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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Greenville County

Honorable J. Cordell Maddox, Circuit Court Judge

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ANTONIO OCHOA-TAVERA,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001115

---

# APPENDIX

---

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STATE OF SOUTH CAROLINA )
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE )

THE STATE )
)
-vs- ) TRANSCRIPT OF RECORD
) 2014-GS-23-09505
MANUEL CRUZ, ANTONIO ) 2014-GS-23-09513
OCHOA-TAVERA, )

DEFENDANTS. FEBRUARY 9, 2015
GREENVILLE, SOUTH CAROLINA

(VOLUME I)

B E F O R E:

THE HONORABLE DANIEL D. HALL, JUDGE. ; And a Jury.

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

JOYCE MONTS, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

JOHN CRANGLE, ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR DEFENDANT MANUEL CRUZ

SCOTT ROBINSON, ESQUIRE
ATTORNEY FOR DEFENDANT ANTONIO OCHOA-TAVERA

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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THE COURT: The court is on the record in the matter of the State versus Antonio Ochoa-Tavera on Indictment 2014-GS-23-9505 and State versus Manuel Cruz, Indictment 2014-GS-23-9513.

Your client -- your clients need to be out here?

MR. CRANGLE: They do. They are on their way, judge.

(Off the record)

(Back on the record)

THE COURT: We are on the record in the matter of 2014-GS-23-9505, 2014-GS-23-9513, the State versus Manuel Cruz on 9513, and Antonio Tavera on 9505.

This is a criminal case involving interpreters to aid the defendants.

Madam Clerk, I'm going to ask that you place the interpreter under oath.

THE CLERK: Thank you.

Do you solemnly swear that you will accurately interpret the language requested in this courtroom of the defendant or the witnesses without additions thereto, or detractions therefrom, or any other amendments of your interpretation, so help you God?

INTERPRETER TERESA SAMPSON: Yes, I do.

THE COURT: And would you please state your name?

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INTERPRETER TERESA SAMPSON: Teresa Sampson.

THE COURT: I find that Ms. Sampson is qualified to serve as interpreter and has been duly sworn.

THE COURT: Are there matters that need to be taken up?

Mr. Crangle, you had something that you needed to bring before the court before the jury comes up?

MR. CRANGLE: Yes, judge, and we also have one more interpreter that needs to be sworn.

THE COURT: Okay, I'm sorry.

THE CLERK: I'm sorry. Yeah, I did know that. I'm so sorry.

Would you please stand? Raise your right hand.

Do you solemnly swear that you will accurately interpret the language requested in this courtroom of the defendant or witnesses without additions thereto, or detractions therefrom, or any other amendments of your own interpretation, so help you God?

INTERPRETER MARINETA JIMINEZ: Yes, I do.

THE CLERK: And would you please state your name?

INTERPRETER MARINETA JIMINEZ: My name is Marineta Jiminez.

THE CLERK: Thank you.

MS. MONTS: And, Your Honor, if I may, there was an interpreter here for the court's purposes. For some

reason she's stepped out. She had to move her car, Your Honor.

THE COURT: Okay. Well, I think we can proceed without the court having an interpreter at this point.

So Mr. Crangle, I'll be glad to hear from you.

MR. CRANGLE: Thank you, judge.

From the defense we both have -- we are joining in the motion just for -- I'm not sure Your Honor's voir dire would be to the jury about the questions, but we would just have maybe two or three proposed questions for voir dire.

THE COURT: I'll be glad to take a look at them.

MR. CRANGLE: All right. Well, we haven't written them out fully, but --

THE COURT: All right.

MR. CRANGLE: Just one would be has anyone ever been the victim of a violent crime or know anyone that's a victim of a violent crime.

THE COURT: All right.

MR. CRANGLE: The second would be is anyone involved in a victim's advocacy group, such as MADD or other organizations.

And then finally, because it's a drug case, specifically a drug trafficking case, has anyone been extremely impacted by drug use. I'm just looking for someone that would be so bias and they have had a close

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family member with addiction, or something like that. I'm not looking to get into any other background or drug use, just extreme impact of drug use. That would be the three that I would propose, Your Honor.

THE COURT: And what's the State's position?

MS. MONTS: Your Honor, the second one I believe it was know anyone who has been --

THE COURT: Yeah, I'll cover that.

MS. MONTS: That's little broad, Your Honor.

THE COURT: Well, I'll cover that in a standard charge about has any member of the jury panel -- I think -- let's see. A member or contributor to any group which as its primary concern the promotion of law enforcement, victims rights, includes MADD, SADD, or CAVE. I mean, I'm going to charge that.

MS. MONTS: Yes, Your Honor.

The one that said do you know anyone that -- I think the second one was do you know anyone who has been a victim of a violent crime.

THE COURT: That was their first one.

MS. MONTS: I'm sorry.

THE COURT: What's your position on that one?

MS. MONTS: Your Honor, I just think that's a little broad.

THE COURT: Yeah, I'm not going to ask that

question.

I will ask the question about does any member of the jury panel have a family member that has suffered with significant drug addiction.

MR. CRANGLE: Thank you, Your Honor.

THE COURT: Does that cover that?

MR. CRANGLE: Yes, judge.

THE COURT: Anything else?

MR. CRANGLE: Nothing from the defense, Your Honor.

MS. MONTS: Nothing from the State, Your Honor.

(Off the record)

(Back on the record)

THE COURT: The court has been informed that there has been a malfunction in the clerk's system or technology in which they pull jurors and they can do some things manually that may take a significant amount of time, or we can break for lunch and then they would be ready at two. So I think that's probably the most prudent thing to do at this point is that we will -- we will break for lunch. Be back in here -- be back in here at about ten 'til two. That way we would be ready to go. Hopefully the jury would be ready to go. They will have those glitches ironed out.

We think, Madam Clerk, should be able -- we should be on the normal way of functioning at two, right?

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THE CLERK: We certainly hope so, yes, sir.

THE COURT: All right. So that's where we are, so we will be at ease until about ten 'til two.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT: Is the State ready?

MS. MONTS: Yes, Your Honor.

THE COURT: Defense?

MR. CRANGLE: Yes, judge.

THE COURT: I think we had an interpreter who was not certified and I'm instructed that we need to have certified interpreters and I have been informed that we have one here now. I'm going to ask the clerk to place her under oath.

THE CLERK: Please raise your right hand.

Do you solemnly swear that you will accurately interpret the language requested in this courtroom of the defendant or a witness without additions thereto, or deletions therefrom, or any other amendments of your own interpretation, so help you God?

INTERPRETER RUBY LENE TUGGY STEPHENS: Yes.

THE COURT: We need her full name for the record.

THE CLERK: Please state your name for the record.

INTERPRETER RUBY LENE TUGGY STEPHENS: My name is Ruby Lene Tuggy Stephens. That's R-U-B-Y L-E-N-E T-U-G-G-Y

S-T-E-P-H-E-N-S.

THE COURT: Thank you, Ms. Stephens.

MS. MONTS: Your Honor, do we have the court reporter for the court -- I mean the interpreter for the court? Mary, do you know where she went?

If I may, Your Honor, my understanding is that one person is the interpreter for Mr. Ochoa-Tavera, one person is the interpreter for Mr. Cruz, and then there is an interpreter for the court.

THE COURT: That is new to me. I mean, I have never seen that done. We haven't -- in York County the few that we have done, we have not had an interpreter provided for the court. Is that generally your practice here, or --

MS. MONTS: Your Honor, it's a very novel issue for us. I think we just wanted to make sure if what the witness -- if the defense -- if the defendants testify, that the neutral party, and that would be the one for the court, would be interpreting for the jury, and there might be other times we need a neutral party interpreting.

THE COURT: All right. And what is her status?

MS. MONTS: She was here earlier.

Did you say earlier she went down to move her car? Somebody said that.

THE COURT: That was earlier.

Well, we won't need her at the earliest until

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after we get the jury selected --

MS. MONTS: Yes, sir.

THE COURT: -- and so if you could just -- who gets her here? Does the solicitor?

MS. MONTS: The clerk's office got her for the --

(Off the record)

(Back on the record)

MS. MONTS: Your Honor, my understanding is there was one here and we will have to check with the clerk's office, because someone got -- we requested one a long time ago and there was another one here this morning and apparently the lady, who was just sworn in, was here for the court earlier, but she's swapped out --

THE COURT: Okay.

MS. MONTS: -- with the other lady because the other lady was not court appointed.

THE CLERK: She was not court certified.

MS. MONTS: Court certified.

THE CLERK: We understand if it's in trial, they have to be certified from Columbia. She's taken the training, but hasn't been qualified -- hasn't been certified yet.

THE COURT: So I assume out of an abundance of caution y'all wanted a neutral interpreter --

MS. MONTS: Yes, Your Honor.

THE COURT: -- to protect the record in case there was some issue later on and you wanted to make sure there was not an issue.

MS. MONTS: Yes, Your Honor, and to have someone to interpret for --

THE COURT: Well --

MS. MONTS: -- from us when we question, if the -- you know, if one of the defendants take the stand, if we question them, that the interpreter can interpret to him and then interpret the response back to the court and to the jury.

THE COURT: I don't know how y'all handle that logistically. I'm perfectly happy to go forward as far as we can without that --

MS. MONTS: Okay.

THE COURT: -- and then he'll leave that up to whoever.

MS. MONTS: Thank you.

Can you e-mail Lisa, or somebody down there, because we had somebody, and just see what the status is and apparently we need someone else.

THE CLERK: Okay. Okay.

MS. MONTS: Thank you, judge.

THE COURT: All right.

(Off the record)

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(Back on the record)

THE COURT: Again, we are on the record in the matter of State versus Manuel Cruz, 2014-GS-23-9513, charged with trafficking methamphetamine. And Mr. Cruz is represented by --

MR. CRANGLE: Mr. Crangle with the Public Defender's office.

THE COURT: Mr. Crangle from the Public Defender's office.

Mr. Crangle, are you prepared to go forward?

MR. CRANGLE: I am today.

THE COURT: How does your client plead, guilty or not guilty?

MR. CRANGLE: My client pleads not guilty.

THE COURT: And is he requesting a jury trial?

MR. CRANGLE: He does, Your Honor.

THE COURT: Okay. We are also here in court on the matter of State versus Antonio Tavera, Indictment 2014-GS-23-9505, trafficking methamphetamine, and Mr. Tavera is represented by Mr. Robinson, is that correct?

MR. ROBINSON: That is correct, Your Honor.

THE COURT: Mr. Robinson, how does your client wish to plead, guilty or not guilty?

MR. ROBINSON: Not guilty, Your Honor. We are ready to proceed.

THE COURT: You are ready to proceed.

And, again, is the State ready?

MS. MONTS: Yes, Your Honor.

THE COURT: All right. And then I think we are waiting to bring a jury up, right?

We will be at ease until the jury gets here.

THE CLERK: Your Honor?

THE COURT: Yes.

THE COURT: Your Honor, the interpreter has a question.

THE COURT: Yes, ma'am.

INTERPRETER RUBY LENE TUGGY STEPHENS: Your Honor, for what it's worth, Ms. Teresa and I were both called here by the Clerk of Court's office for the court. Because we have two defendants, that's why we are each interpreting quietly for the defendants so that we don't have to do this all consecutively. We can do it simultaneously and take less time. We are both here for the court.

THE COURT: That's fine. You are Ms. Stephens?

INTERPRETER RUBY LENE TUGGY STEPHENS: I am.

THE COURT: Is that -- we understand that Ms. Stephens. We are in good shape --

INTERPRETER RUBY LENE TUGGY STEPHENS: Yes.

THE COURT: -- as far as you are concerned.

INTERPRETER RUBY LENE TUGGY STEPHENS: Neutral.

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We are not here for one side or the other.

THE COURT: Okay.

THE CLERK: Your Honor, are you ready for the panel?

THE COURT: Yes, sir.

(Whereupon, the jury venire panel entered the courtroom)

THE COURT: Is the State ready?

MS. MONTS: Yes, Your Honor.

THE COURT: Defense ready?

MR. CRANGLE: Yes, Your Honor.

MR. ROBINSON: Yes, sir, judge.

THE COURT: Ladies and gentlemen of the jury panel, we are about to begin the trial of the case of the State of South Carolina against Antonio --

How do you pronounce Mr. Tavera's full name?

MR. ROBINSON: It's Ochoa, Your Honor, Tavera.

THE COURT: Ochoa-Tavera. He's indicted for trafficking in methamphetamine on True Billed Indictment 2014-GS-23-9505; and the case of the State versus Manuel Cruz, indicted on True Billed Indictment 2014-GS-23-9513 for trafficking in methamphetamine.

Before we select a jury there are several questions that I'm going to ask you and I'm going to ask that you listen very closely to these questions.

One is is any member of the jury panel related by blood or marriage to either the defendant -- the defendants Manuel Cruz or Antonio Tavera? If so, please stand.

No one stands.

Has anyone ever had a close personal or social relationship with either of the defendants in this case? If so, please stand.

No one stands.

I'm going to read a list of possible witnesses in the case. I'm going to ask you when I get through reading the list, if any of you are related by blood or marriage or have any close personal or social relationship with any of these people.

Let me explain to you as well is that the two defendants in this case do not speak English and they have interpreters. I notice the jury is looking at some of that. The defendants have some interpreters explaining to them what's going on.

So this is the list of the potential witnesses.

Jonathan Garrett with the Greenville County Sheriff's Office and the DEA Task Force.

Christopher Ross Brown, the DEA Task Force.

Zachary Hinton of the Greenville County Sheriff's Office.

Mason Hubber from the Greenville County Sheriff's

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Office.

Chad Maltby, Greenville County Sheriff's Office.

David W. Oglesby, the Drug Enforcement Agency.

Christopher Pletcher, Greenville County Sheriff's Office.

Mark Poag, DEA.

Randy Smith, DEA.

Jacob Walters, Greenville County Sheriff's Office.

Matthew Waters, Greenville County Sheriff's Office.

John Westmoreland, Greenville County Sheriff's Office.

D. Kretschmar, forensics.

Dar Shaw, forensics.

Shawn Vile, forensics.

Melanie Watson, property and evidence.

Kara Bennick, property and evidence.

Sean Collins, crime lab.

Kelly S. Dixon, crime lab.

Mauricio Ramirez.

Phillip Lewis.

Max Whatley.

Those are again a list of possible witnesses in this case.

Is anyone on the jury panel related by blood or

marriage to any of these people I have just listed, or do you have a close personal or social relationship with any of those people?

If you would tell us your number, please?

JUROR NUMBER 104: 104. John Westmoreland.

THE COURT: I'm sorry, your name again?

JUROR NUMBER 104, Lorraine Matheny.

Ms. Matheny, who do you know?

JUROR NUMBER 104: John Westmoreland. He's a very close personal friend of my husband.

THE COURT: The fact that you know Mr. Westmoreland, the fact that you know him as a close personal friend of your husband's, would that affect your ability to render a fair and impartial verdict for either the defense or the State in this case?

JUROR NUMBER 104: No, sir.

THE COURT: All right. Thank you. You can be seated.

Anyone else?

Yes, ma'am, your number?

JUROR NUMBER 160: 160.

THE COURT: And your name?

JUROR NUMBER 160: Mary Beth Thornton.

THE COURT: Ms. Thornton, and who do you know?

JUROR NUMBER 160: I'm an employee with the

Greenville County Sheriff's Office, so the names that you mentioned, I know them.

THE COURT: All right. The court will strike Ms. Thornton for cause.

Anyone else?

(No response).

THE COURT: The attorneys in this case are -- I'll let the lawyers introduce themselves.

The attorney for the State, Ms. Monts?

MS. MONTS: Thank you.

Ladies and gentlemen, my name is Joyce Monts. I'm an assistant solicitor for the 13th Circuit Solicitor's Office, which includes Greenville County and Pickens County.

THE COURT: Has any member of the jury panel ever been represented by Ms. Monts, or have a close personal or business relationship with Ms. Monts from the solicitor's office?

(No response).

THE COURT: All right. And the attorneys for the defense?

MR. CRANGLE: Good afternoon. I'm John Crangle. I'm an attorney with the Greenville County Public Defender's office.

THE COURT: Mr. Robinson?

MR. ROBINSON: If it please the court, good

afternoon. My name is Scott Robinson and I'm a private attorney and I practice in Greenville. Thank you.

THE COURT: I ask the panel again, is anybody related by blood or marriage or have a close personal relationship or ever been represented by either of these two attorneys? If so, please stand.

No one stands.

This case, as I have stated earlier, is about these two individuals being charged with trafficking methamphetamine. The indictments allege that on the 2nd day of July, 2014, the defendants did knowingly sell, manufacture, deliver, or bring into the State of South Carolina, or did knowingly provide financial assistance, or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, or bring into this state, or knowingly in actual or constructive possession of more than 200 grams of methamphetamine.

Is there any member of the jury panel who has formed an opinion about this case or any issue that may be involved? If so, please stand.

No one stands.

Is there any member of the jury panel that was a member of the Grand Jury that issued the indictment in this case? If so, please stand.

No one stands.

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Is there any member of the jury panel who is a member of or a contributor to any group which has as its primary concern the promotion of law enforcement or victims rights? These groups would include, but certainly not limited to, MADD, SADD, or CAVE, Citizens Against Violent Crime. Anyone who is a member or contributor to any of those groups? If so, please stand.

No one stands.

Does any member of the jury panel have a close family member who has suffered from or suffers from drug addiction? If so, please stand.

All right. And without going into the details, I'm going to start over here on my right.

Your number?

JUROR NUMBER 182: Carrie Woodward, 182.

THE COURT: Ms. Woodward, the fact that you have a member of your family who suffers from a drug addiction, would that affect your ability to be fair and impartial to both the State and the defendants in this case?

JUROR NUMBER 182: No, but to be transparent, my father was a state prosecutor in Connecticut --

THE COURT: Okay.

JUROR NUMBER 182: -- and did prosecute four to five capital punishment cases.

THE COURT: The fact that your father was a state

prosecutor in the past, would that affect your ability to be fair and impartial to both the defense and to the State in this matter?

JUROR NUMBER 182: Yes.

THE COURT: It would affect your ability?

JUROR NUMBER 182: Yes.

THE COURT: And your number again?

JUROR NUMBER 182: 182.

THE COURT: All right. You can have a seat.

And your number?

JUROR NUMBER 153: 153.

THE COURT: 153?

JUROR NUMBER 153: Yes.

THE COURT: Mr.?

JUROR NUMBER 153: Spadafora.

THE COURT: Spadafora.

The fact that you have a family member who has or suffers from an addiction to drugs, would that affect your ability to be fair and impartial to both the State and to the defense in this case?

JUROR NUMBER 153: No, sir.

THE COURT: Thank you. You may be seated.

And on the front row, your name and number?

JUROR NUMBER 100: 100, Betty Mapes.

THE COURT: Ms. Mapes, the fact that you have or

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may have a family member who has a drug addiction, would that affect your ability to be fair and impartial to both the State and the defense in this particular case?

JUROR NUMBER 100: No, sir.

THE COURT: All right. You may be seated. Thank you.

And your name and number?

JUROR NUMBER 55: Deborah Guerrant, 55.

THE COURT: Ms. Guerrant, the fact that you have a family member that may have suffered or suffers from a drug addiction, would that affect your ability to be fair and impartial in this case today?

JUROR NUMBER 55: I would hope not.

THE COURT: Ma'am?

JUROR NUMBER 55: I would hope not.

THE COURT: All right. You are going to have to be a little more definite than that. I need to know a yes or no.

Could you listen to the evidence that's presented in this courtroom over the next few days and be able to listen to that evidence and be able to render a verdict that's fair and impartial to both the State and to the defense?

JUROR NUMBER 55: I think I could, yes, sir.

THE COURT: All right, Ms. Guerrant, please be

seated.

And your name and number?

JUROR NUMBER 3: Audra Amyx, number 3.

THE COURT: Ms. Amyx, the fact that you have a family member who suffers from a drug addiction, would that affect your ability to be fair and impartial in this case?

JUROR NUMBER 3: No, sir.

THE COURT: You may be seated.

Does any member of the jury panel know of any reason why he or she should not serve as a juror in this case and with particular emphasis being placed on your ability to be fair and impartial to both the State and the defendant? Does anybody know of any reason?

No one stands.

Let me ask the lawyers to approach.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Thank you.

Does the State have any additional questions? Ms. Monts, anything else?

MS. MONTS: No, Your Honor.

THE COURT: Does the defense have any additional questions?

MR. CRANGLE: No, Your Honor.

THE COURT: Mr. Robinson?

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MR. ROBINSON: No, Your Honor.

THE COURT: Thank you.

Then, Madam Clerk, if you will call us the jury.

THE CLERK: When I call your name, please stand in place and then wait for further instructions.

Juror 18, Jason Brown.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant.

MR. CRANGLE: Please seat the juror.

THE CLERK: All right. Mr. Brown, please bring your things and come have a seat in the jury box.

Juror Number 77, Maurice Jones.

What says the State?

MS. MONTS: Please excuse the juror from this case.

THE CLERK: All right. Please be seated. You have been excused in this case.

Juror Number 144, Harriet Selby.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please excuse the juror.

THE CLERK: All right, ma'am, please be seated. You have been excused from this case.

Juror 28, Amy Davenport.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: All right, Ms. Davenport, please bring your things and have a seat in the jury box.

Juror 133, Shirley Reim.

What says the State?

MS. MONTS: Please excuse the juror from this trial.

THE CLERK: Please be seated. You have been excused from this case.

Juror 153, Patrick Spadafora.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please excuse the juror.

THE CLERK: All right, sir, please have a seat.

Juror 21, Claire Burch.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please excuse the juror.

THE CLERK: All right, ma'am, please be seated.

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You have been excused from this case.

Juror Number 3, Audra Amyx.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please excuse the juror.

THE CLERK: All right, ma'am, please be seated. You have been excused from this case.

Juror 164, Phoebe Underwood.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: Ms. Underwood, please bring your things and have a seat in the jury box.

Juror 75, Stephen Jennings.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: All right, sir, please have a seat in the jury box.

Juror 20, Tommy Bunting.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: Sir, please come and have a seat in the jury box.

Juror 68, Tracy Holmesley.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please excuse the juror.

THE CLERK: All right, ma'am, please be seated. You have been excused for this case.

Juror 126, Beatrice Perkins.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: Ma'am, please come and have a seat in the jury box.

Juror 135, Kayla Robertson.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: Ma'am, please come and have a seat in the jury box.

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Juror 171, Frank Watts.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: Sir, please have a seat in the jury box.

Juror 107, Richard Mazzarell.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please excuse the juror.

THE CLERK: All right, sir, please be seated.

Juror 104, Lorraine Matheny.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please excuse the juror.

THE CLERK: All right, ma'am, please be seated.

Juror 50, James Gordon.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: Sir, please have a seat in the jury

box.

Juror 83, Daniel Kilgore.

What says the State?

MS. MONTS: Please excuse the juror from this trial.

THE CLERK: Sir, please be seated.

Juror 127, David Pittman.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please excuse the juror.

THE CLERK: All right, sir, please be seated.

Juror Number 4, Eric Anderson.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: Sir, please come and have a seat in the jury box.

Juror 27, Shana Daniel.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: Ma'am, please come and have a seat in

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the jury box.

Juror 76, David Jones.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please excuse the juror.

THE CLERK: Sir, you may be seated.

Juror 74, Judy Jenkins.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: Ma'am, please come and have a seat in the jury box.

THE COURT: Let me ask the lawyers to approach.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE CLERK: Juror 30, Travis Davis.

What says the State?

MS. MONTS: Please excuse the juror from this trial.

THE CLERK: All right, sir, please have a seat.

Juror 157, Stacie Stegall.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: Ma'am, please come and have a seat in the jury box.

For Alternate 2, Juror Number 8, Orinda Berger.

What says the State?

MS. MONTS: Please present the juror.

THE CLERK: What says the defendant?

MR. CRANGLE: Please seat the juror.

THE CLERK: Ma'am, please come and have a seat in the jury box.

THE COURT: Anything regarding the jury selection from the State?

MS. MONTS: No, Your Honor.

THE COURT: Anything from the defense?

MR. CRANGLE: No, Your Honor.

THE COURT: All right.

MR. ROBINSON: No, Your Honor.

THE COURT: Thank you.

Ladies and gentlemen of the jury, those of you who did not get selected, you are free to leave and I have been informed by the clerk you do not have to report downstairs. You can leave for the day, but you will need to call back after six. There is a number on the back of your name and number card that gives you the information to call about

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your status for tomorrow. So you are free to go and just call after six.

I'm going to ask that everybody remain seated while the jury leaves.

(Whereupon, the jury venire panel left the courtroom)

THE COURT: Would the attorneys approach again?

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Ladies and gentlemen of the jury, what we are going to do, we have a number of issues that we will take up this afternoon outside of your presence and so your services are not going to be needed today. I'm going to dismiss you in just a few minutes and I'm going to ask that you report back tomorrow morning to the jury room. Be in there ready to go at nine o'clock in the morning.

When I dismiss you our bailiff over here will escort you out of this door and then he will give you instructions about where you are to report tomorrow morning, but I'm going to instruct you to be back here tomorrow morning at nine o'clock.

What I do want to tell you is that do not discuss the case. Even though you know very little about it, don't discuss it with anybody. Don't go home and look up on the Internet or Google anybody's names and try to find out. You

are not allowed to do that. In fact, I'm going to instruct you tomorrow, and throughout the case, that the verdict that you render in the case must be based solely on what you hear in this courtroom. So you are not even going to discuss this case among yourselves at all until the case is -- until all the evidence is in at the conclusion of the case. So I just -- I charge you and exhort you do not use the social media, the Internet, to look up names, try to find out anything about the case. Don't go there with any of that. And, again, don't discuss the case with anybody. If somebody comes up to you and wants to discuss the case with you, tell them you are not allowed to and then report that back to the court who that person is. Other than that, I will give you some more instructions tomorrow morning, but at this point I'm going to excuse you. Just be back in your jury room at nine o'clock tomorrow morning and we anticipate we should have a full day tomorrow. Thank you for your attention and the bailiff is going to see you out.

(The following takes place outside the presence of the jury panel)

THE COURT: All right. I think I was informed -- the court was informed earlier that we have some pretrial issues that we needed to deal with before we have the jury back tomorrow morning, and so at this time I'll hear from the State. Do you have any pretrial?

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MS. MONTS: No, Your Honor.

THE COURT: I'll hear from the defense.

MR. CRANGLE: Yes, Your Honor. On behalf of my client, Mr. Cruz, I have a motion to suppress, Your Honor. I also have a written memorandum in support and I'm handing it to opposing counsel. May I approach, Your Honor?

THE COURT: Yes.

MR. CRANGLE: And I filed a copy with the Clerk of Court this morning, judge.

THE COURT: All right. Just a moment while I --

MR. ROBINSON: And Your Honor, as I have informed Mr. Crangle, we would join in that motion as well.

THE COURT: All right. Just a moment. Let me read a little bit.

(Off the record)

(Back on the record)

THE COURT: All right, Mr. Crangle, you have a motion to suppress, is that correct?

MR. CRANGLE: Yes, Your Honor.

THE COURT: What's the basis of your motion?

MR. CRANGLE: The basis of my motion is this, Your Honor. I'll just give you a little background.

Phillip Lewis is the confidential informant in this case. He was arrested in Greenwood County. He approached the police here in Greenville regarding his

knowledge of methamphetamine distribution. The police sent him on Monday, June 30th, 2014, to Ramirez's house. Ramirez is the co-defendant who has pled guilty. They scheduled a buy. Ramirez pulled drugs out of the kitchen vent over the sink and then the CI left the house, so DEA knew of this house two days prior to actually coming into the house.

The next day they called and they set up a buy of about eight -- I guess it would be eight ounces of methamphetamine, which is about $8,000 worth of meth, with Ramirez. Then the next day they planned to do it at the Whitehorse Road parking lot, because Lewis and Ramirez had been -- they had done transactions all throughout Greenville. They had done this sometimes at Ramirez's house, sometimes on Whitehorse, the Wal-Mart at Whitehorse Road. Sometimes at other homes.

They go to Whitehorse Road. The CI has an audio recording. The DEA is following him. The DEA and the CI go to Whitehorse Road. They meet with Ramirez. Ramirez says "hey, we need to go back to my house. I'll show you that the drugs are there. You can show me the money afterwards and we will complete the deal later." So the CI and they go back with Ramirez to Ramirez's home.

My client also lives at the home. There are multiple people that live there. Ramirez unlocks the door and goes in that home. The CI, which is Mr. Lewis, comes

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into the home. The CI goes in the back, sees the drugs, comes out and tells the DEA. He immediately leaves the house. He gets in the car and he goes down the road to a DEA rendezvous point. This is about 10:30 on July 2nd, 2014, and it is in the morning.

At this point the CI tells the DEA agents there are drugs within the house. At this point, instead of obtaining the search warrant, what the State proceeded to do is they sent three Greenville County sheriff's officers to the front door. One of the sheriff's office deputies opened the closed door that is unlocked and goes and opens the door and goes in. They go into the home with their guns drawn. While they are in that home they detain three people; that would be Mr. Ramirez, my client Mr. Cruz, and Mr. Ochoa-Tavera. At that point the officers see drugs and they back out. Well, actually they detain everyone and at this point they are asking for a search warrant to be issued.

The problem that we have, Your Honor, is that this warrantless entry into the home under the Fourth Amendment is, per say, unreasonable. There are simply delineated exceptions, such as exigent circumstances. However, none of the three exigent circumstances exceptions apply. There was no destruction of evidence. The DEA had known for two days prior to this house contained drugs, yet they weren't concerned about evidence being destroyed. There was no hot

pursuit of a felon, and there was no call-out for public safety, such as there has been a report of domestic violence, or there has been a report of shooting, or armed robbery, or burglary, or danger to the community.

Your Honor, the State and the Fourth Amendment specifically delineates that. Within the home a warrant is required for a search. Probable cause alone does not give the police the ability to go search. Warrants are preferred under the Fourth Amendment.

West Greenville Summary Court, which is where they obtained the search warrant from, is .8 miles away, less than a mile away, and this was at about 10:30 to 11:00 on a Wednesday morning when West Greenville Summary Court was open and a warrant could have been obtained prior to the search, Your Honor. The State chose to go into the home without a warrant and the Fourth Amendment tells us that this is in violation of the Fourth Amendment. Therefore, anything in violation of the Fourth Amendment must be excluded and that is the basis for our motion.

THE COURT: All right.

And I'll hear from the State.

MS. MONTS: Your Honor, the State wants to know if the co-defendant is involved in this hearing, in this motion?

MR. ROBINSON: I think we just said that we be

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joined in this motion for the record as well.

THE COURT: Okay. They are.

MS. MONTS: Your Honor, the State's position is that many of the facts that Mr. Crangle just spoke out were not correct.

We would at this point go ahead and put forth our officers who were present and audio of what actually did transpire on that day.

The State's position is that it was absolutely exigent circumstances and that the evidence would have been destructed or would have been removed from the apartment, based on the fact that the informant, who was inside the apartment with the deal, was -- the whole plan was for him to leave supposedly to get the money about a minute away and come back with his -- from the man with the money. This was not going to happen, so exigent circumstances absolutely occurred.

The reason the officers did not have a search warrant was that the deal was supposed to take place in the Wal-Mart parking lot. In fact, all the officers from the sheriff's office and DEA were there at the parking lot waiting for it to go down when the defendant, Mr. Ramirez, pulled up and decided to change the location. At that point part of the officers went to this apartment to surveil and one of the officers, once he knew that the deal was being

talked about on the wire, did immediately go to get the search warrant.

THE COURT: All right. Okay. Well, we need to have a hearing then so we can determine what the facts are.

The State can call your first witness.

MS. MONTS: Your Honor, the State calls Agent Randy Smith.

DEA AGENT RANDY SMITH, having been first duly sworn, testified as follows:

MR. ROBINSON: Your Honor, I would just -- I think she's going to have both the agents testify. I would ask that the witnesses be sequestered during this, because this particular agent I believe is going to testify as well.

THE COURT: All right. Well, it's basically a motion to sequester on a -- if he -- is he the case agent?

MS. MONTS: This is the case agent with the sheriff's office, and Agent Smith is the case agent with the Drug Enforcement Administration. It was a joint effort, so one of them knows more about the original set-up, and the other one is more regarding the actual events on this day.

THE COURT: Okay. The rules allow the case agent to be in the courtroom. I'm going to allow them both.

DIRECT EXAMINATION BY MS. MONTS:

Q. Agent Smith, please state where you are employed and how long you have worked there, your training and

experience.

A. I'm employed as a special agent with the Drug Enforcement Administration. I have been employed with the DEA since 1990. I was originally hired on in Atlanta and was transferred to Raleigh, North Carolina, and I have been in Greenville, South Carolina since 1998.

Q. And please describe what has your training been in and your certifications.

A. My training has been in strictly narcotics dealing with drug traffickers that violate federal statutes or Title 21, and this would primarily include drug dealers that operate on a larger scale in different districts, different states and different countries, as well as an interest in some public officials involving drugs or they have a drug nexus on certain professions within the community.

Q. And have you been certified as an expert in the field of narcotics in any federal or state courts?

A. In North Carolina.

Q. How many times, if you recall?

A. Approximately twice.

Q. And being specific to this case that occurred on July 2nd of 2014, how did you become involved and how did you get the Greenville Sheriff's Office involved?

A. We had a confidential informant that gave us information that he could purchase multi-ounce quantities of

crystal methamphetamine from a Hispanic male that lived off Whitehorse Road who he knew as "Amigo".

Q. And who did you contact with the sheriff's office?

A. John Garrett.

Q. And what did you -- what was your goal and your plan in dealing with this informant and this person who he could buy from?

A. Well, I think we had several goals. The first goal was to identify who "Amigo" was.

The second goal would be to seize a quantity of drugs that he said he could purchase from this Hispanic male named "Amigo".

And, of course, the third goal would be to not only arrest "Amigo", but to further the case and arrest any other sources that we could identify at the time.

Q. And on June 30th of 2014 were you working with the CI or the informant on that date?

A. Yes, I think that was the first time we placed a recorded call to "Amigo" to confirm that, in fact, the informant knew a Hispanic male named "Amigo" who was willing to sell crystal methamphetamine to him.

Q. And did the informant go to an [redacted] at Westgate Apartments in Greenville County on that day?

A. I think it was on that day or the next day and that was not done under the direction of DEA. We found out about it

after the fact. And after he had went over there, he gave us a general description of the apartment and where the address was, but not a particular apartment number. And at that time he was shown a small quantity of crystal methamphetamine that was to be a representative sample of the larger amount he was going to buy in the near future.

Q. And who was the person that you identified that the informant met at this apartment?

A. Ramirez.

Q. And --

A. I'm sorry, I do not recall his first name.

Q. And is that the person that was subsequently arrested for this charge today?

A. Yes.

Q. And please continue. What did you plan to do on coming up the next day or two regarding purchasing more drugs?

A. After the call and finding out that he had showed a representative sample to our confidential source of what he could supply to him, we set another phone call I think the following day in which we had the confidential source agreed to meet the Hispanic male, who was identified as Ramirez, at the Wal-Mart parking lot on Highway 25.

Q. Who did you have assisting you at the Wal-Mart parking lot?

A. Excuse me, there were several members of the DEA

resident office, which is our office here in Greenville that comprised of a couple of special agents, as well task force officers to include John Garrett and other members of the Greenville County Sheriff's Office.

Q. And what was to take place at the Wal-Mart and was this to be a takedown at the Wal-Mart?

A. Yes, that was the original meet was at the Wal-Mart and the intentions at that point from what we knew, that's where the arrest would take place. That's where the drugs would be.

Q. And what was supposed to take place at the Wal-Mart?

A. What would have taken place at the Wal-Mart would have been an exchange of drugs for money. This case there was no money, so as soon as the confidential source could verify to us that he saw the drugs with Ramirez, at that point officers would have came in and initiated the arrest.

