before you got there?

5 A I know them from when we all hung out.

6 Q Okay. And you said you had worked with Mr. Tindal
7 before?

8 A D.J. was my best friend growing up.

9 Q Okay.

10 A I never worked with him.

11 Q And you even have your own nickname for him, Tink
12 Tink?

13 A (Nods in the affirmative.)

14 Q All right. Thank you, ma'am. That's all the
15 questions I have.

16 MR. MAXWELL: No redirect, Your Honor.

17 THE COURT: All right. Thank you very much, ma'am.
18 You may step down.

19 MR. MAXWELL: May we approach real quick, Your Honor?

20 THE COURT: Yes, sir.

21 (There was a bench conference.)

22 MR. MAXWELL: The State would just ask that
23 Ms. Levister be released from her subpoena.

24 THE COURT: Yes, sir.

25 MR. MAXWELL: The State calls Jay Burroughs.

1 JAY BURROUGHS, after being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION:

4 BY MR. MAXWELL:

5 Q State your name for the record?

6 A Investigator Jay Burroughs.

7 Q And Investigator Burroughs, where are you employed?

8 A Fairfield County Sheriff's Office.

9 Q How long have you been with the sheriff's office?

10 A For eight years.

11 Q And what is your position with the sheriff's
12 department?

13 A Narcotics investigator.

14 Q Were you involved in a controlled buy operation on
15 December the 20th of 2017?

16 A Yes, sir, I was.

17 Q And was Ms. Levister the informant on that operation?

18 A Yes, sir.

19 Q And when y'all met Ms. Levister, what did y'all do?

20 A When we met her, we wired her up. She was searched.
21 She was given government funds, recorded government funds.
22 After that, she was wired and all that. She left, went to
23 Mr. Tindal's residence, gave him \$60 recorded government
24 funds in exchange for a quantity of methamphetamine.

25 She then went to her car. Video came back to our

1 predetermined meeting location and the video was turned
2 off by Investigator Cooper, and I got the evidence from
3 her.

4 Q And what evidence was that?

5 A The evidence was the methamphetamine, and it was in a
6 little plastic baggie.

7 Q And what did you do once you took possession of it?

8 A Once I took possession of it, I took it up to our
9 office, filled out an evidence form, case number, all
10 that.

11 Q Is there a case number assigned to this case?

12 A Yes, there is.

13 Q What is that?

14 A It's 17-009782.

15 Q Okay. And is that attached to the evidence?

16 A Yes, it is.

17 Q And so what do you do with it then?

18 A I put the evidence form in -- I get a manila
19 envelope. Place the methamphetamine in a little plastic
20 baggie into the manila envelope. Then I put it into our
21 vault, which only myself and Investigator Melton have
22 access to.

23 Q Is this the manila envelope you're referring to?

24 A Yes.

25 Q Does that have the case number on it?

1 A Yes, sir, it does.

2 Q Does that have Mr. Tindal's name on it and the date
3 on it?

4 A Yes.

5 Q And again, where do you put that?

6 A It's in our evidence locker.

7 Q And who has access to that?

8 A Myself and Investigator Melton.

9 Q And Investigator Melton, what is his specific duty he
10 does with narcotics?

11 A He is evidence custodian.

12 Q Was he part of the operation that day?

13 A No, sir, he was not there.

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

16 BY MR. MAXWELL:

17 Q Investigator Burroughs, I'm going to show you what's
18 been marked for identification purposes State's Exhibit 4.
19 What is that overall package?

20 A This is called a best kit. It is a kit that is given
21 to us from SLED for storing the narcotics to be sent to
22 them.

23 Q What does SLED do with narcotics?

24 A They test the narcotics.

25 Q Is that to see what they actually are?

1 A Yes.

2 Q Are narcotics always put in best kits at some point
3 during the evidence chain?

4 A Yes, sir.

5 Q Does that prevent -- or identify whether a package
6 has been tampered with and so forth?

7 A Yes, it is a tamper proof. It is tamper proof.

8 Q In this case, you didn't put it -- you didn't put the
9 evidence that you collected from Ms. Levister in the best
10 kit, correct?

11 A No, sir.

12 Q You just put it in the evidence locker?

13 A I put it in the evidence locker.

14 Q But on that best kit, is there -- is the case number
15 to this case on it? I'm going to refer you to the yellow
16 tag?

17 A Yes. The yellow tag, yes, sir, it is. It's case
18 number 17-009782.

19 Q Thank you. And in there somewhere, can you see what
20 Ms. Levister gave you?

21 A Yes, sir. That's it right there.

22 Q Can you hold it up as best you can?

23 A That's going to be it right there that, that little
24 baggie.

25 Q All right. Thank you. And Investigator Burroughs,

1 are you familiar with David Tindal?

2 A Yes, sir, I am.

3 Q Does he go by D.J. Tindal, as well?

4 A He goes by D.J.

5 Q I'm going to show you the video, State's Exhibit 1, a
6 still from it. Is that D.J., David Tindal on that screen?

7 A Yes, sir, it is.

8 Q I'm going to show you what's been marked State's
9 Exhibit 3. Can you tell what that is?

10 A Yes, sir.

11 Q What is that?

12 A It's picture of Mr. D.J. Tindal.

13 Q Do you know where that picture is from?

14 A From South Carolina DMV.

15 Q A driver's license picture?

16 A Yeah, it's driver's license picture.

17 Q Is that the same individual on this piece of paper
18 that is in that video?

19 A Yes, sir.

20 MR. MAXWELL: Your Honor, the State would offer the
21 portion of the driving record with Mr. Tindal's picture on
22 it as State's 3?

23 MR. FRICK: No objection.

24 THE COURT: Without objection, State's 3 is in
25 evidence.

1 (WHEREUPON, State's Exhibit No. 3 was admitted into
2 evidence.)

3 MR. MAXWELL: No further questions.

4 THE COURT: Cross?

5 CROSS-EXAMINATION:

6 BY MR. FRICK:

7 Q Investigator Burroughs, you said you collected this
8 package from Ms. Levister?

9 A Yes, sir, I did.

10 Q Okay. And tell me again, what did you say you did
11 with it?

12 A I placed it into a manila envelope with an evidence
13 form and placed that into our evidence locker.

14 Q But you didn't put it in this best kit that went to
15 SLED?

16 A No, sir.

17 Q Do you have any idea when it got put in this best kit
18 and sent to SLED?

19 A No, sir, I do not.

20 Q If I hand it to you, do you think you can determine
21 when it got put in that best kit?

22 A I can show you. January 3rd.

23 Q January 3rd?

24 A 2018.

25 Q And you collected it on December 20th, correct?

1 A Yes, sir.

2 Q Okay. And put it in y'all's evidence locker, right?

3 A Yes, sir, in our walk-in locker.

4 Q Okay.

5 A Evidence vault.

6 Q Got you. All right. You don't do any testing at
7 y'all's place, correct?

8 A No, sir.

9 Q That's why it gets bagged up and sent to SLED, right?

10 A Yes, sir.

11 Q Good deal. Thank you, sir. That's all the questions
12 I have.

13 MR. MAXWELL: No redirect, Your Honor.

14 THE COURT: All right. Thank you very much, sir.

15 You may step down.

16 MR. MAXWELL: The State calls Paul Melton.

17 THE COURT: All right.

18 THE CLERK: Raise your right hand.

19 PAUL MELTON, after being duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION:

22 BY MR. MAXWELL:

23 Q State your name for the record.

24 A Paul Melton.

25 Q Now, Investigator Melton, where are you employed?

1 A Fairfield County Sheriff's Office.

2 Q How long have you been with the sheriff's office?

3 A Between Richland County and Fairfield County, about
4 12 years.

5 Q That's what you've been in law enforcement, 12 years?

6 A I've been in law enforcement 20 years.

7 Q Thank you. And what's your position at the sheriff's
8 office?

9 A I'm a narcotics investigator.

10 Q Were you a narcotics investigator back on
11 December 20th of 2017?

12 A I was.

13 Q Do you have a specific duty in the narcotics unit?

14 A Yes, sir.

15 Q What is that?

16 A Evidence custodian.

17 Q Were you at this buy operation involving Kristin
18 Levister and David Tindal on the 20th?

19 A No, sir.

20 Q Was it still your duty as kind of the overall
21 evidence custodian?

22 A Correct.

23 Q Is it your understanding that Investigator Burroughs
24 logged some or put some narcotics into your evidence
25 vault?

1 A Correct.

2 Q Can you describe the evidence vault, who has access
3 to it and so forth?

4 A Myself and Investigator Burroughs are the only two
5 that have access. It's in a huge vault that was military
6 grade, I guess you would say. The door has a combination
7 on and it's about that thick, you know.

8 Q Are those safety precautions, as well as who has
9 access to it in order to prevent people from tampering
10 with the narcotics that are logged into evidence?

11 A Correct.

12 Q In this particular case, sheriff's office case number
13 17-9782, did you see that -- or did you do something with
14 the narcotics that Investigator Burroughs had put into the
15 evidence locker?

