

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Brian M. Gibbons, Circuit Court Judge

ANTONIO EMERSON TATE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001753

APPENDIX

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1 Q --- but you understood that they were lookin' ---
2 A Look ---
3 Q --- at you ---
4 A --- I'm not gonna argue ---
5 Q --- as buyin' drugs ---
6 A --- with you.
7 Q --- from Brian Stegall and from an individual outta
8 Atlanta, correct?
9 A Correct.
10 Q Okay, so at that time you go down, you're in the car
11 with Chris Bishop, you know you're under ---
12 A I did ---
13 Q --- watch?
14 A --- not know I was under investigation and being
15 investigated when I went in the car with Chris Bishop, no, I
16 did not 'cause I believe that all that had been said to me
17 ---
18 Q Right.
19 A --- was crap.
20 Q Well ---
21 A I just thought that that was just stuff just to scare
22 me ---
23 Q And.
24 A --- okay, I didn't believe that I was under any federal
25 indictment, ---

1 Q You're not under ---

2 A --- I mean, not federal, I mean, grand jury indictment.

3 Q Right, but you got an attorney in this case, right?

4 A Yes, sir, I do.

5 Q Okay, and that's, uh, what's his name?

6 A David Seay.

7 Q Okay, David and got discovery in this case and ya'll
8 discussed, I don't want ya to hear -- talked about what you
9 said with him but ya'll got discovery in this case, right?

10 A Yes, sir.

11 Q Did you get a copy of the audio transmission or the the
12 the wire that was done by Chris Bishop?

13 A No, um, he he has I'm sure.

14 Q He has? Did you listen to it with him?

15 A No.

16 MR. PAULING: Objection, Your Honor, we're getting into
17 conversations she woulda had with her attorney.

18 THE COURT: Alright, yes, sir.

19 MR. ARIAIL: I'm not askin' about her conversation, ---

20 THE COURT: Sustained.

21 MR. ARIAIL: --- sorry.

22 THE COURT: Alright.

23 THE WITNESS: Yeah, you are.

24 BY MR. ARIAIL:

25 Q Have you listened to the tape?

1 A No.

2 Q Do you remember on that tape that you didn't mention
3 Ant at one time on an hour and a half tape?

4 MR. PAULIN: Your Honor, I believe that's been asked
5 and answered. She said she didn't listen to it.

6 THE COURT: Alright, if she's, if she's not listened to
7 the tape, she can't answer what's on the tape and I don't
8 want her to testify to any discussions that she's had with
9 her attorney.

10 Q All right. Do do you recollect having conversations
11 with Chris Bishop on the way down?

12 A I can't recall what that phone conversation was about,
13 no.

14 Q I'm not asking you about dope, I'm bo -- askin' ---

15 A I have no ---

16 Q --- about ---

17 A --- way ---

18 Q --- an Ant, ----

19 A I don't know, ---

20 Q --- an Amp, ---

21 A --- I can't tell you a conversation that I had with
22 someone two years ago in a car. I don't remember.

23 Q Okay.

24 A Do you remember two -- con -- two, I mean, like ---

25 Q I I ---

1 THE COURT: I'll say to both of ya, please be careful

2 ---

3 MR. ARIAIL: Yeah.

4 THE COURT: --- my court ---

5 THE WITNESS: I understand, ---

6 THE COURT: Ju -- that's okay.

7 THE WITNESS: --- I apologize.

8 THE COURT: That's okay. Why don't you take a breath
9 before ya answer, okay?

10 THE WITNESS: Okay.

11 THE COURT: Uh, the court reporter can't take down both
12 of ya'll.

13 THE WITNESS: I'm sorry. I apologize.

14 THE COURT: That's okay, go ahead.

15 BY MR. ARIAIL:

16 Q So you can't recall?

17 A Repeat the question.

18 Q You can't recall sayin' Ant or any type of Amp or
19 Antonio with Chris Bishop on the way down?

20 A I do not remember ---

21 Q Okay.

22 A --- a conversation from two years ago that I had in the
23 car.

24 Q And the reason ya didn't talk about that goin' on the
25 way down is because you weren't talkin' about buyin' drugs

1 'cause you weren't gonna buy drugs, right?

2 A Correct ---

3 Q Okay.

4 A --- I ---

5 Q That's because Ant doesn't sell drugs, Antonio doesn't

6 sell drugs, right?

7 A Wrong.

8 Q Okay, now these Green Dots and, I I mean, I'm I'm goin'

9 back, you still got these Green Dots, and you got access to

10 these Green Dot cards, right?

11 A No.

12 Q Ya you don't.

13 A No, I don't, sir.

14 Q Ya you you had 'em at one time, right?

15 A Yes, sir.

16 Q You can go back and access 'em, correct?

17 A If you still have the card, correct.

18 Q Correct, okay, so at some point in time you could have

19 provided the Green Dot cards or the numbers for those cards

20 that woulda showed these transactions bein' made, right?

21 A Correct.

22 Q Okay, and you woulda shown at at ---

23 A Actually, let me restate that. I'm not sure if Green

24 Dot if they keep that on track. I don't know if they, I

25 mean, all I know it's just a receipt. I never kept the

1 receipts, I usually throw 'em out the window.

2 Q Oh, so we got receipts now with Green Dot ---

3 A No, well ---

4 Q --- cards.

5 A --- okay, receipts was by -- let me calm myself down
6 for a minute here, okay. Receipts by what I mean is when
7 you go and you give the money to the cashier at a register
8 for your Green Dot. If you have \$600 or \$400 that you elect
9 to put on this Green Dot, they give you a piece of paper
10 which is basically like a phone, like when you go and you
11 pay the bill for your phone and you put the little number in
12 your phone and your phone gets fifty minutes added to it,
13 you understand? Uh, that's kinda like what a Green Dot
14 gives you.

15 Q Okay, and there's nothin' that you got here today that
16 shows those Green Dots, that money goin' on, right?

17 A No, sir.

18 Q But you can also show, as part of those Green Dots, who
19 takes the money out, right?

20 A No.

21 Q Ya can't?

22 A No.

23 Q I thought you said in your testimony that you could say
24 the money goes in and who could take it out? Did you not
25 say that?

1 A No, I don't recall saying that.

2 Q So how do you know that you make sure that Mr. Mr. Tate
3 or Amp ---

4 A Because you called me. I mean there's -- if you get
5 this number, okay, ---

6 Q Uh-huh.

7 A --- and you call this certain person and say, Here, put
8 this number on your card and then they do that, they're the
9 one's that's gonna get the money, nobody knows this number
10 but you, okay ---

11 Q Alright.

12 A --- so if I'm callin' and I'm tellin' you to put this
13 money on the card so that you collect your debt that I owe
14 you, then that would be what it was.

15 Q Alright, now show me the cell phone records you have
16 showin' you called him and talked to him about that.

17 A I don't have any cell phone records. I don't keep cell
18 phone records, most, I mean, ---

19 Q Okay.

20 A --- I have house records.

21 Q Alright, so ---

22 A When's the last time you get a cell phone record and
23 and, I mean, I'm sure you do if you do have other than
24 praypik -- prepaid, that's what I use is prepaid phones ---

25 Q You get cell ---

1 A --- cell phones.

2 Q --- phone records when you wanna prove somethin', okay,
3 and here's a question: ---

4 A Uh-huh.

5 Q --- do you have those cell phone records to prove your
6 testimony today?

7 A No.

8 Q Okay, thank you. Now tell me 'bout, uh, Trebuchon,
9 just go through this real quick. He was a a runner I guess,
10 he was a mule? What do you call him?

11 A Trebuchon was a driver, ---

12 Q Driver, okay.

13 A --- he had a license. He was a mule, a runner,
14 somebody who went and got dope.

15 Q Basically he was drivin' you down to go get dope,
16 that's right?

17 A Yes, sir.

18 Q Okay, now where in any of this information, and I've
19 gone through it, you tell me if I'm wrong, well, did you
20 tell anybody that he was pulled over or ya'll had any issue
21 with the police?

22 A No.

23 Q Didn't tell anybody. You know, you didn't tell him
24 that you had dope in the car or might do a report ---

25 A What are you talkin' about first of all, I don't

1 understand. Did I tell anybody what?

2 Q That you were pulled over with Norman Trebuchon.

3 A Did I tell the police that?

4 Q Yeah, did ya?

5 A No, because I was tryin' to tell 'em as little as
6 possible at first.

7 Q Well I'm di -- did ya tell Detective Ayers and Mar --
8 and all these individuals that were tryin' ---

9 A Honestly ---

10 Q --- to prosecute this case ---

11 A Excuse me, me let -- let me go ahead and let you guys,
12 let the jury know somethin'. Honestly, when you're on
13 methamphetamines and you're you're not in your right state
14 of mind. You're tryin' to save your ass, you're tryin' to
15 sa -- excuse me ass, you're tryin' to save yourself, you're
16 tryin' to make everything, you're tryin' to keep as little
17 as possible until you realize how much of a situation that
18 you're in. When you realize that you're about to lose your
19 whole life and I'm 25-years-old, I have no children, you
20 realize you're about to lose everything for the next and I
21 have a cosmetology license. So, they're basically were I'm
22 about to lose everything for the rest of my life, you
23 realize how serious the situation is, you wanna help
24 yourself.

25 Q Now we've heard all these people come in and testify,

1 you're friends with Javin, you're friends with Wendy Lollis,
2 Nor -- Norman Trebuchon, you know him?

3 A I know Norman.

4 Q How 'bout Norman Bergholm?

5 A I know them.

6 Q 'How 'bout -- do you know Warren Chastain?

7 A I know who he is.

8 Q Okay, so you know all these individuals and the only
9 person that doesn't live in South Carolina and who isn't a
10 part of this friendship ---

11 A Um-hum.

12 Q --- is my client, right? Is that ---

13 A Wrong.

14 Q Is that right? He don't live in South Carolina?

15 A That's correct.

16 Q And you guys are all been sellin' drugs with each other
17 for how long?

18 A First of all, I never sold drugs to Wendy Lollis.
19 Second of all, I've never sold dur -- sold drugs to, uh,
20 Warren Chastain. So you're wrong.

21 Q Now there is one thing you did do and that is you
22 bought a car and you bought a transmission from my client
23 and knew what he looked like ---

24 A Yes.

25 Q --- before all this happened, right?

1 A Before all what happened?

2 Q Before he was arrested, correct?

3 A I also bought drugs from him before he was arrested.

4 Q Right, and here, sittin' here today you just said you
5 gotta do what's right for you, right?

6 A Yes.

7 Q You're gonna do the best thing for yourself, right,
8 because you don't wanna be 25-years-old and lookin' at a
9 lotta time, right?

10 A Correct.

11 Q So you were lookin' at a lotta time before you entered
12 in a plea agreement before you testified, right?

13 A Yes.

14 Q And walkin' outta here today, based on what you think
15 is your cooperation, you're looking at 3 to 6 years, is that
16 right?

17 A That's a possibility, yes.

18 Q It's a pretty good deal, isn't it?

19 A Yes, it is.

20 Q Alright, thank you, no further questions.

21 THE COURT: Yes, sir.

22 MR. UNDERWOOD: Briefly, Your Honor.

23 REDIRECT EXAMINATION BY MR. PAULING:

24 Q Now, Ms. Bashaw, Mr. Ariail asked you if you could tell
25 the difference between Mr. Tate and his brother, and you

1 said he was lighter, what what did you mean? Did you mean
2 weight wise or did you mean complexion?

3 A Complexion ---

4 Q Okay, so that ---

5 A --- but Amp's been locked, I mean, he's been in jail
6 for, ya know, uh, the past however long he stayed locked up.
7 So of course his skin's gettin' lighter. He's not been in
8 any sunlight.

9 Q Okay, but he's but but but that's what you meant, his
10 complexion is lighter?

11 A Yes.

12 Q Okay, now as far as the the June 10th, 2010, statement,
13 uh, do you recall why why you were at the Detention Center
14 back in June of 2010?

15 A Yes, I do.

16 Q And why was that?

17 A Pointin' and presenting, assault and battery intent to
18 kill, and malicious damage to property.

19 Q Okay, so you had an assault charge, weapons charge
20 goin' on at that particular time?

21 A Yes.

22 Q Okay, did law enforcement approach you about
23 information that you had regarding drug trafficking at that
24 particular time?

25 A Yes, Chad Ayers, as I was signing my bond, I seen Chad,

1 I knew who he was from the streets, been talkin' about a
2 very good SLED officer that knew his crap and he is around
3 and he was gonna pop everybody.

4 Q So that particular time and you you say you didn't
5 wanna give all, ya know, all this information at first but
6 at that particular time when you gave this statement, uh,

7 ---

8 A Yes, sir.

9 Q --- this is before, this was before you were involved
10 with Javin ---

11 A Yes.

12 Q --- uh, 'cause this is June 10th of 2010, isn't that
13 correct?

14 A Correct.

15 Q Okay, I believe you said that it was July 4th of 2010
16 that you and Javin met?

17 A Yes, sir.

18 Q So all of that, all this other information that Mr.
19 Ariail's saying you didn't provide, that hadn't even come
20 about yet, had it?

21 A Right ---

22 Q Okay, and so ---

23 A --- and, ya know, ---

24 Q Yes, ma'am.

25 A --- let me let you guys know somethin' and all the

1 information that was on that piece a paper at that time I
2 will be ho -- honestly, I was just tryin' to get myself
3 outta, I already signed my my bond for the ---

4 Q Let me ask you, let me ask, Mr. Bashaw, ---

5 A Go ahead, sir.

6 Q --- that statement that you gave on June 10th of 2010
7 was was was that truthful?

8 A Some of it was and some of it wasn't.

9 Q Okay, well let me ask ya this: Did you know Amp's name
10 at that time? Did you, did you know his name ---

11 A I did not ---

12 Q --- or did you know ---

13 A --- know his ---

14 Q --- Antonio Tate ---

15 A I did not know Antoni ---

16 Q How did you know ---

17 A I did not know Antonio Tate, no. I knew him but I did
18 not know his name.

19 Q Okay, and that's what you told Chad Ayers?

20 A Yes.

21 Q Bashaw states that she did not know, does not know the
22 black male subject name.

23 MR. ARIAIL: Objection, Your Honor, he's testifyin'
24 now.

25 THE COURT: Alright, let's move on.

1 Q But that was correct?

2 A Yes, sir.

3 Q Now, Ms. Bashaw, there's been a lot of questioning
4 about keeping receipts and these gas receipts and the Green
5 Dot receipts, when all this is goin' on, when you're, when
6 you're havin' these drug transactions with with Amp, ---

7 A You're tryin' to throw receipts away, you're tryin' to
8 throw anything pos -- physical evidence for the police to
9 find away.

10 Q Okay, so you wouldn't just get a shoe box and and keep
11 all that information?

12 A No.

13 MR. ARIAIL: Objection, Your Honor.

14 A No.

15 MR. ARIAIL: He's just testifyin' now, I mean, ---

16 MR. PAULING: I'm askin' ---

17 THE WITNESS: No.

18 MR. PAULING: --- her a question.

19 MR. ARIAIL: It's a leading question.

20 THE COURT: It's a leading question, I'll sustain that.

21 BY MR. PAULING:

22 Q Why didn't you keep those receipts?

23 A Because when you're sellin' drugs you don't wanna keep
24 anything, kinda books, receipts, you don't wanna keep
25 receipts, books, or anything that have anything to do with

1 you and Green Dot cards to Atlanta, Georgia. If you get
2 caught with stuff like that, that's very incriminating
3 evidence. Why would I keep anything to do with stuff like
4 that?

5 Q Let me ask ya this, Ms. Bashaw: You had car -- did you
6 have car issues at some point regarding the transmission?

7 A Yes.

8 Q Was there no other auto body shop in in South Carolina
9 you could go to?

10 A Of course there was ---

11 Q Well why'd ---

12 A --- Midland LKQ.

13 Q --- well why'd ya go to Atlanta?

14 A We went to Atlanta because our dope man had a good deal
15 on a transmission, okay, and we could come down there and
16 get it.

17 Q Who was your dope man?

18 A Amp, Antonio ---

19 Q And ---

20 A --- Tate.

21 Q --- and so when you went to get that transmi -- that
22 transmission -- so you went, you went to him to get that
23 transmission because you had another relationship with him?

24 A Yes.

25 Q And that relationship was what?

1 A Selling, buying dope from him.

2 Q Now as far as Chris Chris Bishop is concerned, you were
3 questioned on cross-examination that you didn't go there to
4 buy dope that day.

5 MR. ARIAIL: Objection, Your Honor, he's still leading.
6 I mean, he's he's testifying for her.

7 THE COURT: Sustained.

8 MR. PUALING: I'll rephrase, Your Honor.

9 THE COURT: Thank you.

10 BY MR. PAULING:

11 Q Had Chris Bishop been to Atlanta before with you ---

12 A No.

13 Q --- to meet, to meet Amp?

14 A No.

15 Q Had never been there before with you ---

16 A Never.

17 Q --- with you and Javin?

18 A Never.

19 Q Okay, so when you left South Carolina to go to Atlanta
20 why, with Chris Bishop, why did you go?

21 A I went to get a transmission from my dope man.

22 Q And how did it come up that ya'll -- you were gonna try
23 to buy dope?

24 A Chris said, Nate', um, you think that you can get some
25 shit, some dope while we're down here, I said, I don't know,

1 I'll have to ask him, I hadn't -- 'cause usually it's not
2 something that I just it pop up on, I wouldn't just pop up
3 in Atlanta and say, Hey, buddy, how ya doin', can I get
4 somethin' from you. It be something that I would ask, you
5 know, turn on the phone, but the only thing that had been
6 discussed that day was a transmission. Now we got down
7 there and Chris had a little bit extra money and so did I,
8 he said, Hey, I need to make some extra money in Greenville,
9 do you think that, uh, you could say somethin' to, oh, your
10 buddy and see if he will get us some dope and I said sure.

11 Q And was it typical for you to make the phone call to
12 Amp before you traveled to Atlanta?

13 A Yes.

14 Q Did you ever have the situation where you just pop up
15 on him and ---

16 A Uh ---

17 Q --- ask for dope?

18 A --- no. Well we went down there with, um, we went down
19 there with the officers ---

20 Q Okay, well I'm talkin' about the rela -- when when it
21 was just ---

22 A Oh no.

23 Q --- you and Javin and Amp before you were involved with
24 law enforcement did you ever have a situation ---

25 A No, we ---

1 Q --- where you'd just pop ---

2 A --- never just ---

3 Q --- up on ---

4 A --- pop up at someone's house and ask for dope from
5 another state.

6 Q Had you known Chris Bishop was cooperatin' with law
7 enforcement at that particular time, would you have even
8 talked to Amp about that?

9 MR. ARIAIL: Objection, Your Honor, he still asked a
10 leading ---

11 A No ---

12 MR. ARIAIL: --- question.

13 A --- never.

14 THE COURT: Alright, sustained.

15 BY MR. PAULING:

16 Q Ms. Bashaw ---

17 A Yes, sir.

18 Q --- what has has your cooperation entailed? Has it
19 just been testimony?

20 A My cooperation for against Amp?

21 Q In this investigation.

22 A Investigation. It's been testimony, it's been, uh,
23 wear wires, it's been doin' work for them, trying to help
24 ---

25 Q Try to help you mean when you say wire, do you mean

1 undercover deals?

2 A Yes, sir.

3 Q Okay, have you been truthful today?

4 A Yes, I've been one hundred percent honest.

5 MR. PAULING: No further questions, Your Honor.

6 THE COURT: Alright, anything else?

7 MR. ARIAIL: Yeah, if could just real quick.

8 RE CROSS EXAMINATION BY MR. ARIAIL:

9 Q Uh, I thought you just told this jury earlier that you
10 had already lied so that couldn't mean you were truthful,
11 right? Right?

12 A Right.

13 Q Okay, so when you went down to buy drugs with Chris
14 Bishop, excuse me, when you went down to buy the
15 transmission with Chris Bishop from you said, are you saying
16 you didn't talk about drugs in any way on your way down?

17 A No.

18 Q Okay, and do you remember ---

19 A No, no, no, wait, wait, wait. Did I talk about drugs
20 to Chris Bishop on the way down there, yes, we did discuss
21 drugs.

22 Q Okay, so now we've discussed drugs down there, not
23 until when we got ---

24 A We weren't ---

25 Q --- down there.

1 A --- we weren't discussin' drugs to buy down there, we
2 were just discu -- discussing drugs on the way there ---

3 Q You remember sayin', Hey, ---

4 A --- in general.

5 Q --- there's a black dude every time I been down here 50
6 to 75 times? Do you remember sayin' that?

7 A No, I don't.

8 Q Okay, you said, "Dude is on a whole nother level," you
9 remember sayin' that?

10 MR. PAULING: I object. I be -- I don't know what he's
11 reading from, but she's already testified she didn't ---

12 A I don't.

13 THE COURT: Hold on one second. And she's already
14 testified what ---

15 MR. PAULING: That she ---

16 THE COURT: --- I'm sorry?

17 MR. PAULING: --- didn't hear any audio. I mean, I
18 don't know what he's reading from.

19 THE COURT: Alright.

20 MR. ARIAIL: I ---

21 THE WITNESS: I haven't ---

22 MR. ARIAIL: --- I ---

23 THE WITNESS: --- heard the audio.

24 MR. ARIAIL: --- I'm simply askin' if she said -- made
25 these statements on the way down with Chris Bishop, I'm not

1 askin' ---

2 THE WITNESS: I can't recall the whole conversation ---

3 THE COURT: All right. I'll allow her to answer as to
4 her conversation with him. Of course, if she says she's not
5 heard any audio ---

6 MR. ARIAIL: Right.

7 THE COURT: --- she can't if she's heard herself.

8 BY MR. ARIAIL:

9 Q But those type of statements you hadn't, you don't
10 remember?

11 A No.

12 Q Okay, now when -- the the first time my guess where --
13 you were in Atlanta with Chris Bishop, you went to the shop,
14 is that where you went? When when was the first time you
15 saw Mr. Tate?

16 A First time I saw Mr. Tate is when we took his wife back
17 to her car which was on the side of the road with a busted
18 out tire, I can't remember exactly what it was. Something
19 was wrong with the car, I think she had a flat tire.

20 Q Did you go to, uh, the shop at any time after that?

21 A No.

22 Q So you've never been to the shop.

23 A No.

24 Q Where'd you get the transmission from?

25 A The shop.

1 Q But ya just said ya didn't go to the shop.

2 A We went to the shop when he -- when I called him and I
3 told him I got down there, ok, his wife was on the side of
4 the road with a busted tire, I'm tryin' to remain calm here
5 'cause you're gettin' really -- okay, we, I've already told
6 you this. His wife was on the side of the road with a
7 busted tire, he said, Can -- she can show you where the shop
8 is blah, blah, blah, this is what I recall, this has been a
9 long time ago, what year was that? Do you rem -- can you
10 even tell me what time of year that was?

11 Q When'd you go to the shop?

12 A I went to the shop after we picked his wife up.

13 Q Okay, and you got the transmission and no drugs were
14 exchanged, right?

15 A No drugs were exchanged.

16 Q Okay, and you've heard and we -- you just testified
17 that you had this information on these Green Dot cards and
18 all this information, you had so at one point in time,
19 right?

20 A Yeah.

21 Q And you said why keep the receipts, well why do you
22 think you need to keep the receipts?

23 A Why would I keep the receipts?

24 Q Do ya think it would be helpful to prove that what
25 you're testifyin' to today is the truth?

1 A Okay, well, I never intended on being caught, okay. I
2 never intended on getting caught. So why would I keep
3 receipts to catch myself up?

4 Q You coulda simply told law enforcement, law enforcement
5 how to get that information, right? They can subpoena it,
6 correct?

7 A I don't understand what you're talkin' about.

8 Q You coulda gotten their help to get that information,
9 right?

10 A How after I've already thrown everything away?

11 Q By callin' the companies that monitor the stuff: Green
12 Dot company, Verizon ---

13 A Do you think ---

14 Q --- AT&T ---

15 A --- Green Dot company, do you think Ve -- okay, call
16 Verizon and see if you can get. This what I know for a
17 fact. Can you call Verizon and see if you get prepaid, uh,
18 cell phone records? I don't think that you can.

19 Q Okay, the the the point is you didn't do that, correct?
20 Thank you. No further questions.

21 THE COURT: Anything else for this witness?

22 MR. PAULING: No further questions, Your Honor.

23 THE COURT: Ma'am, you can step down.

24 THE WITNESS: Thank you.

25 (Whereupon, the witness left the stand.)

1 THE COURT: You got another witness for us?

2 MR. UNDERWOOD: Yes, Your Honor. State calls -- I'm
3 sorry.

4 THE COURT: Oh, I'm just standin'.

5 MR. UNDERWOOD: Alright, Your Honor, State calls
6 Charles Norman Trebuchon.

7 THE COURT: Ladies and gentlemen, if anybody needs a
8 break before the end you let me know but as I said yesterday
9 now if you wanna stand, stretch your legs a little bit, go
10 right ahead.

11 THE COURT: C'mon forward and be sworn, sir.

12 (Whereupon, the witness came forward.)

13 THE BAILIFF: Put your hand on the Bible, raise your
14 right hand.

15 CHARLES NORMAN TREBUCHON, having been
16 first duly sworn, testified as follows:

17 THE COURT: Thank you. Be seated, please.

18 DIRECT EXAMINATION BY MR. UNDERWOOD:

19 Q Mornin', Mr. Trebuchon.

20 A Mornin'.

21 Q Please introduce yourself to the jury, tell 'em a
22 little bit about who you are, where you're from.

23 A I'm Charles Trebuchon from, uh, I'm from Easley, South
24 Carolina.

25 Q Have you lived in this area your whole life?

1 A Uh, yes, sir.

2 Q How far'd you go in school?

3 A I graduated from high school. I went to Greenville

4 Tech, graduated and, uh, got certified IN HVAC.

5 Q And how did you get involved with drugs?

6 A Uh, pretty much, I mean, my parents did drugs and one

7 time I just, uh, I'm I'm doin' drugs for a long time.

8 Q What what's a long time?

9 A I mean, since, uh, probly about 15 or 16, just kind --

10 not hard core 'til about 18 though ---

11 Q And ---

12 A That's all.

13 Q --- how old are ya now?

14 A Uh, I'm 30.

15 Q When'd ya start doin' more hard core drugs?

16 A Uh, probly 'bout 18, ni -- 18, 19.

17 Q What kinda drugs were those?

18 A I smoke, uh, really just meth and, uh, cocaine.

19 Q You know Javin Adams?

20 A Yes, sir.

21 Q How do you know him?

22 A I've known him, uh, pretty much, uh, since I was a

23 little kid, we went to school together, my parents were

24 friends, stuff like that.

25 Q Did ya ever have any involvement with him concerning

1 methamphetamine?

2 A Yes, sir.

3 Q What was that?

4 A I, pretty much -- uh, well, I mean, we we did it
5 together, you know, a long time too but pretty much, uh, he
6 got on house arrest a while back and, uh, needed me to, uh,
7 you know, help him out with sumtin', uh. He he didn't have
8 a driver's license, couldn't leave and I was, uh, drivin'
9 for him.

10 Q And where were you living at the time?

11 A Uh, at the time I was livin' at [REDACTED], uh, right right
12 before that, uh, [REDACTED] Road at Easley at my grandma's
13 house, she had just died, but directly after that I moved in
14 with him.

15 Q So you -- with with him being Javin Adams?

16 A Yes, sir.

17 Q Who else lived there?

18 A Uh, hold on a minute, Nate' Nate' and, uh, his son.

19 Q What period a time is this we're talkin' about when you
20 started, uh, bein' involved with him and drugs?

21 A Man, uh, I don't, I don't -- I'm sayin' that's gonna
22 be, uh, I don't, I don't re -- uh, know like the exact, I
23 know it was, uh, summer time 'cause -- you need like exact
24 month and stuff or...

25 Q To the best that you can remember.

1 A I'm I'm gonna say about two years ago maybe, uh, it was
2 like towards the summertime. Uh, I know, right I stayed
3 with it for about two months and I know right after I went
4 to court I went on house arrest, and I know I started that
5 in October so ---

6 Q Okay.

7 A --- I'd say.

8 Q Now when when you got involved with doin' this, is this
9 when Javin was on house arrest?

10 A Correct, yeah.

11 Q Okay, how did you get involved with working with him
12 and methamphetamine?

13 A Uh, he knew pretty much as he was, uh, sellin' dope
14 and, uh, he was sellin' methamphetamines and, uh, that's
15 some -- whoever was helpin' him out before, that I don't
16 know the, I don't really know the situation, uh, he just, he
17 knew I didn't have a job, needed some money and he, uh, gave
18 me opportunity to -- asked me if I wanted a job and work
19 there to do that to make some money.

20 Q Alright, now what exactly did you do for Javin?

21 A Just, uh, all I did was, uh, got in the car and, uh,
22 drove down, drove just drove to 85 or drove 85 to Georgia,
23 uh, and, uh, you need the whole thing I guess ---

24 Q What about this: When you went to Georgia, did you go
25 by yourself?

1 A Uh, not first, uh, at first I went with, uh, Nate'.

2 Q Nate', that's Nate' Bashaw?

3 A Yeah.

4 Q And why were you going with Nate'?

5 A Beca -- uh, because, uh, she was, uh, she knew him and
6 I guess she knew the person where we were goin' to to get
7 the the methamphetamines like cuz I didn't know him or
8 anything like that, I was just drivin', oh, because she
9 didn't have a driver's license to go.

10 Q Okay, so so you drove for her since she didn't have a
11 license?

12 A Correct.

13 Q Alright, do you remember where in Georgia you went?

14 A Uh, yeah, uh, let's see, uh, I think I know you go, uh,
15 I think it was Peachtree exit maybe or Peach sumtin',
16 sumtin' like that, uh, was a condo, a little little
17 apartment, you know. I went to, uh, I went with her I went
18 there but I've been to sev -- to a couple different places.
19 You know, I went to a house one time too but with her mostly
20 it was, uh, a little apartment, ya know, you go upstairs but
21 I couldn't tell you what road or nuttin' like that. I mean
22 I don't know much about Atlanta, and I know I got -- it's
23 real close to to Gwinnett County 'cause I'm sayin' I got
24 pulled over the first time I went down there like directly
25 when I left there and it was still in Gwinnett County.

1 Q Alright, tell me about that ---

2 A I got ---

3 Q --- how'd you get pulled over?

4 A --- I got pulled over for followin' too close is what
5 they said and, uh, I had 4 ounces in the car then and, uh,
6 it got searched, everything but they didn't find nuttin' so
7 and that was it.

8 Q Was Nate' with you at that time?

9 A Yeah, yeah, yeah. Yeah, she gave a fake name and stuff
10 so they didn't know not necessarily, I I don't know,
11 whenever they run her name. So...

12 Q Okay, but you weren't -- the dope wasn't found?

13 A No, no, it just -- they didn't.

14 Q Were there any other times you got pulled over?

15 A No.

16 Q Now when you were goin' to to Georgia, did you know
17 where you were goin' or did Nate' tell you where to go?

18 A Uh, she, uh, until we pretty much like road for road,
19 ya know, she told me what exit we went where we were goin'.

20 Q Did she ever give you an address?

21 A No, no, no.

22 Q Was it kind of a turn-by-turn?

23 A Kinda, yeah, pretty much, yeah and then, you know,
24 you'd call like after, uh, after that, uh, I'd call, uh,
25 when I got down there and found out what, you know, what the

1 deal was, sometimes you have to wait, go to the mall,
2 whatever, you know, stuff like that.

3 Q And how many times did you drive -- well how often did
4 you drive Nate' down to Georgia to pick up dope?

5 A I'd say, uh, I mean, at least a dozen, I mean, half a
6 dozen to a dozen like with her and I went by myself a few
7 times but I'd say, you know, around a dozen, twelve, sumtin'
8 like that.

9 A Who was actually -- when you were going down with Nate'
10 ---

11 A Um-hum.

12 Q --- who was actually making the drugs transactions?

13 A That that was her her and him and then, I mean, I just
14 sit in the livin' room on the couch and they'd go in the
15 kitchen. I had nuttin', I didn't do, you know, did none of
16 that. Like I tried, you know, I mean, the fir -- when I wa
17 -- when I was goin' with her, I I I think I tried some a
18 couple times but most of the time I wouldn't even do any of
19 it so, ya know, drive back and I wouldn't be so nervous or
20 whatever drivin' back. So, but they'd go in the kitchen and
21 do all that, I didn't.

22 Q Now what about, uh, when you went down without Nate',
23 were you by yourself or was someone else with you?

24 A No, I was by myself.

25 Q Were you going on your own or you going for ---

1 A No ---

2 Q --- someone else?

3 A --- it was, uh, for for Javin. It was his money, his
4 car.

5 Q And how many times did you go down by yourself?

6 A I wanna say twice.

7 Q Now when you were going with Nate', do you know how
8 much dope she was buying each time?

9 A Uh, usually, yeah, uh, usually almost -- I think the
10 first time it mighta been, uh, mighta mighta been a ounces,
11 I can't, I I don't swear that 'cause I really don't know,
12 you know, it's been a while, like I said, I was doing a
13 lotta drugs but most the time it was, uh, 4 ounces.

14 Q Usually 4 ounces?

15 A Yeah.

16 Q And that's when you were with Nate'?

17 A Yeah, it was ---

18 Q How would ---

19 A --- it was, it was 4 ounces with me too, I never got no
20 more than 4 ounces.

21 Q Do you remember how much you were payin' for 4 ounces?

22 A Uh, wanna say, uh, wanna say either 3900 or 5900. It
23 mighta been 5900 though, it's been a while.

24 Q Do you know -- well who was supplying the the drugs
25 down in Atlanta?

1 A Um, that would be, uh, some, uh, I don't know,
2 Spanish-speaking Mexicans or but like they, you know what
3 I'm sayin'? Which -- who like ---
4 Q Who did you actually ---
5 A --- well who who handed me drugs ---
6 Q Yeah, ---
7 A --- I mean, who ---
8 Q --- who handed it to you?
9 A That would be, uh, An -- uh, Antonio, uh, Ant is what
10 they ---
11 Q What ---
12 A --- call him.
13 Q --- what did you know his name as?
14 A Ant.
15 Q And when you got the drugs, was it actually directly
16 from him hand to hand?
17 A Correct, yeah, yes.
18 Q Do you know where he got the drugs?
19 A A Mexican is all I know is, you know.
20 Q Did you ever see any of these Mexicans?
21 A No, I didn't.
22 Q How did you know he was gettin' it from them?
23 A Uh, 'cause, uh, he talked Spanish a lot on the phone,
24 uh, and, uh, it was just pretty much like -- well, one time
25 I think this first or second time when I, when I went down

1 there we went and saw him, uh, we drove to somewhere and
2 there was the first Mexican and it was all Mexicans in the
3 apartment complex I was at. So I just kinda figured, you
4 know, that's ---

5 Q Now in all the times that you went down to Atlanta, was
6 it ever your money that was buying drugs?

7 A No.

8 Q Did Javin pay you to go down there?

9 A Yeah.

10 MR. ARIAIL: Objection ---

11 A Yes, sir.

12 MR. ARIAIL: --- Your Honor, he's still leading.

13 THE COURT: Overruled, go ahead.

14 Q Did did he pay you to go down there?

15 A Yes, he did.

16 Q How did he pay you?

17 A Uh, first he, uh, at first it was, uh, he was just
18 givin' me, uh, dope and, uh, and then givin' me dope but,
19 you know, he said I wasn't really sellin' it like that and I
20 couldn't make no money, wouldn't help me out, I was just
21 really lookin' to get out so he started payin' me cash after
22 that ---

23 Q Okay, so you said you weren't sellin', were you a a
24 dealer?

25 A No, I mean, well I I was tryin' to be but livin' with

1 Javin, you know, when they're sellin' 4 and 8 ounces every
2 day or two it's kinda hard sellin', ya know, drugs 'cause
3 they're sellin' 'em all. So...

4 Q So the the drugs that he gave you what did you do with
5 'em?

6 A I did 'em, uh, ---

7 Q So you were using the drugs?

8 A Yes, sir.

9 Q Do you know of anyone else that was goin' down to
10 Atlanta to pick up dope from Ant?

11 A Uh, like drivin' likewise or, I mean, I don't know,
12 I've heard, I mean, I I know that like you mean when I left,
13 when I went to house arrest it was Michael Parker and
14 another guy that was drivin' and before that it was another
15 guy. But other than that really -- I mean, I know there's a
16 lot of guys, as you can see all these people comin' up here,
17 there's just a lotta people goin' down there, you know, but
18 I don't, I couldn't just sit here and tell you I know they
19 did 'cause I don't know, I mean, I just know what we were
20 doin'.

21 Q And do you know a guy named Chad Moore?

22 A Yep.

23 Q How do you know him?

24 A Uh, that's, uh, that's how Javin met, uh, Ant but I've
25 known him a little bit longer than that, I've known from,

1 you know, just we living around each other but, uh, and, uh,
2 he was, uh, let's, see he stayed at J -- right when he got
3 outta jail is when we went to jail that's when Javin started
4 goin' or talkin' to Ant or whatever but then when he got
5 outta jail he came and stayed with Javin for a little while
6 so...

7 Q And do you know somebody named Norman Bergholm?

8 A Yeah.

9 Q How do you know him?

10 A Um, also, uh, Javin, um, ya know, he was another person
11 that we was just includin' myself of, just, yeah, he would
12 come and get dope or we would use his money or Javin would
13 use his money, you know, to go and sellin' dope, just in
14 sellin' dope.

15 Q And so are you sayin' that, you say "use his money" ---

16 A Well no, ---

17 Q --- what do you mean by that?

18 A --- I I told him -- you need to rephrase that. Uh, he
19 would just go, he would buy dope, you know, and then, you
20 know what I'm sayin, he was just gettin' a lotta the, half
21 of what we would get some most of the time he would get it
22 or ---

23 Q So he was buyin' it ---

24 A --- but he was buyin' from Ja -- yeah, Javin and he
25 wasn't goin' to Atlanta or there, I mean, as far as I know,

1 I mean ---

2 Q So at the time you were there he was buying directly
3 from Javin?

4 A Correct.

5 Q Okay, have you ever seen Ant come to South Carolina?

6 A Yes, I have.

7 Q When was that?

8 A Uh, he brought a, like it's been, let's see, he bought
9 a car -- no, I I tell you I, he come once, uh, once one
10 night 'cause I, one time when I was down there I took a girl
11 out, this girl I driving in a car, okay well I left her down
12 there and she stayed with him and spent the night when I
13 come back or me take him back and then, uh, he brought her
14 back the next day and stayed at, uh, Javin's apartment with
15 us and, uh, uh, then he went back and, uh, I thought they
16 try -- I went and got a car from him one time. But well now
17 he's come, I wan -- yeah, I wanna say he come to South
18 Carolina one time. He stayed, he stayed the night or no,
19 yeah, he stayed the night at Javin's but he brought that
20 girl back, Christy, down there.

21 A Did he, did he ever bring any drugs to South Carolina?

22 A That time he did, yeah.

23 Q How much did he bring?

24 A It woulda been, uh, I wan -- I wanna say, I don't know
25 why but I wanna say just a ounce.

1 Q And where did he bring it to?

2 A To just straight to the apartment, uh, ---

3 Q Javin's apartment?

4 A Yes, sir.

5 Q And where was that? What town was that apartment in?

6 A Um, it's in Powdersville right off 85.

7 Q In in Anderson County?

8 A Yeah, yes, sir. Matter of fact I'm sure I think he

9 even took ounce back 'cause it wasn't any good or sumtin'.

10 Q The same ounce or a different ounce?

11 A No, the same ounce. Sometimes it didn't have no legs

12 on it, it wasn't really good, so I think he took it book.

13 Q Now, Mr. Trebuchon, do you remember -- when was the

14 last time that you went down to Atlanta to pick up drugs?

15 A The last time would be, uh, it was right before I went

16 to court, uh, hum, I mean, I mean, I I really, I -- it's

17 gonna be I would say right right before October, uh,

18 whatever year that was all that.

19 Q Well let me ask ya this question, and you said go to

20 court, is that when you got put on house arrest?

21 A Yes, sir.

22 Q Is that the reason why you stopped going?

23 A Yes, sir. Yeah, yeah, that's why.

24 Q Alright, now when you got off of house arrest at that

25 point were you still involved with Javin in buying and

1 sellin' drugs?

2 A The whole time -- well, see, well now the last time I
3 went to Atlanta, uh, when I come back me and him we al -- we
4 already started havin' problems and, uh, I didn't, I pretty
5 much kinda robbed Javin when I went back, I didn't give him
6 all his drugs. So we kinda had a fallin' out for a little
7 while but, uh, I was still pretty much somebody would still
8 bringin' Mi -- Michael was, that guy, the other guy that was
9 drivin' was still bringin' me drugs while I was on house
10 arrest, yeah, but other than just like personal, you know,
11 just here and there buyin', you know, get some drugs, that
12 was it and ---

13 Q It was just for your personal use?

14 A Yeah, 'cause he was there really for for a little
15 while, he was a little mad 'cause I owed him a lotta money.

16 Q After that did you end up, uh, talkin' with law
17 enforcement about your involvement?

18 A Yes, I did or no -- yes, I did, yeah. I'm tryin' to
19 figure out if that was before but that would be -- no.

20 Q Do do you remember in December of 2011 ---

21 A Oh, okay, yes, yes, yeah. Yeah, when I got ar -- yeah,
22 when I got arrested in, uh, yes, sir, I did, ---

23 Q And ---

24 A --- that was the second time I talked to him about, uh,
25 August or they had questioned me about all that.

1 Q Alright, and -- did -- at that time in December of
2 2011, did you give information to law enforcement?

3 A Uh, yes, I did, I just, uh, I at that -- I looked at a
4 lineup on -- yeah, I did.

5 Q Alright, and while you were there did they show you a
6 photo lineup?

7 A Correct.

8 Q How did, how did they present this photo lineup to you?

9 A Pretty much they just, uh, well they, uh, they arrest
10 me on another charge but, uh, they took me up or they took
11 me there and showed me the lineup and, uh, or they just
12 showed me a piece a paper right there and, uh, asked me, uh,
13 asked me, uh, if I recognize anybody on that piece -- on
14 that lineup and, uh, at that point I was like, you know,
15 what am I bein' charged for 'cause I still, you know, I
16 didn't know, I I still, I aint been charged with like all
17 this, this stuff, it's just for sumtin' else, buy anyway
18 they had already to me before, anyway I just -- they asked
19 me about the pictures and, uh, they was -- if I knew one of
20 'em and one of 'em was Ant and that was all, you know, ---

21 Q Now did ---

22 A --- so...

23 Q --- did did you make any markings on that photo lineup

24 ---

25 A Yes.

1 Q --- to indicate who was Ant?

2 A Yes, I did.

3 Q Did you initial it?

4 A Yes, I did.

5 Q Showing you State's Exhibit No. 5, do you recognize
6 that?

7 A Yes, sir.

8 Q What is it?

9 A That's the same paper they showed me that day, ---

10 Q Alright, and are those ---

11 A --- when I was there.

12 Q --- are those your initials on it?

13 A Correct, yes, they are.

14 MR. UNDERWOOD: Your Honor, at this time seek admission
15 of State's 5.

16 THE COURT: Any objection?

17 MR. ARIAIL: No objection, Your Honor.

18 THE COURT: Alright, be so admitted.

19 (State's Exhibit No. 5, photo lineup, admitted into
20 evidence.)

21 (Whereupon, Exhibit No. 5 was published to the jury.)

22 BY MR. UNDERWOOD:

23 Q Thank you, Mr. Trebuchon, please answer any questions
24 defense has.

25 A All right.

1 THE COURT: Mr. Ariail.

2 MR. ARIAIL: Thank you, Your Honor, may it please the
3 Court.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION BY MR. ARIAIL:

6 Q Mr. Trebuchon ---

7 A Yes, sir.

8 Q --- you just indicated that you, I think it's one of
9 these right here, that you're, uh, identification?

10 A Yes, sir.

11 Q So you signed that and, uh, Mr. ---

12 A I didn't sign it, I initialed it but, yeah.

13 Q You did that on 12/9/2011?

14 A Yes, sir.

15 Q And that was done and Mr. Ta -- are you I guess was in
16 position three, is that it right there, is that ---

17 A Yes, sir.

18 Q --- the one? You, uh, you know he has an identical
19 twin brother?

20 A Uh, I I -- no, I didn't know that.

21 Q You didn't know that. Have you ever dealt with his
22 twin brother?

23 A No, sir, but, I mean, no, sir.

24 Q You see anybody in the courtroom today that looks like
25 his twin brother?

1 A Yeah, that man right there (indicating) does ---
2 Q That ---
3 A --- without a beard but I'm sayin' when that -- he has,
4 you know, he always had a big 'ol beard that hung. So
5 that's ---
6 Q Alright ---
7 A --- it's a a big difference.
8 Q --- but you don't know that his brother Anthony ---
9 A Well, I mean ---
10 Q --- has a beard at one time, right?
11 A Yeah, I you're correct. You're right.
12 Q Okay, so, ya know, you're not one hundred percent sure
13 that this man right here ---
14 A Well, I mean, he's got a -- go ahead, I'm sorry.
15 Q Well let's just say if he's got a beard, you're not one
16 hundred percent sure that this is Ant Antonio Tate, right?
17 A Correct.
18 Q Uh, you're not one hundred percent sure that's the man
19 you bought drugs from, right, or got drugs from, right ---
20 A I mean ---
21 Q --- one hundred percent?
22 A Well, I mean, I don't know, does that dude speak
23 Spanish?
24 Q I I'm just askin' ---
25 A Yes, sir.

1 Q --- you're sittin' here right now, if you're askin' ---

2 A No, no, ---

3 Q --- me ---

4 A --- I'm not, you're right, I'm not hundred percent no
5 way.

6 Q That's all I need. Thank you. Um, it -- when you went
7 down with I think -- when we just heard from Ms. Nate'
8 Bashaw, ya'll are good friends, right?

9 A No.

10 Q Not really?

11 A No, sir, not at all.

12 Q Okay.

13 A I ride with her for a lot of, I mean a bunch of
14 methamphetamines last I -- where all that happened, I mean,
15 we kinda -- I was worried about even seein' 'em here to be
16 honest.

17 Q Okay.

18 A --- today, you know.

19 Q Okay. You don't have any connection with them anymore?

20 A Nope.

21 Q Okay, um, where are you, where are you -- are you
22 employed now?

23 A Uh, yes, sir, I am.

24 Q Okay, and, uh, you hadn't had any involvement, have
25 you, have you met with law enforcement about your testimony

1 today?

2 A Uh, just briefly a while ago here, uh, but that's it.

3 Q When was that?

4 A A while ago, they just -- oh, law -- I don't know, is
5 he a law enforcement, I mean I don't know.

6 Q Any of these gentlemen seated right here (indicating).

7 A Yeah, yes, sir, he just -- well, I met with him a while
8 ago just ---

9 Q Di ---

10 A --- to go over my, what I wrote a long time ago. It's
11 been two years ago.

12 Q Can you tell me which one you're point to?

13 A This guy right here (indicating).

14 Q The gentleman that just did the ---

15 A Yes, sir.

16 Q --- questioning ---

17 A Yes, sir.

18 Q --- Mr. Underwood?

19 A Yes, sir.

20 Q So when'd you talk to him?

21 A Uh, five minutes ago.

22 Q Five minutes ago before you came in the courthouse --
23 courtroom?

24 A Before that, yeah.

25 Q Did ya'll talk about what's happened here?

1 A No, a thing, he just showed me a piece a paper, wanted
2 to make sure that that was correct that I I didn't have no
3 discrepancies about what I wrote and what I signed.

4 Q Okay. Now in regards to that and you've, I think you
5 did a statement previously, is that the -- what ya'll went
6 over?

7 A That's correct.

8 Q Is this the document right here (indicating) you did it
9 on December 9th, 2011, is that it? See if you remember
10 that.

11 A Yes, sir, ---

12 Q Okay.

13 A --- that's what I just looked at.

14 Q Okay, so you looked at this and went went over it?

15 A Yep.

16 Q Now in this document I think you said you go down,
17 you're with Ms. Bashaw who we heard, who sat on the stand
18 here and testified ---

19 A Uh-huh.

20 Q --- um, and in this you don't provide any information
21 about being pulled over, do you?

22 A No, I mean, not at, not at all.

23 Q Okay, but you went down there, you made ---

24 A That ---

25 Q --- a trip and got pulled over, is that right?

1 A That was the very first trip, yes, sir.

2 Q That you just got pulled over one time, right?

3 A Yeah, the first trip.

4 Q First trip.

5 A Well, no, I got pulled over actually on the -- when I

6 got, after I got pulled over and they didn't find the drugs

7 then, I went to the, uh, Converse outlets, threw up in the

8 trash can 'cause I thought I was about to go to jail for the

9 rest of my life, come outta there and got pulled over again.

10 Q Okay, and they didn't find any drugs in the ---

11 A Same ---

12 Q --- car.

13 A --- thing. Nah, he left. He just wrote me a warning

14 ticket and he let, let me go.

15 Q Did you have any drugs in the car at that time?

16 A I had 4 ounces of meth in the car under the backseat.

17 Q In the backseat and they couldn't find it.

18 A Nah, I I mean, nah.

19 Q Okay, and that that time ya'll went down, that was the

20 only time you got pulled over?

21 A Yeah.

22 Q Okay, now you've been down and and I think -- so how

23 many times you think you've been down to Atlanta?

24 A 'Bout, you know, a dozen, a good, I mean, about a

25 dozen, I don't -- give give or take you know.

1 Q You know any of these exits you're gettin' off of? I
2 think you said the Peachtree exit was one.

3 A Yeah, always and uh, I know, uh, 'cause there's a mall
4 right there, you know what I'm sayin', we always went and
5 ate at Chick-Fil-A or some kinda place but that was one. He
6 had a house that I went to where his wife and his kids were
7 at and another one somewhere but I can't, you know, I know
8 it was Peachtree exit and it was always 'cu I always had to
9 call him every time I came back, let him know we was out at
10 Gwinnett County at a certain exit, and I can't tell you now,
11 but, ya know, it's been a while now.

12 Q What's his wife's name, did you meet her?

13 A Uh, no, I probly -- I don't know, I ---

14 Q You said wife and kids there, what what ---

15 A There was ---

16 Q --- kids?

17 A --- kids there, yeah, there was kids there and ---

18 Q How many kids?

19 A I don't know. I mean, I counted like I think two come
20 and got off the school bus maybe.

21 Q Okay. Do you, do you know where -- so they're gettin'
22 off the school bus ---

23 A Right.

24 Q --- when you're there?

25 A Yeah, yeah, they just got outta school.

1 Q Where where was this place that you were s ---

2 A This is when I went and picked up a car from him. I
3 drove Javin's car down there and got another car and took
4 back to Javin, a white Chevrolet sumtin'.

5 Q Okay, so you did a a transfer of a car for Javin too?

6 A Yeah.

7 Q Okay, so you go that car and you went to a house?

8 A A car and the, uh, Ant -- yeah, it was his, yeah, it
9 was his wife's house and kids.

10 Q Wife and kids, you know was that the same location
11 where you were goin' to pick up the drugs?

12 A No, that's the only time, one and only time I ever went
13 to that pl -- that that place, ---

14 Q Okay ---

15 A --- that ---

16 Q --- and ---

17 A --- that ---

18 Q --- was anybody with ya at that time?

19 A No, I was by myself.

20 Q Okay, so you you went to another loca -- you know what
21 exit that's on or location?

22 A No, I just -- they always had to call and just he'd
23 tell me where to go. He actually he met me I think at a
24 store, a convenience store down the street or sumtin'.

25 Q So, we got a wife, we got kids, people are livin' in

1 that house ---

2 A Correct, nice house. Two-story house, uh, ---

3 Q Two-story house ---

4 A --- very nice house, yeah, nice neighborhood.

5 Q Well you -- but we can't ha -- you don't have an

6 address?

7 A I'm I'm not from -- I'm from Easley, man, I don't know.

8 Q Well, I mean, I understand but do you think it would be

9 important to tell this jury ---

10 A Right, yeah ---

11 Q --- the address ---

12 A --- I mean, I do.

13 Q --- of the house of a kno -- or of an alleged dealer?

14 A Correct, but that's -- well, I mean, I don't know that

15 -- I I gue -- I guess, I mean, address, I mean, people sell

16 drugs at parkin' lots every day, right?

17 Q Yeah, yeah, but but we're -- you're goin' to a house

18 from what I ---

19 A I don't ---

20 Q --- understand ---

21 A --- I mean, I don't know the address, sir.

22 Q Okay, but, I mean, this where I'm goin' with this is

23 that you're goin' to an apartment and nobody's at this

24 apartment and, you know, we've heard this trap house or ---

25 A Yeah, ---

1 Q --- this ---
2 A --- you understand it was trap spot ---
3 Q Yeah, trap spot, whatever, I mean, that could be used
4 as a trap spot, right, ---
5 A Not the ---
6 Q --- so ---
7 A --- house where the kids was at.
8 Q Well that's what I'm sayin' so ---
9 A That's why he didn't -- correct, only reason I met her
10 was 'cause it was about a car too and I can't remember
11 exactly where I was at, it was the only time and like I
12 don't know, I went to one garage, uh, sat in the car, and he
13 talked, hung out whatever for a minute, uh, his kids come
14 through, that's why I I remember the kids is because the
15 kids come through the garage and then we didn't do the -- ya
16 know, then he handed me the dope and a matter a fact, I
17 don't know, I I think he might have put it, hid it in the
18 car for me or somethin' but it was his car that I was takin'
19 to Javin, Javin was gonna but there was a kid there.
20 Q Right, but I mean ---
21 A I don't know the house ---
22 Q --- but we have a residence and we ---
23 A I ---
24 Q --- coulda looked up the address, we coulda seen who
25 owned the house?

1 A Why would we do that?

2 Q But it would prove that you went to meet ---

3 A Oh, oh, oh, ---

4 Q --- the individual ---

5 A --- I understand ---

6 Q --- you're ---

7 A --- I understand ---

8 Q --- sayin' is a known drug dealer, right?

9 A Correct ---

10 Q Right?

11 A --- I coulda, yeah.

12 Q Okay, I mean, we coulda verified that, right?

13 A Yes, sir. Yes, sir.

14 Q Okay, and to your knowledge you don't know what that

15 address is ---

16 A Uh-uh.

17 Q No? Okay, you do -- you don't even know where the the

18 the the place there was an apartment you were pickin' drugs

19 up, do you know that a --

20 A I could take you to it, uh, ---

21 Q But you can't tell me an address.

22 A No, sir, couldn't.

23 Q Now you also got this phone, I guess you got his phone

24 number too or phone number, is that right?

25 A I had it, yeah ---

1 Q Ya had it?
2 A Yeah.
3 Q You know who that number is?
4 A Couldn't tell ya now, it's been ---
5 Q You get ---
6 A --- how long it's been.
7 Q You got any phone records?
8 A I mean, I'm sure I can get if you pull 'em off from my
9 phone company. You know, Verizon Wireless, two years ago or
10 whatever it would be.
11 Q So it be two years, we'd pull those up, but you didn't
12 bring 'em today?
13 A No, I mean, I don't -- heck, I don't know what -- I
14 have trouble rememberin' yesterday, I don't know, I don't
15 even know the correct -- no, I don't got my phone records.
16 Q So you just told the jury you have trouble rememberin'
17 what happened yesterday, is that right? I mean, that ---
18 A That's right, I did say that, sir.
19 Q Okay, so how can you remember what happened three years
20 ago if you're havin' trouble rememberin' what you're doin'
21 yesterday?
22 A Got me on that one, sir.
23 Q Okay. Now you have a criminal record too, correct?
24 A Yes, I do.
25 Q And it's for financial transaction card fraud, is that

1 right?

2 A Yes, sir.

3 Q And that's four counts, is that correct?

4 A Yes, sir.

5 Q Well okay.

6 A That's a long time ago though yes, sir, got that.

7 Q You bear with me one second.

8 A Alright.

9 Q Thank you. No further questions.

10 THE COURT: Anything else for this witness?

11 MR. UNDERWOOD: Nothing further, Your Honor, we ask he
12 be excused.

13 THE COURT: Alright, sir, you can step down.

14 (Whereupon, the witness left the stand.)

15 THE COURT: Do you have any objection to him -- his
16 being excused?

17 MR. FARNHAM: No, Your Honor.

18 MR. ARIAIL: No.

19 MR. UNDERWOOD: Uh, Your Honor, at this time the State
20 calls Warren Chastain.

21 (Whereupon, a discussion was held off the record.)

22 (Whereupon, the witness came forward.)

23 THE BAILIFF: Put your left hand on the Bible, raise
24 your right hand.

25 WARREN BRENT CHASTAIN, having been

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. UNDERWOOD:

3 Q Afternoon, Mr. Chastain, could you please state your
4 full name for the record?

5 A Warren Brent Chastain.

6 Q How old are you?

7 A Twenty-nine.

8 Q How far'd you go in school?

9 A GED.

10 Q How'd you first get involved usin' drugs?

11 A Uh, through friends.

12 Q What kinda drugs did you start off using?

13 A Marijuana and pills.

14 Q Did you ever start to use anything else?

15 A Meth.

16 Q When'd you start usin' meth?

17 A Uh, I was 18.

18 Q And you say you're 29 now?

19 A Yes, sir.

20 Q Have you been using meth pretty much that whole time?

21 A Yes, sir.

22 Q Did you ever get involved with selling methamphetamine?

23 A Yes, sir.

24 Q How'd you get involved with selling methamphetamine?

25 A At first I got involved with sellin' it to have enough

1 to do and then I saw money in it so I just kept on goin'.

2 Q So you started out gettin' just enough to buy your own
3 drugs?

4 A Yes, sir.

5 Q And then you started to make money after that?

6 A Yes, sir.

7 Q Now when you use meth, what method do you use to do it?

8 A I smoke it.

9 Q Is that the only method you use?

10 A Yes, sir.

11 Q Would you consider yourself an addict?

12 A Yes, sir.

13 Q Now, Mr. Chastain, you've been in trouble with the law
14 before, is that right?

15 A Yes, sir.

16 Q Uh, have you been convicted, uh, for distribution of
17 meth before ---

18 A Yes, sir.

19 Q --- and also for trafficking in?

20 A Never trafficking.

21 Q Okay, but you've been convicted for distributing
22 distributing meth before?

23 A Yes, sir.

24 Q And you've also had possession of other controlled
25 substances before?

- 1 A Yes, sir.
- 2 Q And, in fact, you were indicted by the State grand jury
3 on a meth trafficking conspiracy, is that right?
- 4 A Yes, sir.
- 5 Q Is that the same conspiracy involving Antonio Tate or
6 is that a different conspiracy?
- 7 A I I'm not sure.
- 8 Q Alright, uh, the the people that you were indicted with
9 in your particular group ---
- 10 A It's not ---
- 11 Q --- do you remember any of their names?
- 12 A Yes, sir.
- 13 Q Who are they?
- 14 A It's Adrian Hernandez, Philipe Sandoval, Gordo,
15 Rosario, Nevel Martinez, Jason Griffin, and Kim Rushton.
- 16 Q Okay, and did you ever have dealings with Jason Griffin
17 as far as methamphetamine?
- 18 A Yes, sir.
- 19 Q Okay. Uh, now as far as that indictment, uh, have you
20 already pled guilty?
- 21 A Yes, sir.
- 22 Q And did you plead guilty to a lesser charge?
- 23 A Yes, sir.
- 24 Q And what's your understanding of the offer that you
25 were given, that ---

1 A Uh, ---

2 Q --- what you pled to?

3 A -- that it -- I was pleadin' to second offense
4 traffickin', uh, twenty-eight to a hundred grams and with a
5 State recommendation of twelve to fifteen.

6 Q And who's gonna be ultimately responsible for what your
7 sentence is, is it the State or is it the Court?

8 A I don't understand.

9 Q Okay. Is the State, me, am I the one that's gonna
10 sentence you or am I just making a recommendation?

11 A A recommendation.

12 Q Alright, who's the final decision up to?

13 A I believe it would be the judge.

14 Q Now do you understand that if you had been convicted of
15 the original charge you would have have faced a lot more
16 punishment?

17 A Yes, sir.

18 Q Uh, and it's your understanding that the recommendation
19 is for 12 to 15 years?

20 A Yes, sir.

21 Q Okay, but there's no promise of 12 to 15?

22 A Right.

23 Q What kinda deals did you have with Jason Griffin and
24 methamphetamine?

25 A I would, uh, buy or sell, be either from Jason.

- 1 Q Do you know where he was gettin' that meth from?
- 2 A Yeah, I believe I do, yes, sir.
- 3 Q Alright, was he always gettin' it from the same place?
- 4 A No, sir.
- 5 Q Okay. Have you ever -- well, let me put it to you this
- 6 way: Obviously you were using meth, how exactly did you get
- 7 involved with selling it? Who introduced you to selling it?
- 8 A A friend a mine, Ronnie Sweet.
- 9 Q And how did that come about?
- 10 A Uh, he just made it available and I knew people who
- 11 done it.
- 12 Q After that did you eventually find other sources to get
- 13 methamphetamine to resell?
- 14 A Yes, sir.
- 15 Q Have you ever left South Carolina to get
- 16 methamphetamine?
- 17 A Yes, sir.
- 18 Q Where did you go?
- 19 A Somewhere toward on the outside of Atlanta.
- 20 Q And were you goin' there to see somebody that you knew?
- 21 A No, sir, I would ride with, uh, somebody I knew down
- 22 there to see somebody that he knew.
- 23 Q And who who was it you were riding with?
- 24 A Brian Stegall.
- 25 Q And where did he take you?

1 A Uh, to a Waffle House first and then to a motel room.

2 Q What happened -- well when you got to the Waffle House,

3 who was there?

4 A Uh, Antonio.

5 Q Alright, and that -- you indicated the defendant

6 Antonio Tate?

7 A Yes, sir.

8 Q What what's he wearing?

9 A What was he -- I don't ---

10 Q No, what's he wearing right now?

11 A Uh, the white shirt and the tie.

12 Q Okay. Is that the same individual that you met with in

13 Atlanta?

14 A Well yes, sir, I -- who come and ate with me and Brian.

15 Q Okay. What happened after you got there at that Waffle

16 House?

17 A Uh, me and -- we ate and him and Brian talked, I went

18 and sat in the truck and me and Brian went to a motel room.

19 Q And where was that motel room?

20 A Uh, Super 8 I believe.

21 Q Okay, was it nearby?

22 A Yeah, it was close by.

23 Q What happened at the hotel room?

24 A Uh, me and Brian set there and we was waitin' on

25 somebody to come by.

1 Q Who were you waiting for?

2 A Uh, as far I know it was Antonio and some other guy.

3 Q Do you remember what the other guy looked like?

4 A He was Hispanic.

5 Q What happened when Antonio and the Hispanic guy got

6 there?

7 A Uh, him and Brian went in the bathroom and, uh, I had

8 done gave Brian my money that I was usin' to purchase meth

9 with and they come out and, uh, him and the Hispanic guy

10 left and Brian gave me what I bought.

11 Q And what did you buy?

12 A Uh, two ounces.

13 Q Of what?

14 A Meth.

15 Q Do you know how much Brian bought?

16 A No, he had his money plus somebody else's money.

17 Q Okay, but what was your share of what was bought?

18 A Two ounces. I bought 2 ounces for twenty-six hundred

19 dol -- \$1300 a piece.

20 Q So for \$1300 an ounce you bought 2 ounces?

21 A Yes, sir.

22 Q And you got those 2 ounces that day?

23 A Yes, sir.

24 Q What did you do with those 2 ounces?

25 A Brought 'em back to Greenville.

1 Q What did you do with 'em in Greenville?
2 A Broke 'em down and sold 'em.
3 Q Who'd you sell 'em to, do you remember?
4 A It's a variety of people I ---
5 Q Okay, all in the Greenville area?
6 A Yes, sir, Greenville, Pickens area.
7 Q So both in Greenville and in Pickens?
8 A Yes, sir.
9 Q Did you ever go back to Atlanta?
10 A No, sir.
11 Q Other than court appearances have you seen the
12 individual, uh, Ant that you bought the meth from?
13 A Have I seen him since then?
14 Q Yes.
15 A No, sir, I -- well I seen him, he come to, uh, Pickens
16 one time when I was at someone's house when he got there.
17 Q Whose house was it?
18 A Uh, Jason Griffin.
19 A Alright, and so you saw him at Jason Griffin's house,
20 do you remember when that was?
21 A No, sir.
22 Q Do you know if he brought any meth with him on that
23 trip?
24 A No, sir, I have -- I don't know.
25 Q Okay. Are there any other occasions that you've seen

1 him?

2 A No, sir.

3 Q When was it that you went to that Waffle House in
4 Atlanta and met with Ant to buy meth, do you remember when
5 that was?

6 A No, I was, uh, I guess it was during ya'lls
7 investigation 'cause I was dealin' with Melva mostly and,
8 uh, uh, that cheaper price then come to me as Brian brought
9 it to me and said, Look, I can get ya this for this if
10 you'll just ride with me.

11 Q Okay, so at that time you were dealing with, uh,
12 Maldonada Martinez ---

13 A Yes, sir.

14 Q --- and that's a a different conspiracy indictment
15 'cause you had a better price to go to Atlanta?

16 A Right, but I didn't like the the quality or what you
17 had to go through to to to get it and so I never went back.

18 Q What do ya mean what you had to go through to get it?

19 A Like, uh, as far as him havin' to, I, like I had to
20 give, first of all, I had to give Brian my money without me
21 seein' what I was gettin' to start off with and then, uh, we
22 had to go get a hotel room and wait for somebody to to come.