Q. And was your understanding that Ramirez was supposed to bring the drugs to the Wal-Mart parking lot?

A. Yes.

Q. And did the takedown ever happen at the Wal-Mart parking lot?

A. No, it did not.

Q. Why?

A. When our informant got there and spoke to Ramirez, Ramirez was demanding to see the money that was to be used

to purchase the eight ounces of crystal meth. And, of course, the money was not there, which is typical on these deals, so our confidential source was insistent upon seeing the crystal meth, because once we knew the drugs would be in the parking lot, we would have initiated an arrest. So we got in a situation where the money wasn't there. Ramirez did not bring the drugs, but offered to show the drugs to the confidential source at his apartment.

Q. Did DEA ever plan to provide monies to these people?

A. No.

Q. How did the situation evolve since the deal was not going down in the Wal-Mart?

A. Our confidential source assured Ramirez that the source with the money that was going to be used to purchase the drugs was a minute away. I think he said actually across the street from where he was at the Wal-Mart parking lot. Ramirez offered to show him the drugs, and the CS said "once I see the drugs and I know it's there, I'll call my guy and he's on stand-by and he will immediately bring the money to you." So Ramirez agreed to this arrangement.

At that point the CS followed Ramirez in his vehicle over to I think it's a Harry's or a Harris convenience store at the corner of Lily Street and Whitehorse Road.

Q. Is that a gas station?

A. Yes, it is.

Q. How far was this from the Wal-Mart?
A. Oh, goodness, probably two or three minutes.
Q. And was this entire situation audio recorded?
A. Yes, it was.
Q. And what took place when they met at the Harry's gas station?
A. At the Harry's gas station Ramirez was insistent that the informant get in the car with him to be taken to the apartment. This is against one of the policies and parameters we set up for the confidential source was not to get in the car with him, because we have less control of it when the bad guy is driving the vehicle. So the CS was able to convince Ramirez --
Q. What do you mean by CS?
A. The confidential source. The informant.
Q. Okay. Please continue.
What was this confidential source saying?
A. He was able to convince Ramirez to get in the car with him. Ramirez agreed to do this and they drove down to [redacted]
Q. And what is the purpose of not having the confidential source get in the vehicle with the drug dealer?
A. It's a control issue. With DEA we try to minimize exposure and danger to not only our informant, but officers and the community at large. So if you were to get in the

car with a drug dealer and you are unsure about where he's going, you not able to control that situation much at all; whereas, we had given instruction to the CS that if he were to take Ramirez anywhere, it was to go to wherever it might be for that apartment. And it would also ensure that our CS doesn't get kidnapped. So it just gives you much more control of the situation.

Q. And where were law enforcement officers when this was taking place?

A. We were located in various -- I think there was a pharmacist adjacent to the convenience store. There were officers across the street, and I believe officers had been set up down Lily Street in the general vicinity of where we knew the apartment complex was.

Q. And did all this occur once you found out that the defendant, Mr. Ramirez, did not have the drugs at the Wal-Mart parking lot?

A. Yes.

Q. How far is the apartment on Lily Street from Harry's gas station?

A. It's relatively close. I would think maybe a couple minute drive. Maybe a mile in distance, mile and a half.

Q. So did the confidential source go then to this apartment?

A. Yes, he did. He -- following Ramirez instructions, he

drove to [redacted] and parked in the opening or the breezeway for the [redacted].

Q. And was Ramirez in the source's vehicle?

A. Yes, Ramirez rode with the informant, the confidential source.

Q. And what took place once they arrived there and could you hear what was taking place?

A. Yes, we could hear, and there were also agents and myself had set up across the street. And as our CS with Ramirez pulled into the parking lot, immediately another car pulled up and a Hispanic male got out, who was later identified as Ochoa.

Q. And what is your concern in this where it's not in your -- where you are not the one who planned this, what is your concern?

A. Well, our first concern is safety, the safety of the confidential source, the safety of other people in the apartment complex that aren't aware of what's going on. So certainly our first concern was safety.

Q. And what took place once the confidential source and Ramirez got to the apartment and Mr. Ochoa was there?

A. Almost at the same time everyone got out of the two vehicles, I believe Ramirez led the way, followed by our informant and Ochoa and immediately walked into the [redacted]

Q. And who was at the apartment, if anyone?
A. In it was the other defendant, Cruz.
Q. And what could you -- what did you learn took place or could you hear it as it was taking place?
A. I could hear it. At that point obviously they are inside the apartment. I'm not seeing anything, so I'm relying on the audio transmitter.
Q. And what took place inside?
A. Very quickly, once they entered the door, there was some Spanish talk that I did not understand.

Obviously within a minute of getting inside the house the CS was looking at the quantity of drugs and talking about the eight and saying that it looked really good, or it looked good.

Q. What was the amount as the dollar value of what was supposed to have been sold that day?
A. What we were purchasing was eight ounces of crystal meth and I believe the sale price was $8,400. And at the time when the CS saw the drugs that were out, he estimated it to be slightly more than eight ounces, maybe nine to ten ounces.
Q. And what took place inside the apartment at that point after the discussion about the sale and seeing the drugs?
A. After the discussion of that, the CS got on the phone. He called me. He pretended that he was talking to his

person that was bringing the money, said the drugs looked good, he will meet him at the store. He was referring to the convenience store where we had just left. He would be there in a couple minutes and bring the money back immediately that were there. Everything looked fine.

Q. And what did you tell the confidential source?

A. I told him fine, to go -- we had already planned this out prior to any of the meets that once he saw the drugs and let us know it was good, he was to get back in his car and then drive back to a predetermined meet spot and we followed him back there.

Q. So was the confidential source not going back to the apartment?

A. No.

Q. Was there a search warrant in hand at that time?

A. No.

Q. Why not?

A. We didn't know we were going to that apartment.

Q. And had you ever been to that apartment before?

A. No.

Q. So where were the other officers then when the confidential source left the apartment?

A. I actually followed the confidential source back with another task force officer, Ross Brown. At that point John had already left to get the search warrant and there were

several other officers from our office in Greenville County. They were set up, I believe, directly across the street from the apartment complex.

Q. And it was -- was the plan as told to the three Hispanic men in the apartment that the confidential source would be right back after running to the gas station with the $8,400?

A. Absolutely.

Q. What, in your experience with DEA and narcotics, would have transpired if law enforcement hadn't come in at that time?

MR. CRANGLE: Objection, Your Honor. This calls for speculation. I don't know he's been qualified as an expert witness.

THE COURT: He can testify to what his experience is.

A. Based on my training and experience and through this investigation, the drugs aren't normally stored at that apartment, which again is typical of drug deals I have seen throughout my 25 years; whereas, once you know the drugs are going to be there, or that you are ready to purchase the drugs, someone would typically bring the drugs to the apartment, because they have a fear of leaving the drugs in any one particular place for an amount of time, they will either get robbed or law enforcement will find out that it's

there. So typically if the CS had not come back immediately with the money, they would have thought one of two things; number one, they would fixing to get robbed, because now these people know that the drugs are sitting in the apartment. And number two, which was what happened, the police were fixing to arrive and arrest people.

BY MS. MONTS:

Q. And could those people have left with the drugs?

A. Yes, absolutely, and it was my understanding -- like I said, I did not see that, but one of the individuals in the apartment actually came out into the parking lot as if he could be preparing to leave the area and it's my understanding that's why the uniformed patrol units came in when they did.

Q. And were uniform patrol units told to go to that apartment?

A. Yes, they were.

Q. And who -- if you know, who told them to do this?

A. I really don't know. Like I said, I think it was all initiated by movement from someone inside the apartment actually coming out towards the cars in the parking lot.

Q. Is it possible it was John Garrett that gave them that direction?

A. It's absolutely possible.

Q. And what -- if you know -- if you don't know, just cut

must off. Do you know what their goal was at that point or what they were told?

A. Well, I know since obviously we did not have the search warrant, the whole idea of them going there prior to that is to secure the residence to make sure that the suspects don't get away or the drugs do not get flushed.

Q. And what is the exigency of this situation?

A. Well, the fact again that the drugs weren't normally stored there for any length of time, so you have a probability of them being moved, if the defendants -- the people in the apartment got suspicious, their confidential source didn't come back with the money, so it was an issue of losing people that were at the apartment, or you could have a circumstance where one of the three that are obviously there with the drugs decides to go somewhere else or go up to the convenience store to get a Coke. So once you get to the apartment, if you wait, you have lost the defendants there already. And once everyone knows the police are there searching the apartment, your investigation is compromised. And if that guy, when he sees that, he's not going to be coming back to that apartment, so there are a lot of different factors.

Q. Did you ever go to the apartment that day?

A. It was later on after we secured the confidential source and we removed the recording devices that I really

could not -- probably within 30 or 45 minutes after the CS initially left there, and that would just be a general estimate.

Q. And the value of the drugs was -- the amount that was supposed to have been purchased was $8,400, but there was more than that there, is that what you said?

A. Yes.

Q. And what was the -- who is the confidential source that you have been mentioning? What's his name?

A. Phillip Lewis.

MS. MONTS: Your Honor, I would like to play the audio at this time. I don't know if you want me to go ahead and do that or let defense cross, but I would like to --

THE COURT: Let's go ahead and let's play the audio.

BY MS. MONTS:

Q. Agent, was there also a video at the Wal-Mart?

A. Yes, there was.

MS. MONTS: Your Honor, the entire audio is 42 minutes, but there is about 15 minutes of waiting for the person to come, so I would just skip that 15 minutes of just waiting for the informant to come.

THE COURT: Has the defense heard all of it?

MR. CRANGLE: Yes, Your Honor.

THE COURT: All right.

MR. ROBINSON: Yes.

THE COURT: Any objection to skipping over the 15 minutes?

MR. CRANGLE: No, Your Honor.

THE COURT: All right.

BY MS. MONTS:

Q. Agent, is the -- does the -- Mr. Lewis, does he speak Spanish?

A. No, he does not.

Q. Can you tell his voice?

A. Yes, I can.

Q. And how many voices will we hear at the beginning of this tape and where does it occur?

A. This occurs in the Wal-Mart parking lot of Whitehorse Road. There should just be two voices, which would be the confidential source Phillip Lewis and Ramirez. I can't recall at that point if why he is setting up in the parking lot. Lewis might have called me. That would be the only other voice that you would hear there.

Q. So occasionally do we hear Phillip Lewis calling you on the phone?

A. You do, but I don't know if it's in this part at the Wal-Mart parking lot or later on down the thing. I know that he does get on the phone with Ramirez while they are at the Wal-Mart parking lot.

Q. Before Ramirez arrives to meet him, is that correct?
A. Right, because they are confused at what section of the Wal-Mart parking lot they are in.
Q. Okay.
(Whereupon, the audiotape began playing)
(Whereupon, the audiotape was stopped)
THE COURT: Excuse me, can you stop it there just a minute?
Is there any way to get the volume up any more?
(Whereupon, the audiotape was played)
BY MS. MONTS:
Q. Agent, whose deep voice do we hear?
A. I mean, there is --
Q. Who does not have a Hispanic accent?
A. Mine.
Q. Who else? Who is doing most of the talking?
A. The informant, Lewis, Phillip Lewis.
Q. And when the other deep voice besides yours is saying "I'll meet you at the store," what is actually taking place?
A. He is letting me know and Ramirez know that he is going to get the money and that's where the money was supposed to be, at that convenience store. So several things. One, he sees the drugs. He clearly states to me he's seen the drugs, and then he's going back to the convenience store or he's playing out the ruse that we gave him, that the money

guy would be up there to give the money to Ramirez and occupants of that apartment would think the money was coming back to them immediately.

Q. Does he also in this last portion of the audio tell you what the apartment number is and where it's located?

A. Yes, he does.

MS. MONTS: Thank you. Nothing further.

THE COURT: All right, Mr. Crangle.

MR. CRANGLE: May it please the court, Your Honor.

CROSS EXAMINATION BY MR. CRANGLE:

Q. Agent Smith, you met with Mr. Lewis before the 2nd, right?

A. Yes.

Q. Okay. Do you recall meeting him on June 19th with Agent Garrett in Greenwood?

A. I don't particularly remember that.

Q. Okay.

A. If you could show me the report.

Q. Do you recall -- I'll show you the report.

Would you recognize the DEA report if you were part of it?

A. Yes.

Q. Okay. Is that your name at the top where it says by?

A. Yes, sir, it is.

Q. I'll give you a minute to read over that report just so

you can --

(Witness reviewing document).

MS. MONTS: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

BY MR. CRANGLE:

Q. All right. Sir, does it help you kind of remember that meeting?

A. Yes.

Q. Okay. And who is in the room? Was Mr. Lewis in the room? The CI?

A. Yes.

Q. Okay. And you were in the room?

A. Yes.

Q. And y'all were -- this is one of the first times that y'all met Mr. Lewis, right?

A. Yes.

Q. Okay. And he is telling you kind of his connections with Greenville and meth trafficking, right?

A. Yes.

Q. And when you were there, Lewis kind of went over his general procedure for dealing with "Amigo", who we find out was Mr. Ramirez, right?

A. Yes.

Q. And Lewis tells you that he usually buys about $2,000

worth of meth from "Amigo" at the time, right?
A. Yes.
Q. Okay. And then on the second page above all that blacked out stuff is, it says that "sometimes you meet with "Amigo"," which is Ramirez, "in the parking lot at the Wal-Mart," right?
A. Yes.
Q. And then it also says that "he was showing me he had the money and then Ramirez would go and get the drugs and come back," right?
A. Yes.
Q. Okay. But below it it also says that sometimes Lewis would go with "Amigo" to pick up the drugs from around homes in Greenville, right?
A. Yes.
Q. Okay.
A. Off Whitehorse Road.
Q. So Lewis had gone before to go to other people's homes to buy drugs with Ramirez, right?
A. Yes.
Q. All right. And do you recall making a report on June the 30th, 2014 regarding Mr. Lewis?
A. I'm assuming I did since you are reading off it, but I don't specifically remember the report.
Q. Okay. Would it help to just kind of read it?

A. Yes.
Q. Go ahead.
A. Thank you.
(Witness reviewing document).
Would you mind leaving that up here?
Q. Yeah, go ahead. No problem.
A. Appreciate it.
Okay.
Q. Okay. So on June 30th y'all sent Lewis over to talk to Ramirez, right?
A. He went over there and talked about the meeting after the fact. I don't think at that point he was directed to go over there and talk to Ramirez.
Q. Did he call you then and say "hey, this is supplemental information"?
A. Yeah, I believe that came to us after the fact.
Q. Okay. Do you see on a section of the report it says date prepared, it says number eight, right, and it says 6-30-2014?
A. Yes.
Q. Right. That means that you created this on 6-30-2014, correct?
A. Yes.
Q. So he called you the same day?
A. Yes.

Q. And 6-30-14 is what, two days before 7-20 -- or 7-2-14, right?
A. Right.
Q. Okay. And Lewis tells you that he went to [redacted] [redacted] [redacted]. That's the same apartment that we are talking about, right?
A. Yes, it is.
Q. Okay. And he says that he went there and he went inside with Ramirez, right?
A. Yes.
Q. Then he says when he was inside, Ramirez pulled out and opened seven grams of crystal meth out of the ceiling, right?
A. Yes.
Q. Okay. And he's showing it off to Ramirez -- or he's showing off -- Ramirez is showing Lewis, hey, I have got some high quality crystal meth, right?
A. Yes.
Q. And Lewis at that time didn't buy any of that, right?
A. No.
Q. Because he didn't have any money to buy it, right?
A. He did not buy any.
Q. And what's the street value of seven grams of crystal meth?
A. $700. Well, between $80 and $120 a gram.

Q. All right. So around -- I mean, seven hundred, somewhere in between there, right?
A. Uh-huh.
Q. Okay. And Lewis goes out and he tells you, hey, he's got $700 worth of drugs hidden in this room, right?
A. Yes.
Q. Okay. And this is two days before y'all started doing the search stuff, right?
A. Yes.
Q. So y'all knew about [redacted] on that Monday, right?
A. Yes.
Q. And you knew that the drugs were in the apartment on that Monday, right?
A. Yes.
Q. Why didn't you go to that apartment on that day and seize those drugs?
A. Well, there is several reasons.
Q. Okay.
A. Typically in investigations we work with DEA, obviously you are trying to arrest larger scale drug dealers. You are trying to further your investigation. So with the intelligence we got here, if you look on that report and it continues, like the Dodge mini van that Ramirez was driving, it goes back to his name and address is [redacted] So, in fact, of the two locations, we thought at that point

maybe the Dixie Circle address was more important, being that being his residence than this [redacted]

The second thing, in looking at that, seven grams of meth is seven grams of meth. Seven grams of meth at that point -- you have seven grams of meth and you have one person you arrest; Ramirez. Given our side and trying to further the investigation we ended up with eight ounces -- well, no, I'm sorry, nine and a half ounces of crystal meth, including Ramirez, which is the same person we would have got two days prior, plus sources. So it's a matter of investigation field, it's not at all unusual for the DEA to get information such as this and not act on it immediately.

Q. Okay.

A. In fact, typically that is what we do.

Q. Okay. But this apartment is now on your radar, right?

A. Yes.

Q. Okay. And the fact that Ramirez is keeping drugs hidden out of plain view, that's something to consider, correct?

A. It is something to consider.

Q. So Ramirez knows where to go? I mean, if I walk into a house and I see drugs on the countertop and say here is the drugs, right? That's one thing. If I come in and I say I can pluck them out of a hidden compartment, that's different, right?

A. No, I would totally disagree with you.
Q. Okay.
A. You are getting in a situation now, it's -- it's like you have a crack house in Greenville and you are dealing with nickel and dime $20 pieces of rock versus kilos of cocaine. I might have a few rocks or a few grams of cocaine in that crack house. That doesn't mean I'm going to get a kilo of cocaine there. In fact, I would contend that if you are finding small amounts of drugs like that, seven grams of crystal meth that you are referring to in this, that is not a place larger scale drug dealers will store larger amounts of drugs. The two don't go the same. It would be like going to the Ford dealership and trying to buy a Mercedes.
Q. Okay. So Ramirez is hiding the drugs in his house, right, or not?
A. Absolutely.
Q. Okay. And Ramirez has known -- Lewis has told you that Ramirez has dealt with up to $2,000 worth of meth at a time, right?
A. Yes.
Q. On multiple occasions, over a period of what, a year, maybe?
A. I think so.
Q. Something around that, right?
A. Right.

Q. Okay. So you know on that Monday that Ramirez has dealt -- Lewis and Ramirez has been dealing together, right? They had been buying drugs from each other? I should say -- excuse me. Lewis is buying drugs from Ramirez, right?

A. Yes.

Q. Okay. And we knew what [redacted] is, right?

A. We have an [redacted] that's on a radar, as well as the [redacted].

Q. Right.

Okay. Then the next day you call and you set it up and you say hey, we want to buy the eight ounces, right?

A. I think it was the next day, yes.

Q. Okay. And then on the 2nd, that's the day that the bust is supposed to go down, correct?

A. Right.

Q. And the idea is generally, hey, we are going to go to Wal-Mart and that's where the drugs would be.

In your experience is it usual for someone to bring $8,000 worth of drugs to the Wal-Mart parking lot to start a transaction for meth?

A. It is somewhat unusual, yes.

Q. So that usually drug dealers don't -- they keep it at houses instead of walking around with $8,000 worth of drugs in a car, right?

A. I mean, I have honestly seen it.

I would agree that generally you would not do that in parking lots. Have I seen that done in parking lots? Numerous of times over my career.

Q. Okay.

A. Typically, no, I would agree with you.

Q. Okay. So the majority occurred outside the Wal-Mart parking lot, or out of public parking lots?

A. Larger amounts, yes.

Q. They are trying to do it private, a place more secluded, right?

A. Yes.

Q. Mr. Lewis and Mr. Ramirez agree to go back to the home, right?

A. Yes.

Q. Okay. At this point where are you located when you can hear all this? Are you outside of the apartment [redacted] or are you up the road? Where are you?

A. I am following -- the vast majority of the people -- well, everyone was set up at Wal-Mart that I'm aware of and we followed the CS from there to the convenience store.

Q. Okay.

A. So I followed him from the Wal-Mart, if that's your question, to the convenience store, yes.

Q. Right.

Then when Lewis got in Ramirez's car and drove, where

were you during that time? Did you stay at the convenience store and just listen?

A. No, we drove down. We were probably a few seconds behind him following it into the parking lot. He drove into the parking lot and we drove off the side road to the left across the street from the parking lot.

Q. Okay. And how many people are in this investigation? I would assume you and Mr. Garrett, right?

A. Yes.

Q. Okay. And then we have three Greenville County Sheriff's officers. We have Maltby, Hubber, and the other guy, right?

A. Yes.

Q. Okay. Is there anyone else on this?

A. Task Force Officer Ross Brown.

Q. Okay. That's six.

A. Special Agent Mark Poag.

Q. Okay.

A. And I think TFO Bobby Gilstrap.

Q. So --

A. I mean I believe that's about all.

Q. Okay. And at this point in time the CI decides to go in the house and observe the drugs, right?

A. Yes, he went into the apartment.

Q. Okay. And you are listening to all of this. Is there

any visual or anything? Any camera or anything?
A. No.
Q. It's just straight on the --
A. Yes.
Q. Did the CI, when he came out, did he say hey, I saw some guns in there?
A. I don't think so.
Q. Okay. When he came out, he told you that he had seen drugs inside, right?
A. Yes.
Q. Okay. And then he said I'm coming back to meet you, right?
A. Yes.
Q. So the CI is out of the house and away from the incident location at the time, correct?
A. I think when -- as you listen to the end of the call, he's actually on the phone with me and he's still inside the apartment and as their conversation carries on, he's walking outside followed by Ramirez, I believe.
Q. Okay. At some point after actually being in the house did he meet with you independently away from him?
A. Yes.
Q. Okay. And this is before the takedown had occurred, correct?
A. Yes.

Q. Okay. So he's -- the CI is out and away from the scene, right, apartment [redacted]

A. Yes.

Q. He's secured then?

A. Yes.

Q. So there is no danger to him or anything at that point?

A. No.

Q. Okay. And at this point somehow the sheriff's deputies decide to go into the home, right?

A. Yes.

Q. Okay. And at that point there is no warrant, right?

A. I'm sorry?

Q. There is no warrant issued, right?

A. No.

Q. You haven't gone to the magistrate at West Greenville Summary Court, right?

A. No, John was en route or either there. The timing of that I'm not sure of.

Q. Okay. Did you actually go to the house after the takedown occurred?

A. Yes, I did.

Q. Did you see the drugs where they were originally found, or did they already pick them up and move them?

A. I found them where they were originally found, on top of the dresser.

Q. Were they near the toilet in there?
A. The toilet was -- goodness, the apartment was so small. It was very close. Probably within 15 feet of where the drugs were.
Q. Okay. And the drugs were found on the dresser. Did you find any wrapping or anything in the toilet?
A. I didn't recall looking. By the time I had gotten there I guess 30 minutes had passed. Maybe longer.
Q. Okay.
A. So I wasn't -- no, I did not look in the toilet to look for wrappers, if that's your question.
Q. Right.
Did you review with the CI and say "hey, did you see any other drugs beside these that were seized?"
A. I did.
Q. And the CI said "no, that's everything that we had?"
A. They directed him straight in there to the back bedroom and that's what they showed him and that was it.
Q. Okay. So no drugs were destroyed?
A. Not to my knowledge, no.
Q. And not to the CI who saw all the drugs at the time, right?
A. Right.
Q. Okay. And when the CI leaves the house, Ramirez is still under the impression that the sale is going to occur,

correct?
A. Yes.
Q. Okay. And you told him $8,000 worth of drugs, right?
A. Yes.
Q. Okay. So Ramirez at that moment when the CI had walked out of the door, when Lewis walked out, he told him eight grand and he thinks I'm going to make eight grand, right?
A. Right.
Q. And he's not about to go flush down eight grand down the toilet to him either he figures out, one, he's been double crossed, or the cops are coming, right?
A. Yes.
Q. Okay. But there is no indication that he's going to destroy the drugs when the CI walks out of the apartment?
A. No, I guess I understand what you are saying about Ramirez, but, you know, we are dealing with three people. We have Cruz and Ochoa, and our surveillance and witnesses we saw Ochoa randomly arrive at the scene. So there is nothing at that point that would allow Mr. Cruz -- I know he had a job and I know he was in the process of getting ready to go to that job, and then Ochoa, just as he came in that apartment, he could have left that apartment and then again we would have been left with Ramirez, which we could have gotten him two days prior to that and it doesn't further our case.

Q. Okay. You said you had eight task force deputies, right, or eight people involved in the investigation, right?
A. Yes, that's a general number.
Q. All right. How many cars -- did you have cars?
A. Probably four -- three or four cold cars.
Q. Okay. As Ochoa leaves the house and drives away, one of those cold cars can't follow him?
A. No, that wouldn't have been practical.
Q. Why not?
A. Because you are covering the informant, so there is two cars that are out with him, so now we are down to the maximum two cold cars. You have two other people and drugs in an apartment, so why risk the danger, not only to Ochoa, but other people in the community if we were to get in a high speed chase or try to do a felony car stop with a car that's not properly marked.
Q. But you can't just follow him and not pull him over at that point?
A. Well, I mean, follow him to where? At what point would be a good idea to pull him over would you think?
Q. My question --
A. I don't know, and I said no. I answered it.
Q. All right. Did he leave the apartment?
A. I don't know if he left the apartment. I was not on the scene. My indication -- or I was told that someone had

came out of the apartment, or was coming out of that breezeway, and that's when the deputies went in. And I'm -- I'm not sure about that, because I wasn't there. That's just what I was led to believe.

Q. All right. So you don't know what happened with regards to people leaving the house, right?

A. No.

Q. Okay. Thank you.

MR. CRANGLE: That's all the questions at tis time.

THE COURT: Anything else from the State with this witness?

I'm sorry. I'm sorry. I'm sorry, Mr. Robinson. It's your turn.

MR. ROBINSON: I have a couple of questions.

THE COURT: Okay. Go ahead.

CROSS EXAMINATION BY MR. ROBINSON:

Q. Officer, regarding Mr. Ochoa, you had never had any dealings with him before, had you?

A. No, sir.

Q. And neither had -- the informant as well, correct?

A. No, the informant did have dealings with him before.

Q. He had dealings? All right.

Now, in terms of Mr. Ochoa, did you at any time ever see him with drugs on him or anything like that?

A. I did not.

MR. ROBINSON: That's all I have.

MS. MONTS: Nothing more of this witness, Your Honor.

THE COURT: All right.

THE WITNESS: Thank you.

THE COURT: You can step down.

Let's take about a ten minute break, okay?

How many more witnesses do you have?

MS. MONTS: Two, Your Honor.

THE COURT: All right, let's take about a ten minute break.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT: All right. Is the State ready?

MS. MONTS: Yes, Your Honor.

THE COURT: Is the defense ready?

MR. CRANGLE: Yes, Your Honor.

MR. ROBINSON: Yes.

THE COURT: Call your next witness.

MS. MONTS: Your Honor, the State calls Investigator John Garrett.

INVESTIGATOR JONATHAN GARRETT, having been first duly sworn, testified as follows:

THE COURT: Please be seated.

DIRECT EXAMINATION BY MS. MONTS:

Q. Investigator, please state where you are employed?

A. I'm employed with the Greenville County Sheriff's Office. I'm currently assigned to the Drug Enforcement Administration's task force in the Greenville residence office.

Q. Can you describe some of your background and training in narcotics?

A. I have been in law enforcement 21 years.

I have worked for Greenville City Police Department from '92 to '96. Greenville County Forensics from '96 to '98. United States Border Patrol from '98 to 2001. Since 2001 I have been working with the Greenville County Sheriff's Office. Since 2002 I have been assigned to narcotics. For the past seven years off and on I have been assigned to the Drug Enforcement Administration's task force.

Q. And have you testified in either federal or state court as an expert in narcotics?

A. I have. I have testified on six occasions; two in Federal Court, Judge Herlong and Judge Floyd, and on four occasions in state court.

Q. And were you working with Agent Smith on the case that we just heard the testimony about?

A. I was.

Q. And when did you become involved?
A. Late June.
Q. And what was your job on July 2nd of 2014?
A. Well, I wasn't involved in the operation on June 30th. I think I had a court obligation that day. So when I came in in July I was briefed on the operation and the investigation and information they had received from the confidential source.
Q. And what was supposed to take place on that date?
A. Well, our arrangements were to set up a buy at the Wal-Mart on Whitehorse Road, at which time we had ultimately thought we would do what they call a buy-bust operation where we take them off in the parking lot. That was the goal.
Q. What do you mean by take them off, what does that mean?
A. Arrest them, detain them, seize the drugs, make the arrest once we confirm that the drugs were present.
Q. And was there supposed to be money brought by DEA for the confidential source to provide?
A. No, we were not going to bring money.
Q. Did you have other sheriff's deputies assisting you and what was their role?
A. Their role -- well, let me explain my role then.
My role as a task force officer with the federal task force is to represent Greenville County. We have task force

agents from Anderson, Spartanburg, Greenville City, Greenville County, highway patrol, plus there is four or five special agents that work out of the Greenville office.

My job, not other than to investigate federal drug crimes and state and local, is to coordinate with my agency when we do operations completed with other investigations to make sure we are not working the same targets.

On this date I was asked to get officers from Greenville County Sheriff's Office that were uniformed and marked to conduct this operation, because we anticipated making an arrest in a Wal-Mart parking lot, so we wanted to make sure they were clearly marked as sheriff's deputies.

Q. What's the purpose of them being marked in a public area?

A. Safety. There has been situations where drug dealers think they are being robbed and injuries occurred trying to defend themselves or protect their contraband. Ours is make no mistake who we are when we approach them, that we are law enforcement and what our intentions are.

Q. And approximately how many prior drug cases have you been involved in?

A. Since January?

Q. No, just roughly.

A. I'm trying -- I keep a log. I have been involved in over 500. I have been involved in a hundred -- 259 search

warrants. A 102 of those I have been the affiant.
Q. And were there marked Greenville County Sheriff's Office deputies in the parking lot at the Wal-Mart?
A. No, but they were nearby, in the event that we witnessed the drugs. They would be close by to go in and make their move with us.
Q. Who was it in the parking lot?
A. It's called our DPU Unit, Directed Patrol Unit. Deputy Maltby, Walters, Hubber. I think there was one or two more.
Q. Are they in a marked unit?
A. They are.
Q. Where were you?
A. I was in the parking lot in an unmarked vehicle with Agent Randy Smith and TFO, or Task Force Officer Ross Brown.
Q. And could you observe what happened when the confidential source arrived?
A. Yes, we were close enough to see it.
Q. And were you listening to the audio?
A. I was.
Q. And what was supposed to take place and why didn't it take place?
A. What was supposed to take place was Ramirez was to arrive with approximately eight ounces of crystal methamphetamine.
Q. Was that the amount that had been ordered up?

A. That's correct.
Q. And please continue.
A. What we were going to do, he was going to leave and go get his money man, which unknown to Ramirez was the government, us, and then we would make our move and come in and make our arrest.
Q. And were you expecting to find eight ounces of methamphetamine on Ramirez?
A. We were.
Q. And did you ever approach them in the parking lot?
A. We did not.
Q. Why not?
A. The plans changed per Ramirez. He changed the operation.
Q. And what was the change?
A. He moved and he asked them to come to a nearby location to see the drugs.

We sort of had a short discussion "let me see money, let me see the drugs." And our fears there are, you know, if we did bring a lot of money, we flash a lot of money, which happened in the past, we would get robbed.

And I can understand his concerns. We think he was -- we thought that he was worried about getting robbed if he showed a lot of drugs, so we had this situation where we convinced him that we would follow him to a nearby location

to see if the drugs were actually there.

Q. And by we, you mean the confidential source?

A. Yes, and other agents following, but that's where the situation changes as it was moving along.

Q. Was the confidential source in his own vehicle at the Wal-Mart parking lot?

A. He was.

Q. And did Ramirez arrive in his own vehicle?

A. He did.

Q. And how did they leave then? What -- were they in the same vehicle, or separate?

A. They were separate, and he had instructed the confidential source to follow him to a nearby convenience store at the intersection of Whitehorse Road and Lily Street.

Q. And how far was that from the Wal-Mart?

A. About a mile.

Q. And how far was this gas station down Lily Street from the [redacted] and Westgate Apartments?

A. Several blocks, so I would say at least four to six blocks. It's a straight shot from the convenience store down Lily Street to the apartment.

Q. And where were you when the confidential source and Ramirez went to the convenience store?

A. I was in the vehicle with Agent Smith and we were in an

unmarked mini van. So we rode by the location where they pulled in, and we pulled onto Burdine Road, which is right across the street from the apartment complex. Probably 50, 60 feet up that road is a cell tower site in the woods. We pulled into there where we found Task Force Officer Gilstrap and Brown. They were conducting surveillance of the apartment from the woods with binoculars.

Q. At what point had they gone there?

A. Graham arrived before we did because we pulled in right behind them. Well, take that back. It was Gilstrap and we let TFO Brown out, because he had binoculars and he took those to Gilstrap and they started -- Gilstrap got there right before us and they began surveillance from the woods while we stayed in the vehicle listening to the wire.

Q. Had they been at the Wal-Mart prior to the change in location?

A. They had.

Q. And what took place at the convenience store between the confidential source and --

A. When we heard the conversation where Ramirez wanted the confidential source to get in the vehicle with him and travel, which is rule number one when -- at the task force, we do not let them travel with targets. So we made a call -- I can't remember exactly, but the conversation transpired where the confidential source convinced Ramirez

to get in the vehicle with him, where we had more control of the situation. At that point we were kind of bordering on calling the operation just for safety reasons.

Q. Did Ramirez leave his vehicle at the convenience store?

A. He did, right in the front.

Q. And so at what point did you decide not to call it off?

A. When we had control of the situation and the confidential source was driving the vehicle to wherever we were going.

Q. Okay. At what point did you find out where he was going?

A. When the confidential source pulled into the apartment complex on the right and met with -- or they got out and went into the apartment, into the breezeway labeled 57 through 60.

Q. And where were you at this time?

A. I was across the street on Burdine Road. I did not have a visual, but I was in communication with officers who did.

Q. And continue. What did you learn was happening?

A. At that point, because I was -- Randy Smith -- Agent Smith was in the car with me. He was in communication with the CS. And the plan was after we instructed him once he sees that, let us know. He would call us back and pretend that we were his money men. And I was relaying that over my

radio to Greenville County deputies and other DEA agents that were in the area that were conducting surveillance.

Q. And could you hear the audio at that time or what was being relayed?

A. I could, and I was relaying what was going on to other deputies.

Q. And please continue. What took place inside the apartment?

A. Excuse me?

Q. What took place inside the apartment that you knew of?

A. The confidential source goes inside, meets with Ramirez and he is shown a quantity of methamphetamine that he believed was approximately eight ounces.

Q. Were there other people in the apartment?

A. There were.

Q. Who else was in the apartment?

A. We later found out it was Antonio Ochoa and Manuel Cruz.

Q. And at what point did you know that there were drugs in the apartment?

A. When the confidential source called Agent Smith back and I was sitting in the car beside him and we heard the conversation.

Q. And what was the CI or the confidential source told to do at that point?

A. He was told to tell Ramirez that he was going to get his money right up the street, meet with his money guy, and he would be back in a few minutes.

Q. And by up the street, where was that?

A. The convenience store at Lily and Whitehorse, in that area.

Q. And how close was that to the apartment?

A. Four or five blocks.

Q. And what took place then? What do you know of that took place?

A. What took place then, as I asked TFO Gilstrap and other agents in the area to maintain surveillance of the apartment, that I was going to get a search warrant, and they had an eye on the breezeway. They told me it was the first door on the right on the bottom. That's what I knew. And I wasn't familiar at the time what apartment it was, but I was informed by the confidential source, or he confirmed it with Agent Smith, it was [redacted]. So at that point I didn't have a vehicle. We were following the confidential source back to another location at the intersection of Whitehorse and 253, which is a couple of miles away. While we were en route I'm trying to figure out how I'm going to get a vehicle. I had TFO Officer Ross Brown's keys.