16 A Yes.

17 Q What was that?

18 A Investigator Burroughs did what you saw here. He had
19 an evidence sheet that he filled out and he signed and
20 waited for me when I got to the vault. At that particular
21 time, I was out on a family emergency, so it was a few
22 days later when I got ahold to it. I take it and put it
23 in what's called a best kit. It goes into a sealed
24 envelope. It gets packaged into another envelope. I log
25 it in on the another computer. I do some extra paperwork.

1 I myself transport it to SLED headquarters on Broad River
2 Road and wait on them to let me know when it's ready.

3 Q Then do you transport it back?

4 A Yes. I go pick it up and bring it back.

5 Q How does it get up to the courtroom today?

6 A Me.

7 Q I'm going to show you what's been marked for
8 identification purposes as State's Exhibit 4. Is that the
9 best kit from this case?

10 A It is.

11 Q And does that contain the narcotics that Investigator
12 Burroughs logged into evidence?

13 A It does.

14 Q Investigator Melton, do you know D.J. Tindal?

15 A I do.

16 Q I'm going to show you what's been marked State's
17 Exhibit 3. Is that D.J. Tindal in that picture?

18 A Yes, sir, that's David.

19 Q Have you seen the video in this case?

20 A I have.

21 Q Is that Mr. Tindal in the video?

22 A It is.

23 Q I'm showing you a still from State's Exhibit 1. Is
24 that Mr. Tindal in that video?

25 A It is.

1 MR. MAXWELL: No further questions, Your Honor.

2 THE COURT: All right. Cross?

3 CROSS-EXAMINATION:

4 BY MR. FRICK:

5 Q Investigator Melton, you said when you got the items
6 that's in that State's Exhibit, it came out of this
7 envelope, correct?

8 A Yes, sir.

9 Q Okay. And I mean it's not sealed, correct?

10 A That's not the part that gets sealed. The best kit
11 gets sealed.

12 Q Right, but Investigator Burroughs said it wasn't in a
13 best kit.

14 A I put it in a best kit.

15 Q Right. When you got it, it was just in this
16 envelope, correct?

17 A It was in the locker.

18 Q Uh-huh.

19 A If I'm not mistaken, the evidence form was on top of
20 that simply with the dope inside of it.

21 Q Right. But simply in this, not in the sealed best
22 kit, correct?

23 A No, I'm the one that put it in the sealed best kit.

24 Q You put it in there on -- well, you tell me?

25 A 1/3/2018.

1 Q Okay. So it's seized on the 20th of December?

2 A Uh-huh.

3 Q You put it in this sealed kit, correct?

4 A Correct.

5 Q Until then, it's in your evidence locker?

6 A Correct.

7 Q But it's in this envelope, correct?

8 A Correct.

9 Q And this is not a sealed envelope, correct?

10 A That is not sealed, no.

11 Q And there's only two people that have access to the
12 evidence locker, correct?

13 A Correct.

14 Q You and Investigator Burroughs, right?

15 A Yes.

16 Q Okay. All right. And y'all are entrusted with all
17 the evidence, correct?

18 A All the narcotics evidence and weapons and any kind
19 of money that's dealing with narcotics throughout the
20 whole department.

21 Q Very good. All right. And is all that stuff in this
22 locker with the military door that you talked about?

23 A Yeah.

24 Q Okay. All right. When did this best kit get to
25 SLED? Is that on there? Do you need this?

1 A Well, it was sealed on the third when I got it. I
2 don't know if it tell us when it was -- I'm not sure. It
3 doesn't tell me. I don't see it anywhere. I don't know
4 what --

5 Q Okay. Do you recall, was it that day?

6 A It was either that day or the day after.

7 Q Okay.

8 A I would think.

9 Q But you don't know?

10 A No, I can't honestly say.

11 Q Okay. And other than sitting here and testifying
12 that yeah, that looks like David Tindal, you were not at
13 the scene in this situation, correct?

14 A I was not at the scene, but I do know him.

15 Q I understand that, but what I'm saying is when this
16 occurred, you weren't out wherever they wired up the CI?
17 You were not involved in this transaction?

18 A I had nothing do with that, no.

19 Q The only reason you're here today is because you're
20 the evidence custodian?

21 A Correct.

22 Q Thank you, sir.

23 MR. FRICK: That's all the questions I have.

24 MR. MAXWELL: No redirect, Your Honor.

25 THE COURT: Thank you very much, sir. You may step

1 down.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you.

4 MR. MAXWELL: Your Honor, the State calls Shanna
5 Sorells.

6 SHANNA SORELLS, after being duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION:

9 BY MR. MAXWELL:

10 Q Good afternoon. State your name for the record.

11 A Shanna Sorells.

12 Q And Ms. Sorells, where are you employed?

13 A I'm employed at the South Carolina State law
14 Enforcement Division, more commonly known as SLED.

15 Q And what is your position at SLED?

16 A I am currently a forensic chemist in the drug
17 analysis department.

18 Q And can you talk about your education?

19 A I have a Bachelor's Degree in chemistry from the
20 University of South Carolina, a Master's Degree in
21 analytical chemistry, also, from the University of South
22 Carolina. I spent eight years as a forensic toxicologist
23 analyzing drugs, alcohol and poisons and bodily fluids,
24 such as blood, urine, liver and brain. I then switched
25 over to the drug department where I did extensive in-house

1 training under a senior drug chemist before I actually was
2 able to test drugs on my own.

3 Q Is there a continuing education going on with your
4 job over the years? Are there updates on education? I
5 didn't ask that well, I understand.

6 A There are. There are many drug conferences that we
7 are allowed to attend, that we are able to attend. Most
8 often, I go to the actual Clan lab, which is commonly
9 known as CLIC, which talks about a lot of the newer street
10 drugs that you are being man made.

11 Q And what is your duties at SLED? What do you do
12 daily, essentially?

13 A Daily at SLED, I'm in charge of just analyzing drugs,
14 maintaining our instrumentation, and I actually teach
15 marijuana school.

16 Q And is there a chemical test done on drugs as they
17 come in from different law enforcement agencies?

18 A Every piece of evidence that comes in -- well, I say
19 every piece. Every piece that is able to be tested that
20 comes in doesn't -- it goes through a preliminary test or
21 what we call a color spot test and a chemical analysis
22 that's done on a very small sample of the drug. That kind
23 of gives us an idea of what the drug could be. It does
24 not tell what it is. It tells us what direction we should
25 go in with our drug testing. Once that happens and once

1 we get the idea of what it could be, another small amount
2 of the sample is taken and run on something called the gas
3 chromatography mass spectrometer.

4 Q Let me just jump in one second.

5 A Okay.

6 Q Is the point of that to figure out what a substance
7 is?

8 A The point of all of our testing is to identify what
9 the substance is, yes.

10 Q Have you ever come to court and testified to your
11 testing in identifying drugs?

12 A Yes.

13 Q Now, have you ever been qualified as an expert?

14 A Yes, I have.

15 MR. MAXWELL: Your Honor, the State would offer
16 Ms. Sorells as an expert in drug analysis?

17 MR. FRICK: No objection.

18 THE COURT: All right. Without objection.

19 BY MR. MAXWELL:

20 Q Did you receive drugs in this case we're on here
21 today?

22 A Yes, I did.

23 Q How are -- can you describe how drugs -- when local
24 law enforcement brings them to SLED, how they're logged
25 into SLED and how they get to you?

1 A I don't know the exact process of the -- that's our
2 log-in technicians, our evidence technicians downstairs.
3 But outside agencies bring in drugs to the lab where they
4 are taken to -- I believe now they're in a locker system
5 where they are logged into our computer system with all
6 the information on their case, their case number, their
7 suspect name, their incident date.

8 It is then placed into a secure locker that only the
9 evidence technicians have access to. The evidence
10 technicians, they go into those lockers, take the evidence
11 out of the lockers and assign it a specific lab case
12 number. So the agency has their case numbers and then we
13 give it our own specific lab number. That is then stored.

14 Once they have logged it in and assigned it to the
15 appropriate analyst, that is then stored in another secure
16 locked area only able to be accessed by the technicians
17 until -- let's say, for instance, with this case, until I
18 went down and picked up the evidence to take up to my lab
19 for analysis.

20 Q And does the lab number also include a bar code?

21 A Yes, it does.

22 Q Does that help track who has a piece of evidence as
23 it goes through SLED and when it's ready to be picked up
24 and so forth?

25 A Every time evidence exchanges hands, like if the

1 technician had it in her custody and she places it into
2 the storage area and then she puts it back in her custody
3 to hand to me, every time it gets moved from place to
4 place, it is scanned by the bar code.

5 Q Can you describe what a best kit is?

6 A A best kit is something that we put out. Best
7 actually stands for best evidence sampling test kit is
8 what a best kit is. And it's just a way -- it has
9 instructions on it on the best way to store evidence and
10 submit evidence, what can and cannot be submitted to our
11 agency for analysis.