23 Q And is that, is that normally what you like to do when
24 you ---

25 A No, sir, ---

1 Q --- use?

2 A --- that's not what I like to do. I like to be able to
3 go and look at what I'm buyin', if I like it, give the money
4 and get it and go.

5 Q So is is the defendant here in court today, Antonio
6 Tate, the person you bought that meth from?

7 A Well I bought it from Brian Stegall who I believe got
8 it from him.

9 Q Did did you see, did you see him ---

10 MR. ARIAIL: Objection, Your Honor, asked and answered.
11 He's already gone through this.

12 MR. UNDERWOOD: I haven't ---

13 THE COURT: What's your ---

14 MR. UNDERWOOD: --- even ---

15 THE COURT: --- ques ---

16 MR. UNDERWOOD: --- asked the question yet, Judge.

17 THE COURT: Okay, what, I'm not sure what your question
18 is either.

19 BY MR. UNDERWOOD:

20 Q I I'm just gonna ask did you ever see them go somewhere
21 alone together?

22 A Yes, sir.

23 Q And then after that did Mr. Stegall have the drugs?

24 A Yes, sir, Stegall, he told me that he got it from him
25 but as far as seein' I can't ---

1 Q Okay, but they they were alone together and then he ---

2 A Yes, sir.

3 Q --- came back with the drugs.

4 A Yes, sir.

5 MR. UNDERWOOD: Nothing further, Your Honor.

6 THE COURT: Alright, Mr. Ariail.

7 MR. ARIAIL: Yes, Your Honor.

8 CROSS-EXAMINATION BY MR. ARIAIL:

9 Q Uh, you said they were alone, there was a, I guess you
10 said a Mexican there too, correct?

11 A Right.

12 Q Do you know that Mexican's name?

13 A No, sir.

14 Q But he went with 'em too, correct?

15 A Yeah, they all three went in the bathroom of the hotel
16 room.

17 Q Okay, so you don't know what was goin' on, what
18 happened there, you don't know where Brian got that? You
19 don't if he got it ---

20 A Right ---

21 Q --- from them ---

22 A --- now.

23 Q --- or if he -- you were in a different room, correct?

24 A Correct.

25 Q How long were ya in that different room?

1 A Uh, four or five minutes.

2 Q Okay. Now I -- it it -- have you had any conversations
3 with any other co-defendants in this case?

4 A Uh, no, not ---

5 Q It's just ---

6 A --- about ---

7 Q --- this ---

8 A --- this case.

9 Q Not about this case. Well you ---

10 A Well yes, we, uh, I've to 'em, yes.

11 Q You talked to another co-defendant back ---

12 A Yeah.

13 Q --- here?

14 A Yes, sir.

15 Q And did ya'll talk about that it was not Mr. Tate that
16 they were tryin' to, ya know, and convict here, that he was
17 bein' wrongfully charged?

18 A No, uh, I I made the statement in the, in the holdin'
19 cell that, uh, I've never personally bought dope from Mr.
20 Tate and that, uh, uh, I I didn't know too much I could
21 testify on 'cause I never personally and I didn't see him
22 buy the dope from him.

23 Q Who else was back there with ya, just who was the other
24 co-defendant that was back there?

25 A Norman.

1 Q Norm Bergholm.

2 A Yes, sir.

3 Q Okay. Uh, now did ya'll talk about a a Mexican Eddie?

4 A I believe Norman mentioned Mexican Eddie.

5 Q Okay, so you have Norman talked about Mexican Eddie,
6 was there any discussion, have you ever bought anything from
7 Mexican Eddie?

8 A No, I never.

9 Q Okay. Have you had any discu -- so you had a
10 discussion back here with, uh, Norman in regards to a
11 Mexican Eddie and did he talk about Mr. Tate about what he
12 believed about the, uh, whether or not he was, ya know,
13 shoulda been charged with this or whether or not he sold
14 drugs?

15 A No, to be honest when when Mr. Tate left it opened up,
16 when he was there he was talkin' to Mr. Tate, when Mr. Tate
17 left the cell, he was sayin' that, uh, that he did, he got
18 dope from Antonio, he got dope from here, he got dope from
19 wherever he could get it from at that time.

20 Q Okay. Now in regards to goin' down with Brian Stegall,
21 Brian Stegall's the one that you basically I guess only one
22 you dealt with, you've been down there one time with him?

23 A Right.

24 Q Okay, so no other involvement with anybody else?

25 A Goin' to Atlanta?

1 Q Goin' to Atlanta.

2 A Uh, besides Jason, like I get it from Jason who just
3 get it from Ant or ---

4 Q Okay.

5 A --- uh, people like that.

6 Q Okay. Now you you know it it -- did you know that Mr.
7 Tate has a identical twin brother?

8 A No, sir, I did not.

9 Q Okay. Have you seen this gentleman in the back of the
10 courtroom right here (indicating)? Do you recognize that
11 gentleman?

12 A No, sir.

13 Q You don't? Does he look like Mr. Tate?

14 A They kinda favor, yeah.

15 Q Okay. Can you say for a hundred percent certainty that
16 that gentleman or my client were the ones you saw there? I
17 mean, do you know for certain?

18 A Yeah, I mean is that when I went down there?

19 Q Yeah.

20 A Yeah, well Brian said --- yeah, I mean, I could, yeah,
21 I could say it was one of 'em.

22 Q Well co -- but ya can't say which one, right?

23 A Right.

24 Q Is that right?

25 A I didn't know he had a twin brother, no, I'm not ---

1 Q But you can't say for certain right now which one it
2 is?

3 A That really is is ---

4 Q Is that, I mean, I'm just sayin', you you just said I
5 couldn't tell which one. So, tell me you can't say for a
6 hundred percent certainty that it was which one it was,
7 right?

8 A Right.

9 Q Okay, no further questions. Thank you.

10 THE COURT: Any redirect?

11 MR. UNDERWOOD: Nothing further of this witness, Your
12 Honor.

13 THE COURT: Alright, sir, you can step down.

14 (Whereupon, the witness left the stand.)

15 THE COURT: Alright, we've probly come, we've probly
16 just a little bit ahead of schedule from what we expected,
17 we've got, uh, let's go ahead and break for lunch now. I'm
18 gonna ask you to be back in your jury room at 2:15. So if
19 you'll be back at 2:15. That'll give you an extra few
20 minutes maybe to run an errand or sumtin' at lunch if you
21 can, uh, and please don't discuss the case with anyone,
22 thank you.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Alright, scheduling wise, I told 'em we're

1 a little ahead, I don't know if we are or not actually, we
2 just a little ahead of what I thought. Uh, what ya think?
3 How we goin'?

4 MR. UNDERWOOD: Uh, I think we're actually right where
5 we want to be, Judge.

6 THE COURT: Okay.

7 MR. UNDERWOOD: Uh, I've got about maybe about another
8 four witnesses, maybe five, probly four.

9 THE COURT: Are they short witnesses you think?

10 MR. UNDERWOOD: Uh, one of them, at least one will
11 definitely be short. Uh, I don't expect any of them to be
12 particularly long.

13 THE COURT: This last witness, I'm not tryin' to be
14 patronizin' in any way to either side, this last witness
15 that was the clearest examination that either side did on
16 him, it went like clock work, uh, so, I mean, you know, for
17 both sides, I say that both so just bear that in mind. Uh,
18 alright, and still any thoughts, uh, any thoughts from
19 ya'lls side, I don't want to you tip your hand on trial
20 strategy but ---

21 MR. ARIAIL: We're gonna discuss with Mr. Tate our
22 client at ---

23 THE COURT: That's fine.

24 MR. ARIAIL: --- just to figure out where we're goin'
25 ---

1 THE COURT: Okay, no problem.

2 MR. ARIAIL: --- and hopefully we can give you a better
3 understanding after that.

4 THE COURT: Be fine, be fine. Mr. Tate, a, of course,
5 what we're talkin' about is what you and I talked about
6 yesterday. Uh, over the lunch hour, your attorneys I know
7 are gonna continue to give you counsel on, uh, whether or
8 not you should testify. Ultimately that must be your
9 decision and I'm gonna have a lotta questions for you about
10 whether or not it is your decision, uh, at some point it
11 sounds like this afternoon, alright. I do not know that
12 we're gonna be takin' another break although if your
13 attorneys feel like we need to take a break before you,
14 before you make that decision this afternoon we will do it,
15 alright, but it's -- that decision's gonna come up probly
16 pretty quick for ya, okay. Alright, we'll be in recess
17 until 2:15, thank you.

18 MR. UNDERWOOD: Thank you, Your Honor.

19 (Whereupon, a recess was taken.)

20 THE COURT: Uh, let me tell ya from one of the jurors,
21 they sent out a note, they said they ran, that they ran into
22 ya at lunch ---

23 MR. ARIAIL: Yeah.

24 THE COURT: --- and that ya'll got up and moved away
25 right away ---

1 MR. ARIAIL: I was just tellin' 'em that. I wanted to
2 let you know that to make sure that it -- we moved right
3 away, he asked if he could move and we said, No we'll get
4 over there and we went to the other side ---

5 THE COURT: Good.

6 MR. ARIAIL: --- of the restaurant.

7 THE COURT: Well I really appreciate it ---

8 MR. ARIAIL: Yeah.

9 THE COURT: --- of course you handlin' that way and I
10 knew you, that's the way you'd handle it so, ---

11 MR. UNDERWOOD: Thank you.

12 THE COURT: --- uh, if ya'll don't have any concerns,
13 I'm just not even gonna say anything to him, alright.

14 MR. ARIAIL: Thank you.

15 THE COURT: Bring the jury back in.

16 (Whereupon, a discussion was held off the record.)

17 (The following takes place in the presence of the
18 jury.)

19 THE COURT: Hope you all had a good lunch. We're ready
20 to begin?

21 MR. PAULING: We are, Your Honor.

22 THE COURT: Yes, sir.

23 MR. PAULING: At this time the State will call Larry
24 Gambrell.

25 (Whereupon, the witness came forward.)

1 THE BAILIFF: Left hand on the Bible and raise your
2 right hand.

3 LARRY ANTHONY GAMBRELL, having been first
4 duly sworn, testified as follows:

5 Q How ---

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION BY MR. PAULING:

8 Q --- how you doin', Mr. Gambrell?

9 A Alright.

10 Q Can you please, uh, state your full name for the
11 record?

12 A Larry Anthony Gambrell.

13 Q And if you could, sir, tell the jury where you're
14 originally from.

15 A From Easley, South Carolina.

16 Q Okay, and, Mr. Gambrell, if if you could you're a
17 little soft spoken, can you just speak up a little bit so
18 everybody in the jury can hear you ---

19 THE COURT: And I apologize, we had the microphone on
20 mute ---

21 MR. PAULING: Oh ---

22 THE COURT: --- so...

23 THE WITNESS: From Easley, South Carolina.

24 THE COURT: Okay.

25 BY MR. PAULING:

- 1 Q Okay. Now how long have you, have you lived in Easley?
- 2 A All my life really.
- 3 Q All your life. How old are you, sir?
- 4 A Thirty-two.
- 5 Q Thirty-two years old. And did you go to school in
- 6 Easley?
- 7 A Yes, sir.
- 8 Q Okay. Where'd you go to high school?
- 9 A Easley High School.
- 10 Q Okay, did ya graduate from high school?
- 11 A No, sir.
- 12 Q Okay, why is that?
- 13 A I had a, had a son.
- 14 Q You have a child?
- 15 A Yeah.
- 16 Q Okay, so ya had to drop out?
- 17 A Yes, ma'am -- yes, sir.
- 18 Q Did you ever get your GED?
- 19 A No, sir.
- 20 Q Okay. Now, uh, Mr. Gambrell, at at some point in your
- 21 life did you become involved with, uh, drugs?
- 22 A Yes, sir.
- 23 Q Okay, with using drugs?
- 24 A Yes.
- 25 Q Okay, and and at what point was that? How old were you

1 at that time?

2 A Hmm, 'bout 26.

3 Q Uh, twenty-six?

4 A Yeah.

5 Q Okay, oh, well let me ask ya this: Obviously you're in

6 an orange jumpsuit, uh, where are you currently housed?

7 A I'm in SC -- um, Ridgeland, South Carolina. I'm in

8 SCDC.

9 Q You're in SCDC?

10 A Yeah.

11 Q Okay, for what?

12 A Distribution.

13 Q Distribution of what?

14 A Meth.

15 Q Okay, and now, uh, what what type of sentence are you

16 doin"? How long of a sentence did you get?

17 A I got 10 suspended to 18 months and 3 years probation.

18 Q Okay, well now is that related to this particular

19 investigation or or another ---

20 A No, it was another investigation.

21 Q Now you said you first started usin' drugs when you

22 were 26 ---

23 A Yes.

24 Q --- okay, and who who was that with? How did you get

25 introduced to ---

1 A I had a friend, um, Stan Griffith.
2 Q Stan ---
3 A Griffith.
4 Q --- Griffith?
5 A Yeah.
6 Q Okay, and where where'd you know Stan from?
7 A I mean, I've known him really all my life, I mean,
8 pretty well we's nephews -- was friends with nephew, uh, he
9 introduced me to a guy named Calvin Keys ---
10 Q Okay.
11 A --- and that's I I started sellin' meth when when I got
12 introduced to Calvin.
13 Q Calvin Keys, where was, where was Calvin Keys livin' at
14 that time, was that in Easley?
15 A No, uh-uh, it was, uh, in at Liberty, whatever, down
16 towards Pendleton ---
17 Q Okay ---
18 A --- yeah.
19 Q --- and again this woulda been around the time you you
20 said 26 years ---
21 A Yeah 26, 27.
22 Q Okay, so at six, seven years ago ---
23 A Um, ---
24 Q --- around that time? Now how much were you using at
25 that particular time?

1 A At, I mean, at that particular time I was, I was
2 sellin' more than I was usin' but, I mean, you got the, I
3 mean, about a gram a day or sumtin'.

4 Q Okay. You would use a gram a day so were you, were you
5 sellin' to keep up your habit or ---

6 A No.

7 Q --- you was just sellin' to make money?

8 A Yes, sir.

9 Q Okay, and, uh, how long approximately did you deal with
10 Calvin Keys?

11 A Probly two years.

12 Q About two years?

13 A Yeah.

14 Q Alright, and at some point you s ---

15 A That he went to prison.

16 Q Okay. Did you have a -- find another source, uh, for
17 methamphetamine?

18 A Yes, sir.

19 Q And who was that?

20 A Wendy Lollis.

21 Q Okay, and how do you know Ms. Lollis?

22 A Uh, used to be my best friend, she, she knew my best
23 friend Paul Simon.

24 Q Okay, you knew her through Paul Simon or was Wendy your
25 best friend?

1 A No, no, Paul, uh, Wendy was Paul's girlfriend.

2 Q Okay, alright. And so how how long have you known Paul

3 Simon?

4 A Twenty, twenty years.

5 Q And now when you started dealin' with, uh, Wendy

6 Lollis, what was the arrangement you all had as far as as

7 dealing meth?

8 A For me to, me to take her to to Atlanta and I'd come

9 back and she'd either give me an 8-ball or \$200 or...

10 Q Okay. Why why would you take her to Atlanta?

11 A 'Cuz that's where she'd get it at.

12 Q Okay, now when you first started dealing with Wendy,

13 did she tell you right off the bat who her source was?

14 A No, sir.

15 Q Okay. About what time did you start, when I say about

16 what time, year, month did you start dealing with Wendy

17 Lollis or about how many years ago was it?

18 A It was back around 2010.

19 Q Okay. Uh, do you remember what time of the, what what

20 time of the year, was it ---

21 A It's ---

22 Q --- Spring, Summer?

23 A --- summertime.

24 Q Okay. Where was, where was Wendy livin' at that time?

25 A Um, right across from Pickens courthouse.

- 1 Q Right across from Pickens Pickens County courthouse?
- 2 A Yes.
- 3 Q Okay, was -- who was she livin' with?
- 4 A Her pop.
- 5 Q Okay. And now, uh, when you were first dealin' with
- 6 Wendy, how much meth would you you purchase from her?
- 7 A A quarter ounce, half an ounce.
- 8 Q Quarter ounce or half ounce?
- 9 A Yeah.
- 10 Q Do you remember what Wendy was chargin' you for a
- 11 quarter ounce?
- 12 A Five hundred dollars.
- 13 Q Five hundred dollars?
- 14 A Um-hum.
- 15 Q And you remember for half ounce?
- 16 A Uh-uh, 7.
- 17 Q Seven hundred dollars, okay, okay, and at some point
- 18 did you learn who her source was?
- 19 A Yes, sir.
- 20 Q Okay. And again, how did that come about?
- 21 A Some -- they got me -- she got me to take her to
- 22 Atlanta and to pick up some dope and ---
- 23 Q On that first trip to Atlanta, who all went?
- 24 A Uh, me and Paul went the first trip.
- 25 Q Okay, and, uh, did you, did you buy any meth that

1 particular day?

2 A No.

3 Q Okay, and if you could explain to the jury when you and
4 Paul went, uh, to Atlanta where did this, where did you meet
5 and and what happened once you got there?

6 A Uh, we met at a at at a little apartment and, uh, we
7 went inside or whatever and and the dope, got off got took
8 off toppa the refrigerator with the scales and baggies ---

9 Q Okay, I'm I'm gonna have to slow ya down. When you
10 went to Atlanta, do you remember about what exit you got off
11 of or or where it was?

12 A Uh, Exit 99 I think at that time.

13 Q Okay. You went to an apartment?

14 A Yes, sir.

15 Q Okay. Before you left South Carolina, was there, was
16 there any communication with whoever you were going' to see?

17 A Yeah, Paul Paul had talked on the phone.

18 Q Okay, and once you got there you went to an apartment?

19 A Yes, sir.

20 Q Can can you describe it or the area?

21 A I mean, it wasn't, it wasn't no no dealin' apartment
22 like like in the ghetto or whatever. I mean ---

23 Q And when you got there, uh, to the apartment, what
24 happened, who all was there?

25 A Just me, Paul, and Ant.

1 Q Okay, and at that particular time, uh, did you know him
2 as Ant? How did it come about? Did you know his name?

3 A No, not at that time.

4 Q Okay, you -- but you just knew him as Ant?

5 A Um-hum.

6 Q How was that?

7 A I mean just 'cause Paul, Paul telling me, I mean.

8 Q Okay. Now, uh, once you got there, explain to the jury
9 how the deal took place.

10 A Uh, we went in and and got -- he he put it on toppa the
11 refrigerator, got the scales and and the dope down, and
12 weighed it out and gave it to us, made made us try and stuff
13 over there.

14 Q Where'd he get the dope from?

15 A Outta the cabinet above the top of the refrigerator.

16 Q Okay, and, uh, when you try -- how did, how did you try
17 it? Did you smoke it? Did you shoot it? What did you do?

18 A I snorted it and Paul snorted it.

19 Q Okay. And you remember how much you got that
20 particular time?

21 A I wanna say 2 ounces.

22 Q And, uh, did you go straight back to South Carolina?

23 A Yes.

24 Q Okay. And once you got back, was was all that, was all
25 that dope for you, the 2 ounces -- I mean, excuse me, for

1 Paul ---
2 A Yeah, ---
3 Q --- the 2 ounces?
4 A --- Paul and me.
5 Q Okay. Did they just need you to drive at that point?
6 A Yeah, they didn't have no license ---
7 Q Okay.
8 A --- didn't have a car.
9 Q Okay, and now that was the first time and, again, what
10 what time frame during 2010 was that?
11 A It was in the summertime.
12 Q Summertime?
13 A Yeah, beginnin' of summer.
14 Q Beginnin' of the summer. Now did you have any other
15 trips to Atlanta?
16 A Yes, sir.
17 Q How many other times did you go?
18 A Probly five or six more times.
19 Q And on those particular occasions who went with you?
20 A Uh, most the time well me and Paul went and a couple
21 times it was me, Wendy, and Chad Moore.
22 Q And the times it was, uh, you and Wendy or you and
23 Paul, how much, how much, uh, meth were you getting?
24 A Two to four ounces.
25 Q Two to four ounces? Do you remember what what, uh, you

1 would, you would be charged for a quarter pound?

2 A No, I remember it was like 12, \$1300 a piece. Well ---

3 Q Okay, 1300 an ounce?

4 A Yeah.

5 Q Okay. Now these other occasions that you went, uh,
6 where did these deals take place, was it always the same
7 location?

8 A No.

9 Q You mentioned this apartment at first?

10 A Yes, sir. No, no, wasn't never the same, it's uh,
11 actually, we -- I think we went to that apartment just once.

12 Q The first time?

13 A Yeah.

14 Q Okay, and the other occasions where did you go?

15 A Uh, it was one time behind a Waffle House in the
16 apartments.

17 Q Now that Waffle House that you spoke of, was that off
18 of the the same exit as the, uh, ---

19 A Yeah, it was like, it was off the same exit, it just
20 wasn't as far.

21 Q Okay, it was behind the Waffle House?

22 A Yes, sir.

23 Q And where else would, would you meet?

24 A Exit 101.

25 Q Okay, where off of Exit 101?

1 A In some nice apartments.

2 Q Okay, nicer than the first apartment that you mentioned

3 ---

4 A Um-hum.

5 Q --- off Exit 99?

6 A Um-hum.

7 Q Okay, and at those apartments how did the deals take

8 place or that apartment how did the deals take place?

9 A Uh, we walked in the kitchen and Ant got the dope and

10 put it on the scales and weighed it and gave it to us.

11 Q Now the the times that you met, was the dope always

12 ready, was it always there?

13 A Yeah, it was always there.

14 Q Okay, or you you, did you have to wait on it ---

15 A No.

16 Q --- at any time?

17 A No, sir.

18 Q And now you mentioned Chad Moore, who's Chad Moore?

19 A Another 'nother friend of ours, I mean ---

20 Q Okay. How did it could come about that Chad Moore went

21 with you to Atlanta?

22 A 'Cuz he was, he was takin', I think he was takin' 'bout

23 4 ounces back because it had been bad.

24 Q Okay, that was the reason he went the ---

25 A Yeah, ---

1 Q --- the first time with you?

2 A Yeah.

3 Q Okay. And what happened? Was -- did he -- was he able
4 to exchange the the meth?

5 A Yes.

6 Q And when you would go to Atlanta and meet with Ant,
7 how, 'bout how long did these these these deals take place?

8 A Well, I mean, no more than about an hours time. I
9 mean, the last time I went we we pretty much stayed at his
10 house that that whole nice night 'cause we got pulled over
11 in about two o'clock in the morning' on the way down there,
12 Gwinnett County.

13 Q Alright, well explain that last time, why why was it
14 the last time?

15 A Uh, it's 'cause, I mean, I, too close for me, I mean,
16 when I got pulled over on the way down there.

17 Q Okay, who who was goin' with you on that particular
18 trip?

19 A Paul.

20 Q So it was you and Paul Simon?

21 A Um-hum.

22 Q Okay, did you call ahead or did Paul call ahead like
23 ---

24 A Yes.

25 Q --- before? Okay, and what happened as you were going,

1 uh, to Georgia?

2 A Got pulled over for speeding in Gwinnett County.

3 Q Okay, and well did you have any, did you have any meth
4 in the car at that time?

5 A No, we didn't have no meth, had, uh, I wanna say \$5,000
6 dollars maybe.

7 Q Five thousand dollars? Why'd ya have \$5,000?

8 A 'Cuz we was goin' to see Ant.

9 Q Okay, to do what?

10 A Get get some meth.

11 Q How much?

12 A Four ounces to or three and a half, sumtin' like that.

13 Q Three and a half, three and a half ounces, quarter
14 pound?

15 A Yeah, I don't remember exactly.

16 Q Okay, well did you continue on to Atlanta?

17 A Yes, sir.

18 Q Okay. Who'd you meet with once you got there?

19 A Ant.

20 Q Okay, and did you get meth at that time?

21 A Yes.

22 Q Okay, and did you then return to South Carolina?

23 A Yeah, when it got daylight.

24 Q When it got daylight, okay. Why did, why did you spend
25 the night?

1 A It was 'cause police, uh, told us, um, well they pretty
2 much didn't believe our story from the start and they told
3 me they better not catch me coming back that way so ---

4 Q You're talkin' about when you first got stopped on the
5 way to Georgia?

6 A Yes ---

7 Q Okay.

8 A --- 'cause we had had the money on me.

9 Q Okay, they saw, they saw how much money you had?

10 A Um-hum.

11 Q Okay, and so that was, that was the reason that was the
12 last time that you actually drove?

13 A Yes, sir.

14 Q Okay. Although you weren't driving any longer for for
15 Paul Simon, uh, did you stay in contact with ---

16 A Um-hum.

17 Q --- Wendy and Paul?

18 A Yeah.

19 Q Did you continue to get meth ---

20 A Yeah.

21 Q --- from them?

22 A Yeah, a few more times.

23 Q Okay, and do you know who their source was those times?

24 A I mean, it's ---

25 MR. ARIAIL: Objection, Your Honor.

1 MR. PAULING: I said--

2 MR. ARIAIL: He has no foundation for that.

3 THE COURT: I'm sorry, will you repeat your question.

4 Q Do you know who their source for methamphetamine was?

5 MR. ARIAIL: I ---

6 THE COURT: If he knows I'm gonna allow him to answer
7 it but he'll -- and I'll allow you to, of course, fully
8 cross him on how he knows that.

9 MR. PAULING: Okay, can I, can I repeat the question?

10 THE COURT: Yes, please.

11 BY MR. PAULING:

12 Q Did you stay in contact with Wendy and Paul?

13 A Yes, sir.

14 Q Did you continue to get meth from them?

15 A Yes, sir.

16 Q Do you know who their source was for the meth you were
17 getting from them?

18 A Um ---

19 Q Do you know? If you know.

20 A No, I mean, I'm not a, I aint a hundred percent sure,

21 ---

22 Q Okay, ---

23 A --- I ---

24 Q --- that's that's fine. Now, uh, at some point did you
25 speak with law enforcement regarding any knowledge you had

1 regarding, uh, Wendy Lollis ---

2 A Yes, sir.

3 Q --- okay, uh, and and her drug transactions?

4 A Um-hum.

5 Q And do you recall, uh, being provided a a photo lineup?

6 A Yes.

7 Q And, uh, do you recall how that how how that took
8 place, I'm sayin' and law enforcement doin' the photo lineup
9 with you?

10 A Yeah, uh, uh, Brett Barwick put 'em in the yard and
11 then, I mean, showed me the, I mean, I agreed to work with
12 him and he showed me the pictures and I I picked, I picked,
13 uh, Ant out and put my initials up under it.

14 Q Okay. I show you, Mr. Gambrell, what's been marked
15 States' ID No. 3, I ask you if you recognize that particular
16 item, sir.

17 A Yes, sir.

18 Q Okay, is that the -- well what is that?

19 A That's Ant.

20 Q Okay. Is that the photo lineup that Brett Barwick
21 showed you?

22 A Yes, that's phone lineup, I dated and put my initials
23 down.

24 Q Okay. Your initials is AG ---

25 A Yes.

1 Q --- Anthony Gambrell?

2 A Yes, sir.

3 Q Okay, and did he suggest to you who you should point
4 out?

5 A No.

6 Q Okay, and the person -- well did you, other than
7 signing, did you circle it or circle a number and picture
8 ---

9 A Circle, ---

10 Q --- a number and picture?

11 A --- cir, uh, circled 3 ---

12 Q Okay.

13 A --- the number 3.

14 Q Okay, and that's the individual you knew as Ant?

15 A Yes, sir.

16 MR. PAULING: Your Honor, at this time I'd offer
17 State's 3 into evidence.

18 THE COURT: Any objection?

19 MR. ARIAIL: No objection, Your Honor.

20 THE COURT: Alright, then it'll be so admitted.

21 (State's Exhibit No. 3, photo lineup, admitted into
22 evidence.)

23 BY MR. PAULING:

24 Q And at -- so and at that time you provided law
25 enforcement the information ---

1 A Yes.

2 Q --- that that you had at that time?

3 MR. PAULING: I have no further questions, Your Honor.

4 THE COURT: Alright. Yes, sir.

5 MR. ARIAIL: Thank you, Your Honor. May it please the
6 Court.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION BY MR. ARIAIL:

9 Q Mr. Gambrell, tell me a little bit about you, when you
10 went down I think one time in your car or you got pulled
11 over, is that right?

12 A Yes.

13 Q Okay, and that was you you got a date on that?

14 A Uh, no, sir, I didn't get no tickets.

15 Q No tickets?

16 A No, I don't remember the date, it was in the
17 summertime.

18 Q Summertime, it was you and Paul, is that it?

19 A Ye -- yes, sir.

20 Q Okay, ya'll two goin' down and Paul and you went down I
21 guess how many times together?

22 A Probly four, five.

23 Q Four or five. And Ya'll went by yourself without Wendy
24 Lollis, is that right?

25 A Yes, sir.

1 Q Is that right?

2 A Yes.

3 Q Okay, though -- and you also went with Wendy Lollis on

4 other occasions, is that right?

5 A Yes, sir.

6 Q Okay, when you got pulled over that time you goin' down

7 with Paul, uh, you said you slept there ---

8 A No, I didn't say nothin' 'bout sleepin'.

9 Q Didn't sleep, you stayed the day, stayed ---

10 A Yeah.

11 Q --- the night. Where'd you stay?

12 A At the apartment with him, with Ant.

13 Q The apartment?

14 A Yeah.

15 Q Where was the apartment?

16 A It was off of Exit 101.

17 Q Okay, what what type, I mean, where you -- can you tell

18 us ---

19 A Well ---

20 Q --- where it ---

21 A --- it was a nice, it was a nice apartment complex.

22 Q Nice apartment complex?

23 A Yeah.

24 Q Was it, uh, uh, who else was at this apartment?

25 A I want, I want, I wanna say, I mean, maybe his sister

1 was there, I mean, I don't know, we we really didn't see
2 nobody else there just me, Ant, and Paul.

3 Q Paul but you ---

4 A Yeah.

5 Q --- said the sister might be there?

6 A She may, I mean, there there was, there was a lady
7 there but, I mean, it -- we didn't get introduced or nuttin'
8 to her.

9 Q Okay, you got an address or anything like that?

10 A No, I didn't keep an address.

11 Q Okay, so you got any addresses for these locations that
12 you went to?

13 A No, sir.

14 Q I mean, I'm try' to figure out how ya'll find these
15 places when ya had no addresses. Is that, I mean, ---

16 A I had a GPS in my car at that time.

17 Q So ya have GPS, so you had to put a G -- an address in
18 the GPS, right, don't just put Norcross ---

19 A No, I ---

20 Q --- Georgia.

21 A --- I might not ever put a address in GPS. I just, I
22 mean, I maybe added the first time but, I mean, and and it's
23 not, I mean, that's three years and I don't remember the
24 address.

25 Q Okay, so I I don't -- I didn't really follow that but

1 basically what you're sayin' is ya didn't have an address,
2 you can't provide me an address today, right?

3 A No, I can't.

4 Q Okay, now did you call Mr. Tate?

5 A I didn't personally, no.

6 Q Okay, so you don't have any cell phone records or
7 anything like that.

8 A No, sir.

9 Q Okay. Now ya call, I think you keep sayin' Ant, is
10 that A-N-T, I just wanna make sure of that?

11 A Ant, Amp A-M-P, A-N-T.

12 Q Well now now you're changin' and you said Ant for the
13 whole entire time durin' your direct examination ---

14 A Uh, ---

15 Q --- A-N-T, is that right?

16 A Yeah.

17 Q Okay, so you've said and you remember you gave a a
18 statement to police on August 5th and August 10th two
19 thousand, uh, August 12th, 2011, you remember that?

20 A Um-hum.

21 Q What did you, what did you say in that statement the
22 individual's name was, do you remember?

23 A Uh ---

24 Q I mean, wanna read that and refresh your memory?
25 That's your statement, isn't it?

1 A From Amp.
2 Q Say that again.
3 A Amp, A ---
4 Q How do ---
5 A --- M-P ---
6 Q --- you spell that?
7 A A-M-P.
8 Q A-M-P.
9 A Yeah.
10 Q Okay, and that's different what you been just
11 testifyin' to right here in fronta this jury, correct?
12 A Yeah, it's one letter off.
13 Q What's that?
14 A It's one letter off.
15 Q There's actually two letters off, right? A-N-T is how
16 you spell Ant.
17 A Yeah.
18 Q Okay, A-M-P is what you put in your statement, correct?
19 A Yes.
20 Q Okay. Now you have done a photo lineup in this case,
21 right, I think we just put that out here, is that correct?
22 A Yes.
23 Q This right here (indicating) and you put that --
24 basically did that with Investigator Barwick, right?
25 A Yes.

1 Q Apparently did it at your house or at some location, is
2 that what you just said?

3 A Yeah, my driveway at the house.

4 Q I mean, how how was it done, explain to me how you
5 ya'll discuss this.

6 A Uh, I mean, he had me kinda pick him outta a photo
7 lineup.

8 Q So he asked you to co -- pick who out, I mean, how did
9 it go? Did he say, Hey, pick the guy you been dealin' with
10 down in Atlanta, right?

11 A Yeah.

12 Q Sumtin' like that? Okay, did you know that Mr. Tate
13 has an I -- identical twin brother?

14 A No.

15 Q You you don't know that?

16 A Uh-uh.

17 Q So ya didn't know that at the time you were doin' it,
18 ya didn't know that at the time you you were doin' this
19 right here?

20 A Uh-uh.

21 Q Okay. Do you see the gentleman in the back of the room
22 right here (indicating) seated in the black shirt?

23 A Um, ---

24 Q Do you see him?

25 A Yes.

1 Q Do you see Mr. Tate seated at this (indicating) table
2 over here? Are you a hundred percent certain, now that
3 you've seen identical twin, that that was the man you dealt
4 with when you were in Atlanta, one hundred percent certain?

5 A Yeah, by the mustache, I mean, but ---

6 Q The mustache?

7 A Yeah. No, I can't, I ain't gonna say I'm a hundred
8 percent.

9 MR. ARIAIL: I have no further question. Thank you for
10 bein' honest.

11 THE COURT: Any other questions for this witness?

12 MR. PAULING: None from the State, Your Honor.

13 THE COURT: Alright, sir, you can step down.

14 THE WITNESS: Thank you.

15 MR. UNDERWOOD: Your Honor, the State calls Norman
16 Bergholm.

17 THE COURT: Alright.

18 (Whereupon, the witness came forward.)

19 THE BAILIFF: Put your left on the Bible, raise your
20 right hand, please, sir.

21 NORMAN VICTOR BERGHOLM, IV having been
22 first duly sworn, testified as follows:

23 THE CLERK: Thank you, please be seated.

24 THE BAILIFF: Make sure you speak up.

25 THE WITNESS: Alright.

1 DIRECT EXAMINATION BY MR. UNDERWOOD:

2 Q Good afternoon, Mr. Bergholm.

3 A How you doin'?

4 Q Alright, thank you. Uh, could you please introduce
5 yourself and state your full name?

6 A My name's Norman Victor Bergholm the fourth.

7 Q Okay, and where are you from?

8 A I'm from Pickens, South Carolina.

9 Q How long have you lived in the South Carolina area ---

10 A Uh ---

11 Q --- the Pickens area I should say?

12 A --- I'd say most of my life. I I've moved around a
13 little bit when I was younger but as far as the older part
14 of my life I've lived here since I was 12, 13.

15 Q How old are you?

16 A I'm 33-years-old.

17 Q And I see you're you're in a, uh, orange jumpsuit, are
18 you currently doin' prison time?

19 A No, sir, I'm doin' just county time waitin' on all this
20 to process.

21 Q Okay ---

22 A Oh, yes, sir, I am doin' prison time. I'm doin' prison
23 time in Iowa.

24 Q Okay, but you were temporarily transported here?

25 A Yes, sir, ---

- 1 Q Alright.
- 2 A --- I'm sorry.
- 3 Q What were you convicted of in Iowa?
- 4 A Uh, felony eluding.
- 5 Q Okay. Do ya have any other felony convictions?
- 6 A Yes, sir, uh, I have a felony, uh, a conviction of
- 7 distribution of meth and, uh, I have ABHAN, assault and
- 8 battery of a high and aggravated nature.
- 9 Q And were you also charged in this case?
- 10 A Yes, sir.
- 11 Q And have you already pled guilty?
- 12 A Yes, sir.
- 13 Q Have you been sentenced yet?
- 14 A No, sir.
- 15 Q As part of your guilty plea, did you plea to lesser
- 16 charges?
- 17 A No, sir.
- 18 Q Well you were charged with trafficking 400 grams or
- 19 more, is that ---
- 20 A Oh, yes, sir, and, uh, I think I was gettin' my charge
- 21 dropped to a twenty-eight to, I mean, twenty-eight to a
- 22 hundred.
- 23 Q Okay, and and that's a lesser included offense?
- 24 A Yes, sir.
- 25 Q Alright. And did you also plead guilty to a couple

1 distribution charges?

2 A Yes, sir.

3 Q Alright. What's your understanding of the State's
4 offer that you pled guilty to?

5 A That as long as, uh, I tell my story the way it's
6 supposed to be told, the truth, ya know, that, uh, I'll get
7 a recommendation of 15 to 18 years.

8 Q And is is that based on your testimony being truthful?

9 A Yes, sir.

10 Q Has anyone from the State told you what the truth is?

11 A No, sir.

12 Q Alright, just that you need to tell the truth?

13 A That's it.

14 Q Okay. Mr. Bergholm, how did you get involved with with
15 drugs?

16 A Uh, after my wife split up with me, uh, in 2000 I
17 started dabblin' a little bit in drugs, uh, got introduced
18 to methamphetamines and from there I started usin'
19 methamphetamines and started sellin' methamphetamines, uh,
20 for some Mexicans and and then I got in trouble, went to
21 prison for it, then I got back out, I didn't wanna mess with
22 it at first and then I had a place to live, my rent was
23 runnin' low, didn't have no other means of money, I resorted
24 back to it.

25 Q Now who is it that got you involved with selling?

1 A Uh, in -- involved in sellin' to begin with?

2 Q Yes.

3 A It's a Mexican lady named Angel, I don't know her last
4 name, she was from Hendersonville.

5 Q How long ago was that?

6 A That was, uh, I don't wanna quote her but between 2000
7 and 2004, ya know, it was somewhere around in there.

8 Q And after you got outta prison, did you get involved
9 with sellin' meth again?

10 A Yes, sir.

11 Q How'd you get involved that time?

12 A Uh, I met up with a another Mexican named Mexican Eddie
13 and I starting dealin' with him and then, uh, a Javin Adams,
14 well I knew Javin Adams and, uh, he, uh, was gettin' some
15 meth and I started dealin' with him for 'cause he was givin'
16 it to me a little bit cheaper and then, uh, I just kept on
17 goin' from there.

18 Q Okay, now you mentioned someone named Mexican Eddie.

19 A Yes, sir.

20 Q To your knowledge does he have anything to do with
21 Antonio Tate?

22 A No, sir, I know he doesn't.

23 Q Okay. How do ya know Javin Adams?

24 A Uh, well back before I went to prison, uh, the first
25 time I met him over at a guy named Jason Agnew's house and,

1 uh, I talked to him a couple times, and then I met up again
2 with him afterwards, after I got outta prison he come over
3 to the apartment with, uh, Chad DeWayne Moore and, uh, I
4 dealt with him a couple times there and then after that ---

5 Q You said you "dealt with him", what do you mean?

6 A Just like s -- I sold him somethin', he sold me
7 somethin', ya know, just somethin' small, somethin', ya
8 know, like a half 8-ball here, a half-8 ball there, and then
9 it just started elevatin' after that.

10 Q And when you say "somethin'", what are you talkin'
11 about?

12 A Methamphetamines.

13 Q Okay, so you would sell back and forth between the two
14 of you, you and Javin?

15 A Yes, sir.

16 Q What about Chad Moore, was he -- how was he involved?

17 A Chad Moore, he's always been around I guess, uh, he's,
18 uh, he was always, he was either bringin' some in or wantin'
19 some, he's just like the rest of us I guess, uh, there's a
20 little tight circle of us, uh, ---

21 Q When you say it's a "little tight circle", who you
22 talkin' about?

23 A Well I'd guess I'd say me, uh, I messed with Chad
24 'cause he was goin' back and forth to Atlanta and I messed
25 with Javin and Nate', they was goin' back and forth to

1 Atlanta, and they messed with me because when they couldn't,
2 they didn't have, I had my connection here which was Mexican
3 Eddie before I ever went down to Atlanta.

4 Q Now you talked about a few moments ago initially you
5 and Javin Adams were selling 8-balls back and forth.

6 A Yeah, sumtin' like that.

7 Q Did that ever escalate?

8 A Uh, only after he started goin' to Atlanta he come to
9 me with a business proposition. Uh, he told me that he
10 could get an ounce for me for 12 to 1400 and and if I sent
11 him with the money and I told him, I said, I didn't know, I
12 wanted him to go get some, bring it back, let me look at it
13 first. He got, he went and got some and, uh, brought it
14 back and let me look at it. It looked good so I started
15 sendin' him with some money down there, uh, to whenever he
16 said he was goin' to Atlanta and then started where where
17 I'd get an ounce or more from him.

18 Q And roughly when -- what time period was that?

19 A That was, uh, I would say October, uh, September,
20 August, September of 2010.

21 Q And how many times would you give Javin money to go to
22 Atlanta to get dope?

23 A At least once a week.

24 Q And how much each time?

25 A I would usually get 2 ounces a week.

1 Q And when did you stop getting meth through Javin?

2 A I would say it would be somewhere around November or
3 December of 2010 because, uh, we had a fallin' out and I
4 started, uh, I made, I had Mexican Eddie on the side who I
5 was goin' to and I knew a a guy named Amp, I didn't know, I
6 called him Amp, I didn't know his name, uh, I called him, I
7 tried to talk to him 'cause I knew that's who where Javin
8 was goin' through and I knew his phone number and I ---

9 Q How how did you meet Amp?

10 A I met him at Javin's apartment at Javin's birthday
11 party. •

12 Q And how did you, how did you get to know him better?

13 A I'd just call him on the phone.

14 Q How did you get his number?

15 A Uh, actually Javin called me one day and said that he
16 needed a phone and I had a phone and my bro -- well not my
17 brother but one of my friends named Scotty Bo and we had
18 three phones in a name and I told Javin that I would give
19 him that phone and he could give it to Amp and Amp could use
20 that phone as long as he wanted to and he could just knock
21 it off whatever I got from him ---

22 Q Okay ---

23 A --- for the bill.

24 Q --- was that a prepaid phone?

25 A No, sir, it was a Verizon paid phone, like a plan

1 phone.

2 Q Is that the number that you called him on?

3 A Yes, sir.

4 Q Did you ever, other than at Javin's apartment, did ya
5 ever meet with Ant in person?

6 A Uh, in, I'm not gonna say Atlanta but on Exit 101 and
7 Exit 107 and 111, Exit 111 I met with him. I met with him
8 one time. He was in a truck and we met at a hotel, in the
9 parkin' lot of a hotel on Exit 101 and then we met at a
10 McDonald's on Exit 101 and we met at a, uh, a Waffle House
11 on Exit 103 I think and we met at for the fourth time it was
12 on Exit 111 at a shoppin' mall type place, I don't know
13 exactly where it was. I only met with him four times.

14 Q But that was down in Georgia?

15 A Yes, but in South Carolina the only time I ever talked
16 to him was at Javin's apartment one time.

17 Q Okay, now which one of those trips to Georgia was the
18 first time you went to see him?

19 A Uh, whi -- which which exit did I go to?

20 Q Yeah, whi -- which which one of those locations was
21 first time?

22 A 101 ---

23 Q Okay.

24 A --- to the hotel. It's like -- I cannot remember the
25 name of the hotel, it's a tall hotel, and I pulled in and he

1 pulled up in a, I wanna say it was a cream colored older
2 model truck with like a orange or burgundy stripe on it, I
3 can't remember the model or nothin' in the truck, but I was,
4 I was in my Pontiac and, uh, he pulled up there and he
5 dropped it off with me.

6 Q When you say he dropped it off with you ---

7 A He dropped meth off with me, the meth I come -- I
8 bought a ounce from him the first time I went down there,
9 \$1400.

10 Q Alright, once he gave you the meth, uh, did you test
11 it?

12 A No, uh, I didn't test it, I -- it was wrapped up as a
13 package to where I guess you could bring it back safely and
14 not have to worry about it.

15 Q What do ya mean?

16 A Well, you know, you sometimes, you, if you get pulled
17 over or sumtin', ya know, you might have drug dogs or
18 whatever and you and if it's not packaged right then you
19 could possibly get the drug dog to hit on it, ya know. So
20 so what some people will do is they wrap it up in, uh,
21 cellophane and then they'd take and wrap it up in some
22 pepper, cayan pepper or sumtin', then wrap it back up a
23 little bit more. That way if sumtin' did happen then they,
24 all the dog could smell is the pepper and it would throw off
25 their scent.

1 Q Okay, is that how it was packaged when you ---

2 A Yes, sir, ---

3 Q --- got it?

4 A --- all four times.

5 Q And what did you do with that ounce once you got it?

6 A I would -- he -- one time I put it in my lap. The
7 other three times I hid it.

8 Q Okay, and where'd you go with it?

9 A I went back to South Carolina and I went to my place
10 and I I would open it up and test it and then then get rid
11 of it.

12 Q What do ya mean by "get rid of it"?

13 A I would sell it.

14 Q Okay, where were you sellin' it?

15 A I was sellin' it just all through Pickens and
16 Greenville.

17 Q So both Pickens and Greenville?

18 A Yes, sir.

19 Q Who were you sellin it to, you remember?

20 A Just a bunch a different people. I mean, I could name
21 a list so long and I just, just different users, ya know,
22 just people that worked at restaurants, people that like
23 waitresses and stuff and then friends that I knew and then
24 people that play guitar and stuff would come over and get
25 some.

1 Q What amounts were you selling?

2 A At first I was just sellin' little amounts like I'd
3 sell like fifties, hundreds.

4 Q Now when you say fifties and hundreds, what do you
5 mean?

6 A A gram, half gram.

7 Q Okay, so just user amounts?

8 A User amounts, yes, enough to make somewhere I could do
9 mine, ya know, just...

10 Q Okay, and what about the next trip, where was that?

11 A That was in, that was in a E -- a Exit 103 I believe.
12 I wanna say it was this, as a matter a fact, I know exactly
13 where it was. It was at I pulled up at the Home Depot,
14 yeah, I think it was the Home Depot and, uh, he called me
15 and told me to meet him at Home Depot, he pulled up at a
16 Home Depot parkin' lot, and I got it from him at the Home
17 Depot parkin' lot.

18 Q How much did ya buy that time?

19 A I bought 2 ounces. I paid 1200 a piece for 'em.

20 Q And what did ya do with with those 2 ounces?

21 A I did the same thing. I put 'em up and I carried 'em
22 back a cross state lines and I distribute 'em among my
23 friends.

24 Q What about the third time?

25 A The third time I met him at an American Waffle House,

1 he said his uncle, I remember talkin' to him, he said his
2 uncle owned a chain of Waffle Houses or somethin', thought
3 that was pretty cool but I remember waitin' on him for a
4 minute and he -- or ended up eatin' at a Waffle House, we
5 went inside a Waffle House, he told me, he pointed -- he did
6 a sale like this: I went to a bathroom, got it from him
7 inside a bathroom and then I went back to my table, paid for
8 my orange juice 'cause all I got was an orange juice and I
9 went back out, got in the car and left.

10 Q Okay, and how much did you buy that time?

11 A Two ounces.

12 Q And you said you met with him one more time?

13 A Yes, sir.

14 Q Uh, where was that?

15 A It was in a shoppin', it was in a shoppin' center
16 somewhere, I don't know exactly it -- where it was. There
17 was movie plaza there, there was a, it -- I know it was
18 rainin' that night and me and my wife had to wait for I
19 don't know eight, nine hours down there in the parkin' lot
20 waitin' on him to keep, just waitin' on him to call me back.
21 I already put some money in a bankin' account for him and,
22 uh, I was waitin' and I waited and waited and waited and
23 finally he ta -- called me and told me to pull up at a
24 McDonald's and I pulled up at at McDonald's and I got it
25 from him at a McDonald's and then when I got it back to the

1 house I open it up and half of it was no good.

2 Q Alright, how much total, uh, stuff did ya buy that
3 time?

4 A That that time probly a little over an ounce of actual
5 stuff.

6 Q I mean, in in total. What's the total stuff that you
7 bought?

8 A Are you talkin' about, I bought two ou -- I was
9 supposed to get 2 ounces.

10 Q Alright, and then you said half of that was bad?

11 A Half of it was bad, yeah, and I never went back to him
12 again.

13 Q Okay, the the ounce that was good, what did ya do with
14 that?

15 A I sold it.

16 Q What did ya do with the ounce that was bad?

17 A I got rid, I just threw it away, couldn't do nothin'
18 with it.

19 Q Now you mentioned your wife, did your wife go with you
20 every time?

21 A No, sir.

22 Q How many times did she go?

23 A She went with me that last time because she was like,
24 Where you goin', I said I I was gonna go for a ride. I
25 never let her know where I was goin' 'cause I didn't want

1 her involved in none of this and, uh, so when we, I said,
2 I'm just goin' for a ride, then I told her, I said, Let's go
3 down to Commerce to the outlet. So I took her to Commerce
4 to outlet, bought her a few things and then I rode down and
5 told her I was just gonna go ride, and then we set down
6 there, waited for a while. I I finally told her what I was
7 doin' and so we come back after that but that's the only
8 time she ever went with me.

9 Q Was she happy with ya about ---

10 A No, no, we're actually divorced now.

11 Q Okay, and where is she now?

12 A Uh, she's livin' in Easley workin' at a Subway or
13 somethin'.

14 Q Okay, but that's the only time that she was involved?

15 A Yes, and she wasn't, she didn't wanna know nothin'
16 about it then either so, yeah.

17 Q Now now on that last trip how much did you pay for
18 those 2 ounces?

19 A I paid 1200 a piece.

20 Q Piece.

21 A Yeah.

22 Q Since that time have you had any other contact with,
23 uh, and what what was it that you called the source down in
24 Atlanta, what was that?

25 A A-M-P, Amp.

1 Q And have you come in contact with him since?

2 A Ooh, what do ya mean?

3 Q Since that that fourth time that you went to buy dope
4 from him, have you talked to him since?

5 A Have I talked to him since, no.

6 Q Do you remember meeting with law enforcement in June of
7 2011?

8 A Yes, sir.

9 Q At that time did you provide information about your,
10 uh, dealings with methamphetamine?

11 A Yes, sir.

12 Q At that time do you remember being showed a photo
13 lineup?

14 A Yes, sir.

15 Q How did that happen?

16 A Uh, they, uh -- ya'll -- well the SLED was askin' me if
17 I could point the person out in a, in a lineup and or a
18 picture and I told 'em yeah. They showed me a a a paper, I
19 think it had six to eight pictures on it, they made me
20 circle the one I thought was the one I went down to and put
21 my initials by it.

22 Q Okay, now you said they made you, did they tell who you
23 to pick?

24 A No, they did not tell me who to pick.

25 Q Alright, what exactly did they tell you?

1 A They told me can't, they asked me could I identify the
2 man that I bought that methamphetamines from.

3 Q Were ya able to identify the man you bought
4 methamphetamine ---

5 A I circled the picture that I bought from the man I
6 bought methamphetamines from.

7 Q Now showing you State's Exhibit No. 8, do you recognize
8 that (indicating)?

9 A Yes, sir.

10 Q What is that?

11 A That's the man I bought methamphetamines from ---

12 Q Alright, is ---

13 A --- that's the guy I called Amp.

14 Q Okay, is is this the photo lineup that you were shown?

15 A Yes, sir.

16 Q Are your initials on that?

17 A Yes, sir.

18 Q Are you the one that that circled the individual?

19 A Yes, sir.

20 Q And that's the individual that you were buying
21 methamphetamine from?

22 A Yes, sir.

23 Q And what did you know his name as?

24 A As Amp, A-M-P, that's it, I didn't know his real name.

25 I didn't actually learn the name of the guy until I got

1 locked up in South Carolina here this time.

2 MR. UNDERWOOD: Your Honor, at this time I offer
3 State's Exhibit No. 8 into evidence.

4 THE COURT: Any objection?

5 MR. ARIAIL: No objection, Your Honor.

6 THE COURT: Alright.

7 (State's Exhibit No. 8, photo lineup, admitted into
8 evidence.)

9 (Whereupon, the exhibit was published to the jury.)

10 BY MR. UNDERWOOD:

11 Q Thank you, Mr. Bergholm. Please answer any question
12 the defense has.

13 THE COURT: Mr. Ariail.

14 MR. ARIAIL: Thank you, Your Honor. May it please the
15 Court.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION BY MR. ARIAIL:

18 Q Mr. Bergholm, when you did this photo lineup at
19 6/20/2011 did you know that Mr. Tate had a identical twin
20 brother?

21 A No, sir.

22 Q Okay. Do you -- have you ever met his identical twin
23 brother?

24 A No, sir, not to my knowledge.

25 Q Okay, so you see the gentleman that's seated back at

1 the courtroom in the black shirt ---

2 A Yes, sir.

3 Q --- it looks like -- that's his brother. Are you
4 sittin' here today and at the time you did this can you say
5 for one hundred percent certainty that that was the man you
6 were dealin' with?

7 A I gotta tell the truth, I can't.

8 Q Okay.

9 A But I can say the man in that picture right there is
10 the man I bought methamphetamines from.

11 Q Okay, but you can't tell us for certain who it is?

12 A Between him ---

13 Q The man sittin' next to me over here (indicating).

14 A (The witness nodded in the negative.)

15 Q Okay, that was a no?

16 A No, sir, I can't.

17 Q Okay. Now, the one way we could figure this all out
18 and sort it all out is you gave three Verizon cell phones
19 ---

20 A I had three Verizon cell phones, I had one, and my wife
21 had one and I gave one to Javin Adams and he gave it to
22 Antonio Tate.

23 Q Okay, and you registered that under the name of Scotty
24 Pope, correct?

25 A Yes, sir.

1 Q So that was, I mean, how'd ya come up with the name
2 Scotty Pope ---

3 A Uh, ---

4 Q --- begin with?

5 A --- my friend Scotty Pope had the phones and he went to
6 prison, he told me to finish off his contract.

7 Q Okay, so you gave one of those phones under the name of
8 Scotty Pope to whoever you were dealin' with down in
9 Atlanta, is that right, or did Javin ---

10 A No, I I gave it to Javin Adams 'cause at the time I
11 wasn't goin' down to Atlanta. I was dealin' with Javin
12 Adams.

13 Q But but you had said I think it was ya met Amp or Ant
14 or whoever in Powdersville ---

15 A Yes, sir ---

16 Q --- met him through ---

17 A --- I met ---

18 Q --- Javin Adams.

19 A Met him through Javin Adams at Javin Adams' apartment.

20 Q Javin Adams then gave him a phone after ya'lls
21 conversation so you could keep in touch with him, right?

22 A So I -- so, no, so Javin can keep in touch with Amp,
23 ---

24 Q Okay.

25 A --- the guy known as Amp.

1 Q Okay, so you had that number, Javin had that number and
2 ya'll called that number?

3 A Yeah, I was told never to call that number by Javin and
4 so I never wanted to call that number. It was just under
5 the understandin' I, everytime I, everytime I got sumtin' I
6 was knocking \$200 off my bill ---

7 Q Okay.

8 A --- from Javin.

9 Q Right, but this was a, this was a registered phone
10 number that you can get the cell phone numbers from,
11 correct?

12 A Yes, sir.

13 Q You can see how many times it was called?

14 A Yes, sir.

15 Q Okay. Do ya have those numbers here today?

16 A No, sir, I don't have the numbers here ---

17 Q You have the ---

18 A --- today.

19 Q --- you have those numbers, right?

20 A No, I don't have 'em off the top of my head, no, sir.

21 Q You remember testifyin' to the grand jury?

22 A Yes, sir, I remember testifyin' to the grand jury.

23 Q You remember tellin' the grand jury that you had these
24 numbers and these cell phone records at your home?

25 A Yes, sir, in a black book.

1 Q In a black ---

2 A By the time ---

3 Q --- book.

4 A --- I, by the time I got outta jail my house was
5 robbed. There was nothin' else left in my home period.

6 Q Okay, you can go to Verizon and get those still, can't
7 ya?

8 A Not me because I'm not Scotty Pope.

9 Q Okay, well then you can get somebody to get some help,
10 you can ---

11 A Scotty ---

12 Q --- get law enforcement, correct?

13 A If they wanted to go, I -- they can get Scotty Pope,
14 he's down at Kirkland, uh, Correctional Institute and I can
15 guarantee that he would, he'd be more than happy to get them
16 phone records for me.

17 Q Great, and that woulda shown who was dealin' with that
18 phone, and who had that phone, you could triangulate that
19 and figure out where the cell phone towers and all that are,
20 couldn't ya?

21 A Uh, I don't know, I'm not a ---

22 Q Okay ---

23 A --- I don't know about all that.

24 Q --- but that woulda helped try to figure out if the
25 right man's on trial today ---

1 A Yes, sir, ---
2 Q --- correct?
3 A --- yes, it would.
4 Q Okay. Now ya also said ya had a book I think of all
5 the transactions that you had done, correct?
6 A Yes, sir.
7 Q Call it your, I think you just call it your black book?
8 A Yes, sir.
9 Q Okay, now that black book would have the transactions
10 you did with I guess all individuals you sold drugs to,
11 right?
12 A Yes, sir.
13 Q Okay, where's that black back?
14 A Like I said, my house was robbed when I got out. I was
15 incarcerated for three and a half months and by the time I
16 got out everything in my house was gone.
17 Q And they stole everything including ---
18 A Everything.
19 Q --- the black book?
20 A They stole everything includin' my clothes, everything.
21 The only thing that was left in my house was the trash bags.
22 Q And that black book would included in there when you
23 got dope, whatever from ---
24 A It would include ---
25 Q --- what?

1 A --- everything yes, sir.

2 Q Everything.

3 A Yes, sir.

4 Q Okay. Now say you went down I guess one time with your
5 wife, ex-wife now ---

6 A Yes, yes, sir.

7 Q What's her name?

8 A Her name's Jennifer Nichol Bergholm or now it's White.

9 Q Jennifer White?

10 A Yes, sir.

11 Q Okay, and she's in Easley, ---

12 A Yes, sir.

13 Q --- okay, and she can I guess corroborate that you went
14 down, right?

15 A Yes.

16 Q Okay, and then I I call off, side sumtin' about putting
17 money in an account.

18 A Yes, sir.

19 Q So who was puttin' money in an account?

20 A I put money in an account one time. It was, uh, it
21 definitely wasn't an Antonio Tate name, it was a different
22 name, I couldn't -- it's -- I can't even tell ya the name no
23 more 'cause it's been so long since this happened.

24 Q Okay, well let's just go through this. You're puttin'
25 money in an account and somebody's withdrawin' that money,

1 right?

2 A Yes, sir.

3 Q Okay, so, uh, how -- where was that account? What --
4 at a bank?

5 A It's at Bank of America.

6 Q Bank of America. You got an account set up, you're
7 puttin' dope money into that and it's bein' takin' out when
8 you get your drugs, right?

9 A That was only one time yes, sir.

10 Q One time?

11 A Yes, sir.

12 Q Okay, so ya did it one time and when was that? That
13 was around -- when was the time you went down with her?

14 A I wanna say it was in January.

15 Q January two thousa ---

16 A Yeah, 2011.

17 Q '11, okay, so that money woulda been taken out by
18 somebody and somebody'd have to sign for it, right?

19 A Yes, sir, I was, uh, I would assume so.

20 Q So I I I'm tryin' to figure out how you you put money
21 in an account, you designated it for an individual, correct?

22 A Yes, sir.

23 Q And who was that individual?

24 A That individual was just the person that the guy named
25 Amp told me on the phone to put it on this account and when

1 I got down there I will be alright. So when I put the money
2 in the account, I drove down there, I was alright.

3 Q Okay, or who's -- who who was the guy, I mean, what's
4 the name?

5 A The guy's name?

6 Q Yeah.

7 A I didn't know the guy's name.

8 Q You did wha -- ya know, what name did ya put down?

9 A I don't -- it wasn't a guy's name. It was a woman's
10 name.

11 Q Okay, I'm I'm not tryin' to be difficult here but what
12 was the name?

13 A I don't remember the name ---

14 Q Okay, so you don't remember ---

15 A --- it's been so long ---

16 Q --- a name that you put on an account to drop drug
17 money into so they could withdraw it?

18 A No, sir, I don't.

19 Q Okay. Uh, now these locations that you went to, ya got
20 any addresses to -- for the apartment or anything like that?

21 A Didn't go to no apartment.

22 Q You didn't go to an apartment?

23 A No, sir.

24 Q Thought you said one time you went to an apartment.

25 A I went to a hotel.

1 Q Hotel.

2 A Yes, sir.

3 Q Okay, and this hotel, what was the name of the hotel?

4 A I think it was Hampton Inn I ---

5 Q Hampton Inn.

6 A --- I believe. I cannot remember. I can tell ya it

7 was about 16 stories high, it was nighttime.

8 Q So we got a Waffle House, we got a Home Depot, we got a

9 now a hotel ---

10 A The motel was the first place, yes, sir.

11 Q --- hotel, we got all public areas ---

12 A Yes, sir.

13 Q --- that have video pretty much, right?

14 A Yes, sir.

15 Q And you got any video today to show that you did any

16 transactions with the man seated over here next to me?

17 A No, sir, I don't.

18 Q Okay. You think that'd be helpful to have 'em if you

19 doin' drug deals, be able to corroborate 'em?

20 A I mean, I'm not law enforcement. I I wouldn't want no

21 videos of me personally took.

22 Q You went through your record a little bit I think. I

23 think I got kinda lost in that. Tell tell me you had

24 indicated that you were, you'll bear with me one second,

25 said you'd been, uh, I guess you had manufacturing charge

1 that you pled guilty to?

2 A Yes, sir.

3 Q Okay, and you had an assault and battery of a high
4 aggravated nature ---

5 A Yes, sir.

6 Q --- you said? Now you you did get charged with a
7 filin' a false police report too, correct, convicted of
8 that?

9 A Uh, when I was 16 I think I did, ---

10 Q Sixteen ---

11 A --- sixteen yes, sir, ---

12 Q --- but you didn't tell ---

13 A --- but it fel -- it wasn't a felony. They said did I
14 have any felonies that I, that I, uh, pleaded to ---

15 Q Uh ---

16 A --- and that I ---

17 Q --- and you said conviction.

18 A --- been convicted for, I -- that wasn't a felony that
19 I got convicted for, sir, I'm sorry for, uh, if it
20 mispleases you up. I did when I was younger, I gave my
21 brother's license as an ID and, uh, then my brother got in
22 trouble for it and I told 'em that I would, uh, take the
23 blame for it so the police come and I went and gave the
24 police a statement sayin' it was me, yes, sir.

25 Q Okay, so you you got convicted of that, right?

1 A Yes, sir.

2 Q Okay, and you didn't tell that to the jury, right, ---

3 A It wasn't a ---

4 Q --- when you were here at the beginning ---

5 A --- felony, sir. That wasn't the question asked.

6 Q Okay. Did ya tell that to the jury spefi --

7 specifically in your direct examination?

8 A No, I didn't ---

9 Q Okay.

10 A --- 'cause it wasn't the question asked, sir.

11 Q Did ya also tell -- okay, well let's give this one: Did

12 ya also tell the jury that you were convicted of a half mile

13 charge, which means that you basically have drugs within a

14 half mile of a school?

15 A I had eight distributions of methamphetamines, eight

16 distributions of methamphetamines within the proximity of a

17 school zone. That was what I got convicted for, yes, sir,

18 my ---

19 Q But ya told them ya had a distribution, ya didn't tell

20 ---

21 A They dropped ---

22 Q --- 'bout the half mile char ---

23 A --- they dropped, they dropped it down to a, they

24 dropped it down to a PWID.

25 Q And -- are you saying that you were not convicted of

1 havin' drugs within a half mile of a school?

2 A Yes, sir, I was.

3 Q Okay, you didn't tell that to the jury, did ya?

4 A Uh, no, sir it was part of the PWID.

5 Q That's all I have. Thank you, sir.

6 A Yes, sir.

7 THE COURT: Any other questions for this witness?

8 MR. UNDERWOOD: Nothing further, Your Honor.

9 THE COURT: Sir, you can step down.

10 THE WITNESS: Okay, thank you.

11 THE COURT: Thank you.

12 (Whereupon, the witness left the stand.)

13 THE COURT: Yes, sir.

14 MR. UNDERWOOD: Your Honor, the State calls Chad Moore.

15 THE COURT: Alright.

16 (Whereupon, a discussion was held off the record.)

17 (Whereupon, the witness came forward.)

18 THE BAILIFF: Left hand on the Bible, raise your right
19 hand.

20 CHAD DEWAYNE MOORE, having been first
21 duly sworn, testified as follows:

22 THE CLERK: Thank you, please be seated.

23 (Whereupon, a discussion was held off the record.)

24 DIRECT EXAMINATION BY MR. UNDERWOOD:

25 Q Good afternoon, Mr. Moore, could you please state your

1 full name for the record?

2 A Chad DeWayne Moore.

3 Q Alright ---

4 THE COURT: You could just scoot up just a little bit.
5 I think you're tall and it's kinda hard for you to get your
6 knees under there. How's that?