Q. What does TFO mean?

A. Task force officer, in our vehicle where he had been

monitoring the wiring. Now I had his keys and I told him I was going to get his vehicle, because we had a limited number of vehicles, and I was going to go get the search warrant in his vehicle.

Q. Okay. Why didn't you have a search warrant already?

A. I wasn't a hundred percent confident where this was going to take place and I needed a script and actual events that did happen to put in my search warrant.

Q. I mean, prior to anything happening that day, why didn't you have a search warrant? Where was it supposed to take place?

A. It was supposed to take place at Wal-Mart. It was supposed to be a buy-bust operation.

Q. And how is a buy-bust different from going to an apartment?

A. A buy-bust is we actually witness this -- we were anticipating witnessing drugs through a confidential source out in the open where we could make the arrest in public. It's a freshly seen crime scene.

Q. Is that a more -- is that more controlled?

A. Yes, it is, somewhat.

Q. And once you got enough information, what did -- what were the other officers doing?

A. They were maintaining surveillance across the woods, and I think one or two were up the street or down the

street. We had several vehicles there.

While I'm en route with my radio to Judge Cagle's, I'm listening to the radio and they are telling me there is movement at the apartment, that males that were inside are now leaving or going outside and looking around.

Q. What does that mean to you?

A. It means the monitoring just changed the situation. I was there monitoring the location to get a search warrant and I was monitoring for any change that's in the event somebody left, other people came. The situation changed that I could put in my warrant. The situation did change. They were leaving. And we knew one subject had just recently arrived in one vehicle and I was concerned that they were going to leave, knowing that in the past two or three minutes we were supposed to be back with the money.

Q. And why would somebody leave if it had been more than a few minutes since the person left who was supposed to be back with the money?

A. Well, there -- it was probably a situation where they think they are going to get robbed, because they have already shown their hand. We haven't shown ours, or that law enforcement was involved and there is about to be an arrest.

Q. Please continue. How long did it take you to get the search warrant?

A. About 45 minutes. I went to Judge Cagle's, which is just a short distance away, but then I had to start typing, so I got a computer and I started typing. I typed the search warrant and -- but when I saw the movement, I instructed that deputies that were there to go ahead and secure the apartment and detain the subjects that were there, being that there was movement at the apartment.

Q. And what was your purpose in doing that and not waiting until you got the search warrant?

A. To prevent the evidence from being destroyed or leaving the scene.

Q. Do you recall who it was that you were talking to or who you knew was going to go in and secure the location?

A. Not specifically, because everybody is on the same channel. I just broadcast that -- I confirmed that there is movement outside the apartment and they stated there was and they said subjects that were in the apartment that our informant just went into. At that point I made the decision to secure the apartment and detain the subjects.

Q. Did you instruct them to search?

A. No, I did not. In fact, I think it was Sergeant Westmoreland, when he heard this, he was the only one who I heard respond back on the radio. He instructed his guys to move in easy and take it slow and take the ones out. If there was anybody outside the apartment, take them first,

which I don't know what the situation was then because they were out of reach because I was getting the search warrant trying to listen to them.

Q. And what was supposed to be done inside the apartment?

A. Hold everybody. Account for everybody and detain them until I came back with the search warrant.

Q. And did you return with the search warrant?

A. I did, but I was notified also after I arrived to get the search warrant that they had three subjects in custody. They had the apartment secured and they observed what they saw in plain view of what appeared to be crystal methamphetamine in one of the bedrooms.

Q. And when you say in plain view, where do you mean?

A. Out in the open, not secured. You would have to see it with the search.

(Search Warrant marked as Court's Exhibit No. 1 for identification)

BY MS. MONTS:

Q. Mr. Garrett, I'm handing you State's (sic) Exhibit No. 1. Can you please identify that?

A. I can.

Q. What is it?

A. This is my search warrant for [redacted]

[redacted]

Q. And how many pages is it?

A. 12.
Q. And did you type this?
A. I did.
Q. Where did you type this?
A. At Judge Cagle's office at Whitehorse Road, 6000 block of Whitehorse.
Q. And did you sign it?
A. I did.
Q. And did you get the magistrate to sign it as well?
A. I did. I had him initial each additional page that I added to the original search warrant.

MS. MONTS: And, Your Honor, we ask that this be a Court's Exhibit.

THE COURT: Has it been marked?

THE WITNESS: It has, sir.

THE COURT: Okay. As State's Exhibit 1? State's Exhibit 1 is part of this court's exhibit.

BY MS. MONTS:
Q. And does that also include the return?
A. It does.
Q. And that's -- that part, did you write on that part, or was the return done later?
A. Yeah, I did not. This was done by Deputy Waters. Deputy Matt Waters did the return and ascribed to the warrant.

Q. So you were involved in everything except the return --
A. That's correct.
Q. -- marked as State's Exhibit 1?
A. Correct.
Q. Okay. How long should it have taken the confidential source to get back with the task, if he were actually a buyer of this eight ounces of methamphetamine?
A. Less than a couple minutes. He was only a few blocks away, supposedly.
Q. Thank you.

MS. MONTS: No further questions.

THE COURT: Mr. Crangle?

CROSS EXAMINATION BY MR. CRANGLE:

Q. Deputy Garrett, do you have a copy of that search warrant?
A. Yes, sir.
Q. Okay. I think I have seen your search warrant before, but is the first couple of parts of it under Exhibit A?
A. Correct. That's right.
Q. Okay. And then Exhibit B is a description of personal premises, right?
A. To be searched, correct.
Q. Yeah, it's [redacted] [redacted] It should be [redacted] [redacted], but it's close enough, right?
A. Well, it says [redacted].

Q. Yeah.

A. I can explain that.

What looks like one apartment complex is three buildings.

Q. Uh-huh.

A. They are numbered from 1 to like a 100, but for some reason they have three different numbers.

Q. All right.

A. [redacted], so --

Q. Yeah.

No, I mean -- and the apartment numbers really match up.

And then Exhibit C, this looks like the standard language. You include this in all your search warrants, right?

A. The first part of it, except the facts of the investigation.

Q. Right, but the A through U is your kind of standard language?

A. Yeah.

Q. Okay. But the details, background, it's things like that.

Okay. Then the facts of the investigation, that is approximately five -- no, seven paragraphs?

A. Correct.

Q. And then -- how long have you been an agent?

Let me back up. How long have you been in law enforcement again?

A. 21 years.

Q. Okay. And you have written hundreds of reports, right?

A. I have.

Q. How many pages would you say that is?

A. How many pages is the search warrant?

Q. Yeah, in your -- not search warrant, just reports.

A. Thousands.

Q. Thousands. Okay.

And you have gone to school for this? They have training for verbal report writing, things like that, right?

A. Yes.

Q. Okay. And in your search warrants, you have also gotten training to writing search warrants?

A. More on the job training, but, yes.

Q. Okay. And you done over a hundred you have said?

A. Yes, I have.

Q. Okay. And in your search warrant you include -- in the second to the last paragraph it says that the agents approached the apartment, detained occupants, plain view inside the apartment you found several bags of crystal substance that appeared to be crystal methamphetamine, correct?

A. I did.
Q. Okay. Inside detailing that in the search warrant you found -- you have already seen -- or you have already gone in the apartment and found stuff, right?
A. Right.
Q. Okay. I want to step back to movement real fast. You mentioned that when you were informed about movement, you asked about it because you wanted to put it in the search warrant, but it's not in the search warrant, is it?
A. I don't remember saying that I put that in the search warrant. That's what motivated me to tell them to secure the apartment is the movement.
Q. Okay, the movement.
And who told you that there was movement?
A. The deputies started -- he had task force officers in the woods across from the apartment.
Q. Okay. Who is that?
A. Task Force Officer Gilstrap and Ross Brown.
Q. Okay. And in your report -- do you remember making a report to the USDEA investigation on the 2nd? I guess that would be the day of the bust. Do you recall that?
A. Are you talking about the second paragraph on the last page?
Q. No, no, no, I'm talking about a separate DEA report. Did you also make a DEA report about the --

A. Yes, I did, that's correct.
Q. Okay. Do you recall -- and do you recall making out a report, right?
A. (Shaking head yes).
Q. Do you recall in that report any mention of movement or anything outside the apartment in the report?
A. I would have to look at my report.
Q. Would it help seeing your report? Would you like to see it?
A. Yes.
Q. After you have had time to read that let me know.
A. (Witness reviewing document).
I'm ready.
Q. Okay. Is there anything in this report regarding movement in the hallway?
A. There is not.
Q. And this search warrant was obtained after they had already gone in the house, correct?
A. Correct.
Q. Thank you.
MR. CRANGLE: That's all the questions that I have.
THE COURT: Mr. Robinson?
CROSS EXAMINATION BY MR. ROBINSON:
Q. Officer, had you ever had any prior dealings with Mr.

Ochoa?

A. I had not.

MR. ROBINSON: That's all I have.

THE COURT: Ms. Monts, anything further?

REDIRECT EXAMINATION BY MS. MONTS:

Q. In your report, Agent Garrett, your report starts at the execution of the search warrant and doesn't give any information prior to that, is that correct?

A. I'm sorry?

Q. It doesn't talk about your surveillance at the scene. It talks about starting with the execution of the search warrant?

A. That's correct.

Q. Thank you.

MS. MONTS: Nothing further.

THE COURT: All right. You can step down.

Let me look at that search warrant.

All right, Ms. Monts, call your next witness.

MS. MONTS: Your Honor, Officer Maltby.

OFFICER CHAD MALTBY, having been first duly sworn, testified as follows:

THE CLERK: Thank you. Please be seated.

Would you please state your name for the record?

THE WITNESS: Chad Maltby.

THE CLERK: Thank you.

DIRECT EXAMINATION BY MS. MONTS:

Q. Deputy, please state where you are employed.

A. I'm employed with the Greenville County Sheriff's Office.

Q. And how long have you been with them?

A. I have been here about seven years.

Q. And on July 2nd of 2014 what unit were you assigned with?

A. Directed Patrol Unit.

Q. And are part of their duties to assist other agencies in assignments?

A. Yes, ma'am.

Q. And on July 2nd what were you and your unit assigned to do?

A. We were assigned to assist Master Deputy Garrett, along with the DEA task force.

Q. And where were you to go?

A. Well, we had a briefing and then we went to the location of Wal-Mart on Whitehorse Road.

Q. And what was supposed to take place on Wal-Mart Road -- excuse me, at the Wal-Mart?

A. Yes, this was going to be a buy-bust operation.

Q. And what is a buy-bust?

A. To sum it up, an informant or an undercover officer attempts to purchase narcotics. Once the narcotics are

seen, an arrest is made or a takedown is made of the suspect.

Q. And prior to your briefing on that day did you have any knowledge of this operation that the DEA task force was working on?

A. No, ma'am.

Q. And what were you and your unit wearing and driving on that day?

A. We were driving -- we were in two separate cold car vehicles, which are just some type of SUV's.

Q. Unmarked?

A. Yes.

Q. And are you in uniform, or vests, or what?

A. I believe we were in uniform.

Q. And do you recall where you went to in the Wal-Mart parking lot?

A. I was sitting over near the gardening section, the side closest to West Marion Road.

Q. Did you know what kind of vehicle the confidential source would be in?

A. At the time I did. I don't recall right now.

Q. And were you in audio or phone conversation with Investigator Garrett?

A. We had our 800 megahertz radio contact.

Q. And what were you supposed to do in the parking lot?

Were you supposed to wait for a signal, or what were you supposed to do?

A. Right, we were waiting on a signal that would be basically a takedown signal.

Q. And what would you do once you received that?

A. We would perform a vehicle takedown on the suspect vehicle.

Q. And what would that entail?

A. To sum it up, we would come in and block the vehicle and affect an arrest on the suspect.

Q. And did you do that on this day?

A. No, ma'am.

Q. Why is that?

A. Well, the situation evolved. The suspect met, but did not have the narcotics and wanted to meet at a location down the road with the narcotics.

Q. And what were you told to do then?

A. At that point we staged just up the road from the apartments on Lily Street.

Q. And could you see what was going on at the apartments or hear anything?

A. I couldn't see what was going on. I only had contact over the radio as to what was going on.

Q. With Investigator Garrett?

A. Yes.

Q. And how long -- how long did you stay there in your vehicle.

A. I would estimate five minutes.

Q. And what did you hear over the radio?

A. We heard just that the CI had made entry with a couple subjects and that the CI had seen a large amount of crystal methamphetamine inside the house or the apartment. At that time we knew that the CI left the apartment under the terms of going to get the money to pay for the narcotics that were seen.

We also heard from the surveillance team that was relaying it to Master Deputy Garrett that there was some activity at the apartment, meaning something about a couple different people came out of the apartment and were loitering around out in the breezeway, walking out towards the parking lot area and things of this nature.

Q. And what does that avert into or mean to you?

A. Definitely would think that -- our concern was some type of destruction of the evidence.

Q. At what point do you do anything? What causes you to act?

A. Yes, we were advised by Master Deputy Garrett, due to the exigent circumstances and fearing that some evidence would be destroyed, to secure the residence.

Q. Okay. And what does secure the residence mean? Does

it mean search?

A. No, ma'am, not at all. We just -- basically we just detain whoever was present and that's just about it. Just detain them.

Q. And what did you see when you went to the residence and how did you know which apartment to go to?

A. We were advised over the radio exactly which apartment it was and where it was located.

Q. And what did you -- what happened when you went to that door?

A. Went to the door. The door was unlocked. A deputy opened the door. I was the first one inside.

Q. Did you announce yourself?

A. I did. Several of us were.

Q. And what does announcing mean?

A. Just announcing that we were law enforcement, basically saying sheriff's office and giving commands for the persons inside to get on the ground.

Q. And how many people were inside the apartment?

A. Three people.

Q. How big was the apartment?

A. Very small. I would estimate maybe 600 square feet, somewhere around in there.

Q. Do you recall how many bedrooms?

A. One bedroom.

Q. How many bathrooms?
A. One bathroom.
Q. When you went in where were the people?
A. When I came in the living room I observed Mr. Ramirez and Mr. Cruz walking from the direction out of the only bedroom. They were detained in the kitchen area or hallway -- hallway/kitchen area.
Q. And where was the third person?
A. The third person was -- Mr. Tavera was located in the bedroom.
Q. And where in the bedroom, if you recall?
A. When you walk in the bedroom he was in the -- he was all the way up to the corner on the right-hand side crouched down in the -- crouched down on his heels and had his hands kind of covering his face and head.
Q. Did you see anything in that room?
A. Yes, ma'am. There were I believe four Zipzoc bags of crystal-like substance. This was in plain view sitting on top of a counter which was within sight of Mr. Tavera.
Q. Did you have to pass it to get to Mr. Tavera?
A. Yes.
Q. What did you believe this substance to be?
A. Crystal methamphetamine.
Q. What did you do with the three people that were inside the apartment?

A. They were detained, which means basically they were just handcuffed and asked to sit on the couch, I believe, in the living room.

Q. Did you or any of your officers search the residence?

A. No, ma'am.

Q. Did you touch anything --

A. No, ma'am.

Q. -- other than the three people?

A. No, ma'am.

Q. How far -- or did you know where the confidential source was going to supposedly get the money?

A. To my knowledge, it was just up the street maybe a quarter of a mile at a gas station.

Q. How long would it have taken him to return from that location?

A. I would estimate a minute. A couple minutes.

Q. Did Investigator Garrett arrive with the search warrant?

A. Yes.

Q. How long did it take until he arrived, if you recall?

A. I would estimate 35 minutes.

Q. When he arrived was the search warrant served on the people there?

A. Yes.

Q. And read to them?

A. Yes.
Q. And who -- did you and your officers then search?
A. Yes.
Q. Who was the scribe on the search warrant, do you recall?
A. I believe it was Deputy Walters -- or, I'm sorry, Waters.
Q. So was any evidence that was found then turned over to him on that date?
A. Yes, ma'am.
Q. Thank you.

MS. MONTS: Nothing further.

THE COURT: Mr. Crangle?

CROSS EXAMINATION BY MR. CRANGLE:

Q. Deputy Maltby, when you were preparing to go into the house, where were y'all staged before y'all got there?
A. Just up the road.
Q. Okay. When you got the go signal to go down to the house to secure it, where were you at when you first heard it?
A. Just up the road.
Q. Could you see the hallway and breezeway when you were up the road?
A. I could not.
Q. Did you see any movement in the hallway up the road?

A. I did not.
Q. Okay. How many deputies went to the door?
A. Four, maybe five.
Q. Okay. And were y'all wearing the sheriff's office like you are wearing today with the bulletproof vest and everything?
A. Yes.
Q. Okay. And it all said the Greenville County Sheriff's Office and all that stuff, right?
A. I know -- yes.
Q. In general?
A. Yes.
Q. When you came to the breezeway, did you see anyone in the breezeway?
A. I did not.
Q. Okay. When you came to apartment [redacted] was the door open?
A. It was -- the door was closed but unlocked.
Q. Okay. Did anyone -- did you knock on the door or did you just go in?
A. Yes, we knocked and announced.
Q. Okay. Did anyone come and open the door for you?
A. They did not.
Q. Okay. So you unlocked it. Someone -- did you open the door?

A. Deputy Walters opened the door.
Q. Okay. So deputy -- you didn't open it? You followed in behind, correct?
A. Yes.
Q. When you went into the house at some point, did you get out your pistol?
A. Yes.
Q. And then you used it to make sure that people were detained, right?
A. I didn't use it. It was -- it was out of my holster.
Q. But it was being presented, right?
A. Yes.
Q. You didn't fire or shoot the gun?
A. Right.
Q. Okay. When you went into the bedroom, you found Mr. Ochoa-Tavera in the bedroom, right?
A. Yes.
Q. Okay. Were the drugs -- was he with the drugs? Was he holding them or anything?
A. He was maybe four feet away and it was within visual sight.
Q. Okay. Was he trying to make a run at it to go to the bathroom and dump them?
A. He was crouched down in the corner of the room, like I said, four feet away from them.

Q. Do you recall making a report in this incident?
A. Yes.
Q. Okay. In your report do you recall reporting movement in the hallway at go signal?
A. (No response).
Q. It's okay if you don't remember that. I have the report.
A. Say that again. Do I -- did I record what?
Q. In your report did you write down "we got the go signal because there was movement in the hallway." Do you recall that?
A. I don't recall if I -- I don't believe I wrote that down, no.
Q. Would it help you to see your report to refresh your recollection?
A. I have it right here.
Q. Okay. But you didn't write in there that "we saw movement in the hallway," or, "someone approached and told me there was movement in the hallway?"
A. Correct, I did not.
Q. Okay.

MR. CRANGLE: That's all questions that I have. Thank you.

THE COURT: Mr. Robinson?

MR. ROBINSON: I have no questions, Your Honor.

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THE COURT: Anything else, Ms. Monts?

REDIRECT EXAMINATION BY MS. MONTS:

Q. Officer, although you did put in your report that due to exigent circumstances, that you and the other deputies approached the apartment to secure it in anticipation of a search warrant?

A. Yes, ma'am.

MS. MONTS: Nothing further.

THE COURT: You can step down.

Anything else, Ms. Monts?

MS. MONTS: No, Your Honor.

THE COURT: All right. Anything from the defense?

MR. CRANGLE: No, Your Honor.

THE COURT: The court is going to deny the motion to suppress. I find that on the day and the time of the -- certainly the officers entered, it appears that the testimony has been that the CS, confidential source, was involved with what appeared to be an ongoing drug transaction that actually started at the Wal-Mart and went to the convenience store and then to this particular home where he, in fact, in essence, escorted the confidential source.

The testimony has been that the officers were instructed to move in -- once the officers began surveilling the apartment in question, that there was some activity.

One of the individuals who -- Mr. Ochoa-Tavera appeared to have driven up in a car and went in the house. And there is some testimony where it appears either he or someone else from the apartment had come out of the house and looked like they might leave. The officers were instructed to move in and to hold and detain the apartment until the search warrant was secured. The officers did do that, stating they went in. There were three people. They ordered them down, which they complied with.

The testimony is that the search warrant was eventually served approximately 35 minutes after the entry.

The court also finds that there has not been a showing as to the standing of these two defendants to challenge the search warrant. It appears that Ramirez -- the testimony is that the investigation was aimed at Mr. Ramirez. He is, in fact, named on the search warrant. Neither Mr. Ochoa-Tavera or Cruz are named on the search warrant. The court -- there has not been a showing of any expectation of privacy that either of those two individuals may or may not have had in the apartment. Therefore, the court is going to deny the motion to suppress.

There was a warrantless entry into the house, but there appears to be exigent circumstances of potential destruction of the evidence. And also the fact that this, in essence, was an ongoing drug transaction that moved from

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the outside into the apartment.

All right, anything else on this issue?

MS. MONTS: Nothing from the State, Your Honor.

THE COURT: Anything from the defense?

MR. CRANGLE: Not on this issue. I do have one issue, though.

THE COURT: All right. Then we will move to the next issue.

What's the next issue, Mr. Crangle.

MR. CRANGLE: Judge, I just want to be clear. Deputy Garrett -- or, excuse me, Agent Garrett testified that Task Force Officer Gilstrap and Ross Brown were involved and I don't have any investigative reports from those officers. Perhaps they did not generate any, but in my experience usually people involved in these investigations do generate reports and I have not had any reports disclosed to me. I just want to confirm with the State that there are either no existence of the reports. I have filed Brady and Rule Five motions, Your Honor.

THE COURT: So the -- Ms. Monts, Mr. Crangle is saying that there were two officers listed in a report and he does not have a report from those two officers.

Is that correct, Mr. Crangle?

MR. CRANGLE: What I am stating is that Agent Gilstrap testified -- or, excuse me, Agent Garrett testified

that Task Force Officer Gilstrap and Ross Brown were at the surveillance locations. I don't have any reports regarding their activity there. That doesn't mean that they created one. Just in my experience usually they do create a report.

THE COURT: Well, you work that out with Ms. Monts and let me know what I need to deal with that. She will -- you know, I'll take that up after you have had a discussion with her about whether she has or does not have those.

MR. CRANGLE: All right. Thank you, judge.

THE COURT: Anything else?

Yes, Mr. Robinson.

MR. ROBINSON: May it please the court?

THE COURT: Yes.

MR. ROBINSON: Your Honor, in chambers I discussed with the court a motion that I had in limine in terms of this CI or this CS's testimony regarding his relationship or prior dealings with Mr. Ochoa, and I would like -- I can probably address this at the time he testifies or is proffering his testimony, if the court would allow his testimony, but it's our contention he's had no prior dealings or has not done any drug transactions with Mr. Ochoa.

THE COURT: Well, we will deal with that at trial.

MR. ROBINSON: Yes, sir.

THE COURT: That would be based on what evidence

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comes out at trial, and then certainly be your responsibility, if we get to that point, to ask for a place to break and then we would take up that issue. That's certainly going to depend on what the CS may or may not testify to.

MR. ROBINSON: And I would ask -- I'm concerned that Ms. Monts in her opening is going to discuss that and I would ask that she not, until we get to that point, not be permitted to discuss that in her opening statement.

THE COURT: Ms. Monts certainly knows the rules and if she has what she believes is evidence that she's going to present in court, she can present that during opening. And, again, openings are not evidence and I will charge the jury they're not evidence. All right.

MR. ROBINSON: And, the next motion, Your Honor, is as far limine regarding the testimony of the two officers, they are kind of skirting this lay testimony versus expert testimony in terms of their experience and so forth and I would ask that I be permitted outside the jury's presence to proffer their testimony to see what their dealings have been, as far as ultimate opinions on Mr. Ochoa going into the apartment and supposedly staying at that apartment, whether that indicates he was engaging in drug activity. I'm concerned about the jury getting testimony from these officers then, well, that he goes to an apartment

in a car and this guy is a drug dealer, so he must be involved with drugs too. I mean, I'm concerned about that kind of testimony.

THE COURT: Ms. Monts?

MS. MONTS: Your Honor, the officers do intend to talk about the involvement of all three people in this drug conspiracy. We do believe all three are involved and they do intend to talk about the roles each of the three had. I mean, maybe I don't understand exactly.

MR. ROBINSON: Well, Your Honor, what I have heard today from the officer is that Mr. Ochoa was not involved at Wal-Mart. They didn't see him bringing drugs to this house or anything of that nature. They saw him drive up to this residence that belonged to Mr. Ramirez's apartment, but there is nothing that's indicated that he was involved in any conspiracy. He could just have been there just to pick up a check or pick up some money and leave and I'm not really sure. I'm concerned about the officers talking about all this stuff.

THE COURT: Ms. Monts?

MS. MONTS: Your Honor, this was just a hearing. Officers have a whole lot more to say about what happened on these dates. I mean, this is just the tip of the iceberg, so they do intend to talk about what they know and observed.

MR. ROBINSON: Well, the discovery that I have, we

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have gotten Rule Five, other than him being at the apartment, there is nothing that indicates that he was involved in any conspiracy in this case, so that's where I'm going with this.

THE COURT: Well, Mr. Robinson, you know, the statute -- the manufacturing statute is, you know, conspiracy is one of the potential elements, and certainly they can bring out evidence that they deem appropriate on the issue of conspiracy. So at this point I'm not going to limit them on what these officers -- in fact, their experience certainly goes to the issue of the conspiracy. At this point I have -- of course, I don't know what the testimony is going to be, but we deal with that again at trial. If there is something that you need to renew your motion, we will certainly hear it at that time, but at this point there is nothing that I can rule. Okay.

MR. ROBINSON: Thank you, judge.

THE COURT: Anything else?

MR. ROBINSON: No. Thank you.

I would ask that the witnesses be sequestered, other than the investigating officer. Obviously the other witnesses be sequestered.

THE COURT: All right. Well, I think the testimony was that we really, in essence, have two investigators -- yeah, I think for the purpose of the

hearing today was probably appropriate to have both of them in there, but I believe Mr. Garrett appears to be the case agent or the chief case agent. Is that right, Ms. Monts?

MS. MONTS: Yes, Your Honor.

THE COURT: All right. And then we will ask any other witnesses to be sequestered, and that would be including Agent Smith.

MS. MONTS: Yes, Your Honor.

THE COURT: Okay. Anything else?

MR. CRANGLE: No, Your Honor.

MR. ROBINSON: No.

THE COURT: Anything else from the State?

MS. MONTS: No, Your Honor.

THE COURT: All right. So we should be ready to start with openings as soon as we get the jury in in the morning?

MS. MONTS: Yes, Your Honor.

THE COURT: All right. Great. We will be in here and be ready to go at nine o'clock in the morning.

Thank y'all.

(Whereupon, proceedings were adjourned to February 10, 2015)

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STATE OF SOUTH CAROLINA )
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE )

THE STATE )
)
-vs- ) TRANSCRIPT OF RECORD
) 2014-GS-23-09505
MANUEL CRUZ, ANTONIO ) 2014-GS-23-09513
OCHOA-TAVERA, )
) FEBRUARY 10, 2015
DEFENDANTS. ) GREENVILLE, SOUTH CAROLINA

(VOLUME II)

B E F O R E:

THE HONORABLE DANIEL D. HALL, JUDGE. ; And a Jury.

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

JOYCE MONTS, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

JOHN CRANGLE, ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR DEFENDANT MANUEL CRUZ

SCOTT ROBINSON, ESQUIRE
ATTORNEY FOR DEFENDANT ANTONIO OCHOA-TAVERA

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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THE COURT: All right. Just a couple of things before we get started. One of the jurors yesterday -- what was her number?

THE BAILIFF: Berger.

THE COURT: Ms. Berger.

THE BAILIFF: Number 8, Your Honor.

THE COURT: Number 8 had indicated that she would be needing to pick up children at five every day. I'm going to address that when they come in and just tell her -- either ask her if she has got someone to take care of that today; or, if not, we would just be sure to stop at 4:45 so she could do that.

The other issue was -- and I may have been just a little bit confused. I think Mr. Robinson had had a motion in limine yesterday. In essence, it was about any prior bad acts on behalf of his client. I think that was -- you were concerned about the solicitor possibly talking in opening or eliciting testimony about Mr. Ramirez having the context of his contact with your client in the past? Is that what you were asking?

MR. ROBINSON: May it please the court?

THE COURT: Yes.

MR. ROBINSON: Your Honor, I don't think I was going in that direction. I think what I was going -- they

have a witness, the CI, who is going to testify, and I think he may have -- one of the officers may have said something about it yesterday, that he had dealings with Mr. Ochoa in the past. That's what I was talking about.

THE COURT: Okay., All right. All right.

And Ms. Monts, do you have a response to that?

MS. MONTS: Yes, Your Honor. The State believes that we are allowed to go into this area because this was how the confidential source, named Phillip Lewis, brought this attention to the Drug Enforcement Administration that started this investigation. He had had several drug dealings with Mr. Ochoa. Mr. Ochoa was the source for this particular deal on July 2nd, 2014. He does also arrive at the scene and is present and pulls the drugs out from where they are hidden on this date. So we were going to mention that he had -- you know, how does he know Mr. Ochoa? He's had several dealings with him in the past. And we have got some case law where prior -- where the defendant's personal relationship -- excuse me, a witness' personal relationship with a defendant can be brought in to prove intent or identity. One of those is State v. King, Court of Appeals, 561 S.E. 2d 640, 2002. It's talking about evidence of prior drug activity can be brought up if it's by a personal knowledge situation. Not just something that's not just told to them. He --

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MR. ROBINSON: Your Honor, I would like to respond to that.

THE COURT: Yeah, I'll give you an opportunity in minute, Mr. Robinson.

MS. MONTS: The court said that the witness can testify about the relationship with the other person, including whether they bought drugs from them before.

And also another case, Your Honor, is State v. Gonzalez, which was overturned on other grounds, but the grounds that I'm referring to in State v. Gonzalez, which was -- I have the cite on that, Your Honor. Your Honor, it's 360 S.C. 263. And in that case the court held testimony regarding personal knowledge of a particular criminal transaction is not character evidence and would be admissible.

So we believe since it is personal knowledge, that the witness should be able to tell about how he knows Mr. Ochoa and his prior relationship with him.

THE COURT: All right. I will be glad to hear from you, Mr. Robinson.

MR. ROBINSON: May it please the court, Your Honor, what I'm asking for is this. We have not had the opportunity or been allowed to talk to this witness, as far as what he knows about Mr. Ochoa. My client never seen this guy in his life, according to my client. I would like to

ask that his testimony be proffered before he actually testifies so I can find out what he knows, who told him to say what, and so forth, because what I'm discerning here is that this informant, who has got numerous, numerous charges pending and in the past has got some big reasons to testify in this case against my client and the co-defendant. I would like the opportunity before she starts going into everything about this guy, as far as his relationship, to proffer that testimony so I could see whether or not that testimony is relevant in this case. That's all I'm asking for.

THE COURT: All right. What we will do then is we will wait. When the State gets ready to call that witness, we will deal with that off the record --

MR. ROBINSON: Yes, sir.

THE COURT: -- before he testifies, and so we will resolve that before he testifies.

MR. ROBINSON: Okay. And the only other issue -- Your Honor, may it please the court?

THE COURT: Right.

MR. ROBINSON: I advised Ms. Monts before today -- before this morning what I discerned yesterday was that two officers in this case, the investigating officer that testified yesterday, she is going to try to go into -- qualify them as experts in this area. And if she -- when

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she -- before she does that, I have a very large motion -- large motion. A motion under several different rules that I believe are very important in this case that would address that. I would like to proffer there -- before she starts getting this expert testimony supposedly in from the investigating officer, I would like to proffer -- get them -- if the court is the gate keeper and look at that and determine whether or not they could testify as experts. I'm going to object at that point and so forth.

THE COURT: Hold on just a minute.

(Off the record)

(Back on the record)

THE COURT: Yes, ma'am. Ms. Monts?

MS. MONTS: Again, Your Honor, we just ask that that be taken up at the time that those two witnesses are testifying. They both have been qualified in several courts prior as experts and I believe that they are going to be qualified this time.

THE COURT: Okay. All right. As far as your order, who do you intend to call first?

MS. MONTS: First will be Agent Randy Smith with DEA.

THE COURT: Right.

MS. MONTS: And then second will be the informant. And let me say this, Your Honor, Investigator

Garrett sitting next to me, he's got to go to Federal Court in about 20 minutes. Since Randy Smith is going to be my first officer anyway -- I mean my first witness anyway, I just want to let you know that Mr. Garrett is going to probably be leaving before that happens and then he will be back in about an hour and a half.

THE COURT: Well, thank you. All right.

Well, what we will do is we will get through all of our -- the openings -- I mean the preliminary charge and openings and Mr. Garrett -- I mean Mr. Smith is going to be the first witness. We will talk to you -- I'll talk to you about that issue about him being an expert at that time.

Anything else we need to take up?

MS. MONTS: And, Your Honor, just to clarify that I will ask for Investigator Smith to be an expert as well and he will be our first witness.

THE COURT: Well, I think -- and you can certainly -- Mr. Robinson, I have heard from you. We can flesh this out a little bit later. I think the law is pretty clear, they can both be qualified as experts. You know, they can be.

Let's do this. Let's get through -- let's get through -- let's get the trial started and when we -- when we get ready to call -- when you get ready to call Mr. Smith, then we will -- if we need to send the jury out and

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proffer his testimony, we will.

MR. ROBINSON: Thank you, judge.

THE COURT: Anything else?

MS. MONTS: Nothing from the State, Your Honor.

THE COURT: Anything from the defense, Mr. Crangle?

MR. CRANGLE: No, judge.

THE COURT: Mr. Robinson?

MR. ROBINSON: No, sir, Your Honor.

THE COURT: Let's bring the jury in.

MS. MONTS: Your Honor, one issue.

THE COURT: Yes, ma'am.

MS. MONTS: We --

THE COURT: Don't let the jury in.

MS. MONTS: Mr. Garrett is in custody of the evidence, which we are leaving sit here. When he leaves to go to Federal Court, I was just going to have DEA Agent Smith take control of it here in the courtroom. And I know he -- he will have testified already. I'm just wanting to make sure just since the sequester order if he can stay here and watch it, or if he needs to go out with it.

THE COURT: Certainly you would have a chain potential issue. I don't know that the court is going to give you advice on how to protect the chain. It would be up to y'all how y'all figure out how to do that.

MS. MONTS: But can I -- my question, I'm sorry, is can I have Investigator Smith stay in the courtroom?

THE COURT: Yes, that is fine. That -- once he testifies, he can stay in the courtroom.

MS. MONTS: Thank you, Your Honor.

THE COURT: All right. Bring the jury in.

(The following takes place in the presence of the jury panel)

THE COURT: Thank you, ladies and gentlemen, for being here. I know some of y'all -- I'm driving back from York and the traffic was always bad around Pelham Road, but today from BMW plant up 385 was horrible, so I apologize for there being a delay caused by the court.

We are about ready to get started.

I think Ms. Berger, you had told the court yesterday that you needed to be able to pick up the children or child or children by five o'clock.

JUROR NUMBER 8: I said I have to leave by five.

THE COURT: You need to leave by five. So if we go until five o'clock you are all right?

JUROR NUMBER 8: Yes, sir.

THE COURT: We will make every -- we will accommodate you on that.

I'm also going to ask Mr. Anderson the next time that the jury comes in, if you would take the end seat here.

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You are going to be the -- I'm going to appoint you the foreman in this case, which means you will just need to -- you don't -- you don't have to swap now. The next time y'all go out, when you come in, I want you to always take that first seat. So you will sit there. Everybody else, except the alternates, can sit where you would like. The alternates, both of y'all need to keep these two seats on the end. So just that way the foreman is to my far left and then the alternates on the upper row on my left.

All right. At this point let's swear the jury.

THE CLERK: All right.

If you will please stand and raise your right hand for the oath and the proper response is I will.