12 We do analyze samples not in a best kit, but it is
13 preferred in these kits because they can be sealed. They
14 are tamper evident, which means that, of course, I can cut
15 into the evidence bag and tamper with it, but if I do
16 that, it's obvious it has been cut into. There's no way
17 to reseal it without somebody knowing. That's why we
18 prefer all of our evidence to be sent into a best kit.

19 Q I'm going to show you what's been marked State's
20 Exhibit 4. Is that the best kit for the case we're here
21 on today?

22 A Yes, this is.

23 Q And what's the lab number on it?

24 A The lab number is L18-00149.

25 Q Thank you. If you would, hold it up for the jury.

1 What does it come to you in? What -- as best you can
2 describe, what bag or what container is it in when you get
3 it to start your testing process?

4 A What we usually get, it's an outer manila envelope.
5 We don't usually use that. Those aren't sealed. It's
6 just something to store this little plastic bag in. So
7 that outer envelope also has the lab number on it with
8 this bag inside it. So what we get and what we really
9 only test is whatever is in this plastic bag here.

10 Q When you got there, could you tell whether it had
11 been tampered with or not?

12 A It had not been tampered with, which with every piece
13 of evidence that we have -- we do get some that are not
14 sealed properly. That is why with every bag that we have,
15 we have seal intact if the seal is intact. Of course, it
16 would say seal not intact if it had been tampered with.

17 Q So that was good for you to do testing on when you
18 received it?

19 A Yes, it was.

20 Q Did you perform testing on that?

21 A Yes, I did.

22 Q Can you briefly describe what you do to figure out
23 what that is?

24 A Okay. So I've already kind of explained the color
25 test, I jumped the gun. But then once we got a

1 preliminary color test on this and it gave us a specific
2 color with a specific chemical, I kind of had an idea
3 where to take it. So I did a different type of chemical
4 extraction on a larger amount of the sample and ran it
5 again on the gas chromatography mass spectrometry. The
6 gas chromatography mass spectrometer, or GCMS, as we call
7 it, gives you a specific fingerprint, as we call it, of
8 the sample, which means it has very specific ions that
9 break down in a very specific way at a very specific time.
10 And it is unique to a specific drug when you have those
11 ions in that breakdown ratio in that time. So the GC mass
12 spec gives us an exact answer as to what it is.

13 Q And what was your findings as to what that substance
14 was that you received in this case?

15 A In this case, the substance was identified as
16 methamphetamine.

17 Q And when you're done with your testing, what do you
18 do with the substance?

19 A When I'm done with the testing, the substance is
20 actually sealed in this outer K-Pack bag. We give them
21 this bag. So we have the original best kit in the bag and
22 then the evidence is placed in this bag so that we can
23 present it in a clear manner to a courtroom.

24 Q Has any of that been opened since you sealed it when
25 your finished your testing?

1 A No, it has not.

2 MR. MAXWELL: The State would offer State's Exhibit 4
3 into evidence?

4 MR. FRICK: No objection, Your Honor.

5 THE COURT: Without objection State's 4 is in
6 evidence.

7 (WHEREUPON, State's Exhibit No. 4 was admitted into
8 evidence.)

9 BY MR. MAXWELL:

10 Q Did you produce a report with your findings?

11 A Yes, I did.

12 Q Let me hand you what's been marked State's Exhibit 2.
13 Can you look that over and say what that is?

14 A This is a copy of the report that I submitted in this
15 case.

16 Q Does it identify the substance in this case to be
17 methamphetamine?

18 A Yes, it does.

19 Q Is there a weight you put on it?

20 A Yes, there is.

21 Q What is it?

22 A The weight is actually 0.25 grams.

23 Q Is there more information you put on that that you
24 can explain further? I just want to be clear on what's on
25 there.

1 A The weight is actually, as we say it, 0.25 plus or
2 minus 0.01 grams. It's an uncertainty level. Depending
3 on where the sample is on the balance can make it vary by
4 100th of a gram. So we always try to give that factor in.
5 And, of course, then it says 3.85 plus or minus 0.15
6 grains.

7 We are required by state law to report it out in
8 grams and grains, and then it says our confidence level
9 for the weight is 99.7 percent. Which means that 997
10 times out of 1,000 when we weigh, even with the 0.01 grams
11 value, it will come out as 0.25 grams.

12 Q Does that confidence level have to do with what the
13 substance actually is or just to the weight of it?

14 A That confidence level is only for the weight.

15 Q So the substance in this matter that you tested was
16 methamphetamine?

17 A It is methamphetamine, yes.

18 MR. MAXWELL: No further questions, Your Honor.

19 I'm sorry, Your Honor, I would offer State's
20 Exhibit 3 -- excuse me, State's Exhibit 2 into evidence.
21 I thought that I did.

22 MR. FRICK: No objection, Your Honor.

23 THE COURT: Without objection, State's 2 is in
24 evidence.

25

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

3 CROSS-EXAMINATION:

4 BY MR. FRICK:

5 Q Ms. Sorells, you work at Broad River Road in
6 Columbia, right?

7 A That's correct.

8 Q You don't go out in the field and collect evidence,
9 correct?

10 A No, I do not.

11 Q You test what comes to you, correct?

12 A That is correct.

13 Q All right. And in State's No. 4, I believe you
14 testified that it was not tampered with, correct?

15 A That best kit was not tampered with, no.

16 Q Okay. That was my point. What you're saying is is
17 this little plastic bag that was sealed up that got to you
18 was not tampered with, correct?

19 A That's correct.

20 Q Whatever happened to the substance before it got in
21 this bag, you don't a clue, do you?

22 A No idea.

23 Q Okay. And can you tell me when you received this?

24 A I cannot. I do not have an official chain of custody
25 for this case.

1 Q Okay. Can you tell me when you tested it? Does your
2 report indicate that?

3 A I originally started testing on March 21st, 2018.

4 Q March 21st. Okay. But as far as when it got to your
5 lab, any clue? Obviously, before March 21st, but you
6 don't know when it got there?

7 A No, I do not.

8 Q Okay. All right. Thank you, ma'am.

9 MR. FRICK: That's all the questions I have.

10 MR. MAXWELL: Nothing further, Your Honor.

11 THE COURT: All right. Thank you very much, ma'am.
12 You may step down.

13 THE WITNESS: Thank you.

14 MR. MAXWELL: Your Honor, at this time, the State
15 rests.

16 THE COURT: All right. Ladies and gentlemen, the
17 State has rested their case. I'm going to ask you, if you
18 would, to step back into the jury room. On all cases
19 where the State rests their case, I'm required to take up
20 some matters of law. I'm going to do that. I don't think
21 it will take very long. We'll get that disposed of and
22 then I'll bring you back out. Please have no conversation
23 about the case. We're not done yet.

24 (Whereupon, the jury left the courtroom at 3:19 p.m.)

25 THE COURT: All right. At this time, I'll take up

1 any motions at the close of the State's case.

2 MR. FRICK: Your Honor, at this time, the Defense
3 would move for a directed verdict. Viewing the evidence
4 in the light most favorable to the State, I believe there
5 is not enough evidence for this matter to be sent, as a
6 matter of fact can be cited as a matter of law and ask you
7 to direct a verdict of not guilty at this time.

8 THE COURT: Thank you, Mr. Frick. I'm going to
9 respectfully deny that motion. I think it's a jury
10 question. I think there's evidence in the record
11 depending on how the jury views it. So I think it's a
12 factual issue and I think it needs to be decided by the
13 jury.

14 Anything else regarding that?

15 MR. FRICK: Not regarding that, no, sir.

16 THE COURT: I know that Mr. Tindal is not here. Does
17 the Defense have any other witnesses or do you intend to
18 call any other?

19 MR. FRICK: No, sir, the Defense plans to rest when
20 the jury comes back out. I'm not going to call
21 Mr. FitzSimmons to testify.

22 THE COURT: I'm sure he'd be willing to say
23 something.

24 MR. FRICK: I've advised him he needs to invoke his
25 Fifth Amendment rights.

1 THE COURT: Well, let me go ahead then if it's okay,
2 I'm going to take up motions at the close of the evidence
3 since you indicated the Defense will not be putting up any
4 evidence.

5 So I'm going to let you renew your motions at this
6 time.

7 MR. FRICK: Your Honor, I'd renew my motion, firstly,
8 in regard to the mistrial after the elicited testimony. I
9 understand I was close on the door, but I don't believe I
10 opened up the door. I do renew my objection on the
11 mistrial --

12 THE COURT: Okay.

13 MR. FRICK: -- previously.

14 THE COURT: And I'm going to note that objection and
15 your exception to the Court's ruling.

16 MR. FRICK: Thank you, Your Honor. Of course, I'd
17 renew the directed verdict motion that I just made to the
18 Court.

19 THE COURT: Sure. Again, like I said, I think that
20 is a jury issue and that will have to be taken up by jury.

21 Guys, let me just -- I'll tell you what I've got kind
22 of briefly, and then I'm certainly open to anything else
23 that you may wish. With regards to my charge, just, you
24 know, the preliminary boilerplate stuff.