7 THE WITNESS: That better.

8 THE COURT: Yeah, let let's see.

9 BY MR. UNDERWOOD:

10 Q Okay, Mr. Moore, if you could, just make sure you speak
11 up so that mic can catch ya, okay.

12 A Chad DeWayne Moore.

13 Q Thank you.

14 THE COURT: Thank you, perfect.

15 Q And how old are you, Mr. Moore?

16 A Uh, thirty-six.

17 Q How far'd ya go in school?

18 A The eleventh grade.

19 Q Where are you from?

20 A I'm from Easley.

21 Q Have you lived there most of your life?

22 A Yes, sir.

23 Q How'd you first get involved with drugs?

24 A Uh, I just got introduced to 'em through friends I
25 guess.

1 Q How old were ya at the time?

2 A Well I first smoked marijuana probly around like 15 or
3 so, but as far as methamphetamines I was 28 I think, 28 or
4 29.

5 Q How'd you get introduced to methamphetamines?

6 A Uh, just through friends and people really, I'm not --
7 I don't remember exactly who.

8 Q Okay. Did you start off just using methamphetamine?

9 A Yeah, I started off just usin'.

10 Q Alright, how did, how did you use it? What was your
11 method of choice?

12 A Basically just like eat it ---

13 Q You'd eat it?

14 A --- or snorted it.

15 Q And what what kinda methamphetamine did you use? Was
16 it was it Ice, was it Crank?

17 A Yeah, Ice.

18 Q Ice?

19 A Yeah.

20 Q Now, Mr. Moore, you've been convicted of several crimes
21 in the past, is that right?

22 A Yes.

23 Q And I just wanna go over that briefly with you. Were
24 you convicted of, uh, was back in the nineties, of, uh,
25 using a vehicle without permission, uh, obtaining property

1 under false pretenses, accessory to a felony and a, uh,
2 non-violent burglary charge?

3 A Yes, sir.

4 Q And then in 2008 were you arre -- or convicted of a
5 larceny, failure to stop for a blue light, and possession of
6 meth?

7 A Uh, yes, sir.

8 Q And you were charged in this case as well, weren't you?

9 A Yes, sir.

10 Q Alright, have you already pled guilty?

11 A Uh, yes, sir.

12 Q Okay, are you still waiting to be sentenced?

13 A Yes, sir.

14 Q Now as part of your plea, did you plead guilty to a
15 lesser charge than what you were originally charged with?

16 A I think I pled guilty to a lesser charge.

17 Q And that was, that was a a trafficking charge of a
18 lower weight than 400 grams ---

19 A Yes, I think the weight was dropped down, yeah.

20 Q And did ya also plead guilty to a couple distribution
21 charges?

22 A Yes, sir.

23 Q What's your understanding of the recommendation you're
24 are supposed to get?

25 A Uh, I think it's 18 years.

1 Q And that's just a recommendation?

2 A Yes, sir.

3 Q In the end is that gonna be up to the judge to
4 determine?

5 A I would assume so, yeah, I would assume.

6 Q Um-hum. Now, Mr. Moore, how did you get involved with
7 selling methamphetamine?

8 A Well I s -- just started out usin' and it, well it just
9 got to be expensive, ha.

10 Q Okay, and when you say "got to be expensive", what did
11 you do to support your habit?

12 A Well, I mean, I had worked but, I mean, after a while
13 that don't, that don't do it. So, I mean, so I started
14 basically sellin' so I wouldn't have to pay for it.

15 Q So you were sellin' to support your habit?

16 A Right.

17 Q Who introduced you to selling?

18 A I think at the beginnin' Wendy Lollis.

19 Q And how did she introduce you to sellin' meth?

20 A I mean, that's who I was -- I'd gotten mine from. So
21 it was like basically just...

22 Q So was she your supplier?

23 A Yeah.

24 Q Okay. Alright, did you sell meth for her?

25 A No, I sold it for myself basically.

1 Q Did did you buy it from her and then ---
2 A I ---
3 Q --- sell?
4 A --- bought it from her, yeah, in the beginning, yeah.
5 Q When was that you started buyin' from Wendy Lollis?
6 A Was probably around sometime in the, maybe the
7 beginnin' or the middle part of 2010.
8 Q Do you know Jason Griffin?
9 A Yes.
10 Q How do you know him?
11 A Well, uh, Wendy introduced me to Jason.
12 Q What were your -- what was your relationship with
13 Jason?
14 A Uh, that's who I started buyin' bigger quantities of
15 meth from was Jason.
16 Q How much would you buy from Jason?
17 A I guess I -- up to a quarter ounce sometime I guess,
18 maybe a little more, maybe a little less.
19 Q And when when did you start buyin' quarter ounce
20 amounts from Jason?
21 A I guess close probly around about the same time around
22 the middle part or near the end of 2010 or so.
23 Q And you said about quarter ounce at a time, how often
24 would you buy from him?
25 A Once, maybe twice a week maybe ---

1 Q For how long?

2 A --- sometimes once a ---

3 Q How many weeks?

4 A --- month. Maybe for a month or two.

5 Q Okay, so you're buyin' a quarter ounce from Jason

6 Griffin once or twice a week for about a month, is that

7 right?

8 A Yes, sir.

9 Q Okay. Now did ya ever find out who Jason and Wendy

10 were getting their dope from?

11 A Uh, yes.

12 Q How did you find out?

13 A Uh, they, uh, introduced me to a guy.

14 Q Alright, how did you get introduced to him?

15 A Well they -- over the phone to begin with.

16 Q Okay, and and who did that?

17 A Well Jason and Wendy like together basically.

18 Q And did you eventually meet their source, their

19 supplier?

20 A Yes.

21 Q Where did you meet him?

22 A Uh, at his apartment.

23 Q And where is that?

24 A Uh, in Atlanta.

25 Q Do you remember his -- did, excuse me, did he tell you

1 his name?

2 A He didn't tell me his name at the time, no. I think he
3 went by a nickname Ant.

4 Q Is that A-N-T like the little insect ant?

5 A Yeah.

6 Q Okay, and do you remember when that was that you first
7 met him?

8 A I think around probly the end part of 2010.

9 Q And when you went down to meet him, did you go by
10 yourself?

11 A No, I went with, uh, Wendy I think the first time.

12 Q And did ya buy any meth from Ant at that time?

13 A Yes.

14 Q How much?

15 A I think I bought one ounce.

16 Q You remember how much you paid for it?

17 A Well prices change but, I mean, roughly probly a
18 thousand to \$1200.

19 Q What did you do with that ounce?

20 A I come back and sold it.

21 Q Where'd you sell it?

22 A To just -- to other people that I used to use with.

23 Q Was it at Georgia, in South Carolina?

24 A South Carolina.

25 Q Do you remember where in South Carolina? Just, a a

1 around people that I knew. They just call and I'd ---

2 Q Is this around ---

3 A --- meet 'em at their house ---

4 Q --- where you live? Where were you livin' at the time?

5 A I was livin' in Easley.

6 Q So was it in that area?

7 A Yes.

8 Q Okay. Is that the only time you ever went down to
9 Atlanta to meet Ant?

10 A I went down there maybe two or three other times.

11 Q And how much meth would you buy on each of those times?

12 A Uh, right under an ounce. Uh ---

13 Q So about an ounce each one of those times?

14 A Yes.

15 Q Okay. Do you remember how much you were payin' for it
16 those other times?

17 A Uh, probly around 12, maybe 1300 I think.

18 Q So, in in total, about how many times did you go to
19 Atlanta to meet Ant?

20 A Four or five times I say total.

21 Q Okay, and each time, how much did you buy?

22 A An ounce.

23 Q Did you always go to the same place?

24 A Uh, yes, all except for once.

25 Q Alright, and where -- the majority of the times, where

1 did you go?

2 A To an apartment.

3 Q And where was that apartment?

4 A It was in Atlanta, I mean, I don't know the address.

5 Q Do you remember how to get there?

6 A I don't remember exactly what exit it was off of
7 roughly, uh, maybe about Exit 101 or somethin' like that.
8 Get off 101 and take a left, a bridge that goes back across
9 the highway, and there's a McDonald's, take a right there,
10 uh, either two or three lights down you take a left and
11 about a mile out that road or two there's some apartments on
12 the right.

13 Q And that's where you went the majority of the five
14 times you went?

15 A Yes.

16 Q Where was the other place you went?

17 A Uh, some townhouse, uh, off exit somewhere between 101
18 and 105 I would say.

19 Q And do you know whose townhouse it was?

20 A No, uh ---

21 Q When you got, when you would get to Atlanta to buy
22 meth, how did the deal go down?

23 A I would just come to an apartment and and he'd show it
24 to me and I would just weigh, make sure it weighed right,
25 I'd give him the money and leave.

1 Q Okay, so how long would you be there each time?

2 A Not very long, twenty minutes or so.

3 Q Did you ever test the meth ---

4 A No.

5 Q --- before -- were there any other locations that you
6 met him at?

7 A I met him at a store I think one time.

8 Q Okay, and where was that?

9 A It was like around that neighborhood where the
10 apartment was, right around the area.

11 Q You said a store, what kind of a store?

12 A It was a store that had like a sports bar or sumtin'
13 hooked onto the side of it.

14 Q I mean, was it like a department store, what ---

15 A No, it's like a convenience store thing.

16 Q Okay. Were there other people there at the time?

17 A Uh, he had a friend with him, I don't know who it was,
18 I never met him before.

19 Q You remember what the friend looked like?

20 A No.

21 Q Was it just you, him, and a friend in the store?

22 A Yes.

23 Q Okay. Was the friend the guy who owned or running the
24 store or was that were there other -- was there an employee
25 there?

1 A I think he was the guy runnin' the store.
2 Q Okay, what he, what did he look like?
3 A He was a f -- a foreign, a foreign guy. I mean I'm not
4 sure what nationality he was.
5 Q Okay, and did you do the deal right there in the store?
6 A Yes.
7 Q What part of the store?
8 A Uh, cooler I think.
9 Q Did you ever take anyone else down to Atlanta to meet
10 Ant?
11 A Uh, yes, I think I took Javin Adams.
12 Q How do you know Javin?
13 A I think he went to school with my younger brother.
14 Q And who's that? Who who's your brother?
15 A Brad Moore.
16 Q Okay, do you have any other brothers?
17 A Yes, got an older brother, David.
18 Q Prior to taking Javin to Atlanta, did you ever have any
19 meth dealings with Javin?
20 A I had previously sold him sumtin', yeah.
21 Q Okay. How did it come about that you introduced Javin
22 to Ant?
23 A Javin had some money he wanted to spend that I didn't,
24 basically I didn't have enough to to give him.
25 Q Didn't have enough what to give who?

1 A Enough meth to give him for what money he had.

2 Q Oh, yeah, that's, I'm not tryin' to put words in your
3 mouth but are are you saying' that you didn't have enough
4 meth to give for what Javin wanted?

5 A Right.

6 Q Okay, so he had more money than you had meth?

7 A Right.

8 Q Okay, and is that why you introduced him to Amp?

9 A Yeah.

10 Q And how did you make that introduction?

11 A Uh, I just called him and told him I had a guy that I
12 was wantin' to bring with me, asked him would it be okay.

13 Q Him being Amp?

14 A Yes.

15 Q I'm sorry is it, is it Amp or Ant?

16 A Well, I think at first I mistook what what the people
17 call him. I I knew him at first as Amp for a while.

18 Q Okay, so at the first it was Amp and then Ant?

19 A Yes.

20 Q Okay, so so you called called Ant and told him that you
21 were bringing Javin?

22 A Yes.

23 Q Okay, and how did that introduction go?

24 A I mean, I guess, I mean, it went fairly well, I mean,
25 no no problems.

1 Q And when you took Javin down there, did you buy any
2 meth?

3 A Yes.

4 Q Alright, did he buy any meth?

5 A Yeah.

6 Q How much did you buy?

7 A I think I bought an ounce and I'm not sure exactly, I
8 don't recall exactly how much Javin bought.

9 Q Do you know if he bought the same or more than you?

10 A I think he probably bought more.

11 Q Now did Ant know that you lived in South Carolina?

12 A Yes.

13 Q Did he know that you were selling the meth that you
14 bought from him?

15 A I would assume.

16 Q Were were you buying user amounts from him?

17 A No, no.

18 Q Did you ever -- have you ever seen Amp in South
19 Carolina?

20 A No.

21 Q What kind of -- can you describe the quality and type
22 of meth that you were gettin' from Amp?

23 A Well, I mean, it was, it was fine, I didn't have any, I
24 mean, not ev -- nobody ever complained about it I don't
25 guess.

1 Q Okay, and why did you stop going to Atlanta to buy from
2 him?

3 A Well he he said he was stoppin'. I don't know. He
4 acted real funny sometimes, ha, when you called him, he said
5 he was stoppin', uh, a preacher had given some him some type
6 of revelation about some girl and ---

7 Q Okay, so he, but he broke it off?

8 A Yeah.

9 Q He broke off the relationship?

10 A Yeah.

11 Q Mr. Moore, did you eventually meet with law enforcement
12 and give them information about your dealings with Mr. Tate?

13 A Uh, yes, they come and spoke with me.

14 Q Alright, and do you remember roughly when that was?
15 Does September 2011 sound about right?

16 A Yeah, uh, sometime two -- in 2011, yah.

17 Q And did you give them information about your dealings?

18 A Yes.

19 Q At that time did they show you any photographs or photo
20 lineups?

21 A Yes, they did.

22 Q How did that take place?

23 A I think I was in the county on an unrelated charge and
24 they come and asked me if I could identify a photo lineup.

25 Q Okay, and when they showed you a photo lineup, did they

1 indicate to you, uh, who you should pick?

2 A No.

3 Q Alright, and did anyone else suggest to you who you

4 should pick?

5 A No.

6 Q Did you know in advance they were gonna show you a

7 lineup?

8 A No.

9 Q And were you able to recognize anyone in the photo

10 lineup that they showed you?

11 A Yes.

12 Q Who did you recognize?

13 A Uh, Amp.

14 Q And where'd you recognize him from?

15 A From meeting him in Atlanta, yeah.

16 Q Did you put any markings on that photo lineup to show

17 ---

18 A I ---

19 Q --- who it was you picked?

20 A I think I put my initials on there.

21 Q I'm showing you what's been marked as State's Exhibit

22 No. 9. Do you recognize that?

23 A Yes, sir.

24 Q What is that?

25 A That's a picture of Amp.

1 Q Is it, is it a picture of just him?

2 A No, it's six people.

3 Q Okay, is this the photo lineup that law enforcement
4 showed you?

5 A Yes.

6 Q Are your initials on there?

7 A Yes.

8 Q Is anyone anyone's picture circled?

9 A Yes.

10 Q And who did the circling?

11 A I did.

12 Q Alright, and is that the person you know as Amp that
13 you bought drugs from?

14 A Yes.

15 MR. UNDERWOOD: Your Honor, at this time seek admission
16 of State's 9.

17 THE COURT: Any objection?

18 MR. ARIAIL: No objection, Your Honor.

19 THE COURT: Be so admitted.

20 (State's Exhibit No. 9, photo lineup, admitted into
21 evidence.)

22 (Whereupon, State's Exhibit No. 9 was published to the
23 jury.)

24 BY MR. UNDERWOOD:

25 Q Thank you, Mr. Moore. Please answer any questions the

1 defense has.

2 MR. ARIAIL: Thank you, Your Honor, please the Court.

3 CROSS-EXAMINATION BY MR. ARIAIL:

4 Q Mr. Moore, you were, uh, guess you did this photo
5 lineup, do you know, remember when you did this?

6 A Uh, sometime around the middle or the end part of 2011.

7 Q Okay, and you did that before, I guess, you were
8 incarcerated that time or you were out?

9 A I was incarcerated, yes.

10 Q Okay, did you get out after that or ---

11 A Yes.

12 Q How'd you get out?

13 A I made bond.

14 Q You made bond. So you were out for sometime after
15 that. Do you have any discussions with any of the
16 co-defendants at that time period about this lineup,
17 anything about it?

18 A No, no. I think I called, uh, Ant and told him.

19 Q You called Ant and told him?

20 A Yeah.

21 Q Okay, did you call any of the other co-defendants and
22 talk about this?

23 A Not that I recall, no.

24 Q Not that you recall. But you're you're friends with
25 all these individuals like Javin, Adams, Nate'?

1 A Friends?

2 Q Friends?

3 A No.

4 Q Co-workers?

5 A Acquaintances.

6 Q I mean, drug dealers together?

7 A I know them.

8 Q Okay, so you're acquaintances with them and you've
9 dealt drugs with him, right?

10 A Right.

11 Q Okay, Wendy, Nate', Jason Griffin, Wendy Lollis, is
12 that right, those individuals right there?

13 A Yes.

14 Q Okay. Now they've all been named in this just like you
15 have, right?

16 A Yes.

17 Q Okay, ya'll are all doin' drugs together, sellin' drugs
18 together in the same circle, right?

19 A Yes, we know each other.

20 Q Okay. Now as part of this too, your brother is David
21 Moore, right?

22 A Yes.

23 Q David Moore was the one that introduced Wendy Lollis to
24 Mr. or Tate, Ant, Amp, whoever it was, right?

25 A I have no idea.

1 Q You don't know?

2 A No.

3 Q But you're saying your brother didn't introduce you to

4 Amp to Ant?

5 A I have seen my brother twice in the last 15 years, ---

6 Q Okay ---

7 A --- no.

8 Q --- so you and your brother didn't have any discussions

9 in regards to that?

10 A I've seen him twice in the last ---

11 Q Right.

12 A --- 15 years.

13 Q Now you say that Wendy Lollis was the one that

14 introduced you to Ant, A-N-T, right?

15 A Correct.

16 Q Okay. You remember givin' a statement to police on

17 January 12th, 2011? You remember givin' that?

18 A I remember, yes ---

19 Q Okay ---

20 A --- sir.

21 Q --- you remember statin' that Jason Griffin was the one

22 that told -- introduced you to to Amp, A-M-P? You wanna

23 take a look?

24 A Yes, I see.

25 Q Okay, is that that's what you told law enforcement,

1 right?

2 A Yes.

3 Q Well that's not what you told this jury today, correct?

4 A No, it is. I said Jason and Wendy Griffin, I mean,
5 Jason Griffin and Wendy Lollis.

6 Q So you're now saying that you told this jury Wendy
7 Lollis and Jason Griffin were the ones that introduced you?

8 A That's what I just previously said, yeah.

9 Q Okay, but ya also previously said his name was A-N-T
10 too, correct?

11 A Yes.

12 Q Okay, and now you're sayin' it's Amp, is that right?

13 A I said that's when I first knew him as, Amp.

14 Q Okay. Now you went down to this apartment, you have --
15 we got no address, no location, I mean, you don't -- you
16 can't tell us exactly what the address is, can you?

17 A No.

18 Q Can you provide us anything showin' any transaction
19 occurred, any money, any receipts, anything like that?

20 A No, I've never got a receipt, sir.

21 Q Okay, why why is that funny?

22 A I don't know of anybody that's ever bought any drugs
23 and got a receipt.

24 Q Well at -- they might get receipts in regards to credit
25 cards where they used at gas stations in that vicinity or

1 other type of, uh, things that mighta done while they're
2 down there? You got any of those receipts?

3 A I wasn't down there for anything else.

4 Q Alright, you didn't have to get gas?

5 A No.

6 Q Okay. You don't have any cell phone records even
7 though you made phone calls to Ant or Amp or whoever it is,
8 correct, you don't have any of those, do you?

9 A Why would I want cell phones records?

10 Q To prove that who you were dealin' with, show you made
11 the call, to basically tell this jury that you're tellin'
12 the truth today, you don't have that, do ya?

13 A Uh, you asking me and I'm telling you, you know, what
14 else you want me to do?

15 Q I just want you to tell me if you got your cell phone
16 records today.

17 A No, I don't have any cell phone records. I don't ---

18 Q Okay.

19 A --- make a habit of keepin' cell phone records.

20 Q You coulda gotten law enforcement to get those for you,
21 correct?

22 A You coulda got 'em to get 'em.

23 Q Correct. Now you know, uh, when you did this, did you
24 know that Mr. Tate had an identical twin brother?

25 A No, I didn't.

1 Q Did did you know right now when I just told ya? Do you
2 know he has an identical twin brother?

3 A I found out today, yeah.

4 Q Well who told ya today?

5 A I heard it in the holdin' cell from Norman Bergholm.

6 Q Norman Bergholm and you were downstairs talkin' 'bout
7 this?

8 A Talkin' about what?

9 Q Talkin' about this case.

10 A No, he mentioned the fact that he had a twin brother.

11 Q Okay, so when was that?

12 A I said earlier down in the holdin' cell.

13 Q So was that before or after he testified?

14 A Before.

15 Q Before. So how did he hear about it?

16 A I did not ask him.

17 Q So what'd ya'll discuss in regards to him havin' a trin
18 -- twin brother?

19 A We didn't discuss anything, it was a statement that was
20 made.

21 Q Okay, well what ---

22 A It wasn't a discussion.

23 Q So basically ya'll just made a statement that, Hey,
24 he's ---

25 A I thought you made ---

1 Q --- got a twin brother?

2 A --- the statement did I know that Ant had a twin
3 brother.

4 Q Okay, and you're sayin' right now ya didn't know it.

5 A I didn't know at the time. That's when I became aware
6 of it.

7 Q Okay, what else did ya'll discuss 'bout this case down
8 there?

9 A Just basically how some people seem to be gettin' more
10 time than others and ---

11 Q Right, some people are gettin' more times than other,
12 correct?

13 A Correct.

14 Q And you were lookin' at a substantial amount of time,
15 correct? You're lookin' at trafficking 400 grams, right,
16 you are?

17 A Yes.

18 Q Okay, and you cut a deal to get a lesser sentence,
19 right?

20 A No, matter a fact my plea went up, huh, didn't go down,
21 it went up.

22 Q So trafficking 400 grams down to trafficking
23 twenty-eight to a hundred grams, you're saying that went up?

24 A My plea went from 15 to 18 years to straight 18 years.

25 Q Okay, but you were looking at between 7 and 30 years,

1 correct?

2 A I would, again, I would assume I'm not sure exactly
3 what it carries.

4 Q Eighteen's better than thirty, isn't it?

5 A Yeah, by my math, sure.

6 Q Okay, so you're gettin' a a reduction based upon
7 testifyin' today, cooperatin'?

8 A No, I, that wasn't, that was just what the offer was.
9 It wasn't no stipulation.

10 Q Okay, and and that plea agreement says you gotta
11 cooperate and you will get a recommendation of 18 years,
12 right? Correct?

13 A I would assume if that's what it says.

14 Q Okay. You've read it, correct?

15 A Yes.

16 Q You've signed it?

17 A Yes.

18 Q Okay. Now sittin' here right now lookin' at this
19 individual, Mr. Tate, who you've identified through here,
20 you see the gentleman sittin' in the back of the Court right
21 there (indicating)?

22 A Yes.

23 Q You've seen that's his twin brother. Now sittin' here
24 right now can you say with a hundred percent certainty that
25 Mr. Tate, who's seated next to me, was the gentleman you

1 were dealing with?

2 A Yes.

3 Q You can say with a hundred percent?

4 A Yes.

5 Q Okay. Thank you. No further questions.

6 THE COURT: Any redirect?

7 MR. UNDERWOOD: Nothing, Your Honor.

8 THE COURT: Sir, you can step down.

9 (Whereupon, the witness left the stand.)

10 MR. UNDERWOOD: Your Honor, may may we approach?

11 THE COURT: Yes.

12 (Whereupon, a bench conference was held off the
13 record.)

14 THE COURT: Ladies and gentlemen, we're gonna take a
15 short break. Please don't discuss the case with anyone and
16 just I think there was some concerns about goin' too late
17 this evenin', I do not anticipate we'll be doin' that. I I
18 don't think that's gonna be an issue with us at all,
19 alright?

20 (The following takes place outside the presence of the
21 jury.)

22 THE COURT: Let's be in recess for about ten minutes.

23 (Whereupon, a recess was taken.)

24 THE BAILIFF: Remain seated, court is now in session.

25 THE COURT: Alright, ya'll ready to bring the jury back

1 in?

2 MR. UNDERWOOD: And can I have about twenty seconds,
3 Judge ---

4 THE COURT: Sure.

5 MR. UNDERWOOD: --- I just wanna check my exhibit -- my
6 exhibits are admitted, that's all.

7 THE COURT: Of course.

8 (Pause.)

9 (Whereupon, a discussion was held off the record.)

10 MR. UNDERWOOD: Ready, Your Honor.

11 THE COURT: Alright, give us just a minute. We got to
12 treat a wound here.

13 (Whereupon, a discussion was held off the record.)

14 THE COURT: Alright, ready? Alright.

15 (Whereupon, a discussion was held off the record.)

16 (The following takes place in the presence of the
17 jury.)

18 THE COURT: Yes, sir.

19 MR. UNDERWOOD: Thank you, Your Honor, State calls
20 Ashley Asbill.

21 (Whereupon, the witness came forward.)

22 ASHLEY ASBILL, having been first duly
23 sworn, testified as follow:

24 THE CLERK: Thank you, please be seated.

25 THE COURT: Thank you, there you go.

1 DIRECT EXAMINATION BY MR. UNDERWOOD:

2 Q Good afternoon, Agent Asbill.

3 A Good afternoon.

4 Q Would you please introduce yourself to the jury, tell
5 'em your name, who you are, where you work?

6 A Uh, my name is Bronson Ashley Asbill and I work for the
7 State Law Enforcement Division.

8 Q And what do you do at -- is that also known as SLED?

9 A Also known as SLED.

10 Q What's your position at SLED?

11 A I'm a senior agent.

12 Q How long have you worked with SLED?

13 A Uh, twenty years.

14 Q And in what, in what different capacities?

15 A I've worked in the region. I've also worked in the
16 violent crimes section and I've also worked in the narcotics
17 and vice section.

18 Q Uh, tell the jury a little bit about your your training
19 and background and experience in narcotics investigations.

20 A I've been doing, uh, narcotic, narcotics types
21 investigations probly for a little over twenty years. Uh, I
22 started out with the City of Clinton Police Department, uh,
23 left there and went to the South Carolina ABC Commission and
24 we did some narcotics work. It was related to locations
25 that had, uh, alcohol and beverage license and then we went

1 to SLED in '93 and pretty much been doing this type of work
2 ever since.

3 Q You have any special training in narcotics
4 investigations?

5 A I've been to, uh, a lotta schools, uh, trainin'
6 seminars throughout the years.

7 Q How did you get involved in this case?

8 A Uh, Investigator Ayers with the, uh, Greenville County
9 Sheriff's Office had called me and indicated that he had an
10 informant, uh, that wanted to, uh, relay information about
11 drug dealin', uh, that related to Pickens and Greenville
12 County.

13 Q And did -- after meeting with that informant, did the
14 case expand?

15 A It did.

16 Q How so?

17 A Uh, when you meet with an informant, basically what
18 you're doing is interviewin' the informant and findin' out
19 to what level narcotics dealing they're in, uh, people that
20 they are buyin' from, the people they're also selling to.
21 They're more interested in people they're buyin' from
22 because you wanna naturally work your way up to 'em to, uh,
23 bigger dealers.

24 Q And did the investigation have any kind of, uh, code
25 names?

1 A Yes. Well once the, uh, investigation began, uh, it
2 was 2010 January, uh, initiation was written up and that
3 initiation, uh, in September basically, uh, makin' it a
4 grand jury case, and it was, uh, labeled "Operation Ice
5 House".

6 Q And what's the significance of that name?

7 A Uh, Ice House was just a a, I guess a name that we can
8 all put the the cases that are related to this operation up
9 under and it's easily identifiable.

10 Q And does the term "Ice House" have anything to do with
11 "Ice", the nickname for meth?

12 A It it does, it -- when we came up with a name of "Ice"
13 methamphetamines.

14 Q How many different groups did the investigation
15 eventually involve?

16 A It eventually involved three different conspiracies.

17 Q And was the conspiracy we've been dealing with
18 throughout this trial one of those three conspiracies?

19 A That's correct, the Atlanta conspiracy.

20 Q And if we can kinda focus now at this point just to how
21 the investigation led to that conspiracy. How did the
22 investigation develop once it was initiated?

23 A Once it was initiated we took the informant that
24 Investigator Ayers had and we begin to make, uh, controlled
25 purchases of methamphetamines from individuals that, uh,

1 that informant could deal with, uh, and once we do that, uh,
2 we would bring in some of those defendants and interview
3 'em, uh, and basically ask for their cooperation with the
4 government to further the investigation along to who they
5 were getting their methamphetamines from.

6 Q And as that went on, did you start with, uh, bottom
7 low-end users or just start at the top?

8 A I would start low.

9 Q Alright, how low?

10 A Uh, gram, a couple of grams, 3 grams, that ---

11 Q Now can ---

12 A --- of that level.

13 Q --- can you explain how you build up from there.

14 A Sure, I mean, uh, if you've got an individual who is
15 let's say buyin' a gram or 2 grams at a time, you take that
16 individual, uh, and you make some controlled purchases from
17 whoever that person's supplier is. Uh, at some point in
18 time, uh, the decision's made to approach that person that
19 you're buying from, basically, uh, let them know that, uh,
20 you've been purchasin' from 'em and they could either get on
21 board and cooperate or or not.

22 Q And do you gradually work your way up the ladder?

23 A That's correct, it's it's you're you're always lookin'
24 for the bigger bigger source.

25 Q And were you able to gain information from higher

1 higher sources in this conspiracy?

2 A Yes, we were.

3 Q Without going into any details in what anyone in
4 particular said, uh, what individuals, uh, do you recall
5 meeting with to eventually gather information to work your
6 way up the chain?

7 A We -- which individual?

8 Q And just a general overview of how you built that case.

9 A I'm sorry, I don't understand. What do you mean?

10 Q Oh, I'm sorry, I didn't ask it very well. Uh, you said
11 that you started working with users who were doin' buys on
12 bigger ---

13 A I ---

14 Q --- bigger fish ---

15 A Yes.

16 Q --- and then you would interview people ---

17 A That's correct.

18 Q --- how -- and that's the general practice.

19 A That's correct.

20 Q How did that go about in this case?

21 A This this case here started out with the informant that
22 Investigator Ayers had, uh, and it eventually led to, uh,
23 other individuals who were named as suppliers, uh, some
24 purchases were made, some purchase were not made, but
25 through interviews and some of those controlled purchases,

1 it was established that the the source of the
2 methamphetamines for this particular conspiracy had emanated
3 from Atlanta.

4 Q And some of the people that you eventually interviewed
5 and agreed to cooperate, have some of those individuals
6 testified here in this trial?

7 A Yes.

8 Q And at what point did they begin -- did most of them
9 begin their cooperation?

10 A Most of 'em begin just as soon as you talk to 'em, uh,
11 when ---

12 Q Where ---

13 A --- when you go for an interview, most of 'em, uh, will
14 cooperate more often than not.

15 Q And does the timing and level of cooperation of these
16 defendants have anything to do with how their cases are
17 eventually resolved?

18 A No, uh, that's -- all I'm doin' is gatherin' facts and
19 the evidence in the case.

20 Q Now, Agent Asbill, did you obtain or now since you were
21 with SLED, why was SLED specifically brought into this
22 investigation?

23 A Well -- and part of a state grand jury investigation is
24 once you've established that it involves, uh, different
25 counties, more counties, uh, to some sheriff's offices or

1 city police departments it becomes a jurisdictional problem.
2 Uh, SLED's usually there 'cause we have statewide
3 jurisdiction.

4 Q Now so we're -- who was the team of investigators that
5 focused on this case?

6 A On this case it was Investigator Ayers with the, uh,
7 Greenville County, uh, Sheriff's Office and Investigator,
8 uh, Brett Barwick with the Pickens County Sheriff's Office.

9 Q Now and and were you the lead case agent from the
10 statewide agency?

11 A That's correct, yes.

12 Q During the course of the investigation, uh, did you
13 attempt to obtain any kind of, uh, phone or financial
14 records?

15 A We did not.

16 Q Can you explain why not?

17 A Quite often times, more times than not, the, uh, the
18 dealers, they're dealing in cash, they are dealing with, uh,
19 prepaid phone services. Uh, their records are not generally
20 kept, uh, if you do happen to find a record, uh, let's say
21 on a car or whatever, unless that person's willing to ci --
22 to decipher it, lots of times you don't know what you're
23 lookin' at unless that person cooperates and tells you this
24 is how it's spelled out and this is what somebody owes me.

25 Q Now when you're looking at at phone records, are there

1 ever problems with identifying particular phones to
2 particular people?

3 A Yes.

4 Q Can you explain what those problems are?

5 A Uh, they may loan somebody a phone, uh, the phone may
6 be in a a a family member's name who doesn't have anything
7 to do with, uh, narcotics dealing. Uh, if it's a prepaid
8 service, most of those don't have subscriber information.
9 Uh, so you're not gonna know whose phone it is.

10 Q So if if the records wouldn't identify who owned the
11 phone, would they have much evidentiary value?

12 A It would not.

13 Q Uh, throughout this trial we've, uh, had a chance to
14 look at a number of photographic lineups. How are the photo
15 lineups in this case created?

16 A The photo lineup for this case was created when, uh,
17 the investigators went to Georgia, there was a tag number
18 that was obtained from, uh, uh, suspect's vehicle. Uh, our
19 fusion center which is the the analyst that process
20 information or look at information were able to obtain the
21 tag information was also be able obtain -- obtained a
22 Georgia DA -- DMV photograph of the subject off the tag
23 which was, uh, uh, Antonio Tate.

24 Q So and, in summary, how was the photograph that
25 everyone had circled on these photo lineups, where did that

1 photograph come from?

2 A That photograph came from the fusion center which is
3 our combination intelligence center down there. They made
4 it up, uh, ---

5 Q And whose photograph is that?

6 A On that particular lineup is Antonio Tate.

7 Q Did you participate in the operations of the South
8 Carolina agents going to Atlanta?

9 A I did not.

10 Q Were you aware that those operations were going on?

11 A I was.

12 Q Following those operations, did you receive any files
13 or indication that there were files from Gwinnett County in
14 Georgia?

15 A I did not.

16 Q Have you made inquiries to them in Georgia to find out
17 if there were any files?

18 A I have not.

19 Q Okay. To your knowledge, was anyone else involved with
20 this investigation given any files from Georgia?

21 A Not to my knowledge.

22 Q How closely did you work with the other investigators
23 in the case?

24 A We were probly in contact with each other every day or
25 every other day at some point, at different points in time.

1 Q Now this particular conspiracy, can you describe and
2 explain to the jury the ---

3 MR. FARNHAM: Objection, Your Hon -- Your Honor, uh,
4 believing conspir -- conspiracy, that's for the jury to
5 decide. He can't make a conclusory statement like that.

6 THE COURT: If you'll rephrase, please.

7 BY MR. UNDERWOOD:

8 Q The group of individuals that was indicted for a
9 conspiracy, can you explain to the jury their organizational
10 makeup and how does that compare to a standard
11 methamphetamine conspiracy?

12 A The organizational makeup of a conspiracy generally,
13 uh, starts at the bottom and leads up to the top with the
14 top person being the, I'm not gonna say the ultimate source,
15 but even in the run of an investigation is the end source.
16 It be the top, top level.

17 Q Alright, and the individuals that were indicted for,
18 uh, this conspiracy, this indictment dealing with the
19 Atlanta group, how is that group organized?

20 A Most everyone here were traveling to Atlanta to pick up
21 their methamphetamines from the defendant.

22 Q And were there other individuals that were eventually
23 receiving this methamphetamine that were not indicted?

24 A Yes, there were.

25 Q Were they higher or lower than the people that were

1 indicted?

2 A Lower.

3 Q So is it, is it fair to say that those who were
4 indicted were the higher level dealers?

5 A They were dealing the substantial amounts.

6 Q And to the extent of this investigation, who was the
7 highest source in this particular group?

8 A Antonio Tate.

9 (Whereupon, a discussion was held off the record.)

10 Q Thank you, Agent Asbill. Please answer any questions
11 the defense may have.

12 THE COURT: Okay.

13 MR. FARNHAM: Thank you. Your Honor, thank you.

14 CROSS-EXAMINATION BY MR. FARNHAM:

15 Q Agent Asbill, you just made a conclusory statement that
16 Antonio Tate is the high source in this conspiracy, correct?

17 A The investigation at the end of the investigation, yes,
18 he was the highest we got.

19 Q Okay, I don't mean to insult you but could you tell me,
20 other than these people that have said that they did this,
21 what evidence do you have that Mr. Tate is involved in this
22 conspiracy?

23 A That's what we have.

24 Q Just the word of these people, correct?

25 A That's correct, the sworn statements of some of

1 indicted and not indicted, uh, co-conspirators.

2 Q So we've gotta believe their testimony in order to find
3 that he's, beyond a reasonable doubt, part of this
4 conspiracy, is that your statement?

5 A Could you repeat question?

6 Q We have to believe them, beyond a reasonable doubt, in
7 order to have him part of this conspiracy?

8 A That's correct.

9 Q There's no other piece of evidence that corroborates
10 anything they've told you?

11 A That's correct.

12 Q Now I know you've tried to show that cell phones and
13 photo lineups and, uh, any other document evidence is not
14 important, but in every case that's involved in this
15 conspiracy, every other person that's come into this court
16 and testified you have solid documentary evidence their
17 involvement, don't you? You've got buys?

18 A On some, yes, we do.

19 Q You've got records of them selling, having documented
20 money in their hands?

21 A On some of the individuals, yes, we do.

22 Q You've got cell phone conversations between parties,
23 you've listened to them on the jail, uh, conversations when
24 they've talked back and forth?

25 A Yes, sir, I haven't listened to any but ---

1 Q But, uh, Mr. Ayers has, correct, Agent Ayers?

2 A I believe he has.

3 Q Okay, and you just told, uh, the prosecutor in your
4 direct testimony that more often than not you're not able to
5 get cell phone records, but in this case you actually had
6 three Verizon numbers that you could have gone and
7 subpoenaed records for ---

8 A Yes, sir, could have.

9 Q --- but you didn't?

10 A Yes.

11 Q You could have actually given us some hard evidence
12 that Mr. Tate had one a those phones, but you didn't do it,
13 correct?

14 A Uh, no, we did not.

15 Q Okay, and other than them telling you they drove to
16 Atlanta, you you said in direct testimony that Mr. Tate was
17 supplying these people and that they were driving down to
18 Atlanta to purchase drugs, but you don't know that for a
19 fact, do you?

20 A I I know what they sworn and told me, yes.

21 Q Okay. Are these the same people that sworn, that have
22 have actually told this jury I'm lying to you, that's what
23 you're relying on?

24 A That's correct.

25 Q Okay. Wouldn't you really like to have some more solid

1 evidence in this case, sir?

2 A I wish I had some better witnesses, but we have to work
3 with what we have to work with.

4 Q Okay, and that's what you're expecting us to work with
5 as well, correct?

6 A That's correct. That's what we did.

7 Q Alright, thank you, sir.

8 THE COURT: Any redirect?

9 MR. UNDERWOOD: Very briefly, Your Honor.

10 REDIRECT EXAMINATION BY MR. UNDERWOOD:

11 Q The limited amount of phone information that the
12 investigation was able to turn up, were any of those phones
13 attached to the name Antonio Tate?

14 A None that I'm aware of.

15 Q Do you have any reason, based on the investigation, any
16 reason to not believe the individuals who provided
17 information that they got their methamphetamine from Antonio
18 Tate?

19 A I don't have any reason not to believe it.

20 MR. UNDERWOOD: Nothing further, Your Honor.

21 THE COURT: Mr. Farnham, anything else?

22 RECROSS EXAMINATION BY MR. FARNHAM:

23 Q If a witness in this courtroom tells a jury they're
24 lying to them, you still wanna believe them?

25 A I believe that when they testify that that is who they

1 purchased their methamphetamines from, I do believe 'em.

2 Q How do you know they're not tryin' to protect the real
3 source because he may be in more danger than a man who's
4 never had a criminal history?

5 A I believe they would have told it.

6 Q You do?

7 A I do.

8 Q And were you a part of the North Carolina conspiracy
9 investigation?

10 A Yes.

11 Q There was a man shot and killed in that, in in
12 conspiracy, wasn't there?

13 A I'm not aware of that.

14 Q You sure?

15 A Yes.

16 Q You don't remember that?

17 A No, sir.

18 MR. FARNHAM: That's all I have, Judge.

19 THE COURT: Anything else?

20 MR. UNDERWOOD: Nothing further, Your Honor.

21 THE COURT: Sir, you can step down.

22 (Whereupon, the witness left the stand.)

23 THE COURT: Anything else, Mr. Underwood?

24 MR. UNDERWOOD: Your Honor, the State rests.

25 THE COURT: Alright. Ladies and gentlemen, I'm gonna

1 need you step to your, uh, jury deliberation room for just a
2 moment while I take up a matter of law with the attorneys.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: Mr. Ariail and Mr. Farnham, any matters we
6 need to take up?

7 MR. ARIAIL: Uh, uh, yes, Your Honor, I'd move for a
8 directed verdict in this matter based upon I think there's a
9 substantial issue in regards to the identification of mi --
10 I think most of the witnesses do not and cannot give
11 definitive, uh, I guess ID of Mr. Tate due to his identical
12 brother which they did not know of at the time, uh, a lot of
13 'em said that, ya know, clarifica -- they really can't make
14 a decision, could be him or could be the other. I think
15 that, along with the numerous witnesses that have testified
16 on the stand, that they have provided false information,
17 that they have not been accurate in their report, um, I
18 don't think there's enough there to, uh, uh, to proceed with
19 this, uh, and therefore we make a motion for a directed
20 verdict.

21 THE COURT: Alright, uh, well I think, based on the
22 evidence and testimony that's been presented, uh, without
23 commenting on the strength of that evidence or testimony in
24 any way, uh, there is at least, uh, there is at least a
25 scintilla of evidence on which the, uh, jury could base a

1 verdict against Mr. Tate and, therefore, I'm gonna
2 respectfully deny your motion. But it is preserved for the
3 record.

4 Any other matters we need to take up, I'm gonna speak
5 to Mr. Tate shortly, any other matters we need to take up
6 before we do that? Uh, my idea is this: Depending on what
7 Mr. Tate says if the defense is resting, I'll bring the jury
8 back in, allow you to rest on the record in front of 'em and
9 excuse 'em for the day.

10 MR. ARIAIL: Okay.

11 THE COURT: Alright. Mr. Tate, will you stand please
12 and raise your right hand for me.

13 ANTONIO TATE, having been first duly
14 sworn, testified as follows:

15 EXAMINATION BY THE COURT:

16 Q Okay, you can put your hand down but remain standin' if
17 you don't mind, I want the court reporter to be able to see
18 you. Uh, you and I have talked a couple of times about that
19 this decision was coming about whether or not you would
20 testify in this trial. Uh, have you had an opportunity to
21 discuss your decision with your attorneys?

22 A Uh, yes, ma'am, I have.

23 Q You feel like you've had enough time to discuss this
24 question with them?

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

1 Q Have you listened to their advice?

2 A Yes, ma'am.

3 Q Uh, did you have any que -- did they answer all your
4 questions with regards to it?

5 A Actually, uh, they didn't have to ask me too much.

6 Q Okay. Okay.

7 A I told 'em there was, uh, not a need to.

8 Q Okay, alright. Well let's talk about that a little
9 bit. Uh, in this case you understand you have an absolute
10 right to remain silent, you don't have to say a word in this
11 trial, you understand that, right?

12 A Yes, ma'am.

13 Q You understand that I'm gonna instruct the jury, if you
14 do not take the stand, that they cannot even talk about that
15 in the jury deliberation room, they cannot consider it in
16 any way whatsoever, it cannot enter into their deliberation
17 and you have an absolute right to remain silent, you
18 understand I'm gonna instruct the jury in that?

19 A Yes, ma'am.

20 Q The flip side of that coin is that this is your
21 opportunity to tell your side of the story if you feel it's
22 necessary. Uh, in other words, so to speak it's your day in
23 court, uh, and if you don't testify today there's a great
24 likelihood that you would not tell your side of the story in
25 this case, do you understand that?

1 A Yes, ma'am.

2 Q Uh, has anybody forced you or pressured you in any way,
3 uh, to make this decision here today?

4 A No, ma'am.

5 Q Has anyone promised you anything to get you to make
6 this decision here today?

7 A No.

8 Q Uh, are you under the influence of drugs or alcohol?

9 A I've never taken a drug in my entire life.

10 Q Okay, alright, uh, so I'll take that to mean you are
11 not here today?

12 A No.

13 Q Alright, uh, and ---

14 A Not even cigarettes.

15 Q --- and, uh, well and so I'll ask you what is your
16 decision? Are you going to testify in the trial of this
17 case?

18 A Like I told 'em, I'm gonna, I'm gonna tell you same
19 thing I just told my attorney.

20 Q Yes, sir.

21 A I don't know anything about the case to testify ---

22 Q Okay, ---

23 A --- so ---

24 Q --- alright ---

25 A --- so I can't speak things. I'm not gonna lie like pe

1 -- other other people do in this room.

2 Q Okay, alright. Alright, then, uh, well, uh, thank you
3 very much, sir. And -- well let me ask you a little -- I'll
4 I'll ask you just one or two other questions. I know your
5 attorneys, you've got excellent attorneys, I know they've
6 given you good advice in this regard, this is your decision,
7 is that correct?

8 A Yes, ma'am.

9 Q Not your attorneys decision?

10 A My decision.

11 Q It is your decision, alright, thank you so much.

12 THE COURT: Mr. Ariail, Mr. Farnham, after your
13 discussions with your client, do you feel like he fully
14 understands ---

15 MR. ARIAIL: I ---

16 THE COURT: --- uh, his rights in this regard and that
17 he's waivin' 'em freely, Mr. Ariail?

18 MR. ARIAIL: I do, Your Honor.

19 THE COURT: Mr. Farnham?

20 MR. FARNHAM: I do, Your Honor, thank you.

21 THE COURT: Alright, then very well. Uh, does the
22 defense intend to present any other evidence?

23 MR. ARIAIL: No, Your Honor.

24 THE COURT: Alright. Alright, and just so we're
25 absolutely sure we don't come up on any speed bumps, it's

1 not the State's contention that the defense has entered
2 anything, right, they've not presented any evidence in this
3 case?

4 MR. UNDERWOOD: They have not, Your Honor.

5 THE COURT: Alright, and thus, ---

6 MR. ARIAIL: No.

7 THE COURT: --- it's their right to have li -- last
8 closing would be preserved.

9 MR. ARIAIL: Right.

10 THE COURT: Alright, very well. Okay. Bring the jury
11 back, please.

12 (Whereupon, a discussion was held off the record.)

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: Mr. Ariail.

16 MR. ARIAIL: Your Honor, we have discussed among us and
17 we do not feel it is necessary to present a case. Therefore
18 we rest.

19 THE COURT: Alright, thank you.

20 MR. ARIAIL: Thank you.

21 THE COURT: Alright, ladies and gentlemen, uh, here's
22 what we're gonna do: I'm gonna let you go for the remainder
23 of the day, we're gonna come back in the mornin' but we're
24 gonna come in a little bit later. Uh, we're gonna begin
25 tomorrow morning at 10:30. So if you'll be in your jury

1 room about 10:20, uh, then we will have final arguments from
2 the attorneys, you'll have my charge on the law, and I would
3 anticipate you'll get this case in your hands, uh, maybe
4 about noon or so. Uh, I ha -- we have already made
5 arrangements to order you lunch. Uh, so you you can take,
6 you can take the time that you feel is necessary to
7 deliberate. We'll have lunch already here for you. So
8 don't worry about having to plan to go out for lunch
9 tomorrow. Uh, again, if you would be in your jury
10 deliberation room about 10:30, we will begin promptly at 10
11 -- excuse me, 10:20, we'll begin promptly at 10:30 and I
12 want to tell you our starting later is not due to any of
13 these attorneys, they are ready to go, uh, it's too late in
14 the day for us to argue and submit the case to you, but our
15 later schedule tomorrow is entirely my fault and that rests
16 entirely on my shoulders, and I am, I am sorry and I hope
17 that does not inconvenience anyone. Thank you so much for
18 your attention in this case and I will see you tomorrow
19 morning for closing arguments and final charge on the law.
20 Have a good evenin'.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: Yes, sir, anything ---

24 MR. ARIAIL: No, no ---

25 THE COURT: --- else?

1 MR. FARNHAM: No, we were ju ---

2 MR. ARIAIL: --- no, I'm just stretchin'.

3 MR. FARNHAM: I'm just so used to standin' when the
4 jury gets up. That's just that's what we do in Georgia. If
5 I sat down, the judges would be all over me so...

6 (Laughter.)

7 THE COURT: I have, I have seen that and some people do
8 it here, some people do it here, uh, not everybody does it.
9 No, I -- it -- any motions you'd like to make? You wanna
10 renew?

11 MR. ARIAIL: I'm gonna renew all the motions we made,
12 Your Honor.

13 THE COURT: Alright.

14 MR. ARIAIL: That's it.

15 THE COURT: Then Alright, very well and again, your
16 motions are respectfully denied. Uh, alright, let's revisit
17 this issue about the written charge goin' to the jury.

18 (Whereupon, a discussion was held off the record.)

19 THE COURT: Mr. Ariail, if you can wait one extra
20 minute, I'm gonna print a copy ---

21 MR. ARIAIL: That's fine.

22 THE COURT: --- so you can take a hard copy with ya.

23 MR. ARIAIL: That's fine. I I tell you what, I don't
24 even have to wait, they're gonna take it.

25 THE COURT: Perfect.

1 MR. ARIAIL: We don't have a problem with submittin'
2 it. Are you gonna let us look at it tonight ---

3 THE COURT: That's ---

4 MR. ARIAIL: --- and ---

5 THE COURT: --- what I'm ---

6 MR. ARIAIL: --- then see ---

7 THE COURT: --- gonna do ---

8 MR. ARIAIL: --- if it -- okay.

9 THE COURT: --- and then we'll -- we ---

10 MR. ARIAIL: That's fine.

11 THE COURT: --- talk about it, uh, and the re -- and we
12 can maybe plan to reconvene about 10:15 ---

13 MR. ARIAIL: I'll be here.

14 THE COURT: --- and if we -- that way if there's
15 anything we need to take up on the charge, uh, then we will.
16 Uh, this written charge to back to the jury, is that what
17 they do in Georgia?

18 MR. ARIAIL: We're fine with that.

19 MR. FARNHAM: Do you have pattern charges, Judge? What
20 what we have is, uh, the superior court in Georgia had a
21 counsel of judges that sat ---

22 THE COURT: Oh, you mean standard charges?

23 MR. FARNHAM: Yeah, do you have standard ---

24 THE COURT: Oh, yeah, we just call 'em standard charges
25 and for the most part I have standard charges. I have over,

1 uh, my time on the bench crafted 'em a little bit ---

2 MR. FARNHAM: Okay.

3 THE COURT: --- more towards like what would I ---

4 MR. FARNHAM: I I like ---

5 THE COURT: --- like to say.

6 MR. FARNHAM: --- weave my closing argument around the

7 law so if I ---

8 THE COURT: I kn -- and I'll give you copies of ---

9 MR. ARIAIL: Yeah.

10 THE COURT: --- it ---

11 MR. FARNHAM: Okay.

12 THE COURT: --- so you can read it tonight ---

13 MR. FARNHAM: Thank you.

14 THE COURT: --- and and that's the reason I give it to
15 attorneys is because ---

16 MR. ARIAIL: Yeah.

17 THE COURT: --- I, that's what I ---

18 MR. FARNHAM: Well I think ---

19 THE COURT: --- like ---

20 MR. FARNHAM: --- that's great.

21 THE COURT: --- to do when I tried a case. Uh, ---

22 MR. FARNHAM: I'm all well with that.

23 THE COURT: --- ya'll got any objection to the written
24 copy of the charge goin' back to the jury?

25 MR. UNDERWOOD: None whatsoever, Your Honor.

1 THE COURT: Alright, anything from the defense ---

2 MR. ARIAIL: No, Your Honor.

3 THE COURT: --- on that? I give them a charge that
4 says, and I'm sorry, if you give me one quick moment, I'm
5 not ---

6 MR. ARIAIL: You're fine.

7 THE COURT: --- hold ya up any longer, ---

8 MR. ARIAIL: No, you're fine.

9 THE COURT: --- I know you've got some place to be.
10 Uh, I get all the way to the end here, it is, uh, I'll give
11 each of you a copy of these instructions in written form,
12 "During your deliberations you may refer to the instructions
13 to guide your decision-making. You must consider the
14 instructions as a whole and not follow some and ignore
15 others. Please return each copy of the instructions to the
16 Court at the time your verdict is rendered," uh, and that's
17 it so and I'll -- I sign and number each of the pages so we
18 make sure we get 'em all back, alright?

19 MR. ARIAIL: No problem.

20 THE COURT: Anything else we need to take up before we
21 break?

22 MR. UNDERWOOD: None from the State.

23 THE COURT: Alright, thank you.

24 MR. ARIAIL: Thank you, Your Honor.

25 THE COURT: See you tomorrow afternoon.

1 (Proceedings May 31, 2013)

2 THE COURT: Alright, are we ready to bring the jury
3 back in?

4 MR. UNDERWOOD: Yes, Your Honor.

5 MR. ARIAIL: Yes, Your Honor.

6 THE COURT: Alright. Just not holding you to this but
7 just wonderin' about how long do you think your argument
8 might be, Mr. Underwood?

9 MR. UNDERWOOD: I'll be less than forty minutes, Your
10 Honor.

11 THE COURT: That's good news.

12 (Laughter.)

13 THE COURT: Yours is gonna be over forty minutes I
14 think, yes, sir. Okay, Mr. Farnham, what do you think?

15 MR. FARNHAM: I'll try twenty.

16 THE COURT: Twenty.

17 MR. FARNHAM: Maybe less.

18 THE COURT: That's more like it, okay. Alright, he's
19 gone to get 'em, okay. My charges, as you've seen, not a
20 very long one. So I think this one takes twenty,
21 twenty-five minutes.

22 (Whereupon, a discussion was held off the record.)

23 (The following takes place in the presence of the
24 jury.)

25 THE COURT: Ladies and gentlemen, we're now ready to

1 begin the closing arguments in this case. Just to tell you
2 what's gonna happen, uh, you're gonna hear from Mr.
3 Underwood, then you're gonna hear from Mr. Farnham, and then
4 you gonna hear from me. Uh, we make take a break dependin'
5 on how long, uh, you've you've been sitting, uh, at the end
6 of their closing arguments before I give you my charge but,
7 uh, if our timing works out, your lunch is gonna be
8 delivered about the time that you all go back to deliberate,
9 alright? Mr. Underwood, you may begin.

10 MR. UNDERWOOD: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. UNDERWOOD: This case is about one thing and one
13 thing only: Who sent this poison to South Carolina, this Ice
14 methamphetamine, who sent it here? These drugs
15 (indicating), who sent them here. These drugs (indicating),
16 who sent them here, and these drugs (indicating) and plenty
17 more drugs where these came from. That's what this whole
18 trial has been about.

19 You've heard testimony from eleven different people who
20 went to Atlanta, Georgia to deal with this man, the
21 defendant, Antonio Tate, by getting Ice, methamphetamine,
22 for the sole purpose of bringing it back to South Carolina
23 to sell it, to make money, to use drugs themselves, to get
24 other people hooked on drugs. You heard how they had to go
25 back more and more times. This is a continuing business.

1 This isn't a one time thing to get a fix. This is a group
2 of people working together over an extended period of time
3 funneling more and more drugs from Georgia into the Upstate
4 of South Carolina.

5 Now you heard testimony how Antonio Tate worked through
6 Wendy Lollis. Wendy Lollis, along with her boyfriend, along
7 with Anthony Gambrell, they would make trips to Atlanta,
8 Georgia picking up no less than an ounce every time. Now an
9 ounce is 28 grams. Twenty-eight grams, every single time
10 they went to Georgia or more came back to South Carolina.
11 Wendy Lollis introduced Jason Griffin to Antonio Tate. You
12 heard from Jason Griffin he was goin', at one point, three
13 times a week, sometimes every other day. He started off
14 buying an ounce but then he went to a quarter pound, which
15 is 4 ounces. He's doin' that multiple times a week. That
16 means he's getting almost a pound every week. You heard him
17 testify how eventually it got to the point where he was
18 buying half a pound at a time, at least twice, if not three
19 times, he bought half a pound. One pound is about 454
20 grams. That means that Jason Griffin, by himself, in a week
21 worked with Antonio Tate to bring in more than 400 grams of
22 methamphetamine into South Carolina to be sold to other
23 people and eventually end up with users.

24 You heard through Wendy Lollis and Jason Griffin and
25 Chad Moore. He gets introduced to Amp. They're all

1 connected here, these individuals. Chad Moore makes some
2 trips down there. He's buyin' dope. He's buying at least
3 an ounce every time. This is adding up more and more.
4 Antonio Tate gets introduced separately to Nate' Bashaw and
5 Javin Adams. He first meets Nate' Bashaw sometime earlier,
6 he meets Javin Adams through Mr. Moore. Eventually Javin
7 Adams and Nate' Bashaw started dating and makin' multiple
8 trips down to Atlanta a week. They're buyin' up to a
9 quarter pound every time by themselves. Each of them gets
10 more than 400 grams of methamphetamine and brings it to
11 South Carolina to Antonio Tate.

12 He gets introduced to Norman Bergholm. He goes down
13 there four times, gets 2 ounces every time. That's another
14 8 ounces of methamphetamine and Mr. Tate, as you heard from
15 all these people, he knew they're all in South Carolina. He
16 even came to South Carolina and on one occasion bought some
17 dope to Javin Adams in South Carolina. He knows that meth
18 is coming here. It's not staying in Georgia where he is.
19 He knows it's coming here to our state and it's getting sold
20 to to our citizens getting them on methamphetamine. Now all
21 these people here, they were all users, you saw all them
22 come in here testify. You saw what that drug did to them.
23 He sent that drug, that poison, this here (indicating)
24 through these different people over a 2-year period of time.

25 Now the State has proven this case on it's own just the

1 testimony of these people that came here and spoke to you
2 under oath. Eleven different non-police people came here,
3 swore to tell the truth, and told you they went to Atlanta,
4 Georgia to buy meth from that man (indicating). Consider
5 that, eleven different people and we aren't talkin' about
6 eleven people that live together. We're talkin' about
7 eleven people that loosely know each other 'cause they're
8 all drug dealers. But they weren't all working directly
9 together. The common link is Antonio Tate.

10 You picture this group here kind of like a wheel cause
11 conspiracy's a wheel. Antonio Tate, he's the hub, the
12 center. For Antonio Tate that's where all this meth comes
13 out to the rest of this (indicating) circle but it all
14 starts here (indicating), the narrow end of the funnel.
15 That's how it comes into South Carolina and it spreads
16 throughout Pickens, Anderson, and Greenville Counties.
17 Something to bear in mind.

18 These eleven different people got on that (indicating)
19 witness stand individually when the other ten weren't in
20 here, they were not in the courtroom, and they all testified
21 generally to the same situation of events. Not exactly the
22 same, every person had some slightly different dealings with
23 Mr. Tate, but you could see a pattern of how he would deal
24 his drugs.

25 They'd call ahead, they'd take the 2-hour drive down to

1 Atlanta, some of 'em would call right before they got there,
2 others called at different places but they always had a
3 place that they were going to meet him and it was the same
4 group of places generally. They would meet him sometimes
5 there, go to another place, but all these people mention the
6 same places: a Waffle House, McDonald's, a hotel and a
7 couple different apartments. That's very consistent.

8 Now at times it became an issue that the defense was
9 questioning that well you don't know the address of this
10 place in Georgia where you don't live and no, those people
11 didn't know the address but they consistently gave the same
12 turn by turn by turn directions on exactly where these
13 places were. They told you what business off of what exit.
14 To get to the apartments, they said exactly what turns to
15 take and what side of the street it was on. If these people
16 weren't really goin' down there, how they gonna get that
17 right? If this is some conspiracy where these people got
18 together to blame Antonio Tate, wouldn't it have been a lot
19 easier to just get together and agree on one address where
20 everybody went the same place every time instead of tryin'
21 to remember all these different directions at all these
22 different places: the Waffle House, Shell station,
23 McDonald's.

24 They told how the deals generally went down pretty much
25 the same way. More than one person talked about goin' to

1 this Shell Station, more than one person talked about goin'
2 into the back of that Shell Station, and how the people
3 runnin' that Shell Station seemed to be in on it. That was
4 a safe drug dealing haven apparently for Mr. Tate. He had
5 several difference places. He didn't keep the dope on him.
6 Multiple people testified that he would call ahead to have
7 someone else bring him the dope so he wouldn't be stuck
8 holding onto a large amount at any particular time.

9 That's consistent. That's why you should believe it
10 'cause these people who didn't hear the other's testify are
11 sayin' basically the same thing. It's not word-for-word the
12 same thing. If it was word-for-word the same thing they'd
13 probly be readin' from a script. They're testifyin' from
14 their memories of two to three years after the fact when
15 they've been smokin' meth and they're still pretty
16 consistent, all of these different people.

17 Now why should you believe these witnesses? I
18 understand they didn't live the most respectable lives.
19 They aren't teachers and doctors and preachers. They're
20 drug dealers but ask yourself when we're talking about a
21 drug dealing conspiracy who's gonna know more about dealin'
22 drugs than drug dealers? Those are the people that we're
23 forced to get information from because they're the people
24 involved. These are the people who saw the drugs, who
25 bought the drugs, who sold the drugs.

1 Now don't get any misconceptions about possible bias of
2 these people. All the people that were charged in this case
3 who came in here and testified, they're all goin' to prison,
4 that's already been established, they are going to prison,
5 nobody charged in this case is getting a free ride.

6 Did some of 'em get recommendations for lesser time
7 than they could of faced? Yes, they agreed to plead guilty
8 and cooperate, do undercover buys on each other. That kinda
9 shoots this whole conspiracy theory outta the water when you
10 realize that these people are ratting on each other.
11 They're not talkin' to each other about it. They're doin'
12 drug deals on each other, gettin' each other caught.
13 They're not workin' together. They're working against each
14 other the whole time and all that so that they could get
15 some better recommendations and these aren't easy
16 recommendations of time either. Yeah, some people were
17 looking at shorter periods of time, 3 to 6 years. Three to
18 6 years might be shorter than what they were lookin' at but
19 6 years in prison is a long time. A lot happens in 6 years:
20 A child can be born, learn to roll over, learn to walk,
21 learn to talk, go to kindergarten, go to first grade all in
22 the amount of time that somebody's in prison. An adult
23 could graduate from high school, go to college, graduate
24 from college, get a master's degree in the amount of time
25 these people are gonna be in prison. This is not a cake

1 walk, it's not a cozy deal, and that's a small number of
2 people who got somethin' like that. A lotta these people
3 are lookin' at more like 18 to 20 years. That's a long time
4 in prison, and all they were asked for was to cooperate and
5 give information, and if they testified, to testify
6 truthfully.

7 Now there was some insinuations throughout this trial
8 that these people met with me and that I told them what to
9 say but then when they were asked, Well what were you told,
10 remember what they said? They said to be honest, tell the
11 truth 'cause that's what their agreement was for, to tell
12 the truth whatever it may be.

13 Now I've gotta give the defense credit, they did a good
14 job of tryin' to make Albrie Nate' Bashaw look like a liar.
15 You remember when Mr. Ariail used the word "lie" and
16 suckered Ms. Bashaw into agreeing with him, but remember
17 what they were talkin' about. They were talking about a
18 statement that she gave to law enforcement before she got
19 involved with Javin Adams, before she started goin down to
20 Atlanta and knew who Ant was. When she gave that statement,
21 she said she didn't know his name. Well at the time the
22 statement was given that was the truth because she didn't
23 know his name yet. It was later when she found out that
24 name and that got explained. She never lied. She just got
25 tricked into agreeing with someone else's assertion that she

1 lied but what she said was the truth.

2 Now ask yourselves this question when it comes to why
3 should you believe these witnesses: If they're lying about
4 getting this (indicating) dope and this (indicating) dope
5 from Antonio Tate when they got busted sellin' these drugs
6 or these drugs in their possession, you heard them testify
7 that these witnesses got busted for a lot more distributions
8 of drugs than just those incidents, if they were lying, why
9 didn't they put all those drugs on Antonio Tate too? Why
10 didn't they lie and say that all of their drugs came from
11 him so I coulda filled this (indicating) table up with
12 nothin' but meth?

13 Because they're tellin' the truth, they had more than
14 one source. They only told the drugs that they got caught
15 with that were Antonio Tate's 'cause that was the truth. If
16 you're gonna lie, you go all the way with it. The fact that
17 they didn't shows you that they are telling the truth and,
18 remember, just because someone's a drug dealer, that does
19 not automatically mean they are a liar. A drug dealer can
20 be very honest and say yes, I'm a drug dealer, that's the
21 truth, just because someone sells drugs doesn't mean that
22 they're lying about selling drugs. They got caught. They
23 admitted it.

24 Now throughout this case, on cross-examination of the
25 State's witnesses, you saw several different theories of a

1 defense kind of creeping up. It's kind of like a, like a
2 bird shot shotgun defense where once you take a shotgun with
3 a bunch a little pellets and shoot it at the State's case
4 and see if we can poke a lotta tiny little holes and see if
5 anything will will damage the case or kinda like takin', you
6 know, a bunch of evidence, bunch of strange theories,
7 sprinklin' some glue on it, throwin' it up against the wall
8 and seein' what sticks. You heard so many different
9 theories. You heard about law enforcement not doing their
10 job 'cause they didn't get phone records.

11 Well think about it. How useful would phone records be
12 if you can't prove who the records belong to? People that
13 are always changin' their phone number, buyin' prepaid
14 phones, using phones that are admittedly in someone else's
15 name, if those records were pulled, that's not gonna connect
16 that phone number to anybody, not anybody that's necessarily
17 sellin' the drugs 'cause there's no record of that. The
18 person on the other end of that phone's name isn't gonna
19 appear on any of those documents.