You shall well and truly try the case 2014-GS-23-9505, the State versus Antonio Ochoa-Tavera, he's indicted for trafficking methamphetamines. Also 2014-GS-23-9513, the State v. Manuel Cruz, indictment for trafficking methamphetamines, and a true verdict render according to the law and the evidence, so help you God? I will?

JURY PANEL: (Collectively said I will).

THE CLERK: Thank you. Please be seated.

THE COURT: Ladies and gentlemen, I'm going to give y'all some preliminary instructions in the case as we introduce the case, so I'm going to ask that you listen very

attentively.

I will state again that this is just a little bit unusual, in that we have two interpreters in the courtroom interpreting for the two defendants in the case. You know, it's a little bit different, because we are going to always hear that noise, but that's a necessary part of the trial in this case. So you and I will have to work a little bit harder to listen, because we have got something that we are not normally used to, so that's the reason for -- there is a reason for the interpreters here and it's a very necessary reason.

I'm going to give you the basic explanation. Again, as the clerk has stated, that both of these two defendants in this case are both charged in two indictments, one indictment for each defendant. They are charged with the crime of trafficking in methamphetamine. The indictments allege that Manuel Cruz and Antonio Ochoa-Tavera did, in Greenville County, on or about the 2nd day of July of 2014 knowingly sell, manufacture, deliver, or bring into the State of South Carolina, or did knowingly provide financial assistance, or, otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, or bring into the this state, or was knowingly in actual or constructive possession of more than 200 grams of methamphetamine. This is in violation of Section 44-53-375 of the South Carolina

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Code of Laws.

Those indictments are simply charges by which the case -- by which this case is brought into court. It's not in any sense evidence of any of the allegations that it contains. The defendants in this case have pled not guilty, and so, therefore, the State has the burden of proving each of the elements of the charges by which they are charged beyond a reasonable doubt. And it's going to be your duty, ladies and gentlemen, to determine whether the State has met that burden of proving the defendants' guilt beyond a reasonable doubt.

Your purpose as jurors is to find and determine the facts. You are the sole judge of the facts. If I make a comment regarding the facts, you are to disregard it. My job is I'm to rule on issues of law. You are the fact finders in the case. You are required to determine what the facts are based on evidence here in this courtroom of anything that's introduced to you in the court. It's up to you to determine any inferences that you might feel may be properly drawn from the evidence.

It's especially important that you perform your duty of determining the facts diligently and conscientiously, because ordinarily there is no way to correct an erroneous determination of the facts by the jury.

On the other hand, as I have stated to you

earlier, the law makes you the judge of the facts and makes me the judge of the law. The law as given by the court is the only law that you may consider. You must accept and follow it, even though you may disagree with it. I can't tell you what the facts are. Your job is to take the law, and I'm going to tell you that at the end of the case, and combine it and apply it to the facts as you find them from the testimony of the witnesses and any evidence that's introduced here in court. Once you do that, then you will render a verdict.

You are not to discuss the case or deliberate the case at all until all the evidence is in. When you leave here and you go back to the jury room, it seems sort of odd, but you can't talk about the case at all until all the facts are in. If I -- if you -- you can't talk to your family tonight at the supper table, or if you have got friends, don't talk about the case at all until the case is completely over. If anyone tries to talk to you about your case, don't talk to them. If they insist on that, then please let me know. Again, your job is to determine the outcome of this case based on what you hear solely in this courtroom.

Don't try to find out any information about this case, or any of the lawyers, or the judge, or any court personnel by looking on the Internet or any other source.

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Don't -- you may be tempted in this age. We all want to Google everything. Don't Google anything about anybody or anything about this case. You are not to look at any other materials, books, anything on the Internet about the case. Do not do that.

I don't think there is going to be -- there doesn't appear that there is going to be any media coverage of this case, but if there was during the trial, you are not to read, listen to, or watch any news reports about the case. That includes anything that might be in the newspapers or on the Internet, radio, or television. Anything from all those sources may be incomplete or either completely wrong. In our system it's important that you not be influenced by anything or anyone outside of the courtroom. If you become aware that another juror has violated that, then you need to please inform the court immediately.

It's important that you keep an open mind, not decide any issue in the case until all the evidence has been presented, the parties have made their closing arguments and I have instructed you on the law of the case. It's your solemn responsibility to determine the guilt or the innocence of the defendant and your verdict must be based solely on the evidence as it is presented to you in this trial and on the law as I instruct you at the close of the

trial.

In just a moment the solicitor is going to make what's called an opening statement. The solicitor is going to explain to you the issues in the case, or at least what the solicitor thinks what the issues are, and then the attorney for the defendant will also make their opening statement, if they wish. What they tell you during opening statements is not evidence. It is only their contention as to what the issues are. The evidence in this case is going to be presented to you by testimony of sworn witnesses and any exhibits that may be introduced into evidence.

At some point in time lawyers may object or say they have an issue of law. We may have to send you out to the jury room. We will continue to work here. There are going to be issues that I may have to resolve outside your presence dealing with the law. So if there is an objection, they are doing their job to protect their particular position. It's my job to deal with those areas of the law, but we may well have to do that outside of your presence or we may have a conference up here with the lawyers.

Again, I tell you that in determining the facts in this case you must decide whether or not the testimony of the witnesses is believable. It would be my responsibility to rule on admissibility of any evidence, but whether or not you believe it is solely for you to determine. In deciding

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whether to believe a witness, you have a right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which a witness may testify and the way the witness acts on the witness stand. You have a right to consider anything that's in the record again and what goes on here in this courtroom that will help you evaluate the testimony of the witnesses. You got a duty to pay close attention, to watch them, to observe the witnesses and to listen, and, again, to determine what the true facts are and to apply the law to those facts and render a verdict.

Mr. Anderson, the foreperson, it's your added duty to preside in the jury room and to be the jury spokesman. At the proper time it's going to be your duty to write the verdict and I will give you further instructions on that later. I will say that as the foreman, you don't have any more -- your vote is not worth more than anyone else on the jury. It's your duty just simply to make sure that deliberations take place and that the jury reaches and records the jury's verdict, whatever that may be.

Again, the next thing that we are going to do is we are going to hear from opening statements from the attorneys, if they wish in this case. Once we do that, then they will begin to present testimony.

Ms. Monts.

MS. MONTS: May it please the court, Your Honor?

Ladies and gentlemen, again my name is Joyce Monts. I'm the prosecutor on this case. It is my job to prove to you beyond a reasonable doubt that the two defendants here, Manuel Cruz and Anthony Ochoa-Tavera, are guilty of the charges that are currently pending against them. Those charges are trafficking in methamphetamine.

What is trafficking in methamphetamine? I'm going to describe it and at the end of the trial His Honor is going to describe it. Anything that I say that differs from what he says, he is the judge of the law. Listen to it as he says it.

You are the judges of the facts of what happened and are the defendants guilty of these two charges?

Originally there were three co-defendants. We are down to two. Mr. Ramirez has already pled guilty, so now we have left Mr. Cruz and Mr. Ochoa-Tavera.

This date occurred July 2nd, 2014.

You are going to receive evidence in this case. Evidence includes testimony from the witness stand, as well as physical objects that will be entered into evidence. So when you go back and are allowed to deliberate at the end of the trial, you will remember the testimony that you have heard and look at any evidence that has been admitted that

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you can use to consider whether these two defendants, Mr. Cruz and Mr. Ochoa-Tavera, are guilty of the trafficking in methamphetamine.

What is trafficking in methamphetamine?

Trafficking, as His Honor will instruct you at the end, includes a lot of different acts. The most simple act is being in possession of more than a certain amount of drugs, illegal drugs. This case the illegal drug is methamphetamine. The weight in this case is over 200 grams. Trafficking weight sentences start at over 10 grams, over 28 grams, over 100 grams, over 200 grams, and over 400 grams. We are at the level of over 200 grams.

The way you can be charged and guilty of trafficking, like I said, possession. Also aiding, abetting, conspiring, delivering. There are different verbs in any of those, or more than one of those is enough to be convicted and guilty of trafficking in methamphetamine. You have to have the drugs, you have to have the weight, and you have to have one of these verbs been charged proven to you; possession, delivery, conspire, aid, or abet. It's very broad. Very broad.

You will hear testimony from the officers on the scene. There will be Drug Enforcement Administration officers. There will be officers from the Greenville County Sheriff's Office. There will be chemists, and there will be

lay witnesses, lay witnesses not involved in law enforcement. So those people are here to tell you what they know, and it takes everybody who is testifying to get the full complete picture, which is one of the reasons we can't deliberate until you have all the evidence in front of you, a full complete picture of what really happened.

What we believe we are going to show you on July 2nd, 2014, that an informant with the Drug Enforcement Administration was to purchase methamphetamine, eight ounces, more than 200 grams of methamphetamine, and it was an undercover controlled buy. So there will be an audio. There will be a video as part of it. You will hear testimony from witnesses on what happened.

Now, Mr. Ramirez is the one who came to the scene to start the talking, so -- and he's already pled. Who do we have left? Mr. Cruz and Mr. Ochoa-Tavera. And they were different, albeit just as important in completing a trafficking operation. All three of them are guilty.

We believe once you have heard the testimony, seen the evidence, that you will come back at the end and render your truthful verdict, and we believe that truthful verdict will be guilty. Thank you.

THE COURT: Mr. Crangle?

MR. CRANGLE: May it please the court?

In life guarding you learn a very simple rule.

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One of the most dangerous things that you find is someone drowning. That's not because they are a danger to themselves, but because they are a danger to others. A drowning man has a basic instinct of survival. That survival instinct will overcome any other instinct. So when you are a lifeguard and you have to save this person, they may try and drown you. They will try and push you down, to stay on top of you, do anything that they can to stay above that water line, because they feel that they will sink below the water. And they know that if they can't do anything, that they will go under. They will grab anything. They will grab any object. They will grab any person so they can keep themselves above the water line.

Two people are drowning. You will hear from Mr. Lewis, who is the State's confidential informant in this case. He was arrested in Greenwood County, and then in a little bit of time he contacted law enforcement. He's facing serious criminal charges in Greenwood County. He contacted law enforcement and he says "I have got someone that you need to see. I can help you find drug dealers." He was going under. He was looking to help himself, so he decided to cooperate.

The person he provided to the police, Mr. Ramirez, who the solicitor has informed you of, he's the primary co-defendant. He's the one that pled guilty, guilty of what

he's pled from and what he is now looking at. Mr. Ramirez is going under. He felt himself going under. What did he do? He looked out for anything that he could to grab, to keep himself above that water line, to continue to keep from going under.

Those two men are drowning and they will do anything they can, because they have the basic instinct of survival. And what they have grabbed onto is my client, Mr. Manuel Cruz.

As you can see, we have two co-defendants. This is my client. I represent Mr. Manuel Cruz.

You are going to hear from Mr. Lewis and Mr. Ramirez and you are going to hear from the officers in this case, and there is going to be audio and visual recording. You may hear those.

What Mr. Lewis is going to tell you is Mr. Ramirez is the primary leader. They had Mr. Ramirez on audio talking about the 28 ounces worth of methamphetamine, which is about $8,000 worth of drugs. Mr. Ramirez, you are going to find out, had drugs in [redacted] that he kept in the air conditioner. You are going to hear all this.

Mr. Ramirez has already pled guilty. He admits it. And in exchange for his testimony he has pled guilty to a reduced sentence, a different charge than what my client

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is facing. My client is charged with trafficking in methamphetamine, 200 to 400 grams. Mr. Ramirez pled to a lesser charge which carries lesser time, and we will get into that, but when you are going under, you grab anything that you can and anyone that you can, including my client in an attempt to save themselves and keep themselves out of prison for any extra time that they can.

Mr. Lewis is the confidential informant in this case who is facing criminal charges in Greenwood County. Mr. Ramirez has already pled guilty are going under. The question is who can they keep under below them to keep themselves above that water line? They have grabbed onto my client and they are trying to drag him down, and that's what you are here for today.

You will hear all of the evidence in this case. You will hear about everyone's involvement. You will hear about who the DEA was looking at. You will hear who Mr. Ramirez was looking at and working with. You will hear who Mr. Lewis is working with.

At the end of the day when you have all the evidence before you and after you have heard our closing statements and after you have heard the law in this case, I believe you will find my client not guilty.

THE COURT: Mr. Robinson?

MR. ROBINSON: If it please the court.

Good morning again. As I said, my name is Scott Robinson. I practice here in Greenville and I represent Mr. Ochoa, who is sitting to my left.

Now, y'all came to this courtroom and you were qualified as jurors yesterday for one reason; common sense. Y'all have common sense. Y'all bring to this courtroom all your experiences, things that have happened to you in your life, persons you have met, dealt with and so forth; common sense. But you also brought to court, to this courtroom, the belief -- or the judge is going to instruct you that the defendants are presumed innocent and the State has to prove their case, each and every element of their case, beyond a reasonable doubt.

Now, reasonable doubt is a high standard. There are other courts in this state, such as civil court, where the standard is preponderance of evidence. There is the administrative court where it's possibly maybe a little bit of evidence is enough, but this is criminal court, General Sessions Court, and the State must prove each element of the charges against my client and Mr. Crangle's client beyond a reasonable doubt.

Now, when you woke up this morning you read the paper, maybe, Google, got on the Internet and looked around, may have seen different things, different news topics on ISIS, on different things that are happening in this

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country, in the world, but you also may have seen places where there was an arrest made, or something of that nature, and you may have assumed immediately that, well, you know, law enforcement got this person, him or her, they must be guilty, and you made that presumption at that point. Now, that's okay out there, outside this courtroom, but it's not okay here, because in here the standard, as the judge is going to give you at the end of this case, and you were given in the opening instructions, Mr. Ochoa is presumed innocent in this case. The presumption of guilt is gone. The presumption of innocence is in this courtroom. That's what you are charged with. You all have common sense that you have brought to this courtroom and you also are going to follow the judge's instruction that the presumption of innocence stays with Mr. Ochoa.

Now, here is another word that will come into play specifically in this case, because we all have --

(Whereupon, someone's phone started ringing).

MR. ROBINSON: We all have ideas --

THE COURT: Wait. Solicitor, who has got the phone?

MS. MONTS: I apologize, Your Honor.

THE COURT: All right, go ahead.

MR. ROBINSON: We all have ideas, we have all met different people in our lives, but think about this. Think

about prejudice. We all have people that we look at or we see and we think we assume things and so forth, but, you see, this country was set up, our laws were set up to protect everyone; not white, not black, not oriental, and not Hispanic. Everyone deserves to have a jury of their peers, of other people just like y'all, to look at them in the same way as everyone else. These two folks are two Hispanic gentlemen. They don't speak very much English, but just because they are a different color, or a different race, or they don't speak English very well does not mean they are entitled to any less than all of us are entitled to, and that is that they are presumed innocent. The State must prove their case beyond a reasonable doubt. Mr. Crangle and I only ask you to look at them as you would look at anyone else; white, black, oriental, Hispanic, all the same. And if you do that and you look at the evidence in this case and use the presumption of innocence and use the judge's instructions as he will give you, Mr. Ochoa is not guilty. Thank you.

THE COURT: All right.

Would the attorneys approach?

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Ladies and gentlemen of the jury, we do have an issue of law that we are going to take -- that we

need to take up outside of your presence. I anticipate it will take -- well, the court is never an exact science, which I do anticipate it will take about 15 minutes, or so. It could be a little more, it could be a little bit less, but I'm going to ask the bailiff to take you back to your jury room and just make yourself comfortable. And then, again, do not talk about the case at all. All right. Thank you.

(The following takes place outside the presence of the jury panel)

THE COURT: All right. We are back on the record.

The issue that we need to deal with right now is that the State intends to offer Agent Smith as an expert in narcotics. She will state that a little bit later. The defense has an objection to that and wants to -- has requested an in-camera hearing on the issue of his being qualified as an expert, so that's where we are right now.

Ms. Monts, if you would call Mr. Smith.

MS. MONTS: Your Honor, the State calls Investigator Randy Smith.

DEA AGENT RANDY SMITH, having been first duly sworn, testified as follows:

THE CLERK: Please be seated.

DIRECT EXAMINATION BY MS. MONTS:

Q. Agent Smith, where are you employed?

A. I'm employed as a special agent with the Drug Enforcement Administration assigned to Greenville, South Carolina.

Q. How long have you been with the Drug Enforcement Administration?

A. Approximately 25 years.

Q. Can you describe your classes that you have taken and the requirements to be a Drug Enforcement Administration agent?

A. If I could, even prior before my employment as a special agent with the Drug Enforcement Administration, my degree is in educational psychology. I have a Bachelors of Science.

From 1988 until 1990, I served in the capacity for the State of Georgia as a substance abuse counselor, so I had quite a background in counseling and being involved with drug abuse on a personal level with clients that came in through the place where I was employed, which was Lakewood Recovery Center.

After that, in 1990, I was hired as a special agent with the Drug Enforcement Administration, where I attended the FBI Academy, and I believe at that time the basic agent class was 16 to 18 weeks. During those weeks we were taught daily the federal laws for drug violations, conspiracy law, report writing, as well as several law classes on

Constitution.

From -- I'm sorry.

Q. Go ahead.

A. After I graduated from the basic agent academy, I returned to Atlanta, which is where I was -- the city where I was hired out of, and I was in Atlanta for approximately eight months, where I conducted surveillance and a lot of junior agent tasks in helping the senior agents.

After that I was transferred to Raleigh, North Carolina. At the time in Raleigh there was no DEA office, so I was one of the first agents to open that office in Raleigh, and at that time we shared office space with the FBI. And while I was in Raleigh we conducted investigations from -- I think I was there in late 1990, 1991, until I was transferred in Greenville in 1998. Some of the cases in Raleigh I was involved with involved multi-state. While I was in Raleigh I gave testimony in a courtroom in Freeport, Bahamas; Miami, Florida; Fort Lauderdale, Florida. I have testified in courtrooms across -- federal courtrooms across North Carolina to include Raleigh, Winston-Salem, Elizabeth City, Newbern. I have also been in courtrooms in Anchorage, Alaska, as well as the courtroom in West Virginia, and Chicago, Illinois.

I have been the affiant on at least four to five Title 3 wiretap intercepts. Each of those affidavits, which

generally get approved by the local U.S. Attorney's Office in the district that you are in, as well as headquarters, they are lengthy documents. They are approximately 70 pages, each one of them.

As well as personally being the affiant on Title 3 affidavits, I have worked on at least ten other Title 3 affidavits, wiretap cases with other agents in the offices.

I have written countless affidavits for search warrants, as well as criminal complaints for arrest warrants throughout my career.

Q. Can you give an estimate of how many drug cases that you have been involved with?

A. Goodness, I mean, I would say hundreds.

Q. And how about -- have you ever worked as an undercover operative?

A. I have worked as an undercover capacity in Raleigh, as well as in Greenville. I think my last work I have done as an undercover was probably in 2000, or 2001.

Q. And approximately how many search warrant have you been involved with?

A. In excess of a hundred over my career, easily.

Q. Have you been qualified as an expert in federal or state court?

A. I have in a courthouse in Raleigh. It would have been the Eastern District of North Carolina. I cannot recall

which courtroom or judge it would have been before.

MS. MONTS: Your Honor, we would move Agent Smith as an expert in narcotics.

THE COURT: All right.

MR. ROBINSON: May it please the court?

THE COURT: Mr. Robinson.

CROSS EXAMINATION BY MR. ROBINSON:

Q. Officer, if I understand you correctly, you have been qualified one time in courts that you are not sure about in Raleigh, North Carolina, is that correct?

A. Yes.

Q. That's it, one time.

Now -- and as far as -- you have been an undercover agent, I believe you are not really sure how many times. You have served hundreds of search warrants and so forth, but you would agree with me that in this case that we are here for today that you were the investigating officer, is that correct?

A. Myself and Task Force Officer Jonathan Garrett.

Q. The answer to that is correct, correct? That is, you were the investigating officer with Officer Garrett?

A. Yes.

Q. Okay. And that means that you had an interest in this case with Officer Garrett and anyone else coming in there, correct?

A. Certainly.

Q. Now, in terms of your training and so forth that you have had, you have agreed that you have testified one time, but you --

Going back to that, though, you don't know what court that was in, right?

A. I have testified more than one time.

Q. You just testified -- you just testified on the record when you answered from Ms. Monts and myself, you testified one time in Raleigh, North Carolina, isn't that correct?

A. As an expert.

Q. As an expert, correct? Qualified as an expert one time in Raleigh, North Carolina, and you are not sure what court that was?

A. It was the Eastern District, so it could have been the courtroom in Newbern. It could have been the courtroom in Wilmington.

Q. But you don't know?

A. No, I don't recall.

Q. And educationwise, though, you have background in psychology, correct? Psychology?

A. I have a degree in --

Q. You have a degree in psychology.

A. -- educational psychology.

Q. Okay. And you have been an agent you said in Atlanta

and in Raleigh, right?

A. Yes.

Q. Okay. And you signed some affidavits. You have done affidavits I think you have testified to?

A. Yes.

Q. And you have done some search warrants?

A. Yes.

Q. You have participated in thousands of drug cases, right?

A. I think I said hundreds.

Q. Hundreds? Hundreds of -- I'm sorry.

And this is the first time in South Carolina that you have ever been qualified or tried to get qualified as an expert in a drug case, isn't it?

A. I'm -- this is the first time that it's been --

Q. First time in South Carolina or North -- South Carolina --

A. Yes.

Q. -- or Georgia, where you worked before in Atlanta, that you have ever been qualified by a court to be an expert, is that right?

A. Yes.

MR. ROBINSON: That's all I have, Your Honor.

THE COURT: Mr. Crangle?

MR. CRANGLE: Judge, Mr. Cruz joins the objection.

I have no questions.

THE COURT: Anything else, Ms. Monts?

MS. MONTS: No, Your Honor.

THE COURT: All right. The court finds that Agent Smith, I would find that his 25 years of experience in narcotics enforcement, coupled with his involvement, and it's his testimony hundreds of drugs cases over the past 25 years, is sufficient to qualify him as an expert in the area of narcotics investigations. That's the ruling of the court.

Anything else?

MS. MONTS: Nothing from the State, Your Honor.

MR. ROBINSON: Your Honor, I have a question. We still have the objection and I will raise that when he testifies, but as far as when we were -- when we were at the side bar up there the prosecutor said the areas that he would be -- procedure, I think she talked about; weight, how much weight is involved; and those things should be the areas that he's going to testify about.

I want to -- I would like to make the court aware that I am concerned about him going into other areas, as far as inferences he gets in this matter, that it takes away from the trier of fact. The common sense -- I'm just interested in what's he's going to testify to.

THE COURT: Ms. Monts?

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MS. MONTS: Your Honor, I'm not exactly sure where the defense is going on this. I intend to ask the officers, agents, why he asked the informant to do what he did; why they went to certain locations; what from his experience was taking place with certain movements being made. So I'm going on his expertise in these matters, so I'm not exactly sure what the defense is asking not to be allowed for us to say.

MR. ROBINSON: May it please the court?

THE COURT: Yes, sir.

MR. ROBINSON: Your Honor, the biggest danger that lies in this case with this individual is the jury, when he is qualified -- and I know the court is going to give an instruction at the end as far as believability and so forth, but they are going to think he's neutral and that his opinion is better than anyone else's opinion. And if he starts -- he testified that he's the investigating officer in this case, so he has an interest in this case, so he can -- what he can do in front of the jury, he can kind of move these facts and different inferences to benefit himself and benefit the State's case. That's why I'm concerned about him in this case. I think he -- if he's going to be an expert, he's got to be neutral, not someone who is interested in this case.

THE COURT: All right. I'll note your objection.

I mean, obviously he is one of the case agents in the case and certainly he can testify on what he saw and observed and that the jury's determination is to determine, you know, what weight to give whatever testimony he has, in fact, he, as the investigating agent.

And also the testimony as an expert, again, that goes to the weight. We will leave that up to the jury. You certainly have some arguments. You have arguments that you can make to the jury, but I'm going to allow him to testify in the same line that Ms. Monts has indicated to the court she's going to question him.

Anything else?

MS. MONTS: No, Your Honor.

THE COURT: All right. Let's do this. Let's just take about five minutes for everybody to refresh themselves and then we will start.

Agent Smith, I'll remind you that you are under oath. Don't have any -- don't have any discussions with anybody, your attorney, anybody else about it.

THE WITNESS: Yes, sir.

THE COURT: Until you get through with your testimony.

All right, let's take about five minutes.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

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MR. ROBINSON: Your Honor, I'm going to -- I have got nothing more to add.

THE COURT: Thank you. All right.

Mr. Smith, if you would take retake the stand -- well, I'm sorry, I guess we didn't -- we didn't actually call him in the jury's presence.

MS. MONTS: I don't believe so.

THE COURT: Just have a seat and we will go back through that.

MS. MONTS: Your Honor, one unrelated issue that won't be an issue until this afternoon, but my understanding is that we will have a Spanish speaking witness that we had thought we had an interpreter for to interpret for the jury. We do not have another interpreter. Out of one of the two that are here, if that would be allowable for them to interpret for the court, or how do you want to handle that?

THE COURT: Well, I guess -- yeah, okay, so we actually won't need their services while -- I mean, they are not going to be interpreting when -- they are not going to be interpreting for these two guys when a Spanish speaking witness is on the stand?

MS. MONTS: And he may speak some English.

THE COURT: Okay.

MS. MONTS: I can have him speak in English and the point that we switch over to Spanish, I can -- we can

swap out. So I can certainly do that.

THE COURT: The court does not find a problem with that.

Y'all got any problems with either one of your interpreters interpreting for the jury?

MR. CRANGLE: No, it's the court's interpreters, Your Honor. I guess what we will do is we will put one in between the two of them and she will kind of talk to both of them at the same time and then the other one would be up there.

THE COURT: Okay. All right.

MS. MONTS: And, Your Honor, regarding the issue of Phillip Lewis, who is the confidential source in this case, he will hopefully be the next witness after Agent Smith. I have provided his prior -- all of his prior convictions to the defense attorneys, Your Honor, and all of them -- all of those that carry more than ten years or are of dishonesty are more than ten years old, so the State would object to any of those being mentioned.

The defendant does have pending charges in Greenville County, which include distribution of crack, possession of a weapon, possession with intent to distribute marijuana, trafficking meth, and possession of pills. And we certainly understand that those -- the fact that he has those pending charges are -- will be discussed, obviously.

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THE COURT: I think what you meant was he's got charges that are more than ten years old that you are not --

MS. MONTS: Yes, Your Honor, I apologize.

THE COURT: All right. Mr. Crangle --

In other words, anything in the last ten years is fair game?

MS. MONTS: Your Honor, he's got some --

No, Your Honor. The only thing within ten years are he has an unlawful weapon, a possession of marijuana, and a violation of city ordinance, and another possession of marijuana. None of those carries more than -- none of them -- they are all magistrate offenses -- excuse me, the gun is up here. None of them carries more than a year. Certainly -- we do not believe that those would be allowed for discussion.

THE COURT: Mr. Crangle?

MR. CRANGLE: The one concern I have is he's got prior drug conviction charges which could be used to enhance any potential punishment in Greenwood County. He's charged with second -- a trafficking second offense, and I understand that's outside the ten year window, but he could --

MS. MONTS: And, Your Honor -- I'm sorry, go ahead.

MR. CRANGLE: I just want to make sure that -- I'm

a little bit concerned that the jury may not understand that second means he's got a prior conviction and that he's facing -- the second carries a mandatory minimum of time. And what I don't want to have happen is to be excluded from the fact that he's got prior drug convictions that are used to enhance his current charges and I just want to make sure that I can got into that. That's what I'm planning to do. I don't anticipate needing to go back to a 10 year window, but when I do bring up that he's charged with second, that would necessarily infer that he's got prior convictions outside the 10 year window.

THE COURT: Ms. Monts?

MS. MONTS: Your Honor, the current statute is is that prior convictions over 10 years old. The first one does not enhance, so we believe that those priors would not enhance what he currently has pending.

THE COURT: I'm not aware of that statute. I mean, there are certain offenses that are more than 10 years old that can't be used to enhance, but the general statement that he's got drug offenses more than 10 years old can't be used?

MS. MONTS: Your Honor, the first -- and I can show you the statute. The first drug conviction that is more than 10 years old cannot be used. It's under --

THE COURT: Well, let me just --

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So, Mr. Crangle, his client is charged -- I mean not his client. The witness is charged with a second drug offense in Greenwood County. That's what he's charged with, right? Is that what you are telling me?

MR. CRANGLE: He's charged with trafficking in crank 28 grams to 100 grams, second offense. That's the pending charge in Greenwood County.

THE COURT: And obviously you may not know -- all you know is just what you read on his -- how did you get that information?

MR. CRANGLE: I pulled it off the public index and it's also in the NCIC. I was just provided the NCIC today, but it's in the Greenwood County public index that shows it.

MS. MONTS: I'm sorry, it shows what?

MR. CRANGLE: That's his public index down in Greenwood. That shows the charge that he's been charged with.

THE COURT: Why don't we just do it this way. I mean, he can ask him if has been charged with whatever the charge is in Greenwood County. You can say "you have prior -- "you have other drug offenses. You have been convicted of other drug offenses." Can we do it that way?

MR. CRANGLE: That's what I would like to do.

MS. MONTS: Your Honor, if the purpose is to say that he is looking at more time, I hardly disagree and I

apologize I didn't bring my statute book, but I can show you where a first drug offense over 10 years old does not enhance. So --

THE COURT: Well, do we know what his prior over 10 year old drug offenses are?

MS. MONTS: Yes, Your Honor.

MR. CRANGLE: He has an '85 possession with intent to distribute marijuana.

A '95 possession with intent to distribute crack.

A 1997 possession with intent to distribute marijuana second. A possession with intent to distribute crack.

2008, possession of marijuana first.

2011, possession of marijuana second.

THE COURT: Have y'all got your rule book?

(Off the record)

(Back on the record)

THE COURT: His charge -- the charge that you believe that he has pending is what?

MS. MONTS: Your Honor, what I have from Greenwood County are the warrants.

THE COURT: Just tell me what they are.

MS. MONTS: Your Honor, they are -- it says trafficking crank, crack, or ice more than -- 28 grams or more, second offense. And then a --

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THE COURT: And it's your position that the PWID crack that he was convicted of in 2005 cannot be used to enhance?

MS. MONTS: Yes, Your Honor.

THE COURT: And that your position is that in Greenwood he's facing a first offense and not a second?

MS. MONTS: Yes, Your Honor.

And I'm getting my book too. I can show you the statute.

MR. CRANGLE: Well, that would be within 10 years.

THE COURT: Right.

I'm going to let him ask the question. He can ask the question. I don't know how you can handle it, but he can ask the question, his position, "have you been convicted of other drug offenses?"

MS. MONTS: Well, Your Honor, the conviction was in '97.

THE COURT: What you handed up to me says -- well, maybe -- okay, I'm sorry. I'm misreading it. It says 2005. I was thinking that was PWID crack. That was for the unlawful weapon.

All right. Find me the 10 year statute on -- because it's not my understanding --

MS. MONTS: Yes, Your Honor.

THE COURT: I think it was marijuana and he had --

his priors were marijuana and he had a crack charge. That cannot be used to enhance.

MS. MONTS: Correct.

THE COURT: But if he's got a prior -- regardless of the age of the PWID crack, that can be used to enhance. That's why they have the --

Well, let me pull it up real quickly.

MS. MONTS: Your Honor, I'll get the book.

(Off the record)

(Back on the record).

THE COURT: Let me ask you, Mr. Crangle, how do you -- on what basis do you believe you can ask him about the pending charge in Greenwood County?

MR. CRANGLE: The basis is that it shows the witness' bias.

The fact is is under State v. Gracely, which is from the Supreme Court in 2012, it talks about bias and witness bias in drug cases. Now, in that case the witness had already pled guilty.

I fully intend to go into it with Mr. Ramirez that he's pled guilty to receiving a lesser sentence of seven to 25, instead of the mandatory 25.

But with Mr. Lewis, my basis is that he is currently looking at a mandatory minimum term of imprisonment of seven years to 30 years. He has extreme

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bias to try and cooperate and get as many people rounded up as he can, because if he is convicted, then he would be facing prison time. That bias goes for the fact that he, I think, is going to indicate that my client was involved in drugs transactions within the home.

He is working for the State as a confidential informant and his cooperation was predicated on the fact that he was arrested for criminal charges. He didn't go to them willingly. He was arrested and then in an attempt to get out, and he is out on bond. That's the basis of my argument is it goes towards the witness' bias.

THE COURT: All right. And Ms. Monts, do you have any objection -- do you have an objection to him being able to question Mr. Lewis on his pending charge in Greenwood?

MS. MONTS: No, Your Honor, just about the amount of time that he would be looking at, but I do believe that he would be allowed to ask him about a pending charge and any bias he might have because of that.

But, Your Honor --

THE COURT: But he is charged with a -- his -- regardless of what his record is, the pending charge is a second offense.

MS. MONTS: Well -- and, Your Honor, in drug cases what offense is is for sentencing purposes only. So when magistrates and law enforcement officers put an offense on

there, it is not -- it's usually not correct, and I don't believe in this case that that charge is correct, so he would not be looking at a larger amount of time, and I don't believe it would be appropriate to tell the -- for us to tell the jury that he is looking at more time than he actually is. I would ask that we just say that he has a pending trafficking charge.

THE COURT: We don't -- we don't know that. Certainly his attorney I'm sure is advising him that this charge is a second offense and he's facing "x" amount of years. Now, whether he actually pleads to that or whether that was the correct charge or not, that's not for us to decide.

What else did you have?

MS. MONTS: Your Honor, under the subsequent offense, under 470, it says -- the sentence I was referring to was for an offense involving -- subsection A(3), for an offense involving a controlled substance, other than marijuana, the offender has been convicted within the previous 10 years of a first violation.

So we -- it's our circuit's interpretation on that is that if the first -- if there is a first offense beyond 10 years, it will not be used to enhance.

If he has a second offense beyond 10 years, certainly, but just one offense would not.

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THE COURT: All right. Well, here is what we are going to do. I'm going to let him -- he can ask the question. He's actually charged with a second offense. He can ask him what he's charged with. He can talk about the potential penalty under that charge, and -- I don't know how the witness is going to answer it, but he can cross him on that, but to -- but to then -- but to then ask him about the charge in 1997, PWID crack, I will not allow that.

I can't undo -- this court can't undo the fact of what he is charged with in another. Whether that's right or wrong, that is the charge that it appears that's been presented to the court that he is facing.

MS. MONTS: And, Your Honor, the State would still object -- understands, but would still object to the discussion on the amount of time that he would be looking at. We understand that he was -- that -- you know, the charge would be stated in the courtroom, but as far as the amount of time, we would ask that that not be mentioned.

And, additionally, when Mr. Ramirez comes out here, specifically because he is charged with the same thing that the defendants on trial are here for, that those sentences not be said, because then the jury will know what sentences the defendants are looking at.

MR. CRANGLE: Judge?

THE COURT: Mr. Crangle?

MR. CRANGLE: State v. Gracely directly addresses this point. This is a 2012 case where the State objected to the fact that the jury would find out that they were going to be put away for 25 years. The Supreme Court has ruled that that is critical information and that the defendant's right to cross-examination and fully examine a witness' bias outweighs the State's interests in the amounts of time.

THE COURT: Give me that cite.

MR. CRANGLE: It is -- I have it straight from the judicial website. It was filed August --

THE COURT: Tell me the name of the case.

MR. CRANGLE: State v. Gracely, G-R-A-C-E-L-Y, and I have the appellate case number, if that helps. I don't have the Lexis cite.

THE COURT: We will find it.

MR. CRANGLE: All right. But that case I believe is squarely on point and allows me to go into the witnesses.

Mr. Ramirez, the fact that he's charged with same crime, I do intend to go into that.