25 I've got the presumption of innocence, discussing

1 and, basically, crucified me for using the language they
2 approved.

3 MR. FRICK: So no then?

4 THE COURT: It is not in there.

5 Okay. Well, we'll just take a little bit of a short
6 break and then we'll get started.

7 (WHEREUPON, a short break was taken.)

8 THE COURT: All right. Is the State ready to proceed
9 to closing arguments?

10 MR. MAXWELL: The State is ready.

11 THE COURT: Defense ready?

12 MR. FRICK: Defense is ready.

13 THE COURT: All right. Bring in the jury.

14 (Whereupon, the jury entered the courtroom at 3:44
15 p.m.)

16 THE COURT: All right. Ladies and gentlemen, thank
17 you for that time. We are ready to proceed, and I will
18 recognize Mr. Frick on behalf of the Defense.

19 MR. FRICK: Your Honor, the Defense rests.

20 THE COURT: All right. Thank you, sir.

21 Folks, when we took the break at the close of the
22 State's case, the law requires that I take up matters of
23 law at the close of the State's case, which we did, and
24 then we recognize the Defense and go forward.

25 Mr. Frick was kind enough to let me know during that

1 We also have the videotape, which is in evidence, and
2 during your deliberations, if you need to see that again,
3 you'll just let me know and we can deal with that.

4 But this is the opportunity for them to address you
5 with their closing remarks. It's very important that you
6 listen carefully to everything they have to say. Once
7 they've concluded their closing remarks, I will then give
8 you the charge on the law. Then you'll be in a position
9 on this case for you to have it in the jury room and you
10 begin your deliberations.

11 Okay. So I recognize the State.

12 MR. MAXWELL: May it please the Court?

13 THE COURT: All right. Yes, sir.

14 CLOSING STATEMENT:

15 MR. MAXWELL: Good afternoon, ladies and gentlemen.
16 I hope I -- y'all believed me, I kept my promise it was
17 going to be a short case. It's an important case, as I
18 stated earlier. It's a very important case, important for
19 the community, important for the sheriff's office,
20 important to our office, important to Mr. Tindal.

21 I do ask you when you get back in the jury room and
22 begin your deliberations just to apply your common sense,
23 look at the evidence and come to a just verdict. I'll
24 talk what about I think that is in just a minute.

25 Mr. Tindal, again, is charged with distribution of

1 methamphetamine. It's against the law to give somebody
2 methamphetamine in South Carolina and in the United States
3 of America. Whether somebody gives you money for it or
4 not, if you give it to somebody else, that is
5 distribution. That is illegal under South Carolina law.

6 And in just a few minutes, Judge Russo is going to
7 charge you on the statute that shows -- that Mr. Tindal
8 violated in this case. So the evidence shows that he
9 violated it in this case, the distribution statute.

10 We must prove that he distributed this
11 methamphetamine beyond a reasonable doubt. You'll be
12 instructed in just a few minutes on what reasonable doubt
13 is, but reasonable doubt does not mean beyond all possible
14 doubt. It doesn't mean there's just some possibility
15 something else happened, then, therefore, there's no
16 reasonable doubt. That's not what beyond all reasonable
17 doubt means.

18 Reasonable doubt is something that leaves you firmly
19 convinced when you consider all the evidence that what we
20 allege happened did happen.

21 In this case, what happened was Kristin Levister
22 agreed to -- in working with law enforcement, to go to
23 Mr. Tindal's house, who she knew, who she identified, who
24 she was paid to go. She didn't want to be here telling
25 you all this. She probably didn't expect to be here when

1 she decided to do this on December 20th. She was wired up
2 with this video and audio recording equipment and went to
3 Mr. Tindal's here in Fairfield County and made this
4 purchase of methamphetamine.

5 Before the video was played, she kind of talked
6 about -- she talked about -- I'm getting distracted.
7 Sorry.

8 She talked about what happened there when she got
9 there. That she walked in, there were some other
10 individuals there. She met Mr. Tindal in the bedroom.
11 You see him laying on the bed. And we can watch it again.
12 Again, as the judge said, you can watch it as many times
13 as you want to. It is in evidence.

14 There's two-and-a-half minutes of importance in this
15 videotape. I showed you the whole thing because I wanted
16 to be clear that when she left law enforcement until the
17 time she got back to law enforcement, the only place she
18 was was at Mr. Tindal's house.

19 They searched her before she left their presence.
20 She drove her car, met Mr. Tindal. She left Mr. Tindal's
21 house and met back with law enforcement. That's the whole
22 video.

23 When she gets there, she says she saw Mr. Tindal in
24 the bedroom laying on the bed. He goes into the closet to
25 get the dope. He and his girlfriend, Casey, are arguing.

1 She identified him clearly as David Tindal, D.J. Tindal,
2 as Tink Tink. That's him -- that's the closet door
3 opening, him going in the closet.

4 She talked about him going up to where the dresser
5 was and having the digital scales out, him weighing the
6 dope, the methamphetamine, the ice to provide those.
7 Right there, he's putting out the digital scales. He's
8 got the dope in his hand. It's in the baggie. You'll see
9 it in just a second. I'm going to point it out to you
10 with a baggie in his hand.

11 He's untying the baggie to get it out so he can weigh
12 it to put it in another baggie to give to her. We have a
13 good identity of Mr. Tindal. You also have another
14 picture to compare it to. Again, both -- or all three,
15 Kristin Levister, Investigator Melton and Investigator
16 Burroughs all identified him as D.J. Tindal or David
17 Tindal. This is a baggie with the methamphetamine in it
18 in his hands.

19 There's the digital scale with the blue light on it
20 so he can divvy up what he's going to give her, the \$60
21 worth -- based on the \$60 that she's going to give him.

22 There he is taking it out of the bag, putting it on
23 the scale. You see here, this blue baggie on the counter.
24 You'll have this in the jury room with you. There's the
25 methamphetamine in the small blue baggie from this bag.

1 You'll have it up close and be able to look at it in the
2 jury room.

3 There he is putting it in the bag. He drops a piece
4 on the floor, blue bag, and then he gives it to
5 Ms. Levister. She leaves shortly thereafter.

6 Again, the identification is clear. Him giving her
7 this substance is clear, and where it goes from there.
8 It's logged in evidence by Investigator Burroughs, taken
9 down to SLED for analysis by Investigator Melton, analyzed
10 by Shanna Sorells. What did she determine it to be?
11 Methamphetamine. That's what it is.

12 Now, this is a simple case. The State has met its
13 burden. Ladies and gentlemen, I ask you to find
14 Mr. Tindal guilty of distribution of methamphetamine.
15 Thank you.

16 THE COURT: Thank you, Mr. Maxwell.

17 Mr. Frick.

18 MR. FRICK: Thank you, Your Honor.

19 CLOSING STATEMENT:

20 MR. FRICK: Ladies and gentlemen of the jury, I
21 remind you of a couple of things here. First of all, the
22 State has still got to prove to you, not just press play
23 on a video. Prove to you beyond a reasonable doubt means
24 there is no other explanation but that Mr. Tindal did what
25 they say he did, and what they say here is that he

1 distributed methamphetamine.

2 So they've got to prove to you three things: It was,
3 in fact, meth. It was distributed, and it was David
4 Tindal that did it.

5 Now, I told you at the beginning and I tell you
6 again, something in the milk ain't clean. Let me tell you
7 what I think ain't clean.

8 First of all, remember, you get to decide whether you
9 want to believe what somebody says when they get up here
10 on the stand. Just because they put their hand on the
11 Bible and swear to tell the truth doesn't mean you have to
12 accept what they say as the gospel. You get to weigh it.
13 You get to look up here, determine whether they have any
14 bias or motive or reason to say what they said.

15 Now, their key witness up here was Ms. Levister, a
16 paid informant. She got paid by the Fairfield County
17 Sheriff's Department to go buy from Mr. Tindal. It wasn't
18 their idea to go set him up. She's the one who said I can
19 go do that. Her best friend. So she goes to his house,
20 does this. Well, ladies and gentlemen, something there
21 ain't clean.

22 Second part, we've got confusion as to where this
23 even happens. The testimony from Lieutenant Sparks is
24 they meet over there at their headquarters on Old Airport
25 Road, wire her up and she drives into town.

1 She says we met over there at the dead end road
2 that's beside the storage place that's across the street
3 from Tiaras on the bypass. One's way over there. One's
4 over there. Can't both be right. Something ain't clean.

5 Then when she comes back after she's gone into the
6 house -- and you see, it's not just David Tindal in there.
7 There's his girlfriend, Casey. You heard about that, and
8 there's a couple of other people hanging out on the couch.
9 And clearly, Ms. Levister talks to them because she looks
10 at them and says nice to see you, nice to meet you,
11 something like that.

12 So she's had a conversation with, at least, four
13 different people while she's in there. Something ain't
14 clean. While she's in there, you see her looking through
15 some notebook of jewelry or some such stuff. Folks, there
16 are other explanations here.