20 So what did law enforcement do? They found the people
21 that called him and said, Hey, who did you call, who did you
22 talk to, where did you go and who did you get these drugs
23 from, did you see the person. That's a lot more useful than
24 phone records, a lot more useful than phone records 'cause
25 you have someone that actually sees a person face-to-face.

1 A piece a paper with no name attached to it doesn't have any
2 value compared to that.

3 You hear a lotta talk about when these drug dealers
4 would go to Atlanta, where's your receipts, where's your
5 video, where's you're audio? Think about that for a second.
6 Is someone that's dealin' drugs really gonna ask for a
7 receipt for the illegal drugs that they're buying and keep
8 that when they don't plan on gettin' caught? Are they gonna
9 take video of it that's gonna incriminate themselves when
10 they don't wanna get caught? Are they gonna keep the
11 receipts that show they went down to see their drug dealer?
12 No, that doesn't make any sense, that makes no sense. It's
13 only being talked about in this trial to try to throw you
14 off track.

15 And again there's there's this conspiracy theory that
16 eleven different people in South Carolina all independently
17 picked out the same random black male in Georgia to pin on
18 as their source for drugs. Now that's beyond a stretch that
19 these people would randomly pick the same person that they
20 otherwise shouldn't know in another state as a scapegoat.
21 You can also look at it on the other side of that coin:
22 These eleven admitted drug dealers all know the same person
23 in another state. What does that tell you? The only thing
24 these eleven people had in common is the fact that they're
25 drug dealers. Their common link is drugs. If they all know

1 this same person in another area, it's because he's their
2 drug dealer, he's their supplier.

3 Now think about all these different photo lineups.
4 Chris Bishop, March 28th, 2011, he's by himself, he circles
5 the picture of Antonio Tate as the guy that he went and
6 tried to buy drugs from but when Antonio Tate saw the police
7 car run a light, his cover was blown. So no deal. March
8 30th, Charles Javin Adams, Albrie Nate' Bashaw separately,
9 not together, separately both shown these lineups at the
10 same time and they both pick the same person, Antonio Tate,
11 as the guy they were goin' to Georgia to buy their
12 methamphetamine from. Remember, they were separate, they
13 weren't together, they're not talkin' to each other about
14 who to pick.

15 Jason Griffin, March 9th, 2011. Jason Griffin's in
16 jail. He's not talkin' to anybody on the outside about who
17 he needs to be pickin' in a lineup. He doesn't even know
18 he's gonna have a lineup. He's in jail. Cops come to him
19 at the jail and say, Hey, do you know anybody in this and he
20 picks somebody, who is that, and that's, that's the guy I go
21 down to Atlanta buy drugs from. It's Antonio Tate.

22 Norman Bergholm, June 20th, 2011, similar situation.
23 He's also incarcerated. He's not talkin' to anybody on the
24 outside 'bout any photo lineups, 'bout who he needs to frame
25 for anything, picks Antonio Tate as the guy he went down to

1 Georgia and bought drugs from. Anthony Gambrell, in August
2 2011, he picks Antonio Tate as the guy that he went down
3 through Wendy Lollis to buy meth from. Chad Moore, in
4 September, same thing. Law enforcement approaches him
5 without warning, shown a photo lineup, and he picks
6 somebody. He doesn't know in advance they're comin' to show
7 him any lineup. He doesn't know to go and ask anybody, Hey,
8 who should I pick, but on his own he picks the same person.

9 Wendy Lollis, September 20th, same thing. I know this
10 is repetitive but that's why you should believe this people.
11 Norman Trebuchon, December of 2011. All these people
12 independently of each other are picking out the same person
13 that they're buyin' their meth from. They're not provided
14 with a name. They give the name Ant or Amp, Antonio.
15 Independently they're picking the same person out of a photo
16 lineup.

17 You've also heard these insinuations of Mr. Tate, Mr.
18 Antonio Tate having a look alike, a twin. Now you saw both
19 a these men. You saw the defendant, Mr. Tate, saw the other
20 man sittin' in the gallery. Yes, they look similar, but you
21 can tell there's differences between 'em. They have
22 different mannerisms, different complexion, different body
23 weight. Heard testimony that Antonio Tate never wore
24 glasses when people went down to buy their drugs but the man
25 that was asked to step forward to be compared to Mr. Tate

1 took off his glasses and was holding them. That can't be
2 the same person 'cause the person in Atlanta wasn't wearing
3 glasses ever according to the testimony that you heard.
4 People were asked, Did you ever see him wear glasses, they
5 said no, they never remember seeing him wear glass.

6 Now, admittedly, Jason Griffin, doin' everything he can
7 to be honest, gives out this information that, Hey, I see
8 this guy in the back of the courtroom that kinda looks like
9 Ant. It's hard to tell 'em apart. He admits that. What
10 else did he say? While he's in jail with Antonio Tate, the
11 man arrested, the man here on trial, he had interactions
12 with him, wasn't just a blind look at someone, he had
13 interaction with him, he talked to him, and he knew, without
14 a doubt, that the guy he was talkin to, the guy that was
15 arrested is the guy he was buyin' his drugs from because he
16 talked with him and then there are other witnesses: Javin
17 Adams, Nate' Bashaw, Chad Moore, they unequivocally say from
18 that (indicating) witness stand they could tell the
19 difference and that that man is who they bought their drugs
20 from. They were very stern about that. They had no doubts
21 that that's the man they bought their drugs from.

22 Now something you should consider: These defenses that
23 were thrown out, this twin theory and this conspiracy theory
24 that there never was any drug transactions in Atlanta with
25 either of these individuals, that they're making the story

1 up versus oh, maybe it was the twin that did it, those don't
2 mix. Either it didn't happen or it happened with somebody
3 else, you can't have both, that's called testing the waters
4 to see what sticks 'cause those defenses can't work
5 together.

6 Now I'm not gonna have the last word in this case. I
7 don't know what defense they're gonna argue to you. It
8 could be any of those. It could be some all new defense. I
9 don't know but that's part of the reason why you should
10 ignore it 'cause obviously it can't be the truth because if
11 the defense were the truth it would just be one. It
12 wouldn't be a mix of all these different things. Truth is
13 what the evidence has shown you, what all of that testimony
14 showed you. Eleven people went to Atlanta and talked to
15 this (indicating) man about buyin' drugs, ten of 'em did buy
16 drugs and they bought drugs more than once, lots of drugs,
17 lots of meth, and the State has proven that that's what
18 happened.

19 Now I wanna tell you a little bit about what, just very
20 briefly, what the State has proven and has to prove to ya.
21 Mr. Tate, ya'll can see that, Mr. Tate's charged with
22 trafficking 400 grams or more of methamphetamine, he's doin'
23 that through a conspiracy, but what is trafficking? It's a
24 word you've heard it thrown out a few times here in the
25 courtroom but it's kind of a strange word. It's kinda hard

1 to understand what exactly makes trafficking different from
2 just givin' somebody some drugs.

3 Well, this is the difference: Trafficking is when
4 someone sells, manufactures, cultivates or grows, delivers,
5 purchases or brings into South Carolina or someone who aids
6 or conspires to do any of those things. Methamphetamine,
7 what makes it trafficking is the amount. A distribution of
8 methamphetamine means it was less than 10 grams.
9 Trafficking means it was more than 10 grams or, in this
10 case, more than 400 grams. That's why this is a trafficking
11 case and it is a conspiracy case. We aren't alleging that,
12 on one particular occasion, Antonio Tate came to South
13 Carolina with 400 grams of meth in his pocket and was
14 handing it out to people. What we have proven to you is
15 that he, along with other individuals, conspired together,
16 over a period of time, to bring in an amount much greater
17 than 400 grams.

18 Now a conspiracy is essentially an agreement between
19 two or more people to do a criminal, unlawful objective or
20 some objective that, while it itself could be lawful,
21 they're doing it in an illegal way. Now the crime here is
22 the agreement to do it, not the actual bringing of the dope.
23 Simply agreeing to come together to bring the dope is a
24 conspiracy.

25 Now at the beginning of the trial I talked to you a

1 little bit about building a car, ya know, BMW they've got,
2 you know, people that put different parts on the car: the
3 wheel guy, the steering guy, the seat guy, the axle guy, the
4 window guy, all those people have a part to play. At BMW,
5 they've got contracts, they've got invoices, they've got
6 orders that show exactly what they're supposed to do,
7 everyone understands, they're all on the same page.

8 Criminal conspiracy doesn't work like that. It doesn't
9 have to be a formal agreement, doesn't have to be in
10 writing. People won't have to explicitly say, We are going
11 to come together and conspire to do this. Conspiracy can
12 exist by people's actions. In this case conspiracy exists
13 because these individuals came together, Antonio Tate at the
14 center, each person bringing their share of methamphetamine
15 into South Carolina to resell it.

16 Now for Mr. Tate to keep making money, those people
17 have to come back to buy more, which means they have to sell
18 what they buy to have money to come back and buy more. It's
19 a continuous cycle that builds and builds and builds, the
20 more money they make, the more they come back to buy even
21 more meth for Antonio Tate to make even more money, that's a
22 conspiracy, that is what the State has proven. It doesn't
23 matter if Antonio Tate ever, at one time, had that much
24 dope. It's the total amount of all that he funneled through
25 these different people over a 2-year a time.

1 Another thing that you need to consider, as we've
2 already talked a little bit about, is the credibility of the
3 witnesses that you saw here. You were able to witness them
4 and what their physical condition was, able to view their
5 demeanor, able to see how consistent their statements were
6 with what other people said. You can believe every single
7 thing you heard. You can believe parts of what you heard
8 and disbelieve other parts. You're the jury. You determine
9 the facts as you see them. You can choose how much and what
10 to believe from the witnesses who testified.

11 Now I submit to you that their statements are generally
12 consistent, they were all under oath, and when some of them
13 were challenged about lying, they were actually getting kind
14 of upset. If they were people that just struck a deal and
15 all they had to do was come and talk and didn't care, well
16 they wouldn't get upset, they'd just sit there and whatever,
17 they've already got their deal. People that get upset when
18 they're called liars are people who are tellin' the truth.

19 Now, again, as I say, this is a conspiracy to traffic
20 400 grams or more of methamphetamine. Just as a little
21 reminder got this (indicating) board here to show some of
22 the different weight breakdowns. Wendy Lollis testified
23 that Ant told her he never sells less than an ounce. So if
24 you're going to Atlanta to buy meth from Antonio Tate,
25 you're buying at least an ounce, it's about 28 grams.

1 You heard from Jason Griffin that he was goin' three
2 times a week to buy 4 ounces each time. Well, that right
3 there is 336 grams per week and he was doing this over a
4 period of a couple months. That right there is a lot more
5 than 400 grams. He also talked about how he eventually got
6 up to where he could buy half a pound at a time. Well half
7 a pound -- well, 1 pound is 454 grams. If he bought half a
8 pound twice, that's already more than 400 grams and he
9 testified that he might've done it three times, and that
10 again is another 400 grams or more.

11 Javin Adams says he went down with Chad Moore and he
12 got introduced to Antonio Tate, and he got 4 ounces, it's a
13 hundred and twelve grams. Then he was goin' on his own
14 before he was on house arrest, three to four times a week,
15 where the smallest amount he would get would be 1 or 2
16 ounces, sometimes he'd get up to 4 ounces. That's three to
17 four times a week. He went on to clarify that five to ten
18 times he got at least 3 ounces.

19 Now we'll just go on the low end of the spectrum here
20 like Mr. Adams was talkin' about, don't wanna try to look
21 like exaggerating anything. We'll go on the low end. He
22 said five to ten times getting more than 3 ounces. Well
23 just five times, not ten, but five, five occasions of 3
24 ounces, 28 grams a piece is 420 grams. That means Javin
25 Adams, by himself, bought more than 400 grams from Antonio

1 Tate, brought it back to South Carolina and sold it, then he
2 went on house arrest and he started sending Nate' Bashaw,
3 his girlfriend at the time. She's goin' down two to three
4 times a week for several months gettin' 2 to 4 ounces every
5 time and you figure, excuse me, you know, now if she's
6 getting 3 ounces, you know, twice a week, that's a hundred
7 and sixty-eight grams. In one month that's 672 grams. She
8 did this for several months. That's a lot more than 400
9 grams.

10 Norman Trebuchon, who was driving Nate' until she
11 stopped going, he went twice by himself. Each time he was
12 gettin' 4 ounces. That right there is half a pound, 224
13 grams. Warren Chastain, through another individual, Brian
14 Stegall, he went down and he bought another 2 ounces for
15 himself. He doesn't know how much Brian Stegall got but
16 Brian Stegall got more for himself but Warren Chastain got 2
17 ounces. Norman Bergholm went down four times. Each time he
18 got 2 ounces. That's 224 grams. Larry Anthony Gambrell,
19 six or seven times, got 2 to 4 ounces each time. Say it's
20 just two ounces, okay, that's six times of 336 grams.

21 Now I'm tryin' not to bore you with math. I'm just
22 tryin' to show you we got a lot more than 400 grams here and
23 if he got, if if Gambrell got 3 ounces each of those times,
24 that's 4, excuse me, 500 grams, more than 500 grams. So he,
25 by himself also, got more than 400 grams and Chad Moore, he

1 bought 4 or 5 ounces himself. Now why am I telling you all
2 this and breaking it down by people and that's the minimum
3 amounts that they testified. They might have gotten a lot
4 more than that. That's the minimum.

5 Talked about credibility of witnesses. If you choose
6 to believe some of the witnesses and not others, you still
7 got a lotta dope from each of the witnesses. So if you
8 believe some and not others, you still got a ton of meth
9 that Antonio Tate funneled into South Carolina through these
10 different people.

11 Now, the State has the burden of proof. You've heard
12 that a little bit already. You're gonna hear about it some
13 more. That means that myself and Mr. Pauling, it's our duty
14 to prove to you, beyond a reasonable doubt, that Antonio
15 Tate is guilty of trafficking methamphetamine 400 grams or
16 more. Now what is a reasonable doubt? Well it's a doubt
17 that makes you hesitate to act. Now by hesitate to act,
18 that does not mean, when you go in your jury room, you can't
19 sit around and think about all the evidence and properly
20 deliberate. It doesn't mean you can't take your time, take
21 your time and consider all of the evidence in the case.
22 What it means is that there has to be evidence that leaves
23 you firmly convinced, firmly convinced, that Antonio Tate is
24 guilty of trafficking methamphetamine by conspiracy, working
25 with all these other individuals who testified under oath

1 that they bought their drugs from him or bought a portion of
2 their drugs, some of them also had other sources, but it's
3 evidence that leaves you firmly convinced.

4 Now, ladies and gentlemen, I submit to you that we have
5 proven this case beyond a reasonable doubt, that you have
6 more than enough evidence from that (indicating) witness
7 stand, from these drugs here (indicating) and here
8 (indicating), here (indicating), you have more than enough
9 evidence to be firmly convinced that Antonio Tate is guilty.
10 I ask that when you deliberate and when you are firmly
11 convinced of his guilt, at that time that you're firmly
12 convinced he's guilty, you'll have no choice but to find him
13 guilty and return a verdict of guilty. Thank you.

14 THE COURT: Thank you, Mr. Underwood. Mr. Farnham, you
15 ready to proceed?

16 MR. FARNHAM: Yes, I am, Judge, thank you.

17 THE COURT: Everybody okay?

18 (No response.)

19 MR. FARNHAM: Morning, ladies and gentlemen. I haven't
20 had an opportunity to address you durin' this trial, you've
21 only seen me cross-examine some of the witnesses, my name is
22 David Farnham, I'm co-counsel with Mr. Mills Ariail. And so
23 you -- you're devoid of any belief that Mr. Tate has a big
24 team of lawyers with a lotta money to spend. We've donated
25 most of our time in this case to defend him in this case.

1 He has a strong family back there (indicating) that's
2 very supportive of him and I wanna thank you for mostly
3 being very attentive durin' this trial. I was very
4 impressed with the fact that you all -- some were takin'
5 notes, were payin' close attention to every witness in this
6 case for a week long because for my client, you know,
7 there's an old saying from way back about today's the first
8 day of the rest of your life. Today is the first day of the
9 rest of his life and his family and he and I, as an officer
10 of the court, and our defense team with Mr. Ariail, uh,
11 Mills, uh, thank you for that, and I'm sure the judge does
12 as well.

13 Uh, let's talk about the law in this case and how
14 you're gonna evaluate the evidence that's been presented to
15 you. Uh, what's important in this case, uh, and what I
16 found, uh, when you go back to the jury room that's that's
17 important, and I thank the Founding Fathers every day when I
18 see that we have a jury system in this country because right
19 now, Mr. Tate, who you do know has a family, a legitimate
20 business, uh, has never been in serious trouble with the law
21 in his entire life, has never had any accusation of being
22 involved in drugs in his entire life, uh, is depending on
23 you to evaluate this evidence. He has the whole state of,
24 uh, South Carolina and the SLED team that's investigating
25 drugs across the State accusing him of being involved in

1 this conspiracy.

2 Now one of the things I I think is important is that
3 when you're evaluating evidence and and what our Founding
4 Fathers did, uh, that I thought was an incredible system is
5 that we have so many different people on this jury from
6 different backgrounds. Uh, you all come from different
7 walks of life, you have different life experiences, you're
8 different ages. Uh, this jury, I think, is one of the most
9 diverse I've ever seen. You've got white male people over
10 50, you've got younger people, some students, we've got
11 people that are self-employed. I know there's an electrical
12 engineer on the jury. Everybody has a different life
13 experience and what I'm gonna ask you to do, when you go
14 back there today, is to use your common life experiences in
15 evaluating this evidence of what is true and what is not
16 true because what's incredible about this case, first of
17 all, is that a group of white drug dealers in South Carolina
18 all pick out a man that they say is their kingpin, a man of
19 the African-American race who lives in another state and
20 puts all the focus on on him.

21 Now, ladies and gentlemen, I don't know what you know
22 about the meth industry. In my experience, as a lawyer over
23 the years, meth is not an African-American ---

24 MR. UNDERWOOD: Objection, Your Honor.

25 THE COURT: Sustained.

1 MR. FARNHAM: Uh, the fact that they're accusing this
2 (indicating) man, uh, with no evidence other than their own
3 testimony, uh, I submit to you shows the weakness in their
4 case.

5 Now let's talk about some of the evidence. Mr.
6 Underwood, uh, is showing you two s -- what he considers to
7 be the strengths of his case to show that Mr. Tate is
8 guilty. Now I submit to you that the two pieces of evidence
9 that he's presented here are nothing more than red herrings
10 that are gonna distract you from the fact that they don't
11 really have any evidence and they're using the bias of your
12 concerns about drugs being presented in your statement in
13 these packages and what I mean by a red herring is, and I
14 don't know if you're familiar with that term, but that is --
15 that came about from what occurred in the Soviet Union when
16 the Communist use to rule in S -- in Russia. They had
17 concentration camps, I think if you've read about, uh, the
18 Gulag that Solzhenitsyn wrote back in the seventies, it
19 talked about people being in prison camps and how they were
20 treated.

21 Back in that part of the world, uh, herring was the
22 number one source of food, and when prisoners were out in
23 the, uh, ice in those camps, they never put up fences or
24 anything because they were so far out in the wilderness that
25 they never worried about them escaping and what prisoners

1 used to do is take a bag of this smelly fish and drag it
2 across the snow, so when the guards were released in the
3 morning, they would head in the opposite direction and the
4 dogs would follow the smelly fish. That's what Mr.
5 Underwood's attempting to have you do with these two pieces
6 of evidence because they do not and they cannot tie them to
7 Mr. Tate.

8 The, uh, photograph that show Mr. Tate in the upper
9 left hand corner on each picture, now if you, if you
10 remember when, uh, I was questioning Agent Barwick about
11 these photographs and how reliable they were, he assured us
12 that there is no way that these people could have contacted
13 each other and talked about who was in these lineups because
14 they weren't out in a situation where they could contact
15 each other but now we know that that's not the truth. The
16 truth is that over a year's time these lineups were out
17 there and month after month after month they were being
18 shown to a group of people that were all associated with
19 each other.

20 Now instead of making it more reliable, as an
21 identification process, by switching these pictures around
22 sometimes putting Mr. Tate here (indicating) or putting him
23 in position number 1, for the whole years period these
24 pictures were shown to these people, they weren't in jail.
25 You have evidence that Mr. Moore was released in March of

1 2011 and he was out in in the, uh, public. Mr. Trebuchon,
2 who testified yesterday, was at home on home arrest. We
3 also know that Mr. Ayers, who was the chief investigator in
4 the Greenville, South Carolina investigation, was listening
5 to them talking on the telephone. So all these people were
6 in communication with each other. The first person that saw
7 this back in the beginning of 2011 had an opportunity to see
8 this and knew that Mr. Tate was in the upper right hand
9 corner. None of those pictures ever changed over the course
10 of a year and all of those people were out talking to each
11 other.

12 Now there's nothing -- the one thing that we do know
13 for sure is that all these people were friends, they all
14 communicated with each other, they say that they went back
15 and forth but let me ask you this one question: As you
16 evaluate the evidence in this case, do you know for a fact
17 that any of these people actually drove to Atlanta? You
18 heard them tell you that they did but there's not one bit of
19 evidence in this case that shows that they actually did it.
20 In fact, I submit to you that, and the only times that the
21 police were involved in investigating this case and they
22 were attempting to get evidence on Mr. Tate he was doing a
23 legitimate activity. It's not a surprise that these people
24 knew this man because the first contact with him back in
25 2008 he was selling automobiles in Atlanta, which is what he

1 does for a living: He repairs cars, he sells cars on
2 Craigslist, and that's how he makes his money. When the
3 police tried to do a surveillance on him, if you remember
4 the two times that they have any evidence that they
5 presented that they were trying to monitor him in any way,
6 he was selling a transmission or selling an automobile, he
7 showed a car, I think it was a white Malibu to them at one
8 point he was tryin' to sell, and that's the evidence they
9 documented.

10 Now we we know that Mr. Mill, uh, Mills caught, uh, Ms.
11 Bashaw and Mr. Bishop in inconsistent statements when Mr.
12 Bishop said, Well, you know, we went down there but we
13 didn't intend to buy any drugs, we were just down there to
14 try to meet with them but they had a a recording line for
15 that whole period and that wa -- and Mr. Mills, uh, Ariail
16 was able to get Mr. Bishop to admit that he had this
17 recording for a period a time but he wasn't even aware that
18 it had been on for an hour and a half and that whole hour
19 and a half that they were recording, there was no evidence
20 on that tape that Mr., on that tape, that Mr. Tate was
21 involved in any drug conspiracy, any talking about selling
22 drugs, any indication that he was complicit in selling
23 drugs. They don't have one piece of evidence that he has
24 any knowledge about drugs, not a tape recording, not a
25 video, not marked money. You know, when Mr. Armstr -- uh,

1 Underwood said to you these people are all going to prison
2 that have testified in this court in the last week, do you
3 know why they're going to prison, because they're guilty and
4 they have evidence on each one of them.

5 You've seen -- I think when I had Lieutenant Campbell
6 on the stand, do you remember when I showed him one of his
7 police reports and I opened it up and I showed him the
8 marked money that he had taken into evidence when he had
9 done a buy with, uh, I think Ms. Bashaw, uh, or in the case
10 with Mr., uh, Griffin when he was busted at his home, he
11 jumped out of his car and dropped drugs on the ground, they
12 had evidence in each one of those cases. Each one of these
13 people were acting as confidential informants. They went to
14 do a drug buy, they took marked money, they were wired, they
15 got evidence on each of those people and why did they, were
16 they able to do that 'cause those people were guilty, they
17 were doing that activity. You've got a 3-year period of
18 them alleging Mr. Tate's involved because these people say
19 that he was and yet they don't have any documentation,
20 money, video, audio recordings or a phone record, just one
21 phone record to show that they made a call to him to buy
22 drugs. You don't have any of that in this case and the
23 reason you don't have that evidence and the only time that
24 you heard about him being talked about when they were doing
25 surveillance was that he was selling cars is because that's

1 what he does. They couldn't prove it because he's not doing
2 that activity. The only evidence that you have been
3 presented that says that he is doing that activity is those
4 people's words that he was.

5 Now how do we know that these people didn't just pick a
6 person that they knew that wasn't a threat to them that
7 they've done business legitimately with to just say Mr.
8 Tate's the guy we're gonna blame for this, they're looking
9 for our kingpin drug source. This is a statewide
10 investigate. They haven't found the source of where these
11 people are getting their drugs and so what's happened in
12 this case is they picked an innocent person who has no
13 criminal history, isn't a threat to them, he's not gonna be
14 coming after them to shut them up to stop hundreds of
15 thousands of dollars of the drug trade business. There's no
16 evidence this man has any of those kind of assets and do you
17 know what I think is the mo -- one of the most important
18 things you should think about when you go in the jury room
19 today when you're evaluating the truthfulness of these
20 eleven people that came in the court this week, what was the
21 one thing that changed as the week went on? If you remember
22 in the beginning I questioned the officers about what assets
23 they found that Mr. Tate had. There weren't any, nothing
24 significant. He drove a 2002 Mustang, he had a small, uh,
25 home, in Atlanta, nothing flamboyant, nothing that indicated

1 that he was receiving any of the proceeds of a person who
2 was doing 4 to \$5,000 a week in methamphetamine trade and
3 none of the witnesses in the beginning of the week said
4 anything about well, he's got a lotta stuff, but what did
5 you hear yesterday after they had a chance to listen to the
6 questions we were asking in the beginning of the week?

7 All the witnesses yesterday got on the stand would say,
8 and I asked you to pay particular attention if you listened
9 to this, it was interesting because I did what I did in the
10 beginning of the week to see if they were talking to each
11 other and obviously they are because three of the witnesses
12 yesterday made a very strong point of saying to you, Oh,
13 yeah, he has a really nice house or he drove a nice car and
14 as as the week went on you also notice that they couldn't
15 identify whether or not he was his brother or it was Mr.
16 Tate, they weren't sure who it was that was in the
17 photograph, but yesterday after the whole week had gone by
18 the last few witnesses, I'm a hundred percent sure now,
19 because why? Because Norman who was in the jail cell with
20 Mr., uh, Ayers had talked to him, they got their story
21 together. All through the week they've been changing their
22 story to better help themselves because they've heard what
23 we've been accusing them of being weak in their story.
24 That's proof positive that they're all communicating with
25 each and they have been since the beginning of this case.

1 They wanna blame somebody else for what they're doing, what
2 they're doing to do that is trying to keep themselves from
3 serving 18 to 25 years in prison and he talks about how
4 serious 6 years is, 6 years is nothing to a person in their
5 20s or 30s compared to 20 to 25 to 30 years.

6 Now the judge is gonna ask you -- excuse me, I need
7 some water. At the conclusion of my comments to you today,
8 the judge is gonna give you the law in the case, how do you
9 as a juror evaluate and use the law to evaluate the evidence
10 in the case? She's gonna tell you what the charges are
11 against Mr. Tate. One of the things that the State has to
12 prove -- and and the standard of proof, uh, the judge is
13 gonna give you as to what their burden is is that they have
14 to prove to you beyond a reasonable doubt. That's so that
15 you, as a person, have a clear and convincing understanding
16 that he was involved in this activity and that he actually
17 knew about it and consented to be involved with it. They
18 have to show you, beyond a reasonable doubt, that he
19 actually sold drugs and intended drugs to be distributed,
20 uh, with these people throughout the State.

21 MR. UNDERWOOD: Objection, Your Honor, that that's a
22 misstatement of the law.

23 THE COURT: Alright, well I'll I'll allow ---

24 MR. FARNHAM: The judge will charge 'em on the law.

25 THE COURT: I'm gonna charge them on the law and,

1 ladies and gentlemen of the jury, you understand that the
2 law that I give you is the only law that you can accept.
3 Alright, Mr. Farnham, ---

4 MR. FARNHAM: Thank you ---

5 THE COURT: --- proceed.

6 MR. FARNHAM: --- Judge. She'll tell you that, uh, Mr.
7 Tate stands with the presumption of innocence, that his
8 entry of a plea of not guilty and that he states that he is
9 not involved in this, never been involved in this and is
10 innocent of these charges is a presumption that follows him
11 throughout the case until the State has taken that
12 presumption away by proof beyond a reasonable doubt, that
13 they've shown by clear and convincing evidence that he's
14 guilty of these charges. She'll define for you what
15 reasonable doubt is and that is and I would ask you this: As
16 you're evaluating the evidence in the -- this case, can you
17 say, based on believing just what these witnesses have told
18 you without one piece of evidence to support anything that
19 they've said, that this (indicating) man is actually the
20 person that's been supplying them with methamphetamine, that
21 they actually got it from him. Now I submit to you that if
22 there was a video of him handing drugs to someone, if there
23 was one telephone record to show that he had a phone call
24 with any of these people -- now we we have eleven people
25 here, ladies and gentlemen, and they haven't given us one

1 phone record to show that any phone calls were ever made to
2 this man.

3 Now they say that it's hard to get phone records from
4 phones that are dropped or prepaid phones but we know from
5 the evidence in this case that they said that they gave him
6 Verizon telephones. Those records are readily available.
7 When a police officer, I submit to you when a police officer
8 who's been involved in these kind of investigations like
9 Agent Asbill has for over twenty-six years tells you that he
10 hasn't got any evidence, the reason he hasn't been able to
11 get any evidence is because there's no evidence to be
12 gotten. There aren't any phone records in this case 'cause
13 Mr. Tate never spoke to these people. There aren't any
14 videos of him selling drugs because he's never sold them any
15 drugs and they can't get that evidence. You can believe
16 that if there was any chance at all that they could have
17 done a buy with him, contacted him and purchased drugs, got
18 him on surveillance, put him under a video, they would have
19 it. Why can't they get it? Because he wasn't doing those
20 activities. All of these people that were trying to pin
21 this on him to keep their real source of supply a secret
22 from the State and, in return for that, they're getting a
23 deal. He's no threat to them. They can get out with their
24 3 to 6 years and go right back to doing what they're doing
25 because the supplier that's been giving them their drugs is

1 still out there.

2 Now let me submit this to you as well: If they had any
3 one piece piece of either -- pieces of evidence like they
4 have against all of the other defendants in this case, I I
5 wouldn't have anything to say to you, I'd have to sit down,
6 I wouldn't be able to say they don't have any evidence to
7 support their accusations against Mr. Tate, they got a phone
8 record that clearly shows that mis -- Mr. Griffin called him
9 up and made a drug deal or we got him on video goin' to this
10 place in Atlanta and doing a controlled buy in this gas
11 station and think about all the things that they've said to
12 you, the the, uh, places that they say they went to are
13 generic places that we all know that are almost at any exit:
14 McDonald's, Waffle House. If you drive down 85 or go South
15 on 85 there's a Waffle House almost every exit between here
16 into Atlanta from Greenville. It's not hard for them to say
17 there's a Shell station at a interstate exit or there's a
18 McDonald's or a Waffle House but what what does your common
19 sense tell you? If these people are really buying drugs
20 from Mr. Tate day after day, what we heard was evidence that
21 it was two to three times a week, I've only driven up to
22 this courthouse a few times and I know what's on East North
23 Street, how difficult would it be for them to come in here
24 and say, you know, we went over to this apartment complex on
25 Southeast Avenue, it was green, it had a porch, they can't

1 describe any of the small details that are important in the
2 case because it never happened, they're making this all up
3 and these guys went out and did their job and couldn't
4 support anything that those people told 'em. They're
5 relying completely on these eleven people, and as Agent
6 Asbill told you yesterday, you know, I wish I had some
7 better witnesses, you're just gonna have to either believe
8 'em or not.

9 Now I submit to you, ladies and gentlemen, is that
10 beyond a reasonable doubt? If we can get convicted on the
11 evidence that's been presented in this courtroom over this
12 week, if you convict Mr. Tate based on a few people coming
13 in and saying that he did this and they can't provide one
14 document to support any of the things that they said, none
15 of us are safe from people coming into court and saying
16 anything false against us. You have to believe that they're
17 credible and the worst thing about this is these aren't
18 people in our society that you should find credible.

19 Uh, one of the things Judge Verdin is going to say to
20 you is, as a tool, is what the credibility of witnesses are
21 and whether or not you should believe the witnesses that
22 have testified in this case. Credibility comes down to
23 their demeanor on the stand, the method in -- of of how they
24 testified, their motives for testifying, whether they have
25 bias or prejudice. We all know, from a lot of the testimony

1 we heard, that these people have bias and prejudices. We
2 also know that they have a motive for lying in this case
3 because they wanna benefit themselves as much as they can.
4 In fact, Nate' Bashaw said, I'm gonna do what I can for me,
5 she told that to Mr. Ariail point blank, Yes, I'm gonna do
6 what they -- what I'm gonna do for myself. They're asking
7 you to put your faith in the voracity of everything that
8 they've said in order to take this man's (indicating)
9 freedom away who's been a law abiding citizen.

10 I submit to you that the credibility of witnesses is
11 the most important thing in this case and I would ask you,
12 as you evaluate the evidence today, when you go back in the
13 jury room and you look at each other and start talking about
14 this case, ask yourselves this question: Has Mr. Underwood
15 and his team actually proven to me these people drove down
16 to Atlanta and actually purchased drugs from that
17 (indicating) man? If I wake up tomorrow morning, get out of
18 bed and look in the mirror at myself and I say, I wonder if
19 Mr. Tate really did sell the man the drugs. Were they
20 credible? Do I believe them? Do I judge his entire future
21 from this point forward, a man who we know is a law abiding
22 citizen versus eleven people who have not been law abiding
23 and who actually have solid evidence against them for their
24 guilt in their their, uh, part in all of this drug selling
25 business that's been going on in South Carolina.

1 We know that they've done it, there's no doubt that
2 they've got solid evidence on every one of these eleven
3 people but he doesn't get the same accommodations because
4 all that they're basing their indictment on in this case --
5 and if you notice on the indictment itself he's only charged
6 on one count of whether or not he conspired with these
7 people and there's not one piece of corroborating evidence
8 to support that he ever did that. I submit to you, ladies
9 and gentlemen, that the burden of proof has not been met in
10 this case, that each citizen, especially a citizen who's
11 lived a law abiding life, who we know who's doing legitimate
12 businesses deserves the benefit of the doubt, there's a
13 lotta doubt in this case. This (indicating) man deserves
14 your greatest consideration when you consider the evidence
15 in this case and I submit to you that what our Founding
16 Fathers said, We're entitled to a jury of our peers before
17 the State can take away our freedom because we're a freedom
18 loving country, this man deserves your consideration, every
19 consideration for the life that he's led and this is not the
20 evidence to convict a person and put a felony of a serious
21 nature on them.

22 I ask that you find Mr. Tate not guilty because the
23 State in this case has not met the burden of proof. I ask
24 that you -- the judge will, uh, charge you on what the law
25 is and I am convinced that once you've understood, uh, what

1 she presents to you as your tools for evaluating the
2 evidence in this case that there can only be one fair
3 verdict and verdict means, in Latin, to speak the truth and
4 the only way to speak the truth today is to find Mr. Tate
5 not guilty and I thank you for your time and consideration.

6 THE COURT: Thank you, Mr. Farnham. Will the attorneys
7 approach for just a moment. Does any, my charge on the law
8 will take about twenty minutes, does anybody wanna break or
9 you wanna keep goin'?

10 (Whereupon, a bench conference was held off the
11 record.)

12 THE COURT: Ladies and gentlemen, before I begin my
13 charge on the law I need t -- I need to remind you of
14 something and that is that you are not to consider any
15 possible sentence in this case in determining, uh, whether
16 or not you you find that the State has met its burden of
17 proof in this case. You are to determine only if the State
18 has determined -- has met their burden of proof. You are
19 not consider any possible punishment, that is up to me,
20 that's that's my area, you are to determine whether or not
21 the State has met their burden of proof.

22 Alright, I'm gonna, I'm now gonna give you my charge on
23 the law and I read it to you and I read it to you for two
24 reasons. First is I wanna get it right, I don't wanna
25 forget anything, uh, but secondly, and most importantly, is

1 you're going to get a copy of exactly what I read to you in
2 the jury deliberation room with some instructions on how to
3 use this written copy, uh, to help you and guide you in your
4 deliberations.

5 Madam foreperson, ladies and gentlemen of the jury, you
6 have seen and heard the evidence presented as well as the
7 arguments of counsel. It now, therefore, becomes my duty
8 and obligation to instruct you on the law that is applicable
9 in this case. It will then be your duty and obligation to
10 begin your deliberations through which process you will
11 decide the facts, apply the law as instructed by the Court
12 and fair, and render a fair and impartial decision. It is
13 your exclusive duty to determine what the facts are. You do
14 that based upon your own common sense examination and
15 evaluation of the testimony and other evidence received
16 during the trial of this case. You twelve jurors alone will
17 decide what weight, value, and effect that is to be given to
18 any particular testimony or any other evidence received.
19 Your ultimate goal is to simply reach the truth in this
20 matter and by doing so you will have fulfilled your
21 obligations as jurors and that is to give both the State and
22 the defendant a fair and impartial trial based upon the
23 evidence presented and the law applicable to this case.

24 In this case the State of South Carolina, through the
25 attorney general, has charged the defendant with the

1 criminal offense known as "conspiracy to traffic in
2 methamphetamine for more than 400 grams". The allegations
3 charging the defendant with these crimes are set forth in
4 the indictment that has been previously explained to you.
5 As I've previously explained, the indictment is not evidence
6 in this case and may not be considered by you as evidence
7 against the defendant.

8 As to the charge set forth in the indictment, the
9 defendant has entered a plea of not guilty. That plea of
10 not guilty has, therefore, placed upon the State the burden
11 of proving the allegations that are set forth in the
12 indictment, the burden of proving each of the essential
13 elements of any crime charged and, therefore, the burden of
14 proving the guilt of the defendant to the satisfaction of
15 you twelve jurors beyond a reasonable doubt before a verdict
16 of guilty could be returned as to the indictment. The
17 burden is never upon a defendant to prove that he is not
18 guilty or to prove that he is in -- that he is innocent
19 because, in some cases, that may not be possible. The
20 burden is always upon the State because they have made the
21 allegations to prove the defendant guilty beyond a
22 reasonable doubt.

23 You are further instructed that it is a vital and
24 important cardinal rule of law that every defendant in a
25 criminal trial, no matter how serious the offense for which

1 he stands charged, the defendant shall always be presumed
2 innocent of those charges and that presumption of innocence
3 shall be with the defendant from the moment of his arrest
4 and throughout the course of the criminal process and even
5 throughout the course of the actual trial. The presumption
6 of innocence shall be with the defendant even as you go into
7 the jury room to begin your deliberations and that
8 presumption of innocence shall be with him there and be with
9 him forever unless you twelve jurors determine that he is no
10 longer entitled to that presumption of innocence. It is
11 only if, unless and until you are satisfied of the
12 defendant's guilt beyond a reasonable doubt that he would no
13 longer be entitled to the presumption of innocence.

14 I remind you that, during this trial, you and I have
15 certain duties to perform. As the trial judge, it is my
16 responsibility to preside over the trial of this case and I
17 also have the duty to rule on the admissibility of the
18 evidence offered during this trial. You are to consider
19 only the competent evidence before you. If there was any
20 testimony ordered stricken from the record in this case
21 during this trial, you must disregard that testimony. You
22 are to consider only the testimony which has been presented
23 from this (indicating) witness stand, any exhibits which
24 have ma -- been made a part of the record in this case and
25 any stipulations of counsel.

1 I have the additional duty to charge you the law
2 applicable in this case. As the presiding judge, I'm the
3 sole judge of the law in this case and it is your duty, as
4 jurors, to accept and apply the law as I now state it to
5 you. If you already have any idea as to what the law is or
6 any idea as to what the law ought to be and it does not
7 agree with what I tell you now the law is, you must abandon
8 this idea because you are sworn to accept the law and apply
9 the law exactly as I state it to you. In every case in this
10 court tried, excuse me, every case tried in this court
11 before a jury, the jury becomes the sole and exclusive judge
12 of the facts in a case. A trial judge cannot intimate,
13 state, comment on or make any statement to a trial jury
14 about the facts in a case. Since you, the jury, are the
15 sole judge of the facts in this case, you are not to infer
16 from what I have said during the progress of this trial in
17 ruling upon the admissibility of evidence or otherwise or
18 anything that I say now during the course of this
19 instruction to you that I have any opinion about the facts
20 in this case. I do not. The law does not allow me to have
21 an opinion about the facts in this case. This is a matter
22 solely for you, the jury, to determine. As jurors it is
23 your duty to determine the effect, value, weight and truth
24 of the evidence presented during this trial.

25 The State has the burden of proving the defendant

1 guilty beyond a reasonable doubt. Some of you may have
2 served as jurors in civil cases where you were told that it
3 is only necessary to prove that a fact is more likely true
4 than not true such as by the greater weight or preponderance
5 of the evidence. In criminal cases, the State's proof must
6 be more powerful than that. It must be beyond a reasonable
7 doubt. Reasonable doubt is the kind of doubt that would
8 make a reasonable person hesitate to act. Proof beyond a
9 reasonable doubt is proof that leaves you firmly convinced
10 of the defendant's guilt. There are very few things in this
11 world that we know with absolute certainty, and in criminal
12 cases, the law does not require proof that overcomes every
13 possible doubt. If, based on your consideration of the
14 evidence, you are firmly convinced that the defendant is
15 guilty of the crime charged, you must find the defendant
16 guilty. If, on the other hand, you think there is a real
17 possibility that the defendant is not guilty, you must give
18 the defendant the benefit of the doubt and find him not
19 guilty. Facts and circumstances that merely place upon the
20 defendant a grave suspicion of the crime charged or that
21 merely raise a speculation or conjecture of the defendant's
22 guilt are not sufficient to authorize a conviction of the
23 accused.

24 There are two types of evidence which are generally
25 presented during a trial: direction evidence and

1 circumstantial evidence. Direct evidence is the testimony
2 of a person who claims to have actual knowledge of a fact
3 such as an eyewitness. It is evidence which immediately
4 establishes the main fact to be proved. Circumstantial
5 evidence is a proof of a chain of facts and circumstances
6 indicating the existence of a fact. It is evidence which
7 immediately establishes collateral facts from which the main
8 fact may be inferred. Circumstantial evidence is based on
9 inference and not on personal knowledge or observation. The
10 law makes absolutely no distinction between the weight or
11 value to be given to either circumstantial evidence or
12 direct evidence nor is a greater degree of certainty
13 required of circumstantial evidence than of direct evidence.
14 After weighing all of the evidence, if you are not convinced
15 of the guilt of the defendant beyond a reasonable doubt, you
16 must find the defendant not guilty.

17 Necessarily, you must determine the credibility of
18 witnesses who have testified in this case. Credibility
19 simply means believability. It becomes your duty, as
20 jurors, to analyze and to evaluate the evidence and
21 determine which evidence convinces you of its truth. In
22 determining the believability of witnesses who have
23 testified in this case, you may believe one witness over
24 several witnesses or several witnesses over one witness.
25 You may believe a part of the testimony of a witness and

1 reject the remaining part of the testimony of that same
2 witness. You may believe the testimony of a witness in its
3 entirety or reject the testimony of a witness in it's
4 entirety. You may consider whether any witness has
5 exhibited to you any interest, bias, prejudice or other
6 motive in this case. You may also consider the appearance
7 and manner of a witness while on the witness stand. In
8 other words, you are to judge a witness's credibility in the
9 same way you would judge a person's credibility in your
10 daily life.

11 I instruct you and emphasize that the fact that the
12 defendant did not testify is not a factor to be considered
13 by you in any way in your deliberation and in your
14 consideration on the question of the guilt or innocence of
15 the defendant. It must not be considered by you in any
16 manner whatsoever. A defendant has the constitutional right
17 to remain silent and the assertion of this right must not be
18 considered by you in your deliberations. I repeat, under
19 your oath, you are to draw no conclusion whatsoever from the
20 fact that the defendant in this case did not testify. The
21 fact that this defendant did not testify should not even be
22 discussed in the jury room. The burden of proof of -- as I
23 have stated to you is on the State. The defendant is not
24 required to prove his innocence. The burden of proof
25 remains on the State to prove guilt beyond a reasonable

1 doubt.

2 In order to establish criminal liability, criminal
3 intent is required. For example, the mental state required
4 to be proven by the State for a particular crime might be
5 purpose, intent, knowledge, recklessness or criminal
6 negligence. Criminal intent must be proven by the State
7 beyond a reasonable doubt. Criminal intent is always a
8 matter that must be determined by the jury from the
9 circumstances surrounding the situation. There is no way to
10 prove criminal intent to a mathematical certainty. So the
11 law says that criminal intent may be inferred from the
12 circumstances shown to have existed. This is how you make a
13 determination of whether or not the element requiring intent
14 was present. It is not necessary to establish intent by
15 direct evidence, but intent may be established by inference
16 in the same way as any other fact by taking into
17 consideration the acts of the parties and all the facts and
18 circumstances of the case. Criminal intent is a mental
19 state of conscious wrongdoing. It is up to you to determine
20 what the defendant intended to do based on the circumstances
21 shown to have existed. Criminal intent can arise from an
22 action or failure to act. It may arise from negligence,
23 recklessness or an indifference to duty or to consequences
24 that is considered by the law to be the equiv -- the
25 equivalent of criminal intent.

1 The defendant is charged with conspiracy to traffic
2 methamphetamine for more than 400 grams. The State must
3 prove, beyond a reasonable doubt, that the defendant
4 combined with one or more persons for the purpose of
5 committing an unlawful act or of committing a lawful act by
6 unlawful means. The State alleges that the defendant
7 conspired to commit the unlawful act of trafficking in
8 methamphetamine for more than 400 grams. The State must
9 prove, beyond a reasonable doubt, that the defendant
10 conspired to traffic methamphetamine for 400 grams.
11 Trafficking means to knowingly sell, manufacturer,
12 cultivate, deliver, purchase, bring into the State, provide
13 financial assistance or otherwise aid, abet, attempt or
14 conspire to sell, manufacturer, cultivate, deliver, purchase
15 or bring into this state, was knowingly in actual or
16 constructive possession, knowingly attempted to become in
17 actual or constructive possession of more than 400 grams of
18 methamphetamine.

19 In order to prove that the defendant conspired to
20 traffic methamphetamine for more than 400 grams, it is not
21 necessary to prove that he did traffic methamphetamine. All
22 that is necessary to prove is that he conspired to traffic
23 more than 400 grams of methamphetamine. In or -- in order
24 to prove conspiracy, the State must also prove that there
25 existed a mutual understanding, agreement or common

1 intention and plan to carry out the unlawful act. Mere
2 passive knowledge of or consent to the criminal contact of
3 another is not enough to make a person a conspirator. There
4 must be guilty knowledge and participation.

5 Similarly, the mere fact that the defendant may have
6 associated with another person or met with another person
7 and discussed common names and interest does not necessarily
8 establish proof of the existence of a conspiracy or that the
9 defendant was involved in a conspiracy. On the other hand,
10 it is not necessary that the agreement be a formal one, that
11 it be in writing, that the persons hold a meeting and
12 expressly state the terms of the common plan or that the
13 agreement be stated in words between them. The agreement of
14 a criminal conspiracy may come into being through an implied
15 mutual understanding, the wilful intention and knowing
16 adoption by two or more persons of a common plan is
17 sufficient. No overt acts need to be shown to establish a
18 conspiracy. A conspiracy may be shown by circumstantial
19 evidence and the conduct of the parties.

20 In order to convict the defendant of conspiracy, the
21 State must prove, beyond a reasonable doubt, not only that
22 the defendant knew of the unlawful conduct but that the
23 defendant agreed to combine with the other persons for the
24 purpose of accomplishing the unlawful conduct.

25 I will give you a copy of these instructions in written

1 form. During your deliberations, you may refer to the
2 instructions to decide, excuse me, to guide your decision-
3 making. You must consider the instructions as a whole and
4 not follow some and ex -- ignore others. Please return the
5 copy of the instructions to the Court at the time your
6 verdict is rendered.

7 Now, madam foreperson, the verd -- we have done a
8 verdict form in this case. It's a very simple one. It
9 says, We, the jury, in the above-named case find the
10 defendant, Antonio Emerson Tate, either guilty beyond a
11 reasonable doubt of conspiracy to traffic methamphetamine
12 for more than 400 grams or not guilty beyond a reasonable
13 doubt of conspiracy to traffic methamphetamine for more than
14 400 grams. There is no significance to the order in which I
15 listed the two possible verdicts in this case, none
16 whatsoever, one had to be listed first, one had to be listed
17 second. When you have marked your verdict on this verdict
18 form, madam foreperson, if you will sign and date it in the
19 spaces provided. Ladies and gentlemen, your verdict must be
20 a unanimous one. Madam foreperson, when the jury agrees on
21 the verdict, you will write the verdict on the verdict form
22 and sign as the foreperson as I just explained to you, then
23 knock on the jury room door and inform the bailiff that you
24 have reached a verdict. At that time we'll receive you back
25 into the courtroom.

1 I ask now that you return to your jury deliberation
2 room but do not begin your deliberations until you are told
3 by the bailiff to do so. Uh, your signal to begin your
4 deliberations will be when you receive these written
5 instructions, uh, my instructions in written form, uh, the
6 verdict form in this case and all of the evidence. Thank
7 you so much for your service.

8 (The following takes place outside the presence of the
9 jury.)

10 (Whereupon, a discussion was held off the record.)

11 THE COURT: Any objection to my charge on the law from
12 the State?

13 MR. UNDERWOOD: Your Honor, not an objection, I know,
14 uh, one concern I just had was that, uh, since they're
15 getting the the written charge, is there any way that, I
16 don't think we need to bring them out, where you just send
17 the note that if they have any questions they can ask the
18 Court for further explanation ---

19 THE COURT: Okay ---

20 MR. UNDERWOOD: --- just ---

21 THE COURT: --- we'll ---

22 MR. UNDERWOOD: --- so they know that they have that
23 option.

24 THE COURT: --- we'll let them know. Uh, the bailiffs
25 I always wonder how it is they get ahold of those yellow

1 sheets of paper they always send out but the bailiff gives
2 them a a a pad and tell them if that they they have any
3 questions they can ---

4 MR. UNDERWOOD: Great ---

5 THE COURT: --- write ---

6 MR. UNDERWOOD: --- thank you, Your Honor.

7 THE COURT: --- so we will take care of that. Yes,
8 sir?

9 MR. ARIAIL: No objections, Your Honor.

10 THE COURT: Alright, thank you so much. Will you all
11 take a moment and make sure that all of the exhibits are
12 together and make sure that they're all supposed to go back
13 to the jury and then we'll send 'em back.

14 MR. UNDERWOOD: And, Your Honor, just ---

15 THE COURT: Yes, sir.

16 MR. UNDERWOOD: --- to check, how, uh, how did Your
17 Honor wanna handle the drug evidence? I know different
18 judges do different things as far as securing that.

19 THE COURT: You know, I've always just sent it back and
20 never given it a thought. What ---

21 THE CLERK: Usually SLED takes evidence they have a
22 SLED form for the chain of custody.

23 THE COURT: Okay.

24 MR. UNDERWOOD: 'Cause, Your Honor, ---

25 THE CLERK: What I ---

1 MR. UNDERWOOD: --- the 'cause the these are not ---

2 THE CLERK: --- do is ---

3 MR. UNDERWOOD: --- sealed.

4 THE COURT: Right, right, and that's the one thing I
5 know we unsealed the things that we have. Uh, ---

6 (Whereupon, a discussion was held off the record.)

7 THE COURT: Alright, let's go back on the record.
8 There are a couple of options, uh, one was that a SLED agent
9 would take it back there, however, I'm more comfortable with
10 the clerk goin' back there with the form and with, uh, the
11 drugs just to, uh, I don't think any SLED agent would say
12 anything to the jury or anything like that but just so
13 there's no question whatsoever we'll send the clerk back
14 with the drugs and ---

15 MR. ARIAIL: Okay.

16 THE COURT: --- the the inventory form, alright?

17 MR. UNDERWOOD: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. ARIAIL: And then one last thing, I'm sorry.

20 THE COURT: Oh, yes, sir.

21 MR. ARIAIL: I was just gonna make sure, I don't know
22 if the alternates were excused already ---

23 THE COURT: I I'm gonna I'll excuse them before they
24 get going.

25 MR. ARIAIL: That's what I thought. I thought you

1 would. Thank you.

2 THE COURT: I will.

3 (Whereupon, a discussion was held off the record.)

4 THE COURT: Mr. Farnham ---

5 MR. FARNHAM: Yes, Judge.

6 THE COURT: --- the the jury had an odd request from
7 the outset: They wanted a list of witnesses who had
8 testified, uh, and I know there's the proposed list of
9 witnesses but, excuse me, not all those witnesses test
10 testified. We can make a list of witnesses if you'd like,
11 uh, but I needed to know, uh, what your position was on
12 that.

13 MR. UNDERWOOD: I don't have a problem with them just
14 having a list of who testified. I I don't think that's a
15 ---

16 THE COURT: Alright.

17 MR. UNDERWOOD: --- a problem.

18 THE COURT: Would you take your proposed list and get
19 with Mr. Farnham and ya'll agree on who testified. I'm be
20 honest with ya, I don't know, I mean, -- oh, you've got it.

21 MR. PAULING: You got it, yeah.

22 THE COURT: Maggie's got 'em. Well we'll make a list
23 from Maggie's list.

24 MR. UNDERWOOD: Okay.

25 THE COURT: You -- you're alright with that, Mr.

1 Farnham?

2 MR. FARNHAM: Yes, that's fine.

3 (Whereupon, a discussion was held off the record.)

4 (Whereupon, the alternate jurors were released off the
5 record.)

6 (Whereupon, the jury began deliberations at 12:21 p.m.)

7 (Jury charge marked Court's Exhibit No. 1 and witness
8 list marked Court's Exhibit No. 2 for identification.)

9 (Whereupon, a verdict was reached at 2:07 p.m.)

10 THE COURT: Alright, it's my understanding the jury has
11 a verdict, we ready to bring the jury back in?

12 MR. UNDERWOOD: State's ready, Your Honor.

13 THE COURT: Defense?

14 MR. ARIAIL: Yes, Your Honor.

15 THE COURT: Go get 'em. Before anybody comes back in,
16 uh, before we bring the jury back in let me just say to
17 everyone in the courtroom, Mr. Tate, you're included in
18 this, I know this is an emotional case, uh, I know that, uh,
19 well emotions will be runnin' high either way. Uh, let me
20 just say this jury didn't ask to be here. They didn't ask
21 to be a part of this case. They've sat here attentively.
22 They deserve our respect and they'll get our respect. Uh,
23 if there are any outbursts, anything like that in the
24 courtroom, you can just expect, there's a deputy in the back
25 and two right here (indicating), you can expect you'll spend

1 tonight at the law enforcement center, alright.

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: Madam foreperson, it's my understanding
5 that the jury's reached a verdict, is that correct?

6 JURY FOREPERSON: Yes, we have.

7 THE COURT: Alright, if you would please hand the
8 verdict form to the bailiff.

9 (Whereupon, the jury foreperson complied.)

10 THE COURT: The verdict form appears to be in order.
11 Publish it, madam clerk.

12 THE CLERK: Sure. In the matter of the State of South
13 Carolina vs. Antonio Emerson Tate, we the jury in the above
14 named case find the defendant Antonio Ener -- Em -- Emerson
15 Tate guilty beyond a reasonable doubt of conspiracy to
16 traffic methamphetamine for more than 400 grams.

17 THE COURT: Alright, you can ask them if this is their
18 verdict.

19 THE CLERK: I I'm gonna poll the jury now. Ladies and
20 gentlemen, of the jury I'm gonna ask you two questions
21 relating to your verdict. As I call your juror ---

22 THE COURT: Madam clerk, you don't have to poll them,
23 if you'll ---

24 THE CLERK: Okay.

25 THE COURT: --- just ask them is this, is this their

1 verdict, ---

2 THE CLERK: Okay, alright.

3 THE COURT: --- signify by raisin' their right hand.

4 THE CLERK: Okay, was this your verdict, uh, if it was,
5 will you raise your right hand.

6 THE COURT: And all have so signified, thank you so
7 much. Ladies and gentlemen of the jury, I thank you so much
8 for your service. Uh, I'm gonna, uh, come back to your jury
9 deliberation room but if you'll step back there I know they
10 need to get you your cell phones and and that sorta thing,
11 uh, before you leave anyway so I'll be right back there to
12 speak with you. Thank you so much.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: We'll take up the matter of sentencing
16 shortly. Uh, I'm gonna release the jury, is there any
17 matter that we need to take up, I know there -- they'll be
18 some matters you'll need to take up but is there any matter
19 we need to take up before I release the jury from the ---

20 MR. UNDERWOOD: Not ---

21 THE COURT: --- State?

22 MR. UNDERWOOD: --- from the State, Your Honor.

23 THE COURT: Any from the ---

24 MR. ARIAIL: Your Honor, I ---

25 THE COURT: --- defense?

1 MR. ARIAIL: --- just request that we poll the jury
2 just, uh, in regards to that, I think there was some
3 question and I would like to do that on behalf a my client
4 if we could.

5 THE COURT: Alright, alright.

6 (Whereupon, a discussion was held off the record.)

7 THE COURT: If you feel as though, and I understand
8 that your emotions can't be in check while the jury's in
9 here, now would be a good time to excuse yourself.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: Ladies and gentlemen, we've had a request
13 from the attorneys, as is their right, uh, to to request
14 that you be polled, uh, so the clerk is going to have, uh,
15 some, uh, two questions for you and I think she started to
16 go into that before we left, uh, but she's got some
17 question, two questions for you and she'll go there --
18 through that with you.

19 THE CLERK: Okay, I'm gonna start with the foreperson.
20 Uh, Juror Number 37, was this your verdict?

21 JUROR NUMBER 37: Yes.

22 THE CLERK: Is this still your verdict?

23 JUROR NUMBER 37: Yes.

24 THE CLERK: Juror Number 177, was this your verdict?

25 JUROR NUMBER 177: Yes.

1 THE CLERK: Is this still your verdict?
2 JUROR NUMBER 177: Yes.
3 THE CLERK: Juror Number 20, was this your verdict?
4 JUROR NUMBER 20: Yes.
5 THE CLERK: Is this still your verdict?
6 JUROR NUMBER 20: Yes.
7 THE CLERK: Juror Number 62, was this your verdict?
8 JUROR NUMBER 62: Yes.
9 THE CLERK: Is still your verdict?
10 JUROR NUMBER 62: Yes.
11 THE CLERK: Juror Number 37, is this your verdict?
12 JUROR NUMBER 37: I believe that was me.
13 THE CLERK: I'm sorry. Sorry. Juror Number 42, was
14 this your verdict?
15 JUROR NUMBER 42: Yes.
16 THE CLERK: Is this still your verdict?
17 JUROR NUMBER 42: Yes.
18 THE CLERK: Juror Number 25, is this your verdict?
19 JUROR NUMBER 25: Yes.
20 THE CLERK: Is this still your verdict?
21 JUROR NUMBER 25: Yes.
22 THE CLERK: Juror Number 78, was this your verdict?
23 JUROR NUMBER 78: Yes.
24 THE CLERK: Is this still your verdict?
25 JUROR NUMBER 78: Yes.

1 THE CLERK: Is this still your verdict?

2 JUROR NUMBER 78: Yes.

3 THE CLERK: Juror Number 166, was this your verdict?

4 JUROR NUMBER 166: Yes.

5 THE CLERK: Is this still your verdict?

6 JUROR NUMBER 166: Yes.

7 THE CLERK: Juror Number 104, was this your verdict?

8 JUROR NUMBER 104: Yes.

9 THE CLERK: Is this still your verdict?

10 JUROR NUMBER 104: Yes.

11 THE CLERK: Juror Number 138, was this your verdict?

12 JUROR NUMBER 138: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR NUMBER 138: Yes.

15 THE CLERK: Juror Number 137, was this your verdict?

16 JUROR NUMBER 137: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR NUMBER 137: Yes.

19 THE CLERK: Juror Number 113, was this your verdict?

20 JUROR NUMBER 113: Yes.

21 THE CLERK: Is it still your verdict?

22 JUROR NUMBER 113: Yes.

23 THE CLERK: Thank you.

24 THE COURT: Alright. Thank you, ladies and gentlemen.

25 Once again I'll be back to speak with you in just one

1 moment.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any other matters before the jury's
5 dismissed from the State?

6 MR. UNDERWOOD: Not from the State, Your Honor.

7 THE COURT: Any from the defense and we'll certainly
8 take up any post-trial motions, uh, at any point but
9 anything before we release the jury?

10 MR. ARIAIL: Nothin' before release ---

11 THE COURT: Alright.

12 MR. ARIAIL: --- the jury, Your Honor.

13 THE COURT: Uh, we will move to any post-trial motions.
14 I can give you ten days also for post-trial motions if you
15 -- if that would be of help to you then I'll give you the
16 full ten days to respond.

17 MR. ARIAIL: Great.

18 THE COURT: Oh, we'll move to sentencing ---

19 MR. ARIAIL: Okay.

20 THE COURT: --- shortly?

21 (Whereupon, a recess was taken.)

22 THE COURT: Alright. I will say I didn't discuss the
23 case with the jurors at all, uh, except to say they all
24 displayed what I would call an appropriate level of gravity
25 about the whole thing. There wasn't anyone happy, uh, and

1 there were some people who were sad I can tell so they
2 clearly took their responsibility very seriously.

3 (Pause.)

4 (Whereupon, Attorney Farnham entered the courtroom.)

5 MR. FARNHAM: Sorry, Judge.

6 THE COURT: That's fine, I just walked back in. I was,
7 I told the attorneys before you were back in here the jury
8 showed, uh, they were complimentary of the attorneys
9 involved and they were -- showed, uh, uh, appropriate level
10 of gravity of the situation and, uh, uh, alright, we ready
11 to move to sentencing?

12 MR. UNDERWOOD: Yes, Your Honor.

13 THE COURT: Alright, thank you. If ya'll wanna step
14 forward and do it just as if...

15 (Whereupon, the defendant and his counsel came
16 forward.)

17 MR. UNDERWOOD: May it ---

18 THE COURT: Yes.

19 MR. UNDERWOOD: --- please the Court, Your Honor. Uh,
20 Your Honor, as you're aware, this charge carries a minimum
21 sentence of 25 years to a maximum of 30 years and a \$200,000
22 fine. Uh, Your Honor, is very well aware of the facts due
23 to the trial and the other pleas. Uh, we would leave the
24 sentence to your appropriate discretion.

25 THE COURT: And hi -- he has a, if any, a very, very

1 limited prior record.

2 MR. UNDERWOOD: It is limited, Your Honor. In 2001 a
3 driving under suspended revoked license, uh, 2002 a
4 probation violation, 2003 giving false name or info. to
5 police and 2003 another probation violation, Your Honor.

6 THE COURT: Okay. Alright, Mr. Ariail.

7 MR. ARIAIL: Your Honor, and, uh, you've heard the the
8 testimony. You've learned a little bit about my client in
9 regards to it. Uh, uh, to say the least we're a little
10 shocked in regards to kinda what happened today, uh, and I
11 know, uh, him just seated here he's ex -- he's lookin' at 25
12 to 30 years, uh, others in this have, uh, gotten
13 substantially less. It is our hope, based upon what you've
14 got in front of you, he can get the mandatory minimum in this,
15 uh, that's 25, uh, and that's pretty much, uh, the best he
16 knows he can do in that and that we hope that you will go
17 with that instead of the the maximum.

18 THE COURT: Mr. Tate, is there anything you'd like to
19 say, you you looked earlier like you wanted to say somethin'
20 and I've ---

21 THE DEFENDANT: Yeah, he just, uh, stated that, uh, I
22 had a probation violation. Did he, I don't know if it said
23 in my paperwork the probation that I was on was to pay a
24 speedin' ticket off that I thought was taken care of ---

25 THE COURT: Okay, I see, I see.

1 THE DEFENDANT: --- so I was on probation to pay a
2 speedin' ---

3 THE COURT: Alright.

4 THE DEFENDANT: --- ticket off.

5 THE COURT: Alright, and I'll I'll say for the record I
6 will not consider that probation violation. We we don't
7 have somethin' like that here in South Carolina, uh, where
8 somebody would be on probation for something like that. So
9 that's I'm not even gonna take it into consideration
10 whatsoever, alright. I'll take into cons -- I, well I'll
11 just say to you, Mr. Tate, you you have probly more family
12 support than anybody I've seen in in my recent memory in the
13 courtroom, great deal of family support, uh, and I couldn't
14 couldn't blame them for for bein' emotionally involved in
15 this case of course because it was obvious they they care
16 about you a whole lot. Uh, I take into consideration that
17 you're a young man, relatively young man for who we see and
18 that, uh, that you do have have very little prior record,
19 uh, sentence of the Court is 25 years and credit for the
20 time you served. Good luck to you.

21 POLICE OFFICER: This way, please.

22 MR. ARIAIL: Thank you, Judge.

23 THE COURT: Thank you.

24 MR. UNDERWOOD: Thank you, Your Honor.

25 THE COURT: Thank you. Mr. Ariail, you wanna save it,

1 you do wanna save any post-trial motions ---

2 MR. ARIAIL: I will ---

3 THE COURT: --- for ---

4 MR. ARIAIL: --- reserve those, yes, Your Honor.

5 THE COURT: Absolutely.

6 MR. ARIAIL: I talked with Mr. Farnham in regards to
7 those and let you know ---

8 THE COURT: No problem whatsoever, ---

9 MR. ARIAIL: --- so I guess we ---

10 THE COURT: --- they ---

11 MR. ARIAIL: --- we file those ten ten days, that would
12 be, I wanna make sure I got the right date on that, when we
13 do this that looks like it would be ---

14 THE COURT: Well I can tell ya this, Mr. Ariail, I will
15 not be in this circuit for two weeks ---

16 MR. ARIAIL: Okay.

17 THE COURT: --- so so I will not receive any motions so
18 how 'bout with say June the 16th, is that the day I'm back
19 here?