With regards to Mr. Lewis and the mandatory minimum, that has no effect. My client is not charged at all with that, and, therefore, the State's interests in not letting the jury know about potential mandatory minimum sentences --

THE COURT: Well, let's get started. Let's get

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started with Mr. Smith and we will -- I will have y'all approach and we will deal with the issue on Mr. -- the penalties for Mr. -- the potential penalties that Mr. Lewis is facing, we will deal with those at the side bar.

Anything else?

MS. MONTS: No, Your Honor.

THE COURT: As far as Mr. Lewis?

Mr. Robinson?

MR. ROBINSON: May it please the court, I don't believe at this point, Your Honor, but when I read the Robinson case on Marvin Brown, the objection remains, but I think it's distinguishable because the SLED agent, Marvin Brown, he was not an investigating officer. That's my objection, is that they are qualifying an expert who's an investigating officer. That's my objection.

THE COURT: All right. I note your objection.

All right, let's have the jury come in.

(The following takes place in the presence of the jury panel)

THE COURT: Ladies and gentlemen, thank you for your patience. We are ready to proceed.

The State can call your first witness.

MS. MONTS: Your Honor, the State calls Agent Randy Smith.

DEA AGENT RANDY SMITH, having been first duly sworn, testified as follows:

THE CLERK: Thank you. Please be seated.

Would you please state your name for the record?

THE WITNESS: My name is Randy Smith.

THE CLERK: Thank you.

DIRECT EXAMINATION BY MS. MONTS:

Q. Agent Smith, please tell the jury where you are employed and how long you have worked there.

A. I have been employed as a special agent with the Drug Enforcement Administration since 1990. I was hired on in Atlanta, Georgia; was transferred to Raleigh, North Carolina; and I have been assigned to Greenville, South Carolina since March of 1998.

Q. Can you describe briefly your education?

A. My educational background, I have a Bachelor of Science Degree in educational psychology.

After being hired with DEA, I was trained at the FBI Academy for approximately 14 to 16 weeks. And from there, after graduating, I went back to Atlanta for several months before I was assigned to Raleigh.

Q. And describe any training that you go through in the field of narcotics.

A. The training at the FBI Academy is obviously geared toward drug and narcotics investigations. That is a daily

thing, and most of the weekends we also work. And there are also instruction on Constitutional law.

Q. Okay. And how many narcotics cases have you been involved with while working with the Drug Enforcement Administration?

A. Hundreds.

Q. And what different roles have you played in these investigations?

A. I have done investigating, as far as generating Grand Jury subpoenas. I have been the affiant on wiretap affidavits, which is obviously a wiretap is where you are listening to people's phone calls. We have gathered Grand Jury information, subpoenas based on bank records. I have conducted arrests. I have conducted search warrants, and I have also worked some undercover.

Q. Okay.

MS. MONTS: Your Honor, we would move Agent Smith as an expert in the field of narcotics investigation.

THE COURT: Any objection?

MR. ROBINSON: I note my objection, Your Honor.

MR. CRANGLE: Mr. Cruz joins.

THE COURT: The Court does find that Agent Smith is qualified as an expert in narcotics investigation.

BY MS. MONTS:

Q. Agent Smith, please describe your involvement in this

incident with the allegations pending against Mr. Cruz and Mr. Ochoa. When did your investigation on this case begin?

A. In late June of 2014.

Q. And did you use any other officers to help you in this investigation?

A. There were -- the primary officer was Task Force Officer John Garrett, and we were assisted by some members of the Greenville County Sheriff's Office, as well as some members of the DEA resident office.

Q. And prior to this incident on July 2nd of 2014, did you have contact with a confidential informant that you used in this case?

A. Yes, we had information from a confidential source that he was able to purchase ounce quantities of crystal methamphetamine from a Hispanic male that he knew at that time as "Amigo", and he was later identified as Ramirez.

Q. And what is the name of this person who gave you this information?

A. Phillip Lewis.

Q. And did Phillip Lewis have pending charges in another jurisdiction?

A. Yes, ma'am, in Greenwood County.

Q. And were these drug charges?

A. Yes, they are.

Q. And why did he come to work and assist you?

A. He came to work to help us in hopes that --

MR. ROBINSON: Your Honor, I'm going to object. That calls for speculation.

THE COURT: Overruled.

A. He came to work for DEA in hopes that we would, after his cooperation was complete, would tell the prosecution of the help and assistance he had been to our agency.

BY MS. MONTS:

Q. And any work that he did, was it monitored by law enforcement?

A. Yes, sir, it was.

Q. And on this day, on July 2nd of 2014, how many officers and from what agencies were assisting you?

A. Probably approximately eight officers and they involved members of the DEA Task Force, as well as members of the Greenville County Sheriff's Office.

Q. And what did you have take place? What did you observe and have take place?

A. Well, prior to July 2nd, we had, I think it was the day before, had the confidential source, Lewis, make a call to Ramirez and that call was recorded and essentially able to confirm that what Lewis was telling us was, in fact, which was that Ramirez could supply -- I think they negotiated for eight ounces of crystal methamphetamine.

Q. And did you listen to this?

A. Yes, I did.

Q. And please continue. What was the deal supposed to do?

A. They were to meet and conduct a sale on July 2nd at the Wal-Mart parking lot off Highway 25.

Q. And did you get officers to assist you on this?

A. Yes, we did.

Q. And who was at this location?

A. Myself, Task Force Officer John Garrett, Task Force Officer Ross Brown.

I believe there was a Greenville County uniformed patrol car set up in one of the adjoining strip malls in the back. In case they were needed, they would be on the scene.

In fact, once the deal was conducted, it was going to be a buy-bust, which meant that after the drugs were seen, law enforcement would have came in and initiated the arrest. And the initial contact for the arrest would have been made by the uniformed patrol units to minimize any type of damage or concern from the citizens so they would know that it was a police doing this.

Q. And how much money was the purchase supposed to cost?

A. About $8,400.

Q. And did the Drug Enforcement Administration or Greenville County have the $8,400 for this?

A. No, typically when we set up these type of what we term as buy-busts, we do not allow the money to be brought out

there for fear that we could be robbed.

Q. So how was this supposed to exactly take place?

A. What we had instructed Lewis, our confidential source, to do, and during this time he was wearing a wire and there was a video of the initial meet with Ramirez. What he was --

Q. Was there also an audio?

A. Yes, there was an audio.

What we had planned to do was to have Lewis meet with Ramirez in the parking lot and once he saw the drugs, he was going to let us know that he had seen the drugs and the law enforcement agents from Greenville County, they were the marked units, would have come in and initiated the arrest.

Q. And what is the goal by law enforcement going in there, marked law enforcement?

A. It's, number one, to the bad guy in this case, Ramirez, would know he wasn't getting ripped off. It was the police. And number two, it would be the protection of the citizens of other innocence that might be in the parking lot.

Q. And would law enforcement at that point take custody of the drugs?

A. They would have, yes.

Q. And what transpired in this and were you listening?

A. We were listening, and what happened was the CS did, in fact, meet --

Q. What is the CS?
A. I'm sorry, the confidential source, which is Lewis, did meet with Ramirez and they began --
Q. Could you see this from where you were?
A. Yes, I did.
Q. Okay.
A. Uh-huh. And --
Q. Were they in vehicles?
A. Yes, Ramirez was in a van, kind of a primer gray van, and Lewis, the confidential source, was in his pickup truck.
Q. And please continue. What did you observe and what did you hear?
A. Lewis, our confidential source, got out of his truck and walked over to the van and engaged Ramirez in conversation about the quality of the drugs and Ramirez was concerned about seeing the money. Of course, there was no money to be seen, so Lewis, our informant, acting under our instruction was very insistent to Ramirez to see the drugs to make sure it was a good quality, and Lewis was telling Ramirez that his money man, the guy with the money, was located directly up the street at a bank in a parking lot, which was like a minute away.
Q. And so at this point there are no drugs and there is no money?
A. That is -- no, there is neither, there is no drugs and

there is no money.

Q. And so were you in contact, or how were you in contact with Phillip Lewis?

A. Lewis, our confidential source, he would periodically throughout the meet call me. And when he was calling me, he was using the ruse to Ramirez that I was his money guy. So he was able to call me and kind of tell me what was going on and asked for advice of kind of where to steer it as we went along. And, again, Ramirez at that point thought that Lewis was calling the guy that had the money.

Q. And what was the amount of drugs that you expected to be there?

A. Eight ounces of crystal methamphetamine.

Q. So did Lewis call you, Phillip Lewis call you, and tell you that the drugs were not there?

A. Yes, he did.

Q. And what did you then tell him?

A. We -- and Lewis had advised me that during his talks with Ramirez, that Ramirez was willing to show him the eight ounces. He didn't have it with him. And Lewis said that, you know, he had told him --

MR. ROBINSON: Objection, Your Honor, hearsay.

THE COURT: Go ahead.

A. According to the wire or the transmitter that I was listening to live, Lewis advised Ramirez again that the

money was very close by. Then once he saw the drugs, that the money would immediately go to him very soon, that his guy just wanted to make sure that the drugs were of good quality.

BY MS. MONTS:

Q. His guy, being you?

A. Yes.

Q. And did this change the entire operation?

A. Yes, it did.

Q. What needed to be done at this point?

A. Well, at this point, you know, again, we have no drugs, there is no money. So Ramirez agreed to take Lewis to where the drugs were to look at them. And then once Lewis had looked at the drugs, he was going nearby to get the money from his guy that had the money to do the purchase.

Our CS -- I'm sorry, Lewis agreed to do this and he followed Ramirez from the Wal-Mart parking lot to I believe it's a Harry's Convenience Store. It's located on the corner of Whitehorse Road and Lily Street. So it was probably a minute, maybe two minutes from that location that Ramirez and Lewis, the CS, ended up in the parking lot of the convenience store.

Q. And where were you when they met at the convenience store?

A. Pretty much our entire surveillance unit, including

myself, followed them to the convenience store parking lot, so we maintained a continual visual of what went on. And then the units that were with us spread out in an area close to the convenience store so that they could -- at that point we still didn't know what direction we were going in, so we would stage units north on Whitehorse Road at the corner, maybe a unit south on Whitehorse Road below it, and we had units -- I believe across the street there is a pharmacy. So whichever way they went, we would be in a position to follow them.

Q. And could you hear what conversation was taking place in the parking lot at Harry's gas station?

A. Yes, I did.

Q. And describe what vehicle Mr. Ramirez and Phillip Lewis were in.

A. Lewis, our confidential source, was in his white Dodge truck. Again, Ramirez was driving it looks to be a primer or gray mini van.

Q. And at the convenience store did they get into one vehicle?

A. Yes, at that point Lewis -- Ramirez said "get in my van. Get in my car. I will take you to where it's at and show you that it's good. Our people are good. The drugs are good." Lewis began to get in the car. I immediately called him and did not want that to happen.

Q. Why not?

A. Well, once Lewis is in the vehicle where Ramirez is driving, law enforcement loses a great control of the deal of what's going on. So you would have a situation to where Ramirez could take our informant Lewis anywhere became a danger. We didn't know where they were going and we just lose control of that situation, and you always worry about that Ramirez at that point could kidnap Lewis.

Q. Did you consider calling the operation off at that point?

A. At that point what I told Lewis to do, that he would have to insist that Lewis would drive Ramirez. You know, we will go wherever you want, but we wanted Lewis to be in control, in the driver's seat actually driving. And that way we could still control what was going on and it greatly lessen the threat of a kidnapping and it would just give the law enforcement field the main control in the situation what was going on.

Now, outside of that, Lewis was told not to do the deal. So there was not a situation where we thought it would be okay for Lewis to get in the car with Ramirez, not knowing where they were going.

So pretty much Lewis was left with the option of totally not doing the deal, or convincing Ramirez to get in his truck to drive wherever Ramirez wanted to go.

Q. And what took place?
A. Ramirez agreed. He said, "you know, sure, I'll ride down there with you and tell you where to go." So Ramirez did get in the car with Lewis and Lewis was the driver and Ramirez was the passenger.
Q. And where did they go and how do you know?
A. We followed them. I was I think directly or maybe one car behind Lewis and Ramirez. They exited the convenience store and turned right directly onto Lily Street and traveled probably less than a minute to the apartment complex that was located at [redacted]
Q. And what did you hear or see at that point?
A. At that point immediately when Lewis turned into the parking lot, along with Ramirez as the passenger, they drove up in front of the entrance, which was the entrance to apartment [redacted] and they were immediately followed by another car that almost pulled in at the exact same time and the driver of that car was later identified as Ochoa.
Q. And describe -- did everyone get out of their vehicles at about the same time?
A. Yes, they did.
Q. And where did they go?
A. They entered apartment [redacted]
Q. And could you at this point see anything?
A. At this point we still had an audio, but once they

entered the apartment, we did not see, no. There was just audio that we were monitoring.

Q. And do you recall how long they were inside -- or how long Phillip Lewis was inside the apartment?

A. It was a very short period of time. Probably less than 60 seconds. He seemed to be very rushed.

Q. How many voices did you hear inside the apartment?

A. There was Lewis. There was Ramirez, because he was speaking broken English, and it appeared that two more voices besides that that were Spanish speaking.

Q. And what was taking place inside the apartment?

A. Immediately --

MR. ROBINSON: Objection, Your Honor. The officer has testified he was not in the apartment at that time.

A. Based on what -- I'm sorry.

THE COURT: Rephrase your question.

BY MS. MONTS:

Q. What did you hear that was taking place inside the apartment?

A. By monitoring the audio of the wire, I was able to hear Lewis, our informant, being escorted in an area of the apartment where he looked at a quantity of crystal methamphetamine and he was able to say "it looks good. It looks very good. It looks like it did before." And he immediately said "my guy is going to be good with this. I'm

going to call him and let him know." And at that point while he's in the apartment he calls me and let's us know that the drugs are, in fact, in the apartment like they were supposed to be.

Q. And how many voices were involved, if you can recall, during this conversation?

A. Well, obviously I hear Lewis. You can hear Ramirez in the background, because it's broken English. Then I recall one or two other Spanish speaking voices in the background.

Q. And did Lewis take these drugs at that time?

A. No, he did not. He got on the phone again calling me, telling Ramirez he's calling his money guy and his money guy is very close. And while he's on the phone with me, he's telling me "it looks good. You know, we are ready to do it. Everything pretty much checks out. And, you know, I'm on my way to get the money. I will be right back."

Q. And how many minutes was he supposed to return?

A. Very shortly. I think in listening to the audio of the wire, he indicates that his money man is at the convenience store, so it would have been less than two minutes away. Very near the apartment location.

Q. What did you hear or see next?

A. His -- literally as Lewis is on the phone with me, he's walking out of the apartment and there is voices in the background. He walks out of the apartment, gets back in his

vehicle. And while he's still on the phone with me, advises me of a gray car that's also in the parking lot, to watch it and make sure they don't leave, because he was concerned that the drugs had just recently been placed there and that they would be moved.

Q. And in your experience with drugs, why would this be a concern?

A. Because typically larger quantities of drugs do not stay in a place for any length of time for fear of either getting robbed by other drug dealers; or, which was in the case of this happening, the police finding out and seizing it.

Q. And when did you next see Phillip Lewis?

A. As Phillip exited back onto Lily Street heading to Whitehorse Road, myself and another task force officer followed him back to a predetermined meet spot, probably maybe ten minutes away from that location. And once he arrived at that location, we were able to take the body wire off of him.

Q. Was there ever any intent to take money back to this apartment to purchase those drugs?

A. No.

Q. What was the plan and who did you speak to?

A. Well, in speaking with Lewis after this had transpired, I was by telephone speaking with Task Force Officer John

Garrett, who was in the process of securing a search warrant for the location.

Q. And what took place prior to that happening?

A. Surveillance was being conducted at the location during the time this was going on and there was an indication over the radio that there was movement.

MR. ROBINSON: Objection, Your Honor, hearsay.

THE COURT: Overruled.

BY MS. MONTS:

Q. Please continue.

A. Listening to over the radio traffic, because I was not present, it was an indication that there was movement or someone possibly leaving that apartment, and the Greenville County Sheriff's Office was given the okay to go in and to secure the location.

Q. And what does secure the location mean?

A. That means they would go in and detain the individuals in the house and waiting for a search warrant to be signed and be executed at the house.

Q. And does that mean any searching would take place at that point?

A. Absolutely not.

Q. Were you present at this time, or did you ever go to this location, the apartment?

A. I returned back to the apartment, but -- I'm trying to

think. Probably -- maybe 45 minutes after the Greenville County Sheriff's Office had made entry into it.

Q. And did a search warrant get executed at the location?

A. Yes, it was.

Q. Did you see anything in place inside the residence or had the search already been conducted?

A. I believe I got there prior to the search getting conducted and what I saw was approximately eight to ten ounces of crystal methamphetamine sitting on top of a dresser with a set of scales.

Q. Please describe the size of the apartment and the amount of rooms.

A. It was a one-bedroom apartment and it was an extremely small apartment, in that actually from the living room you could see the corner of the bedroom. It was not a true hallway. You kind of walked into the living room and the kitchen was directly beyond the living room, and then a short breezeway I would call it, to walk right into the bathroom, and the bedroom immediate to the left. It was a very, very small apartment.

Q. Did you see anything else that you noticed regarding this case inside the apartment?

A. Beside the defendants?

Q. Who did you see present?

A. Ramirez, Cruz, and Ochoa.

Q. And are Cruz and Ochoa in the courtroom?
A. Yes, they are.
Q. Where are they seated?
A. Cruz is sitting here on the end, and Ochoa is listening to his interpreter.
Q. Were the three - Ramirez, Manual Cruz and Antonio Ochoa-Tavera - arrested at that incident?
A. Yes, they were.
Q. Thank you.
MS. MONTS: No further questions.
THE COURT: Thank you.
Mr. Crangle?
CROSS EXAMINATION BY MR. CRANGLE:
Q. Agent Smith, Lewis sought y'all out, right?
A. Yes, he did.
Q. Okay. You have video of the Wal-Mart interaction, correct?
A. Yes.
Q. Mr. Cruz isn't on that video, right?
A. No.
Q. Okay. Do you speak Spanish?
A. I do not.
Q. Okay. Did you ever have anyone analyze that recording of Lewis inside the home?
A. We did have someone listen to it, yes.

Q. Did they inform you that that's a TV on in the background in Spanish?
A. There was a TV on, yes.
Q. In Spanish, right?
A. Yes.
Q. Okay.
A. Well, actually, from my recollection, the TV was tuned to a soccer match. Whether or not it was in Spanish, I don't recall.
Q. Okay. Did you hear Mr. Cruz's voice on the recording?
A. I don't think the interpreter could distinguish whose voices were which.
Q. You don't know?
A. I do not know.
Q. Okay. Y'all found Ramirez with the key to the house, right?
A. I believe Ramirez did have a key to the house.
Q. Thank you.

MR. CRANGLE: That's all the questions that I have.

THE COURT: Yes, sir.

Mr. Robinson?

MR. ROBINSON: If it please the court.

CROSS EXAMINATION BY MR. ROBINSON:

Q. Officer, in keeping with Mr. Crangle's questioning

regarding Mr. Ochoa, you would agree that you don't speak Spanish, correct?

A. I do not speak Spanish.

Q. And you would agree that you never heard, or anyone heard, Mr. Ochoa's voice on the audio? You would agree with that, wouldn't you?

A. I would not agree with that. I don't know that it was Ochoa's voice. I think there was an interpreter that had listened to it and distinguished the voices, but I could not distinguish the voices, so I cannot affirmly say yes or no whether or not Ochoa's voice was on that recording.

Q. Okay. So what you are telling this jury then is you don't know, do you?

A. I'm telling you I do not speak Spanish.

Q. And you don't know?

A. No, I would not know that.

Q. And you agree with Mr. Crangle that the TV was in Spanish and it sounded like a soccer match, is that right?

A. I'm pretty confident about the soccer match. I'm not a hundred percent sure whether it was in Spanish or not, but I do recall it being a soccer match.

Q. And on the video at Wal-Mart, the jury may see Mr. Ochoa is not on that video, is he?

A. He is not.

Q. And he's actually -- there is no picture of Mr. Ochoa

in this case, is there?
A. No, the first time Ochoa shows up is when Lewis is driving Ramirez to the apartment to do the drug deal, Ochoa shows up immediately at the same time and that was the first that day that we saw or knew of Ochoa.
Q. And I think you -- I think you kind of said this on examination by Ms. Monts. This CI that we have, the CS, the confidential source that we are talking about, it's Phillip Lewis, correct?
A. It is.
Q. And I think you testified on the stand, and correct me if I'm wrong, that Mr. Lewis is helping himself in this case, isn't he?
A. He is hoping that he is helped by doing this, certainly.
Q. So he's -- again, he's helping -- he is testifying and helping you all to help himself, isn't he?
A. Yeah, typically confidential sources, like Mr. Lewis, they do not come to us unless they, themselves, have a pending charge, and that's probably the vast majority of confidential sources come under that circumstances.
Q. So his testimony then is when he gets on the stand, you agree that he does have pending charges and he's trying to help himself, correct?
A. He does have pending charges, yes.

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Q. And the person --

Now, you were the investigator, one of the investigators in this case with Officer Garrett, correct?

A. Yes.

Q. And I think Officer Garrett is sitting to the right of Ms. Monts, correct?

A. He is.

Q. Okay. Now, in your investigation, that apartment, which I believe is [redacted] is that correct?

A. Yes.

Q. That apartment was registered to Mr. Ramirez, isn't that correct?

A. No, I believe the apartment was leased to Mr. Cruz.

Q. Okay. So it was not leased to Mr. Ochoa, is that correct?

A. It was not.

Q. Okay. And Mr. Ochoa does not have a key to that apartment, does he?

A. Not to my knowledge, no.

MR. ROBINSON: That's all I have. Thank you.

THE COURT: Anything else?

MS. MONTS: Nothing further of this witness, Your Honor.

THE COURT: All right. You may step down.

THE WITNESS: Thank you.

THE COURT: Ladies and gentlemen, we anticipate the next witness may by lengthy as well and we do have one matter to take up outside of your presence, so we are going to take a ten minute break. Refresh yourselves. Don't talk about the case. Don't talk about anything you have heard and we will have you back in here in about ten minutes.

(The following takes place outside the presence of the jury panel)

THE COURT: All right. Let's revisit Mr. Lewis' -- where we are with Mr. Lewis. I think he's your next witness, is that right, Ms. Monts?

MS. MONTS: Yes, Your Honor.

THE COURT: And the way I understand it, there is some discussion about potential penalties, being able to cross-examine him or question him about the potential penalties that he may face on pending charges, is that correct, Mr. Crangle?

MR. CRANGLE: Yes, Your Honor.

THE COURT: And I think I have heard arguments from both the defense and the State.

The court -- the court finds that that testimony is relevant as to potential bias. And the case of -- the court is governed by State v. Gracely, a case that came from Pickens County, and the court did -- the Court of Appeals

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ruled that it was error not to allow in the case very -- pretty much pretty similar to the facts of this case, that it would be error for the court not to allow the defense to question in this case any of the witnesses that have had involvement with illegal drugs and other criminal activities. In exchange for their cooperation, they face the possibility of having long prison terms reduced. And, therefore, based on that case the court will allow Mr. Crangle to ask Mr. Lewis about any potential penalty for what he's charged with.

Are we clear on that, Mr. Crangle?

MR. CRANGLE: Yes, judge, with regards to Mr. Lewis.

THE COURT: Right.

MR. CRANGLE: The court hasn't made a ruling with regard to Mr. Ramirez, or does that include Mr. Ramirez?

THE COURT: That would include Mr. Ramirez too.

MR. CRANGLE: Okay. Mr. Ramirez is charged with the exact same crime that my client was charged with originally and he has pled to a reduced charged. That's what we intend to disclose to the jury, that he has a 25 year charge.

THE COURT: I mean, obviously we get into the situation of the jury being able to determine what these particular individuals may be facing, which is normally not

admissible at trial, but if the State chooses to put up Mr. Ramirez to testify, that's what he was facing, then the court is going to allow you to question him on potential penalties.

THE COURT: All right.

Anything else? Anything else?

MS. MONTS: No, not from the State, Your Honor.

THE COURT: Mr. Crangle?

MR. CRANGLE: No, judge.

THE COURT: Mr. Robinson?

MR. ROBINSON: No, sir, Your Honor.

THE COURT: We will take about five more minutes and then we will start again.

(Photograph marked as State's Exhibit No. 1 for identification)

(Photograph marked as State's Exhibit No. 2 for identification)

(Photograph marked as State's Exhibit No. 3 for identification)

(Photograph marked as State's Exhibit No. 4 for identification)

(Photograph marked as State's Exhibit No. 5 for identification)

(Photograph marked as State's Exhibit No. 6 for identification)

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(Photograph marked as State's Exhibit No. 7 for identification)

(Photograph marked as State's Exhibit No. 8 for identification)

(Photograph marked as State's Exhibit No. 9 for identification)

(Photograph marked as State's Exhibit No. 10 for identification)

(Photograph marked as State's Exhibit No. 11 for identification)

(Photograph marked as State's Exhibit No. 12 for identification)

(Photograph marked as State's Exhibit No. 13 for identification)

(Photograph marked as State's Exhibit No. 14 for identification)

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT: All right, Ms. Monts, are you ready?

MS. MONTS: The State is ready.

And Mr. Crangle and I, I just showed him the actual warrants that were served on Mr. Lewis, and the only one that was the second offense was the trafficking. The marijuana and the pills and the distribution of crack were all first offenses.

THE COURT: All right.

MR. CRANGLE: Your Honor, I'm going to get into all that.

MS. MONTS: But, I mean, we are talking about penalties. He wants to know if it's a first or second offense and those are the actual warrants served on him as for first offenses.

MR. CRANGLE: With regards to the penalties, judge, I do plan to get into the penalties of the second offense. I have got all the -- I pulled the CDR codes and penalty statutes. I have got it straight off the website.

MS. MONTS: But, Your Honor, I have the actual warrants that were served on him, and the --

THE COURT: Well, I mean, the charges that he's facing is a trafficking second offense, right?

MS. MONTS: One of them, yes, Your Honor.

THE COURT: Okay. Then whatever the penalty -- yeah, you are limited to the penalty for whatever he is charged. If the other offenses are first offenses, if he's charged with then -- is that where we are?

MS. MONTS: Yes, Your Honor, and I'm going with the offenses on the warrants that were served on him.

THE COURT: Right, and that's -- right.

MR. CRANGLE: That's what I'm going with. For example, distribution of cocaine base first, that's zero to

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15 years. That's what I'm --

THE COURT: Right.

MR. CRANGLE: I'm not going into the second part.

THE COURT: Right.

MS. MONTS: Just to be clear, the only second offense will be the trafficking offense?

MR. CRANGLE: Yup.

THE COURT: Right.

And also be clear, the State -- I mean the court was relying on State v. Gracely. That is a Supreme Court case, not a Court of Appeals case. And in that case the Supreme Court directed the court that certainly in a case like this, as part of the confrontation clause, it would be error not to allow -- error not to allow the defense to cross-examine witnesses, these two witnesses that are similar to the witnesses in Gracely, as the penalties, if they may -- that they are facing and the charges.

Anything else?

MS. MONTS: No, Your Honor.

MR. CRANGLE: No, judge.

THE COURT: All right.

MR. ROBINSON: Your Honor, are we going to proffer his testimony, Mr. Lewis' testimony, before we bring the jury in this case?

THE COURT: Proffer his testimony for what

purpose?

MR. ROBINSON: Regarding his -- he has -- or the State has said he is going to testify that he's had prior dealings with Mr. Ochoa. I don't know what the prior dealings are.

THE COURT: You -- I mean, I don't know what the question is going to be. You can object when she asks the questions at this point. If she is asking -- I think she understands what the rules are and what the limitations are, but, on the other hand, she can't ask him how she knows -- how he knows the guy, I mean, what contacts he's had with him in the past.

Is that sort of where we are, Ms. Monts?

MS. MONTS: Yes, Your Honor, his prior contacts with Mr. Ochoa.

THE COURT: All right. And are you -- do you intend to elicit questions about any prior drug dealings with Mr. Ramirez?

MS. MONTS: Yes, Your Honor.

THE COURT: All right. And your position on that Mr. Robinson is?

MR. ROBINSON: Your Honor, we object to the prior bad acts, going to prior bad acts in this case. That's my objection.

THE COURT: And what is the purpose, Ms. Monts,

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for asking that question?

MS. MONTS: Your Honor -- to show -- to show his relationship with Mr. Ochoa, and for the two cases I mentioned earlier, to show that they are -- the identity and the intent. The case regarding intent specifically says to show that drugs that are found were for the purpose of being sold.

THE COURT: All right. I think the court is in the position under Rule 404(b), evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action and conformity therewith. It may, however, be admissible to show motive and identity of existence of common scheme or plan, absence, mistake, or accident or intent.

Then the court then has to take the next step of weighing it and determining whether it's probative.

Then the court next has to weigh whether the prejudicial effect outweighs the probative value of it.

I'm not going to allow you to question him about any prior drug dealings. The court believes and finds that that would -- the prejudicial effect in this case, particularly what he's charged with, would outweigh any probative value.

MR. ROBINSON: Thank you, Your Honor.

MS. MONTS: Yes, Your Honor.

And if I may, before we call him up to the witness stand, I will make sure -- I would like to just tell him to make sure you don't mention that.

THE COURT: All right. Thank you. Right.

(Off the record)

(Back on the record)

THE COURT: All right. Is the State ready?

MS. MONTS: Yes, Your Honor.

THE COURT: Defense ready?

MR. CRANGLE: Yes, Your Honor.

MR. ROBINSON: Yes, Your Honor.

THE COURT: Let's bring the jury in.

(The following takes place in the presence of the jury panel)

THE COURT: Again, thank you, ladies and gentlemen, for your patience. We are now ready for the State to call their next witness.

MS. MONTS: Your Honor, the State calls Phillip Lewis.

PHILLIP LEWIS, having been first duly sworn, testified as follows:

THE CLERK: Please be seated.

Would you pleas state your name for the record?

THE WITNESS: Phillip Lewis.

THE CLERK: Thank you.

DIRECT EXAMINATION BY MS. MONTS:

Q. Phillip, would you please tell the jury what county do you live in?

A. Greenwood.

Q. And do you have family?

A. Yes, ma'am.

Q. What do you -- do you have any children?

A. Yes, ma'am, three kids.

Q. And we have been listening to Investigator Randy Smith with the Drug Enforcement Administration. Are you familiar with Mr. Smith?

A. Yes, ma'am.

Q. And were you working with him?

A. Yes, ma'am.

Q. And did you have pending charges in Greenwood County?

A. Yes, ma'am.

Q. And does that include trafficking methamphetamine?

A. Yes, ma'am.

Q. And distribution of crack?

A. Yes, ma'am.

Q. It was an older charge?

A. Yes, ma'am.

Q. And a possession with intent to distribute marijuana and a possession of pills?

A. Yes, ma'am.

Q. And you are looking at a lot of time on those charges, weren't you?
A. Yes, ma'am.
Q. And why did you go -- what were you hoping to do by going to speak with Randy Smith with the Drug Enforcement Administration?
A. Hoping that me assisting them would get me some -- earn me some leniency on my charges.
Q. And you are pretty familiar with drug dealing, is that right?
A. Yes, ma'am.
Q. And buying and selling and prices?
A. Yes, ma'am.
Q. When you told Agent Randy Smith that you would be able to help him, were you thinking that you would be able to purchase some drugs?
A. Yes, ma'am.
Q. And did you meet with other agents beside Mr. Smith sometimes --
A. No.
Q. -- or not?
A. When I met with him sometime, his co-workers might be there.
Q. Okay. And on July 2nd of 2014, and the few days prior to that, were you working with Mr. Smith?

A. Prior to July the 2nd?
Q. Yes.
A. We wasn't -- we was in contact. We wasn't working.
Q. Okay.
A. Yes, ma'am.
Q. Were you talking over the phone?
A. Yes, ma'am.
Q. And on July 2nd of 2014, did you come to Greenville?
A. Yes, ma'am.
Q. And on that day were you wired?
A. Yes, ma'am.
Q. And what were you supposed to do?
A. I was supposed to get some crystal meth from a guy. Wait for him to show up with it and then, you know, at least lay my eyes on it.
Q. On the crystal meth?
A. Yes, ma'am.
Q. Had you made a phone call the prior days to set this up?
A. Yes, ma'am.
Q. And how much crystal meth were you supposed to purchase?
A. Eight ounces.
Q. Or what did you ask for?
A. I asked for eight ounces.

Q. And how much were you supposed to pay for eight ounces?
A. 8,400.
Q. And is that what -- was that an acceptable price? Did the person that you were talking to say that they would sell you eight ounces of $8,400?
A. Yes, ma'am.
Q. And who was it that you spoke to?
A. Um --
Q. Or what did you know him by?
A. I called him "Amigo", but his name is Mauricio Ramirez.
Q. Okay. So when you spoke to him, you called him "Amigo"?
A. Yes, ma'am.
Q. And did he call you anything, or not?
A. No, he called me "Amigo" also.
Q. Okay. On July 2nd of 2014 did you meet with Officer Smith and get wired and where did you go?
A. Met him on like a strip mall off of Whitehorse. And then after I got wired, I went to Wal-Mart on Whitehorse.
Q. And do you know -- maybe you don't know. Do you know if there were officers around in the parking lot?
A. Yes, I knew Smith and his -- one of his co-workers was, but I didn't see the other. I knew they was there, but I didn't see them.
Q. Do you know if there were supposed to be any sheriff's

deputies around?
A. Yeah, I knew they was -- they was -- they was hid. I knew they was around, but I knew they was hid also, so you couldn't see them.
Q. And did you drive your own vehicle there?
A. Yes, ma'am.
Q. What type of vehicle?
A. A white Dodge Dakota.
Q. And did you know what type of vehicle Mr. Ramirez was supposed to arrive in, or not?
A. Yes, ma'am.
Q. What type of vehicle?
A. Usually in a gray van, primed looking Dodge van.
Q. Had you seen him prior to this date so you knew what vehicle he would be driving?
A. Yes, ma'am.
Q. And where were you supposed to meet him in the Wal-Mart parking lot?
A. In front of the garden center.
Q. And did that happen? Did you meet him in front of the garden center?
A. Yes, ma'am.
Q. And did he call you, or did you call him and say "hey, where are you?"
A. I remember -- I remember him calling me saying

"whereabouts you at?" I was like "I'm in front of the garden center." That's when I got out of the truck and I seen him coming around by the garden center.

Q. And how well did Mr. Ramirez speak English?

A. He spoke it kind of -- pretty fair. You know, you might have to listen closely, but you could tell what he was saying, though.

Q. Okay. Do you speak any Spanish?

A. Just a few words.

Q. And, to your knowledge, was there a video recording your meeting with Mr. Ramirez in the Wal-Mart parking lot?

A. I knew I was audio, but Randy Smith and them had the video on him.

Q. And did you see the video later?

A. Oh, yeah, I seen it.

Q. And were you on there?

A. Yes, ma'am.

Q. And did you hear the audio?

A. Yes, ma'am.

Q. And were you on it and were you part of the entire conversation on that audio?

A. Yes, ma'am.

(Audiotape marked as State's Exhibit No. 15 for identification)

(Videotape marked as State's Exhibit No. 16 for

identification)

THE COURT: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

BY MS. MONTS:

Q. Phillip, what -- I'm handing you two discs and can you identify any markings on there, any writing?

A. Yes, ma'am.

Q. What writing do you see on there?

A. My initials and where I dated -- well, I put the date on each one and initialed each one.

Q. And was that the date that you reviewed those discs?

A. Yes, ma'am.

Q. And were you -- one of them being audio and one of them being video, were you a party to everything on there?

A. Yes, ma'am.

MS. MONTS: Your Honor, we would move State's Exhibits 15 and 16 into evidence.

THE COURT: And for the purposes of the record, would you have him state which one is the audio and which one is the video?

BY MS. MONTS:

Q. State's Exhibit 15 is what, Mr. Lewis?

A. The audio in the red case, 15.

Q. And State's Exhibit 16?

A. The video in the yellow case is 16.

THE COURT: Any objection?