17 Then when she comes back -- oh, yeah, and she's
18 driving her friend's borrowed car. Told you the car she
19 was driving wasn't even hers. It was her friend's car.
20 And she said no, I don't think they did search it.
21 Something ain't clean, folks.

22 Then when they get it from her, we've got two
23 evidence custodians for narcotics. One of them was the
24 one who has it. Instead of taking this little packet
25 right here -- this is what we're talking about, let's be

1 clear.

2 There's a little teeny blue envelope inside another
3 envelope that's inside this envelope. The big envelope
4 here, the secondary envelope that carries this little blue
5 one is the best kit everybody's been talking about. All
6 right. SLED agent told you when they got that, nobody had
7 messed with it. It was not tampered with, tamper-proof.
8 Otherwise, she wouldn't test it.

9 But remember, I asked her, now, before it got into
10 this best kit, would you have any idea what happened to
11 it. She said no, there's no way to tell. This tiny thing
12 that we're all here about, right here, ladies and
13 gentlemen.

14 She cannot tell you what happened to it before it got
15 put in the best kit and sent to SLED. But we know where
16 it was, it was in this unsealed envelope sitting in the
17 locker over on Old Airport Road from January 20th until it
18 gets put in this bag -- December 20th until it gets put in
19 this bag on January 3rd. Then nobody can tell me what
20 happens from January 3rd.

21 Then nobody can tell me what happens from January
22 3rd. All the other evidence custodians says I don't know
23 when it got to SLED. The SLED person says I don't know
24 when it got here. I know when I tested it. I can look at
25 my report. I tested it in March.

1 So from January 3rd to March 27th when it gets
2 tested, it's floating around here somewhere, somehow
3 magically makes it to Broad River Road, but nobody can
4 tell you where it was or what happened to it.

5 Folks, if that ain't something not clean in the milk,
6 I don't know what is. You've got enough issues in this
7 case to bring doubt. They cannot convict somebody by
8 saying yeah, I believe it was him. Yeah, it looked like
9 that happened.

10 Remember, they got to prove all three things. Is it
11 meth? Well, I mean, whatever got tested out of this kit,
12 maybe it is, because that's what SLED said it was. But
13 she can't tell you how it got here.

14 Second, did a distribution occur? Well, the person
15 that they paid to go set Mr. Tindal is wandering around
16 the house talking to four other people, playing with
17 notebooks, chatting with other people, driving her
18 friend's borrowed car, either going from that direction of
19 town or that direction of town. We don't know which way.
20 In a car that may or may not have been searched.

21 And then, is it Mr. Tindal? Remember, they have to
22 prove all three of those things before you can come up
23 with a verdict of guilty, and they've got to prove that to
24 you beyond a reasonable doubt, meaning it's got to be no
25 other explanation.

1 Folks, there's plenty of other explanations that
2 ain't -- there is definitely something in the milk.
3 Something in the milk ain't clean. Mr. Tindal is not
4 guilty. Thank you very much.

5 THE COURT: Thank you, Mr. Frick.

6 CHARGE BY THE COURT:

7 THE COURT: All right. Ladies and gentlemen, I'm
8 going to now give you the charge on the law that is
9 applicable to this case.

10 So that I don't leave out anything or misquote
11 anything, I'm going to read it verbatim from my notes
12 here. But I'm going to give you the law, and then when
13 I'm finished with that, it will then be time for you to go
14 back and finally discuss the case and conduct your
15 deliberations.

16 Madam Forelady, and members of the jury, you've heard
17 the evidence and the arguments of both parties. I'm now
18 going to explain to you the rules of law which you must
19 follow and apply in deciding this case.

20 When I have finished, you will go back in your jury
21 room and begin your deliberations. Your decision must be
22 based only upon the evidence that has been presented here.
23 You must not be influenced in any way by sympathy for or
24 prejudice against anyone.

25 The indictment in this case charges the Defendant,

1 David A. Tindal, Jr. with distribution of methamphetamine.
2 An indictment is simply the formal written instrument
3 which contains the charge made against the Defendant.

4 I remind you that the fact that the Defendant was
5 arrested, charged and indicted in this case is not
6 evidence in this case, and it cannot be considered by you
7 as evidence of guilt in this case. Nor does it create any
8 presumption or inference of guilt.

9 The Defendant has pled not guilty to the charge of
10 distribution of methamphetamine and that plea puts the
11 burden upon the State to prove him guilty beyond a
12 reasonable doubt. A person charged with committing a
13 criminal offense in South Carolina is never required to
14 prove him or herself innocent.

15 I charge you that it is an important rule of law that
16 a defendant in a criminal trial, no matter what the
17 seriousness of the charge may be will always be presumed
18 to be innocent of the crime for which the indictment was
19 issued unless guilt has been proven by evidence satisfying
20 you of that guilt beyond a reasonable doubt. This
21 presumption of innocence does not end when you begin your
22 deliberations, but it accompanies the Defendant throughout
23 the trial until you reach a verdict in this case.

24 The presumption of innocence is not a mere legal
25 theory. It's not just a legal phrase, but it is a

1 substantial right to which every defendant is entitled
2 unless you, the jury, are satisfied from the evidence of
3 the Defendant's guilt beyond a reasonable doubt.

4 So what is a reasonable doubt in the law? Some of
5 you may have served as jurors in civil cases where you
6 were told that it is only necessary to prove that a fact
7 is more likely true than not true, such as by the greater
8 weigh or the preponderance of the evidence.

9 In criminal cases, the State's proof must be more
10 powerful than that. It must be beyond a reasonable doubt.
11 Proof beyond a reasonable doubt is proof that leaves you
12 firmly convinced of the Defendant's guilt.

13 Now, there are very few things in this world that we
14 know with absolute certainty, and in criminal cases, the
15 law does not require proof that overcomes every possible
16 doubt.

17 If, based upon your consideration of the evidence,
18 you are firmly convinced that the Defendant is guilty of
19 the crime charged, you must find him guilty. If on the
20 other hand, you think that there is a real possibility
21 that the Defendant is not guilty, then you would give the
22 Defendant the benefit of that doubt and find him not
23 guilty.

24 As I said before, you must consider only the evidence
25 that I have admitted into this case. Evidence includes

1 the testimony of witnesses and the exhibits which were
2 admitted. You should not assume from anything that I have
3 said that I have any opinion about any factual issue in
4 this case.

5 Except for my instructions to you right now that I'm
6 giving on the law, you should disregard anything that I
7 may have said during the course of this trial in arriving
8 at your own decision about the facts. Your own
9 recollection and interpretation of the evidence is what
10 matters. In considering the evidence, you may use
11 reasoning and a common sense to make deductions and to
12 reach conclusions.

13 Now, while argument of counsel is a beneficial part
14 of every trial, you should remember that the statements
15 made by counsel are not evidence. In presenting
16 arguments, counsel, oftentimes, refers to the evidence.
17 However, you should base your verdict on the evidence as
18 you remember it. Therefore, if there are any conflicts
19 between the recollection of counsel about the evidence and
20 your own recollection, you should rely upon your own
21 understanding of the evidence.

22 Now, there are typically two types of evidence that
23 are generally presented during the course of a trial:
24 There's direct evidence, and there's circumstantial
25 evidence.

1 Direct evidence directly proves the existence of a
2 fact. It does not require deduction or inference.

3 Circumstantial evidence is proof of a chain of facts or
4 circumstances which indicate the existence of a fact.

5 Crimes may be proven by circumstantial evidence and
6 the law makes absolutely no distinction between the weight
7 or the value to be given to either direct or to
8 circumstantial evidence. However, to the extent that the
9 State relies on circumstantial evidence, all of the
10 circumstances must be consistent with each other and when
11 taken together point conclusively to the guilt of the
12 accused beyond a reasonable doubt.

13 If these circumstances merely portray the Defendant's
14 behavior as suspicious and nothing else, then that proof
15 has failed. The State has the burden of proving the
16 Defendant guilty beyond a reasonable doubt, and this
17 burden rests on the State regardless of whether it relies
18 on direct evidence, circumstantial evidence or some
19 combination of the two.

20 Now, when I say you must consider all of the
21 evidence, I don't mean that you must accept all of the
22 evidence as true or accurate. You should decide whether
23 you believe what each witness has had to say and how
24 important that testimony was. In making those decisions,
25 you may believe or disbelieve any witness in whole or in

1 part.

2 The number of witnesses testifying concerning a
3 particular point does not necessarily matter. To decide
4 whether to believe any witness, I suggest that you ask
5 yourself a few questions. Did the witness impress you as
6 one who was telling the truth? Did the witness have any
7 particular reason not to tell the truth, or have any
8 personal interest in the outcome of the case? Did the
9 witness have the opportunity and the ability to accurately
10 observe the things he or she testified about? Did the
11 witness appear to understand the questions clearly and
12 answer them directly? Did the witness's testimony differ
13 from other testimony or evidence?