20 MR. ARIAIL: June 16th ---

21 LAW CLERK: Seventeenth.

22 MR. ARIAIL: --- okay, or June ---

23 THE COURT: June the 17th ---

24 MR. ARIAIL: --- 17th?

25 THE COURT: --- is the day that I'm back in this

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

CASE NO. 2011-GS-47-07

VS.

ORIGINAL FILED

DEC 13 2011

SUPERSEDING
INDICTMENT FOR
UNLAWFUL DRUGS

ANTONIO EMERSON TATE,
 WENDY CHRISTINE LOLLIS,
 CHARLES JAVIN ADAMS,
 ALBRIE NATE' BASHAW,
 CHAD DEWAYNE MOORE,
 NORMAN VICTOR BERGHOLM, IV,
 GARY JASON GRIFFIN,
 CHRISTOPHER MICHAEL SIMMONS,
 RACHEL ELIZABETH EADES,

DEFENDANTS.

JAMES R. PARKS
 CLERK, STATE GRAND JURY

Trafficking Methamphetamine
 (Conspiracy)
 S.C. Code Ann. § 44-53-375(C)(5)
 (1 Count)

Trafficking Methamphetamine
 10 - 28 grams
 S.C. Code Ann. § 44-53-375(C)(1)
 (4 Counts)

Trafficking Methamphetamine
 28 - 100 grams
 S.C. Code Ann. § 44-53-375(C)(2)
 (3 Counts)

Distribution of Methamphetamine
 S.C. Code Ann. § 44-53-375(B)
 (13 Counts)

Possession of a Stolen Pistol
 S.C. Code Ann. § 16-23-30(C)
 (1 Count)

Possession of a Firearm During the
 Commission of or Attempt to Commit
 a Violent Crime
 S.C. Code Ann. § 16-23-490
 (1 Count)

Unlawful Carrying of a Pistol
 S.C. Code Ann. § 16-23-20
 (1 Count)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on December 13, 2011 the State Grand Jurors present upon their oath:

COUNT I
TRAFFICKING METHAMPHETAMINE
(CONSPIRACY)
S.C. Code Ann. § 44-53-375(C)(5)

That ANTONIO EMERSON TATE, WENDY CHRISTINE LOLLIS, CHARLES JAVIN ADAMS, ALBRIE NATE BASHAW, CHAD DEWAYNE MOORE, NORMAN VICTOR BERGHOLM, IV, GARY JASON GRIFFIN, CHRISTOPHER MICHAEL SIMMONS, RACHEL ELIZABETH EADES, and other persons whose names are both known and unknown to the State Grand Jury, did in Greenville County and Pickens County of South Carolina, during the period of time extending from on or about November 1, 2009 until November 8, 2011, conspire to sell, manufacture, deliver, purchase, or bring into this State, four hundred (400) grams or more of methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT II
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That WENDY CHRISTINE LOLLIS did in Pickens County, on or about July 31, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, et. seq., Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT III
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That WENDY CHRISTINE LOLLIS did in Pickens County, on or about July 31, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT IV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That WENDY CHRISTINE LOLLIS did in Pickens County, on or about September 13, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT V
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That CHARLES JAVIN ADAMS did in Anderson County, on or about March 29, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT VI
TRAFFICKING METHAMPHETAMINE 10 - 28 GRAMS
S.C. Code Ann. § 44-53-375(C)(1)

That ALBRIE NATE' BASHAW did in Pickens County, on or about August 27, 2010, knowingly possess (actually or constructively), deliver, sell, or bring into this State, ten (10) grams or more but less than twenty-eight (28) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT VII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That ALBRIE NATE BASHAW did in Anderson County, on or about March 29, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT VIII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That CHAD DEWAYNE MOORE did in Pickens County, on or about March 17, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT IX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That CHAD DEWAYNE MOORE did in Pickens County, on or about April 19, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT X
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That NORMAN VICTOR BERGHOLM, IV did in Greenville County, on or about March 31, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XI
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That NORMAN VICTOR BERGHOLM, IV did in Pickens County, on or about May 31, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XII
TRAFFICKING METHAMPHETAMINE 10 - 28 GRAMS
S.C. Code Ann. § 44-53-375(C)(1)

That GARY JASON GRIFFIN did in Greenville County, on or about January 27, 2010, knowingly possess (actually or constructively), deliver, sell, or bring into this State, ten (10) grams or more but less than twenty-eight (28) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XIII
TRAFFICKING METHAMPHETAMINE 10 - 28 GRAMS
S.C. Code Ann. § 44-53-375(C)(1)

That GARY JASON GRIFFIN did in Greenville County, on or about February 3, 2010, knowingly possess (actually or constructively), deliver, sell, or bring into this State, ten (10) grams or more but less than twenty-eight (28) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XIV
TRAFFICKING METHAMPHETAMINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-375(C)(2)

That GARY JASON GRIFFIN did in Pickens County, on or about March 10, 2010, knowingly possess (actually or constructively), deliver, sell, or bring into this State, twenty-eight (28) grams or more but less than one hundred (100) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

**COUNT XV
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)**

That GARY JASON GRIFFIN did in Pickens County, on or about March 10, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

**COUNT XVI
POSSESSION OF A STOLEN PISTOL
S.C. Code Ann. § 16-23-30(C)**

That GARY JASON GRIFFIN did in Pickens County, on or about March 10, 2010, knowingly possess, a stolen pistol, knowing that the pistol was stolen or converted under circumstances constituting a crime in violation of § 16-23-0030(C), Code of Laws of South Carolina (1976), as amended.

**COUNT XVII
POSSESSION OF A FIREARM DURING COMMISSION OF OR ATTEMPT TO
COMMIT A VIOLENT CRIME
S.C. Code Ann. § 16-23-490**

That GARY JASON GRIFFIN did in Pickens County, on or about March 10, 2010, possess or visibly display a firearm during the commission of or attempt to commit a violent crime, to wit: TRAFFICKING METHAMPHETAMINE in violation of § 16-23-490, Code of Laws of South Carolina (1976), as amended.

COUNT XVIII
UNLAWFUL CARRYING OF A PISTOL
S.C. Code Ann. § 16-23-20

That GARY JASON GRIFFIN did in Pickens County on or about March 10, 2010, wilfully and unlawfully have in his possession, a deadly weapon, described as follows: a semi-automatic pistol, he not being authorized by law to so possess the said pistol, in violation of §16-23-0020, Code of Laws of South Carolina (1976), as amended.

COUNT XIX
TRAFFICKING METHAMPHETAMINE 10 - 28 GRAMS
S.C. Code Ann. § 44-53-375(C)(1)

That GARY JASON GRIFFIN did in Pickens County, on or about December 27, 2009, knowingly possess (actually or constructively), deliver, sell, or bring into this State, ten (10) grams or more but less than twenty-eight (28) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That CHRISTOPHER MICHAEL SIMMONS did in Pickens County, on or about March 10, 2010, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXI
TRAFFICKING METHAMPHETAMINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-375(C)(2)

That CHRISTOPHER MICHAEL SIMMONS did in Pickens County, on or about March 10, 2010, knowingly possess (actually or constructively), deliver, sell, or bring into this State, twenty-eight (28) grams or more but less than one hundred (100) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

COUNT XXII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That CHRISTOPHER MICHAEL SIMMONS did in Pickens County, on or about February 8, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXIII
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That CHRISTOPHER MICHAEL SIMMONS did in Pickens County, on or about February 8, 2011, knowingly distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT XXIV
TRAFFICKING METHAMPHETAMINE 28 - 100 GRAMS
S.C. Code Ann. § 44-53-375(C)(2)

That RACHEL ELIZABETH EADES did in Pickens County, on or about March 10, 2010, knowingly possess (actually or constructively), deliver, sell, or bring into this State, twenty-eight (28) grams or more but less than one hundred (100) grams of methamphetamine ("ice" or "crank"), a controlled substance under the provisions of § 44-53-110, *et seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State.

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

A True Bill



FOREMAN

Alan Wilson
 ALAN WILSON
 ATTORNEY GENERAL

FILED

STATE OF SOUTH CAROLINA

MAY 31 2013

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

GREENVILLE

JAMES F. PARKS

STATE

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2011 -GS- 47 - 07 COUNT I

VS.

ANTONIO EMERSON TATE

A/W#: DIRECT PRESENTMENT

AKA:

Date of Offense: 11/01/2009 - 11/08/2011

Race: B

Sex: M

Age: 34

S.C. Code §: 44-53-375(C)(5)

DOB: 1978

SS#: [REDACTED]

CDR Code #: 0370

Address:

City, State, Zip:

DL#

SID#

*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: TRAFFICKING METHAMPHETAMINE, 400 GRAMS OR MORE (CONSPIRACY) (1ST OFFENSE)

In violation of § 44-53-375(C)(5) of the S.C. Code of Laws, bearing CDR Code # 0370

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45 (CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 76207
Assistant Attorney General SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 25 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 State Department of Corrections.☐ The Defendant is to be placed on 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

*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 47.9 (Public Def/Prob)	\$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	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 8.40
TOTAL		\$ 288.40

Clerk of Court/Deputy Clerk

Court Reporter:

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, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)355630
Antonio Emerson Tate)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2016-CP-23- 05259

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Greenville County Court, Greenville, South Carolina
3. Name(s) of co-defendant(s) (if any) Wendy Lollis, Charles Adams, Albrie Bashaw, Chad Moore, Norman Burgholm, Jason GRIFFIN, Rachel Fades
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2011-GS-47-07
 (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 1st 2013 sentence 25 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. denied and issues not preserved
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 15 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of council
- (b) Violation of Due process under 14 Amendment
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Council failed to interview potential witnesses
- (b) State failed to obtain exculpatory evidence known to
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Trial - Mills Ariel Jr of Greenville County,
11 North Irvine st. Suite 11 Greenville county, SC 29601
 ii. Wendy Keefe of Charleston South Carolina
as Appeal lawyer, 1643B Savannah Hwy ste 266 Charleston SC 2940
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and sentencing
 ii. Appeal.
 iii. _____

19. State clearly the relief you seek in filing this application:

Conviction Vacted or reversed and/or New trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Antonio Tate, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Antonio Tate

SWORN to and subscribed before me this 19th
day of August, 2016.

Michael Camare Michael Camare
(L.S.)
Notary Public

My Commission Expires: July 09, 2026

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Antonio Tate, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Antonio Tate
Applicant

SWORN or affirmed to and subscribed before me this

19th day of August, 2016.
Michael Camare

Notary Public

My Commission Expires: July 09 2026

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
ANTONIO EMERSON TATE,	)	
S.C.D.C. No. 355630	)	Case No. 2016-CP-23-05259
Applicant,	)	
	)	
v.	)	RETURN AND MOTION FOR A MORE
	)	DEFINITE STATEMENT
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

In response to the post-conviction relief application filed September 12, 2016, Respondent would show this Court:

I.

Antonio Emerson Tate (“Applicant”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of South Carolina Grand Jury Clerk of Court. On December 13, 2011, the State Grand Jury of South Carolina indicted Applicant by superseding indictment for Trafficking in Methamphetamine (Conspiracy) (400 grams or more) (2011-GS-47-0007) as part of a multi-count, multi-defendant indictment stemming from an investigation into a methamphetamine trafficking ring.

On May 28, 2013, Applicant proceeded to a jury trial in the Greenville County Court of General Sessions before the Honorable Letitia H. Verdin, circuit court judge. R. Mills Ariail, Jr., Esquire, and David J. Farnham, Esquire¹, represented Applicant. Assistant Attorney Generals Joshua R. Underwood and Curtis A. Pauling, of the South Carolina Attorney General’s Office, prosecuted the case. On May 31, 2013, the jury convicted Applicant as indicted. Judge Verdin sentenced Applicant to twenty-five years imprisonment.

¹ Mr. Farham is a member of the Georgia Bar and was admitted *pro hac vice* to represent Applicant in this matter alongside Mr. Ariail.

On June 14, 2013, Applicant filed a motion for a new trial, arguing the trial court erred in denying his motion for directed verdict. By order signed June 27, 2013 and filed July 8, 2013, Judge Verdin denied Applicant's post-trial motion.

On July 8, 2013, Applicant filed a timely notice of appeal. Applicant was represented on appeal by Wendy J. Keefer, Esquire. Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion. State v. Antonio Emerson Tate, 2016-UP-291 (Ct. App. filed June 15, 2016). The Remittitur was returned to the circuit court on July 1, 2016.

II.

In his *pro se* application for post-conviction relief, Applicant alleges he is being held in custody unlawfully due to ineffective assistance of counsel for "fail[ing] to interview potential witnesses." Applicant also alleges his due process rights guaranteed under the Fourteenth Amendment to the U.S. Constitution were violated when the "State failed to obtain exculpatory evidence." Applicant failed to set forth with any specificity any of the underlying facts giving rise to these allegations.

Attached herewith and incorporated herein are the records of the South Carolina State Grand Jury Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the motion and trial transcripts, and the appellate records (including the record on appeal). Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant alleges ineffective assistance of counsel for failing to interview potential witnesses on his behalf. Respondent submits Applicant's allegation of ineffective assistance of

counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges he was denied due process of law based on a general claim that the State failed to obtain exculpatory evidence. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to this allegation. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCPP, to require Applicant to provide a more definite statement of his allegation of a due process violation. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCPP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Applicant’s allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, Respondent requests Applicant provide a more definite statement of his claims, and an evidentiary hearing be held on any claims so requiring one.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: Megan Harrigan Jameson
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

8/23, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2016-CP-23-05259
	)	
ANTONIO EMERSON TATE, #355630	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah Conyers Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this 23rd day of August, 2017.


 Caroline Collins, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
ANTONIO EMERSON TATE,	)	SUPPLEMENTAL APPLICATION
APPLICANT.	)	
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	CASE # 2016-CP-23-5259
RESPONDENT.	)	

This matter comes before the Court by way of application for post conviction relief filed September 12, 2017, alleging ineffective assistance of trial counsel for failure to contact witnesses and obtain exculpatory evidence and due process violations. A Return and Partial Motion for a More Definite Statement was made on August 23, 2017. This application is intended to incorporate Mr. Tate's application allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution and add the allegations of ineffective assistance of trial counsel Mills Ariail, Esquire and David Farnam, Esquire, for:

(1) failing to preserve the issue of insufficient proof of conspiracy in his directed verdict motion;

(2) conceding that he would not cross examine co-defendant witnesses who were also originally charged with trafficking 400 grams or more avoiding twenty-five year mandatory minimum when he had every right to do so under State v. Gracely, 731 S.E. 2d 880 (2012);

(3) failing to cross examine eight co-defendant witnesses about avoiding twenty-five year mandatory minimum sentence and when applicable possible life without parole sentences;

(4) failing to consistently object to testimony by investigators regarding the legal definition of conspiracy and the sufficiency of the evidence and/or allowing investigators to testify as experts; (R. pp. 317-319, p. 332, l. 21, p. 657, l. 19, p. 659, l. 1, p. 664)

(5) failing to object to the investigator's to testifying as to the ultimate issue, (p. 655, l. 8);

(6) consistently failing to object to leading and improper questions by the State;

(7) failing to object to Agent Barwick's recital of statements made at the bond hearing by the Attorney General that the Applicant had a twin and attempted to use his identity to allude police and other improper comments by testifying agents. (R.p. 339, l. 22)

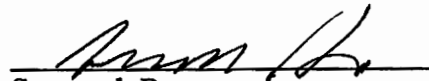
(8) failing to move to suppress or object to the admission of drugs, money, drug paraphernalia, phones, and a weapon recovered from Jason Griffin, Rachael Eades and Christopher Simmons;

(9) failure to challenge the identification procedure; and

(10) failure to investigate and present defense witnesses.

A Due Process violation is alleged based on Mr. Tate's failure to get a fair trial and a total breakdown of the adversarial process.

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 27 day of March, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

ANTONIO EMERSON TATE,)

Applicant,)

vs.)

THE STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

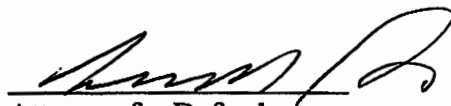
IN THE COURT OF COMMON PLEAS

2017-CP-23-5259

AFFIDAVIT OF SERVICE
BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Supplemental Application** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Attorney General
Alan Wilson
P.O. Box 11549
Columbia, SC 29211
 Attn: Megan Jameson



 Attorney for Defendant

This 2nd day of March, 2018

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ANTONIO EMERSON TATE,
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

SUPPLEMENTAL APPLICATION

CASE # 2016-CP-23-5259

2017 SEP 12 PM 4:22
CLERK OF COURT
JANET COLEMAN

This matter comes before the Court by way of application for post conviction relief filed September 12, 2017, alleging ineffective assistance of trial counsel for failure to contact witnesses and obtain exculpatory evidence and due process violations. A Return and Partial Motion for a More Definite Statement was made on August 23, 2017. This application is intended to incorporate Mr. Tate's application allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution and add the allegations of ineffective assistance of trial counsel Mills Ariail, Esquire and David Farnam, Esquire, for:

(1) failing to preserve the issue of insufficient proof of conspiracy in his directed verdict motion;

(2) conceding that he would not cross examine co-defendant witnesses who were also originally charged with trafficking 400 grams or more avoiding twenty-five year mandatory minimum when he had every right to do so under State v. Gracely, 731 S.E. 2d 880 (2012);

(3) failing to cross examine eight co-defendant witnesses about avoiding twenty-five year mandatory minimum sentence and when applicable possible life without parole sentences;

(4) failing to consistently object to testimony by investigators regarding the legal definition of conspiracy and the sufficiency of the evidence and/or allowing investigators to testify as experts; (R. pp. 317-319, p. 332, l. 21, p. 657, l. 19, p. 659, l.1, p.664)

(5) failing to object to the investigator's to testifying as to the ultimate issue, (p. 655, l. 8);

(6) consistently failing to object to leading and improper questions by the State;

(7) failing to object to Agent Barwick's recital of statements made at the bond hearing by the Attorney General that the Applicant had a twin and attempted to use his identity to allude police and other improper comments by testifying agents. (R.p. 339, l.22)

(8) failing to move to suppress or object to the admission of drugs, money, drug paraphernalia, phones, and a weapon recovered from Jason Griffin, Rachael Eades and Christopher Simmons;

(9) failure to challenge the identification procedure;

(10) failing to put up a defense case advising Mr. Tate not to testify and failure to investigate and present defense witnesses;

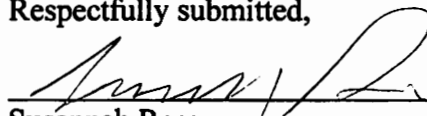
(11) failing to argue the sentence exceeded the maximum sentence for conspiracy;

(12) failure to move to quash the indictment arguing that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction; and

(13) failure to argue in directed verdict that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction.

Due Process violations are alleged based on Mr. Tate's failure to get a fair trial due to cumulative error, a total breakdown of the adversarial process, and lack of constitutionality and enforceability of Section 44-53-375 SC Code Ann.

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina

This 5th day of October, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

ANTONIO EMERSON TATE,)

Applicant,)

vs.)

THE STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

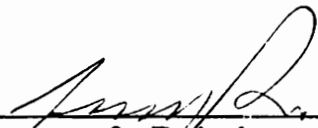
IN THE COURT OF COMMON PLEAS

2017-CP-23-5259

AFFIDAVIT OF SERVICE
BY MAIL18 OCT 22 PM 4:22
PAUL WICKENHEIMER 000 601 500

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Supplemental Application** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Attorney General
Alan Wilson
P.O. Box 11549
Columbia, SC 29211
 Attn: Megan Jameson



 Attorney for Defendant

This 5 day of October, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
ANTONIO EMERSON TATE,	)	
S.C.D.C. No. 355630	)	Case No. 2016-CP-23-05259
Applicant,	)	
	)	
v.	)	AMEDNED RETURN AND
	)	PARTIAL MOTION TO DISMISS
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

In response to the post-conviction relief application filed on September 12, 2016, by Applicant Antonio Emerson Tate and supplemental applications filed on March 27, 2018, and October 22, 2018, by counsel for Applicant Susannah Ross, the State of South Carolina (Respondent), would show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of South Carolina Grand Jury Clerk of Court. On December 13, 2011, the State Grand Jury of South Carolina indicted Applicant by superseding indictment for Trafficking in Methamphetamine (Conspiracy) (400 grams or more) (2011-GS-47-0007) as part of a multi-count, multi-defendant indictment stemming from an investigation into a methamphetamine trafficking ring.

On May 28, 2013, Applicant proceeded to a jury trial in the Greenville County Court of General Sessions before the Honorable Letitia H. Verdin, circuit court judge. R. Mills Ariail, Jr., Esquire, and David J. Farnham, Esquire¹, represented Applicant. Assistant Attorney Generals Joshua R. Underwood and Curtis A. Pauling, of the South Carolina Attorney General's Office,

¹ Mr. Farham is a member of the Georgia Bar and was admitted *pro hac vice* to represent Applicant in this matter alongside Mr. Ariail.

prosecuted the case. On May 31, 2013, the jury convicted Applicant as indicted. Judge Verdin sentenced Applicant to twenty-five years imprisonment.

On June 14, 2013, Applicant filed a motion for a new trial, arguing the trial court erred in denying his motion for directed verdict. By order signed June 27, 2013 and filed July 8, 2013, Judge Verdin denied Applicant's post-trial motion.

On July 8, 2013, Applicant filed a timely notice of appeal. Applicant was represented on appeal by Wendy J. Keefer, Esquire. On appeal, Applicant raised the following issues:

I. Did the trial court err in submitting the case to the jury and denying the Motion for Directed Verdict where the State presented evidence of Trafficking in Methamphetamine 400 grams or more?

II. Did the trial court commit reversible error by limiting cross examination of cooperating witnesses pleading to lesser charges, and no longer facing mandatory minimum on their initial charges, which were the same as Appellant was facing, and where cross was allowed as to receiving a substantial reduction in sentence and the possible sentence of the initial charge was ultimately communicated to the jury?

III. Did the trial court err in permitting testimony by a witness with experience investigating methamphetamine cases about the organizational sale and distribution of methamphetamine?

Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion. State v. Antonio Emerson Tate, 2016-UP-291 (Ct. App. filed June 15, 2016). The Remittitur was returned to the circuit court on July 1, 2016.

II. Summary of Evidence Adduced at Trial

The State presented evidence of Applicant's guilt of trafficking Methamphetamine 400 grams or more. Such evidence included testimony of witnesses about purchasing methamphetamine from Applicant in Georgia for distribution and sale in South Carolina. Some of the testifying witnesses were charged as Co-Conspirators and were initially charged with the same crime as Applicant, but had accepted plea agreements to plead guilty to lesser charges. The

trial court permitted defense counsel to inquire as to the possible sentence on the lesser charges and testimony was given that the charges exposed the witnesses to substantially less time for incarceration than their original charges.

The State presented the testimony of eleven witnesses involved in the purchase of methamphetamine from Applicant in Atlanta, Georgia for sale in South Carolina. Witnesses testified about traveling to Georgia to retrieve narcotics from Applicant and how these transactions were initiated and conducted. Applicant seems to emphasize that witnesses could not provide an address or phone number for Applicant. However, the witnesses described in detail how to arrive at designated meet locations repeatedly used by Applicant, and that Applicant used different phone numbers. Witnesses also testified calling Applicant to arrange deals for methamphetamine and recalled particular meet locations and some specific occurrences.

Witnesses independently testified to the same locations used for the sale of the narcotics such as a Waffle House, and Applicants residence. The witnesses knew which exit to take and how to get there.

Witnesses recalled details of specific instances such as the purchase at the Shell gas station. Witnesses testified to numerous and repeated purchases of methamphetamine in amounts greater than one would purchase for personal use, of tactics used in the sale of narcotics for future distribution involving large amounts of money such as "fronting", and the use of green dot cards. Witnesses also testified as to Applicant's knowledge of witnesses residing in South Carolina and to seeing him on a least one occasion in South Carolina.

Witnesses independently identified Applicant in a photo line-up prior to or at the on-set of cooperating with law enforcement, at different times. Witnesses also identified Applicant in court as the individual from whom large amounts of methamphetamine were purchased.

The State's case, primarily in the form of testimonial evidence set forth below, consistently shows that Applicant sold dealer weights of methamphetamine while in Georgia to individuals known to reside in South Carolina who were bringing that methamphetamine back to South Carolina over the period of time alleged in the indictment for an amount greater than 400 grams. He also traveled to South Carolina on two occasions and provided methamphetamine to Jason Griffin and Javin Adams. Applicant's pattern of dealing methamphetamine that entered South Carolina was shown by the State.

Wendy Christine Lollis

Ms. Lollis testified that she began using methamphetamine when she was 18 or 19. (R. p. 54, line 2). She admitted that she was a meth addict at this time. (R. p. 55, line 6). She also admitted that she dealt methamphetamine for 5 or 6 years prior to the trial. (R. p. 54, line 22). She also admitted that she pleaded guilty to charges related to the conspiracy alleged in this case after reaching a plea deal with the State and that if convicted of the original charges she would be facing a considerably higher amount of time. (R. p. 55, lines 19-23, p. 56, lines 3-16).

Ms. Lollis testified that David Moore purchased an ounce or more of meth at a time from a source in Atlanta. (R.p. 56, lines 22-25, p. 57, lines 1-25). She identified the Applicant in court as Mr. Moore's source and further testified to traveling to Georgia to purchase meth from Applicant and taking others to meet him. (R. p. 58, lines 1-17). Ms Lollis testified that she introduced a number of other individuals to Applicant, including Jason Griffin, and that they purchased meth from him as well beginning in early 2009. (R. p. 56, line 10, p. 64, line 9). Ms.

Lollis testified Applicant knew she and the others were from South Carolina. (R. p. 52, lines 1-7).

She testified that Applicant did not sell less than an ounce at a time. (R. p. 74, lines 9-100). She testified that she purchased meth from Applicant with Amy Cagle on one occasion (R. p. 69, lines 1-14) and that Paul Simon and Anthony Gambrell also purchased meth from Applicant an ounce at a time. (R. p. 70, lines 1-24). She also testified that she knew Javin and Nate were in a drug relationship with Applicant. (R. p. 73, lines 24-25, p. 74, lines 1-4).

Upon her arrest, Ms. Lollis began to cooperate with law enforcement. (R. p. 75, lines 19-23). She picked Applicant from a photo line-up in September of 2011. (R. p. 76, lines 2-11, 18-25, p. 77, lines 1-18, p. 80, lines 15).

Lollis says she went to Georgia between ten and fifteen times. (R. p. 89, lines 1-4). While she did not provide an address, she stated Applicant provided directions to her and she recalled going to two or three apartment buildings in Indian Trail and the exit number 101. (R. p. 89, lines 9-12, p. 90, lines 14-25). Ms. Lollis acknowledged that she did not know Applicant's phone number, but stated that she could probably get it. (R. p. 88, lines 17-19).

Ms. Lollis admitted receiving a "substantial reduction" in her sentence in exchange for her cooperation. (R. p. 101, lines 7-9). She acknowledged she was initially charged with trafficking 400 grams or more of methamphetamine and that she pled to the reduced charge of Trafficking 28-100 grams with a recommended sentence of 12 to 15 years. (R. p. 99, lines 20-25, p. 100, lines 11-17, p. 101 lines 7-9).

Gary Jason Griffin

Gary Jason Griffin ("Griffin") testified he was currently incarcerated. (R. p. 113, lines 3-5). In 2008 he became associated with Chris Simmons and re-entered the drug trade. (R. p. 115,

lines 14-19). Griffin also met Lollis and he started dealing methamphetamine with her. (R. p. 119, lines 110-13). Griffin testified that about a month after he met Lollis he went with her and his ex-wife, Rachel Eades ("Eades"), to Atlanta to meet Applicant. (R. p. 120, lines 18-21; p. 121, lines 10-11). Griffin testified that they met the Applicant at a house where Griffin purchased 28 grams of methamphetamine for \$1400. (R. I, p. 124, lines 13-19). After the transaction, Eades drove Lollis and Griffin back to South Carolina. (R. p. 126, lines 22-25).

Griffin testified he later returned from South Carolina to get an ounce of methamphetamine from Applicant but received cocaine instead and Lollis and Eades accompanied him on this trip as well. (R. p. 127, lines 1-11, 16-18). Griffin, like Lollis, recalls a transaction for methamphetamine at a Shell Gas Station. (R. p. 136, line 25. He testified Applicant became more comfortable and started letting him come to an apartment, which was off the same exit as the Shell Station. R. (p. 137, lines 3-20). Griffin stated he returned to Georgia to deal with Applicant on 15-20 additional occasions and that he eventually began to make quarter-pound purchases from Applicant, having initially purchased by the ounce. (R. I, p. 132, lines 1-13; p. 133, lines 1-6.; (R. p. 138, lines 1-25). These transactions with Applicant took place during a three-month time frame and on two occasions he purchased a half pound at Applicant's apartment. ((R. p. 147, lines 2-11).

Griffin testified to seeing Applicant in South Carolina at his house when he resided there with Rachel. (R. p. 147, lines 16-25, p. 148, lines 1-4, 21-25). On this occasion, Griffin testified that Applicant brought a quarter ounce of methamphetamine for Griffin and, though he "can't say for a fact," Griffin believed Tate gave Lollis a quarter ounce, too. (R. p. 149, lines 9-20). Griffin testified that the meth recovered from his vehicle when he was arrested with Eades and Simmons came directly from Applicant.

Griffin identified Applicant in court as the individual from whom he purchased methamphetamine. (R. p. 155, lines 21-24, p. 156, lines 1-24). Griffin cooperated with law enforcement after his arrest and identified Applicant in a photo line-up. (R. p. 158, lines 1-21, p. 159, lines 1-7). He also noted he met Applicant at a Waffle house and that he was told by Applicant that Applicant's brother worked there. (R. p. 157, lines 17-24). He further stated the individual with whom he dealt did not wear glasses. (R. p. 176, lines 16-18). He also testified that after his arrest he spoke with Applicant in person and was sure Applicant was the individual from whom he received methamphetamine. R. (p. 177 lines 24-25, p. 178, lines 1-17).

Griffin admitting to pleading guilty for his involvement in this matter. (R. I, p. 171, lines 23-25). He was initially charged with conspiracy for trafficking 400 grams or more of methamphetamine and acknowledged pleading to trafficking 28-100 grams with a recommended sentence of 15 to 20 years. (R. p. 113, lines 9-20, p. 114, lines 8-19, p. 172, lines 1-9). When asked if he knew the sentencing range on the original charge, Griffin replied (without objection) 25-30 years. (R. p. 172, lines 10-16).

Rachel Elizabeth Eades

Rachel Elizabeth Eades ("Eades") testified Griffin introduced her to methamphetamine. (R. p. 182, lines 9-10). Eades met Lollis in 2009 through Griffin. (R. p. 183, lines 13-15). Ms. Eades stated she overheard Lollis tell Griffin that she had a friend in Atlanta who could sell him inexpensive methamphetamine. (R. p. 184, lines 3-9). Eades testified that she went with Griffin to Georgia to buy methamphetamine at a Waffle House in January 2010. (R. p. 185, lines 6-10). She said that Griffin purchased methamphetamine from Applicant outside in the parking lot while she ate. (R. p. 186, lines 11-12). Eades stated she went with Griffin to Georgia on eight to ten other occasions to purchase methamphetamine. (R. p. 188, lines 1-19).

Eades testified that the first transaction occurred at a Waffle House, while others occurred at the Shell Station and at an apartment. (R. p. 189, lines 2-11). Eades provided directions to the apartment. (R. p. 189, lines 12-24, p. 190, lines 1-13). Other She recalled a particular transaction at the Shell Station when Wendy, Jason, and Paul were there and provided details. (R. p. 195, lines 5-25, p. 196, lines 1-25, p. 197, lines 1-25, p. 198, lines 1-25). Transactions were for an ounce or more of methamphetamine. (R. p. 193, lines 1-4). One meeting took place at a strip bar and at that time they were purchasing 2 to 3 ounces. (R. p. 200, lines 7-16). Eades identified Applicant in court as the supplier of methamphetamine. (R. p. 206, lines 206, p. 207, lines 1-19).

Eades acknowledged that as a result of this investigation, the State charged her with conspiracy to traffic 400 grams or more of methamphetamine. (R. p. 222, lines 19-21). She entered a plea with a recommendation of 7 to 10 years and admitted that she was initially exposed to a substantially higher sentence. (R. p. 223, lines 1-15). Eades also admitted that she committed felony child neglect and fraud. (R. p. 222, lines 19-21).

Christopher Noah Bishop

Mr. Bishop was a Confidential Informant ("CI") for Greenville County (R. p. 275, lines 16-25, p. 276, lines 1-2). He admitted to being a former user of marijuana and hallucinogenic mushrooms with felony convictions for bank robbery and making a bomb threat. (R. p. 274, lines 4-25; p. 275, lines 1-2).

After completing six buys on other individuals, Bishop was to purchase meth from Applicant in Atlanta. (R. p. 293, lines 16-17; p. 294, lines 8-12). According to Bishop, he contacted Chad Ayers of the Greenville County Police Department Vice Squad, who "wired [him] up," and gave him a thousand dollars to make the controlled purchase with another co-

conspirator, Albrie Nate Bashaw. (R. p. 281, lines 4-20). Bishop had previously conducted 2 undercover buys on Bashaw. (R. p. 277, lines 21-2). Bashaw and Javin Adams had contacted Bishop to go to Georgia with her to get a transmission from Applicant. (R. p. 294, lines 13-15). Bishop testified that they never consummated the transaction; instead, they drove around for an hour and a half because Applicant came to suspect that an unmarked police car was following him. (R. p. 284, lines 1-6). Bishop testified that Applicant eventually called off the transaction. (R. p. 287, lines 6-8). The agreement for a drug transaction did not occur, according to Bishop, because of police surveillance. (R. p. 305, lines 5-10)

Sometime after this incident, Bishop identified Tate in a photographic lineup. (R. p. 287, lines 21-25). Bishop was unable to record any of the conversations because the wire recorder provided to him had technical problems. (R. p. 281, lines 22-25; p. 282, lines 1-7).

Charles Javin Adams

Adams testified that Chad Moore asked him to accompany him to Atlanta to help him get drugs from Applicant. (R., p. 390, lines 6-25). Adams subsequently traveled to Atlanta between eight and thirteen times to purchase meth from Applicant, sometimes with Bashaw and sometimes with Moore. (R. p. 394, lines 23-25; p. 395, lines 1-20). He testified that during the time he was dealing with Applicant he tried to go every other day and the smallest amount he would purchase was an ounce. (R. p. 398, lines 15-20, p. 399, lines 16-17).

Adams stated he would call Applicant's cellular phone when he wanted to make a deal, and, like Lollis, he testified that Applicant changed his telephone number several times. (R. p. 404, lines 22-25; p. 405, line 1, 14-18). Adams testified that Applicant came to Adam's apartment in South Carolina on several occasions. (R. p. 405, lines 19-25). Adams also testified

about the unsuccessful controlled purchase with Bishop and that Applicant told him to never send Bishop again, because Bishop had been "tailed." (R. p. 411, lines 1-11).

Adams testified that he usually went to Applicant's house for the purchases. (R p. 402, lines 10-11). He also testified to the use of a green dot card for making purchases. (R p. 404, lines 7-23). He also testified that on one occasion Applicant "fronted" him an ounce and on another occasion brought an ounce to him at his residence in South Carolina. (R. p. 399, line 18). After he was sentenced to house arrest, he began sending Bashaw along with a "driver" named Norman Trebuchon to purchase the meth from Tate. (R. p. 396, lines 1-2).

Sometime after this incident, Adams began working with law enforcement and became a confidential informant. (R. p. 412, lines 5-15). Adams identified Applicant in a photo lineup and was certain that he bought methamphetamine from Applicant and not his brother. (R. p. 414, lines 4-20, 21-25; p. 450, lines 1-9).

Mr. Adams acknowledged to initially being charged in this case with Trafficking 400 grams or more and to a pleading guilty to the lesser charge of Trafficking 10 to 28 grams with a recommendation of 3 to 6 years. (R. p. 388, lines 9-25, p. 389, line 1; 429, lines 3-19; p. 431, lines 5-7). He also stated he would have been facing a significant amount of time (R. p. 389, lines 1-4, 16-20).

Albrie Nate Bashaw

In July 2010, Ms. Bashaw moved in with Javin Adams and they both sold methamphetamine at this time. ((R. p. 457, lines 1-9). Ms. Bashaw testified that she took trips to Atlanta without Adams from July 2010 to January 2011 to secure meth. (R. p. 469, lines 13-18). The amount of methamphetamine varied between two ounces to four ounces. (R. p. 471, lines 21-25). She testified that she travelled to Atlanta an average of three times a week during this

period. (R. p. 472, lines 6-10). In total, Ms. Bashaw claimed she had dealt with Applicant on twenty occasions over a period of about nine months. (R. p. 489, lines 8-10). She also stated that Applicant knew she lived in South Carolina. (R. p. 407, lines 13-15).

Ms. Bashaw began cooperating with law enforcement in March 2011. (R. p. 479, lines 8-15; p. 480, lines 7-9). As part of her cooperation she provided information on her drug dealings and participated in undercover deals. (R. p. 480, lines 13-25). In one such deal, she testified that she, Adams, Officer Chad Ayers and Officer Brett Barwick attempted to arrange a controlled deal with Applicant. (R. p. 481, lines 15-25). However, the deal was unsuccessful and Applicant told her he was no longer interested but would contact them in the future if he felt he could make some money off of them. (R. p. 481, lines 23-25; p. 482, lines 1-5).

On cross-examination, Bashaw admitted that she gave a statement to law enforcement concerning the identity of Applicant at one point that conflicted with her testimony. (R. p. 516, lines 1-8). On re-direct it was clarified that at the time she provided the statement to law enforcement she did not know Applicant and it was actually not untrue (R. p. 515, lines 4-21).

Bashaw acknowledged that she was originally charged with conspiracy to traffic 400 grams or more of methamphetamine. (R. p. 496, lines 1-3). She testified, however, that the State reduced her sentence down to 3 to 6 years in exchange for her cooperation. (R. p. 496, lines 6-8).

Charles Norman Trebuchon

Charles Norman Trebuchon testified he has known Adams since he was a “kid” and admitted using methamphetamine with him. (R. p. 528, lines 19-25; p. 529, lines 1-16). For a period of time, he lived with Adams and Bashaw. (R., p. 529, lines 11-16).

Trebuchon testified that he would drive Ms. Bashaw to Atlanta for her to obtain methamphetamine from Applicant and that he would wait in the living room of Applicant’s

apartment while she made the purchase in the kitchen. He recalled specific instances and that he took Bashaw approximately a dozen times. (R. p. 533, lines 3-6, 12-25). He also testified that he went by himself twice on behalf of Mr. Adams at Mr. Adam's direction to purchase methamphetamine from Applicant. (R. p. 534, lines 3-6 and Ms. Bashaw). Each of these trips ended in a purchase of "usually 4 ounces." (R. p. 534, line 14). Trebuchon was never charged in this case and did not receive the benefit of a plea deal to a reduced sentence.

Warren Brent Chastain

Warren Brent Chastain testified he began purchasing methamphetamine to support his habit, but then purchased a sufficient quantity to sell to others as well. (R. p. 558, lines 2-6).

Chastain testified that he drove from South Carolina to Atlanta with Brian Stegall ("Stegall") to purchase methamphetamine. (R. p. 561, lines 15-24). Upon arriving at a hotel room in Atlanta, he stated he met Applicant at a Waffle House, and then went with Stegall to a local motel room where Stegall purchased methamphetamine from Applicant and a "Hispanic guy" in the motel room's bathroom using Chastain's money, and Stegall then gave Chastain the two ounces of methamphetamine he had purchased. (R. p. 562, lines 1-20; p. 563, lines 2-16). (R. p. 563, lines 17-23).

After this transaction, Chastain returned to South Carolina to sell these two ounces. (R. p. 564, lines 1-2). He testified that he saw Applicant once more at Griffin's home in South Carolina, but does not know if Applicant brought any methamphetamine to Griffin's home. (R. II, p. 564, lines 15-24).

Chastain acknowledged that he pled guilty to a lesser charge for this crime, and that by doing so he avoided a much larger sentence. (R. p. 560, lines 14-17). Specifically, he pled guilty

to a second offence of the trafficking of twenty-eight to a hundred grams of methamphetamine with a State recommendation of twelve to fifteen years. (R. p. 560, lines 2-5).

Larry Anthony Gambrell

Larry Anthony Gambrell testified that he met Tate through Lollis, who took him to an apartment in Atlanta to purchase methamphetamine. (R. p. 579, lines 16-20; p. 580, lines 5-11). He testified that he went to Atlanta on five or six more occasions. (R. p. 584, lines 19-21). According to Gambrell, they purchased two to four ounces of methamphetamine on each trip. (R. II, p. 585, lines 1-4).

Gambrell agreed to work for law enforcement and identified Applicant in a photo lineup. (R. p. 591, lines 5-19). Gambrell was serving time for Distribution of Methamphetamine unrelated to this case and was not indicted in this case nor did receive any deal related to this case.

Norman Bergholm

Norman Bergholm testified he started purchasing methamphetamine from Adams once a week. (R. p. 605, lines 4-13). Bergholm testified to meeting Applicant at Mr. Adam's home during a birthday party and that he purchased methamphetamine from Applicant on numerous occasions. (R. p. 606, lines 9-11). (R. p. 608, lines 6-9; p. 606, lines 4-13). Bergholm stopped purchasing from Applicant because the product was "no good." (R. p. 611, lines 14-25; p. 611, lines 1-2). Bergholm met with law enforcement in June of 2011 at which time he identified Applicant in a photo lineup. (R. p. 614, lines 6-11; p. 615, lines 1-9).

Bergholm testified he is currently serving prison time in Iowa for felony eluding and has other felony convictions (R. p. 601, lines 23-25, lines 5-8; p. 627, lines 2-17). Bergholm was originally charged with trafficking methamphetamine 400 grams or more and pled guilty to

trafficking twenty-eight to a hundred grams of methamphetamine with a recommended a sentence of 15 to 18 years. (R. p. 601, lines 18-22, p. 602, line 307).

Chad Dewayne Moore

Chad Dewayne Moore testified that he bought methamphetamine from Griffin, whom he met through Lollis. (R. p. 633, lines 1-15). Moore eventually met Griffin and Lollis' supplier at an apartment in Atlanta. (R. p. 634, lines 9-24). Chad Moore identified this individual as Applicant. (R., p. 635, lines 1-5). Chad Moore had went with Lollis to meet Applicant and bought an ounce of methamphetamine from him on this occasion. (R., p. 635, lines 9-24). He stated he drove back to Atlanta on two or three other occasions to purchase about an ounce of methamphetamine from Applicant, who eventually stopped selling meth to him. (R. p. 636, lines 8-17; p. 642, lines 1-8).

Mr. Moore testified that he was introduced to selling methamphetamine by Wendy Lollis and that she introduced him to Jason Griffin. From that point, he met their supplier, Applicant. He testified to going to Atlanta to conduct drug deals with Applicant on the initial meeting when he was introduced and then 2 or 3 other times. (R. p. 636, lines 8-10). He recalled certain details of meet locations such as taking exit 101. (R. p. 637, lines 4-12). He stated he took Javin Adams to meet Applicant. (R. p. 639, lines 9-11). Mr. Moore identified Applicant in a photo line-up. (R. p. 643, lines 9-11; lines 21-25).

On cross examination Mr. Moore acknowledged he was initially facing the same charge as Applicant of Trafficking Methamphetamine 400 grams and the possible penalty was 30 years. (R. p. 651, lines 14-25, p 652, lines 1-5). He also acknowledged that the State agreed to recommend a sentence of 18 years. (R. p. 652, lines 1-13).

Law Enforcement

Law Enforcement testifying for the State included Lt. Henry Dale Campbell, Agent Brett Barwick, and Agent Ashley Asbill. Mr. Campbell testified that he is employed by the Pickens County Sheriff's Office in the Narcotics unit and that he has been with the Sheriff's Office for 15 to 16 years. (R. p. 232, lines 2-5). He explained how he conducts investigations and that he uses Confidential Informants ("CI"). (R. p. 233, lines 5-25).

Mr. Campbell used a CI for a controlled purchase from Christopher Simmons on March 2010, for the investigation underlying this case. (R. p. 234, lines 14-25). Ms. Eades and Simmons were present at this time. (R. p. 239, lines 4-11). Methamphetamine was recovered as a result and Mr. Campbell, testified that subsequent to the arrest of Chris Simmons he learned that the methamphetamine came from Applicant. (R p. 241, lines 1-11).

Agent Brett Barwick testified he works as a narcotics officer for the Pickens County Sheriff's Office. (R. p. 316, lines 8-9). He became involved in this investigation when another officer, Chris Marquis, developed a CI that was aware of several persons trafficking methamphetamine throughout Pickens and Greenville County. (R. I, p. 316, lines 19-25; p. 317, lines 1-5). During this investigation, he said the "conspiracy" widened as he spoke to more CIs and others who would cooperate with him. (R. I, p. 318, lines 14-25). Eventually, this process led to the source of the methamphetamine for this case, the Applicant. (R. p. 319, lines 2-7).

Barwick was involved with the attempted controlled purchase from Applicant by Bishop. He testified that although no purchase was made, law enforcement was able to identify Applicant as a source for methamphetamine.

Agent Ashley Asbill testified he works for the State Law Enforcement Division. (R. p. 655, lines 1-7). Asbill explained the general concept of the organizational makeup of a

conspiracy. (R. p. 664, lines 12-16). Asbill further testified that the individuals indicted in this conspiracy were organized in the sense they all went to Atlanta to purchase methamphetamine from Tate. (R. p. 664, lines 17-21). Those that were indicted were dealing "substantial amounts" according to Asbill. (R. p. 665, lines 1-5). Asbill testified that Applicant was the highest source in this group. (R. p. 665, lines 6-8).

III. Current Action before the Court

In his *pro se* application for post-conviction relief, Applicant alleges he is being held in custody unlawfully due to ineffective assistance of counsel for "fail[ing] to interview potential witnesses." Applicant also alleges his due process rights guaranteed under the Fourteenth Amendment to the U.S. Constitution were violated when the "State failed to obtain exculpatory evidence." Applicant failed to set forth with any specificity any of the underlying facts giving rise to these allegations. In response, Respondent filed its return, partial motion to dismiss, and motion for a more definite statement.

In his first supplemental application filed on March 27, 2018, by counsel Ross, Applicant raises the additional allegations for relief:

- (1) failing to preserve the issue of insufficient proof of conspiracy in his directed verdict motion;
- (2) conceding that he would not cross examine co-defendant witnesses who were also originally charged with trafficking 400 grams or more avoiding twenty-five year mandatory minimum when he had every right to do so under State v. Gracely, 731 S.E. 2d 880 (2012);
- (3) failing to cross examine eight co-defendant witnesses about avoiding twenty-five year mandatory minimum sentence and when applicable possible life without parole sentences;
- (4) failing to consistently object to testimony by investigators regarding the legal definition of conspiracy and the sufficiency of the evidence and/or allowing investigators to testify as experts; (R. pp. 317-319, p. 332, l. 21, p. 657, l. 19, p. 659, l.1, p.664)

(5) failing to object to the investigator's to testifying as to the ultimate issue, (p. 655, l. 8);

(6) consistently failing to object to leading and improper questions by the State;

(7) failing to object to Agent Barwick's recital of statements made at the bond hearing by the Attorney General that the Applicant had a twin and attempted to use his identity to allude police and other improper comments by testifying agents. (R. p. 339, l.22)

(8) failing to move to suppress or object to the admission of drugs, money, drug paraphernalia, phones, and a weapon recovered from Jason Griffin, Rachael Eades and Christopher Simmons;

(9) failure to challenge the identification procedure;

(10) failing to put up a defense case advising Mr. Tate not to testify and failure to investigate and present defense witnesses;

(11) due process violation based on Applicant's failure to get a fair trial and a total breakdown of the adversarial process.

In his second supplemental application filed on October 22, 2018, by counsel Ross,

Applicant raises the additional allegations for relief:

(1) failing to preserve the issue of insufficient proof of conspiracy in his directed verdict motion;

(2) conceding that he would not cross examine co-defendant witnesses who were also originally charged with trafficking 400 grams or more avoiding twenty-five year mandatory minimum when he had every right to do so under State v. Gracely, 731 S.E. 2d 880 (2012);

(3) failing to cross examine eight co-defendant witnesses about avoiding twenty-five year mandatory minimum sentence and when applicable possible life without parole sentences;

(4) failing to consistently object to testimony by investigators regarding the legal definition of conspiracy and the sufficiency of the evidence and/or allowing investigators to testify as experts; (R. pp. 317-319, p. 332, l. 21, p. 657, l. 19, p. 659, l.1, p.664)

(5) failing to object to the investigator's to testifying as to the ultimate issue, (p. 655, l. 8);

(6) consistently failing to object to leading and improper questions by the State;

(7) failing to object to Agent Barwick's recital of statements made at the bond hearing by the Attorney General that the Applicant had a twin and attempted to use his identity to allude police and other improper comments by testifying agents. (R. p. 339, 1.22)

(8) failing to move to suppress or object to the admission of drugs, money, drug paraphernalia, phones, and a weapon recovered from Jason Griffin, Rachael Eades and Christopher Simmons;

(9) failure to challenge the identification procedure;

(10) failing to put up a defense case advising Mr. Tate not to testify and failure to investigate and present defense witnesses;

(11) failing to argue the sentence exceeded the maximum sentence for conspiracy;

(12) failure to move to quash the indictment arguing that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction; and

(13) failure to argue in directed verdict that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction.

(14) Due Process violations are alleged based on Mr. Tate's failure to get a fair trial due to cumulative error, a total breakdown of the adversarial process, and lack of constitutionality and enforceability of Section 44-53-375 SC Code Ann.

Attached herewith and incorporated herein are the records of the South Carolina State Grand Jury Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the motion and trial transcripts, and the appellate records (including the record on appeal). Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant has alleged trial counsels were constitutionally ineffective in their representation for thirteen specific allegations as set forth in his supplemental application. Respondent submits Applicant's allegations of ineffective assistance of counsel are refuted by the record and without merit.

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

Strickland does not guarantee perfect representation, only a " 'reasonably competent attorney.' " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U.S. 759, 770 (1970)). Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its

“reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney.” Id. at 690.

Although courts may not indulge “post hoc rationalization” for counsel’s decision making that contradicts the available evidence of counsel’s actions, Wiggins v. Smith, 539 U.S. 510, 526-527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a “strong presumption” that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Yarborough v. Gentry, 540 U. S. 1, 8 (2003). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011).

With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Id. at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. at 687. See Harrington, 562 U.S. 86. With respect to guilty plea counsel, an applicant must establish there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371 (2010), and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” United States v. Timmreck, 441 U.S. 780, 784 (1979). An

ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U.S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is “reasonably likely” the result would have been different. Id. at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693. Harrington, 562 U.S. 86.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test as to any of his allegations of ineffective assistance of counsel. Each allegation is addressed below.

Allegation that counsel failed preserve the issue of insufficient proof of conspiracy in his directed verdict motion

Initially, Applicant asserts trial counsels were ineffective for failing to preserve the issue of insufficient proof of conspiracy in his directed verdict motion. Respondent submits this allegation is without merit and Applicant cannot prevail on this claim. The record establishes trial counsels moved for a directed verdict at the close of the State's case based on the State failing to prove the identity of the defendant (Applicant). Specifically, counsels argued the State could not prove Applicant's identity and had failed to meet its burden of proof based on false testimony elicited from State's witnesses and co-conspirators as well as an inability of State's witnesses to distinguish Applicant from his identical twin brother who was present in the courtroom throughout trial. See Tr. P. 670. Counsels presented their strongest possible argument for a directed verdict motion—that the State had failed to prove identity and therefore the trial court should direct a verdict of not guilty.

On appeal, Applicant, though appellate counsel, argued a different reason a directed verdict should have been granted by the trial court—that the State failed to sufficiently prove Applicant's participation in the conspiracy based on a lack of intent to conspire. This argument was not raised to the trial court, and accordingly, the South Carolina Court of Appeals found the issue unpreserved for appellate review:

1. We affirm the trial court's denial of Tate's motion for a directed verdict, finding Tate did not preserve the issue of insufficient proof of a conspiracy by the State in providing only isolated sales of meth rather than any intent to conspire with the purchasers because the issue was not raised in his directed verdict motion. Rather, Tate raised the failure of the witnesses to positively identify him and the lack of credibility of the witnesses. Accordingly, we find this issue is not preserved for appellate review. *See State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal."); *State v. Jordan*, 255 S.C. 86, 93, 177 S.E.2d 464, 468 (1970) (stating issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review).

State v Antonio Emerson Tate, 2016-UP-291 (Ct. App. filed June 15, 2016).

In the instant post-conviction relief action, Applicant appears to be arguing that trial counsels were clearly ineffective because his appellate counsel elected to raise an issue of first impression that was never raised to the trial court rather than the issue that was raised to and ruled upon by the trial court. However, this argument is without merit. It is clear from the record that trial counsels presented their strongest possible argument for a directed verdict motion—that the State had failed to prove identity and therefore the trial court should direct a verdict of not guilty. This argument was much stronger than a challenge to the sufficiency of the State’s evidence of conspiracy, as the record was well-developed that there was a conspiracy between “Ant/Amp,” the methamphetamine dealer in Georgia, to sell and transport large quantities of methamphetamine into South Carolina. Specifically, through the testimony of Albie Nate Bashaw, the State presented evidence that Ant knew she lived in South Carolina and was selling the methamphetamine he provided to her in South Carolina. As the State clearly presented direct or substantial circumstantial evidence tending to prove the guilt of the defendant when viewing the evidence and all reasonable inferences in the light most favorable to the State, a directed verdict motion on this ground would have been denied. See State v. Pearson, 415 S.C. 463, 470, 783 S.E.2d 802, 806 (2016) (citing State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014) (holding the standard for denial of a directed verdict and sending the case to the jury is whether the State has presented any direct or substantial circumstantial evidence tending to prove the guilt of the defendant when viewing the evidence and all reasonable inferences in the light most favorable to the State). Accordingly, Applicant cannot establish deficiency of counsel or prejudice as to this allegation.

Allegation that counsel improperly conceded he would not cross-examine co-conspirators regarding the mandatory minimum sentence for trafficking in methamphetamine 400 grams or more failing to cross-examine his co-conspirators on their original possible sentence exposure

As his second and third grounds for relief, Applicant asserts trial counsels were ineffective for conceding Applicant would not cross examine co-defendant witnesses who were also originally charged with trafficking 400 grams or more avoiding twenty-five year mandatory minimum and failing to cross-examine his co-conspirators on their original possible sentence exposure. Applicant asserts he had every right to do so under State v. Gracely, 731 S.E. 2d 880 (2012) and counsels were ineffective for failing to properly cross-examine the witnesses on this mandatory minimum sentence. Respondent submits this allegation is refuted by Respondent submits this allegation is without merit and Applicant cannot prevail on this claim. The record establishes the State moved *in limine* to prevent the defense from eliciting any testimony from State's witnesses and co-conspirators about the potential sentences for trafficking in methamphetamine up to 40 grams because the State did not want the jury to know Applicant's potential sentence range, as sentencing is an issue outside the province of the jury. Trial counsels argued they should be able to cross-examine the co-conspirators on the substantial benefit they received by cooperating. The trial court agreed to allow the defense to cross-examine the co-conspirators on the sentencing ranges/exposure for the offenses to which they pled guilty as well as question them about the substantial benefit they received by pleading guilty to lesser-included offenses, thereby significantly reducing their sentencing exposure. When cross-examining the various co-conspirators, trial counsels did just that—eliciting testimony that each had received a substantial benefit by cooperating with the State and testifying against Applicant. This very issue was raised on appeal and the Court of Appeals found any possible error in the trial court limiting the defense's cross-examination was harmless beyond a reasonable doubt,

noting “the numerous co-defendants that testified regarding their reduced sentences, the mandatory minimum sentences or the sentencing ranges of their original charges compared to their plea recommendations, and the substantially greater sentences they would have faced.” State v Antonio Emerson Tate, 2016-UP-291 (Ct. App. filed June 15, 2016).

Accordingly, there is no way Applicant can now prevail on this claim when an appellate court has already properly determined he suffered no prejudice as to this very issue. “Harmless error review looks to the basis on which the jury actually rested its verdict.” Lowry v. State, 376 S.C. 499, 508, 657 S.E.2d 760, 765 (2008) (citing Sullivan v. Louisiana, 508 U.S. 275, 279 (1993)). “From this perspective, in order to conclude that the error did not contribute to the verdict, the Court must ‘find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.’” Id. (citing Yates v. Evatt, 500 U.S. 391, 403 (1991); See Arnold v. State/Plath v. State, 309 S.C. 157, 165, 420 S.E.2d 834, 838 (1992) (noting that the requirement that a constitutional error be harmless beyond a reasonable doubt “embodies a standard requiring reversal ‘if there is a reasonable possibility that the evidence complained of might have contributed to the conviction’ ” (quoting Yates, 500 U.S. at 403)); see also Clark v. Groose, 16 F.3d 960, 964 (8th Cir. 1994) (concluding even if evidence is erroneously admitted but it constitutes at most harmless error, no ineffective performance is shown); LePage v. Idaho, 851 F.2d 251, 257 (9th Cir. 1988) (concluding that since admission of statements obtained in violation of Massiah was harmless error beyond a reasonable doubt, LePage suffered no prejudice from his counsel’s failure to object to the statements). Accordingly, Applicant cannot establish deficiency of counsel or prejudice as to this allegation.

Allegation that counsel was ineffective for failing to consistently object to testimony by investigators regarding the legal definition of conspiracy and the sufficiency of the evidence and/or allowing investigators to testify as experts

As fourth and fifth allegations, Applicant asserts trial counsels were ineffective for failing to consistently object to testimony by investigators regarding the legal definition of conspiracy and the sufficiency of the evidence and/or allowing investigators to testify as experts, as well as allowing law enforcement to testify as to the ultimate issue in the case—whether a conspiracy existed. See R. pp. 317-319, p. 332, l. 21, p. 657, l. 19, p. 659, l.1, p.664). Respondent submits these allegations are without merit and Applicant cannot prevail on these claims.

Overall, it was abundantly clear to the jury that this was a conspiracy case. From the start of the case, the court read the indictment to the jury indicating Applicant was charged with conspiracy to traffic methamphetamine:

Alright, uh, ladies and gentlemen, the S—the State is alleging that **this is a drug conspiracy case**. The State has accused Mr. Tate of trafficking methamphetamine from At – the Atlanta area to the Upstate through a number of individuals during the dates of November 2009 and November 2011. He is charged with trafficking methamphetamine **by conspiracy** for more than 400 grams.

Tr. p. 15. From the very outset, the jury knew the State was proceeding forward on trafficking in methamphetamine based on not only conspiracy but particularly a conspiracy where Applicant sold methamphetamine from Atlanta to be brought into the Upstate region of South Carolina with a number of other individuals. During the trial, the State then presented co-conspirator after co-conspirator who all testified regarding their involvement in the conspiracy, including their travels to Georgia to purchase large quantities of methamphetamine from Applicant to be transported to and sold in the Upstate region. For Applicant to now be arguing the result of his trial would have been different—i.e., that he would have been acquitted—but for a few

utterances of the word “conspiracy” by law enforcement witnesses is illogical and cannot succeed based on the record before the court.

Additionally, it is clear from the record that when the term “conspiracy” was used by law enforcement, it was in the context of the officers explain how the investigation began or unfolded. It was **not** in the context of a legal definition or expert testimony as Applicant now asserts.

Moreover, it is abundantly clear from the record that trial counsels were proceeding forward on a defense of identity—essentially arguing not that a drug conspiracy was not underway but that Applicant had no involvement in the conspiracy and the State had charged the wrong man. Accordingly, these few utterances of “conspiracy” by law enforcement witnesses had no impact on counsel’s trial strategy and the outcome of the case. Accordingly, Applicant cannot establish deficiency of counsel or prejudice as to this allegation.

Allegation that counsel was ineffective for failing to consistently object to leading questions by the State

As a sixth allegation, Applicant asserts trial counsels were ineffective for failing to consistently object to leading questions by the State. Applicant fails to state with any specificity exactly where counsels should have objected or how this purported failure to object had any impact on his case or lead to his conviction. Moreover, the record shows trial counsel routinely objected to leading questions (and other objectionable issues) during trial and some of these objections were sustained while others were overruled. Accordingly, Respondent submits Applicant cannot meet his requisite burden of proof as to this allegation.

Allegation that counsel was ineffective for failing to object to Agent Barwick's recital of statements made at the bond hearing by the Attorney General that the Applicant had a twin and attempted to use his identity to allude police and other improper comments by testifying agents.

As a seventh allegation, Applicant asserts trial counsels were ineffective for failing to object to Agent Barwick's recital of statements made at the bond hearing by the Attorney General that the Applicant had a twin and attempted to use his identity to allude police and other improper comments by testifying agents. (R. p. 339, l. 22). Respondent submits this allegation is without merit and Applicant cannot prevail on this claim.

The record establishes that during the testimony of Agent Barwick, the State asked him to elaborate on a conversation between two co-conspirators, Ms. Eades and Ms. Lollis, at their bond hearings and Agent Barwick responded:

Uh, there was discussion about their bonds not being reduced and . . . not bein' happy about that and reduced and then the discussion I think that they were alluding to earlier 'bout Mr. Tate was that they learned at the bond hearing, uh, when Mr. Underwood was presenting information to Judge Cooper that, uh, Mr. Tate had a twin brother, that it was at that point in time my understanding that they learned this. Uh, Mr. Underwood went on to explain that, uh, he had a twin brother and Mr. Tate attempted to use his brother's identity to elude police when he was, uh, when when they approached him in in Georgia on our charges because once our indictments were issued we issued charges for him and he, uh, tried to use his brother's ID to stop being arrested, well Mr. Underwood was explainin' this to the judge and during that conversation, uh, Ms. Eades and them heard this and and they were talkin' about that on the way back to the LEC.

Tr. p. 339-40.

At this point during Applicant's trial, the jury had already been advised that Applicant had an identical twin brother. The defense had questioned several witnesses about Applicant's identical twin brother and had also elicited testimony or challenged the witnesses as to whether they had discussed that Applicant had an identical twin brother with other co-conspirators in an attempt to make sure their testimonies would be consistent. Accordingly, the State was merely

responding to this line of inquiry as posed by the defense, which was part of a reasonable trial strategy by the defense to paint the co-conspirators as untruthful and to attack their identification of Applicant as the mastermind of this methamphetamine ring. Accordingly, Respondent submits Applicant cannot meet his requisite burden of proof as to this allegation.

Allegation that counsel was ineffective for failing to move to suppress or object to the admission of drugs, money, drug paraphernalia, phones, and a weapon recovered from Jason Griffin, Rachael Eades and Christopher Simmons

As an eighth allegation, Applicant asserts trial counsels were ineffective for failing to move to suppress or object to the admission of drugs, money, drug paraphernalia, phones, and a weapon recovered from Jason Griffin, Rachael Eades and Christopher Simmons. Respondent submits this allegation is without merit and Applicant cannot prevail on this claim.

As discussed above, it is abundantly clear from the record that the defense strategy was to challenge identity and specifically argue to the jury that Applicant was not involved with any conspiracy to traffic methamphetamine—not that this particular methamphetamine ring did not exist. Accordingly, the testimony and evidence pertaining to drugs, money, drug paraphernalia, phones, and a weapon recovered from Jason Griffin, Rachael Eades and Christopher Simmons was wholly irrelevant to the defense strategy. Moreover, there was nothing tying Applicant to this particular evidence recovered from these co-conspirator and accordingly, could not have impacted the verdict in any substantial way. Accordingly, Respondent submits Applicant cannot meet his requisite burden of proof as to this allegation.

Allegation that counsel was ineffective for failing to challenge the identification procedure

As a ninth allegation, Applicant asserts trial counsels were ineffective for failing to challenge the identification procedure. As an initial note, Respondent acknowledges a pre-trial hearing to determine the admissibility of the lineup should have been conducted pursuant to Neil

v. Biggers, 409 U.S. 188, 196 (1972) and counsel's failure to request such a pre-trial hearing could be construed as deficient performance. However, Respondent submits Applicant still cannot prevail on this claim, as there is nothing to establish the identifications would have been excluded had a pre-trial hearing been conducted, and therefore, Applicant cannot establish any requisite prejudice.

When evidence of an eyewitness identification is introduced during a criminal trial, a defendant may be deprived of due process of law if the identification procedure employed in the particular case was unnecessarily suggestive and highly conducive to irreparable mistaken identification. Neil v. Biggers, 409 U.S. 188, 196 (1972). In determining the admissibility of identification evidence, a court must conduct a two-prong inquiry into the matter. See id. at 199-200 (outlining the necessary inquiry regarding out-of-court identifications and the factors to be weighed when determining reliability). That inquiry involves first ascertaining whether the identification process was unduly suggestive and then determining whether the out-of-court identification was nevertheless so reliable no substantial likelihood of misidentification existed. State v. Govan, 372 S.C. 552, 558, 643 S.E.2d 92, 95 (Ct. App. 2007); see State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012) ("Due process requires courts to assess, on a case-by-case basis, whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed.").

Importantly, even assuming the particular identification procedure used in a case is found to be unduly suggestive, identification evidence may still be admissible if the State can prove by clear and convincing evidence the identification is reliable notwithstanding the suggestiveness of the identification procedure employed. Govan, 372 S.C. at 559, 643 S.E.2d at 95-96.