MR. CRANGLE: No objection from Mr. Cruz.

MR. ROBINSON: No objection from Mr. Ochoa.

THE COURT: Admitted without objection.

(Whereupon, State's Exhibit No. 15 was entered into the record as evidence)

(Whereupon, State's Exhibit No. 16 was entered into the record as evidence)

BY MS. MONTS:

Q. And Phillip, what took place when you did meet up with Mr. Ramirez in the parking lot? Did you get out of the -- did you get out of your car? Did he get out of his car? If you recall, what took place?

A. He parked and I had -- like I say, he had gave me a call saying "I'm coming through the parking lot now," so I told him "I'm over here by the garden center." I was getting out of the truck then, so when he parked I was walking up on his van, and I stood outside his van talking to him. He was inside the van.

Q. And did Mr. Ramirez have the eight ounces of crystal meth?

A. No, ma'am, he didn't have it on him.

Q. And did you have the $8,400?

A. No, ma'am.

Q. Did you ever intend to have $8,400?
A. No, ma'am.
Q. What did you -- what did you expect was going to happen at that point?
A. I thought he was going to just pull it one and just, you know, here it is, and then I was going to give Randy and them a signal on the wire and stuff that I seen it and they got it right in the van with him, but I guess he left it somewhere else and then like "you got to follow me to see it."
Q. And was that kind of a shock to you that wasn't what you were supposed to do?
A. Yeah, it was a shock. He usually have it.
Q. And on this date did you have contact -- could you contact Investigator Smith? Did you have a phone or could you call him?
A. Yes, ma'am, I was -- the guy that I was telling Ramirez that was going to spend the $8,400, I acted like he was a mile or two up the road waiting on me to see it and that everything was good, but the whole time I was on the phone with Randy telling him, yeah, that everything is good, everything, you know, and the guy with the $8,400 was actually was Randy, the agent, you know.
Q. But Randy didn't really have the $8,400 either?
A. No, ma'am.

Q. And do we hear on this audio that you listened to, do we hear you talking to Randy -- excuse me, Investigator Smith sometimes?

A. Yes, ma'am.

Q. And, to your knowledge, Ramirez was never a part of this conversation when you were talking directly to Agent Smith?

A. No, he was just sitting there listening, but he thought he was -- he thought it was somebody that was going to give me the $8,400 the whole time.

Q. And where did -- do you know where Mr. Ramirez wanted you to go at that point?

A. Yeah, after he told me that he wanted me to come to the apartment that I had previously been to, I knew then where I was going.

Q. And did you talk to Investigator Smith about whether you should go or not?

A. Yeah, I talked to him and he was like "yeah, you go over there, but be careful." So, you know, we headed that way.

Q. And did you go all the way to the apartment, or did you stop somewhere?

A. No, we stopped at a store right above the apartment, because Ramirez liked -- you know, his friend didn't want all these cars pulling up in the apartment complex, so he

was like "leave your car right here at the store. Get in the car with me and we are going to go on around here." So I called Randy on the phone and, you know, I was like "hold on, let me call my man then that's spending the money and see what he want to do." So I was like "he wanted me to ride with him," and Randy was like "no, don't get in the car with him. Make him get in the car with you." So he got in the car with me and we went on to the apartment.

Q. And how far is it from -- when you say store, do you mean like a gas station convenience store?

A. Yes, ma'am.

Q. And how far was that, if you recall, from the apartment?

A. Probably 150 yards.

Q. So very, very close?

A. Very close.

Q. So please continue.

When you -- when you got to the apartment, where do you pull in and what other cars are down there?

A. When we pulled in in my truck, Ramirez was on the passenger side. We had left the van at the store. And we pulled in and Ochoa was getting out of his gray Malibu.

Q. Have you seen Ochoa with that car before?

A. Not in the car, but I have seen him before.

Q. Okay. How many times have you seen him before this

date?
A. Twice.
Q. Was once at his house?
A. Yes, ma'am.
Q. Where was the other time?
A. At a little -- like a little bar, like a little club.
Q. Was that the Mexican Club?
A. Yes, ma'am.
Q. So you knew what he looked like?
A. Yes, ma'am.
Q. And he is pulling in as you are. Do you get out of the cars at the same time?
A. Yeah, we all get out at the same time, all three of us, me, Ramirez, and Ochoa is over here in his car. And he get out and we all walk toward the door of the apartment.
Q. And is the door open or shut, if you recall?
A. It was shut.
Q. And who opened the door, if you recall?
A. It was a guy Cruz. I called him "Shorty" at the time, but he's the one that unlocked the door and opened it.
Q. Is he in the courtroom now?
A. Yes, ma'am.
Q. Where is he? Where is he seated?
A. Right here by the door.
Q. Okay. And he opened the door for you?

A. Yes, ma'am.
Q. And who went in?
A. I want to say Ochoa went in first, then Ramirez, and then me. And Cruz shut the door, locked it. It was me, Ochoa, Ramirez went on back toward the bedroom.
Q. Why -- who led the way back to the bedroom?
A. Ochoa.
Q. And where did Mr. Cruz go?
A. He locked the door and kind of peaked around out the window, you know, and then, you know, shut the blinds. I was kind of looking back because I was wondering, you know, what he was doing, you know, locking me up in there. But, you know, that's how it goes, but then he came on around the corner and was kind of looking in the bedroom, but --
Q. Were you a little concerned for your safety at that point?
A. Yes, ma'am.
Q. And why -- from what you could see, what was the purpose of looking out the window?
MR. CRANGLE: Objection. It calls for speculation, judge.
THE COURT: Sustained.
BY MS. MONTS:
Q. Please continue. What did you see when you did go into the bedroom?

A. When I went into the bedroom, Ochoa was reaching under the dresser. He pulled out like a Bi-Lo bag, a plastic bag, and set it on the -- set it up on top of the dresser. Then he started pulling different bags of meth out of it and setting it on the bed.

Q. If you recall, how many bags did Ochoa pull out of the --

A. It was about four in there. He got about three of them out.

Q. And where did he set them?

A. Onto the bed.

Q. Describe the house. How big is it and how many rooms? How -- yeah, how big?

A. It was just front room, like a living room. Then you got the kitchen, bedroom and the bathroom. It was very small. You know, it was like a one bedroom apartment. It was small and it was in disarray, you know, sort of.

Q. Okay. And what -- was there any conversation while Ochoa was pulling the drugs out from under the dresser?

A. Yeah, Ramirez told me "it's good, man. It's good. It's the same thing you have been getting. It's good. It's good."

Q. And was there any -- was there a TV on, if you recall?

A. It might have been one on in the front room when I came through there.

Q. Okay. And in the -- and who all was talking in the bedroom --

A. Ramirez --

Q. -- if you recall?

A. Ramirez and Ochoa, but they were speaking Spanish then. Ramirez speak a little English to me, but the only thing Ochoa said to me in English was "it's good. It's good. It's good."

Q. And what -- then what did you do next?

So now you have seen the crystal meth. Could you describe what it looked like?

A. It was like a yellow tint to it. It looked like shards of glass, ice. Like a broken window. And it was in four different ziplock bags inside of an -- all of it inside of one Bi-Lo bag, though. He was pulling them out, laying them on the dresser.

So after I seen this stuff, I acted like I was going to call my man that had the $8,400, but really it was Randy. So I was like "man, I'm standing here looking at it. It looks good. Everything looked good, you know."

Q. And what were you -- and this -- what was taking place? What were you supposed to be doing?

A. I was supposed to have been calling the guy and letting him know it's good and meet me up the street with the money so I can get it and come right back and get the drugs.

Q. And in this drug transaction you were doing, in this faking situation that you were doing, why wouldn't you have brought the money there originally?

A. I mean, you know, I would have if the DEA wanted me to, but they were just -- you know, they were just saying, you know, I just knew I could see it without the money. You know, I didn't have to bring the money or nothing. I just knew Ramirez. I have been knowing him for a little while and I knew he would let me see it and I could tell him that the guy that's spending the money actually was kind of scared because of this kind of neighborhood and he wanted me to be the man to come and look at it first and make the deal and stuff, you know. That's why I didn't have no money on me.

Q. Okay. And the original deal was supposed to be a buy-bust at the Wal-Mart parking lot, is that correct?

A. Yes, ma'am.

Q. So what did you do once you -- you have seen the stuff. Did you recall anything else being on the dresser or in the room?

A. I remember a bedspread with the moon and the sun on it. And I remember the dresser had empty liquor bottles and stuff like that on it.

Q. Was there a scale?

A. The scales were inside the Bi-Lo bag.

Q. Okay.
A. Yeah, when he laid it up there, you could see the black scales inside the Bi-Lo bag. It was inside of it. And then you had like four different ziplock bags inside of it too, so --
Q. And once you -- so you have seen the drugs and you call Agent Smith and what do you tell him and what do you do?
A. I tell him that everything -- everything looks good and the drugs the same and it's looking good. You know, basically the signal where they told me to give him. And I told Ramirez, you know, "I'm going to go ahead and go get the money."
Q. And do you -- when you leave, how do you -- what order do you leave in? Who goes out? Who goes to the door, if you recall?
A. Yeah, I walked toward -- I leave out the bedroom first and Ramirez followed behind me. I want to say Ochoa kind of followed Ramirez and we all --
Q. And I may not have asked you this. Is Ochoa in the courtroom?
A. Yes, ma'am.
Q. Where is he seated?
A. Sitting with the woman in his ear, blue shirt.
Q. Okay. Thank you. Okay.
So Ochoa stayed in the room. Please continue.

A. Ochoa kind of followed out behind us, me and Ramirez. You know, I didn't look all back to see where "Shorty" was or nothing like that, but I remember -- I think Ochoa kind of came in the hallway outside the door, and Ramirez followed me all the way to my car. And I'm on the phone with Randy the whole time telling him "yeah, man, I'll meet you up the street. I'm going to come and get the money and come back and get it."

Q. So you were pretending to maybe go to the convenience store to get the money?

A. Yes, ma'am. I told Ramirez that my guy with the money is going to meet us at the same store that we left his van at. So that was what -- you could see the store from the apartment complex, you know, so it wasn't far away. Like I say, 100, 150 yards?

Q. Okay. Phillip, I'm going to hand you --

(Off the record).

(Back on the record).

MS. MONTS: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

BY MS. MONTS:

Q. Phillip, I'm handing you State's Exhibit 1. Can you tell the jury what that is?

A. This is the door number, and I remember looking at it,

because when I was on the phone with Agent Smith leaving out, he say "what's the door number? Look at the door number." And I told him right on the phone in front of Ramirez, say "[redacted]," but Ramirez didn't know what I was talking about, though.

Q. Okay. And State's Exhibit 2.

A. That's the front room where we -- when you enter the front door, that's the first room you come into.

Q. State's Exhibit 3?

A. That's the kitchen area like -- I guess you call it the nook.

Q. Okay. State's Exhibit 4?

A. That's the kitchen.

Q. State's Exhibit 5?

A. That's the bedroom.

MS. MONTS: Your Honor, the State moves these into evidence at this time.

THE COURT: Mr. Crangle, Mr. Robinson, any objection?

MR. CRANGLE: State's Exhibit 1 through 5, correct?

THE COURT: That's correct.

MR. CRANGLE: No objection to this.

MR. ROBINSON: May I see them one more time?

THE COURT: Yes.

MR. ROBINSON: No objection.

THE COURT: All right. State's Exhibit 1 through 5 are entered without objection.

(Whereupon, State's Exhibit No. 1 was entered into the record as evidence)

(Whereupon, State's Exhibit No. 2 was entered into the record as evidence)

(Whereupon, State's Exhibit No. 3 was entered into the record as evidence)

(Whereupon, State's Exhibit No. 4 was entered into the record as evidence)

(Whereupon, State's Exhibit No. 5 was entered into the record as evidence)

BY MS. MONTS:

Q. When you left apartment [redacted] and the three gentlemen there, where did you go, or who did you go to meet?

A. I left there and I went back to the strip mall above the Wal-Mart, where I told you I met Randy and he put the wire on me. So I left there and went back over there. Randy -- I called Randy when I was leaving and he say "meet me back at the location where we first met up." Probably -- must have been an hour ago, you know, 45 minutes ago.

Q. So Mr. Ramirez's car was not at the apartment now, correct?

A. No, ma'am, it was at the -- still at the store. He --

when I left with -- when we left the store, he rode with me to his apartment. So when I left the apartment after seeing the drugs and stuff, he just stood around outside. He didn't worry about his car, because you can kind of see it up the street, you know. The store was that close, so he didn't -- he didn't worry. He wasn't like "drop me back off to get my car." I mean, he didn't care about the car, you know, so I left past the store and went on back towards the strip mall and went behind there to meet Randy and them.

Q. And whose car was there?

A. At the apartment?

Q. Yes, sir.

A. It was other cars there, but the only one I know was Ochoa's gray Malibu was sitting out there.

When I left -- when I left the apartment, I told Randy and them on the phone, I say "don't let the gray Malibu leave, because that's the guy that I believe that brought it."

Q. And why would you be concerned that the drugs might be leaving?

A. Because, you know, some people might get kind of scared that you didn't buy it right then. I mean, they be like "well, let's move this over here then, because even though he might be good or whatever, he might be coming back with the money, but we still can't trust it, so let's move it

right quick, you know." That's how they will do, though.

Kind of scale to scale drug dealer, or something, you know, you need to buy it right then. You come and look at it and you didn't buy it, they are liable to just move it, you know what I'm saying, just to be safe.

MS. MONTS: Your Honor, we would like to publish the audio and video at this time.

THE COURT: All right.

MS. MONTS: The video is approximately five minutes.

BY MS. MONTS:

Q. And, please, from your seeing of it, what are we going to see in this video?

A. You will see me at Wal-Mart talking to Ramirez, negotiating a deal and stuff. He is telling me to get the money and then come meet him, but I'm telling him --

MR. ROBINSON: Your Honor, objection. I think the video will speak for itself.

THE COURT: Yeah, we will allow the video to speak for itself, if you need to explain after that.

And for purposes of the record, tell us what you have just put in the --

MS. MONTS: I'm sorry.

THE COURT: Which exhibit you put in.

MS. MONTS: Your Honor, that's State's Exhibit 16.

THE COURT: Thank you.

(Whereupon, State's Exhibit No. 16 was played to the jury panel)

MS. MONTS: And, Your Honor, now I would like to publish State's Exhibit 15.

THE COURT: All right.

MS. MONTS: And, Your Honor, there are few times I'll fast forward through the tape where it's just nothing on it.

THE COURT: All right.

Any objection from the defense fast forwarding in places where she says there is nothing on there?

MR. ROBINSON: No, sir, Your Honor, no objection.

THE COURT: Mr. Crangle?

MR. CRANGLE: No, Your Honor.

THE COURT: All right. Thank you.

THE COURT: Let's set it up to where we can -- where the entire courtroom can hear it.

(Whereupon, State's Exhibit No. 15 played to the jury panel)

BY MS. MONTS:

Q. Did you hear your voice on this recording?

A. Yes, ma'am.

Q. What was the price of the drugs? What was the arrangement?

A. 8,400.
Q. And at the end do you say "how about 8,300?"
A. Yes, ma'am.
Q. And why were you saying that?
A. Just making it seem more believable that I was coming back to try to get a lower price on it, like I would if I would have been coming back.
Q. And based on the amount of those drugs that you saw, and I believe you say something on the audio, how much do you believe that you saw? Was it more than what you had ordered?
A. Yeah, it was more than what I ordered.
Q. Okay. And how much had you ordered?
A. I ordered eight, but it was looking more like ten on some, you know.
Q. And when you saw it -- when you saw the drugs, can you describe what else was in the packaging, if there was any -- and describe what the drugs looked like.
A. It was like a white Bi-Lo bag. And then inside the Bi-Lo bag it was like four different ziplock bags, sandwich bags, and a scale. They was inside the Bi-Lo bag.

The ice was sort of yellow. You can get some that's -- sometimes it's clear looking. Sometimes it's yellow looking, but this right here had a yellow tint to it.

Q. Okay. I'm going to hand you State's Exhibit 6. Can

you identify this?
A. Yes, ma'am.
Q. What do you see in there and how do you know what it is?
A. By past experience I know it's ice.
Q. Does this look like the bags that you saw?
A. Yes, ma'am, the same ziplock bag. Not the fold bags, but the actual locks on them.
Q. And describe what you see about the consistency of this crystal meth, if you see anything.
A. It looks -- you know, that's what it is. It's sort of got an oily feel to it. I don't know why, but like it might have been hid in something, oil or gas tank, or something.
MR. ROBINSON: Objection, Your Honor. It calls for speculation.
THE COURT: Overruled.
BY MS. MONTS:
Q. And do you see a card in there?
A. Yes, ma'am.
Q. Is that common in your experience?
A. Yes, ma'am. They use a credit card to pick it up out of there, drop it on the scales, just like a spoon or something.
Q. Thank you.
MS. MONTS: Your Honor, we would move this exhibit

into evidence, State's Exhibit 6.

THE COURT: Any objections?

MR. CRANGLE: None from Mr. Cruz.

MR. ROBINSON: Nothing from Mr. Ochoa.

THE COURT: All right, State's Exhibit No. 6 is entered into without objection.

(Whereupon, State's Exhibit No. 6 was entered into the record as evidence)

BY MS. MONTS:

Q. And I'm going to show you pictures on the screen that you have already looked at.

A. Uh-huh.

Q. And not the people in the picture, but just the furniture and the way the room is looked, do you recognize that room?

A. Yes, ma'am, that's the first room that you enter when you come through the door.

THE COURT: And, again, if you would --

MS. MONTS: I'm sorry.

THE COURT: -- state for the record what exhibit we are looking at.

MS. MONTS: State's Exhibit 2.

BY MS. MONTS:

Q. Describe where anything is in this picture that you remember. Where are the other rooms?

A. I remember the coffee table with all this beer cans and stuff on it. Then you have got the -- through that door right there you have got the kitchen, that it goes to the right right there. You got little kitchen table straight ahead, but to the left it's a restroom and a bedroom.

Q. I'm going to show you State's Exhibit 5. Can you identify this?

A. Yes, ma'am, the dresser right there is what he reached up under. Ochoa reached up under and got the drugs from all the way under the dresser. Not a drawer or nothing, but all the way under. Then he set the bag on the dresser, but he started putting the ice on the bed, just setting the bag up.

Q. Where on the -- I'm pointing my pen. Where on the bottom of the dresser here did he get it out?

A. All the way under the bottom.

Q. Like here?

A. Yeah, all the way under. You got to stick your hand like this under there to get it. It wasn't in no drawer or nothing. It was completely under the dresser.

Q. Okay. And he set it on top of the bed then?

A. Yes, ma'am.

Q. And I'm going to show you State's Exhibit 6 that we just talked about. Can you for the jury explain what this is?

A. It's crystal meth. It's got the scales that he had in

the Bi-Lo bag to weigh it up with, and then you got the credit card inside the bag with the meth. You use it as sort of like a dipping spoon.

Q. Is the scale the black thing?

A. Yeah, the scale over here with the red and black -- the red and blue button on it.

Q. Did you ever go back on this day to that apartment once you left it and met back up with Agent Smith?

A. No, I ain't never been back, ma'am.

Q. Thank you.

MS. MONTS: Nothing further.

BY MS. MONTS:

Q. You are going to need to answer any questions of these two attorneys.

A. Okay.

THE COURT: Mr. Crangle?

CROSS EXAMINATION BY MR. CRANGLE:

Q. Mr. Lewis, you have bought drugs from Mr. Ramirez a lot, haven't you?

A. A few different times before I got in trouble, yes, sir.

Q. Okay. How many times in total would you say that was?

A. I mean, it's kind of hard to keep up with, man. Just --

MS. MONTS: Objection, Your Honor. May we

approach?

A. A lot.

THE COURT: Hold on.

Yes. The attorneys approach.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

BY MR. CRANGLE:

Q. You were arrested on April the 25th, 2014, right?

A. Might have been the 25th. It was in April.

Q. Okay. And when did you first contact Agent Smith and tell him that you wanted to work?

A. As soon as I got out on bond.

Q. Okay. Do you remember when that was?

A. I think I got locked up April the 24th, and I got out like 30 days later. So it was like 30 days later.

Q. Was your bond reduced at all by the government?

A. I was denied bond from the beginning. They finally gave me one like 30 days later.

Q. Okay. Was Agent Smith involved in that?

A. No, sir.

Q. Was the prosecution involved in that?

A. No, I got a lawyer. The lawyer got me up there in front of the judge and he gave me a bond.

Q. Okay. Do you remember going to that apartment two days before on I guess it would have been Monday? It would be

June 30th. Do you remember that?

A. Yes.

Q. Going with Ramirez?

A. Yes, sir.

Q. And when you went with Ramirez, he opened up the door to the apartment, right?

A. Yes, sir.

Q. Okay. And then he had drugs in a vent kind of like that over the kitchen sink, right?

A. Yes, sir.

Q. So he popped the vent off and he got the drugs out, right?

A. Yeah. Well, it wasn't over -- it was just a hole. The paper was missing, so he run his hand in there, yeah.

Q. But it was above the sink? I wasn't just something that you could see plain laying out?

A. It was right above the sink, you know, like head level. He just reached up there and got it.

Q. Okay. And what did he have? Was it crystal meth? Is that what it was?

A. Yes, sir.

Q. Okay. And how much was it?

A. It must have been about six or seven grams.

Q. Okay. And that was Ramirez, correct?

A. Yes, sir.

Q. My client wasn't there that day, right?
A. No, just me and Ramirez.
Q. You and Ramirez were the only ones there?
A. Uh-huh.
Q. Who opened the door?
A. Ramirez.
Q. Did he have keys?
A. I don't even -- I don't even know if the door was locked. Me and him pulled up.
Q. Okay. But no one was in the house and Ramirez got in the house?
A. Yeah.
Q. You do remember that you didn't open the door? Ramirez opened the door?
A. No, I didn't open it.
Q. Okay. I want to turn towards that video that we just watched with you in the Durango and the van, okay?
A. Yes.
Q. In that vehicle where is Mr. Cruz?
A. The video?
Q. Uh-huh.
A. He's already at the apartment.
Q. So is he in the video?
A. No, sir.
Q. All right. He's not in the video?

A. Uh-huh.
Q. And the audio recording that we hear, that's Mr. Ramirez and you talking the entire time, right?
A. Uh-huh.
Q. Okay. Mr. Cruz isn't on that audio, is he?
A. You might hear him speak. If you listen to it closely, you can't really hear it in here, but you can hear other guys speaking Spanish in the video -- I mean in the audio, if you -- it just ain't -- you know, it just ain't, you know, loud enough for him.
Q. Okay. But you don't know who those other people in the background are. It could be the TV, right?
A. No, it was those guys.
Q. So it's your testimony here today that they are on the audio?
A. Yeah.
Q. On the audio that we listened to, my client is on that audio?
A. Yeah.
Q. Okay. Let's turn to where the drugs were located. You said they were underneath the dresser. Do you mean, for example, they were tucked up under here?
A. Tucked all the way under there. It wasn't in no -- it wasn't in no drawer. They was under next to the carpet in the bottom of the dresser. That's where they were on.

Q. Were they taped to it, or were they just stuffed all the way to the back?
A. No, stuffed up under there.
Q. Okay. So they weren't open or out in plain sight?
A. No, not when I got there.
Q. Okay. So the first time they were up hidden in the vent? The second time they were hidden underneath the dresser, right?
A. Yeah. The reason the first time they was in the vent because it was only a small bag and the vent was like this. You couldn't get all them ten ounces in that vent no way, if you tried, you know.
Q. And Ramirez was in the room, right?
A. The day the bust went down?
Q. No, no, no, when you were pulling the drugs out from underneath the dresser, was Ramirez --
A. I didn't pull them out.
Q. Who pulled them out?
A. Ochoa.
Q. And Ramirez was in the room, right?
A. Uh-huh.
COURT REPORTER: Is that yes?
A. Yes, sir.
BY MR. CRANGLE:
Q. Okay. I'm showing you what's been marked as State's

Exhibit 6, okay? Let's see if we can get it right here.

Do you recognize that picture?

A. Yes, sir.

Q. Okay. Let's see if I can zoom in on it. There we go. Okay.

That's the drugs, right?

A. Yes, sir.

Q. Okay. Whose name is on that credit card?

A. I mean, I don't -- I don't know whose name is on there.

Q. Is Mr. Cruz's name on that credit card?

MS. MONTS: That's been asked and answered, Your Honor.

A. It's probably one of them credit cards --

THE COURT: I'm sorry, overruled. You can go ahead.

BY MR. CRANGLE:

Q. Is Mr. Cruz's name on that credit card?

A. No, that's one of them credit cards you use -- don't get no name on it. You just add money to it.

Q. Okay. How old are you?

A. I will be 38 in July.

Q. 38.

Okay. And let's talk about -- you have got some pending charges down in Greenwood, right?

A. Yes, sir.

Q. Okay. Let's go through them. You have a possession of a controlled substance, Schedule I through V, is that correct?

A. Yes, sir.

Q. Okay. And that carries zero to one year?

A. Uh-huh.

Q. Okay. You know the difference between consecutive and concurrent time, don't you?

A. Yes, sir.

Q. Consecutive time -- let me start.

Concurrent time means that they run at the same time, right?

A. Uh-huh.

Q. So if you get two 10 year sentences, you get done in 10 years, right?

A. Uh-huh.

COURT REPORTER: Yes or no, please, sir.

A. Yes, sir.

BY MR. CRANGLE:

Q. Okay. Consecutive time means that they run after each other, right?

A. Yes, sir.

Q. Okay. So if you get two 10 year sentences consecutive, that means that you got 20 years, right?

A. Yes, sir.

Q. Okay. You also have a manufacture possession of controlled substance, I, II, III, or Flinozopan with intent to distribute first offense, right?

A. Yes, sir.

Q. Okay. And that's zero to five years?

A. Uh-huh.

Q. Okay.

MS. MONTS: Your Honor, he's testifying.

THE COURT: He can cross him on that, but I'll instruct you, you got to say yes or no so the court reporter can get your answer.

THE WITNESS: All right.

BY MR. CRANGLE:

Q. Okay. So consecutive, that's six years now, right; one plus five?

A. Yes, sir.

Q. Okay. You also have a manufacturing, distribution of cocaine base first, right?

A. Yes, sir.

Q. Okay. And that's zero to 15, right?

A. Yes, sir.

Q. Okay. So 15 plus six is 21, right?

A. Yes, sir.

Q. So now we are at 21 years consecutive?

A. Uh-huh.

Q. Okay. You also have possession of a weapon during the commission of a violent crime, right?
A. Yes, sir.
Q. And that's a five year mandatory minimum, right?
A. Yes, sir.
Q. Okay. And finally you have a trafficking in crack or crank, 28 grams, but less than 100 grams, second offense, right?
A. It's supposed to be first offense, but, yeah, I got that charge, yes, sir.
Q. Okay. So you have a second offense charge currently, right?
A. Yes, sir.
Q. Okay. And that carries seven to 30 years, right?
A. Yes, sir.
Q. Okay. And that's a mandatory minimum of seven years, right?
A. Yes, sir.
Q. And that's violent time, right?
A. Yes, sir.
Q. Okay. All together that adds up to 56 years, right?
A. Somewhere along in there.
Q. Okay. And you said that you were 38, right?
A. Yes, sir.
Q. So that's 94. You would be 94 years if you got all

that time, right?
A. Uh-huh.
Q. And you have three children you said?
A. Yes, sir.
Q. And your motivation here today is to make sure that you don't get that 56, right?
A. Yes, sir.
Q. And you will do anything to make sure that you don't get 56?
A. I won't do anything. I tell the truth. That's what I do, but don't give me 56. I'm here to tell you what God loves is the truth.
Q. Thank you.
THE COURT: Mr. Robinson?
MR. ROBINSON: If it please the court?
CROSS EXAMINATION BY MR. ROBINSON:
Q. Is it Phillip?
A. Yes, sir.
Q. Phillip, you just made mention of God a second ago?
A. Uh-huh.
Q. Was God there when you were committing all these other crimes?
A. Yes, sir.
MS. MONTS: Objection, Your Honor.
A. Yes, sir. Yes, sir.

MR. ROBINSON: I'll withdraw the question, Your Honor.

THE COURT: You know the rules, Mr. Robinson.

MR. ROBINSON: Yes, Your Honor.

BY MR. ROBINSON:

Q. Now, let's talk about your preparation for this case today.

A. Uh-huh.

Q. Okay. Now, you started working with law enforcement in this case how long before this bust?

A. It's been about two months before the bust. I got out on bond I think it was in May. The bust went in July.

Q. Okay. And you would agree with me that you met with the agents and the prosecutors about this case, is that correct?

A. I met with the -- prior to this case or after it went down?

Q. This case.

A. After the bust went on and all?

Q. This case, right, as far as --

A. I met with the agents before this case and after it happened and everybody got charged. Yeah, I met with the prosecutors.

Q. Okay. The prosecutors would be Ms. Monts and other prosecutors in her office?

A. No, just Ms. Monts.
Q. Ms. Monts.
And you would agree with me you met with her more than one time, wouldn't you?
A. Yeah, twice.
Q. Twice.
A. Uh-huh.
Q. That was in preparation for this case, for this trial this afternoon, right?
A. I guess you say preparation. There wasn't no -- wasn't no say this or don't say this. It was just do you recognize this, do you recognize that. That's what the preparation was about then.
Q. Well, let's talk about your preparation with the agent --
A. Uh-huh.
Q. -- of law enforcement.
A. Uh-huh.
Q. Okay. Now, how many times did you meet with them in preparation for this trial?
A. Oh, man, we -- not in preparation for the trial, but so many times since then about other stuff.
Q. So many times since then about other stuff?
A. Uh-huh.
Q. And in terms of -- I think Mr. Crangle asked you a

minute ago as far as your motivation, but you would agree --

A. Uh-huh.

Q. -- that if you cooperate, that will help you on this?

A. Yes, sir.

Q. Okay.

MR. ROBINSON: That's all I have. Thank you.

THE COURT: Anything else, Ms. Monts?

MS. MONTS: Yes, Your Honor.

REDIRECT EXAMINATION BY MS. MONTS:

Q. When you mentioned, Phillip, the six to seven grams that you saw two days prior to this eight or nine ounces --

A. Uh-huh.

Q. -- which amount is larger?

A. Six or seven grams is only about the size of a quarter that you have in your pocket. Ten grams is different bags of it.

Q. So the amount that you saw on the day of this bust may have had eight or nine ounces --

A. Uh-huh.

Q. -- which was a lot larger amount?

A. A lot larger, yeah.

Q. And would someone have to be called to bring in that much larger amount?

A. Yeah, that's when -- that's when -- if it's only a little bit then, the middle man would handle it, but when

it's -- when it's thousands of dollars on the line, then you got other people that step out from behind the shadows. That's how that went. That's why -- that's why only the middle man was -- I was seen when I was dealing with the little bit, but when the big bag come out, that's when the big men come out.

Q. Thank you.

MS. MONTS: Nothing further.

THE COURT: All right. You can step down.

MS. MONTS: Your Honor, we ask this witness be excused.

THE COURT: All right.

MR. ROBINSON: No objection on behalf of Mr. Ochoa.

THE COURT: He's excused.

The items that were placed into evidence, let's leave those up here. The photos that were placed into evidence, please leave them with the court reporter.

All right, ladies and gentlemen, I'm sure y'all all agree it's time for lunch. We will take a lunch break and ask that you be back in your jury room at two o'clock. We will start back at two o'clock.

I do remind you again not to discuss the case at all, even among yourselves. Certainly don't discuss it with anybody else at all.

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So we will see you back in your jury room at two o'clock.

(The following takes place outside the presence of the jury panel)

THE COURT: All right, anything at this point from the State?

MS. MONTS: No, Your Honor.

THE COURT: Anything from the defense?

MR. CRANGLE: No, judge.

THE COURT: All right.

MR. ROBINSON: No.

THE COURT: Let's be back in here ready to go at two o'clock.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT: All right. Is the State ready?

MS. MONTS: Yes, Your Honor.

THE COURT: Defense ready?

MR. CRANGLE: Yes, judge.

MR. ROBINSON: Yes.

THE COURT: All right, let's bring the jury in.

(The following takes place in the presence of the jury panel)

THE COURT: Thank you, ladies and gentlemen for your patience. We are ready to begin the afternoon session.

Ms. Monts, call your next witness.

MS. MONTS: Your Honor, the State calls Max Whatley.

MAX WHATLEY, JR., having been first duly sworn, testified as follows:

THE CLERK: Would you please state your name for the record?

THE WITNESS: My name is Max Whatley, Jr..

THE CLERK: Thank you, sir.

DIRECT EXAMINATION BY MS. MONTS:

Q. Mr. Whatley, do you live here in Greenville?

A. I do.

Q. And are you the manager at Westgate Apartments on Lily Street here in Greenville?

A. That's correct.

Q. And as part of your duties, do you rent or lease the apartments out to people?

A. Yes, ma'am.

Q. And do you collect the rent?

A. I do.

Q. And do you keep a ledger of those?

A. I do.

Q. And what is the address on Lily Street of the apartments?

A. Well, the apartment I think in question is [redacted]

[redacted]

Q. And did you bring a ledger today with you of who was renting that apartment?

A. I did.

Q. And who was renting that apartment?

A. Manuel Najera.

Q. And did you see Mr. Najera? Did he pay the rent?

A. He did.

Q. So had he rented the apartment between May of 2011 and July of 2014?

A. Correct.

Q. And was anyone else on the lease or allowed to be in that apartment?

A. No, ma'am.

Q. And was it a one bedroom apartment?

A. It was.

Q. And was Mr. -- you knew him as Manuel Najera, is that right?

A. Yes, ma'am.

Q. And you saw him approximately once a month or when he paid rent, or would you see him more than that?

A. Rarely more. Every now and then I would run across him on the property.

Q. And did he pay rent up until May of 2014?

A. Yes, ma'am.

Q. And did you have a notation about why he didn't pay rent any more after that, or if he were behind?

A. Well, I think he missed the June rent and then the following month we had the arrest.

MS. MONTS: Your Honor, I would move the ledger into evidence. I would ask to substitute a copy for the original.

THE COURT: All right.

MR. ROBINSON: No objection for Mr. Ochoa.

MR. CRANGLE: No objection for Mr. Cruz.

THE COURT: Did you have it marked? Have it marked.

(Rent Ledger marked as State's Exhibit No. 17 for identification)

THE COURT: What's the exhibit number?

MS. MONTS: Your Honor, that's State's Exhibit No. 17.

THE COURT: State's Exhibit 17 is admitted into evidence without objection.

(Whereupon, State's Exhibit No. 17 was entered into the record as evidence)

BY MS. MONTS:

Q. And, Mr. Whatley, is it your handwriting on the ledger?

A. Yes, ma'am, it is.

Q. Can you describe Mr. Najera?

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A. A short Hispanic male. I think that's him right there on the right, my right.

Q. Okay. Thank you very much, and I have no further questions. These two gentlemen may have some questions for you.

THE COURT: All right, Mr. Crangle?

CROSS EXAMINATION BY MR. CRANGLE:

Q. Just one question. Did you ever see my client dealing drugs?

A. No, sir.

MR. CRANGLE: Thank you.

THE COURT: Mr. Robinson?

MR. ROBINSON: I have no questions for this gentleman.

THE COURT: Thank you, Mr. Whatley. You can step down.

THE WITNESS: Okay.

MS. MONTS: Your Honor, we ask that this witness be excused.

THE COURT: Any objection?

MR. CRANGLE: No, Your Honor.

THE COURT: You are excused. Thank you Mr. Whatley.

MS. MONTS: Thank you.

Your Honor, may we approach?

THE COURT: Yes.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

MS. MONTS: Your Honor, one moment, please.

(Off the record)

(Back on the record)

MS. MONTS: May we approach?

THE COURT: Yes.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Court would be at ease while we wait on the next witness.