14 However, keep in mind that a simple mistake doesn't
15 mean that a witness wasn't telling the truth as he or she
16 remembers it. People naturally tend to forget some things
17 or remember them inaccurately. So, if a witness misstated
18 something, you must decide whether it was because of an
19 innocent lapse in memory or an intentional deception.

20 Now, the Rules of Evidence ordinarily do not permit
21 witnesses to testify to opinions or conclusions. There is
22 an exception to this rule that exists for witness that we
23 call expert witnesses. A witness who by education and
24 experience has become an expert in some art, science,
25 profession or calling may state an opinion as to the

1 relevant and the material matter in which the witness
2 claims to be an expert and may also state the reasons
3 given for that opinion.

4 You should consider any expert opinion received into
5 evidence in this case and, like any other evidence, give
6 it the weight you think it deserves. If you decide that
7 the opinion of an expert witness is not based on
8 sufficient education and experience or if you conclude
9 that the reason given in support of that opinion is not
10 sound or that the opinion is outweighed by other evidence,
11 you may disregard that opinion in its entirety.

12 An expert witness's testimony to be given no greater
13 weight than that of any other witness simply because that
14 witness is an expert. Furthermore, you are not required
15 to accept an expert's opinion even though it is not
16 contradicted.

17 Now, I instruct you and I emphasize that the fact
18 that the Defendant did not appear or testify in this case
19 is not a factor to be considered by you in any way in your
20 deliberations and in your consideration on the question of
21 guilt or innocence of the Defendant.

22 It must not be considered by you in any manner
23 whatsoever. A defendant has the Constitutional right to
24 remain silent. And the assertion of this right must not
25 be considered by you in your deliberations.

1 I repeat, under your oath, you are to draw no
2 conclusion whatsoever from the fact that Mr. Tindal did
3 not appear or testify in this case. The fact that he did
4 not appear or testify should not even be discussed in the
5 jury room.

6 Now, the Defendant is charged with distribution of
7 methamphetamine. The State must prove beyond a reasonable
8 doubt that the Defendant distributed a drug, in this case,
9 methamphetamine. The State must prove the existence of
10 the drug methamphetamine beyond a reasonable doubt.

11 To distribute under the law means to deliver or to
12 actually, constructively or attempt to transfer a drug
13 other than by administering or by dispensing.

14 To deliver means to actually, constructively or
15 attempt to transfer the drug. A transfer can involve an
16 exchange for money, a barter or a gift. However, there
17 does not have to be anything given in exchange for the
18 drugs for a transfer to constitute a distribution.

19 An issue in this case is the identification of the
20 Defendant as the person who committed the crime charged.
21 The State has the burden of proving the identity of the
22 Defendant beyond a reasonable doubt. You must be
23 satisfied beyond a reasonable doubt of the accuracy of the
24 identification of the Defendant before you may convict the
25 Defendant.

1 Identification testimony may be an expression of
2 belief or an impression by a witness. You must determine
3 the accuracy of the identification of the Defendant. You
4 must consider the believability of each identification
5 witness in the same way as any other witness.

6 You may consider whether the witness had an adequate
7 opportunity to observe the offender at the time of the
8 offense. This will be affected by things like how long or
9 how short was the time available. How far or how close
10 was the witness from the defendant, the lighting
11 conditions and whether the witness had a chance to see or
12 to know the person from some past relationship.

13 Once again, I instruct you that the burden of proof
14 is on the State and it extends to every element of the
15 crime charged, and this specifically includes the burden
16 of proving beyond a reasonable doubt the identity of the
17 Defendant as the person who committed the crime.
18 Identity, as with other elements, may be proven by either
19 direct or circumstantial evidence.

20 Now, ladies and gentlemen, as I told you, your
21 verdict must be unanimous. In other words, you must all
22 agree on the verdict whatever it may.

23 Your deliberations are secret and you will never have
24 to explain your verdict to anyone. Each of you must
25 decide the case for yourself, but only after carefully

1 considering the evidence along with the other jurors. So
2 you must discuss the case with one another and try to
3 reach an agreement.

4 Your own opinion -- excuse me. While you're
5 discussing the case, don't hesitate to reexamine your own
6 opinion and change your mind if you become convinced that
7 you are wrong, but don't give up your honest or firmly
8 held beliefs simply to be in agreement with the others or
9 because you want to get the case over with.

10 Now, when you go back into your jury room, I'm going
11 to send back with you a verdict form. It's a very simple
12 form. It just has -- at the top, it has the caption of
13 the case, and then it list the indictment number.

14 There are two possible forms of verdict in this case.
15 Either, we, the jury, find the Defendant guilty of
16 distributing methamphetamine or we, the jury, find the
17 Defendant not guilty of distributing methamphetamine.

18 And Ms. Collier, I apologized earlier, I referred do
19 you as Ms. Moore, but I understand you're now Ms. Collier;
20 is that correct?

21 THE FORELADY: Correct.

22 THE COURT: Ms. Collier, when we send back the
23 evidence, this form will be with that evidence. Once the
24 jury has reached a unanimous verdict, if you would mark
25 the appropriate place on the verdict form to indicate that

1 verdict and then sign it as the foreperson, and then you
2 can knock on the door and let the bailiff know when the
3 jury has reached a unanimous verdict.

4 Now, as I said, ladies and gentlemen, if you wish to
5 view the videotape, more than happy to do that for you.
6 Just need to let us know and we'll bring you back out and
7 play it again, and at your direction, we can stop and
8 start it, however you want to see it. It's all up the
9 you, whether you want to see it or not.

10 But what I'm going to do right now is ask you to step
11 back into your jury room. Don't begin your deliberations
12 yet. I just need to verify with the attorneys that I have
13 charged you everything I needed to charge you with. If I
14 need to bring you back out and charge you anything else, I
15 will do that. But if everything is good with the charge,
16 we will gather these items. When you receive the evidence
17 and the verdict form, that will be your cue to begin your
18 deliberations. Okay.

19 So if you will please step back in the jury room and
20 await these items.

21 (Whereupon, the jury left the courtroom at 4:19 p.m.)

22 THE COURT: All right. Any objections or exceptions
23 to the charge from the State?

24 MR. MAXWELL: None from the State, Your Honor.

25 THE COURT: Anything from the Defense?

1 MR. FRICK: None from the Defense.

2 THE COURT: All right. Folks, if you'll go over,
3 make sure everything is there that's supposed to be there.

4 (Whereupon, the jury began deliberations at 4:21
5 p.m.)

6 THE COURT: Folks, let's remain in order for just a
7 bit until I excuse the alternates.

8 All right. Ms. Jeter and Mr. Hall, I want to thank
9 y'all for your service. I think everyone back there is
10 healthy enough to proceed with their deliberations. I
11 don't want to waste any more of your time. I thank you
12 for your service. It's important.

13 As a matter of fact, it's happened a lot recently.
14 I've had cases where something has occurred with a member
15 of the jury during the course of the trial and I've had to
16 go to the alternates to seat one of the alternates. So
17 you can see that it's important that you hear and
18 experience everything because if you get inserted into the
19 main panel, obviously, you have to know everything that
20 they know.

21 So it's not easy being an alternate because you hear
22 everything and you sit through the whole thing and now
23 it's time to deliberate and you don't get to play. But I
24 want to thank you for your service. As I told the panel
25 earlier, that concludes your service. You don't have to

1 call back. You don't have to come back. Thank you very
2 much. You're free to go.

3 ALTERNATE JUROR: Thank you.

4 THE COURT: You're also free to talk about the case.
5 You're under no further instructions regarding that.

6 (Whereupon, the alternates were excused.)

7 THE COURT: All right. We'll just remain at ease
8 while the jury does their thing.

9 (Whereupon, a break was taken awaiting a verdict.)

10 THE COURT: All right, folks. The jury has reached a
11 verdict.

12 Is the Defense ready to receive that -- excuse me,
13 the State?

14 MR. MAXWELL: Yes, sir.

15 THE COURT: Defense ready?

16 MR. FRICK: Yes, sir.

17 THE COURT: Okay. Let me -- before you go do that,
18 obviously, if they find him not guilty, then it won't
19 matter. If they find him guilty, you -- and, obviously,
20 because of the situation of him not being here, that would
21 be a sealed sentence and I wouldn't discuss that with the
22 jury, but, typically, I let the jury be present for
23 sentencing since they worked the case.

24 Would it be any problem if they find that, I'll
25 explain to them that because Mr. Tindal is not present

1 here today -- typically, we would go into sentencing, but
2 because he's not here today, that matter is going to be
3 held for later, but allow the State if he has -- does he
4 have any prior history?

5 MR. MAXWELL: Yes, sir, he does.

6 THE COURT: To, at least, let them put on the
7 record -- not necessarily -- to let the jury kind of know
8 everything but sentencing, I guess, is what I typically
9 let them hear.

10 MR. FRICK: Well, as I understand it, you get to pass
11 the sentence. It's just sealed.

12 THE COURT: Sure.

13 MR. FRICK: Obviously, I guess you need to hear the
14 past --

15 THE COURT: Sure. I'm going to hear all that from
16 the State. Is there any objection to me allowing the jury
17 to remain for that if they want to?