“Reliability is the linchpin in determining the admissibility of identification testimony.” State v. Brown, 356 S.C. 496, 504, 589 S.E.2d 781, 785 (Ct. App. 2003). To determine whether the identification is reliable, a court must look to: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness’s degree of attention; (3) the accuracy of the witness’s prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the amount of time between the crime and the identification. Govan, 372 S.C. at 559, 643 S.E.2d at 96; see also State v. Scipio, 283 S.C. 124, 127, 322 S.E.2d 15, 17 (1984) (“The reliability of an identification is determined by the facts.”). “[I]f the indicia of reliability are strong enough to outweigh the corrupting effect of the police-arranged suggestive circumstances, the identification evidence ordinarily will be admitted, and the jury will ultimately determine its worth.” Perry v. New Hampshire, __ U.S. __, 132 S. Ct. 716, 720 (2012).

Significantly, “[a] conviction based on a suggestive pretrial photographic lineup and a subsequent in-court identification will be set aside only if ‘the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.’ ” State v. Carlson, 363 S.C. 586, 599-600, 611 S.E.2d 283, 290 (2005) (quoting Simmons v. United States, 390 U.S. 377 (1968)); see Brown, 356 S.C. at 504, 589 S.E.2d at 785 (“Suggestiveness alone does not mandate the exclusion of evidence.”). Thus, even where a suggestive out-of-court identification procedure is employed, an “in-court identification is admissible if based on information independent of the out-of-court procedure.” Carlson, 363 S.C. at 600, 611 S.E.2d at 290. Critically, the exclusion of evidence is a “drastic sanction” and should be “limited to identification testimony which is manifestly suspect.” Harker v. Maryland, 800 F.2d 437, 443 (4th Cir. 1983).

In the present case, there is nothing to establish the trial court would have excluded the identifications had a pre-trial hearing been requested as there is no evidence that law enforcement used any sort of improper methods or suggested who the co-conspirators should select during the identification procedure, and therefore, Applicant cannot establish that it was unduly suggestive. Moreover, there is no substantial risk of irreparable misidentification as the co-conspirators testified were certain in their identifications. Accordingly, the identifications made by the various co-conspirators would have been admissible at trial and trial counsel's failure to move for a pre-trial hearing to determine admissibility of the identifications pursuant to Neil v. Biggers had no result on the outcome of the trial. Accordingly, Applicant cannot establish prejudice as to this allegation.

Allegation that counsel was ineffective for advising Applicant not to testify, failing to investigate, and failing to present defense witnesses

As a tenth allegation, Applicant asserts trial counsels were ineffective for advising Applicant not to testify, failing to investigate, and failing to present defense witnesses. Respondent submits this allegation is without merit and Applicant cannot prevail on this claim.

As to Applicant's allegation that trial counsels were ineffective for advising him not to testify, this allegation must fail as Applicant was thoroughly and adequately advised by the trial court regarding his right to testify. In response, Applicant told the trial court he had sufficiently talked to his attorneys about his right to testify and even told the court he informed his attorneys there was no need for much of a discussion because he did not intend to testify. (Tr. 671-74). He elaborated that he was not involved in this conspiracy and had nothing to add to the case because he had no knowledge. (Tr. 673-74). He affirmed that it was his decision alone not to testify. (Tr. 674. Accordingly, Applicant cannot now assert the contrary to what he previously told the trial court while under oath—that he did not want to testify and the choice was his alone.

As to Applicant's allegation that trial counsel failed to investigate or present witnesses on his behalf, Respondent submits this allegation is refuted by the record. However, Applicant wholly failed to provide any facts or circumstances to support this allegation, such as what investigation counsel should have conducted and how it impacted his case. Without such required information, it is impossible for Respondent to adequately respond to this allegation.

"Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary." Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014) (citing Strickland, 466 U.S. at 691). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to undertake a particular investigation should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Bagwell, 410 S.C. at 265, 763 S.E.2d at 633 (citing Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006)). "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). "Counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions." Bagwell, 410 S.C. at 265, 763 S.E.2d at 634. (internal citations omitted). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690.

The record shows trial counsels investigate and then presented his identical twin brother to multiple witnesses throughout the trial. Moreover, the record establishes a clearly defined trail strategy—to attack the identification of Applicant as participant in the drug conspiracy. Accordingly, Respondent submits Applicant cannot meet his requisite burden of proof as to this allegation.

Allegation that counsel was ineffective for failing to argue Applicant's sentence exceeded the maximum sentence for conspiracy

As an eleventh allegation, Applicant asserts trial counsels were ineffective for failing to argue his sentence exceeded the maximum sentence for conspiracy. Respondent submits this allegation is patently without merit, as Applicant's sentence of twenty-five years' imprisonment is the mandatory minimum sentence he could have received upon conviction.

Applicant was indicted for and convicted of trafficking in methamphetamine (conspiracy) (400 grams or more) pursuant to S.C. Code Ann. § 44-53-375(C)(5), which states in relevant part:

(C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as "trafficking in methamphetamine or cocaine base" and, upon conviction, must be punished as follows if the quantity involved is:

(5) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

S.C. Code Ann. § 44-53-375

Applicant was sentenced to the mandatory minimum sentence he could receive upon conviction—twenty-five years' imprisonment. This allegation is without merit and should be denied and dismissed.

Allegation that counsel was ineffective for failing to move to quash the indictment arguing that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction; and failing to argue in directed verdict that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction

As twelfth, thirteenth, and fourteenth allegations, Applicant asserts trial counsels were ineffective for failing to move to quash the indictment arguing that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction; and failing to argue in directed verdict on the same grounds. Applicant also asserts due process violations on the same grounds. Respondent submits these allegations are without merit and Applicant cannot prevail on these claims.

As to Applicant's allegations pertaining to extraterritorial jurisdiction, on appeal, Applicant argued the trial court did not have jurisdiction over Applicant because any purported crimes occurred in Georgia not South Carolina. The Court of Appeals expressly rejected this argument, finding, "the State presented overwhelming evidence that Tate committed acts intended to produce and producing detrimental effects within South Carolina." Accordingly, Applicant cannot now argue he is entitled to a new trial based on trial counsels' failure to move to quash the indictment and for a directed verdict on the same grounds that were already expressly rejected by the Court of Appeals. Applicant cannot meet his require burden of proof as to these allegations.

Applicant also alleges counsel was ineffective for failing to move to quash his indictments and for failing to move for a directed verdict pertaining to S.C. Code Ann. § 44-53-375 based on an alleged lack of the Great Seal in violation of Article III, Section 18 of the South Carolina Constitution. Applicant similarly alleges he was denied due process because the statute lacked the Great Seal. Both of these allegations are wholly without merit and should be summarily dismissed.

Pursuant to South Carolina Constitution, Article III, Section 18. “No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: Provided, That either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by its title only”.

The South Carolina Supreme Court has held absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. Smith v. Jennings, 67 S.C. 324, 45 S.E. 821, 824 (1903). Furthermore, under the enrolled bill rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of Secretary of State. Medical Soc. of South Carolina v. Medical Univ. of South Carolina, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); Beaufort County v. Jasper County, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); State v. Town Council of Chester, 39 S.C. 307, 17 S.E. 752, 755 (1893) (“when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable”).

As an initial matter, Respondent notes that this allegation is **wholly** unsupported by any proof whatsoever. At the time Applicant was indicted in 2015, S.C. Code Ann. § 44-53-375 was properly ratified and approved pursuant to 2010 Act No. 273, § 38, which went into effect on June 2, 2010. See 2010 Act No. 273, § 38 (noting the legislation was ratified on June 1, 2010 and approved on June 2, 2010). This legislation was properly ratified, signed by the Governor, and the Great Seal was affixed to the Act on or about the time it was enrolled with the Office of the Secretary of State on June 8, 2010.² It is Applicant's burden of proof to establish he is entitled to relief and Applicant has wholly failed to present any evidence to support this allegation. Accordingly, his allegation of ineffective assistance of counsel and due process violations should be summarily dismissed.

In conclusion, Respondent submits Applicant cannot satisfy either requirement of the Strickland test for any of this various claims of ineffective assistance of counsel. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules

² Despite a complete lack of evidentiary support for this allegation, undersigned counsel for Respondent contacted General Counsel for the Office of the Secretary of State and confirmed the Great Seal was indeed affixed to 2010 Act No. 273, § 38. If Applicant intends to proceed forward on this purely speculative and unsupported allegation at the evidentiary hearing, Respondent intends to introduce evidentiary support at the hearing of the correspondence with the Office of the Secretary of State in response.

15(a)-(b), SCRCF. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCF.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V. Response to Any and All Other Allegations

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI. Request for an Evidentiary Hearing

WHEREFORE, having made its amended return, Respondent requests an evidentiary hearing be held on the allegations as set forth in Applicant's application and supplemental applications.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: Megan Harrigan Jameson
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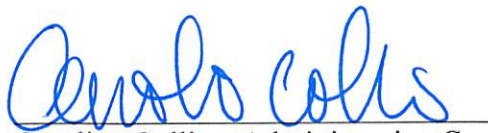
June 4, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2016-CP-23-05259
	)	
ANTONIO EMERSON TATE, #355630,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this the 4th day of June, 2019.



Caroline Collins, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2016-CP-23-05259
COUNTY OF GREENVILLE	)	
	)	
	)	
	)	
ANTONIO E. TATE,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

June 7, 2019
Greenville, South Carolina

B E F O R E:

THE HONORABLE BRIAN M. GIBBONS, JUDGE

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

SUSANNAH C. ROSS, ESQ.
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MEGAN HARRIGAN JAMESON, ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

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1	4/19/18 Letter from SC Department Of Archives RE: Great Seal	32	33

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P R O C E E D I N G S

(WHEREUPON, State's Exhibit Number 1 was premarked for identification; proceedings commenced at 10:00 a.m.)

THE COURT: All right. Madam A.G., if you'll introduce the case.

MS. JAMESON: Yes, Your Honor. May it please the Court. The first matter of the day is Antonio Tate vs. The State of South Carolina, Docket Number 2016-CP-23-5259.

On December 13, 2011, the South Carolina statewide grand jury indicted Mr. Tate by superseding indictment for trafficking in methamphetamine conspiracy, 400 grams or more. It's part of a multicount, multidefendant indictment stemming from an investigation into a methamphetamine trafficking ring in the Upstate. He was represented by R. Mills Ariail, Junior and David Farnham, a member of the Georgia bar who was admitted pro hac vice for this case.

On May 28, 2013, Mr. Tate proceeded to a jury trial in Greenville county before Judge Verdin. Assistant Attorney Generals Josh Underwood and Curtis Pauling of the Attorney General's Office prosecuted the case. On May 31, 2013, the jury convicted Mr. Tate as indicted and Judge Verdin sentenced Mr. Tate to the mandatory minimum sentence of 25 years imprisonment.

1 On June 14, 2013, Mr. Tate, through counsel, filed a
2 motion for a new trial arguing the trial court erred in
3 denying his motion for a directed verdict by order signed
4 June 27, 2013, and filed on July 8th. Judge Verdin denied
5 his posttrial motion.

6 Thereafter he filed a timely notice of appeal and was
7 represented on appeal by Wendy Keefer. On appeal he
8 argued four grounds: that the trial court erred in
9 denying his directed verdict motion where the State failed
10 to provide sufficient evidence of his participation in the
11 conspiracy; the trial court erred in prohibiting defense
12 counsel from cross-examining witnesses about the sentences
13 they faced on their original indicted charges; the trial
14 court erred in permitting expert testimony regarding the
15 legal definition of conspiracy; and the trial court
16 exercised improper extraterritorial jurisdiction over
17 Mr. Tate.

18 Following briefing and oral argument, the Court of
19 Appeals affirmed the convictions in an unpublished opinion
20 and the remittitur was returned to the Circuit Court on
21 July 1st of 2016.

22 Mr. Tate filed this instant postconviction relief
23 application on September 12th of 2016 alleging he was
24 being held in custody unlawfully due to ineffective
25 assistance of counsel for failing to interview potential

1 witnesses in a vague allegation that his due process
2 rights were denied. He failed to set forth with any
3 specificity the grounds, and so the State made a return
4 asking for a motion for a more definite statement.

5 Thereafter, Susannah Ross was appointed to represent
6 him and filed two supplemental applications: One on
7 March 27, 2018, and then another one on October 3, 2018,
8 listing 14 enumerated grounds for postconviction relief.
9 It's my understanding we're going forward on those
10 14 grounds today.

11 On Tuesday of this week, the State filed an amended
12 return and partial motion to dismiss responding to all of
13 these allegations that is in Your Honor's packet. And the
14 State would renew our motion to dismiss Allegations
15 Number 12, 13 and 14 regarding the lack of a great seal
16 missing from the statute when it was filed at the
17 Secretary of State's Office. Mr. Tate has not set forth
18 any grounds. It's wholly unsupported, any evidence to
19 support that allegation.

20 Mr. Tate was indicted pursuant to the 2010 act of
21 trafficking in cocaine -- or, excuse me -- trafficking in
22 methamphetamine, and that was properly ratified by the
23 governor and filed with the Secretary of State's Office
24 with a great seal, and so there's nothing to support this
25 allegation, so the State would move for dismissal at this

1 time on the great seal arguments.

2 THE COURT: All right. Thank you.

3 Ms. Ross, is that your understanding of the
4 procedural nature of this case, first?

5 MS. ROSS: Yes, Your Honor.

6 THE COURT: All right. Now, any response to the
7 State's motion to dismiss on Items 12, 13 and 14 of your
8 client's supplemental application?

9 MS. ROSS: That's a question for the judge, Your
10 Honor. I mean, frankly, I can -- I'd like to hand up some
11 more basis for that, and my client, Mr. Tate, has some as
12 well.

13 Basically, the act that changed the law I believe in
14 2003 did not contain the state seal. 1993. Excuse me.
15 And then the one in 2010, the question is, is it a
16 supplementing or superseding law. In other words, it
17 repeats the exact same language as the prior act when it
18 amends the statute. So to us we'd argue that it's the
19 same and the state seal argument would stand.

20 I can pass up both acts if that would help you.

21 THE COURT: Sure. That would be good. But, you
22 know, I guess, I mean, your client's here ready to go
23 forward, and, you know, rather than making a ruling on
24 that based on the law, let me hear, you know, a factual
25 presentation on everything and then I can take -- consider

1 everything as a whole and make a decision.

2 MS. ROSS: Okay. That sounds like a good way to
3 handle that.

4 I just have two cases that I'd like to hand up just
5 to start off.

6 THE COURT: Yes, ma'am.

7 MS. ROSS: I said two. Three.

8 And rather than making argument now, I'd rather just
9 argue at the end of presenting evidence.

10 THE COURT: Sure. And are you ready to proceed with
11 evidence?

12 MS. ROSS: Yes, Your Honor. We call Mr. Tate.

13 THE COURT: All right. Mr. Tate, come on around.

14 THE CLERK: Mr. Tate, please place your left hand on
15 the Bible and raise your right hand -- left hand on the
16 Bible and raise your right hand.

17 WHEREUPON,

18 ANTONIO TATE

19 After having been duly sworn, testified as follows:

20 THE CLERK: Thank you. You may be seated. Please
21 state your full name for the record.

22 THE WITNESS: Antonio Emerson Tate.

23 THE COURT: All right.

24 ///

25 ///

DIRECT EXAMINATION

BY MS. ROSS:

Q Okay. Mr. Tate, I'm going to just ask you questions sort of in the order that I presented the issues on the amended application. So first I'd like to address there was an argument that you failed -- that your -- Mills Ariail and David Farnham, your trial attorneys, failed to preserve the issue of insufficient proof of conspiracy by the State and providing only isolated sales of meth versus any intent to conspire with purchasers. And that was -- in your appellate opinion, that was not preserved for the record, that argument, okay? And I would point to page 670 in the transcript where I believe Mills Ariail presented the argument. And that's lines 7 through 20.

A 7 through 20. Yes.

Q And he argues the identification issue only; is that correct?

A Yes, ma'am.

Q Now, did he ever make any argument, and you had talked to me about State v. Castineira, which is a case that he argued that the sentence should be reserved to the conspiracy statute of 44-53-420?

A No, ma'am, he didn't.

Q So he never argued that that statute should supersede in this case, not 44-53-375?

1 A No, ma'am.

2 Q Okay. And when you talk -- are you familiar with
3 State v. Castineira?

4 A Yes. Some -- it's Castineira and Harris. Yes,
5 ma'am.

6 Q Okay. In those cases, that involves a statute
7 44-53-370; is that correct?

8 A Yes, ma'am.

9 Q And it said that that superseded the conspiracy
10 statute 44-53-420 because there was specific language in
11 that section dealing with conspiracy.

12 A Yes, ma'am.

13 Q Does that language exist in 44-53 ---

14 MS. JAMESON: Your Honor, objection. This is outside
15 the scope of this witness's knowledge or expertise. The
16 law is what the law is, and Ms. Ross can argue it, but
17 it's inappropriate through this witness.

18 THE COURT: Sustained.

19 BY MS. ROSS:

20 Q Are you familiar with those statutes or did you
21 provide me with those statutes in this argument?

22 A Yes, ma'am. I'm familiar with both statutes as far
23 as the 370 and 375, one being -- 370 being the cocaine
24 statute and 375 being the methamphetamine/crack cocaine
25 statute.

1 Q And what's the difference in those statutes regarding
2 conspiracy?

3 MS. JAMESON: Your Honor, objection.

4 THE COURT: I'll sustain it.

5 I guess, sir, do you want me to consider the
6 difference between the statutes in my interpretation of
7 your hearing?

8 THE WITNESS: Yes, ma'am -- yes, sir.

9 THE COURT: Okay. That's the appropriate way.

10 MS. ROSS: Thank you, Your Honor.

11 THE COURT: I know it's more of a legal issue, but
12 today is his day in court, so I am going to give her some
13 latitude, Madam A.G.

14 MS. JAMESON: Yes, Your Honor.

15 THE COURT: But on legal stuff like that, he's not
16 qualified to testify as a lawyer or a legal expert about
17 interpretation. But if you give me an idea just like I
18 asked of what you're looking at, and, of course, I'm going
19 to give you ample opportunity to discuss or argue the law
20 at the end, okay? Thanks.

21 MS. ROSS: Thank you, Your Honor.

22 BY MS. ROSS:

23 Q Okay. Moving on to Issue Number 2, in your appeal,
24 it was found to be harmless error, but did your trial
25 attorneys cross-examine each and every one of I believe

1 the 11 codefendants in your case regarding the time that
2 they would face if they hadn't struck a deal and testified
3 against you?

4 A No, ma'am. He didn't -- he did not bring up the
5 mandatory minimum.

6 Q And isn't it true on page 50, line 19, I believe,
7 that he conceded that he would not testify -- I mean would
8 not cross-examine them fully on the issue that each of
9 them faced the mandatory 25 years if they didn't testify?
10 And that's page 50, line 19.

11 A 50, 19. Yes. He conceded. He conceded that he
12 wouldn't -- wouldn't cross-examine them concerning the
13 mandatory minimum.

14 Q All right. And then going on to Issue Number 3, he
15 then went on to fail to fully cross-examine eight of the
16 codefendants about avoiding 25-year mandatory minimum
17 sentences.

18 A Yes. Yes, he did.

19 Q And I'd refer you to page 56.

20 A Okay.

21 Q And that's Wendy Lollis witness.

22 A Yes, ma'am.

23 Q And 223, that's witness Rachel Eades.

24 A Yes, ma'am.

25 Q Okay. And 428, that's witness Charles Javin Adams.

1 A Yes, ma'am.

2 Q And then moving on to 513, that's witness Alvery Mate
3 Vashon [phonetic]?

4 A Yes, ma'am.

5 Q And pages 568 through 570, that's witness Warren
6 Brent Chastain?

7 A Warren Chastain. Yes, ma'am.

8 Q And then two more. 598, witness Larry Anthony
9 Gambrell?

10 A Larry Gambrell. Yes, ma'am.

11 Q And 628, witness Chad Dwayne Moore.

12 A Chad Dwayne Moore. Yes, ma'am.

13 Q And he faced a potential life sentence, didn't he?

14 A Yes, ma'am. He got a record.

15 Q Okay. Moving on to Issue 4, we've alleged that your
16 lawyer failed to consistently object to testimony by
17 investigators regarding the legal definition of conspiracy
18 and the sufficiency of the evidence. And on those -- on
19 that argument, I would refer you to page 317 through 319
20 in the transcript. And I refer you to page -- to line 21
21 on page 317.

22 A Okay. Okay.

23 Q What is he talking about there?

24 A He says, "Now, okay. Now, you mention that in
25 talking with the confidential informant that you were able

1 to identify several different conspiracy groups."

2 Q And then he goes on.

3 A He says, "Yes, sir. And it started the framework
4 that led to several, several conspiracy groups."

5 Q And then going on to line 318 -- I mean, excuse me,
6 page 318, line 6 and 7?

7 A It says, "Groups that had formed in a bit of
8 trafficking conspiracy under an umbrella, but somewhere
9 along most of these groups has small links that kind of
10 join back and forth between, but there were still core
11 groups within the larger umbrella."

12 Q Okay. So then he goes on to testify about how he had
13 identified a conspiracy over and over again.

14 A Yes.

15 Q Now, moving on to page 332, line 21.

16 A Okay.

17 Q What does the investigator tell the jury?

18 A He said, "We had a strong conspiracy on this end, but
19 it was coming from -- we didn't have a name. That's what
20 we really wanted."

21 Q And what was the ultimate issue in your case?

22 A The ultimate issue, I guess, is that they were trying
23 to advocate [sic] me in the conspiracy.

24 Q And the investigator's telling the jury they had a
25 strong conspiracy.

1 A Yes, ma'am.

2 Q Now 338, he goes on. I've lost the line on that.
3 I'll just move on to page 362, line 3. That goes into a
4 photo lineup situation, 362, line 3?

5 A Okay.

6 Q Now, you have a twin brother; is that correct?

7 A Yes, ma'am.

8 Q Can you tell the Court a little bit about a main
9 issue in your trial?

10 A Well, I mean, I guess they stated they couldn't tell
11 the difference between us because what was brought forth
12 in trial. But ---

13 Q And a number of witnesses testified that they
14 couldn't tell the difference or couldn't be sure who's ---

15 A They couldn't tell the difference.

16 Q Now, were photo lineups presented to the witnesses in
17 your case?

18 A Yes, ma'am.

19 Q Did your trial attorneys challenge the identification
20 process in your case in any way?

21 A No. They stipulated to every last one of them.

22 Q Okay. Do you feel that prejudiced your case?

23 A I believe it prejudiced me because my face was in the
24 same spot on every last one of them.

25 Q Okay. And that was, I believe, in the upper

1 right-hand corner?

2 A Yes, ma'am.

3 Q Is that right?

4 A Top right.

5 Q Okay. We'd move on to page 657, line -- 57, line 19.

6 A Okay.

7 Q But that's more about the investigator testifying, an
8 expert that he wouldn't expect a drug trafficker to have a
9 large home. And there's no objection there, is there?

10 A It's 657, line 19?

11 Q Yes. That's what my notes ---

12 MS. JAMESON: Your Honor, I'd object to Ms. Ross's
13 clear characterization that he was testifying as an
14 expert. I think that's an issue for Your Honor to decide.

15 THE COURT: All right. Well, overruled. I'm going
16 to give her some latitude, again, in presenting the
17 applicant's case.

18 MS. JAMESON: Thank you, Your Honor.

19 THE COURT: Uh-huh.

20 BY MS. ROSS:

21 Q Okay. And then going on to page 659, and it's
22 rolling over from 658, line 1.

23 A Okay.

24 Q What does he say there?

25 A Line 1, "That informant could deal, and once we do

1 that, we bring in some of those defendants and interview
2 them and basically ask for their cooperation with the
3 government to further the investigation of law to who they
4 were getting their methamphetamine from," is what he said.

5 Q And then moving on to the last page, 664 and 665.

6 A Okay.

7 Q This is Agent Barwick. What is he talking about
8 there?

9 A Well, he says he made a conclusory statement about
10 conspiracy, about his conspiracy.

11 Q Okay.

12 A He says -- he says, "Now, this particular conspiracy,
13 can -- can you describe and explain it to the jury?" And
14 then Farnham objected.

15 Q And what does he say on 665, lines 6 through 8?

16 A 63. "And to the extent of this investigation, who
17 was the highest source in this particular group?"

18 Q And then on line -- going down to line 15, what does
19 Mr. Farnham then do?

20 A "Agent Asbill, you just made a conclusory -- clusory
21 [phonetic] statement that Antonio Tate is the highest
22 source in this conspiracy, correct?"

23 Do you want me to respond to what he said, asked
24 Bill?

25 Q And then, essentially, he makes it worse by saying,

1 "Isn't he the top guy?" kind of going on in that line of
2 questioning.

3 A Yeah.

4 Q Now, just going back to the facts of your case,
5 didn't they try to set you up to get you to sell drugs on
6 a certain occasion?

7 A If they did, I didn't know about it.

8 Q Okay. And -- well, in the trial, did it come out
9 that they had attempted to set you up and then tried to
10 have a sting and tried to record conversations?

11 A Yes, ma'am. I learned that at trial.

12 Q Did any of that reveal anything? Were any drugs
13 found on you?

14 A No.

15 Q Were any tapes made of you attempting to sell drugs
16 or on the phone about selling drugs?

17 A No.

18 Q And so all this stuff that Mr. Farnham is testifying
19 about, the investigator, is just based on the
20 codefendants' statements alone.

21 A Yes, ma'am.

22 Q It's not substantiated by any other direct evidence.

23 A No, ma'am.

24 Q And do you feel that his testimony hurt -- hurt you
25 at trial?

1 A Oh, yes, ma'am, I did.

2 Q And did your lawyers object or shut down that
3 testimony?

4 A No, ma'am.

5 Q Now, going on, again, to the next argument, I'd refer
6 you to page 322, line 21. I believe they were talking
7 about -- page 332, line 21.

8 A So page 332?

9 Q Yeah.

10 Again, we've referenced this before. What is he
11 testifying to?

12 A Line 4?

13 Q Line 21.

14 A Line 21 says, "We had a strong conspiracy on this
15 end, but where it was coming from we didn't have a name,
16 and that's what we really wanted."

17 Q And, again, was there any objection there?

18 A No.

19 Q And then I'd refer you to page 665.

20 A Okay.

21 Q Again, that's the same argument. Again, there was no
22 objection when the agent says that you were the top of
23 that conspiracy.

24 A No objection.

25 Q And then I'd refer you to page 668, line 15 through

1 19. What is the question there? What does the prosecutor
2 ask the investigator?

3 A He said, "Do you have a reason, based on
4 investigation, any reason to not believe the individuals
5 who provided information that they got their
6 methamphetamine from Antonio Tate."

7 And he said, "I don't have any reason not to believe
8 it."

9 Q Was there any objection made to that?

10 A No.

11 Q Do you believe that's the State sort of bolstering
12 their case by saying it's the truth?

13 A Yes, ma'am. I do believe that right there because
14 they place their credibility behind that.

15 Q And, again, there was no objection.

16 A No objection.

17 Q Do you think that affected your case, the outcome of
18 your case?

19 A Yes, ma'am, I did.

20 Q Okay.

21 A Due to the suspect credibility of the witnesses.
22 Yes, ma'am.

23 Q All right. Okay. I'm moving onto the next issue.
24 There was a failure to object to leading and -- a number
25 of leading questions by the State. And there's one on --

1 I'll start with page 61. There's a question asking the
2 witness what your state of mind was.

3 A Okay.

4 Q Line 20 ---

5 A Okay.

6 Q --- and 20 -- 22, they're asking -- he does object on
7 24 to leading, but does not object to the witness would
8 not know your state of mind.

9 A Yeah. There's no objection to that.

10 Q And there were a number of times where the solicitor
11 attempts to ask witnesses whether the defendant would have
12 known they were distributing drugs in South Carolina?

13 A Yes, ma'am.

14 Q And were objections made to those?

15 A No.

16 Q And what was the prejudice to you of no objections
17 being made to that?

18 A I believe the prejudices that was made is that he
19 allowed the witnesses to testify for me.

20 Q And what was the relevancy of them testifying what
21 you might have known whether what they were doing in South
22 Carolina or not?

23 A Well, if I -- if I'm being testified against
24 somebody, I mean, well, somebody testified against me as a
25 witness and they're putting words in my mouth ---

1 Q Right.

2 A --- then it's -- then it's not my actual testimony.

3 Q And what was the jurisdiction of this case?

4 A Well, the jurisdiction, I believe, should have been
5 Atlanta, but . . .

6 Q But it had to be South Carolina. That was what was
7 in the indictment.

8 A Okay.

9 Q The county's in South Carolina.
10 I'd refer you to page 289, line 9.

11 A Okay.

12 Q What does Mr. Underwood ask there?

13 A "So this person Number 3, that's the person you met
14 with and discussed buying ice and getting a transmission
15 from."

16 Q Was there any objection to leading there?

17 A No.

18 Q Let's see. How about 364, line 6? Now, on this,
19 they're asking about your rap sheet, correct?

20 A Okay.

21 Q And it consists of traffic convictions. And what is
22 -- what's a side comment that's made on Line 6 about your
23 rap sheet?

24 A He said, "It's several pages."

25 Q Now, was there any objection to that?

1 A No.

2 Q And on page 365, line 14, was there any objection to
3 that comment or that question by the State, "Is it fair to
4 say that everyone has to get arrested before they have a
5 record"?

6 A No objection.

7 Q And you didn't testify in this case, did you?

8 A No, ma'am.

9 Q So your record was not relevant, your prior record?

10 A If I didn't testify, no.

11 Q Right.

12 Okay. 406, line 22.

13 A Okay.

14 Q Now, on this, he asked, again, "Now, did Antonio Tate
15 know that the drugs he was selling you were -- that you
16 were reselling them in South Carolina?"

17 And he said, "I'm pretty sure he did."

18 Again, on line 407, Mr. Ariail does object to that,
19 correct?

20 A Yes, Your Honor.

21 Q But did he move to have the record stricken or make
22 any comment that that was something that that witness
23 could not have known?

24 A No, he didn't.

25 Q And just on that, that is witness -- let's see. That

1 is witness Charles Javin Adams. On line 19, he talks
2 about a meeting in Anderson county, correct?

3 A He -- he mentions Anderson county, yes.

4 Q And that's the only county he mentions, correct?

5 A Yes, ma'am.

6 Q And that was not on your indictment, any mention of
7 Anderson county.

8 A No.

9 Q Now, just going on to page 419, here is a question on
10 cross-examination regarding red dot cards. The -- your
11 attorney asks why the witness did not mention anything
12 about red dot cards in his statement. And that's around
13 line 16 and then down to 23.

14 A No. He said -- well, repeat the question again.

15 Q So your trial attorney is cross-examining a witness
16 against you.

17 A Okay.

18 Q Okay? And he points out the witness has already
19 testified all about this red dot card process of charging
20 money, right?

21 A Okay.

22 Q And your trial attorney impeaches him by saying, "But
23 you didn't mention any of that in your original statement,
24 anything about the red dot card," right?

25 A Oh, yes, yes.

1 Q Okay. So then I'm going to refer you over to
2 page 445. At that point, Mr. Underwood, in redirect,
3 questions the witness for three to five pages about red
4 dot cards.

5 A Okay.

6 Q Okay?

7 A Yeah.

8 Q So on redirect, he gets up and starts talking -- goes
9 into extensive detail about red dot cards and the dealings
10 and how it worked. Did your lawyer, at any point, object
11 and say that was beyond the scope of the
12 cross-examination?

13 A No. There's no -- no objection here on the record.
14 Not in two pages.

15 Q All right. And then on page 450, line 7 -- I'll
16 scratch that. Again, I believe there was an objection
17 there, so I'll scratch that.

18 Moving on to 467, line 7. And then what the
19 prosecutor is getting to there is, again, trying to ask a
20 question about your state of mind, whether you or the
21 defendant knew drugs were being sold in South Carolina.
22 And he asked about any discussion, and that doesn't get
23 the answer he wants, and then he goes on on line 14 to
24 say, "Did he know that you were selling the dope?" And
25 then there's no objection there, is there?

1 A No.

2 Q And that goes to your mens rea.

3 And, again, on page 638, line 44 ---

4 A Okay.

5 Q --- sorry. It's not line 44.

6 Well, my reference in there is on these pages 638

7 through 644, the prosecutor leads the witnesses a good

8 bit. Is there any objection to that throughout?

9 A No. There's no objection on neither page.

10 Q Now, I'm sort of persnickety going through all these,

11 but the consistent failure to object or make the correct

12 objections to your trial, do you think that could have

13 affected the outcome of your case?

14 A I believe it had -- had a lot to do with it.

15 Q Now, Issue Number 7 was failing to object to Agent

16 Barwick's recital of statements made at the bond hearing

17 by the attorney general. And this is on page 339,

18 line 22. As we said before, our main issue in your case

19 was identity because you had a twin brother. On page 339,

20 line 22, what does the investigator tell the jury about

21 that issue?

22 A It says, "Mr. Underwood went on to explain that he

23 had a twin brother and Tate attempted to use his brother

24 identity to elude police when he was -- when they

25 approached him in Georgia on our charges because of the

1 indictments -- indictments were issued. And we issued
2 charges for him, and he tried to use his brother's
3 identity to stop being arrested. Well, Mr. Underwood was
4 explaining this to the judge, and during that
5 conversation, Ms. Eades and them heard this and they were
6 talking about that on the way back to the LEC."

7 Q All right. Was there any objection made to that
8 testimony?

9 A No.

10 Q And this is what the prosecutor had said. He's
11 repeating at a prior hearing.

12 A Yes, ma'am.

13 Q Did your trial attorneys move to suppress the
14 admission of any of the drugs or money or paraphernalia or
15 phones that were brought in in the trial of this case?

16 A No, they didn't. Not even at my request.

17 Q And why did you request for them to move to suppress
18 that stuff?

19 A Because I hadn't sold any drugs to them.

20 Q And who were those drugs recovered from, do you know?
21 They weren't recovered from you.

22 A No.

23 Q They were recovered from witness Jason Griffin,
24 Rachel Eades, Christopher Simmons, but not you. So your
25 fingerprints wouldn't have been on those drugs ---

1 A No.

2 Q --- or phones or anything like that.

3 A No.

4 Q Was there any testimony that your phone number was on
5 any of those phones? Did they tie it in at all?

6 A No.

7 Q But there was no objection. And the relevant pages
8 were page 243, line 6. And that's witness Dale Campbell,
9 no objection.

10 A Okay.

11 Q 368. And I'm just going to give you the numbers.
12 371, 374, no objections to those drugs coming in.

13 And then on -- I'll refer you to page 682, line 12.
14 Can you tell what the prosecutor is doing there?

15 A Says, "This case is about one thing and one thing
16 only: Who sent this poison to South Carolina, this
17 heist."

18 Q What's he doing while he -- what's he doing in front
19 of the jury while he's saying that?

20 A He's testifying.

21 Q Well, what's he holding up? Is he touching anything?

22 A Oh, he said, "These drugs here."

23 Q Okay.

24 A He said, "These drugs here," indicating.

25 Q Do you recall whether he's holding them up for the

1 jury, being like these drugs right in front of the jury?

2 A Oh, yeah. He picked them up.

3 Q Now -- and do you feel that those drugs would have
4 come in if your lawyer had objected to them properly?

5 A I don't believe so. No.

6 Q And would the prosecutor have opened his opening
7 statement holding up all those drugs if he didn't think it
8 hurt your case?

9 A I don't think he would have.

10 Q I'm going to move on to failing to challenge the
11 identification procedure.

12 At the opening of your trial, there was no Neil v.
13 Biggers hearing, was there?

14 A No.

15 Q No challenge to the lineup.

16 And on -- I'll refer you to page 707. This, I
17 believe, is Mr. Farnham's closing argument, line 8?

18 A Okay.

19 Q He's talking about the identification procedure,
20 about your picture being in the upper left-hand corner,
21 correct?

22 A Upper right-hand corner, yes.

23 Q Yeah. And he's talking about how -- he's questioning
24 to the jury whether that was reliable or not.

25 A Yes.

1 Q But it came in, and everything came in because they
2 made no motion to keep it out.

3 A No motion.

4 Q So your lawyer's making that argument in closing but
5 just never made it effectively on the record to help out
6 your trial.

7 A Yeah. He never -- he never put it in the record
8 before closing.

9 Q Okay. Now, moving on to Issue 10, did you testify?

10 A No, ma'am.

11 Q Why didn't you testify?

12 A I was told by my attorneys that they didn't think I
13 needed to testify because they didn't think the State had
14 a case.

15 Q Okay. And did you have any witnesses that you might
16 have presented?

17 A I believe I had six people that showed up in court.

18 Q Okay. And are any of them here today?

19 A One of them. One of the people here. One of the
20 people's here.

21 Q Okay. What would they have testified to? Or what --
22 how would that have helped your case?

23 A I believe it would have helped me because when they
24 alleged that there was an investigation going on and I was
25 being tailed or whatnot, that was in the transcript and in

1 the trial that they were coming to buy drugs, and I
2 believe it would have proven that nobody was coming to buy
3 the drugs from me because Nate' herself stated that they
4 were coming to buy a transmission and it was not -- and
5 Detective Ayers stated on the record that he saw me at a
6 transmission shop when I was never there.

7 Q Okay. And those witnesses could have gone against
8 that testimony.

9 A Yes. Yes, ma'am.

10 Q Okay. Now, moving on, I believe we've already argued
11 this, but your lawyers didn't argue that the -- your
12 sentence exceeded the maximum sentence for conspiracy.

13 A No. No, they didn't.

14 Q That -- that it should have been half the 25 years,
15 12 1/2 years under 44-53-420.

16 A Yeah. According to that provisional statute.

17 Q Okay. And then was there any objection to lack of
18 extraterritorial jurisdiction in your case? Do you know
19 what that is?

20 A Yeah. I know what that is. It's called the effects
21 doctrine.

22 Q Did your lawyers argue that?

23 A No, no. Not at all. And that was something I was
24 very adamant about.

25 Q Now, do you think that might have changed the outcome

1 of your case?

2 A I believe so.

3 Q Now I'm going to go move on to the seal issue. You
4 might have the original, but let me show you. Okay. You
5 sent me this. Do you know what this is?

6 A Yeah. I've got the original right here. I need to
7 get to the ground to get it.

8 Q Okay. Let's put the original in. Is that okay with
9 you to put the original in evidence?

10 A Yeah.

11 (WHEREUPON, Applicant's Exhibit Number 1 was marked for
12 identification.)

13 BY MS. ROSS:

14 Q Okay. So what is this, again?

15 A This is a letter from Steve Tuttle letting me know
16 that he checked -- he said, "I checked the 1993 Act
17 Number 184 and found that it does not have a visible
18 impression of the great seal."

19 Q Okay. What is the relevance of that to your case, do
20 you know?

21 A Well, the relevance, two -- two issues: one is with
22 the 44-53-375 statute, the other one is conspiracy --
23 criminal conspiracy itself. That also was in that
24 particular act ---

25 Q Okay.

1 A --- that was not sealed.

2 Q And what does the South Carolina Constitution say
3 about ---

4 MS. ROSS: Let me go ahead and move this into
5 evidence at this time.

6 THE COURT: Any objection?

7 MS. JAMESON: No objection to the exhibit coming in.
8 I do have an objection to the question she's about to ask
9 on the same basis as before. He doesn't have a legal
10 expertise and should not be testifying as to the law.

11 THE COURT: Well, I'll let her ask the question first
12 and then we'll decide whether it's objectionable.

13 All right. That exhibit comes in then as
14 Applicant's 1.

15 (WHEREUPON, Applicant's Exhibit Number 1 was admitted into
16 evidence.)

17 BY MS. ROSS:

18 Q Now, why do you think it's important that that act
19 doesn't -- to your case that that act doesn't have a seal
20 on it?

21 A Well, according to Article 3 in Section 18 of the
22 South Carolina Constitution, no joint bill resolution,
23 act, commission of law should have the force of law until
24 it shall have first been read three times by both parties
25 on three separate days, has had the great state seal

1 affixed to it, has been signed by the president of the
2 Senate and has been signed by the speaker of the House and
3 the governor. That's what it says.

4 Q And the statute that you were convicted under, your
5 indictment relates to, didn't have the state seal affixed
6 to it.

7 A Well, the charge -- the charge itself of conspiracy
8 did not have the state seal affixed to it.

9 Q Okay. And therefore, you don't think that had ---

10 MS. JAMESON: Your Honor, objection. I think that's
11 a mischaracterization of what he was indicted under. He
12 was indicted pursuant to a 2010 act, not the 1993 act.

13 THE COURT: All right. I'll overrule the objection,
14 but I will take that into consideration when I look over
15 everything.

16 MS. JAMESON: Thank you, Your Honor.

17 THE COURT: Thank you.

18 BY MS. ROSS:

19 Q Now, is there anything else you want me to put in the
20 record or on the record regarding the state seal issue?

21 A Well, I've got the state seal issue.

22 There was a -- because she just mentioned about the
23 conspiracy law. In 2015 there was a -- an opinion,
24 attorney general's opinion from South Carolina ---

25 MS. JAMESON: Your Honor, objection. He doesn't have

1 -- he's not been admitted as an expert, he's not qualified
2 as a legal expert and this is ---

3 THE WITNESS: I have the paper here to prove it.

4 MS. JAMESON: --- this is argument Ms. Ross should be
5 making at the close of the case, not through this witness.

6 THE COURT: All right. Sustained.

7 THE WITNESS: Okay.

8 MS. ROSS: And I'll make those arguments.

9 THE WITNESS: Okay. I've got the paperwork.

10 BY MS. ROSS:

11 Q And did your attorneys make the state seal argument
12 at the opening or at any point in your trial?

13 A No.

14 Q Did they make -- did they ever argue the lack of
15 extraterritorial jurisdiction?

16 A No.

17 Q Now, just going to that specifically, I'd like to
18 refer you to page 147. And this is where witness Jason
19 Griffin says that the defendant came to South Carolina to
20 Rachel's house. Okay. And that's on page 147.

21 A Okay.

22 Q And that is one of the few points where a witness
23 puts the defendant in South Carolina.

24 And then on page 175, that same witness can't tell
25 you from your twin brother in the courtroom.

1 A No.

2 Q And then witness Rachel Eades, who Jason Griffin said
3 you came to her house, she never says you came to her
4 house.

5 A No. That's -- that's correct. She never said that.

6 Q Now, referring to page 406, line 19, another incident
7 where a witness Charles Adams said the defendant sold him
8 an ounce in Anderson county.

9 A Okay.

10 Q However, you weren't indicted. Anderson county was
11 not on your indictment, was it?

12 A No.

13 Q And on page -- just referring you to page 713,
14 line 19.

15 A Okay.

16 Q There the attorney general objects in your -- in the
17 -- your lawyer's, Mr. Farnham's, closing ---

18 A Yes.

19 Q --- and argues intent to distribute in South Carolina
20 was not the law, correct?

21 A Yes. He said that. Mr. Underwood said it was a
22 misstatement of law. That's what he said.

23 Q Not that it matters, but do you agree with that?

24 A Yeah. I agree with it.

25 Q And then there was something, an argument that you

1 had, I believe, about the jury instructions on intent and
2 conspiracy not fully addressing the law?

3 A Okay.

4 Q What was that?

5 MS. JAMESON: Your Honor, the State would object. We
6 haven't been put on notice. These weren't alleged in the
7 original application, the supplemental application, or the
8 second supplemental application.

9 THE COURT: All right. What's your position on that,
10 Ms. Ross?

11 MS. ROSS: I believe that was an argument that
12 Mr. Tate had presented to me that I hadn't fully fleshed
13 out from this morning, so I was just going to allow him to
14 put it on the record if he so chooses.

15 THE COURT: All right. Any further argument on that,
16 Ms. Jameson?

17 MS. JAMESON: Yes. The State has not had an
18 opportunity to discuss that with either of our two defense
19 counsels or the prosecutor or research this. This case
20 has been pending for two and a half years. It's been
21 supplemented or amended twice. This is now an issue that
22 clearly could have been raised before, and it's
23 prejudicial for the State to, in the middle of his
24 testimony, allow him to raise new allegations.

25 THE COURT: All right. Motion granted.

1 MS. JAMESON: Thank you.

2 THE COURT: That issue ---

3 MS. ROSS: All right.

4 THE COURT: --- that issue is not preserved for this
5 particular application.

6 MS. ROSS: Okay. Thank you, Your Honor.

7 THE COURT: All right.

8 BY MS. ROSS:

9 Q That is the end of the questions I had on my notes
10 for you and just going through the transcript and pointing
11 out places that may have affected the outcome of your
12 trial. Are there anything -- is there anything else you'd
13 like to add?

14 A Well, as far as you asked about the quashing the
15 indictment, that was one in the beginnings, right?

16 Q Uh-huh.

17 A I asked him to and requested that, and he walked over
18 to the -- to the clerk of court while the judge had went
19 on in the back, and he brought it back to me and said,
20 "She says it's okay." And I wanted that on the record,
21 but it didn't get put on the record.

22 Q Okay.

23 A So I was -- I was unable to bring that up at appeal.

24 Q And your lawyers filed a timely appeal, right?

25 A Yeah.

1 Q But some of the issues weren't preserved, and in your
2 court opinion it said so.

3 A That's -- that's correct.

4 Q Do you feel that prejudiced you as well?

5 A Yes. Because my appeal didn't even get heard, the
6 main issues.

7 MS. ROSS: All right. I've got no further questions.

8 THE COURT: All right. Ms. Jameson, your witness.

9 MS. JAMESON: Thank you.

10 CROSS EXAMINATION

11 BY MS. JAMESON:

12 Q Good morning. Mr. Tate.

13 When did you -- who did you retain first, Mr. Farnham
14 or Mr. Ariail?

15 A Mr. Farnham.

16 Q How did you -- how did you go about retaining him?

17 A My family retained him.

18 Q When was that?

19 A Sometime during the summer, I believe, of 2012.

20 Q Did you know that he was not licensed to practice law
21 in South Carolina, he was a Georgia attorney?

22 A No.

23 Q He never -- he never told you that?

24 A No. He said he -- well, he said he had to go pro hac
25 vice on another attorney is what he told me.

1 Q Did he explain what that meant to you?

2 A No.

3 Q Okay. What was your understanding of Mr. Ariail's
4 involvement then, why Mr. Ariail got involved in the case?

5 A My understanding was that he had to be the liaison
6 for Mr. Farnham to practice in the State for this
7 particular case.

8 Q Because he wasn't a member of the South Carolina Bar.
9 Mr. Farnham wasn't a member of the South Carolina Bar,
10 correct?

11 A No.

12 Q So you did know that when you retained him?

13 A No. I didn't know that at the time, but he also --
14 he told me once me, him and Mr. Mills met together.

15 Q Were you out on bond pretrial?

16 A No.

17 Q So you were incarcerated the entire time?

18 A Yes, ma'am.

19 Q Did you meet with Mr. Farnham and Mr. Ariail before
20 your trial?

21 A Twice.

22 Q You only met with them two times the entire time they
23 were representing you?

24 A Twice.

25 Q Okay. When -- when were those meetings?

1 A Once was when he -- we signed a pro hac vice
2 agreement, and the other one was when we were supposed to
3 go to trial in 2012 but without any understanding of why
4 we didn't, they continued the trial.

5 Q So other than signing the pro hac vice document and
6 when you were supposed to go to trial, Mr. Farnham and
7 Mr. Ariail never met with you any other times?

8 A No.

9 Q Did they review the discovery with you in this case?

10 A No. Nobody did.

11 Q So you never saw any of the witness statements?

12 A No. I was told that it was just statements, but
13 that's -- that's all I was told. I was never allowed to
14 have a copy of it.

15 Q But did they review it with you when they came and
16 met with you?

17 A No. They was going to, but Verdin, Judge Verdin told
18 him on the record that he couldn't have a copy of it at
19 the time, so . . .

20 Q Told them that you couldn't have a copy or that your
21 attorneys couldn't have a copy?

22 A That he couldn't have it because they had -- he had
23 no pro hac vice agreement yet at that time.

24 Q What about the various identifications from your
25 co-conspirators, did you ever look at those?

1 A I've seen them now that I've got them in the
2 transcript.

3 Q But your attorneys didn't show those to you ---

4 A No.

5 Q --- prior to trial?

6 A No.

7 Q And so they never showed you any discovery?

8 A No. I -- I never was allowed to put my hands on the
9 discovery.

10 Q Did they explain what they were -- what the
11 indictments were against you? Did your attorneys explain
12 what you were being charged with by South Carolina?

13 A Yeah. He explained it all as being charged with
14 conspiracy to trafficking methamphetamine.

15 Q Did he explain how much weight that was for?

16 A Yes. He said 400 grams or more.

17 Q Did your attorneys explain the mandatory minimum
18 sentence you faced for that charge?

19 A They explained the mandatory minimum, and I asked a
20 question concerning such a matter because of the 420
21 statute, and they said it wasn't applicable.

22 Q What did they tell you the mandatory minimum sentence
23 was?

24 A 25.

25 Q And you responded that there was another statute you

1 should be charged with for lesser time, I believe you
2 said?

3 A No. I responded -- I responded -- I didn't say that
4 I was charged with. I said according to South Carolina
5 law and the drug statute, which is Title 44, that they
6 have a statute with the last three digits as 420 that says
7 you cannot get above half of whatever the principal
8 offense carries.

9 Q And you discussed that with your attorneys and they
10 told you it wasn't applicable to your case?

11 A Yes.

12 Q And you're not an attorney, correct?

13 A No.

14 Q So you knew that you were facing a mandatory minimum
15 of 25 years if you were convicted at trial then?

16 A As far as I know, as far as I was told, yes.

17 Q You testified you wanted them to present six
18 different witnesses on your behalf, correct?

19 A Yes.

20 Q Specifically, what are the names of those six
21 witnesses?

22 A I don't have all of those here with me, but they're
23 in the -- they should be in the transcript. I could name
24 them.

25 Q You don't know off the top of your head the six

1 witnesses you wanted called?

2 A No. Two of them were detectives from Atlanta,
3 Georgia.

4 Q And why did you want them called?

5 A Because they could prove exculpatory -- exculpatory
6 evidence that is now not available to me.

7 Q What's that?

8 A That South Carolina did call them about doing an
9 investigation and that they did do an investigation on me.

10 Q Okay. And what are the other four witnesses?

11 A It was Gerald Cooper, Rene Rogers, Chastity Raines
12 and Anthony Tate.

13 Q And why did you want Gerald Cooper called?

14 A Because Gerald Cooper was my roommate at the time.

15 Q And what did you want him to testify to?

16 A I didn't want him to testify to nothing but the
17 truth, that these people had never been to my house.

18 Q What did you want Rene Rogers to testify to?

19 A Alibi and character.

20 Q And the State presented numerous different
21 co-conspirators who testified to well over a year of drug
22 transactions with you is what the State alleged, correct?

23 A Yes.

24 Q So Rene Rogers would have been able to testify as an
25 alibi for every single one of those drug transactions?

1 A No. I'm not saying. I said she could have been a
2 character witness and an alibi witness because she will be
3 at my house all the time.

4 Q So an alibi for some of those transactions?

5 A No. Because there were no drug transactions at my
6 house.

7 Q And what would she have been a character witness for?

8 A That I'm a person that loves everybody, that helps,
9 that preach the gospel of Jesus Christ.

10 Q Okay. What would Chastity Raines have testified to?

11 A She would have testified to as to when they brought
12 up an investigation about the transmission purchase, that
13 I was never there at a transmission purchase when Barwick
14 and Ayers testified that they saw me there when I was
15 never there.

16 Q And what would Anthony Tate have -- who is Anthony
17 Tate?

18 A That's my twin brother.

19 Q And he was present for trial, correct?

20 A He was present.

21 Q And your attorneys utilized him through several of
22 the witnesses, correct?

23 A I believe so.

24 Q They had him stand up in the courtroom and they asked
25 several of your co-conspirators if they could tell the

1 difference between you and your twin brother, correct?

2 A Yes.

3 Q And your attorneys, particularly Mr. Ariail, were
4 able to get the witnesses on cross-examination to admit
5 that they weren't certain the identity between you and
6 your twin brother, correct?

7 A Yes.

8 Q So he was utilized at your trial, correct?

9 A Yes.

10 Q Did you tell your attorneys you wanted those six
11 witnesses called?

12 A Yes. Mr. Farnham even said it on the record that he
13 asked the judge before he walked out for the first day
14 that he was checking the time because he wanted to know
15 because he wanted to present his witnesses. It's on the
16 record.

17 Q Did you discuss not calling witnesses with your
18 attorneys at the close of the State's case?

19 A No. I asked why. I asked why. And they said we --
20 I don't think that we need them. And plus they said --
21 said something to the effect of the last say-so, but I
22 don't recall the exact words verbatim.

23 Q Okay. Did you agree with their decision not to call
24 these six witnesses?

25 A I didn't agree with that right there. I really

1 didn't. But I was going upon the advice of my
2 attorneys.

3 Q But you relied upon their advice as attorneys?

4 A Yes.

5 Q Okay. One of your allegations is also that you
6 wanted to testify in your own behalf, correct?

7 A I did, but yet I understand the fact that I -- I
8 relied on their -- their advice.

9 Q And Judge Verdin asked you several times about your
10 right to testify, correct ---

11 A Yes.

12 Q --- during trial? And you told Judge Verdin that you
13 discussed this with your attorneys, correct?

14 A Yes.

15 Q And that you did not want to testify.

16 A Yes. Upon the advice of them, but I understand that
17 when I spoke, that I gave it up, yeah.

18 Q And you also told Judge Verdin at this time that
19 you didn't want to present any of your own witnesses,
20 correct?

21 A No. I didn't say that right there. I don't believe
22 I did.

23 Q Regarding your allegation that your attorneys failed
24 to cross-examine several of your co-conspirators about the
25 sentences they were facing, they did cross-examine them

1 that they had originally been charged with greater
2 offenses where they faced much more time, correct?

3 A She allowed the greater but didn't allow the
4 mandatory minimum.

5 Q She didn't allow them to testify as to 25 years,
6 correct?

7 A No.

8 Q But ---

9 A The mandatory minimum.

10 Q But Mr. Ariaail did, through several witnesses, put
11 before the jury that your various co-conspirators all were
12 facing much greater time than what they ultimately agreed
13 to with the State through the plea agreements, correct?
14 That was presented to the jury?

15 A The much greater time, I wouldn't say so, because
16 some of them didn't.

17 Q And that issue was raised on direct appeal, correct?

18 A Yes.

19 Q And the Court of Appeals found that to be harmless,
20 correct?

21 A Yes, yes. But I don't know why.

22 MS. JAMESON: No further questions, Your Honor.

23 THE COURT: All right. Any redirect?

24 MS. ROSS: No, Your Honor.

25 THE COURT: All right. Thank you, sir. You may step

1 down.

2 Applicant call its next witness.

3 MS. ROSS: If I could just briefly confer with my
4 client.

5 THE COURT: Sure.

6 MS. ROSS: We call Chastity Raines.

7 THE COURT: All right.

8 THE CLERK: Ms. Raines, please place your left hand
9 on the Bible and raise your right hand.

10 WHEREUPON,

11 CHASTITY RAINES

12 After having been duly sworn, testified as follows:

13 THE CLERK: Thank you. You may be seated.

14 DIRECT EXAMINATION

15 BY MS. ROSS:

16 Q Hi, Ms. Raines. How do you know Anthony -- Antonio
17 Tate?

18 A That's my children's father.

19 Q And were you at his trial?

20 A Yes, I was.

21 Q And were you prepared to testify if asked?

22 A Oh, yes, I was.

23 Q Did you ever talk to any of the defense attorneys?

24 A No, I have not.

25 Q Mr. Farnham or ---

1 A Yeah. I did talk to Mr. Farnham, yes.

2 Q Did you ever discuss with him whether you wanted --
3 whether to testify or not?

4 A Yeah. I did discuss that with Mr. Farnham.

5 Q And did you -- were you willing to testify?

6 A Yes. He had me waiting outside to testify.

7 Q So you weren't even in the courtroom for the trial to
8 make you ---

9 A Most of the time I was not.

10 Q Now, do you -- why would you -- what would you have
11 testified to?

12 A About the transmission. I actually went to meet his
13 friends to get the transmission for them.

14 Q Okay. So how is that relevant? Can you just give me
15 some background? What was the State trying to say? What
16 were the witnesses trying to say?

17 A That they met Antonio. But they didn't meet him. I
18 met him.

19 Q Okay. You had met with them ---

20 A Yes, I did.

21 Q --- about the transmission.

22 And do you think -- how would the relevance of that
23 question have been?

24 A Well, during the trial, it was just like a lot of
25 deceit in the trial, and ---

1 MS. JAMESON: Objection, Your Honor. The witness
2 testified that she wasn't present in the courtroom. She
3 has no independent knowledge of this, and it's outside
4 the ---

5 THE WITNESS: No. I didn't testify ---

6 THE COURT: Hang on, ma'am. Don't talk.

7 THE WITNESS: I'm sorry.

8 THE COURT: Objection overruled. Go ahead. You can
9 answer the question.

10 THE WITNESS: Okay. What I said at the beginning of
11 the trial, I was there. Then Mr. Farnham said, "Oh, I
12 need you to testify. For a witness, you need to go
13 outside." And I stayed outside for a little -- little
14 bit, and then he said, "Oh, we're not going to use you as
15 a witness so you can come back in." And so I came back
16 in.

17 BY MS. ROSS:

18 Q Okay. So your testimony would have been completely
19 different than the witnesses who were saying that Mr. Tate
20 did the transaction regarding the transmission.

21 A Yes.

22 MS. ROSS: Thank you.

23 THE COURT: All right. Any cross?

24 MS. JAMESON: No, Your Honor.

25 THE COURT: Thank you, ma'am. You can step down.

1 THE WITNESS: Thank you.

2 THE COURT: Applicant can call its next witness.

3 MS. ROSS: That's the applicant's case, Your Honor.

4 THE COURT: All right. Applicant rests.

5 Let's take a brief recess. We'll reconvene in about
6 ten minutes, okay?

7 MS. JAMESON: Thank you, Your Honor.

8 THE COURT: Thanks.

9 (WHEREUPON, a recess is taken at 11:09 a.m.)

10 THE COURT: All right. Is the State ready to
11 proceed?

12 MS. JAMESON: Yes, Your Honor. May it please the
13 Court.

14 THE COURT: Yes.

15 MS. JAMESON: The State calls R. Mills Ariail,
16 Junior.

17 THE COURT: All right.

18 THE CLERK: Mr. Ariail, please place your left hand
19 on the Bible and raise your right hand.

20 WHEREUPON,

21 R. MILLS ARIAIL, JUNIOR

22 After having been duly sworn, testified as follows:

23 THE CLERK: Thank you. You may be seated. And
24 please state your full name for the record.

25 THE WITNESS: Mills Ariail.

DIRECT EXAMINATION

BY MS. JAMESON:

Q Good morning, Mr. Ariail. How long have you been practicing law?

A Year 19 now, almost 20.

Q What percentage is criminal defense work?

A I guess it's about a third of my practice.

Q How did you become involved in this case?

A I came -- became involved -- I guess Mr. Farnham, David Farnham, called me, he's an attorney out of Atlanta, called me to serve as local counsel and help him on this case.

Q And Mr. Farnham was a member of the Georgia State Bar?

A That's what he told me, yes.

Q He was admitted pro hac vice in this case?

A He was.

Q With you as local counsel?

A Yes.

Q Can you explain how your -- how your relationship worked out? Were you -- were you second chair? Or can you elaborate on that a little bit?

A Yeah. And I kind of can go back a little bit more. I think initially, Mr. Tate had an appointed attorney. I think his name was Michael Johnson. At some point in

1 time, he got Mr. Farnham involved. Mr. Farnham came to me
2 and asked if I would help him in regards to it. I think
3 we kind of got into it and agreed that we would determine
4 how we would split things up. We were both going to be
5 equally involved and then determine how we would go about
6 it at trial as to how we wanted to present the evidence.

7 The key to this was, and I don't think we've gotten
8 into it, but I think we were set on a trial from this from
9 the beginning. There was a plea offer that had been on
10 the table, I think, before I had gotten involved, and he
11 was -- as we discussed, I don't think there was any
12 question he was not going to plead and he wanted a trial.
13 So Mr. Farnham and I worked together to evaluate all the
14 information and to prepare to try this case.

15 Q So from the beginning of your representation, you
16 knew that Mr. Tate wasn't interested in plea offers?

17 A That was my understanding. I mean, I think we --
18 initially, I think, when I got involved, I took him back
19 what I believe was a plea agreement that had been given to
20 him at some point in time, discussed it with him, and he
21 was not interested in pleading. I even said would -- I
22 think we tried to negotiate it down or try to reduce the
23 time frame, and I can go back through my file. I think he
24 had something around 18 years at that point in time. And,
25 you know, I mean, we had a discussion. It's, you know, 18

1 or mandatory minimum of 25, you know. And he said, "I
2 didn't do it and wasn't involved in this," so that made
3 our decision kind of easy to prepare for trial.

4 Q And at the start of trial, he was questioned by Judge
5 Verdin about a plea offer and rejected that plea offer
6 from the State on the record, correct?

7 A Yes. I believe that's the case.

8 Q Do you recall how many times you met with Mr. Tate?

9 A I will tell you, I know, can go back, look through my
10 file, I met with him on numerous occasions. I would say
11 it was over ten times. And we discussed all of the
12 evidence.

13 And I know I took down trial notebooks and I've got a
14 packet of individual folders of things that we showed him,
15 statements and what we were -- what was going to be
16 presented against him. And I know there were -- I think
17 there were about ten codefendants who were going to, you
18 know, state information. We explained to him, and I know
19 I explained to him what they were going to say and how
20 that was going to impact him at trial. So we discussed
21 all the evidence.

22 Q Did -- there were some photo lineups that were used
23 in this case, correct?

24 A Correct.

25 Q I believe nine different co-conspirators identified

1 Mr. Tate from photo lineups?

2 A I think that's correct.

3 MS. JAMESON: And those are already in for the
4 record, Your Honor. Those are already in evidence and --
5 as part of the record on appeal, pages 32 through 49 of
6 the record on appeal.

7 BY MS. JAMESON:

8 Q Did you show him those nine six-pack lineups?

9 A Yes, yeah. I mean, we -- we discussed those and I
10 think what each of the witnesses had stated in regards to
11 that and all the witness lineups they had presented.

12 Q Were there any -- was there any video evidence in
13 this case?

14 A I'm trying to think back in regards to it. One of
15 the -- I know there were two potential -- they tried to
16 set up two controlled buys against him in Atlanta, and I
17 know there was one, it was either an audio that we had
18 where they discussed and they went down. They didn't get
19 anything on the tape. There was no transaction about that
20 during that controlled buy.

21 There was another -- one issue came up during the
22 trial and I think there was a continuance that was
23 granted, and the reason it was granted was that we got
24 notice that there were a couple of officers who had
25 performed surveillance on him in Atlanta or the

1 surrounding area, and they had presented us the tapes that
2 they had for those -- or attempted buys down there, which
3 we were clearly thought was exculpatory and was necessary
4 to review. And we got a continuance to get that
5 information, reviewed it with him and let him know that
6 they didn't have anything on him while they were down
7 there during those attempted buys.

8 Q So there were no successful buys with these
9 various ---

10 A No.

11 Q --- CIs that the State tried to get video of?

12 A Correct. And that was our -- I mean, from the
13 beginning, we said that there's nothing that ties him to
14 it other than the witness statements from these
15 codefendants. That was our theory of the case.

16 And the other theory was it wasn't him. It was, you
17 know, someone else. His brother was one that we said had
18 done it and we present that as, you know, why he was not
19 involved.

20 Q So the State's theory of the case was that Mr. Tate
21 had sold various amounts of drugs in Georgia to these
22 co-conspirators who came from South Carolina, correct ---

23 A Sure.

24 Q --- over -- well over a year period of time?

25 A Right. And I think there was actually some testimony

1 that he had come up here on one or two occasions to do
2 things. But most of it they alleged that was transactions
3 out of his house, and they testified how they got there
4 and where it was located and past a McDonald's. You know,
5 there was a lot of -- which we tried to draw out on cross,
6 and I can go back, but inconsistencies in the information
7 they presented showing where he was and where his house
8 was, which we were trying to show was problematic for the
9 prosecution.

10 Q When you say "inconsistencies," the codefendants
11 didn't -- or, excuse me -- the co-conspirators didn't
12 testify as to one specific location where all these buys
13 were, correct? It was a variety of places?

14 A It was a variety of places.

15 Q Sometimes ---

16 A I mean, I just remember one being is a house where
17 they tried to show where he was going, but there were
18 other locations.

19 Q A house and apartment, correct?

20 A Correct.

21 Q A Waffle House, correct?

22 A I think there was -- that was one.

23 Q A McDonald's, correct?

24 A Correct.

25 Q A gas station at one point?

1 A Right.

2 Q And this was ten or more co-conspirators who had
3 traveled to the suburban Atlanta area, correct?

4 A That -- that was their story.

5 Q Okay. But they -- nine of them identified Mr. Tate
6 from a photo lineup, correct?

7 A Correct. And that's, I think, what's been put in
8 evidence. They were presented that and . . .

9 Q After viewing all this discovery with Mr. Tate, what
10 was his response? Did he deny any involvement in this
11 conspiracy?

12 A Yeah. That was -- I mean, he was not involved in
13 this from the beginning. I mean, that's -- and I'll sit
14 here today, and I still think there's nothing that shows
15 that he was involved in this other than these ten
16 codefendants. And I -- you know, I thought we put up the
17 best case we could to be able to give him the best defense
18 based on the information we had. I mean, it was a
19 codefendant, co-conspirator type case testimony against
20 him. There were no controlled buys that were -- that
21 anybody can testify about, and I thought we had a pretty
22 strong case including we had his identical twin who I
23 believe going through a lot of the testimony here. I was
24 able to elicit testimony that some had a question as to
25 whether it was him, Mr. Tate, or his brother.