(Off the record)

(Back on the record)

THE COURT: Ms. Monts.

MS. MONTS: Yes, Your Honor, I just want to make sure if we are going to do the exchange up about the translator in case we need that?

THE COURT: All right. Let me do this. Just have a seat. Let me ask the jury to be excused for just about five minutes. We will take up the issue outside of your presence and then I'll have you back in here.

(The following takes place outside the presence of the jury panel)

THE COURT: All right. Ms. Monts, where are we?

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MS. MONTS: Your Honor, Mr. Ramirez is here. We are about to call him.

THE COURT: All right.

MS. MONTS: His attorney is now present in the courtroom.

I just -- we had talked earlier about having one of the two interpreters be prepared in case the witness needs to speak in Spanish so the jury will understand what he is saying and have the other interpreter just stay with the two defendants.

THE COURT: All right. In fact, I had received an e-mail from the Clerk of Court. We had some confusion over interpreters, the number of interpreters, and an interpreter, in fact, for the court. The Clerk of the Court's e-mail informed me that there was an order in place, I'm not sure from what judge, I presume from Judge Hill, authorizing interpreters -- their application of that was that there would be one interpreter for both defendants and the other interpreter was going to be available when -- because it's such a tedious task to relieve that one interpreter, so the court is comfortable at this point of having one interpreter between both defendants. I think that was actually the intent of judge -- whatever circuit judge authorized the interpreter. So I don't know logistically how we do that. I assume one interpreter has

been talking through a microphone into one of the defendants -- is transmitted to a device in his ear and the other interpreter has been talking directly to the other defendant. It appears to me that the best thing to do would be to have I believe Ms. Stephens be sitting between both of them so that she can interpret. Does that make sense?

INTERPRETER RUBY LENE STEPHENS: Sure.

THE COURT: And then -- and you are Ms. -- I forgot your name.

INTERPRETER TERESA SAMPSON: Sampson.

THE COURT: And you would be available for -- if the court needed -- or if the court -- you are to relieve her, or if there was some issue that she couldn't answer. Are we on the same page?

Ms. Monts, are you ready?

MS. MONTS: Yes, Your Honor.

THE COURT: Okay. We are ready as far as the interpreters?

All right, let's bring the jury in.

(The following takes place in the presence of the jury panel)

THE COURT: All right, Ms. Monts.

MS. MONTS: Your Honor, the State calls Mauricio Ramirez.

MAURICIO RAMIREZ, having been first duly sworn, testified as follows:

THE COURT: Please be seated.

(Whereupon, the testimony of Mauricio Ramirez was by the witness and also an interpreter)

THE CLERK: Would you would please state your name for the record?

THE WITNESS: Mauricio Ramirez.

THE CLERK: Thank you.

DIRECT EXAMINATION BY MS. MONTS:

Q. Mr. Ramirez, do you speak some English?

A. I speak a little understand.

MS. MONTS: And if you will let me just talk to him for a minute and let --

BY MS. MONTS:

Q. Do you understand or speak English better?

A. I understand.

Q. Just the speaking is a little hard for you?

A. Yes.

Q. So I'm going -- I want to talk to you in English. And if it gets to a -- if you don't understand what I'm saying, this lady to your left, just turn to her and she will tell you what I said, okay?

A. Okay.

Q. And if you want to speak back in Spanish, you can, but

I would like you to speak in English for a little bit.
A. Okay.
Q. Mr. Ramirez, you are currently incarcerated in the jail, is that right?
THE INTERPRETER: Yes.
BY MS. MONTS:
Q. And did you plead guilty to the charges, the trafficking in methamphetamine charges?
A. Yes.
Q. And did you get a reduction for your accepting responsibility and pleading?
A. Okay.
Q. Okay.
A. Yes.
Q. Have you been sentenced yet, or is that still to come?
THE INTERPRETER: I'm waiting.
BY MS. MONTS:
Q. And Mr. Ramirez, did you sell drugs before you were arrested?
THE INTERPRETER: Yes.
BY MS. MONTS:
Q. And was someone that you sold drugs to a black man that was actually the person on the day that you were arrested that you were trying to sell to him, is that --
THE INTERPRETER: Yes.

BY MS. MONTS:

Q. And how long have you known this black male that you were meeting on this date that you were arrested?

THE INTERPRETER: Three months. Two months after I got incarcerated.

BY MS. MONTS:

Q. Did I speak to you at the jail about testifying today?

THE INTERPRETER: Yes.

BY MS. MONTS:

Q. And did you listen to an audio and watch a video at the Wal-Mart parking lot?

THE INTERPRETER: Yes.

BY MS. MONTS:

Q. And was that you on the video in the gray van in the Wal-Mart parking lot meeting the black man?

THE INTERPRETER: Yes.

BY MS. MONTS:

Q. And I'll ask --

MS. MONTS: Let's see if he can answer a few questions in English.

BY MS. MONTS:

Q. If you -- if it's too hard, let me know, but if you can please answer a few questions in English.

A. Okay.

Q. How much were you to sell to the black man on this

date, the last day before you were arrested?
A. The last day before I arrested?
Q. Yes, this last deal in the Wal-Mart parking lot, do you recall how much drugs you were supposed to have?
A. He told me that eight ounce he want. He wanted eight ounce.
Q. And were you going to provide him the eight ounces?
A. Yeah.
Q. And how much money was he to bring to you for the eight ounces?
A. I think 9,000, or eight and a half.
Q. So 8,500 or 9,000?
A. Yes.
Q. And what type of drug was it?
A. (No response).
Q. What do you call it?
THE INTERPRETER: Ice.
BY MS. MONTS:
Q. And did you bring the eight ounces of ice or methamphetamine to the Wal-Mart when you went to meet him?
A. No.
Q. And why not?
A. Because I don't do that. That's only when the guy say he's bringing the money, I call somebody to bring the dope over there.

Q. Okay. And did you tell the black male that you needed to go somewhere else to see the drugs then?
A. The black guy, he know me, because one day before we go TO there and he say okay, tell your friend bring him over here and I'll come and get it when they have the money.
Q. Okay. Did he have the money on this day?
A. He said no, his friend didn't have it.
Q. And how were you -- did you need to show him the drugs before he would give you the money?
A. Yes.
Q. And where did you go when you left the Wal-Mart parking lot?
A. Where I was going to the Lily Street where we have our arrest.
Q. And did you stop at the Harry's -- the gas station and get in his car?
A. Yeah, we -- we -- we stopped, leave my van over there and we go in his truck.
Q. And why did you want to leave his truck there?
A. I guess because I'm -- because I don't want too many cars in the apartment.
Q. And who lived in this apartment?
A. Cruz.
Q. And how long have you known Cruz?
A. How long? For 15 years.

Q. Are you both from Mexico?
A. Yeah, we from the same country.
Q. Were you from the same village or city or town?
A. Yeah, the same country.
Q. So you have been friends for a long time?
A. Yes.
Q. When you -- how did the drugs that -- how did the drugs get -- what -- how did you get the drugs to that apartment?
A. How?
Q. Did you call someone?
A. Yeah, I called somebody.
Q. Who did you call?
A. Ochoa.
Q. And did you know that the drugs would be in the apartment when you got there?
A. I know when he told me it's there.
Q. Did Ochoa tell you it was there?
A. Yeah.
Q. On the telephone?
A. Yes.
Q. And when you got to the parking lot, was Ochoa there, or did he arrive while you were there?
A. No, he on his way. We there in the same time, me and the black guy. And when we go into the apartment, we there at the same time.

Q. And was Ochoa getting -- did he arrive at the same time in his car?
A. Ochoa drove his car by himself, and me and the black guy in his truck, and we go in together and when we went inside.
Q. Did you get there about the same time?
A. Yeah, the same time we there.
Q. And who went to the door first, if you recall? Who -- did you speak with Ochoa, or did the black guy speak to Ochoa, or how did that work?
THE INTERPRETER: Ochoa got in first and then myself and the black guy soon after.
BY MS. MONTS:
Q. Got in? Is that how you went into the apartment?
THE INTERPRETER: Yes.
BY MS. MONTS:
Q. And who was inside the apartment?
THE INTERPRETER: Cruz.
BY MS. MONTS:
Q. And what do you call Cruz? Does he have any other name that you call him?
THE INTERPRETER: Gandia.
BY MS. MONTS:
Q. How about --
MR. CRANGLE: Objection, Your Honor. This is

leading the witness.

THE COURT: Sustained.

MR. CRANGLE: Objection.

THE COURT: Rephrase your question.

Ma'am, instruct the witness that he's not to answer the last question, but he's to answer whatever question she asks.

BY MS. MONTS:

Q. Do you know of other names that Cruz uses or other people call him?

THE INTERPRETER: Carlos.

BY MS. MONTS:

Q. And what is Cruz's first name?

A. Manuel.

THE INTERPRETER: Manuel.

BY MS. MONTS:

Q. And when you went into the apartment, where did Ochoa go?

THE INTERPRETER: He went to show the drugs to the black guy.

BY MS. MONTS:

Q. And where did you go?

THE INTERPRETER: I went with them inside.

BY MS. MONTS:

Q. And where did the black guy and Manuel go?

THE INTERPRETER: Manuel was about to leave for work and the black guy was going to go get the money.

BY MS. MONTS:

Q. Who was in the bedroom when Ochoa got the drugs out?

THE INTERPRETER: Myself and the black guy.

BY MS. MONTS:

Q. And where did Ochoa get the drugs from?

THE INTERPRETER: I saw he took them out from under a piece of furniture.

BY MS. MONTS:

Q. Did you see where he sat the drugs?

THE INTERPRETER: Yes.

BY MS. MONTS:

Q. Where?

THE INTERPRETER: On top of the furniture.

BY MS. MONTS:

Q. Do you know if the eight ounces was there?

THE INTERPRETER: Yes, possibly he told me yes.

BY MS. MONTS:

Q. Was there more than the eight ounces of meth or ice?

THE INTERPRETER: To tell you the truth, yes, ten.

BY MS. MONTS:

Q. Say that once more.

THE INTERPRETER: To tell you the truth, yes, ten.

BY MS. MONTS:

Q. Is that ten ounces?

THE INTERPRETER: Ten or nine. I can't remember precisely.

BY MS. MONTS:

Q. Was the black man supposed to bring the money back?

THE INTERPRETER: Yes.

BY MS. MONTS:

Q. And did you walk him out to his car?

THE INTERPRETER: No.

BY MS. MONTS:

Q. Did the black man ever return?

THE INTERPRETER: No, he didn't.

BY MS. MONTS:

Q. Did the police arrive then?

THE INTERPRETER: Yes.

BY MS. MONTS:

Q. Who was in the apartment then when the police arrived?

THE INTERPRETER: Ochoa, Manuel and I.

BY MS. MONTS:

Q. How much of the $8,400 was your portion?

THE INTERPRETER: About $800.

BY MS. MONTS:

Q. Where was -- who was going to get the rest of that money?

THE INTERPRETER: Ochoa.

BY MS. MONTS:

Q. When the black man brought -- if he had brought the money back, would you have taken your portion or would you have given it all to Ochoa and then received your 800?

MR. CRANGLE: Objection, Your Honor, that calls for speculation.

THE COURT: Sustained.

BY MS. MONTS:

Q. Who was the black man to bring the money back to?

THE INTERPRETER: He was going to give it to me or Ochoa.

BY MS. MONTS:

Q. Mr. Ramirez, who in this courtroom -- are these two gentlemen in the courtroom now? If so, where are they seated?

THE INTERPRETER: One to the right. Both of them.

BY MS. MONTS:

Q. And which one is Manuel?

THE INTERPRETER: The one on this side.

BY MS. MONTS:

Q. And which one is Ochoa?

THE INTERPRETER: The one on the other side.

BY MS. MONTS:

Q. How long before this date had you known Ochoa?

MR. ROBINSON: Objection, Your Honor. Same

objection as before.

THE COURT: Overruled.

THE INTERPRETER: About six months before. Six or eight months.

BY MS. MONTS:

Q. Thank you. Mr. Ramirez, I'm done with my questions, but these two gentlemen are going to ask you questions.

A. Okay.

THE INTERPRETER: That's fine.

MS. MONTS: Your Honor, I apologize. One more question.

BY MS. MONTS:

Q. Mr. Ramirez, you have pled to a lesser trafficking offense that -- you have already pled, is that correct?

THE INTERPRETER: Yes.

BY MS. MONTS:

Q. And you are testifying today and are you hoping to get a lesser sentence by your cooperation?

THE INTERPRETER: Yes.

BY MS. MONTS:

Q. Are you telling the truth?

THE INTERPRETER: Yes.

BY MS. MONTS:

Q. Thank you.

THE COURT: Mr. Crangle?

CROSS EXAMINATION BY MR. CRANGLE:

Q. Mr. Ramirez, you and Mr. Cruz lived at that apartment together, right?

THE INTERPRETER: No. Only him.

BY MR. CRANGLE:

Q. You had a key to that apartment, right?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. And you were originally charged with trafficking in methamphetamine 200 to 400 grams, correct?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. And you were the first of the three co-defendants, right?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. Okay. And that charge is the same charge that my client, Mr. Cruz, faces, right?

MS. MONTS: Objection, Your Honor.

THE INTERPRETER: Yes.

THE COURT: Overruled.

THE INTERPRETER: Yes.

MR. CRANGLE: Judge, may I ask that question again?

THE COURT: The lawyers approach.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

BY MR. CRANGLE:

Q. Mr. Ramirez, you were originally charged with trafficking in methamphetamine 200 to 400 grams, correct?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. And that sentence carries 25 years, correct?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. And you have agreed to cooperate with the State and testify, correct?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. And in exchange last week you pled guilty to a lesser charge, correct?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. Now, it's trafficking, just at a lower weight, correct?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. And that sentence is now seven to 25 years?

A. Yes.

Q. Instead of the original 25?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. And you haven't been sentenced yet, correct?

THE INTERPRETER: No.

BY MR. CRANGLE:

Q. And when was the first time that you talked to the police?

THE INTERPRETER: I can't remember. About two weeks ago.

BY MR. CRANGLE:

Q. Did you give a statement when you were arrested?

THE INTERPRETER: No.

BY MR. CRANGLE:

Q. Well, why didn't you cooperate when you were originally arrested?

THE INTERPRETER: Cooperate in what way?

BY MR. CRANGLE

Q. Why didn't you talk to the police when you were arrested?

THE INTERPRETER: I do remember that I told the police officers that that wasn't mine and he say "no, it was too. We are still going to bring you."

BY MR. CRANGLE:

Q. But two weeks ago is the first time that you formally sit down with the government and talked to them about it, right?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. And the deal was they will reduce your charges if you cooperate, right?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. And that's you on the video, right?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. And you have been audio recorded, right?

THE INTERPRETER: Yes.

BY MR. CRANGLE:

Q. Why not go to trial?

MS. MONTS: Objection, Your Honor.

THE COURT: Overruled.

THE INTERPRETER: Why not go to trial? Because I'm in the recording. They recorded me.

BY MR. CRANGLE:

Q. Thank you.

MR. CRANGLE: That's all questions that I have.

THE COURT: All right, Mr. Robinson.

MR. ROBINSON: If it please the court?

CROSS EXAMINATION BY MR. ROBINSON:

Q. Mauricio, so how are you?

THE INTERPRETER: Fine.

BY MR. ROBINSON:

Q. I speak a little bit of Spanish, but I'm not going to grasp that.

Mauricio, as far as a trade goes, a job goes, you do -- or you are a roofer, isn't that right?

THE INTERPRETER: Yes.

BY MR. ROBINSON:

Q. And at the time you and Mr. Ochoa did roofing at the same job, is that right?

THE INTERPRETER: Only once. He came with other people where I was working at.

BY MR. ROBINSON:

Q. Okay. Now, you lived at the apartment in question, isn't that right?

THE INTERPRETER: No.

BY MR. ROBINSON:

Q. Who lived at that apartment?

THE INTERPRETER: Cruz.

BY MR. ROBINSON:

Q. Okay. Did you have a key to that apartment?

THE INTERPRETER: Yes.

BY MR. ROBINSON:

Q. Okay. So you could go to that apartment and get in when you wanted to, correct?

THE INTERPRETER: Yes.

BY MR. ROBINSON:

Q. Did you ever stay at that apartment?

THE INTERPRETER: No.

BY MR. ROBINSON:

Q. Now, the day in question that this happened, Mr. Ochoa's vehicle came after you arrived at this place, or before?

THE INTERPRETER: The same time.

BY MR. ROBINSON:

Q. Arrived at the same time as you?

THE INTERPRETER: Yes.

BY MR. ROBINSON:

Q. Now -- so you were at the same time.

And did you guys go -- did you and Mr. Ochoa go in together?

THE INTERPRETER: He got in first and then the black guy and I went after, went inside after.

BY MR. ROBINSON:

Q. Okay.

MR. ROBINSON: One second, Your Honor.

(Off the record)

(Back on the record)

MR. ROBINSON: That's all questions that I have. Thank you.

THE COURT: Ms. Monts, any redirect?

MS. MONTS: No, Your Honor.

THE COURT: All right. You can step down.

MS. MONTS: Your Honor, we ask this witness be excused.

THE COURT: Any objection?

MR. CRANGLE: No, Your Honor.

THE COURT: All right. He's excused.

MS. MONTS: Your Honor, may we approach briefly?

THE COURT: Yes.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: All right. Ms. Monts, are you ready?

MS. MONTS: Yes, Your Honor.

THE COURT: Call your next witness.

MS. MONTS: The State calls Deputy Maltby.

OFFICER CHAD MALTBY, having been first duly sworn, testified as follows:

THE CLERK: Would you please state your name for the record?

THE WITNESS: Chad Maltby.

THE CLERK: Thank you.

DIRECT EXAMINATION BY MS. MONTS:

Q. Master Deputy Maltby, please tell the jury where you are employed and how long you have worked there.

A. Yes, ma'am, I'm employed with the Greenville County

Sheriff's Office.

I have been in law enforcement 10 years. I have been here about seven.

Q. And regarding the case that we are here for today, were you a part -- what was your unit's role in the situation at the Wal-Mart parking lot?

A. Yes, ma'am, we were tasked with the actual tactical part of the operation, which would be the takedown and the arrest of the individual.

Q. And what were you expecting and what were you told was going to take place there at the Wal-Mart parking lot?

A. The initial plan was going to be a buy-bust operation.

Q. And please describe what that means.

A. To sum it up, either the confidential informant or possibly an undercover officer orders narcotics from a dealer. They agree to meet at a location. Once they meet at that location and either the informant or officer sees the narcotics, they will give a takedown cue, at which time we will basically just affect an arrest on the suspect.

Q. And what were you -- were you driving marked or unmarked vehicles?

A. We were in unmarked vehicles, some type of SUV.

Q. And were you in uniform or not?

A. We were in uniform.

Q. And who were you getting instructions from on what was

taking place?
A. Yes, we were taking instructions over our radio from Master Deputy Garrett.
Q. And where were you located?
A. We were located within the Wal-Mart parking lot.
Q. And could you see the person you were supposed to take down, or were you going to be told who it was?
A. We were given a play by play of what was going on and we would have been instructed on exactly what vehicle the suspect was in.
Q. Were you ever told to take down a vehicle?
A. No, ma'am.
Q. And why were you not told to take down a vehicle?
MR. ROBINSON: Objection, Your Honor, calls for speculation.
THE COURT: Overruled.
A. The suspect met with the informant at the Wal-Mart and suggested that the deal not go there and that it went to a different location nearby.
BY MS. MONTS:
Q. And what did your role then become as it evolved in this situation?
A. As it evolved we basically got in the area of that apartment complex and, again, just monitored over the radio as to what Master Deputy Garrett instructed us to do.

Q. And how close were you to the apartment?
A. We were just right up the street a couple hundred yards.
Q. And at what point did you go to the apartment?
A. Once Master Deputy Garrett instructed us that there was some movement at the apartment and that there was a fear of some evidence may be destructed, at that time we moved into the apartment.
Q. And what was your duty and your unit's duty at that time?
A. It was to basically secure the apartment, to ensure that there wasn't any destruction of evidence.
Q. Were you going in to search?
A. No, ma'am.
Q. What were you waiting for?
A. We were waiting on the search warrant. So basically we just detained the people inside so they couldn't -- so no evidence could be destructed and waited on the search warrant to be obtained.
Q. Did the search warrant arrive?
A. Yes, ma'am.
Q. Who brought it, if you recall?
A. I believe it was Master Deputy Garrett.
Q. And once the search warrant arrived, what was your duty or role?

A. I then assisted with the search of the residence.
Q. And please describe the size of the apartment.
A. Extremely small one bedroom. It's just a very small apartment.
Q. And when you originally went in to detain people, how many people were inside?
A. There were three.
Q. And were they handcuffed?
A. Yes, ma'am.
Q. And were they arrested on that day?
A. Yes.
Q. Were photographs taken of the scene after the search warrant arrived?
A. Yes, ma'am, there were.
Q. And were you present when those photos were taken?
A. Yes, ma'am.

MR. ROBINSON: Your Honor, I have got objection to 9, 10, 11, and 14, Your Honor.

THE COURT: We need to give her an opportunity to see what questions she's going to ask as to what foundation she's laid and then I'll hear your objection.

BY MS. MONTS:

Q. Deputy --

MS. MONTS: Your Honor, I was going to ask him if he could identify these exhibits.

THE COURT: If you will just state for the record which photos that you are showing him, what exhibits.

BY MS. MONTS:

Q. If you can, can you identify State's Exhibit --

MS. MONTS: I guess, Your Honor, without him explaining it, just say whether he --

THE COURT: He can say what it is.

BY MS. MONTS:

Q. Do you recognize State's Exhibit 7?

A. Yes, ma'am.

Q. And what do you recognize that as?

A. This would be the bags of methamphetamine found inside the bedroom on top of the dresser.

Q. And did you see them in that location?

A. Yes, ma'am.

Q. And how about State's Exhibit 8?

A. This is just another angle of the same bags of methamphetamine.

Q. And what -- in State's Exhibits 7, what other items do you see in the picture?

A. This is 7?

Q. Yes, sir.

A. Okay. I see what looks to be a liquor bottle. Some miscellaneous paperwork there. Some type of Visa card which is inside one of the baggies, and also a black digital

scale, which is directly beside the baggies.
Q. State's Exhibit 9, do you recognize that?
A. Yes.
Q. Is that someone from the scene, or what -- can you tell me if it was someone who was on the scene?
A. It was someone that was at the scene.
Q. State's Exhibit 10?
A. Yes.
Q. Was that person present?
A. Yes, ma'am.
Q. And State's Exhibit 11?
A. Yes, ma'am.
Q. And --
A. They were present.
Q. And were they arrested?
A. They were.
Q. State's Exhibit 12, do you recognize that?
A. I do.
Q. And what is it and where was it found?
A. It was a pill bottle also located -- I can't say for sure where that was located, but it was inside the apartment with the name Carlos Najera on it.
Q. And State's Exhibit 14, do you recognize that?
A. Yes, ma'am. It's a type of identification.
Q. Was that inside the apartment?

A. Yes, ma'am.

MS. MONTS: Your Honor, we would move these exhibits into evidence.

THE COURT: And your objection?

MR. ROBINSON: It's a 403 objection, Your Honor, and also --

THE COURT: I note your objection. The objection is overruled. Those six items -- I had 7, 8, 9, 10, 11 and 12. Was there a 13.

MS. MONTS: No 13, Your Honor, but a 14.

THE COURT: All right. State's Exhibit 7, 8, 9, 10, 11, 12, 14 are admitted into evidence with the objection of Mr. Robinson noted for the record.

MR. CRANGLE: Judge, Mr. Cruz joins in that objection as well.

THE COURT: All right.

(Whereupon, State's Exhibit No. 7 was entered into the record as evidence).

(Whereupon, State's Exhibit No. 8 was entered into the record as evidence).

(Whereupon, State's Exhibit No. 9 as entered into the record as evidence).

(Whereupon, State's Exhibit No. 10 was entered into the record as evidence).

(Whereupon, State's Exhibit No. 11 was entered

into the record as evidence).

(Whereupon, State's Exhibit no. 12 was entered into the record as evidence).

(Whereupon, State's Exhibit No. 14 was entered into the record as evidence)

BY MS. MONTS:

Q. Deputy Maltby, when you arrived at the apartment, where exactly did you go and did you -- what was your role in the entry?

A. Yes, I was actually the first one through the door on the entry.

Q. And what -- was the door open, or closed, or locked, or not locked?

A. The door was closed, but it was unlocked.

Q. And did you say anything when you went inside?

A. We did. We announced ourselves as being with the sheriff's office, several loud verbal commands as such.

Q. And did you have your guns out?

A. Yes, ma'am.

Q. And how many people -- or what did you see when you walked in?

A. The first thing I saw was two people. Mr. Ramirez and Mr. Cruz were walking -- call it a hallway, but this apartment is so small, it's part of the kitchen as well, but they were both walking from the area or the location of that

bedroom.

Q. And were they arrested or secured in that area, or did someone take them out?

A. Yes, ma'am, they were detained at that location. Myself and another deputy went into the back bedroom at that time.

Q. And please describe what you saw when you walked in that back bedroom.

A. When I entered the bedroom I saw Mr. Ochoa, which was crouched down in the corner, kind of the far right corner.

I also noticed immediately, you know, there was several bags of a crystal-like substance consistent with methamphetamine sitting on top of the dresser, which was I would estimate five or six feet from Mr. Ochoa and was within line of sight.

Q. And describe -- did you handcuff or were you present when Mr. Ochoa was handcuffed?

A. Yes, ma'am, he was detained in that bedroom.

Q. And what were any more of your duties during this detention, or was that the completion of the detention?

A. That was the completion of the detention.

Q. And where did you seat or have the three people stay?

A. The best I remember was it was in the living room on a couch.

Q. And you stayed there until what happened?

A. We stayed there until the search warrant was obtained --

Q. Okay.

A. -- and then assisted with the search.

Q. And how many other officers in your unit, if you recall, were there?

A. It would be an estimate, but I would say five.

Q. Okay. And were their duties primarily the same as yours?

A. Yes, ma'am, they assisted with the entry and the detention and then waited until the search warrant and then assisted with the search.

Q. Did Mr. Manuel Cruz need any medical attention?

A. He did.

Q. What was his --

A. He was complaining of an injury to his arm. I think it was an injury that he had had previous to this that maybe was just agitated.

Q. And was he taken somewhere, to your knowledge?

A. Yes, ma'am, he was taken to the hospital to have it evaluated.

Q. And was he taken to the detention center after the trip to the hospital?

A. Yes, ma'am, he was.

MR. CRANGLE: Objection, judge.

THE COURT: He can testify to what he knows.

BY MS. MONTS:

Q. Thank you.

MS. MONTS: No further questions.

THE COURT: Mr. Crangle?

CROSS EXAMINATION BY MR. CRANGLE:

Q. You said you encountered Mr. Ochoa-Tavera in the bedroom near the drugs, correct?

A. I'm sorry, the last part?

Q. You encountered Mr. Ochoa-Tavera in the bedroom near the drugs, correct?

A. That's correct.

MR. CRANGLE: That's the only question I have.

THE COURT: Mr. Robinson?

MR. ROBINSON: If it please the court?

CROSS EXAMINATION BY MR. ROBINSON:

Q. Is it Investigator Maltby, or --

A. Master deputy.

Q. Master Deputy Maltby, I want to go back just to clarify some stuff.

When you arrived at the scene, you were the officer that went through the door first, is that right?

A. Yes, sir.

Q. And you would agree with me that the door was -- you could push it open, couldn't you? It was unlocked. Do you

remember that?
A. I agree that it was unlocked, yes, sir.
Q. So that means that you could go in, is that right?
A. Could you go in an unlocked door, yes, sir.
Q. Regarding your surveillance of the confidential informant in the case, did you see him go to that apartment?
A. I did not.
Q. You did not?
A. No.
Q. So your only involvement was going through that door and going and making the bust, is that right?
A. Yes, sir, that's correct.
MR. ROBINSON: That's all I have. Thank you.
MS. MONTS: Nothing further of this witness, Your Honor.
THE COURT: You can step down.
THE WITNESS: Thank you, Your Honor.
MS. MONTS: Your Honor, we ask this witness be excused.
THE COURT: Any objection?
MR. ROBINSON: No objection.
MR. CRANGLE: No objection, judge.
THE COURT: You are excused.
THE WITNESS: Thank you, judge.
THE COURT: Call your next witness.

MS. MONTS: Your Honor, the State calls Deputy Waters.

OFFICER MATTHEW WATERS, having been first duly sworn, testified as follows:

THE CLERK: Would you please state your name for the record?

THE WITNESS: Matthew Waters.

THE CLERK: Thank you.

DIRECT EXAMINATION BY MS. MONTS:

Q. Deputy Waters, please tell the jury where you are employed and how long you have worked there.

A. I'm employed with the Greenville County Sheriff's Office. I have been there just a little over seven years.

Q. And can you tell us what units you have been assigned to and specifically what you were assigned to do on July 2nd of 2014?

A. In July of 2014 I was assigned to the Directed Patrol Unit. Prior to that I was in Uniform Patrol.

Q. And on the Directed Patrol Unit, what are your duties?

A. The Directed Patrol Unit is a street level narcotics unit.

Q. And what does that mean? What do you -- do you get orders to go somewhere, or do you do the investigation, or do you just follow what you are told?

A. Yes, ma'am, typically we do street level narcotics,

prostitution and gambling. However, at the discretion of the sheriff and the sheriff's office, in general, we are directed to help other units.

Q. And on this date at what point did you -- or July 2nd of 2014, at apartment [redacted] at the Westgate Apartments, what -- did you --

Let me go back. Were you at the Wal-Mart parking lot?

A. Yes, ma'am, I was.

Q. And what was your role there?

A. Originally the units with the Directed Patrol Unit that were on the scene that day were tasked with doing a vehicle takedown.

Q. And what was your duty to be?

A. My duties were to assist in helping cover the vehicle and do the vehicle takedown in the Wal-Mart parking lot.

Q. Did that happen?

A. No, ma'am, it did not.

Q. Because that did not happen, were you told to go somewhere else?

A. Yes, ma'am, we were -- we were instructed to later go to the apartment in question.

Q. And at what -- how close did you get to the apartment?

A. I was actually in the apartment.

Q. And were you surveilling it before you were told to go in?

A. Yes, ma'am, we were.
Q. And were you told at some point to go in?
A. Yes, ma'am, we were.
Q. And why was that --
A. Because --
Q. -- if you know?
A. -- due to the exigent circumstances and the fact that some evidence may be destroyed, we decided to secure the scene and do a protective sweep of the apartment.
Q. And when you went in -- how many officers were already inside when you entered the apartment?
A. If memory serves, I was either the third or the fourth one in. I was last. I will say that.
Q. And what did you see when you got in?
A. Once I was inside, there are two subjects that had already been placed on the ground and it was my responsibility as the tail end of the entry unit to secure them in handcuffs.
Q. And what room was this taking place in?
A. It was sort of in between the -- it was a very small apartment and the kitchen and the living room area sort of adjoined and it was right in between those two areas.
Q. Do you know which two -- if you know, which two people that you were handcuffing?
A. It was Mr. Cruz and Mr. Ramirez.

Q. And what was your duty once you had handcuffed them?
A. After handcuffing them, I basically just was security to watch them until the scene was secure.
Q. And where were they seated?
A. If memory serves, they were seated on a couch in the living room.
Q. And did you assist in the search?
A. No, ma'am, I didn't actually assist in the search. I scribed the search warrant.
Q. And please describe what a scribe does.
A. That is -- as the scribe of the search warrant, I took position at the table at the kitchen area. I signed proof of service and quote, unquote, execution of the search warrant.

While I sat at the table, units who were searching the apartment would bring me the items they found that were being seized. I would write their descriptions and where they were found on the search warrant, and also logged them onto a property and evidence sheet.

Q. Did you go and see where the items were located prior to them being brought to you?
A. Most of the items, no, ma'am. I did briefly enter the bedroom in question and observed the bags of crystal substance, but shortly after that I took my position at the table.

Q. And did you take custody of those items, once you have written them down?

A. Yes, ma'am, I did.

Q. And in this case, once you took custody of them, what did you do, or did you turn them over to someone else?

A. After the scribe of the search warrant was complete and the evidence sheets were logged, I turned over the evidence to Mr. Garrett.

(Drugs were marked as State's Exhibit No. 18 for identification).

(Drugs were marked as State's Exhibit No. 19 for identification).

(Drugs were marked as State's Exhibit No. 20 for identification).

(Drugs were marked as State's Exhibit No. 21 for identification)

BY MS. MONTS:

Q. Deputy, I'm going to hand you what's been marked State's Exhibit 18, 19, 20, and 21. Can you please identify these?

A. Yes, ma'am, they are all marked with my initials and individual item numbers, as is common when we log our evidence on the scene.

Q. And what are your initials that you placed on there?

A. MW.

Q. And what numbers did you give them, if you gave them numbers?

A. I have got MW-2, MW-3, MW-1, and I believe there is another MW-2, which is also common that we have subcategories of A, B, and C.

Q. Could that be a 4?

A. It's possible.

Q. But, regardless, these are your initials and --

A. Yes.

Q. -- you took custody of them?

A. Yes, ma'am, my poor writing is unmistakable.

(Digital Scales marked as State's Exhibit No. 22 for identification)

BY MS. MONTS:

Q. Deputy, I'm going to hand you --

THE COURT: Let me do this.

For purposes of the record he's identified just some items with his initials and the number. Can we go back and have whatever you had them marked as State's Exhibit, which one he's referring to?

MS. MONTS: Yes, Your Honor.

Your Honor, State's Exhibit 18 --

THE COURT: Let's do this. Just hand him State's Exhibit 18 and ask him what it is.

BY MS. MONTS:

Q. Deputy, please describe State's Exhibit 18.
A. It's marked as item number MW-1. It's an off-white crystal substance.
Q. I'm now handing you -- it's out of order, State's Exhibit 20, could you identify that?
A. Yes, ma'am, it's marked with my handwriting again as MW-3 and it's another plastic bag of the off-white crystal substance.
Q. Okay. State's Exhibit 19?
A. Yes, ma'am, marked as MW-2, another bag of off-white crystal substance.
Q. And State's Exhibit 21?
A. Marked as MW-4, another bag of off-white crystal substance.
Q. Deputy, I'm going to hand you State's Exhibit 22. Could you identify this item, please?
A. It is marked as MW-6 and it is a small set of digital scales.
Q. And can you identify when you took custody of that item?
A. It was -- it was brought to me while I was scribing the search warrant on that same date.
Q. And did you take custody of that item?
A. I did.
Q. And when you took custody of all these items, where did

you keep them and when did you give them to Investigator Garrett?

A. They were kept in my possession right there at the table in the apartment until we left. Just shortly after walking out the door I gave custody of all the items over to Mr. Garrett.

Q. And that was at the apartment at the scene, is that right?

A. Yes, ma'am, in the parking lot.

Q. Did you have any other duties at the scene after you were finished being scribe?

A. No, ma'am, after I turned over custody of the evidence to Mr. Garrett I left the scene.

Q. And did you return the return on the search warrant to the magistrate?

A. Yes, ma'am, I did.

Q. And did they sign the return?

A. They did.

MR. ROBINSON: May we approach, Your Honor?

THE COURT: Yes.

(Whereupon, the attorneys approached the bench for an off-the-record discussion)

(Passport marked as State's Exhibit No. 23 for identification)

(Passport marked as State's Exhibit No. 24 for

identification)

BY MS. MONTS:

Q. Deputy, I'm handing you State's Exhibit No. 23 and 24 that were in this envelope marked MW-11. Could you identify these two items?

A. Yes, ma'am, they appear to be Mexican passports; one for a Manuel Najera Cruz. Actually they were both for Manuel Najera Cruz.

Q. And what are those two numbers that you are looking at?

A. State's Exhibit 23 and 24.

Q. And did you take custody of these items as the scribe on the search warrant?

A. Yes, ma'am, I did.

Q. And did you turn those over to Investigator Garrett there at the scene?

A. Yes, ma'am.

MS. MONTS: Thank you. I have no further questions.