18 MR. FRICK: No objection.

19 THE COURT: All right. It may not matter. We'll
20 just see.

21 Go ahead and bring the jury in.

22 (Whereupon, the jury entered the courtroom at 4:56
23 p.m.)

24 THE COURT: All right. Madam Forelady, has the jury
25 reached unanimous verdict, ma'am?

1 THE FORELADY: Yes.

2 THE COURT: All right. Would you pass that to the
3 bailiff?

4 (Complies.)

5 THE COURT: Thank you. Thank you, ma'am.

6 All right. Madam Clerk, if you would please publish
7 the verdict of the jury, please.

8 THE CLERK: State of South Carolina, County of
9 Fairfield, the State of South Carolina vs. David A.
10 Tindal, Jr., Defendant. Indictment number
11 2018-GS-20-103 -- as indictment number 2017-GS-20-00103,
12 we, the jury, find the Defendant, David A. Tindal guilty
13 of distributing methamphetamines, dated May 31st, 2018 by
14 the foreperson.

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, if that is, in fact, your verdict, would you please
17 signify by raising your right hand.

18 (All indicated affirmatively.)

19 Please let the record reflect that all members of the
20 jury have indicated that is their verdict.

21 Folks, I want to thank you for your service. Now,
22 let me just explain briefly. Typically, what would occur
23 at this stage is I would hear from the State as far as if
24 there is any prior record or any other factors that the
25 State would like for the Court to consider regarding

1 sentencing, and then I would hear from Defense counsel and
2 the Defendant regarding anything in mitigation of that,
3 and then would impose sentence.

4 I, typically, would allow the jury, since you worked
5 the case, to be present for that if you choose to be, but
6 I don't make folks stay if they don't want to.

7 So that does conclude your service for this week.
8 You don't have to call back or come back, but if you would
9 like to stay for that, then I'm going to go ahead and
10 recognize the State, but if there's anybody who would like
11 go ahead and leave, I certainly would not have any
12 objection to you doing that, as well. Okay. So I'll let
13 that be your decision and if you want to go while we're
14 taking care of this, you're welcome to.

15 I'm going to go ahead and recognize the State with
16 regards to the issue on sentencing and the position of the
17 State on that.

18 MR. MAXWELL: Your Honor, Mr. Tindal was convicted of
19 distribution of cocaine and possession of cocaine in 2008.
20 He's also been convicted of several disorderly conducts
21 and driving under suspension since then, so this does
22 count as a second offense, which I believe is five to 25.

23 THE COURT: Five to 30, I think.

24 MR. FRICK: I thought it was 20.

25 MR. MAXWELL: We can --

1 THE COURT: We'll look at it. I have five to 30 in
2 my head, but I could be wrong.

3 MR. FRICK: I remember I used to know what all the
4 law was.

5 MR. MAXWELL: Your Honor, just so the Court is aware,
6 Mr. Tindal has other pending charges, another count of
7 possession of meth and possession of Oxymorphone, another
8 distribution of methamphetamine, another possession with
9 intent to distribute methamphetamine, possession of a
10 controlled substance, Hydrocodone, possession of Xanax.
11 It was another charge that was initially charged as
12 possession of heroin in which the analysis came back as
13 methamphetamine, as well.

14 He's also been indicted for habitual traffic offender
15 and driving under suspension fifth offense, I believe.
16 All those charges are pending.

17 THE COURT: Okay.

18 MR. MAXWELL: They're unresolved. The State would
19 ask for a heavy significant sentence in Mr. Tindal's case.
20 He was present here yesterday. He failed to show up
21 today. And I also think -- ask the Court to consider that
22 fact, as well.

23 THE COURT: All right. Thank you, sir.

24 Mr. Frick.

25 MR. FRICK: Your Honor, I'm not going to go into a

1 great deal of mitigation to protect my client on any
2 future grounds on the case or of the unsealing of the
3 sentence. However, I would just ask the Court to consider
4 that my client's prior conviction was 10 years ago, and I
5 understand that he was still serving the sentence on
6 probation within the 10-year statute. But the conviction
7 is actually right at that 10-year mark where this would
8 officially be a first offense, which, of course, the Court
9 is aware that would make this range from zero to 15,
10 rather than the five to whatever significant number we all
11 agree it is, and I would ask you to consider that as you
12 go into sentencing.

13 THE COURT: All right, sir.

14 MR. MAXWELL: Just to clarify, he pled guilty to that
15 charge back in February of 2008. He got a year suspended
16 upon three years probation, so that probationary sentence
17 would have ended in '11. As Mr. Frick said, it still
18 counts as a second due to the fact that the sentence --
19 penalty didn't end until --

20 THE COURT: Carry over.

21 MR. MAXWELL: Carried over within the ten years.

22 THE COURT: All right. Now, ladies and gentlemen,
23 had Mr. Tindal appeared and was here, then I would hear
24 from him if there's anything he would like to share with
25 the Court, and then I would impose sentence.

1 I believe -- and I put my book away. I want to say
2 it's five to 30, but -- it's either five to 20 or five to
3 30.

4 MR. MAXWELL: I put my book up in my office. I can
5 certainly grab it real quick. I didn't that a few minutes
6 ago.

7 THE COURT: I'll get that before I decide what the
8 sentence is imposed. But that's the sentencing range
9 because this would be considered a second offense. And so
10 then, typically, I would go ahead and impose sentence.

11 Because he is not here, then by law, I am required to
12 impose sentence and then to seal that sentence until --
13 what will happen is I've issued a bench warrant for --
14 will issue a bench warrant for Mr. Tindal for his arrest,
15 to be picked up.

16 He will -- once he's picked up, be brought to court,
17 and then that sentence will be unsealed at that point and
18 that sentence will be imposed. So that -- and that -- of
19 course, I have to get my book to make sure I'm within the
20 guidelines. And that sentence would need to be sealed
21 anyway, so I wouldn't be able to share that with you
22 anyhow.

23 But that does conclude your service, as I said. If
24 you have any questions about anything or want to talk to
25 the lawyers, you can. You can talk about the case at this

1 point.

2 All restrictions or instructions to not discuss the
3 case are lifted. You're more than welcome to discuss the
4 case with anybody, but you're also free to also say you
5 don't want to talk about it.

6 I can tell you now, if anybody asks you any questions
7 here out of curiosity, if you tell them you don't want to
8 talk about that, they will respect that and not bother you
9 any further. You can talk to your friends, family and
10 loved ones about it. All those restrictions have been
11 lifted.

12 I want to thank you again for your service. If you
13 don't have any questions for me, that concludes your
14 service for this week. Thank you.

15 (Whereupon, the jury left the courtroom at 5:05 p.m.)

16 THE COURT: All right. Do you have a sentencing
17 sheet?

18 MR. MAXWELL: Yes, sir, I have one from yesterday.

19 THE COURT: All right. For first offense, as we all
20 know, we agree on this, up to 15. For a second offense,
21 the offender must be in prison not less than five years or
22 more than 30 years or fined not more than \$50,000 or both.
23 Third or subsequent is not less than 10, no more than 30.
24 So it is five to 30.

25 (Whereupon, there was an off-the-record discussion).

1 I have considered the things that have been shared
2 with the Court regarding sentencing. I have imposed
3 sentence and have sealed it in an envelope and it will --
4 and a bench warrant is issued for Mr. Tindal, and once he
5 is brought before the Court, that can be unsealed with any
6 presiding judge and have that sentence imposed.

7 MR. MAXWELL: Thank you, Your Honor.

8 (Whereupon, the proceedings were concluded.)
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STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF FAIRFIELD
2018-GS-20-00103

State of South Carolina

Vs.

David Allen Tindale, Jr.

Winnsboro, South Carolina

June 25, 2018

Before the Honorable Brian M. Gibbons

APPEARANCES

For the State: Riley Maxwell

For the Defendant: William Frick

Reported by: Michael C. Watkins

Official Court Reporter

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NO EXHIBITS

1 MR. MAXWELL: Your Honor, before you is David Tindale.
2 Mr. Tindale was tried in his absence back on May 21st of
3 2018 before Judge Russo on indictment number 2018-GS-20-103,
4 an indictment for distribution of methamphetamine. Mr.
5 Tindale was found guilty of that, it was a second offense
6 and Judge Russo sealed a sentence and we're here for the
7 unsealing of that sentence. Mr. Frick is his attorney.

8 THE COURT: All right. Thank you. Let the record
9 reflect that I'm unsealing the sentence at this point in
10 time. All right. And Mr. Tindal, of course, you understand
11 why you're here today?

12 THE DEFENDANT: Uh-huh.

13 THE COURT: All right. Well, I'm going to pronounce
14 the sentence that judge -- the trial judge was Judge Russo?

15 MR. MAXWELL: Yes, sir.

16 THE COURT: I'm going to pronounce the sentence that
17 Judge Russo sentenced you and then I will allow your
18 attorney to make any argument he wishes to, and I'll be glad
19 to hear from you as well if need be. All right. In the
20 case of the State of South Carolina versus David Allen
21 Tindale, Jr., docket 18-GS-20-103, having been found guilty
22 of distribution of methamphetamine second?