1 Q Several of the witnesses on cross-examination you
2 were able to elicit testimony that they weren't
3 100 percent certain it was the defendant after seeing his
4 twin brother in the courtroom, correct?

5 A Correct.

6 Q Jason Griffin would be an example of one such
7 witness, correct?

8 A Right.

9 Q As well as Larry Gambrell, who admitted that after
10 seeing Mr. Tate's twin in the courtroom, he wasn't
11 100 percent certain of his identification, correct?

12 A Correct, correct.

13 Q At least one or two of the co-conspirators testified
14 that they had also bought auto parts or cars from
15 Mr. Tate, correct?

16 A Correct.

17 Q How did that play into your defense strategy?

18 A I'm trying to remember back in regards to that. I
19 think they had been down there. They had met him. They
20 knew where he was. I think one of the things that we
21 thought was they've got this gentleman down in Atlanta who
22 they've bought stuff, they know stuff about, are they
23 placing this on him unjustly, and then we were trying to
24 prove, you know, he's not involved in this, he doesn't
25 know them. There were two unsuccessful buys in regards to

1 him which shows -- I thought strengthened our case to show
2 that he wasn't tied in with these individuals.

3 Q Or that at most he had bought -- he had sold
4 transmissions to a few of these co-conspirators, correct?

5 A Correct, correct. He was doing legitimate things
6 that he's allowed to do.

7 Q And was one of your defense strategies to say that
8 the co-conspirators were just trying to pin it on anyone
9 to save themselves, correct?

10 A I -- I --- going back, yes, I think that was. I
11 mean, I think that's exactly what they were trying to do.
12 We tried to pick that apart a little bit during some of
13 the cross-examinations.

14 Q Did you ever consider an alibi defense in this case?

15 A I -- we -- he raised that during his testimony. I
16 don't remember any -- the problem with this was he said he
17 didn't do it, and I understand there's numerous times they
18 were down there. I don't know how we were going to prove
19 an alibi as to all these different times that were done.
20 I also don't remember him, maybe Mr. Farnham does, any
21 time any witnesses that were presented that could
22 definitively say, well, here's one of those times, and
23 here's an alibi that I have for that. I mean, because
24 clearly, I would have looked into that and explored that
25 if I had known that.

1 Q But it was numerous, numerous transactions ---

2 A Sure.

3 Q --- over a very extended period of time, correct?

4 A Sure, sure.

5 Q With multiple different co-conspirators.

6 A Right. And if I could have picked apart a couple of
7 those and used a witness to be able to do that, I think I
8 would have probably done it because, I mean, I was simply
9 trying to show that they -- their evidence was very weak
10 in regards to proving it was him. The locations, the
11 codefendants are all tied together. If I could have
12 proved some of those, I might have used that, but I -- I
13 don't remember that.

14 Q Did you discuss with Mr. Tate whether he wanted you
15 to present any witnesses on his behalf?

16 A I think we discussed -- and I do remember this. We
17 were trying to figure whether or not it would be helpful
18 for his brother to testify or -- who was here, and a
19 concern I had was, and I'm -- frank was, we had proved on
20 cross-examination that some of them didn't know. I didn't
21 want to put his brother on the stand to then potentially
22 would go back on and say things that would not help us in
23 regards to his testimony. I think we had elicited enough
24 through him being here and some of the witnesses not being
25 able to identify or make sure who had done the drug

1 transaction. So I thought we had done enough on
2 cross-examination for that.

3 Q In your various meetings with Mr. Tate, did you
4 explain the trafficking of methamphetamine statute and
5 that he was indicted for 400 grams or more?

6 A Sure. We went over that. I mean, I -- and he had --
7 I've got multiple copies of the indictment and we
8 discussed it. I mean, I remember going through because I
9 looked at it again. Everybody else had distribution
10 charges and individual charges. That's what we discussed
11 with him was he's in the overall conspiracy because he's
12 tied in with these individuals. There's no individual
13 drug transactions they can place on him or have indicted
14 him for.

15 Q And several of the co-conspirators were originally
16 charged with the exact same things as Mr. Tate, correct?

17 A Correct.

18 Q Trafficking, conspiracy, 400 grams or more?

19 A I think -- I'm looking at it right now. If I'm not
20 mistaken, the majority or all of them are on here as being
21 trafficking methamphetamine, conspiracy, 45-53-375(C)(5).

22 Q Which is 400 or more, correct?

23 A 400 or more, conspiracy, correct.

24 Q Did you explain to Mr. Tate that the State was
25 proceeding forward under a conspiracy theory, not based on

1 any individual buys?

2 A Oh, I definitely talked to him about that. We went
3 over the indictment, which is clearly here, and says that,
4 400 grams or more conspiracy.

5 Q Turning to the specific allegations, are you the
6 attorney from the defense team who made the directed
7 verdict motion?

8 A I did.

9 Q Do you recall on what grounds you moved for a
10 directed verdict?

11 A I think it was on the identification. And I can go
12 back. I looked at it a little bit earlier. I don't know
13 if there were some additional items I did under there.
14 But I thought our strongest argument in regards to it was
15 whether or not they could prove that it was him.

16 Q If you'll turn to page 670, please. And just that's
17 where you made your directed verdict motion. And just
18 review to yourself the grounds you made it on.

19 A (Witness complies) It looks like I made it in regards
20 to the identification and his identical twin, and they
21 couldn't make a decision if it was him or someone else.

22 Q And also, the State hadn't met their burden based on
23 false testimony and information from the co-conspirators,
24 correct?

25 A That's another line. Yep. I think that's on

1 line 15, 16 and 17 there.

2 Q Why did you select these grounds for your directed
3 verdict motion?

4 A I thought -- I mean, going back and looking at it and
5 thinking back at the time, and I know he -- you know,
6 there was evidence I think in there to show that they had
7 -- saying he was down there, he was part of the
8 conspiracy, they were tied together, he had come up here.
9 I didn't think our strongest argument in regards to
10 stating a directed verdict in regards to conspiracy was
11 the appropriate one to make. I thought it was based upon
12 the identification not being able to prove that he was the
13 one that actually was involved.

14 Q Because the State did present evidence through, for
15 example, Albrie Nate' Bashaw and other codefendants that
16 Ant, or Amp, as they call him, knew that Mr. Tate had --
17 or, excuse me -- that they had customers in South
18 Carolina, correct?

19 A Correct.

20 Q So do you think that testimony would have been enough
21 to get by the directed verdict threshold?

22 A I do. Based upon looking at it and going back, I
23 don't think I would have been successful in that.

24 Q And so you chose the strongest grounds for your
25 directed verdict motion.

1 A I thought the strongest grounds, which was the theory
2 of our case from the beginning, was couldn't identify him,
3 he didn't do it. Those were -- that was my strongest
4 argument, I felt.

5 Q Regarding Allegations Number 2 and 3, at the
6 beginning of trial, do you recall Assistant Attorney
7 General Underwood making a motion in limine to preclude
8 the defense from cross-examining the various
9 co-conspirators about the mandatory minimum for
10 trafficking 400 grams or more?

11 A I do. I was trying to probably get in everything I
12 could in regards to that because I wanted to do the best
13 cross-examination of those witnesses as I could.

14 Q And ultimately, Judge Verdin agrees and allowed you
15 and Mr. Farnham, the defense team, to cross-examine the
16 various co-conspirators on the sentencing ranges for what
17 they pled, correct?

18 A Correct.

19 Q Or their plea agreement ranges, correct?

20 A Correct. I think that's correct. And I can go back
21 and look exactly.

22 Q But Judge Verdin also allowed you to cross-examine
23 these various co-conspirators that they were originally
24 indicted for a much heftier charge, correct?

25 A Right. Correct, yes.

1 Q Were you able to elicit that testimony on
2 cross-examination through these various co-conspirators?

3 A I think I did, and I can go back and piece
4 through each of the witnesses if you want to. I think we
5 elicited -- I mean, once she gave me what I was allowed to
6 go into, I'm pretty confident that I would have explored
7 that and probably would have done more if she'd allowed me
8 -- give me more leeway to go into some of the mandatory
9 minimums and other things that they were facing
10 potentially, but I think I was precluded from doing that.

11 Q If you'll turn to page 172 of the trial transcript.
12 This is in the testimony of Jason Griffin. If you will
13 look at it, just review page 172 to yourself, like 1 all
14 the way to the bottom.

15 A (Witness complies) Okay.

16 Q So here on page 172, during your cross-examination --
17 excuse me. You did cross-examine the co-conspirators,
18 correct?

19 A I did. It even looks like he even admitted at one
20 point in time he was looking at 25 to 30 years.

21 Q So here you actually do get the mandatory minimum for
22 conspiracy, 400 grams or more in, correct?

23 A Yeah. And I -- I can go back and look at a ruling.
24 I don't think she was allowing me to get into that, but
25 apparently, it was elicited here that they -- the jury now

1 would have known trafficking 400 grams or more is 25 to 30
2 and he was getting 15 to 20, so he got a pretty good
3 discount there for testifying.

4 Q And you do specifically ask him lines 1 and 2, "You
5 were originally charged with trafficking 400 grams or more
6 conspiracy," correct?

7 A Correct. In Line Number 1 and 2.

8 Q Okay. If you'll turn to page 222 of the record, this
9 is in your cross-examine of Rachel Eades. If you will
10 review lines 19 onto the next page.

11 A (Witness complies) Okay.

12 Q Here you do ask Rachel Eades if she was originally
13 indicted for trafficking conspiracy, 400 grams or more,
14 correct?

15 A Correct. I think I did.

16 Q And she does admit that ---

17 A She does.

18 Q --- correct?

19 A Correct. And then she testifies to what she's in the
20 range, which is 7 to 10 years, if I'm understanding.

21 Q Based on her plea agreement with the State, correct?

22 A Based on her new plea agreement, which is apparently
23 reduced. I even elicit testimony on lines 12, 13 and 14
24 that she's looking now at 28 to 100 grams is what she
25 plead for.

1 Q Which is substantially less than what she was
2 originally facing I believe you elicit on 223, correct?

3 A Correct.

4 Q Okay. If you'll turn to page 429, please. This is
5 in your cross-examination of another co-conspirator, Javin
6 Adams, correct? Is it correct? If you'll start at 428
7 onto 429, lines 21 through the next page, and review that
8 to yourself.

9 A (Witness complies) Okay. I've read through 429 on 13
10 -- 429, line 13.

11 Q So you here do ask Mr. Adams whether or not he was
12 originally indicted for trafficking 400 grams or more,
13 correct?

14 A Yes.

15 Q And do you get him to elicit testimony that he was,
16 and I believe you even reference on 428 that he got a cozy
17 deal from the State?

18 A Yeah. He got a cozy deal, and he looks like he's
19 kind of sparring with me, telling me to treat me with
20 respect and I'll treat you with respect. So we've kind of
21 gotten into a little bit of an argument in regards to his
22 -- he was looking at trafficking 400 grams and he's gotten
23 a cozy deal of three years is what I thought.

24 Q And if you'll turn to . . .

25 A I think he says on 431 also talks about 400 grams,

1 now 10 to 28 grams on line ---

2 Q Which is less than the original 400 grams or more
3 that he previously testified to on the the previous page?

4 A Yeah. Correct.

5 Q So through several of the co-conspirators, that you
6 were able to elicit that they were originally charged with
7 trafficking 400 or more, correct?

8 A Correct.

9 Q And through Jason Griffin, you actually got in that
10 the range for that was 25 to 30 years, correct?

11 A Correct.

12 Q Even though Judge Verdin had in limine precluded you
13 from questioning the witnesses about that range, correct?

14 A Right. And I think he brought it up himself.

15 Q Yes.

16 A I think he was the one that testified to it.

17 Q Yeah.

18 A I didn't ask him about it. He -- he elicited that.
19 So they knew that that was the range based upon that
20 testimony.

21 Q Regarding Allegation Number 4, failing to object to
22 testimony by the investigators regarding the legal
23 definition of conspiracy, were you present in the
24 courtroom when Judge Verdin read the indictments to the
25 jury panel?

1 A I'm sure I was, yes.

2 Q And Mr. Tate was indicted pursuant to -- the State's
3 theory of the case was conspiracy, correct?

4 A Correct. Conspire to sell, manufacture, deliver,
5 purchase or bring into the state 400 grams or more of
6 methamphetamine, I think what the indictment said.

7 Q So the jury was on notice at the beginning of the --
8 the jury panel was on notice at the beginning of the trial
9 that this was a conspiracy case, correct?

10 A Correct.

11 Q Did you see any basis to object every time the word
12 "conspiracy" was uttered by a law enforcement officer?

13 A I didn't see the basis. I mean, our theory was he
14 was not part of the conspiracy. They can call it what
15 they want to. She's already stated as part of this he's
16 been charged with it. It's our view that he was not a
17 part of this, he did not conspire with these individuals,
18 and that was where we were going with his case. And
19 whether or not you call it a conspiracy or not, we didn't
20 believe there was any type of conspiracy.

21 Q That involved Mr. Tate?

22 A Correct, correct. There ---

23 Q There might have been a conspiracy with these
24 co-conspirators ---

25 A Sure.

1 Q --- but Mr. Tate just wasn't involved.

2 A These individuals knew each other, from what I'm
3 understanding. I mean, this was, if I remember back, they
4 had been dealing with each other. It just didn't involve
5 Mr. Tate, who we believe was not involved.

6 Q And you didn't handle the law enforcement witnesses,
7 correct? That was Mr. Farnham?

8 A I was going back. I was trying to read the beginning
9 of it. I can't remember if I did -- Brett Barwick was
10 one. That would have been Mr. Farnham. I'm looking at
11 the beginning of the transcript. I think Mr. Farnham
12 handled all of the law enforcement witnesses, which I
13 think were two or three, and then I did most of the
14 co-conspirators.

15 Q And, again, your defense was based on identity and
16 that Mr. Tate wasn't part of the conspiracy, not that a
17 conspiracy had taken place, correct?

18 A Correct.

19 Q Would that be the same reason that you or Mr. Farnham
20 did not object to SLED agent Ashley Asbill testifying that
21 they believed a conspiracy had taken place here?

22 A Correct.

23 Q Allegation Number 7, failing to object to Agent
24 Barwick's recitation of statements made at the bond
25 hearing by the attorney general that Mr. Tate had a twin

1 and had attempted to use his twin's name to allude police,
2 at this point in trial, you had already utilized
3 Mr. Tate's twin brother, correct?

4 A And I'll have to go -- I don't know where it is in
5 the transcript.

6 Q 339.

7 A 339.

8 Q Several of the co-conspirators already testified at
9 this time, correct?

10 A It looks like it. I mean, it looks like we're
11 halfway through the trial from my look at the transcript.

12 Q Wendy Lollis has already testified. Jason Griffin.

13 A Yeah. If Wendy's -- yeah. If Wendy has testified,
14 then I think we had elicited that there was a twin brother
15 that I think they were -- one of them or two of them
16 couldn't determine if it was him or Mr. Tate.

17 Q And Jason Griffin had already testified at that time?

18 A Correct.

19 Q I believe you testified before that on
20 cross-examination, you questioned him about Mr. Tate's
21 twin brother?

22 A I did, correct.

23 Q Do you recall eliciting testimony from several of the
24 co-conspirators that they had perhaps discussed the case
25 previously to get their testimony consistent?

1 A I thought one -- and I think Mr. Tate knew this when
2 I was trying the case. I thought we were scoring a lot of
3 points in regards to his identical twin. After the first
4 day, and I can go back and look and try to figure this
5 out, it seemed that everybody got on the same page and
6 said now we believe it's him, which I was concerned about
7 that and I -- I thought there was a potential that they
8 had started talking. And I tried to elicit that and find
9 out what they were talking about and if there was anything
10 that could help us in regards to how they were -- why they
11 were now testifying the way they were.

12 Q Do you recall cross-examining Chad Moore, one of the
13 co-conspirators?

14 A I believe I saw my name as the one that
15 cross-examined him. I don't remember exactly which one he
16 was. Oh, he was later in the trial. I see it now.

17 Q If you'll turn to page 649 and 650, review the very
18 bottom of 649 starting at line 23 on to 650, the next
19 page.

20 A Okay. (Witness complies) I see that now.

21 Q So you were able to elicit testimony from Chad Moore
22 that him and another co-conspirator, Norman Bergholm ---

23 A Bergholm. Uh-huh.

24 Q --- were actually talking about the case in the
25 holding cell and whether or not Mr. Tate had a twin

1 brother, correct?

2 A Right, right. It appears to be that was one of my
3 concerns, and I've elicited in testimony knowing they're
4 all talking with each other.

5 Q Would you agree that it is these -- the testimony
6 when -- as the trial went on, the testimony from the
7 co-conspirators seemed more certain that it wasn't
8 Mr. Tate's twin, correct?

9 A That was -- yes. That's what my concern was about
10 that.

11 Q And is that why you asked Mr. Moore on
12 cross-examination if he knew we had a twin and how he knew
13 that Mr. Tate had a twin?

14 A Yes. And I'll have to go back real quick. I don't
15 -- for some reason, it might have been in response to his
16 identification of him about how are you so certain. I
17 don't know. I can go back and look.

18 But apparently, he -- the other ones the day before,
19 if I'm not mistaken, were having difficulty identifying
20 Mr. Tate versus his brother, which they became more
21 certain later on in the trial, which that made me believe
22 that someone had been talking. So I wanted to elicit
23 testimony or find out are you getting your stories
24 straight about this, because that was going to have a big
25 impact on our view of the case because we wanted to show

1 that they didn't know who he was and couldn't tell if it
2 was his twin brother or someone else.

3 Q And also for their credibility in front of a jury,
4 correct?

5 A Sure. That's it. I mean, I -- I thought I did a
6 pretty good job hurting his credibility here that he's
7 talking with someone else in regards to it, especially a
8 codefendant who had already testified which would then
9 hurt his credibility because they're all talking about
10 this.

11 Q Regarding Allegation Number 9, failing to move to
12 suppress or object to the admission of drugs, money, drug
13 paraphernalia, of phones and a weapon recovered from Jason
14 Griffin, Rachel Eades and Christopher Simmons, did you
15 have standing to object to any of this stuff coming in?

16 A I don't know if I had standing or not in regards to
17 it. I know we discussed -- I mean, our thing was I don't
18 care what they have or what is in their house or what drug
19 deals they're doing. What I'm saying is he didn't know
20 them, he had no involvement with them, so what is found on
21 them has no relevance to us. And I don't know if I could
22 have -- if I had standing or not to object to that, but I
23 just didn't see how -- even if it was going to be kept
24 out.

25 Q And none of these various drugs, money, drug

1 paraphernalia was tied to Mr. Tate, correct? It was all
2 found on ---

3 A Correct.

4 Q --- these co-conspirators in the Upstate area?

5 A Yeah. And I believe that this was what they elicited
6 through testimony is what they found when they were
7 arrested or other things there, and I don't think there
8 was any testimony or anything linking him to that, from
9 what I recall.

10 Q Regarding Allegation Number 9, failing to challenge
11 the identification procedure, there was no Neil v. Biggers
12 hearing about this case, correct?

13 A Correct, correct.

14 Q Why not? Why did you guys not move pretrial for a
15 Neil v. Biggers hearing?

16 A And we went through and I've looked at and I didn't
17 hear anything or sense anything or see anything in there
18 that showed that these were overly suggestive type of
19 lineups. I mean, I've looked at them again and I go
20 through and there was nothing that was -- showed me that
21 there was going to be -- they were linking in or trying to
22 highlight him in regards to that. I didn't see anything
23 that raised that.

24 Our other theory of the case was it was his identical
25 twin and he wasn't involved, so that was kind of where we

1 were heading with that.

2 Q So you didn't think there'd be any basis to have
3 these identifications suppressed because you didn't see
4 anything to show that the police had used unduly
5 suggestive tactics?

6 A Right. Under Neil v. Biggers, I didn't think they
7 were suggestive or highly conducive to mistake. I didn't
8 -- I didn't see -- in addition, I think the other part of
9 Neil v. Biggers is if they're reliable or there's clear
10 and convincing evidence of that, they're going to come in.
11 I didn't see anything which gave me a legal argument that
12 was going to allow me to keep those out.

13 MS. JAMESON: Your Honor, I don't believe I need to
14 move these into evidence because they are already in the
15 record from the record on appeal, pages 32 through 49, but
16 may I approach with a copy of them?

17 THE COURT: Sure. I've already looked at them and
18 they're in the record of appeal in Box 2.

19 MS. JAMESON: Thank you, Your Honor.

20 THE COURT: Uh-huh.

21 BY MS. JAMESON:

22 Q Do these appear to be the nine photo lineups that
23 were introduced at trial as State's Exhibits 1 through
24 State's Exhibits 9? And the back has the exhibits that
25 are on it, or the next page.

1 A (Reviews document) From my review, and I haven't
2 matched up the transcript to be able to see it, but these
3 do appear to be them. I can't tell you -- I can go
4 through the initials. I think it shows the individuals
5 who testified to them. There's a WL on the first one
6 would probably be Wendy Lollis, but I can't give you
7 exactly who they belong to.

8 Q Okay. Looking at State's Exhibit Number 1, that does
9 appear to have a WL for Wendy Lollis, right?

10 A Okay, okay.

11 Q If you'll turn to page 76 through 77 in the
12 transcript and review that to yourself briefly.

13 A Okay. (Witness complies) Okay. I've read that.

14 Q Ms. Lollis testifies that she was shown this lineup
15 in her probation office, correct?

16 A Correct.

17 Q And she testified that law enforcement did not
18 suggest in any way who she should identify, correct?

19 A It's in lines 15, 16 and 17, I think.

20 Q And she was able to select Mr. Tate when shown this
21 lineup, correct?

22 A She did. She did.

23 I've gone through and looked at the cards again. And
24 there's six different black males who have beards who are
25 similar to Mr. Tate. There was nothing that I saw when I

1 looked at these in the beginning that would have said
2 somebody's standing out different than someone else.

3 Q Do they appear to be -- all nine appear to be the
4 same six pack?

5 A You're going to have to -- my problem is I don't have
6 a color copy.

7 Q Understandable.

8 A So it's kind of difficult to -- some of the facial --
9 from -- from reviewing -- well, from my -- my review, they
10 look the same.

11 Q And they all appear to be African-American men who
12 are bald with beards, correct?

13 A I would say some of them have receding hair. I can't
14 tell based on these photos. Some of them might have some
15 hair on the top. They're not all bald. But they do have
16 bald on the front. They have full -- full beards and --
17 well, that was -- that's based on my analysis of that.

18 Q Turning to State's Exhibit 2, does this appear to be
19 Jason Griffin's identification -- out-of-court
20 identification of Mr. Tate?

21 A If you'll bear -- is this number Bates Stamp 00034?

22 Q Yes.

23 A Okay. It appears to be -- it says, "JG, 5/9/11."

24 Q If you'll turn to page 157 and 158 and review those
25 -- through 159 and review those to yourself just briefly.

1 A (Witness complies) Okay.

2 Q Jason Griffin was presented that -- he testified that
3 he was presented this lineup by law enforcement officer
4 Brett Barwick, correct?

5 A Correct.

6 Q Brought him to Pickens County and showed him a
7 lineup?

8 A He did.

9 Q And he testified specifically that Brett Barwick or
10 that law enforcement did not tell him who to pick,
11 correct?

12 A Yeah. I think he even says, "No. He just set it
13 down in front of me. Do you see the guy that was buying
14 -- that you was buying meth from in Atlanta?"

15 Q And ---

16 A "And I said 'yes, sir,' and I initialed it."

17 Q And he testified that he had no trouble identifying
18 Mr. Tate as the person he was purchasing meth from,
19 correct?

20 A That is my understanding.

21 Q And then on cross-examination, I believe we've
22 already covered this, but you questioned Mr. Griffin about
23 the similarities between him and his twin, correct?

24 A Correct.

25 Q And he admitted on cross-examination that now seeing

1 Mr. Tate's twin, he wasn't 100 percent certain of his
2 identification, correct?

3 A Correct.

4 And as part of that, I mean, I think that having him
5 identify here and then being questioning what he was doing
6 was part of our -- you thought you were so certain back
7 then and now you're not certain, that only played into our
8 ability to be able to help him in the identification
9 process.

10 Q If you'll look at State's Exhibit Number 3, does this
11 appear to be the lineup identification out of court for
12 Larry Gambrell? If you'll turn to page 592, that might
13 help you.

14 A This is the Bates Stamp 00036?

15 Q Yes.

16 A Okay. Got it. Thanks. 590 ---

17 Q If you'll look at 591 through 592.

18 A (Witness complies) Okay.

19 Q And he testifies that, again, Brett Barwick showed
20 him the lineup, correct?

21 A Yeah. I just want to make sure. I've got Anthony
22 Gambrell.

23 Q Excuse me. I believe his name might be Larry Anthony
24 Gambrell.

25 A Okay. He -- it just says Anthony in the part. Okay.

1 So we're talking about the same one.

2 Q Yes.

3 A Okay.

4 Q Mr. Gambrell, the co-conspirator.

5 A Correct.

6 Q He testified that Brett Barwick also showed him the
7 lineup, correct?

8 A He does.

9 Q And that Mr. Barwick did not suggest who he should
10 select?

11 A No. He -- he didn't say -- he actually says -- he
12 says, "Did he suggest to you who you should point out?"

13 "No."

14 Q And he was able to select Mr. Tate, correct?

15 A He did. Circled Number 3 with Mr. Tate.

16 Q If you look at State's Number 4, which is Record on
17 Appeal Number 38 ---

18 A Got it.

19 Q --- does this appear to be Javin Adams'
20 identification of Mr. Tate?

21 A Mine has CJA.

22 Q Yes.

23 A So okay. That appears to be -- if that's Mr. Adams'
24 initials.

25 Q If you'll turn to page 412 and review 412 through 415

1 just briefly to yourself.

2 A (Witness complies) Okay.

3 Q He testifies that he started cooperating with law
4 enforcement and became a CI in this case, a confidential
5 informant, correct?

6 A Correct.

7 Q And he was shown a lineup at the Southern Command
8 Center?

9 A Uh-huh.

10 Q And law enforcement didn't tell him who to select or
11 suggest anyone, correct?

12 A That's correct. I think that was -- he says on lines
13 -- 414, 11, 12 and 13, "Did law enforcement or anyone else
14 indicate to you who to pick?"

15 "No, sir."

16 Q And was able to select Mr. Tate, correct?

17 A Correct. He was.

18 Q And he also goes on on page 416 and says he has no
19 doubt that the defendant, Mr. Tate, is the one who was
20 selling him methamphetamine in Atlanta, correct?

21 A That's correct.

22 Q So he is certain in his identification, correct?

23 A Correct. On 416, 23 and 24 lines right there, yes.

24 "Is there any doubt?"

25 "No."

1 Q If you'll turn to State's Exhibit Number 5 from
2 trial, which is Record on Appeal Number -- Page
3 Number 40 ---

4 A Okay.

5 Q --- and 41, does this appear to be the identification
6 of Charles Trebuchon? I may be butchering that name. I
7 apologize.

8 A I've got an NT, 12/1/11. I can go back and look and
9 see if it corresponds with Mr. Trebuchon. I think
10 that ---

11 Q Yes. And if you'll turn to page 541 through 543 and
12 review those to yourself.

13 A Okay. I'll do that. (Witness complies.)

14 Q 542 is where you can start, 542 to 543.

15 A I just want to make sure I had Mr. Trebuchon's
16 testimony, the right one. Okay. (Reviews document) Okay.

17 Q And he -- Mr. Trebuchon testified that he was
18 arrested by law enforcement and shown a lineup after
19 arrest, correct?

20 A That's correct.

21 Q And law enforcement asked him if he recognized anyone
22 in the six pack, correct?

23 A That's correct.

24 Q And he identified the defendant as Ant, the person
25 who had previously sold him drugs, correct?

1 A Right. I think in lines 4 -- 542, 19 and 20. "If I
2 knew one of them, one of them was Ant, and that was all,
3 you know." That's what he said right there.

4 Q And he testifies they just showed him a piece of
5 paper and said, "Do you know any of these people?"
6 correct?

7 A Yeah. "I think they showed me a lineup and showed me
8 a piece of paper right there and asked if I recognize
9 anybody on that piece." And that's on, 10, 11, 12, 13
10 lines right there.

11 Q And he doesn't testify as to any suggestive or force
12 of tactics by law enforcement, correct?

13 A No. They were -- he didn't testify to any of that.

14 Q Okay. If you look at State's Exhibit Number 6 from
15 trial, which is Record on Appeal Number 42, does this
16 appear to be the identification made -- out-of-court
17 identification made of Albrie Nate' Bashaw?

18 A It appears to be.

19 Q If you'll turn to page 482 through 484 and review
20 those briefly to yourself.

21 A (Witness complies) Okay.

22 Q And she, again, testifies how she started cooperating
23 with law enforcement, correct?

24 A Correct.

25 Q And she is shown a lineup by law enforcement and

1 asked if she can identify Antonio, correct?

2 A That is correct.

3 Q And she testifies that law enforcement did not
4 suggest who she should pick, correct?

5 A Correct.

6 Q And she was able to identify the defendant in this
7 lineup, correct?

8 A Correct. I think she even says on 483, line 1, "That
9 is a photo lineup that I circled of Amp."

10 Q And the various -- or was testified that they called
11 their drug dealer in Atlanta either "Ant" or "Amp,"
12 correct?

13 A Correct. Yeah.

14 Q On the next page, 484, she -- Nate' then goes on to
15 make an in-court identification of Mr. Tate, correct?

16 A That's correct.

17 Q If you'll turn to State's Exhibit Number 7 from
18 trial, which is Record on Appeal Number 44.

19 A Okay.

20 Q Does this appear to be the out-of-court
21 identification made by Christopher Bishop?

22 A I'm going to defer to you on that. I have a CMB,
23 3/28/11, and I've got the same document that's circled, so
24 I guess that's it.

25 Q If you'll turn to page 287 to 289 and review those to

1 yourself.

2 A (Witness complies) Okay.

3 Q And Christopher Bishop testifies he was shown the
4 lineups -- shown this lineup at the Southern Command
5 Center, correct?

6 A That's correct.

7 Q And he also testifies law enforcement did not tell
8 him who to select or otherwise suggested who to pick,
9 correct?

10 A That is correct.

11 Q And he was able to select the defendant, correct?

12 A He does.

13 Q If you'll turn to State's Exhibit Number 8, which is
14 Record on Appeal Number 46 and 47.

15 A Okay.

16 Q Does this appear to be the out-of-court
17 identification made by Norman Bergholm?

18 A It appears to be, and it's hard to read his writing,
19 an NB in the top, 6/30/2011. So if that's the one that
20 corresponds with the transcript, then that is his -- his
21 identification.

22 Q If you will turn to page 614 and review that through
23 616 to yourself, please.

24 A Okay. (Witness complies) Okay.

25 Q Here Mr. Bergholm testifies that he met with law

1 enforcement in June of 2011, correct?

2 A That's correct.

3 Q And was shown the lineup and asked to select the
4 person he dealt with, correct?

5 A That's correct. Correct.

6 Q And he testified that law enforcement did not tell
7 him who to select, correct?

8 A Correct.

9 Q And he was able select the defendant who he testified
10 he knew as Amp, correct?

11 A That's right.

12 Q And you were able to elicit on cross-examination from
13 him that he didn't know that Mr. Tate had an identical
14 twin brother, correct?

15 A That's correct.

16 Q And I believe we discussed this before. Thereafter
17 with Chad Moore who testified after Mr. Bergholm, you were
18 able to elicit testimony that after Mr. Bergholm
19 testified, they then discussed in the holding cell
20 that ---

21 A Sure.

22 Q --- Mr. Tate had a twin brother who was present in
23 the courtroom, correct?

24 A Correct.

25 Q If you'll turn to the final identification, State's

1 Exhibit Number 9, which is Record on Appeal Number 48 and
2 49, does this appear to be the out-of-court identification
3 made by Chad Moore?

4 A It looks like a CM in the side with a circle around
5 Number 3.

6 Q And if you'll turn to page 642 and review 642 through
7 644.

8 A (Witness complies) Okay.

9 Q And Mr. Moore testifies he was shown a lineup while
10 he was in county jail on unrelated charges, correct?

11 A That's correct.

12 Q And testified that no one in law enforcement
13 suggested who he should select from the lineup, correct?

14 A That's right.

15 Q And he actually went a bit further than the other
16 witnesses and testified that he didn't know about the
17 lineup in advance, correct?

18 A Correct.

19 Q And he was able to select the defendant, Mr. Tate,
20 correct?

21 A Yeah. And he says, "How did you recognize him?"

22 "From a -- meeting him in Atlanta." I -- I think he
23 says Amp, again, which is one of the names that they said
24 for Mr. Tate.

25 Q So based on these nine lineups, you didn't have

1 testimony from any of the co-conspirators that law
2 enforcement had done anything suggestive, correct?

3 A No.

4 And I was thinking back as we were doing this. I
5 know I went through and probably looked at some of the
6 police reports and other things to see if there was
7 anything in there that would help me. I haven't seen
8 anything that shows that it was suggestive or anything was
9 done to get them to sign off on this and to just
10 rubberstamp what they wanted.

11 Q So you didn't believe there was any reason the
12 lineups would have been excluded or suppressed should you
13 have moved pretrial?

14 A I didn't. And if I had seen anything, I can tell you
15 all to try to keep those out.

16 Q Regarding Allegation Number 10, failing to put up a
17 defense and advising Mr. Tate not to testify, did you and
18 Mr. Farnham discuss with Mr. Tate his right to testify?

19 A We went clearly through that.

20 Q Did he want to testify?

21 A We went back and forth in regards to it, and we
22 discussed kind of where we were in the case. I -- I
23 believe, and he's testified on the record, I think is part
24 of the transcript, he didn't want to testify.

25 So we would have gone over that. We would have given

1 him our advice in regards to what can happen if you
2 testify, we would have told him what we are able to do if
3 we don't put up witnesses and the right when we can close.
4 We're also telling him probably about the risk that would
5 be associated if he does testify based upon where we think
6 the evidence stands at that time. And I think based on
7 all that, he made a decision not to testify.

8 Q And he was questioned at length by Judge Verdin
9 regarding his right to testify, correct?

10 A I remember that, yes.

11 Q Do you recall him giving you any witnesses that he
12 wanted you to call on his behalf?

13 A I don't -- I mean, there were people here. I will
14 have to acknowledge that with him. We talked about his
15 brother. I don't remember Ms. Raines. I think that was
16 her name. She said she spoke with Mr. Farnham. I don't
17 remember talking with her in regards to that. I don't
18 know even if they were here. We would have explained to
19 him -- we would have tried to figure out if they're going
20 to testify about the alibi versus character, how that
21 would impact. We would have gone through all that with
22 him. I don't remember him telling us I want this witness
23 to be called for this reason.

24 Q Did you see any benefit to calling character
25 witnesses in this case?

1 A I didn't. I mean, I don't think -- I mean, we're
2 saying doesn't matter what his character is. He wasn't
3 there, he didn't do it. So I didn't see how that was
4 going to be -- and I agree. I mean, he's a very nice man,
5 had a great representation with him. It's a bad situation
6 that he's in, and we did -- I felt like we did all we
7 could based upon where we are to be able to put up the
8 best case for him.

9 Q And I think we touched on this earlier. You didn't
10 consider calling any alibi witnesses because the volume of
11 different drug deals that were testified to by these ten
12 or more co-conspirators, correct?

13 A Right. I -- I mean, I didn't -- if I had heard there
14 was a way to knock out some of the testimony on some of
15 the potential ones, this didn't happen or this date, then
16 I would have potentially discussed. I don't remember
17 having something to be able to do with that and -- or any
18 information presented about that.

19 Q And ultimately, it was Mr. Tate's decision whether or
20 not he wanted to testify, correct?

21 A Correct.

22 Q And he told Judge Verdin on the record under oath
23 that he did not want to testify.

24 A Right. I mean, we would have gone through everything
25 with him to give him the best understanding of what would

1 happen if he testify -- testified.

2 Q Allegation Number 11, failing to argue the sentence
3 exceeded the maximum for conspiracy, Mr. Tate was indicted
4 under trafficking in cocaine under conspiracy theory,
5 correct?

6 A Correct.

7 Q And the mandatory minimum sentence for that is
8 25 years, correct?

9 A Correct.

10 Q And the indictments clearly state that he is being
11 indicted under 44-53-375, correct?

12 A Correct.

13 Q And his sentencing sheets reflect that he was
14 sentenced under that same statutory provision, correct? I
15 believe (C) (5)?

16 A I'm going to take your word. I don't have the
17 sentencing sheets in front of me, but I think that is
18 correct.

19 Q So whether or not the State could have prosecuted him
20 on some offense that had a lower sentencing exposure,
21 that's the prosecutor's discretion to determine what they
22 want to proceed forward on, correct?

23 A Sure.

24 Q You didn't represent Mr. Tate on appeal, correct?

25 A I filed the appeal. I did not represent him in

1 regards to the appeal.

2 MS. JAMESON: A moment's indulgence, Your Honor.

3 THE COURT: Yes.

4 MS. JAMESON: No further questions.

5 THE COURT: All right. Your witness, Ms. Ross.

6 MS. ROSS: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MS. ROSS:

9 Q Afternoon.

10 A Afternoon.

11 Q Okay. You agree that every defendant has a right to
12 an appeal, a review of the trial.

13 A Oh, correct.

14 Q And however, unless objections are preserved on the
15 record, those things cannot be reviewed on appeal.

16 A I understand that.

17 Q And going in this case, in the appellate opinion, the
18 Court of Appeals found that you failed to argue that there
19 was insufficient proof of conspiracy in your directed
20 verdict motion.

21 A And I read that.

22 Q Yes. But that wasn't preserved for them to
23 review ---

24 A Correct.

25 Q --- that argument was made.

1 And then just moving on, I'm going to hand you up
2 this case, State v. Castineira. Okay. I'm just showing
3 you this State v. Castineira.

4 A Okay.

5 Q To avoid making a legal argument, I just say you did
6 not argue that in Mr. Tate's trial, that that case would
7 apply to his case.

8 A I mean, I -- if you're asking if I argued conspiracy,
9 I didn't -- well, in directed verdict? Is that what
10 you're asking?

11 Q Uh-huh.

12 A I didn't argue about conspiracy in the directed
13 verdict, ask for a directed verdict motion on that. So I
14 don't know if Castineira -- I've read the first couple
15 lines. It said something about a conspiracy, but ---

16 Q Right.

17 A Okay.

18 Q And I'm going to argue that in a different manner.

19 A I think I've explained to her in regards -- I didn't
20 think it was going to be successful in regards to arguing
21 the conspiracy based upon the testimony of the
22 co-conspirators during it, and that's why I didn't make
23 it.

24 Q Okay. And you didn't argue that he should have been
25 sentenced under the drug conspiracy statute 44-53-420.

1 A My -- I mean, he was indicted under this, they were
2 proceeding under this. And when I say "this," I'm saying
3 44-53-375(C) (5) is what he was indicted for and what we
4 explained to him he was going under. If that -- I don't
5 know if that answers your question. Sorry.

6 Q That's fine.

7 Now, as far as cross-examining witnesses, I believe
8 it's page 56 and possibly 50, essentially, Judge Verdin
9 rules that you cannot, on cross-examination, question a
10 witness and say you were facing a mandatory 25 years; is
11 that your understanding?

12 A Correct me if I'm right on this. I was trying to get
13 in -- and I can go back and read the whole transcript, was
14 trying to get in that they were looking at a mandatory
15 minimum of 25 just like he was under the 400 grams or
16 more, and I was trying to get the time frames mandatory
17 minimum to be able to show that they were getting a
18 reduction based upon their plea, which was well below the
19 25 years that they were looking at.

20 Q Okay. And Judge Verdin ruled that you couldn't say
21 specifically 25 years.

22 A I think that's what she -- and I read it, but I think
23 that's why I was precluded from doing that.

24 Q And then you conceded to that ruling.

25 A Well, I don't have the transcript in front of me to

1 see. I did what the judge -- what I felt the judge was
2 going to tell me to do or what the judge ordered me to do.

3 Q And I believe it's on page 51.

4 A Okay.

5 Q But I'll find it. Essentially, is that your
6 recollection of her ruling?

7 A I just -- I'll tell you what my understanding was. I
8 was trying to get in everything I could to be able to show
9 that they were getting a substantial reduction and to try
10 to impeach them on their testimony, so if she precluded me
11 from saying 25 to 30, I think we got it in some other
12 point. I tried to do what I could with that to be able to
13 help him the best I could.

14 Q Okay. And this trial was in 2013?

15 A Yes. May 28, 29, 30 and 31st of 2013.

16 Q Okay. And were you familiar with the case State v.
17 Gracely that came out in 2012?

18 A I can't -- I mean, I'd have to read the full one, if
19 you want me to, to be able to determine.

20 Q Well, would you agree that you did not argue that
21 case to Judge Verdin during Mr. Tate's trial?

22 A I -- I didn't -- if it's not in the transcript, I
23 didn't bring up State v. Gracely.

24 Q Okay.

25 A That's all I can tell you.

1 Q That's -- that's fine.

2 A Okay.

3 Q And in that, it goes into a full and fair cross being
4 allowed to cross-examine witnesses about what they
5 potentially face.

6 A Okay. And I guess my -- I don't know. I haven't
7 read the decision, but I tried to do what I could to
8 prevent the motion in limine by them to be able to get
9 that in. I think that was -- and I hope that was an
10 appellate issue that, you know, was raised if I was
11 precluded from doing that.

12 Q All right.

13 A It was against that. I don't -- I don't know.

14 Q Now, as far as -- and I believe we've gone through
15 the transcript a good bit. As far as the investigator's
16 testimony ---

17 A Okay.

18 Q --- if the record reflects that you did not make any
19 objections to testimony, would you agree that you probably
20 did not make those objections?

21 A I'm going to let the record speak for itself on that.

22 Q Okay. Thank you.

23 Now, at one point, one of the investigators on
24 page 668, line 15 states, "I believe the witness." Was
25 there any motion to strike that comment or argument that

1 that was bolstering?

2 A Okay. So let me make sure I've got the right -- line
3 15 through ---

4 Q 668, line 15. And, you know, this might be
5 Mr. Farnham.

6 A I think it is. I was just going to tell you -- I
7 mean, I think this was his witness. I see him in a
8 recross at the bottom.

9 Q Okay.

10 A So my understanding would be that would be ---

11 Q I apologize for that.

12 A I don't know if I could have made an objection based
13 upon it being his witness.

14 Q All right. Now, did you make any argument regarding
15 extraterritorial jurisdiction during this trial?

16 A I'm going to once again refer back to -- if it's in
17 the record, I made it. If not, I did not. I don't ---

18 Q Would you agree that for a statewide grand jury case
19 based in South Carolina, they would have to show that some
20 kind of harm was intended and produced detrimental effect
21 in the State of South Carolina?

22 A I'm trying to understand exactly what you're saying.

23 Q In other words ---

24 A I mean, there's something that would have had to
25 happen or some harm back to South Carolina. For instance,

1 in this case, it was -- if I'm not mistaken, there was
2 testimony he came here, he had a sale here or did some
3 activity here. Also, the drugs that were apparently --
4 the codefendants were saying were coming back to South
5 Carolina and having some harm here, that was my
6 understanding.

7 Q And would you agree that possibly two witnesses
8 mentioned any drug sales in South Carolina and the rest
9 were all in Georgia?

10 A Right, right. I mean, there was a lot -- yeah. And
11 they were bringing back to South -- I think the testimony
12 was they were going down and bringing it back based upon
13 him giving it to them in Georgia. He had come here on two
14 occasions, if I'm not mistaken, and provided drugs here in
15 the State of South Carolina.

16 Q And that was according to -- of the ten witnesses ---

17 A Right.

18 Q --- maybe two said anything happened in South
19 Carolina.

20 A Yeah. There was limited -- I mean, there was limited
21 involvement in South Carolina, but there was some, from my
22 understanding, and also an impact on South Carolina.

23 Q And wouldn't it be important for the attorney general
24 to have to prove that Mr. Tate intended the conspiracy to
25 exist in South Carolina to prove his case?

1 A I'm trying -- I don't understand that question.

2 Q I'm sorry. I withdraw the question.

3 A No. I -- I -- I think I know where you're going in
4 regards to it. I mean, I think that they were putting up
5 evidence that was showing some harm or something that was
6 being affecting South Carolina and these people were
7 involved in South Carolina, they were testifying he was
8 doing this, and they were going back to South Carolina. I
9 don't know if that's answering your question. That's what
10 -- my understanding.

11 Q And when -- when he was directing -- when
12 Mr. Underwood was questioning his witness -- witnesses,
13 isn't it true he often tried to get in questions about
14 their opinion as the state of mind of Mr. Tate regarding
15 the sales that were going on?

16 A You read one. I think there was some mens rea for
17 him on one of the questions. I don't -- I just let the
18 record speak for itself in regards to those others.

19 Q All right. And let me move on.

20 And on page 339, line 22 where Agent Barwick talks
21 about statements made at the bond hearing, was that you?
22 Probably not.

23 A That's what I was trying to pick up right here.
24 Mr. Farnham was doing the cross on that.

25 Q I apologize.

1 A That's fine. Yeah.

2 Q Now, as far as the drugs, you stated on direct that
3 you didn't have a problem with all the drugs coming in and
4 everything because your argument was other guy did it,
5 the ---

6 A Right. I mean, our theory -- I mean, Mr. Tate was
7 not involved. This was not correct. It didn't matter
8 that we were -- that these people were known drug dealers,
9 that they were doing their own thing. I didn't think that
10 -- you know, I knew we were going to have that in this
11 case, and he just wasn't connected with it.

12 Q All right. And you never made any motion to keep
13 those drugs out or a pretrial motion to suppress those
14 drugs.

15 A Yeah. I let the record -- I don't remember, but I
16 let the record speak for itself on that.

17 Q Now, as to the photo lineup ---

18 A Uh-huh.

19 Q --- you testified earlier about not doing a pretrial
20 motion on that?

21 A Right.

22 Q But isn't the linchpin of that whether the lineup is
23 reliable? Isn't that the point of Neil v. Biggers?

24 A I -- you know, I know there's the reliability aspect
25 of it, too. That's -- I mean, you've got the suggestive

1 and then conducive to a mistake, and then there's if it's
2 reliable. I mean, I looked at it ---

3 Q Well, isn't the fact that he's a twin automatically
4 render it unreliable?

5 A Well, I mean ---

6 MS. JAMESON: Your Honor, I believe that's a
7 mischaracterization of the standard of Neil v. Biggers.

8 THE COURT: All right. Overruled. Go ahead.

9 THE WITNESS: Say your question one more time. I'm
10 sorry.

11 BY MS. ROSS:

12 Q Well, isn't the fact that Mr. Tate has an identical
13 twin, wouldn't that automatically bring in question the
14 reliability of the photo lineup?

15 A Yeah. I can't really -- I mean, no. I mean, I see
16 them testifying to what they remember in regards to it. I
17 don't know if that would have brought up and created an
18 issue on reliability under that case.

19 Q And the appellate court could not review that at all
20 because you didn't preserve it.

21 A Correct. I mean, that wasn't a -- we didn't have a
22 Neil v. Biggers hearing.

23 Q And just also, just as to those lineups, all the
24 co-conspiracies are all friends. They all know each other
25 and had gone to Atlanta together with investigators.

1 A I don't -- I mean, to say they're all friends, I
2 don't -- I don't remember the whole interplay with this.
3 I know some of them knew each other, and I don't know how
4 they were all connected, you know, if some were. I don't
5 know if the individuals who signed the statements were
6 connected with the others. I don't know.

7 Q And the positioning of the photo in all these photo
8 lineups is in the exact same spot, correct?

9 A I think it's the same photo lineup for each. It
10 wasn't changed.

11 Q Right. Now, as far as the state seal stuff, did you
12 argue that at all?

13 A I didn't.

14 Q Okay. And you also didn't argue lack of jurisdiction
15 at all either.

16 A The extraterritorial, I didn't. I did not. I mean,
17 if it's -- I don't believe it's in there. Or Mr. Farnham.
18 The reason I go back to the record, I don't know if he
19 argued it. I don't remember arguing it.

20 MS. ROSS: I do believe -- beg the Court's
21 indulgence.

22 THE COURT: Okay.

23 BY MS. ROSS:

24 Q I believe the indictment speaks for itself, but
25 Mr. Tate's charge was not cocaine. It was crack cocaine,

1 44-53-375. That was the indictment, correct, for
2 methamphetamine?

3 A 375(C)(5). The indictment I have -- I'm making sure
4 this is the original filed in November 8, 2011, at
5 400 grams or more of methamphetamine, parentheses, ice or
6 crank, a controlled substance under provisions of
7 44-53-110. That's ---

8 Q Okay.

9 A Is that the one you're ---

10 Q And that's the indictment. All right.

11 A That's the one I have, the conspiracy.

12 Q And did you submit any proposed or requested jury
13 instructions to the Court?

14 MS. JAMESON: Your Honor, objection. The Court
15 already sustained the State's objection. This is not an
16 allegation that was alleged, and the Court already ruled
17 he cannot go into any sort of allegations regarding jury
18 charges.

19 THE COURT: All right. Is that correct?

20 MS. ROSS: Well, I think it would go to ineffective
21 assistance of counsel, just a general argument.

22 MS. JAMESON: For the ground that Your Honor has
23 already precluded him from going into today.

24 THE COURT: All right. That's not before the Court.
25 Objection sustained.

1 MS. ROSS: No further questions.

2 THE COURT: All right. Any redirect?

3 MS. JAMESON: One question.

4 REDIRECT EXAMINATION

5 BY MS. JAMESON:

6 Q If you'll turn to page 47, and look at the top of
7 that page there. This is when the Court, the State and
8 defense are discussing the motion in limine regarding
9 cross-examination of co-conspirators, correct?

10 A Yes, it is.

11 Q And at the top of the page, Mr. Underwood actually
12 brings to the Court and defense's attention State v.
13 Gracely, correct?

14 A He does.

15 Q So this is something -- this is a case that the
16 parties at the time were aware of. They were trying to
17 confirm -- conform their ruling to State v. Gracely it
18 appears, correct?

19 A Apparently he submitted it to the Court, so it was
20 reviewed by the Court at that time.

21 MS. JAMESON: No further questions.

22 THE WITNESS: 47, Line 1.

23 MS. JAMESON: Yes.

24 No further questions.

25 THE COURT: Any recross based upon that one direct

1 question?

2 MS. ROSS: No, Your Honor.

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

4 THE WITNESS: Thank you.

5 THE COURT: You can step down.

6 Call your next witness.

7 MS. JAMESON: May Mr. Ariail be excused from his
8 subpoena?

9 THE COURT: Yeah. Thank you, sir.

10 MS. JAMESON: Your Honor, our next witness is David
11 Farnham, who will be testifying via telephone. If I can
12 have a minute to call him and try to get that set up.

13 THE COURT: All right. And this is without objection
14 from the Applicant, Ms. Ross?

15 MS. ROSS: Yes, Your Honor. No objection.

16 THE COURT: All right. Thank you.

17 (Pause in proceedings.)

18 MS. JAMESON: All right. David, I'm going to have
19 the clerk of court swear you in.

20 WHEREUPON,

21 DAVID FARNHAM

22 After having been duly sworn, testified as follows:

23 THE CLERK: Thank you. Please state your full name
24 for the record.

25 THE WITNESS: David J. Farnham.

DIRECT EXAMINATION

BY MS. JAMESON:

Q Mr. Farnham, how long have you been practicing law?

A It will be 33 years on the 19th of June.

Q Do you have any experience in practicing criminal defense work?

A Yes. The past 30 years.

Q Have you tried jury trials before?

A I've had 100 jury trials to verdict. I was a death penalty certified attorney back in the early 2000 time frame, but my certification's lapsed since then.

Q And you're a member of the Georgia State Bar, correct?

A Yes.

Q You're not a member of the South Carolina Bar, are you?

A I am not.

Q Did you move to be admitted pro hac vice in this case?

A I did.

Q And you were admitted pro hac vice, correct?

A Yes.

Q How did you first become involved in this case?

A Can I first ask who's questioning me?

Q Yes. Yeah. Go ahead.

1 Oh, I apologize. This is Megan Jameson from the
2 Attorney General's Office.

3 A Oh, it is Megan. I just wanted to make sure I knew
4 which party was asking me these questions.

5 Q Yes. I apologize. I'm calling you as my witness in
6 direct, and then afterwards, Mr. Tate's attorney, Susannah
7 Ross, will have an opportunity to cross-examine you. I
8 apologize. I should have started with that.

9 A Thank you. I appreciate it.

10 Q Let me ask again. How did you become involved
11 representing Mr. Tate?

12 A Mr. Tate's wife, who was a client of mine in Georgia,
13 approached me after he was arrested.

14 Q Did you tell Mr. Tate that you weren't a member of
15 the South Carolina Bar?

16 A Yes.

17 Q But that you would seek admission to represent him?

18 A Yes. I -- go ahead.

19 Q Go ahead.

20 A I made a recommendation to him after I did some
21 research on local counsel, and Mr. Mills Ariail, Mills I
22 thought would be a good choice, and I actually introduced
23 the two of them and they met.

24 Q And Mr. Ariail became local counsel, correct?

25 A He did.

1 Q How was your working relationship with Mr. Ariail?

2 A Excellent. I think he's an extremely talented trial
3 lawyer and he's a good friend now.

4 Q Would you describe your -- how you guys divided up
5 work on this case? Was he second chair or was it more of
6 a co-counsel relationship?

7 A It was more of a co-counsel relationship. I kind of
8 conceded to his direction because he was local and he --
9 and he knew the law in South Carolina and the procedures
10 in your court better than I, so I didn't mind deferring to
11 his judgment.

12 Q It appears from the record that Mr. Ariail handled a
13 lot of the pretrial motions and arguments, correct?

14 A Yes, he did.

15 Q Is that because he had a greater knowledge of
16 specific South Carolina law?

17 A That and logistic-wise because I was so far away.
18 But we did a lot of preparation jointly.

19 Q Did you ever travel to South Carolina before the
20 trial to meet with Mr. Ariail or Mr. Tate?

21 A Yes. For both occasions. I think I met Mr. Tate in
22 jail at least four times or more, and I was at Mills' --
23 Mr. Ariail's office on numerous occasions, stayed
24 overnight in the hotel several days before the trial
25 started and we did preparation work.

1 Q Did you review discovery with Mr. Tate during those
2 four or more meetings?

3 A Yes.

4 Q Did you review the various co-conspirators'
5 statements that they'd made against Mr. Tate with him?

6 A Yes.

7 Q Did you review ---

8 A One of us did. You know, it's been so long I can't
9 swear under oath affirmatively that I was the one that did
10 that. I do know that the file was reviewed with Mr. Tate,
11 and Ariail, Mr. Mills, went over to see him as well. And
12 we went jointly as well.

13 Q What was -- what was Mr. Tate's version of events?
14 Did he deny any involvement in this conspiracy?

15 A He consistently denied any involvement in this ---

16 Q How did that ---

17 A --- these charges that were brought against him.

18 Q Okay. How did that shape your theory -- defense
19 theory going forward?

20 A You mean his -- his denial?

21 Q Yes.

22 A Well, it's the toughest thing to represent somebody
23 who you believe is innocent because of the unlikely event
24 that they get convicted, it's -- it's a hard case to look
25 back on. And, you know, Mr. Mills and I felt strongly

1 that he was innocent based on the evidence that we saw,
2 and he's consistently denied that even after conviction.

3 Q But as far as your investigation, he tells you he has
4 no involvement in this case. Did he give you any
5 witnesses he wanted you to try to track down and talk to?

6 A There were some names, I believe.

7 Q Do you recall -- I'm sorry. Go ahead.

8 A I know there were some names thrown out. There was
9 somebody that we weren't able to find.

10 The real problem with this case was that he had so
11 little knowledge about the accusations brought against him
12 and, you know, his only knowledge about these people that
13 he can absolutely talk about is the fact that he sold some
14 either a vehicle or some auto body parts to some of the
15 people involved in this, and that was the only interaction
16 he had. So it was difficult for him to actually prepare
17 some kind of a defense because they're making out that
18 he's -- they're different locations, which he had no
19 knowledge of. It was difficult to find a witness for
20 something that he didn't really have any knowledge that
21 existed at the time. And the evidence didn't show that
22 there were any buys made with him. These -- the people
23 that were codefendants in the case had, obviously, a
24 networking of drug distribution and he had very little
25 knowledge about that. So it was a difficult case from

1 that standpoint to put up a defense other than mistaken
2 identity.

3 Q And that was your defense strategy, correct, mistaken
4 identity? Not that there was a conspiracy, it just didn't
5 involve Mr. Tate, correct?

6 A That's correct.

7 Q Did you utilize any witnesses in furtherance of this
8 defense theory or strategy?

9 A Well, he has a twin brother, and while he was
10 reluctant to cooperate with this, we did, you know, give
11 his presence to the court so that people could see it was
12 actually another person that looked like Mr. Tate.

13 Q When you say "reluctant to cooperate," can you
14 elaborate what you mean by that?

15 A He didn't really -- well, it was hard to communicate
16 with us. Put it that way.

17 Q But you were able to secure his presence in the
18 courtroom during his trial, correct?

19 A Family members put a lot of pressure on him to be
20 there.

21 Q And he was there, correct?

22 A And we did get him there, yes.

23 Q Okay. And several co-conspirators, after they were
24 shown his twin brother, did change their level of
25 certainty in their identification, correct?

1 A Yes, they did.

2 Q And I believe you testified that some of the --
3 Mr. Tate might have sold an auto or auto body parts to
4 some of the co-conspirators, correct?

5 A Yes. And I don't know if it was -- there was -- he
6 was selling a used car to them or it may have been a
7 transmission involved, if I remember, but I'm not
8 absolutely positive of that, but that's what I recollect
9 at the moment. But yeah. He had a business connection
10 with one or more of them, and that's what he did for a
11 living. He sold vehicles and repaired vehicles, so it
12 seemed like a legitimate reason for them to be in contact
13 with each other.

14 I don't know why they were down in Atlanta doing
15 that. Maybe they thought he had a better price or
16 something. I don't know how -- I don't remember now how
17 that interaction initiated, but I do know that they were
18 involved in some type of automotive transaction.

19 Q So a legitimate transaction other than
20 methamphetamine, correct?

21 A Yes. Exactly.

22 Q Was Mr. Tate ever interested in accepting any plea
23 offers from the State?

24 A Not ever.

25 Q He consistently wanted to go to trial from the

1 beginning?

2 A Yes.

3 Q Okay. And when it came time to trial, how did you --
4 how did you and Mr. Ariaail divide up who was going to
5 handle what witnesses?

6 A I believe I handled most of the cross-examination on
7 law enforcement personnel, and he handled the
8 co-conspirators -- codefendants, the alleged codefendants,
9 co-conspirators.

10 Q Okay. And Mr. Ariaail handled the directed verdict
11 motion, correct?

12 A Yes.

13 Q During several of the law enforcement officers'
14 testimonies, they uttered the word "conspiracy." Did you
15 see a reason to object every time the word "conspiracy"
16 was used?

17 A No.

18 Q Why not?

19 A Well, I mean, that was what the charges were for all
20 -- everyone. I don't think they were making a conclusory
21 statement about it.

22 Q And, again, your defense theory was not that a
23 conspiracy had not taken place, it was just that your
24 client, Mr. Tate, wasn't involved in this conspiracy,
25 correct?

1 A Correct.

2 Q A moment's indulgence. I'm just trying to go through
3 and limit it a little bit because we've already had
4 Mr. Ariail testify, Mr. Farnham.

5 A Okay.

6 Q Did you see any reason to challenge the
7 identifications of Mr. Tate, the out-of-court
8 identifications from the nine various co-conspirators?

9 A You mean like a Biggers challenge?

10 Q Yes, yes.

11 A Mr. Mills and I looked through all of those photo
12 lineups. We didn't see anything that was glaring that
13 pointed out any prejudice or was suggestive that would
14 make the witnesses identify Mr. Tate inappropriately.
15 However, we really actually wanted a photo of him entered
16 into evidence because of our misidentification defense.

17 Q Pertaining to his twin brother, correct?

18 A Correct.

19 Q So you had a strategic reason for why you wanted
20 these photo lineups to come in.

21 A Yes.

22 Q Did you discuss Mr. Tate's decision to testify or not
23 with him?

24 A I know we did. I don't have any independent
25 recollection of that meeting at the time. I'm trying to

1 think back. But in all the years that I've been
2 practicing, I always have that conversation with my
3 client, go over his rights and his reasons why he should
4 or why he should not. I believe he elected not to.

5 Q And he was advised by the judge at trial about that
6 right, correct?

7 A I'm sure. I'm sure he was. I think my review of the
8 record being done, yes.

9 MS. JAMESON: I don't have any more questions for
10 you, Mr. Farnham, so Susannah Ross, who represents
11 Mr. Tate, is going to question you now. Thank you very
12 much.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Ms. Ross?

15 MS. ROSS: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MS. ROSS:

18 Q Hi, Mr. Farnham. This is Susannah Ross on behalf of
19 Mr. Tate.

20 A Ms. Ross.

21 Q Did you -- just hopping right in, was there a plea
22 offer in this case?

23 A Yes, there was. I don't remember now off the top of
24 my head.

25 Q But it's your testimony that Mr. Tate maintained his

1 innocence and had no intention of pleading?

2 A Yes.

3 Q Now ---

4 A He made that very clear throughout our entire
5 representation of him.

6 Q Okay. And as far as putting up a defense, did you --
7 there were witnesses ready to testify in Mr. Tate's case,
8 correct?

9 A There were family members there, I believe.

10 Q Go ahead.

11 A We got as many people there that he identified as
12 potential witnesses. The problem with this case was,
13 though, no one that was in his close circle of friends or
14 family had ever heard or seen any of these people that
15 were alleging he was doing all these activities. It was
16 kind of hard to rebut things because they just never
17 observed him acting in any of the roles that these people
18 testified he was doing either in the Atlanta area or up in
19 South Carolina.

20 Q All right. And then you chose not to put them up to
21 say just that?

22 A We had a meeting about which people to put up and
23 which ones not, and I actually cannot remember at this
24 time the reasons why we did not. But if there had been
25 any beneficial purpose for putting on a witness and not

1 confusing the issues because of their lack of knowledge
2 about any of this, I'm sure Mr. Mills and I would have
3 used those witnesses, and we talked about that with
4 Mr. Tate.

5 Q Now, as far as wasn't there an Atlanta drug
6 investigation into Mr. Tate?

7 A Yes.

8 Q And what was the result of that?

9 A They had no findings that he was involved in
10 anything.

11 Q And did you -- why didn't you put up any evidence of
12 that or Detective -- is it Rosere [phonetic] -- Rosere?

13 A No. Yeah. We did. I subpoenaed him. I can't
14 remember what happened with all of that at this point.

15 Q And ---

16 A I know we went down to his precinct, and he was
17 avoiding us for a period of time. I don't know. Maybe
18 Mr. Mills remembers more accurately what the issue was
19 with that detective. I can't right now remember what the
20 issue was, but there was something. And then I think he
21 said something that wasn't going to help us, and I was
22 concerned about that. It was he seemed reluctant to want
23 to go in and be on the other side of other law enforcement
24 personnel.

25 Q Now, you were cross-examining the investigators.

1 There was an Agent Barwick and an Agent Asbill; is that
2 correct?

3 A Yes. I believe so.

4 Q Do you have the transcript with you?

5 A No, I do not. I'm out of state, actually, in Florida
6 today.

7 Q Okay. Well, if the transcript doesn't ---

8 A I'll defer to the transcript, if that's what you want
9 me to say.

10 Q Now, there was specifically one -- some testimony by,
11 I believe, Agent Barwick on page 668 where he talked about
12 how he believes the witnesses in the case, and you didn't
13 object to that, did you? Or would you agree if the
14 transcript ---

15 A If the transcript says I didn't, then I didn't and I
16 probably should have because he's vouching for credibility
17 of witnesses, and that's improper, police in Georgia, and
18 that's improper.

19 Q Okay. Now also, in the transcript, at one point,
20 Agent Barwick says that the attorney general had explained
21 at the bond hearing how Mr. Tate was trying to blame his
22 twin brother and bring into -- and allude police by using
23 his twin brother, and that wasn't objected to either in
24 the transcript.

25 A It probably should have been.

1 Q All right. I think -- I think that answers all my
2 questions, but let me briefly confer with Mr. Tate.

3 (Pause in proceedings.)

4 BY MS. ROSS:

5 Q Mr. Tate wanted me to ask you about when witness
6 Rachel Eades was testifying, a number of times she was
7 saying that it wasn't her signature on a prior statement
8 or weren't her initials on the identification. Do you
9 recall Mr. Tate asking you to cross-examine on that issue
10 and not doing that?

11 A Asking me to do it?

12 Q I believe so.

13 A Did I cross-examine her during the trial?

14 Q I don't think so.

15 A Okay.

16 MS. ROSS: You've got no knowledge of that. All
17 right. Thank you.

18 THE COURT: All right. Anything else? Any redirect?

19 MS. JAMESON: No, Your Honor.

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

21 THE WITNESS: Thank you, Judge, for making the
22 accommodations for me. I appreciate it.

23 THE COURT: Yes, sir. That concludes your testimony.

24 MS. JAMESON: Thank you very much, David. Bye.

25 THE WITNESS: Thank you, Megan.

1 THE COURT: Any further witnesses from the State?

2 MS. JAMESON: No. The State does not have any
3 further witnesses to call. I would like to introduce
4 what's been premarked as Respondent's -- of, excuse me --
5 State's Exhibit No. 1, which is in response to the
6 Allegations 12 through 14 regarding the great seal. When
7 this allegation was made, I reached out to the Secretary
8 of State's Office, the general counsel there, and asked if
9 she would mind checking to see whether the great seal had
10 been affixed to the 2010 act that Mr. Tate was indicted
11 under, and in response she sent me a request that was made
12 by an attorney and then their response that was given to
13 the attorney showing that the great seal was affixed, and
14 the two employees from the Secretary of State's Office who
15 affixed the great seal to the 2010 act. So the State
16 would move to introduce the emails and those two letters
17 in response.

18 THE COURT: All right. Any objection?

19 MS. ROSS: No objection, Your Honor.

20 THE COURT: Without objection, introduced on behalf
21 of the State State's Exhibit 1 collectively.

22 (WHEREUPON, State's Exhibit Number 1 was admitted into
23 evidence.)

24 MS. JAMESON: Thank you, Your Honor.

25 The State has no additional evidence or witnesses to

1 call. And in lieu of argument, the State would rely on
2 the 40-page amended return that was filed earlier this
3 week addressing all of the allegations.

4 THE COURT: All right. So the State rests.

5 MS. JAMESON: Yes.

6 THE COURT: All right. Anything else from the
7 applicant, Ms. Ross?

8 MS. ROSS: Judge, just in terms of argument, I think
9 I've attempted to sort of present these arguments
10 throughout the testimony, but essentially, in this
11 Castineira case, it talks about conspiracy, whether
12 someone should be sentenced under 420, 44-53-420, or
13 whether conspiracy is encompassed in the 44-53-375.
14 Castineira talks about 370 and says the statute does
15 encompass conspiracy because there is language in
16 44-53-370 specifically addressing conspiracy and saying
17 this comes into play here. That language does not exist
18 in 44-53-375. It's simply not there, and we would argue
19 that because it's not there, the 44-53-420 would suddenly
20 trump and that he could only be sentenced to half the
21 maximum, 12 1/2 years. That was not argued at all and
22 preserved for the record for review.

23 THE COURT: Was that attempted to be argued in the
24 Court of Appeals?

25 MS. ROSS: I don't believe so.

1 THE COURT: I didn't think it was. I read the
2 opinion.

3 MS. ROSS: Uh-huh. I don't believe it was.

4 THE COURT: Okay.

5 MS. ROSS: And then going onto that, what was argued
6 was the 25 year mandatory minimum that the codefendants
7 faced. I believe Mr. Ariail conceded that he wouldn't
8 question on that, and he didn't have to. I believe under
9 the case law, he has a right to a full and fair cross, and
10 that would include asking all of those ten witnesses you
11 were looking at 25 years. You would have been in jail for
12 25 years. That did not happen. The State points out that
13 one of the witnesses was asked or blurted out that it did
14 -- the charge did carry 25 years, but certainly, that's
15 not as strong as being able to march, you know, all ten,
16 every witness you heard from.

17 THE COURT: Was that preserved for review?

18 MS. ROSS: That was not.

19 THE COURT: Okay. Was that brought up in the Court
20 of Appeals' decision?

21 MS. ROSS: It was.

22 THE COURT: And they said it wasn't preserved for
23 review.

24 MS. ROSS: I believe so.

25 THE COURT: Okay.

1 MS. JAMESON: And said it was harmless, Your Honor.

2 MS. ROSS: And they said it was harmless.

3 One of those witnesses was looking at a potential
4 life sentence, automatic life.

5 Then I pointed out the page numbers on -- during
6 Mr. Tate's testimony, but there was just a lot of the
7 investigators talking about we have a conspiracy here,
8 this was conspiracy. We'd argue that's testifying to the
9 ultimate issue.

10 They also, those investigators said "I believe the
11 witness" at one point, and that's bolstering.

12 There were -- I went in great detail through Mr. Tate
13 a number of just times where there were leading or
14 improper questions of witnesses and it wasn't preserved,
15 that the whole comment on page 339 where Mr. Tate was
16 attempting to use his twin to trick everybody at the bond
17 hearing, that was improper prejudicial.

18 The failure to move the suppression -- for the
19 suppression of all those drugs that came in, clearly,
20 those drugs are always going to be prejudicial, and having
21 them in there cannot be strategic in any way. There's no
22 valid strategy for allowing, you know, the attorney
23 general to close holding up a bunch of drugs. It's
24 prejudicial as anything could be.

25 Same with the identification procedure. Clearly,

1 probative value was outweighed by the prejudice on those.

2 We have the issue of failing to put up a defense.
3 That speaks for itself.

4 And then we've got the state seal issue. And, Judge,
5 I would just ask for a ruling on that. I understand, and
6 I have a number of things out here, I know that there was
7 an amendment to 44-53-375 by the 118th session in 2010.
8 We would argue that did nothing to change the language
9 that existed there in the statute originally under the
10 1993 act that did not have the state seal. I also have an
11 attorney general's opinion on that from December 1, 2017.
12 And I guess it would come down to simply -- and I don't
13 know the answer, is it supplementing or superseding
14 existing law? You know, that's the issue.

15 THE COURT: I'm denying the State's motion to dismiss
16 on Items -- on dealing with the state seal issue. I don't
17 need to hear any more from you on that, Ms. Jameson. You
18 know, I'll address that in whatever order I issue for this
19 PCR hearing.

20 But as far as the motion to dismiss aspect of it, you
21 know, this is his day in court. I allowed him to testify
22 about it. I'm hearing argument about it right now. So,
23 you know, and I'm nonjury here, okay? So I'm the fact
24 finder and the judge of the law, so it's on that basis I'm
25 denying the motion to dismiss.

1 MS. JAMESON: Thank you, Your Honor.

2 THE COURT: All right.

3 MS. ROSS: Would you like me to just pass up this
4 information I have?

5 THE COURT: Yeah. Please. I mean, I'll take it and
6 give it ---

7 MS. ROSS: This is -- it's like 101, how bills amend
8 statutes, which I printed out for myself.

9 THE COURT: I understand. I've dealt with this issue
10 before, not at a PCR issue, but on underlying charges
11 before they went to trial.

12 MS. ROSS: Okay. And then I have just printouts of
13 excerpts of the act. Take them for what they're worth.

14 The issue of extraterritorial jurisdiction just
15 really wasn't argued much in this trial. A lot of I would
16 say improper witness testimony was allowed in and not
17 objected to to sort of give some idea of something
18 happening in South Carolina. But I think that was a huge
19 issue. Jury instruction should have been proposed, and it
20 should have been argued more clearly on the record for
21 that jury. And State v. Dudley goes to that argument.

22 And then Mr. Tate has a number of arguments just
23 generally on the standard of law for conspiracy. He
24 argues that it should not have been included. 44-53-375
25 does not just cover all this sort of general conspiracy

1 from everywhere. And so that's his argument on that.

2 And Mr. Tate would like to briefly make an argument.

3 THE COURT: Well, hang on a second before I hear from
4 that.

5 Any response from the State briefly on the argument
6 that was presented?

7 MS. JAMESON: The State would rely primarily on our
8 40-page amended return that was filed this week as to all
9 14 of the allegations.

10 I do want to include regarding the failing to object
11 to the guns, drugs and other sort of evidence that was
12 admitted, Mr. Tate didn't have any standing to object to
13 those things coming in, so I want to supplement the
14 argument we already made regarding that.

15 I also did want to add to the argument regarding
16 failing to object to the Neil v. Biggers. I believe in
17 her questioning of Mr. Ariail, Ms. Ross elicited the wrong
18 standard for Neil v. Biggers. The first inquiry is
19 whether or not it was suggested procedures by law
20 enforcement. Here, all nine of the witnesses testified
21 there were no suggested procedures, so the inquiry ends
22 there. You wouldn't automatically jump to whether or not
23 it's reliable. The inquiry starts in the first prong as
24 whether it's suggestive or not. So I did want to
25 highlight that to the Court.

1 Additionally, we have testimony from Mr. Farnham that
2 he had a trial strategy for why he wanted those lineups to
3 come in. They had Mr. Tate's identical twin brother
4 present in the courtroom, and he believed it was to his
5 benefit to have those lineups come in and then be able to
6 cross-examine the various co-conspirators as to their
7 difficulty telling whether it was Mr. Tate or his twin
8 brother. So I think there's also a valid trial strategy
9 argument that was elicited today on the stand, so I do
10 want to supplement our arguments as to that.

11 But regarding everything else, I would defer to the
12 arguments made by the State in our amended return.

13 THE COURT: All right. Thank you.

14 Does the State have an objection to Mr. Tate making a
15 brief argument to supplement what his lawyer said to me?

16 MS. JAMESON: For the record, I would object, Your
17 Honor. He is represented by Ms. Ross. There's no hybrid
18 representation in South Carolina, and she is the attorney
19 representing him and should be presenting all legal
20 arguments on his behalf.

21 THE COURT: And I agree with that. However,
22 Mr. Tate, I'm going to extend to you the courtesy. You
23 see, I've got these two boxes right here. You've got a
24 big old stack of materials also. I'm not making a
25 decision today, okay? I've got to take all this

1 information with me back to my office, which is an hour
2 and a half from here. I'm not a judge in Greenville. I'm
3 a visiting judge, okay? And I'm going to take this back
4 and read through all this, and your lawyer's made
5 excellent arguments to me along with the State. And I'm
6 going to read through everything before I make any
7 decision, okay, because this decision is very important
8 not only to you but also to the State, okay? And I'm
9 going to give you all that due deference.

10 But I will allow you an opportunity to make a brief
11 statement to you -- to me, excuse me -- concerning your
12 theory or anything else you want to tell me, but please
13 understand it needs to be brief, okay?

14 APPLICANT TATE: Okay. I sure will. I appreciate
15 you, Judge.

16 THE COURT: Yes, sir.

17 APPLICANT TATE: In 1993 the Legislature voted on a
18 bill which was Bill 3151. And in that bill, they had a
19 section called misdemeanors changed to felonies. All
20 right. And where they -- prior to that there was no
21 statute for the criminal conspiracy. All right. It was
22 on the common law which carried a misdemeanor of zero to
23 five. They amended it to read and change the reading as
24 -- I'm going to read it. Do you mind if I read it real
25 quickly?

1 THE COURT: Go ahead.

2 APPLICANT TATE: It says: Section 35, conspiracy.
3 Section 16-17-410, the common law crime known as
4 conspiracy defined as a combination between two or more
5 persons for the purpose of accomplishing an unlawful
6 object or lawful object by unlawful means. A person
7 commits the crime of conspiracy is guilty of a felony,
8 upon conviction must be fined not more than \$5,000 or
9 imprisoned not more than five years.

10 In this amendment, there was a third -- when they
11 added the felony to it, they -- they added a third
12 paragraph which says: A person who was convicted of the
13 crime conspiracy must not be given a fine or sentence that
14 that would receive -- hold on -- than if he would receive
15 or carried out the unlawful act contemplated by the
16 conspiracy and had been convicted of the unlawful act
17 contemplated by the conspiracy or have been convicted of
18 the unlawful acts by which conspiracy was to be carried
19 out or effected. All right.

20 And my argument was -- was with -- the reason why I
21 brought the seal issue up concerning conspiracy is because
22 they amended that and adding that third sentence, and --
23 and what they did is I believe they misapplied the law.
24 But that's my opinion. You're the judge. That's why I'm
25 speaking to you right now.

1 THE COURT: Sure.

2 APPLICANT TATE: And so they can be able to -- that
3 third sentence was put there so they can be able to
4 sentence the individuals who were charged on the
5 conspiracy up to whatever the principal offense carried,
6 but what they did is they simply failed to classify the
7 conspiracy law to go over what was already unambiguous in
8 the language already, which is zero to five.

9 All right. I have here a letter from Ms. Tonnya K.
10 Kohn of the Attorney General's Office to the
11 administration court interpreting what they were meaning
12 when they tried to bring in the conspiracy statute in
13 1993. There's never been an amendment from that day on,
14 right? And even they themselves in the Attorney General's
15 Office stated that furthermore, while it was true that
16 16-17-410, the third sentence reflects an individual
17 convicted of conspiracy may not be given a greater fine or
18 sentence than if he were convicted of the unlawful object
19 of conspiracy, there's nothing within the sentence to
20 suggest the classification of the conspiracy is changed by
21 fine or sentence prior to conspiracy or lawful object.
22 Instead, the 16-17-410, third sentence, suggests the
23 Legislature was aware of a way to lengthen incarceration
24 of conspiracy to its object but simply declined to do so.
25 See State vs. Raymond [phonetic]. All right. Explain

1 with respect to a statutory construction that to express
2 or include one thing implies the exclusion of another or
3 the alternative.

4 Now, this was done in 2015, two years after I went to
5 trial. And they're explaining -- I mean, I'm just seeing
6 a contradictive -- I -- I don't know. You're the judge,
7 you know. I'm not an attorney.

8 THE COURT: I follow your rationale. I understand
9 what you're saying.

10 APPLICANT TATE: Okay. So that's why I brought it
11 in. It wasn't -- my -- my issue with the conspiracy
12 wasn't just because of the 445 or 375. It was also the
13 conspiracy itself as criminal conspiracy does not have the
14 force of law not having the great state seal affixed to
15 it ---

16 THE COURT: Yes, sir.

17 APPLICANT TATE: --- for them to be able to put in
18 the body and charge you and give you the sentence as the
19 principal offense, because even the 420 that they came out
20 when they amended it allowing it to be, what, half the
21 sentence, right? That was contingent upon the 445, 3 --
22 no -- the 16-17-14 being proper or constitutional.

23 And -- and -- and what -- what my findings were --
24 like I said, I'm -- I'm just a layman, I'm not an attorney
25 or a judge or anything else ---

1 THE COURT: Yes, sir.

2 APPLICANT TATE: --- is that my findings were that
3 when one specific statute itself is deemed
4 unconstitutional, all amendments thereto are what?
5 Unconstitutional, too, and without force and effect. So
6 if a -- if a -- if a standard foundation is broken, how
7 can somebody build on top of that foundation even if it's
8 in the drug statute?

9 THE COURT: Understood.

10 APPLICANT TATE: Your Honor, I don't believe that the
11 drug statute in 375 statute abrogates the conspiracy law
12 itself.

13 THE COURT: Understood your argument.

14 Anything you wish to add to that, Ms. Ross, based
15 upon what your client just said to me?

16 MS. ROSS: No, Your Honor. I just -- I will just say
17 that the A.G. opinion is November -- dated November 13,
18 2015, that he's talking about.

19 THE COURT: Okay. Anything the State wishes to
20 respond to his statement to me?

21 MS. JAMESON: No, Your Honor.

22 THE COURT: All right. I'm going to take all this
23 into consideration, including the arguments made.

24 Anything else, Ms. Ross?

25 MS. ROSS: He wanted me to hand up that -- the A.G.

1 opinion.

2 THE COURT: I'll be glad to take it.

3 APPLICANT TATE: And Steve Tuttle's to me. Do you
4 mind if I put this in the record, too? Or . . .

5 THE COURT: It doesn't need to be made an exhibit.
6 Just hand it up to me and I'll include it in my materials
7 that I'm going to review.

8 And, Madam Clerk, I do want a copy of the exhibits
9 that you entered. I don't want to take the original
10 exhibits with me when I leave, okay?

11 All right. Sir, is this fine for me to take? Are
12 these my copies?

13 APPLICANT TATE: Yeah. I have other copies of them.

14 THE COURT: All right. Because once I take them, you
15 ain't getting them back. I just want to make sure.

16 APPLICANT TATE: Well, I had them send me two
17 originals so you have one and I have one.

18 THE COURT: Okay. All right. Good. Thank you, sir.

19 All right. I'm going to do that with the exhibits
20 which came in as well.

21 All right. Seeing there's nothing else to be heard
22 in this matter, the Court will take this matter under
23 advisement and adjourn this hearing. Thank you very much.

24 (WHEREUPON, proceedings concluded at 1:19 p.m.)
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)4 COUNTY OF GREENVILLE)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 General Sessions for Greenville County, South Carolina, on
14 the 7th day of June, 2019.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17

18 January 13, 2020
19
20

21 *Cheryl A. Smith*

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA,
Respondent.

ORDER OF DISMISSAL

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to post-conviction relief and denies this application with prejudice.



PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of South Carolina State Grand Jury Clerk of Court. On December 13, 2011, the South Carolina State Grand Jury indicted Applicant by superseding indictment for Trafficking in Methamphetamine (Conspiracy) (400 grams or more) (2011-GS-47-0007) as part of a multi-count, multi-defendant indictment stemming from an investigation into a methamphetamine trafficking ring throughout the Upstate region.

On May 28, 2013, Applicant proceeded to a jury trial in the Greenville County Court of General Sessions before the Honorable Letitia H. Verdin, circuit court judge. R. Mills Ariail, Jr., Esquire, and David J. Farnham, Esquire¹, represented Applicant. Assistant Attorneys General Joshua R. Underwood and Curtis A. Pauling of the South Carolina Attorney General's Office prosecuted the case. On May 31, 2013, the jury convicted Applicant as indicted. Judge Verdin sentenced Applicant to twenty-five years imprisonment.

On June 14, 2013, Applicant filed a motion for a new trial, arguing the trial court erred in denying his motion for directed verdict. By order signed June 27, 2013 and filed July 8, 2013, Judge Verdin denied Applicant's post-trial motion.

On July 8, 2013, Applicant filed a timely notice of appeal. Applicant was represented on appeal by Wendy J. Keefer, Esquire. On appeal, Applicant raised the following issues:

- I. Did the trial court err in submitting the case to the jury and denying the Motion for Directed Verdict where the State presented evidence of Trafficking in Methamphetamine 400 grams or more?
- II. Did the trial court commit reversible error by limiting cross examination of cooperating witnesses pleading to lesser charges, and no longer facing mandatory minimum on their initial charges, which were the same as Appellant

¹ Mr. Farham is a member of the Georgia Bar and was admitted *pro hac vice* to represent Applicant in this matter alongside Mr. Ariail.



was facing, and where cross was allowed as to receiving a substantial reduction in sentence and the possible sentence of the initial charge was ultimately communicated to the jury?

III. Did the trial court err in permitting testimony by a witness with experience investigating methamphetamine cases about the organizational sale and distribution of methamphetamine?

Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion. State v. Antonio Emerson Tate, 2016-UP-291 (Ct. App. filed June 15, 2016). The Remittitur was returned to the circuit court on July 1, 2016. Thereafter, Applicant initiated this current proceeding with the filing of an application for post-conviction relief.

SUMMARY OF EVIDENCE ADDUCED AT TRIAL

At Applicant's trial, the State presented evidence of Applicant's guilt of Trafficking Methamphetamine-400 grams or more. Such evidence included testimony of witnesses about purchasing methamphetamine from Applicant in Georgia for distribution and sale in South Carolina. Some of the testifying witnesses were charged as co-conspirators and were initially charged with the same crime as Applicant, but had accepted plea agreements to plead guilty to lesser charges. The trial court permitted defense counsel to inquire as to the possible sentence on the lesser charges and testimony was given that the charges exposed the witnesses to substantially less time for incarceration than their original charges.

The State presented the testimony of eleven witnesses involved in the purchase of methamphetamine from Applicant in Atlanta, Georgia for sale in South Carolina. Witnesses testified about traveling to Georgia to retrieve narcotics from Applicant and how these transactions were initiated and conducted. The witnesses described in detail how to arrive at designated meeting locations repeatedly used by Applicant and that Applicant used different



phone numbers. Witnesses also testified calling Applicant to arrange deals for methamphetamine and recalled particular meet locations and some specific occurrences.

Witnesses independently testified to the same locations used for the sale of the narcotics such as a Waffle House and Applicant's residence. The witnesses knew which exit to take and how to get there.

Witnesses recalled details of specific instances such as the purchase at the Shell gas station. Witnesses testified to numerous and repeated purchases of methamphetamine in amounts greater than one would purchase for personal use, of tactics used in the sale of narcotics for future distribution involving large amounts of money such as "fronting", and the use of green dot cards. Witnesses also testified as to Applicant's knowledge of witnesses residing in South Carolina and to seeing him on a least one occasion in South Carolina.

Witnesses independently identified Applicant in a photo line-up prior to or at the on-set of cooperating with law enforcement, at different times. Witnesses also identified Applicant in court as the individual from whom large amounts of methamphetamine were purchased.

The State's case, primarily in the form of testimonial evidence through the various co-conspirators, consistently shows that Applicant sold dealer weights of methamphetamine while in Georgia to individuals known to reside in South Carolina who were bringing that methamphetamine back to South Carolina over the period of time alleged in the indictment for an amount greater than 400 grams. He also traveled to South Carolina on two occasions and provided methamphetamine to Jason Griffin and Javin Adams. Following all testimony presented, the jury found the State had proven its case beyond a reasonable doubt and convicted Applicant as indicted.

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CURRENT ACTION BEFORE THE COURT

In his *pro se* application for post-conviction relief, Applicant alleged he is being held in custody unlawfully due to ineffective assistance of counsel for “fail[ing] to interview potential witnesses.” Applicant also alleges his due process rights guaranteed under the Fourteenth Amendment to the U.S. Constitution were violated when the “State failed to obtain exculpatory evidence.” Applicant failed to set forth with any specificity any of the underlying facts giving rise to these allegations. In response, Respondent filed its return, partial motion to dismiss, and motion for a more definite statement.

In his first supplemental application filed on March 27, 2018, by counsel Ross, Applicant raised the additional allegations for relief:

- (1) failing to preserve the issue of insufficient proof of conspiracy in his directed verdict motion;
- (2) conceding that he would not cross examine co-defendant witnesses who were also originally charged with trafficking 400 grams or more avoiding twenty-five year mandatory minimum when he had every right to do so under State v. Gracely, 731 S.E. 2d 880 (2012);
- (3) failing to cross examine eight co-defendant witnesses about avoiding twenty-five year mandatory minimum sentence and when applicable possible life without parole sentences;
- (4) failing to consistently object to testimony by investigators regarding the legal definition of conspiracy and the sufficiency of the evidence and/or allowing investigators to testify as experts; (R. pp. 317-319, p. 332, l. 21, p. 657, l. 19, p. 659, l.1, p.664)
- (5) failing to object to the investigator's to testifying as to the ultimate issue, (p. 655, l. 8);
- (6) consistently failing to object to leading and improper questions by the State;
- (7) failing to object to Agent Barwick's recital of statements made at the bond hearing by the Attorney General that the Applicant had a twin and attempted to use his identity to allude police and other improper comments by testifying agents. (R. p. 339, l.22)



(8) failing to move to suppress or object to the admission of drugs, money, drug paraphernalia, phones, and a weapon recovered from Jason Griffin, Rachael Eades and Christopher Simmons;

(9) failure to challenge the identification procedure;

(10) failing to put up a defense case advising Mr. Tate not to testify and failure to investigate and present defense witnesses;

(11) due process violation based on Applicant's failure to get a fair trial and a total breakdown of the adversarial process.

In his second supplemental application filed on October 22, 2018, by counsel Ross,

Applicant raised the following allegations for relief:

(1) failing to preserve the issue of insufficient proof of conspiracy in his directed verdict motion;

(2) conceding that he would not cross examine co-defendant witnesses who were also originally charged with trafficking 400 grams or more avoiding twenty-five year mandatory minimum when he had every right to do so under State v. Gracely, 731 S.E. 2d 880 (2012);

(3) failing to cross examine eight co-defendant witnesses about avoiding twenty-five year mandatory minimum sentence and when applicable possible life without parole sentences;

(4) failing to consistently object to testimony by investigators regarding the legal definition of conspiracy and the sufficiency of the evidence and/or allowing investigators to testify as experts; (R. pp. 317-319, p. 332, l. 21, p. 657, l. 19, p. 659, l.1, p.664)

(5) failing to object to the investigator's to testifying as to the ultimate issue, (p. 655, l. 8);

(6) consistently failing to object to leading and improper questions by the State;

(7) failing to object to Agent Barwick's recital of statements made at the bond hearing by the Attorney General that the Applicant had a twin and attempted to use his identity to allude police and other improper comments by testifying agents. (R. p. 339, l.22)

(8) failing to move to suppress or object to the admission of drugs, money, drug paraphernalia, phones, and a weapon recovered from Jason Griffin, Rachael Eades and Christopher Simmons;



- (9) failure to challenge the identification procedure;
- (10) failing to put up a defense case advising Mr. Tate not to testify and failure to investigate and present defense witnesses;
- (11) failing to argue the sentence exceeded the maximum sentence for conspiracy;
- (12) failure to move to quash the indictment arguing that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction; and
- (13) failure to argue in directed verdict that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction.
- (14) Due Process violations are alleged based on Mr. Tate's failure to get a fair trial due to cumulative error, a total breakdown of the adversarial process, and lack of constitutionality and enforceability of Section 44-53-375 SC Code Ann.

At the evidentiary hearing, Applicant proceeded forward on the claims as set forth in his second supplemental application. Applicant testified on his own behalf and presented testimony from his children's mother Chastity Raines. Respondent presented trial counsels Mills and Farnham.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety, including the trial transcript, the appellate records, and the records for this current action. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).



Ineffective Assistance of Counsel

Applicant has alleged trial counsels were constitutionally ineffective in their representation for thirteen specific allegations as set forth in his second supplemental application. After a thorough review of all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof as to each allegation of ineffective assistance of counsel and denies each allegation, which will be specifically addressed below.

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686

Strickland does not guarantee perfect representation, only a “ ‘reasonably competent attorney.’ ” 466 U. S. at 687 (quoting McMann v. Richardson, 397 U.S. 759, 770 (1970)). Representation is constitutionally ineffective only if it “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624,

625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the

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identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney.” Id. at 690.

Although courts may not indulge “post hoc rationalization” for counsel’s decision making that contradicts the available evidence of counsel’s actions, Wiggins v. Smith, 539 U.S. 510, 526-527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a “strong presumption” that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Yarborough v. Gentry, 540 U. S. 1, 8 (2003). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011).

With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Id. at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. at 687. See Harrington, 562 U.S. 86.

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371 (2010), and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” United States v. Timmreck, 441 U.S. 780, 784 (1979). An



ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U.S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is “reasonably likely” the result would have been different. Id. at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693. Harrington, 562 U.S. 86.

This Court finds Applicant has failed to meet his requisite burden of proof as to each allegation of ineffective assistance of trial counsel. Each allegation is addressed below.

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Allegation that counsel failed preserve the issue of insufficient proof of conspiracy in his directed verdict motion

Initially, Applicant asserts trial counsels were ineffective for failing to preserve the issue of insufficient proof of conspiracy in his directed verdict motion. At the evidentiary hearing, Applicant testified counsels were ineffective because they only argued the identity issue during the directed verdict stage, thereby leaving his arguments regarding the sufficiency of the indictment unrepresented to the trial court and unpreserved for appellate review. In support of relief, Applicant cites to the appellate decision from the Court of Appeals finding his particular directed verdict arguments raised on appeal unpreserved because such arguments had not been presented to the trial court.

When questioned about this specific allegation at the evidentiary hearing, trial counsel Mills testified he handled the directed verdict motion on behalf of the defense team. He testified he moved for a directed verdict at the close of the State's case based on the State's failure to sufficiently establish Applicant's identity based on several witnesses unable to distinguish Applicant from his identical twin brother, whom was present in the courtroom throughout trial and about whom the witnesses were questioned. Mills testified he also argued the State had failed to meet its burden of proof because its co-conspirator witnesses had provided false testimony and information. Mills testified he selected these grounds on which to move for a directed verdict because he believed these were the strongest arguments based on his professional opinion and the evidence presented (or not presented) at trial. He testified he did not argue the State had presented insufficient evidence of Applicant's intent to conspire because the State had indeed presented such evidence through various co-conspirator witnesses and he accordingly had no good faith basis to move for a directed verdict on that ground. He elaborated



one co-conspirator, Albrie Nate Bashaw, testified Applicant knew she had customers in South Carolina that she was re-selling the methamphetamine she purchased from him.

This Court finds this allegation is without merit and Applicant cannot prevail on this claim. The record establishes trial counsels moved for a directed verdict at the close of the State's case based on the State's purported failure to prove the identity of the defendant (Applicant). Specifically, counsels argued the State could not prove Applicant's identity and had failed to meet its burden of proof based on false testimony elicited from State's witnesses and co-conspirators as well as an inability of State's witnesses to distinguish Applicant from his identical twin brother who was present in the courtroom throughout trial. See Tr. P. 670. This Court agrees with Mills assessment that the defense presented its strongest possible argument for a directed verdict motion—that the State had failed to prove identity and therefore the trial court should direct a verdict of not guilty.

This Court rejects Applicant's argument that he is entitled to relief merely because this particular directed verdict issue was not preserved for appellate review. The fact that Applicant's appellate counsel elected to present a different argument on appeal is not dispositive as to this issue and does not establish that trial counsels were ineffective. On appeal, Applicant, though appellate counsel, argued a different reason a directed verdict should have been granted by the trial court—that the State failed to sufficiently prove Applicant's participation in the conspiracy based on a lack of intent to conspire. This argument was not raised to the trial court, and accordingly, the Court of Appeals found the issue unpreserved for appellate review:

1. We affirm the trial court's denial of Tate's motion for a directed verdict, finding Tate did not preserve the issue of insufficient proof of a conspiracy by the State in providing only isolated sales of meth rather than any intent to conspire with the purchasers because the issue was not raised in his directed verdict motion. Rather, Tate raised the failure of the witnesses to positively identify him and the lack of credibility of the witnesses. Accordingly, we find this issue is not



preserved for appellate review. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (“A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal.”); State v. Jordan, 255 S.C. 86, 93, 177 S.E.2d 464, 468 (1970) (stating issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review).

State v Antonio Emerson Tate, 2016-UP-291 (Ct. App. filed June 15, 2016).

Applicant’s argument that trial counsels were ineffective because his appellate counsel elected to raise an issue of first impression that was never raised to the trial court rather than the issue that was raised to and ruled upon by the trial court. However, this argument is without merit. It is clear from the record that trial counsels presented their strongest possible argument for a directed verdict motion—that the State had failed to prove identity and therefore the trial court should direct a verdict of not guilty. This argument was much stronger than a challenge to the sufficiency of the State’s evidence of conspiracy, as the record was well-developed that there was a conspiracy between “Ant/Amp,” the methamphetamine dealer in Georgia, to sell and transport large quantities of methamphetamine into South Carolina. Specifically, through the testimony of Albrie Nate Bashaw, the State presented evidence that Ant knew she lived in South Carolina and was selling the methamphetamine he provided to her in South Carolina. As the State clearly presented direct or substantial circumstantial evidence tending to prove the guilt of the defendant when viewing the evidence and all reasonable inferences in the light most favorable to the State, a directed verdict motion on this ground would have been denied. See State v. Pearson, 415 S.C. 463, 470, 783 S.E.2d 802, 806 (2016) (citing State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014) (holding the standard for denial of a directed verdict and sending the case to the jury is whether the State has presented any direct or substantial circumstantial evidence tending to prove the guilt of the defendant when viewing the evidence and all reasonable inferences in the light most favorable to the State). Accordingly, Applicant

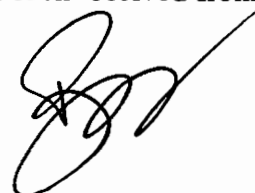
cannot establish deficiency of counsel or prejudice as to this allegation. This Court finds this allegation must be denied and dismissed with prejudice.

Allegation that counsel improperly conceded he would not cross-examine co-conspirators regarding the mandatory minimum sentence for trafficking in methamphetamine 400 grams or more failing to cross-examine his co-conspirators on their original possible sentence exposure

As his second and third grounds for relief, Applicant asserts trial counsels were ineffective for conceding Applicant would not cross examine co-conspirator witnesses who were also originally charged with trafficking 400 grams or more avoiding twenty-five year mandatory minimum and failing to cross-examine his co-conspirators on their original possible sentence exposure. Applicant asserts he had every right to do so under State v. Gracely, 731 S.E. 2d 880 (2012) and counsels were ineffective for failing to properly cross-examine the witnesses on this mandatory minimum sentence.

At the evidentiary hearing, Applicant testified counsels were ineffective for conceding they would not cross-examine the co-conspirator witnesses on the specific sentences each was initially facing based on his or her original charge(s). Applicant acknowledged the jury did hear through at least one witness that the sentence for trafficking in methamphetamine – 400 grams or more was twenty-five years of imprisonment and that counsel elicited from all witnesses that they reaped a substantial benefit in terms of sentence exposure by cooperating with the State.

When questioned about these allegations, Mills, who handled the cross-examination for the co-conspirator witnesses, testified the State moved pre-trial to limit his questioning of the co-conspirator witnesses on the particular sentences for their original indictments since the co-conspirators had already pled guilty to lesser-included offenses and did not want the jury to hear the specific sentence Applicant was facing if convicted. In response, Mills argued he should be allowed to question the co-conspirators on the substantial benefit each received from cooperating



with the State, including the reduction in sentence. Mills testified the trial court ultimately agreed to allow him to cross-examine the co-conspirators on the benefit each received but precluded him from mentioning the specific sentence for trafficking in methamphetamine – 400 grams or more. During this pre-trial discussion, Mills noted the Gracely decision was specifically discussed. Mills testified during that during trial, he was able to elicit favorable testimony from all co-conspirators that each received a substantial reduction in sentence exposure for cooperating with the State and the specific ranges each faced for the lesser-included offense. He also testified he was able to elicit the specific sentence range of twenty-five years imprisonment for the original charge from Jason Griffin. Mills also testified this issue was raised on Applicant's direct appeal and found to be harmless.

This Court finds these allegations are without merit and Applicant cannot prevail on these claims. The record establishes the State moved *in limine* to prevent the defense from eliciting any testimony from State's witnesses and co-conspirators about the potential sentences for trafficking in methamphetamine up to 400 grams because the State did not want the jury to know Applicant's potential sentence range, as sentencing is an issue outside the province of the jury. Trial counsels argued they should be able to cross-examine the co-conspirators on the substantial benefit they received by cooperating. The trial court agreed to allow the defense to cross-examine the co-conspirators on the sentencing ranges/exposure for the offenses to which they pled guilty as well as question them about the substantial benefit they received by pleading guilty to lesser-included offenses, thereby significantly reducing their sentencing exposure. When cross-examining the various co-conspirators, trial counsels did just that—eliciting testimony that each had received a substantial benefit by cooperating with the State and

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testifying against Applicant. In fact, during the testimony of co-conspirator Gary Jason Griffin, Mills was able to elicit the specific sentencing range for the original offense. See Trial Tr. p. 172.

This very issue was raised on appeal and the Court of Appeals found any possible error in the trial court limiting the defense's cross-examination was harmless beyond a reasonable doubt, noting "the numerous co-defendants that testified regarding their reduced sentences, the mandatory minimum sentences or the sentencing ranges of their original charges compared to their plea recommendations, and the substantially greater sentences they would have faced." State v Antonio Emerson Tate, 2016-UP-291 (Ct. App. filed June 15, 2016).

Accordingly, this Court finds there is no way Applicant can now prevail on this claim when an appellate court has already properly determined he suffered no prejudice as to this very issue. "Harmless error review looks to the basis on which the jury actually rested its verdict." Lowry v. State, 376 S.C. 499, 508, 657 S.E.2d 760, 765 (2008) (citing Sullivan v. Louisiana, 508 U.S. 275, 279 (1993)). "From this perspective, in order to conclude that the error did not contribute to the verdict, the Court must 'find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.'" Id. (citing Yates v. Evatt, 500 U.S. 391, 403 (1991); See Arnold v. State/Plath v. State, 309 S.C. 157, 165, 420 S.E.2d 834, 838 (1992) (noting that the requirement that a constitutional error be harmless beyond a reasonable doubt "embodies a standard requiring reversal 'if there is a reasonable possibility that the evidence complained of might have contributed to the conviction' " (quoting Yates, 500 U.S. at 403)); see also Clark v. Goose, 16 F.3d 960, 964 (8th Cir. 1994) (concluding even if evidence is erroneously admitted but it constitutes at most harmless error, no ineffective performance is shown); LePage v. Idaho, 851 F.2d 251, 257 (9th Cir. 1988) (concluding that since admission of statements obtained in violation of Massiah was harmless error beyond a reasonable doubt,



LePage suffered no prejudice from his counsel's failure to object to the statements). Accordingly, Applicant cannot establish deficiency of counsel or prejudice as to these allegations, which this Court denies and dismisses with prejudice.

Allegation that counsel was ineffective for failing to consistently object to testimony by investigators regarding the legal definition of conspiracy and the sufficiency of the evidence and/or allowing investigators to testify as experts

As fourth and fifth allegations, Applicant asserts trial counsels were ineffective for failing to consistently object to testimony by investigators regarding the legal definition of conspiracy and the sufficiency of the evidence and/or allowing investigators to testify as experts, as well as allowing law enforcement to testify as to the ultimate issue in the case—whether a conspiracy existed. See R. pp. 317-319, p. 332, l. 21, p. 657, l. 19, p. 659, l.1, p.664).

At the evidentiary hearing, Applicant testified trial counsels repeatedly failed to object to testimony from various witnesses testifying as to the legal definition of conspiracy and the ultimate issue in the case, which he argues amounted to improper expert testimony.

When questioned about these allegations, counsels testified the defense strategy was not that that a conspiracy to traffic methamphetamine was taking place, but rather, that Applicant was simply not involved in the conspiracy in any way whatsoever. Both stressed the presentation of Applicant's twin brother and the repeated challenges to Applicant's identity. Accordingly, counsel testified these comments during testimony from numerous law enforcement witnesses had no impact on their case and were irrelevant. Counsels testified the jury was already on notice this was a conspiracy case, as the trial court read the indictment to the jury at the start of trial. Moreover, when questioned about the specific instances that Applicant alleges counsel should have objected, counsel noted these portions of the testimony were not objectionable, as they were often just explaining the course of the investigation



This Court finds these allegations are without merit and Applicant cannot prevail on these claims. Overall, it was abundantly clear to the jury that this was a conspiracy case from the start of trial. As is standard practice, the trial court read the indictment to the jury indicating Applicant was charged with conspiracy to traffic methamphetamine:

Alright, uh, ladies and gentlemen, the S—the State is alleging that **this is a drug conspiracy case**. The State has accused Mr. Tate of trafficking methamphetamine from At – the Atlanta area to the Upstate through a number of individuals during the dates of November 2009 and November 2011. He is charged with trafficking methamphetamine **by conspiracy** for more than 400 grams.

Trial Tr. p. 15 (emphasis added). From the very outset, the jury knew the State was proceeding forward on trafficking in methamphetamine based on not only conspiracy but particularly a conspiracy where Applicant sold methamphetamine from Atlanta to be brought into the Upstate region of South Carolina with a number of other individuals. During the trial, the State then presented co-conspirator after co-conspirator who all testified regarding their involvement in the conspiracy, including their travels to Georgia to purchase large quantities of methamphetamine from Applicant to be transported to and sold in the Upstate region. For Applicant to now be arguing the result of his trial would have been different—i.e., that he would have been acquitted—but for a few utterances of the word “conspiracy” by law enforcement witnesses—is illogical and cannot succeed based on the record before the court.

Additionally, it is clear from the record that when the term “conspiracy” was used by law enforcement, it was in the context of the officers explain how the investigation began or unfolded. It was not in the context of a legal definition or expert testimony as Applicant argues.

Moreover, it is abundantly clear from the record that trial counsels were proceeding forward on a defense of identity—essentially arguing not that a drug conspiracy was not underway but that Applicant had no involvement in the conspiracy and the State had charged the

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wrong man. Accordingly, these few utterances of “conspiracy” by law enforcement witnesses had no impact on counsel’s trial strategy and the outcome of the case. Accordingly, Applicant cannot establish deficiency of counsel or prejudice as to these allegations, which this Court denies and dismisses with prejudice.

Allegation that counsel was ineffective for failing to consistently object to leading questions by the State

As a sixth allegation, Applicant asserts trial counsels were ineffective for failing to consistently object to leading questions by the State. Applicant testified there were several instances during trial when the State asked various co-conspirator witnesses whether Applicant knew the drugs he was selling were being resold in South Carolina, which Applicant asserts was improperly asking the witnesses to speculate on someone else’s state of mind. He testified counsels should have objected when a witness was questioned about his “rap sheet” and made a comment that it was several pages long. Applicant also referenced instances where the State’s re-direct examination went beyond the scope of his cross-examination and counsel failed to object. Applicant testified he believed these various instances affected the outcome of his trial.

When questioned about their failures to object, trial counsels testified they routinely and consistently objected at trial when they believed an objection was warranted based on their years of trial experience. As to the various instances listed by Applicant, counsels testified they do not believe these particular exchanges warranted an objection nor did they have any impact on Applicant’s trial.

This Court agrees with counsels and finds Applicant has failed to establish his burden of proof as to this allegation. The record shows trial counsel routinely objected to leading questions and other objectionable issues during trial and some of these objections were sustained while others were overruled. Applicant has failed to establish any objectionable instances where



counsels should have objected that had any impact whatsoever on the outcome of his trial. Accordingly, this Court finds this allegation must be denied and dismissed with prejudice.

Allegation that counsel was ineffective for failing to object to Agent Barwick's recital of statements made at the bond hearing by the Attorney General that the Applicant had a twin and attempted to use his identity to allude police and other improper comments by testifying agents.

As a seventh allegation, Applicant asserts trial counsels were ineffective for failing to object to Agent Barwick's recital of statements made at the bond hearing by the Attorney General that Applicant had a twin and attempted to use the identity of his twin to allude law enforcement and other improper comments by testifying agents. (R. p. 339, l. 22). Applicant testified his identity was a crucial issue at trial and the State improperly implied he had used his twin brother to evade arrest. He also testified several witnesses discussed his identical twin brother in advance of their testimony.

When questioned about this allegation, counsels both testified using Applicant's twin brother throughout trial was a main component of their trial strategy to attack and challenge Applicant's identity. They testified, and the record reflects, that Applicant's twin brother was utilized early in the trial by defense counsel and they continued to question the co-conspirator witnesses about Applicant's twin throughout trial. Counsel testified he believes the defense opened the door to the State questioning law enforcement about Applicant's twin brother but it was based on a deliberate and well-reasoned trial strategy to attack Applicant's identity.

This Court finds Applicant cannot meet his requisite burden of proof as to this allegation and denies relief. The record establishes that during the testimony of Agent Barwick, the State asked him to elaborate on a conversation between two co-conspirators, Ms. Eades and Ms. Lollis, at their bond hearings and Agent Barwick responded:

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Uh, there was discussion about their bonds not being reduced and . . . not bein' happy about that and reduced and then the discussion I think that they were alluding to earlier 'bout Mr. Tate was that they learned at the bond hearing, uh, when Mr. Underwood was presenting information to Judge Cooper that, uh, Mr. Tate had a twin brother, that it was at that point in time my understanding that they learned this. Uh, Mr. Underwood went on to explain that, uh, he had a twin brother and Mr. Tate attempted to use his brother's identity to elude police when he was, uh, when when they approached him in in Georgia on our charges because once our indictments were issued we issued charges for him and he, uh, tried to use his brother's ID to stop being arrested, well Mr. Underwood was explainin' this to the judge and during that conversation, uh, Ms. Eades and them heard this and and they were talkin' about that on the way back to the LEC.

Tr. p. 339-40.

At this point during Applicant's trial, the jury had already been advised that Applicant had an identical twin brother. The defense team had questioned several witnesses about Applicant's identical twin brother and had also elicited testimony or challenged the witnesses as to whether they had discussed that Applicant had an identical twin brother with other co-conspirators in an attempt to make sure their testimonies would be consistent—a valid trial strategy to attach these witnesses' credibility. Accordingly, the State was merely responding to this line of inquiry as posed by the defense, which was part of a reasonable trial strategy by the defense to paint the co-conspirators as untruthful and to attack their identification of Applicant as the mastermind of this methamphetamine ring. Accordingly, Applicant cannot meet his requisite burden of proof as to this allegation, which this Court denies and dismissed with prejudice/

Allegation that counsel was ineffective for failing to move to suppress or object to the admission of drugs, money, drug paraphernalia, phones, and a weapon recovered from Jason Griffin, Rachael Eades and Christopher Simmons

As an eighth allegation, Applicant asserts trial counsels were ineffective for failing to move to suppress or object to the admission of drugs, money, drug paraphernalia, phones, and a weapon recovered from Jason Griffin, Rachael Eades and Christopher Simmons. Applicant



testified he asked his attorneys to object to this evidence but they failed to do so. He also complains the State mentioned this evidence during closing and counsels failed to object.

When questioned about this allegation, Mills testified whether co-conspirators were found with methamphetamine and that evidence was introduced was wholly irrelevant to Applicant's defense of identity and that he was not involved with the trafficking ring. He elaborated there was no evidence tying Applicant to these particular drugs and drug paraphernalia and he did not believe he had any valid standing to challenge the evidence based on Fourth Amendment grounds.

This Court finds Applicant cannot meet his requisite burden of proof as to this allegation. As discussed above, it is abundantly clear from the record that the defense strategy was to challenge identity and specifically argue to the jury that Applicant was not involved with any conspiracy to traffic methamphetamine—not that this particular methamphetamine ring did not exist. Accordingly, the testimony and evidence pertaining to drugs, money, drug paraphernalia, phones, and a weapon recovered from Jason Griffin, Rachael Eades and Christopher Simmons was wholly irrelevant to the defense strategy. Moreover, there was nothing tying Applicant to this particular evidence recovered from these co-conspirator and accordingly, could not have impacted the verdict in any substantial way. Accordingly, Applicant cannot meet his requisite burden of proof as to this allegation, which this Court denies and dismisses with prejudice.

Allegation that counsel was ineffective for failing to challenge the identification procedure

As a ninth allegation, Applicant asserts trial counsels were ineffective for failing to challenge the identification procedure. At the evidentiary hearing, Respondent acknowledged a pre-trial hearing to determine the admissibility of the lineup should have been conducted pursuant to Neil v. Biggers, 409 U.S. 188, 196 (1972) and counsel's failure to request such a pre-



trial hearing could be construed as deficient performance. However, Respondent argued Applicant still cannot prevail on this claim, as there is nothing to establish the identifications would have been excluded had a pre-trial hearing been conducted, and therefore, Applicant cannot establish any requisite prejudice. This Court agrees.

At the evidentiary hearing, Mills (who handled the cross-examination of the co-conspirator witnesses) testified in detail regarding the admission of all nine of the identifications that were admitted by the State at Applicant's trial. Mills testified each identification was made by a cooperating co-conspirator witness who testified regarding the method and procedures used by law enforcement and the level of certainty in which the witness selected Applicant as the person who sold them methamphetamine. Mills testified each identification made was not based on suggestive procedures from law enforcement and the witnesses all had a great deal of certainty regarding the identifications. Accordingly, he did not believe there was any arguable basis in which he could keep out any of the identifications, which he believes were all properly conducted by law enforcement and properly admitted into evidence.

When Farnham was questioned regarding the identifications, he testified the defense team thoroughly reviewed all the identifications and found there was nothing suggestive that would have led to exclusion of any of the identifications. Moreover, he elaborated the defense team wanted the identifications admitted into evidence because one of their main defense arguments was that it was Applicant's twin brother who had sold the methamphetamine, not Applicant, and the identifications supported (or at the least were irrelevant to) this defense strategy.

This Court finds Applicant cannot meet his requisite burden of proof as to this allegation, which must be denied and dismissed with prejudice, as there is no reasonable likelihood any of the identifications would have been suppressed had counsels challenged their admission.

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When evidence of an eyewitness identification is introduced during a criminal trial, a defendant may be deprived of due process of law if the identification procedure employed in the particular case was unnecessarily suggestive and highly conducive to **irreparable** mistaken identification. Neil v. Biggers, 409 U.S. 188, 196 (1972). In determining the admissibility of identification evidence, a court must conduct a two-prong inquiry into the matter. See id. at 199-200 (outlining the necessary inquiry regarding out-of-court identifications and the factors to be weighed when determining reliability). That inquiry involves first ascertaining whether the identification process was unduly suggestive and then determining whether the out-of-court identification was nevertheless so reliable no substantial likelihood of misidentification existed. State v. Govan, 372 S.C. 552, 558, 643 S.E.2d 92, 95 (Ct. App. 2007); see State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012) (“Due process requires courts to assess, on a case-by-case basis, whether the identification resulted from unnecessary and unduly suggestive police procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed.”).

Importantly, even assuming the particular identification procedure used in a case is found to be unduly suggestive, identification evidence may still be admissible if the State can prove by clear and convincing evidence the identification is reliable notwithstanding the suggestiveness of the identification procedure employed. Govan, 372 S.C. at 559, 643 S.E.2d at 95-96. “Reliability is the linchpin in determining the admissibility of identification testimony.” State v. Brown, 356 S.C. 496, 504, 589 S.E.2d 781, 785 (Ct. App. 2003). To determine whether the identification is reliable, a court must look to: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness’s degree of attention; (3) the accuracy of the witness’s prior description of the criminal; (4) the level of certainty demonstrated by the witness



at the confrontation; and (5) the amount of time between the crime and the identification. Govan, 372 S.C. at 559, 643 S.E.2d at 96; see also State v. Scipio, 283 S.C. 124, 127, 322 S.E.2d 15, 17 (1984) (“The reliability of an identification is determined by the facts.”). “[I]f the indicia of reliability are strong enough to outweigh the corrupting effect of the police-arranged suggestive circumstances, the identification evidence ordinarily will be admitted, and the jury will ultimately determine its worth.” Perry v. New Hampshire, ___ U.S. ___, 132 S. Ct. 716, 720 (2012).

Significantly, “[a] conviction based on a suggestive pretrial photographic lineup and a subsequent in-court identification will be set aside only if ‘the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.’ ” State v. Carlson, 363 S.C. 586, 599-600, 611 S.E.2d 283, 290 (2005) (quoting Simmons v. United States, 390 U.S. 377 (1968)); see Brown, 356 S.C. at 504, 589 S.E.2d at 785 (“Suggestiveness alone does not mandate the exclusion of evidence.”). Thus, even where a suggestive out-of-court identification procedure is employed, an “in-court identification is admissible if based on information independent of the out-of-court procedure.” Carlson, 363 S.C. at 600, 611 S.E.2d at 290. Critically, the exclusion of evidence is a “drastic sanction” and should be “limited to identification testimony which is manifestly suspect.” Harker v. Maryland, 800 F.2d 437, 443 (4th Cir. 1983).

In the present case, there is nothing to establish the trial court would have excluded the identifications had a pre-trial hearing been requested as there is no evidence that law enforcement used any sort of improper methods or suggested who the co-conspirators should select during the identification procedure, and therefore, Applicant cannot establish that it was unduly suggestive. Moreover, there is no substantial risk of irreparable misidentification as the



co-conspirators testified were certain in their identifications. At the evidentiary hearing, Respondent and Mills painstakingly reviewed all nine of the six-pack photo lineup identifications and the record supports that each lineup was properly conducted by law enforcement without coercive or suggestive procedures. See State's Ex. No. 1-9, Trial Tr. 58, 76-77. 155-60, 287-89, 412-16, 541-46, 480-88, 590-98, 614-16, 642-49. Moreover, the record establishes there was no irreparable risk of misidentification based on the certainty of the identifications. Accordingly, the identifications made by the various co-conspirators would have been admissible at trial and trial counsel's failure to move for a pre-trial hearing to determine admissibility of the identifications pursuant to Neil v. Biggers had no result on the outcome of the trial. Accordingly, this Court finds Applicant cannot establish the result of his proceeding would have been different but for counsel's failure to challenge the identifications. Accordingly, this allegation must be denied and dismissed with prejudice.

Allegation that counsel was ineffective for advising Applicant not to testify, failing to investigate, and failing to present defense witnesses

As a tenth allegation, Applicant asserts trial counsels were ineffective for advising Applicant not to testify, failing to investigate, and failing to present defense witnesses. At the evidentiary hearing, Applicant testified he did not testify at trial on the advice of counsels, who advised him they did not believe his testimony would be needed based on the evidence presented by the State. He acknowledged he was properly advised by the trial court about his right to testify and he informed the court it was his decision not to take the stand in his own defense. He testified he also provided counsels with the names of six witnesses who could have testified to prove that he did not sell drugs and only sold auto parts. At the hearing, the only witness Applicant presented was Chastity Raines, the mother of his children, who testified she was present at Applicant's trial and prepared to testify that she was involved in a single transmission



sale with some of the co-conspirators and drugs were not purchased. She testified she was never called as a witness despite being sequestered outside the courtroom and prepared to testify.

When questioned about this allegation, Mills testified the defense team thoroughly reviewed Applicant's right to testify with him and Applicant knowingly, voluntarily, and intelligently elected not to present a defense including not testifying. He testified the trial court also reviewed Applicant's right to testify with him and Applicant affirmed on the record under oath that he did not wish to testify or present a defense. Farnham testified similarly and acknowledged while he has no independent recollection of advising Applicant regarding his right to testify and present a defense, this is his standard practice he follows in every criminal trial and has no reason to believe he differed in this case.

Both counsels also testified they elected not to present any witnesses on Applicant's behalf because they had adequately challenged the State's case based on identity, lack of evidence showing Applicant sold any methamphetamine, and the lack of credibility of the various co-conspirators. Mills also testified he did not believe any witnesses would have been beneficial based on the nature of the State's case. He elaborated alibi witnesses were not practical based on the vast timeline of the conspiracy, Applicant's twin was not willing to testify and implicate himself, and character witnesses would have been irrelevant to the case. He testified the defense team reviewed this with Applicant at the close of the State's case and he was in agreement not to present witnesses.

This Court finds Applicant cannot meet his requisite burden as to this allegation. As to Applicant's allegation that trial counsels were ineffective for advising him not to testify, this allegation must fail as Applicant was thoroughly and adequately advised by the trial court regarding his right to testify. In response, Applicant told the trial court he had sufficiently talked

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to his attorneys about his right to testify and even told the court he informed his attorneys there was no need for much of a discussion because he did not intend to testify. (Tr. 671-74). He elaborated that he was not involved in this conspiracy and had nothing to add to the case because he had no knowledge. (Tr. 673-74). He affirmed that it was his decision alone not to testify. (Tr. 674. Accordingly, Applicant cannot now assert the contrary to what he previously told the trial court while under oath—that he did not want to testify and the choice was his alone.

As to Applicant's allegation that trial counsel failed to investigate or present witnesses on his behalf, this allegation is refuted by the record, which shows counsels were thoroughly prepared for trial and had clearly investigated the underlying facts of his case. "Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary." Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014) (citing Strickland, 466 U.S. at 691). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to undertake a particular investigation should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Bagwell, 410 S.C. at 265, 763 S.E.2d at 633 (citing Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006)). "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). "Counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions." Bagwell, 410 S.C. at 265, 763 S.E.2d at 634. (internal citations



omitted). “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Strickland, 466 U.S. at 690. The record shows trial counsels investigate and then presented his identical twin brother to multiple witnesses throughout the trial. Moreover, the record establishes a clearly defined trial strategy—to attack the identification of Applicant as participant in the drug conspiracy. Accordingly, Applicant cannot meet his requisite burden of proof as to this allegation, which this Court denies and dismisses with prejudice.

Allegation that counsel was ineffective for failing to argue Applicant’s sentence exceeded the maximum sentence for conspiracy

As an eleventh allegation, Applicant asserts trial counsels were ineffective for failing to argue his sentence exceeded the maximum sentence for conspiracy. This Court finds this allegation is patently without merit, as Applicant’s sentence of twenty-five years’ imprisonment is the mandatory minimum sentence he could have received upon conviction.

Applicant was indicted for and convicted of trafficking in methamphetamine (conspiracy) (400 grams or more) pursuant to S.C. Code Ann. § 44-53-375(C)(5), which states in relevant part:

(C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as “trafficking in methamphetamine or cocaine base” and, upon conviction, must be punished as follows if the quantity involved is:

(5) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.



S.C. Code Ann. § 44-53-375

Applicant was sentenced to the mandatory minimum sentence he could receive upon conviction—twenty-five years' imprisonment. Accordingly, this allegation is without merit and is denied and dismissed with prejudice.

Allegation that counsel was ineffective for failing to move to quash the indictment arguing that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction; and failing to argue in directed verdict that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction

As twelfth, thirteenth, and fourteenth allegations, Applicant asserts trial counsels were ineffective for failing to move to quash the indictment arguing that the underlying statute did not have the force of law under Article III, Section 18 of the South Carolina Constitution and Article I, Section 23 of the South Carolina Constitution and lack of extraterritorial jurisdiction; and failing to argue in directed verdict on the same grounds. Applicant also asserts due process violations on the same grounds. In support of this allegation, Applicant presented a letter from the South Carolina Department of State Archives dated April 19, 2018, stating 1993 Act No. 184 does not have a visible impression of the great seal. He testified his attorneys failed to argue the statute was improper based on the lack of a great seal. He also argues trial counsels failed to argue the State of South Carolina lacked jurisdiction over him because the drug sales occurred in Georgia.

When questioned about these specific allegations, counsels testified there was no proper basis to object to the indictments on either a great seal argument or extraterritorial jurisdiction argument. Mills elaborated the extraterritorial jurisdiction issue was addressed in Applicant's direct appeal and the Court of Appeals expressly found there to be no merit to this claim.



This Court finds Applicant cannot meet his requisite burden of proof as to any of these allegations. As to Applicant's allegations pertaining to extraterritorial jurisdiction, on appeal, Applicant argued the trial court did not have jurisdiction over Applicant because any purported crimes occurred in Georgia not South Carolina. The Court of Appeals expressly rejected this argument, finding, "the State presented overwhelming evidence that Tate committed acts intended to produce and producing detrimental effects within South Carolina." Accordingly, Applicant cannot now argue he is entitled to a new trial based on trial counsels' failure to move to quash the indictment and for a directed verdict on the same grounds that were already expressly rejected by the Court of Appeals. Applicant cannot meet his require burden of proof as to these allegations, which are denied and dismissed.

This Court also finds Applicant's allegations regarding counsels' purported ineffectiveness for failing to move to quash his indictments and for failing to move for a directed verdict pertaining to S.C. Code Ann. § 44-53-375 based on an alleged lack of the Great Seal in violation of Article III, Section 18 of the South Carolina Constitution, as well as his similar allegation he was denied due process because the statute lacked the Great Seal, are wholly without merit and are denied.

Pursuant to South Carolina Constitution, Article III, Section 18. "No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: Provided, That either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by its title only".

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'B' shape with a long, sweeping tail that curves upwards and to the right.

The South Carolina Supreme Court has held absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. Smith v. Jennings, 67 S.C. 324, 45 S.E. 821, 824 (1903). Furthermore, under the enrolled bill rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of Secretary of State. Medical Soc. of South Carolina v. Medical Univ. of South Carolina, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); Beaufort County v. Jasper County, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); State v. Town Council of Chester, 39 S.C. 307, 17 S.E. 752, 755 (1893) (“when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable”).

At the time Applicant was indicted in 2015, S.C. Code Ann. § 44-53-375 was properly ratified and approved pursuant to 2010 Act No. 273, § 38, which went into effect on June 2, 2010. See 2010 Act No. 273, § 38 (noting the legislation was ratified on June 1, 2010 and approved on June 2, 2010). This legislation was properly ratified, signed by the Governor, and the Great Seal was affixed to the Act on or about the time it was enrolled with the Office of the Secretary of State on June 8, 2010. Applicant’s assertions he is entitled to post-conviction relief because the Great Seal of the State of South Carolina is missing from an outdated statute under which he was not indicted lack merit. This Court finds these allegations pertaining to the great seal are without merit and must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for



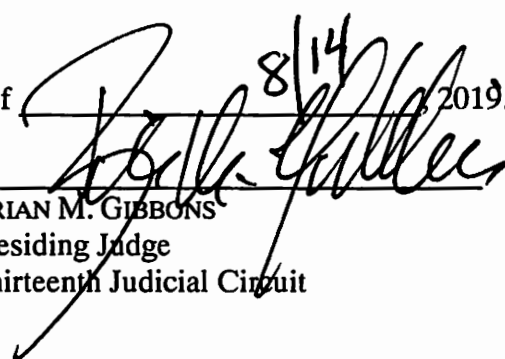
post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes that if Applicant wishes to appeal this order, Applicant, though his counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

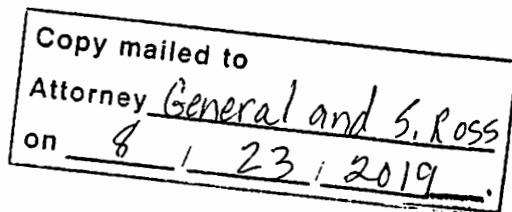
IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this _____ day of _____, 2019.


 BRIAN M. GIBBONS
 Presiding Judge
 Thirteenth Judicial Circuit

, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ANTONIO EMERSON TATE,
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
)
)

) MOTION TO ALTER OR AMEND THE
) JUDGMENT
)
)

) CASE # 2016-CP-23-5259
)

19 SEP 4 PM 3:19
Paul Wickensimer COC 6VL SC

COMES NOW the Applicant and hereby moves pursuant to Rule 59(e), SCRCF, to alter or amend the judgment of this Court filed on August 23, 2019. The eleventh allegation that the Applicant argued regarding his sentence exceeding the maximum sentence for conspiracy is not fully addresses in the Order denying post-conviction relief in his case. (Order p. 30)

Citing State v. Castineira, the Applicant argues that his lawyer was ineffective for failing to argue that sentence exceeded the maximum because he should have been sentenced to twelve and one-half to fifteen years pursuant to S.C.Code Ann. § 44-53-420. The Court in Castineira reasoned:

A plain reading of the language of section 44-53-370 establishes that the legislature intended to include conspiracy within the substantive framework of the offense of trafficking. The trafficking statute delineates conspiracy to sell, manufacture, deliver, or bring into the State more than ten grams of cocaine as a violation. Violations of this statutory offense are known as "trafficking in cocaine." State v. Wilson, 315 S.C. 289, 294, 433 S.E.2d 864, 867 (1993). Specifically, the language exempting trafficking convictions from the conspiracy penalty provision states that "a person convicted of conspiracy *pursuant to this subsection* must be sentenced as provided in this section." S.C.Code Ann. § 44-53-370(e) (Supp.1999) (emphasis added).

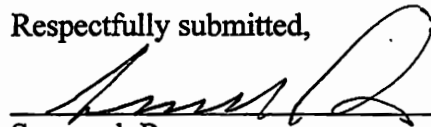
State v. Castineira, 341 S.C. 619, 626, 535 S.E.2d 449 (S.C. App., 2000)

Unlike in Castineira who was convicted under S.C.Code Ann. § 44-53-370(e), the Applicant here was indicted and convicted under S.C.Code Ann. § 44-53-375(c)(e). That statute

uses the identical language to define trafficking as S.C.Code Ann. § 44-53-370(e) including the language "or conspires to sell....". However, unlike S.C.Code Ann. § 44-53-370(e), § 44-53-375 does not contain the following sentence, "Notwithstanding Section 44-53-420, a person convicted of conspiracy pursuant to this subsection must be sentenced as provided in this section with a full sentence or punishment and not one-half of the sentence or punishment prescribed for the offense." The presence of that language in section 44-53-370 shows that the legislature could and did include such language when the intent of the statute was to exempt conspiracy to traffic convictions from the punishment for conspiracy as prescribed in Section 44-53-420. S.C.Code Ann. § 44-53-375(c)(e) does not contain that language.

For the foregoing reasons, the Applicant requests this Court to alter its Order of Dismissal and grant Applicant relief.

Respectfully submitted,



Susannah Ross
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Greenville, South Carolina

This 4 day of Sept, 2019

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

SYLVESTER KING,)

Applicant,)

vs.)

THE STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2018-CP-23-3013

AFFIDAVIT OF SERVICE
BY MAIL
 '19 SEP 4 PM 3:19
 Paul Wickensimer COC GUL SC

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **59 (e) motion** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of the Attorney General
 PCR Division
 P.O. Box 11549
 Columbia, SC 29211


 Attorney for Defendant

This 4 day of Sept, 2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ANTONIO EMERSON TATE,
APPLICANT,

v.

THE STATE OF
SOUTH CAROLINA,

RESPONDENT.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

ORDER DENYING APPLICANT'S
MOTION TO RECONSIDER
ALTER OR AMEND

CASE # 2016-CP-23-5259

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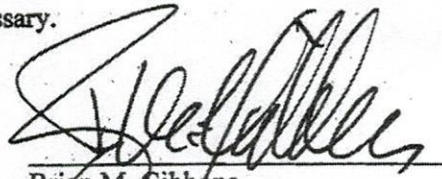
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After further deliberation, review of the Court's extensive notes, and considering the evidence presented and applicable law, the Court respectfully denies the applicant's motion to reconsider/ alter or amend. Further hearing is not necessary.

AND IT IS SO ORDERED.

Chester, S.C.

September 23, 2019


Brian M. Gibbons
Circuit Court Judge

Copy mailed to
Attorney general / S. Ross
on 10 / 01 / 19

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

The State of South Carolina,)

v.)

Antonio Tate,)

Defendant)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

2011-GS-47-07

ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL**FILED**

JUL - 8 2013

JAMES R. PARKS
CLERK, STATE GRAND JURY

THIS MATTER is before the Court on Defendant's motion for a new trial. Defendant's motion is made pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. Defendant argues that this Court erred in failing to grant Defendant's Motion for a Directed Verdict and that the jury verdict is not supported by the evidence presented at trial. This Court denies Defendant's motion, finding that the State presented sufficient evidence at trial upon which the jury could find the Defendant guilty of Conspiracy.

June 27, 2013


 Letitia H. Verdin
 Circuit Judge

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Letitia H. Verdin, Circuit Court Judge

Case No. 2013-001562

The State of South Carolina, ... Respondent,

v.

Antonio Emerson Tate, ... Appellant.

FINAL BRIEF OF APPELLANT

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