23 MR. MAXWELL: Yes, sir.

24 THE COURT: All right. The sentence of the Court is 20
25 years in the South Carolina Department of Corrections with

1 credit for nine days time served. Mr. Frick?

2 MR. FRICK: Your Honor, at this time I would move for
3 the Court to reconsider the sentence. I've passed forward
4 two cases, one is State vs Alton Smith. The cite is
5 276SC494 that says that the sentence is not really imposed
6 until it is unsealed, thereby that makes you the sentencing
7 judge and gives you authority to consider whether the
8 sentence is appropriate or not. Your Honor, that case is
9 confirmed by State versus Arthur Jackson, 290SC435. So I
10 would ask you to consider the defense's motion to reconsider
11 a sentence at this time. Judge, the main reason on that is
12 Mr. Tindal does have a limited record. This is a second
13 offense because his prior conviction was in 2008 so he's
14 right at the ten year window when he was convicted, it was a
15 sentence that was suspended to probation which is what put
16 it within the ten year window. I do believe that because of
17 that -- and he had some other stuff since then, I'm sure the
18 solicitor can tell you, but basically it's magistrate level
19 offenses. There were some pending charges but no other drug
20 convictions. With that limited record I think that the
21 sentence of 20 years is out of proportion, and I think
22 something lesser than that would be more appropriate. So at
23 this time I would move for you to reconsider sentence.

24 THE COURT: All right. Solicitor, what's your
25 position?

1 MR. MAXWELL: Your Honor, in reading those cases, which
2 Mr. Frick did provide to me last week, I'm not real sure
3 that they're clear on what they say on whether the unsealing
4 judge can reconsider. But at any rate, if you do feel that
5 you have the authority to reconsider the sentence I ask you
6 to consider that Judge Russo heard the case, gave a sentence
7 within the guidelines, or within the sentence range of
8 distribution of methamphetamine second, which is five years
9 up to 30 years and sentenced him appropriately.

10 THE COURT: And what is his prior record?

11 MR. MAXWELL: Your Honor, in 2008 he was convicted of
12 distribution of cocaine and possession of cocaine, which was
13 the offenses used to enhance this current charge to a second
14 offense. I think he received a probationary sentence and
15 didn't get off until sometime after 2008 putting him in the
16 ten year window. He's also been convicted of disorderly
17 conduct in 2009 and 2015, and some driving under suspension
18 charges. Mr. Tindale has several other charges that are
19 still pending, as well as when he was arrested on the bench
20 warrant after the trial, the same day as the trial but about
21 two hours after the verdict, he had methamphetamine on
22 him -- and a stolen moped in his possession at the time.
23 Those charges were brought to him after the trial. So he's
24 got another distribution --

25 THE COURT: But these weren't in Judge Russo's mind

1 when he sentenced this defendant to 20 years.

2 MR. MAXWELL: He had another possession of -- well,
3 what he had -- what Judge Russo was aware of was possession
4 of meth, possession of oxymorphone, habitual traffic
5 offender, driving under suspension, another possession with
6 intent to distribute meth, possession of hydrocodone,
7 possession of Xanax, possession of heroine, and another
8 distribution --

9 THE COURT: Those were all pending charges.

10 MR. MAXWELL: Those were all pending. And then after
11 the trial when he was picked up he had methamphetamine on
12 his person as well as a stolen moped.

13 THE COURT: And distribution of meth second offense
14 carries three to --

15 MR. MAXWELL: Five to 30.

16 THE COURT: Five to 30. Anything else from the State?

17 MR. MAXWELL: Nothing else from the State.

18 THE COURT: Mr. Frick, coming back to you, anything
19 else?

20 MR. FRICK: Your Honor, I don't know if Mr. Tindale
21 wants to address you or his girlfriend, Ms. Smith.

22 THE COURT: I'll be glad to hear from anybody on his
23 behalf.

24 MR. FRICK: If you want to address the Court now is the
25 time to do it. You don't have to, it's just -- Judge --

1 THE SPEAKER: I would just ask you to please
2 reconsider.

3 THE COURT: All right. Mr. Tindale, anything you wish
4 to tell me, sir? Any family members or close personal
5 friends wish to say anything? There's somebody in the back.

6 THE SPEAKER: Yes, sir.

7 THE COURT: Come up.

8 MR. FRICK: Your Honor, I believe this is Mr. Brian
9 Smith, he's a friend of Mr. Tindal.

10 THE COURT: All right. You're Brian Smith?

11 THE WITNESS: Yes, sir.

12 THE COURT: Just talk loud so my court reporter can
13 pick up for you -- what would you like to say, sir?

14 THE SPEAKER: I would just like to say I've known Mr.
15 Tindal now for about 15 years, we've been real good friends.
16 I just want to say what I know of him he's a real good
17 fellow, sir, he just made some bad choices, but he's a real
18 good fellow from what I know of him.

19 THE COURT: Thank you, sir. Thank you for saying that.

20 THE SPEAKER: Yes, sir.

21 MR. FRICK: And Your Honor, the only thing additional I
22 would say in this situation, in talking to Mr. Tindale as we
23 prepared about this case in his situation, obviously he was
24 found guilty of a distribution in this case, but I think he
25 was a user who was supporting his habit. I think he has

1 suffered from the addiction with meth for a little bit of
2 time now, so --

3 THE COURT: Well, for what it's worth I am swayed by
4 your legal argument that this Court has the jurisdiction to
5 sentence based upon the facts and circumstances presented.
6 Now, Judge Russo, as the trial judge, properly sentenced him
7 and sealed the sentence, but I do believe reading the case
8 law I agree with your argument that the Court has
9 jurisdiction to modify the sentence since I'm really not
10 sitting in an appellate capacity but I'm the one pronouncing
11 the sentence so I can be swayed either way. However, after
12 hearing arguments from both the State and the defense I
13 decline to readdress the sentence. I find the sentence is
14 appropriate under the circumstances. You are sentenced to
15 20 years in prison. Good luck to you, sir.

16 (End of the hearing.)

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STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Fairfield)
STATE VS.)

INDICTMENT/CASE#: 2018GS2000103

David Allen Tindal Jr)

A/W#: 2017A2010100474

AKA: _____)

Date of Offense: 12/20/2017

Race: WHITE Sex: M Age: 32)

S.C. Code § : 44-53-0375 (B) (2)

DOB: [REDACTED] SS#: [REDACTED])

CDR Code #: 3199

Address: [REDACTED])

City, State, Zip: [REDACTED])

DL#: [REDACTED] SID#: _____)

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Drugs / Distribution, etc. of methamphetamine, 2nd (Excludes manufacturing meth; see CDR Code 3777)

in violation of § 44-53-0375 (B) (2) of the S.C. Code of Laws, bearing CDR Code # 3199

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

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]
Solicitor

74878 Defendant [Signature] Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 20 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 §24-13-40 to be calculated and applied by the SCDOC.

Credit for 9 days time served

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 PTUP _____ days/hours Public Service Employment

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 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: Nike Walker on 6-25-18

SCCA/217 (04/2018) Karen Ambroizack on 5-31-18

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 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [Signature]

Judge Code: 2141

Sentence Date: 5-31-2018

104

WITNESSES

Burroughs-FCSO

DOCKET NO. 2018-GS-20-103

The State of South Carolina

County of Fairfield

20
f

COURT OF GENERAL SESSIONS

APRIL TERM 2018

ARREST WARRANT NUMBER/DOA

2017A2010100474 (DOA-12-28-17)

THE STATE

vs.

David Allen Tindal, Jr.

ACTION OF GRAND JURY
TRUE BILL

Wallace J. Martin
Foreperson of Grand Jury
Date: 4-17-2018

VERDICT

Indictment for

Distribution of Methamphetamine

Foreperson of Petit Jury

Date:

SC Code: § 44-53-375(B)

CDR Code: 3014

Class: Felony, D

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

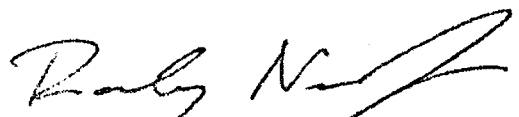
INDICTMENT

At a Court of General Sessions, convened on April 17, 2018, the Grand Jurors of Fairfield County present upon their oath:

DISTRIBUTION OF METHAMPHETAMINE

That David Allen Tindal did in Fairfield County on or about December 20, 2017, distribute, dispense, or deliver methamphetamine, in violation of § 44-53-375(B), *Code of Laws of South Carolina, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

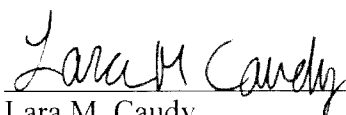


Randy E. Newman, Jr., SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the 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,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of October, 2019.

RECEIVED
OCT 14 2019
SC Court of Appeals