THE COURT: All right, Mr. Crangle.

CROSS EXAMINATION BY MR. CRANGLE:

Q. Is it Master Deputy Waters, or deputy?

A. Just deputy.

Q. Deputy Waters, I want to get into just kind of the general layout of the apartment, okay?

A. Okay.

Q. You are familiar with the apartment, right?
A. Yes.
Q. Okay. When you open up the door and you go in, is there a kitchen on your left or right?
A. The kitchen is actually at the back and I guess technically to the right.
Q. Okay. So when you go in, you go straight into the living room?
A. Yes.
Q. Okay. And then you go through the living room and then the kitchen would be, you said, on the right?
A. There is a short wall that kind of separates the kitchen from what I would describe as maybe a dining area.
Q. Okay.
A. But it's very -- altogether it's a very small room.
Q. Right.
So there is a dining area kind of over to the right and then there is a wall and then there is a kitchen, right?
A. The dining area on the left, kitchen on the right.
Q. Okay. Got you.
Then further through you go and you would get to the bathroom and the bedroom, is that correct?
A. The bathroom and the bedroom are actually on a short hall to the left of the kitchen and dining area.
Q. Okay. So kitchen is on my left, right -- or the

kitchen is on the right and the dining area is on the left?
A. Correct.
Q. I would go up a little bit and I would turn to the left, right?
A. You actually stop and you can stand in one place and be in between the kitchen and den area. Short hall to the left. You don't actually go any further. And when I say short hall, maybe three or four feet and then the bathroom and the bedroom.
Q. Is the bathroom outside of the bedroom or is the bathroom within the bedroom?
A. It's outside of the bedroom.
Q. So it's a separate room?
A. Yes.
Q. Okay. And you found -- when you came in the door, you found Mr. Cruz in kind of the kitchen area, right?
A. In the small space. I guess technically it would still be the living room, because it was a carpeted area. There is a small threshold there.
Q. So he was in the --
A. Separates the two.
Q. And it goes living room, dining area, kitchen, little bit further hallway, little bit further bathroom, and then bedroom, right, but it's all real tight?
A. Yes.

Q. Okay. But you found him in the kitchen, in the kitchen/living room area?
A. Yes.
Q. And --
A. It's kind of hard to differentiate between the two. They are merely separated by a threshold.
Q. Okay. And then did you go into the bedroom and see Mr. Ochoa-Tavera in there?
A. Yes, briefly.
Q. And he was in the bedroom, though, right?
A. Correct.
Q. He was in a different area than the kitchen and living room area, correct?
A. That's correct.
Q. That's all the questions that I have. Thank you.

THE COURT: All right, Mr. Robinson.

MR. ROBINSON: If it please the court?

CROSS EXAMINATION BY MR. ROBINSON:

Q. Deputy, when you went to the apartment, the door was unlocked, correct?
A. Yes.
Q. Now, the ID that's been marked as an exhibit in this case, that ID was given to you by Mr. Ochoa at that time, correct?
A. I don't recall who actually handed me the

identification. Another deputy may have taken it from him and then given it to me to seize as evidence.

Q. Okay.

MR. ROBINSON: Thank you. That's all I have.

THE COURT: Anything else, Ms. Monts?

MS. MONTS: No, Your Honor.

THE COURT: All right. You can step down.

THE WITNESS: Thank you, sir.

MS. MONTS: Your Honor, we ask this witness be excused.

THE COURT: Any objection?

MR. CRANGLE: No objection, Your Honor.

MR. ROBINSON: No objection.

THE COURT: He's excused.

I tell you what, ladies and gentlemen. Let's take about a 10 or 15 minute break and then we will start back with our next witness after about 15 minutes.

Again, I'll charge you not to discuss the case at all. Thank you.

(The following takes place outside the presence of the jury panel)

THE COURT: All right. We will be at ease for about 15 minutes.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

300

MS. MONTS: Your Honor, for scheduling, I just have a real quick witness and then Investigator Garrett, who will -- I know we need to have -- to be out by five. I think we will -- anyway, those -- that's my order.

THE COURT: Let me -- we're not rushing you. I mean, wherever we are, we will -- whatever point we get to, we will deal with that.

All right. Is the State ready?

MS. MONTS: Yes, Your Honor.

THE COURT: Defense?

MR. ROBINSON: Yes, sir.

MR. CRANGLE: Yes.

THE COURT: Let's bring the jury in.

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

THE COURT: All right. Thank you, ladies and gentlemen.

The State may call your next witness.

MS. MONTS: Your Honor, the State calls Deputy Christopher Pletcher.

OFFICER CHRISTOPHER PLETCHER, having been first duly sworn, testified as follows:

THE CLERK: Would you please state your name for the record?

THE WITNESS: Chris Pletcher.

THE CLERK: Thank you.

DIRECT EXAMINATION BY MS. MONTS:

Q. Deputy, if you will please tell the jury where you are employed and how long you have worked there.

A. The Greenville County Sheriff's Office. I have been employed for about seven years now.

Q. And on July 2nd of 2014, what unit were you assigned to?

A. The Directed Patrol Unit.

Q. And where -- you were not at the Wal-Mart or at the apartments in this case, is that correct?

A. Correct.

Q. At what point do you become involved in this case?

A. I became involved -- Deputy Hubber was with Manuel Cruz at the hospital. He had sustained an arm injury, I believe, and my involvement was I went to the hospital to go relieve Deputy Hubber so I get some food and some dinner, and I took Manuel Cruz to the -- from the hospital, when he was discharged, I took him to the detention center.

MR. CRANGLE: Judge, may we approach?

THE COURT: Yes.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: All right, Ms. Monts, go ahead.

BY MS. MONTS:

Q. Deputy, please continue. You were at the Greenville -- North Greenville Hospital?

A. Yes, I relieved Deputy Hubber at the North Greenville Hospital. When Mr. Cruz was discharged from the hospital, I took him to the detention center. Master Deputy Maltby had already obtained all the charging documents on Mr. Cruz, so basically I just went down there to put him into the jail. I put him -- I took him down into the sally port.

Before you go into the jail they have an electronic fingerprint system. You put your two fingers on it, it scans you. And if you have ever been in our detention center before, your picture and your name will come up, so we did that. And when he -- when we scanned his two fingers he came up with a different name. The warrants were under Carlos Najera, which he had told Master Deputy Maltby was his name, and the face and the new name that came up, when we fingerprinted him, was Manuel Cruz. So at that time I had to obtain new charging documents under that name and he had been -- obviously used before and been arrested under, and so basically I got all those charging documents under the new name of Manuel Cruz and re-served warrants on him and everything and placed him in the jail. That was the basically my involvement.

Q. Okay. Thank you.

MS. MONTS: Nothing further.

THE COURT: Any cross, Mr. Crangle?

MR. CRANGLE: No, judge.

THE COURT: Mr. Robinson?

MR. ROBINSON: No, sir, Your Honor.

THE COURT: All right. Thank you, Mr. Pletcher.

THE WITNESS: Yes, sir.

MS. MONTS: Your Honor, may I ask this witness be excused?

THE COURT: Any objection?

MR. ROBINSON: No, Your Honor.

MR. CRANGLE: No, judge.

THE COURT: He's excused.

Call your next witness.

MS. MONTS: The State calls Investigator John Garrett.

INVESTIGATOR JOHN GARRETT, having been first duly sworn, testified as follows:

THE CLERK: Would you please state your name for the record?

THE WITNESS: My name is Jonathan Garrett.

THE CLERK: Thank you.

DIRECT EXAMINATION BY MS. MONTS:

Q. Investigator Garrett, please tell the jury where you are currently employed.

A. I'm currently employed at the Greenville County

Sheriff's Office.

Q. And please describe how long you have been there and what your duties are.

A. I have been employed with the Greenville County Sheriff's Office since 2001, and I'm currently assigned as a task force officer with the United States Drug Enforcement Administration.

Q. And what was your training and job history prior to that?

A. I started my career in 1992 with the Greenville City Police Department. I worked there until 1996.

In 1996 I began employment with the Greenville County Forensic Division as a crime scene investigate until 1998.

I left there and went to the United States Border Patrol, assigned to southwest Texas. I stayed there until 2001, where I returned home and began employment with the Greenville County sheriff's office.

Since 2002, I have been on loan off and on to the United States Government as a task force officer with the DEA for about six years total.

Q. Okay. And as a task force officer what are your duties?

A. I'm a Greenville County deputy, but I have federal authority and have Department of Justice DEA credentials to investigate federal crimes involving Title 21 drug

violations. And my primary duties in the task farce, which are comprised of other task force officers from other counties and cities and four, or maybe five special agents, with an emphasis to Greenville County that may follow into other jurisdictions, states, or countries.

Q. And as part of your duties working on these cases, what has your role been in different drug investigations?

A. Primarily as a cold case agent or case agent. I've worked undercover on 49 occasions.

I liaison most of the time when we have an operation that's going to go in Greenville, or other upstate counties, but primarily Greenville, I'll coordinate for the Greenville County Sheriff's Office for manpower, assistance on search warrants, operations, surveillance, things like that.

Q. Okay. Approximately how many drug cases have you worked?

A. Since 2002, hundreds. I have been involved in 229 search warrants as an affiant, which I wrote 99 of those. 80 were involved with meth.

As I said before, I have worked in an undercover capacity on 49 occasions, and I have testified in court as an expert on 10 occasions, federal and state.

Q. Okay. And regarding this incident on July 2nd, 2014, what was your role with the task force?

A. I was a case agent.

Q. And what were your duties?
A. To coordinate, assist with surveillance with the other agents in the office, and to get manpower from my agency, my home parent agency, Greenville County Sheriff's Office, at which time I notified the Directed Patrol Unit for assistance and surveillance and to assist with a buy-bust operation.
Q. And what is a buy-bust?
A. It's basically when an undercover or confidential source informant orders up some narcotics, and once seeing them or believing they are at the location, we will make an arrest.
Q. Okay. And where was this to take place?
A. It's to take place at Wal-Mart on Whitehorse Road.
Q. Who was the person that was going to purchase the drugs?
A. It was going to be a confidential source, Mr. Lewis.
Q. And who was the person Mr. Lewis was going to attempt to purchase drugs from?
A. Mauricio Ramirez.
Q. And where were you when this was supposed to take place?
A. I was with my partner, Randy Smith, a special agent for the DEA.
Q. And where did you and Mr. Smith go in the parking lot?

A. We went close to where the garden center was is where we made arrangements, or the confidential source made arrangements to meet with Mr. Ramirez to make the purchase, so we were conducting surveillance I think one car row over.
Q. And could you -- did you hear the audio at the time?
A. I could.
Q. And were you making the decisions or was Agent Smith making the decisions?
A. Well, we both were. He was coordinating with the confidential source, and I was coordinating surveillance with my deputies and investigators and other DEA agents.
Q. And what did you do once the buy -- or once the defendant, Mr. Ramirez, did not bring the drugs?
A. Once he didn't bring, the decision -- well, they had made arrangements or he wanted the confidential source to go to the apartment, as you have heard. And I was coordinating on the radio with other channels and trying to coordinate the surveillance to follow him to the location that we were going to see the drugs.
Q. And did you then move your location?
A. We did. We followed the confidential source with Mr. Ramirez and they pulled into the convenience store at Lily Street and Whitehorse Road.
Q. And did someone get into someone else's car?
A. Yes, the -- after negotiating and for safety issues, we

finally had the confidential source drive Mr. Ramirez to the location to see the drugs.

Q. And where was this location?

A. [redacted]

Q. Is this in Greenville County?

A. It is.

Q. And where were you located once they left the gas station and went to the apartment?

A. We followed them now one or two cars behind. And going down Lily Street toward the apartments on the right, we pulled onto Burdine Road across the street from it, where some other investigators or -- yeah, task force officers were in like a vacant lot with a cell site tower there and they were watching through the woods with binoculars.

Q. And could you at that time hear what was going on?

A. I could hear what was going on on the wire and I was coordinating that information over the radio to the other investigators.

Q. And how long, approximately, were you sitting there?

A. Minutes. It was long enough for him -- we hear them carry on a conversation outside. It continued inside and then carried on outside again while he was talking to my partner on the radio.

Q. Could you see what cars were in the parking lot, or could you see that Mr. Phillip Lewis' car in the parking lot

from where you were?

A. I did.

Q. And did you see Mr. Lewis go into and come out of the apartment?

A. Just briefly I saw him get out and go in by the time we were returning. I did not see him come out.

Q. And what did you do once Mr. Lewis came out of the apartment?

A. When he was coming out of the apartment he was on the phone with Special Agent Smith, who was in the car with me, and pretended to be the money man telling him that he was going to go up the street and get the money. I was relaying this information to surrounding surveillance agents to monitor the apartment and see if any changes occurred.

Q. And what was your next step and what did you hear in order to take the next step?

A. Well, being I was in the vehicle with Special Agent Smith, I needed to get a search warrant, so I took one of the officers that was in the cell site vacant lot, I got his keys and we followed the confidential source back to the intersection of 253 and Whitehorse in a plaza behind some restaurants. While they were taking off the surveillance equipment and debriefing him, I took another agent, task force officer, he's got in his vehicle that was parked at this location and went to Judge Cagle's office on Whitehorse

Road to obtain a search warrant for the business.

Q. And were you present when DEU was securing the apartment?

A. Yeah, I made that call. When I heard activity on the radio that there was movement outside the apartment and we felt that one of the main players or one of the subjects may leave, possibly having the drugs in his possession, I made the decision for them to secure the residence and detain the occupants inside until I could return with a search warrant.

Q. And why did you not have a search warrant prepared?

A. I wasn't sure we was going to go there. That was our plan B is somewhere in the neighborhood. Our plan A was to do a buy-bust at Wal-Mart, but Murphy's Law never goes the way you plan.

Q. And did you return with the search warrant?

A. I did.

Q. Who assisted you on the search warrant? Did you read the search warrant?

A. I didn't. I gave it to Deputy Waters and he was the scribe that served the search warrant, which he documented everything that was searched and seized and put on a copy of the scribe.

Q. And were you present while the home or the apartment was being searched?

A. Yes, in and out. I was out in the parking lot and I

was also in the breezeway, but I did walk through the apartment with the search warrant, once I arrived.

Q. How large was the apartment?

A. Half the size of this courtroom.

Q. And did you see the items where they were in place before they were given to Waters, or were they already given to Waters?

A. I think they were moving them from the bedroom to the kitchen table when I arrived, because I had a concern that they documented it with photographs, at which time they assured me they did, so I didn't want them to move them, but that was already taken care of.

Q. And when you -- did you assist Waters at that time?

A. I didn't. He packaged up everything and labeled it, which was easy for me. At the end of the search warrant in the parking lot I took custody of it to secure it in the property and evidence section at the Greenville County Law Enforcement Center.

Q. Describe where you took the items at the property and evidence.

A. We store evidence at the Greenville County Law Enforcement Center, 4 McGee Street, downtown. It's -- it's in the basement. It's fortified. It's a vault, secured, 24 hour surveillance lock and key. I don't have access to it. I either have to relinquish my custody to the clerk,

the property and evidence clerk at the window. And after hours I have to put it in a drop box vault, which once it's in there I can't get it out. Only the person after hours the next morning can get my evidence and log it in.

Q. So on this date when you took the items to this property and evidence room, did you drop them in the lock box?

A. No, I didn't. I relinquished them to a clerk.

Several hours later after I had documented everything, it was relinquished to one of the property the evidence clerks, Ms. Watson.

Q. And what did you -- did you bring the items for this case that were turned in by you to court today?

A. I did. I picked them up this morning. They have been in my possession all day.

Q. And what did you have to go through to check them out?

A. Well, first I called ahead of time, because there's usually a waiting list, but I called last night and had it ready this morning. It was in a staging area. So when I got there it was waiting on me.

And we -- it's bar coded, so it's itemized. We do a quick inventory of what I need under this case number and then I sign for it, relinquish it to my custody and it's signed out in the computer where the evidence is. It should state today that it's in court in my possession.

Q. After this ended, did you subsequently go back to the property and evidence room; and, if so, why regarding this case?

A. Yeah, the day of when I took the drugs, the plastic bag from -- I took them from Deputy Waters, he had removed the crystal substance from each of the bags, four bags, and to submission of getting some fingerprints and had them processed for fingerprints. So we took the plastic bags from each of the exhibits to make subjects out of them, and the crystal meth, the crystal substance, the methamphetamine was placed in new bags to be analyzed by our crime lab. And then I put in a request for latent fingerprints on each of the other bags.

Q. Did you receive that?

A. Yeah, I received notification that there no latents were obtained by the print division.

Q. And did you -- what else did you do with the bags prior to asking --

A. Well, before that happened I checked on them and they hadn't been processed. And I got a notification from the forensic division that this crystalline substance in the bags was wet, at which time they dried it and I had more weight inside the bags. So they couldn't process it because all the crystalized substance inside the bags had additional weight that I had to go obtain and make exhibits out of and

then re-submit the bags again to be processed to make it -- now that they were completely empty.

Q. And did you do this?

A. I did, and I made other exhibits or item numbers from the crystal substance that was removed from the bag.

Q. And did you turn these into the property and evidence secured area?

A. I did.

Q. Okay.

(Drugs marked as State's Exhibit No. 25 for identification)

(Drugs marked as State's Exhibit No. 26 for identification)

(Drugs marked as State's Exhibit No. 27 for identification)

(Drugs marked as State's Exhibit No. 28 for identification).

BY MS. MONTS:

Q. Investigator, I'm going to hand to you what's been marked as State's Exhibits 25, 26, 27, and 28. Can you match up any other labels? Can go in there and say which exhibit you speaking about?

A. All right. I'm speaking of exhibit -- State's Exhibit 25, which I continued with the number sequence for Deputy Waters. MW-1-A was the original plastic bag.

Additional residue I brought out I made MW-1-AA.

State's Exhibit 26 is crystalized substance, which was the additional residue was removed from the plastic bag MW-3-A. I made that item number MW-3-AA.

State's Exhibit 27 was labeled MW-2-AA, it's the residue from item MW-2-A, the residue from the empty bag.

And State's Exhibit 28 -- it's backwards. I'm sorry. It's MW-4-AA, which is the residue I removed from plastic bag MW-4-A.

Each one of these bags contained a crystal substance that were later dried and I removed it.

Q. And where were you when you removed this excess substance?

A. At the property and evidence section at the counter.

Q. And you were in the secured area?

A. I was.

Q. And describe how you packaged it. There are several packages in there.

A. This bag -- it contained two bags. One is the bag that I removed it from originally and put it into a new bag. Once it's removed from the forensic division -- I mean from property and evidence, it goes to the crime lab for analysis. They put it in another bag. And bag it came from becomes another item. It's put inside with it, so you know my bag is the also in there, but the bag that the chemist

and the crime lab generated also.

Q. And did you ask or request that these items be lab tested in the crime lab?

A. I did.

Q. And did you receive a result?

A. I did with my case file. I don't have it here.

Q. And did you bring all the items in this case to court today and check them out from the secured area of property and evidence?

A. I have.

MS. MONTS: Your Honor, the State would move in into evidence State's Exhibits 23 and 24, State's Exhibit 14 -- excuse me.

THE COURT: Let's just wait.

Any objection to State's 23 and 24 being introduced into evidence?

MR. CRANGLE: I renew my prior objection in my prior motion, judge, previously with the admission.

MR. ROBINSON: I would join with him.

THE COURT: All right. Your objection is overruled.

The court allows State's 23 and 24 into evidence.

(Whereupon, State's Exhibit No. 23 was entered into the record as evidence).

(Whereupon, State's Exhibit no. 24 was entered

into the record as evidence)

THE COURT: All right, what's next?

MS. MONTS: Your Honor, the State moves Exhibit 22, the digital scales, into evidence.

THE COURT: Any objection?

MR. CRANGLE: I renew my prior objection, judge.

MR. ROBINSON: I join the prior objection.

THE COURT: They are moved into evidence over the defense objection. They are entered into evidence.

(Whereupon, State's Exhibit No. 22 was entered into the record as evidence)

BY MS. MONTS:

Q. At the scene, once you -- what did you observe when you walked into the apartment? Were the three defendants there?

A. They were.

Q. And where did you observe them?

A. I observed all three of them on the couch in the living room.

Q. I'm going to show you State's Exhibits 9, 10, and 11. Can you identify these?

A. I can. This is Mauricio Ramirez.

Q. Which exhibit is that?

A. 9. State's Exhibit 9.

Antonio Ochoa, Exhibit 10.

And State's Exhibit 11 is Manuel Cruz.

Can I explain where these photos were taken?

Q. Were you present when they were taken, or did you observe those people in those conditions?

A. I did, but I had them moved out to the hallway while they completed their search and them to be photographed, so I had them sit on the steps.

Q. And is that where they are in the photos?

A. In the breezeway steps in front of apartment [redacted]

Q. Thank you.

MS. MONTS: I have no further questions.

THE COURT: Mr. Crangle?

CROSS EXAMINATION BY MR. CRANGLE:

Q. Agent Garrett, you mentioned that the original bags that the drugs were found in, you had those processed for fingerprints, correct?

A. I did.

Q. And Mr. Cruz's fingerprints were not on those bags, were they?

A. They were not.

MR. CRANGLE: Thank you.

THE COURT: Mr. Robinson?

MR. ROBINSON: If it please the court?

CROSS EXAMINATION BY MR. ROBINSON:

Q. To add to what Mr. Crangle asked you, Exhibit 22, which is the digital scales --

A. That's correct.
Q. -- that's in evidence.
I think the black item there is also Exhibit 22, correct?
A. That's correct.
Q. Do you agree that no fingerprints were taken from that, any latent prints that could connect --
A. No comparable prints were obtained.
Q. -- to Mr. Ochoa?
A. That's correct.
MR. ROBINSON: Thank you.
REDIRECT EXAMINATION BY MS. MONTS:
Q. To clarify, Investigator Garrett, when you say no prints were obtained, you mean there were no prints at all so you couldn't compare any? No comparable prints were lifted?
A. That's correct.
Q. So you -- I mean --
A. Working as a crime scene investigator -- could I explain?
Q. Yes, please. Describe your experience in --
A. A lot of times you think you are going to obtain a print, you are getting the ridge detail, but it's unidentifiable to the point of some fingerprint. A lot of times you get fingerprints on top of fingerprints, because

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something is handled so much and you don't obtain comparable fingerprints. So no comparable fingerprints were obtained that were identifiable belonging to any of the subjects.

Q. So you can't say whether somebody has touched this or not? All you can say is there were no comparable prints lifted off these packages?

A. That's correct.

MS. MONTS: Thank you. Nothing further.

THE COURT: Anything else?

MR. CRANGLE: No.

MR. ROBINSON: No.

THE COURT: All right. Mr. Garrett, you can step down.

MS. MONTS: Your Honor, may we approach?

THE COURT: Yes.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: Ladies and gentlemen, we are at the point where the State has another witness that's going to take a few minutes for them to get here, and then there is some other issues we need to take up. I think instead of sending you out, wait 10 or 15 minutes and bring you back in here, I think this is a good point for us to break for today, so in just a moment I'm going to let you leave.

I do -- we will do everything that we can to

accommodate. I think today certainly the folks that have had places that they need to be are going to be able to get there.

What I would like for you to do in preparation for tomorrow is we don't know how long we will be here tomorrow, but you need to make arrangements that you don't have anything else that you need to do tomorrow evening -- tomorrow afternoon or evening. That doesn't mean we are going to be here that long, but we want to have that opportunity, if we need to, for you to be here as long as possible, as long as you are needed tomorrow. So those of you who have other things going on tomorrow evening, make arrangements that jury duty is going to take precedence over those tomorrow.

Again, I'll tell you don't talk about the case.

Let's do this. Instead of having you come in here at nine and start sitting around, let's be here in tomorrow morning at 9:30. We will start at 9:30 in the morning. All right? Thank you all.

(The following takes place outside the presence of the jury panel)

THE COURT: All right. The court has been informed that the State intends to call the chemists tomorrow morning and that the defense is going to stipulate to the chain of custody on the evidence that was taken, and,

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therefore, we would not have to have some of those witnesses who merely touched or handled the evidence to be here.

Is that correct, Mr. Crangle and Mr. Robinson?

MR. CRANGLE: Yes, it is, Your Honor. Mr. Cruz consents or can stipulate to the chain of custody being intact. I have reviewed the property records.

THE COURT: All right. Thank you.

Mr. Robinson?

MR. ROBINSON: Your Honor, we also concur with Mr. Crangle, and my client also stipulates to the chain being complete.

THE COURT: Thank you. All right.

Is there anything else we need to take up today, Ms. Monts?

MS. MONTS: Your Honor, I would just say that there are two chemists, but they should be quick. The lab result does include the marijuana that they were charged with and I will white that out --

THE COURT: All right.

MS. MONTS: -- and bring a copy that has that whited out.

THE COURT: Okay. All right.

Anything else from the defense today?

MR. CRANGLE: No, Your Honor.

THE COURT: All right. Well, the court will be in

recess until tomorrow morning. We will start at 9:30. 9:30 tomorrow morning.

(Whereupon, proceedings were adjourned to February 11, 2015)

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STATE OF SOUTH CAROLINA )
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE )

THE STATE )
)
-vs- ) TRANSCRIPT OF RECORD
) 2014-GS-23-09505
MANUEL CRUZ, ANTONIO ) 2014-GS-23-09513
OCHOA-TAVERA, )

DEFENDANTS. FEBRUARY 11, 2015
GREENVILLE, SOUTH CAROLINA

(VOLUME III)

B E F O R E:

THE HONORABLE DANIEL D. HALL, JUDGE. ; And a Jury.

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

JOYCE MONTS, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

JOHN CRANGLE, ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR DEFENDANT MANUEL CRUZ

SCOTT ROBINSON, ESQUIRE
ATTORNEY FOR DEFENDANT ANTONIO OCHOA-TAVERA

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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THE COURT: All right. Is the State ready?

MS. MONTS: Yes, Your Honor.

THE COURT: Defense ready?

MR. CRANGLE: Yes, judge.

MR. ROBINSON: Yes, judge.

THE COURT: And let's bring the jury in.

MS. MONTS: Your Honor, I have the two -- I have two chemists that are testifying. Do they remain sequestered?

THE COURT: Is there any objection to both chemists being in the courtroom from either defense?

MR. CRANGLE: No, Your Honor.

MR. ROBINSON: No, sir.

THE COURT: That's fine.

MS. MONTS: Thank you.

(The following takes place in the presence of the jury panel)

THE COURT: All right. Thank you, ladies and gentlemen. We are ready to proceed.

The State can call your next witness.

MS. MONTS: Your Honor, the State calls Kelly Dixon.

KELLY DIXON, having been first duly sworn, testified as follows:

THE CLERK: Would you please state name for the record?

THE WITNESS: Kelly Dixon.

THE CLERK: Thank you.

DIRECT EXAMINATION BY MS. MONTS:

Q. Ms. Dixon, would you please state in what capacity you are employed with the Department of Public Safety?

A. I'm a criminalist in the crime laboratory.

Q. Can you please give us the extent of your education?

A. I have a Bachelors Degree in Biology from Southern Wesleyan University and I have trained for over a year with the supervisors at the laboratory.

Q. And how many times, if you recall, have you testified in court?

A. Four times.

Q. And have you been qualified as an expert in the field of drug analysis?

A. Yes, ma'am.

Q. All these four times?

A. Yes.

MS. MONTS: Your Honor, the State would offer Ms. Dixon as an expert in the field of chemical drug analysis.

THE COURT: All right. Any objection from the defense?

MR. CRANGLE: No objection from Mr. Cruz.

MR. ROBINSON: No objection from Mr. Ochoa, Your Honor.

THE COURT: I find she is qualified as an expert in chemical analysis.

BY MS. MONTS:

Q. Ms. Dixon, I'm handing you what's been marked State's Exhibits 18, 19, 20, and 21. Can you please tell me if you can identify these and if you have any markings on them?

A. Yes, ma'am, my initials and date are where I opened the package, and I have the item number, the weight, and the date that I sealed all these items.

Q. And where did you get these items from before you performed an analysis?

A. Property and evidence.

Q. And where is property and evidence?

A. It's inside the law enforcement center.

Q. Is it a secured locked area?

A. Yes, ma'am.

Q. What do you have to do to go and check out these items to test them?

A. We go down there and they bring them to us. We don't go back in the drug vault. They bring us the drugs.

Q. And is it a -- you are outside of the property and evidence room, is that correct?

A. Yes, ma'am.

Q. And describe what you do once you take them from the property and evidence room and take them back to your lab.
A. I take them back to the laboratory and I conduct analysis on the items.
Q. And in this case did you conduct an analysis on State's Exhibit 18, 19, 20, and 21?
A. Yes, ma'am.
Q. And what were your results on those items?
A. Methamphetamine found.
Q. And can you please tell us what the weights on those four items were?
A. Yes, ma'am.
On State's Exhibit 18 it was 79.13 grams.
On State's Exhibit 19 it was 24.98 grams.
On State's Exhibit 20 it was 77.53 grams.
And on State's Exhibit 21 it was 78.40 grams.
Q. And once you conducted your analysis, where did you take these items?
A. I returned them to P & E.
Q. Did you seal them again?
A. Oh, yes, ma'am.
Q. And when you get them, are they sealed when you received them?
A. Yes, ma'am.
Q. Is that a heat seal?

A. Yes, ma'am.
Q. Would you know if it had been tampered with?
A. Yes, ma'am.
Q. And when you return it, do you heat seal it?
A. Yes, ma'am.
Q. After you returned these items and in the course of your employment, did you go out on medical leave for a time?
A. I did.
Q. And you are currently back in your status?
A. Yes, ma'am.
Q. Thank you.

MS. MONTS: No further questions.

THE COURT: Anything from the defense?

CROSS EXAMINATION BY MR. CRANGLE:

Q. Ms. Dixon, you have 18, 19, 20, and 21 in front of you, is that correct?
A. Yes, sir.
Q. Okay. On Exhibit 18, are Mr. Cruz's fingerprints on that bag?
A. I wouldn't know. I don't do fingerprint analysis.
Q. Okay. On Exhibit 19, are his fingerprints on that bag?
A. I don't do fingerprint analysis.
Q. Okay. On Exhibit 20, are his fingerprints on the bag?
A. I don't do fingerprint analysis.
Q. Okay. On Exhibit 21, are his fingerprints on the bag?

A. I don't do fingerprint analysis.

Q. Thank you.

THE COURT: Mr. Robinson?

MR. ROBINSON: I have no questions for her.

MS. MONTS: Your Honor, we have no further questions.

THE COURT: All right. Ms. Dixon, you can step down.

All right, call your next witness.

MS. MONTS: The State calls Sean Collins.

SEAN COLLINS, having been first duly sworn, testified as follows:

THE CLERK: Would you please state your name for the record?

THE WITNESS: Sean Franklin Collins.

THE CLERK: Thank you, sir.

DIRECT EXAMINATION BY MS. MONTS:

Q. Mr. Collins, can you please state in what capacity you work with the Department of Public Safety?

A. I'm the manager of the crime laboratory.

Q. And please give us the extent of your education.

A. I have a Bachelor of Science Degree in Chemistry from Clemson University.

In addition to that, I have attended the Drug Enforcement Administration forensic chemist seminar.

I have completed several instrumental schools for the equipment we use in the laboratory, and I have received over 700 hours of specialized training in drug analysis.

Q. And how long have you been the head of the crime laboratory?

A. Approximately 22 and a half years -- I'm sorry, I have been employed 22 and a half years. I have been the head of the laboratory for seven years.

Q. And have you testified in the courts of this state, federal courts of South Carolina?

A. Yes, ma'am, I have.

Q. And have you been declared an expert in the field of drug analysis?

A. Yes, ma'am, I have been declared an expert 161 times.

MS. MONTS: Your Honor, the State would offer Sean Collins as an expert in the field of chemical drug analysis.

THE COURT: Anything from the defense?

MR. CRANGLE: No objection from Mr. Cruz.

MR. ROBINSON: No objection.

THE COURT: All right. The court finds he's qualified as an expert in chemical analysis.

BY MS. MONTS:

Q. Mr. Collins, in front of you are State's Exhibit 18, 19, 20, and 21. Can you please identify these items and say if you have any markings on them?

A. Yes, ma'am, my initials and date are them packages, as well as the item number, my initials and weight, and the initials and date I sealed the packages are on all four items.

Q. And what date did you take these out to have them tested?

A. December 9th, 2014.

Q. And was that after Ms. Dixon had tested them?

A. Yes, ma'am.

Q. And was that re-testing at the request of the State?

A. Yes, ma'am, it was.

Q. And was Ms. Dixon out on medical leave during the time -- during that time?

A. Yes, ma'am, she did not have an estimated return date at that point.

Q. And once you checked these items out of property and evidence, what did you do with them and where did you take them?

A. I returned to the laboratory with them, performed a chemical and instrumental analysis. Once the analysis was completed, I resealed the items and returned them to the property and evidence section.

Q. And were they again in a sealed form?

A. Yes, ma'am, they were.

Q. And can you please tell what drug that you found in

your analysis?
A. I found all four items contained methamphetamine.
Q. And what were the weights that you found?
A. State's Exhibit No. 18, which is item MW-1 for the laboratory, was 79.25 grams.

State's Exhibit No. 19, which is item MW-2 in the laboratory, is 25.55 grams.

State's Exhibit No. 20, which is item MW-3 for the laboratory, the weight was 79.26 grams.

And State's Exhibit No. 21, item MW-4 in the laboratory, the weight was 84 -- excuse me, 80.16 grams.
Q. And can you explain why your weights would be different from Ms. Dixon's weights on these four items?
A. Yes, ma'am. The bags Ms. Dixon removed the evidence from, she sealed them in a new bag. The bags that she had removed it from had a residue on it at the time of -- was wet at the time I analyzed it. It had dried and I was able to remove more of the original sample for weight.
Q. So you actually tested more than Ms. Dixon did?
A. Yes, ma'am.
Q. And did you return these four items back to the property and evidence room in a secure location?
A. Yes, ma'am, I did.

MS. MONTS: Your Honor, the State would move Exhibits 18, 19, 20, and 21 into evidence.

THE COURT: Anything from the defense?

MR. CRANGLE: Mr. Cruz raises his prior objection, judge.

MR. ROBINSON: We concur with that, Your Honor.

THE COURT: The court will admit those over the defenses objections. They are admitted into evidence.

(Whereupon, State's Exhibit No. 18 was entered into the record as evidence)

(Whereupon, State's Exhibit No. 19 was entered into the record as evidence)

(Whereupon, State's Exhibit No. 20 was entered into the record as evidence)

(Whereupon, State's Exhibit No. 21 was entered into the record as evidence)

BY MS. MONTS:

Q. Mr. Collins, I'm going to hand you State's Exhibits 25, 26, 27, and 28. Could you please identify these?

A. Yes, ma'am, my initials and the date of opening the packages and my initials and the date of closing it, as well as my initials and the weight of the items are on these items.

Q. And where did you get these items from?

A. I also received these from the property and evidence room at the law enforcement center.

Q. Was that at the same time that you received State's

Exhibit 18, 29, 20, and 21 from the P & E, or was that a separate date?

A. The same time.

Q. And was the P & E a locked area and secured area that you recovered these from?

A. Yes, ma'am, it is.

Q. And what did you do once you checked these items out of the property and evidence room?

A. I returned to the laboratory and performed my analysis.

Q. And where did these four items come from?

A. My understanding is the original bag separated for -- these items were separated from had gone to crime scene and more drugs were recovered from there as they dried.

Q. And that would be the same --

A. These same original items that the other State's Exhibits came from.

Q. Thank you.

And what were the weights that you received and the results from your testing?

A. State's Exhibit No. 25, item MW-1-AA in the laboratory was 2.87 grams.

State's Exhibit No. 26, which is item MW-3-AA in the laboratory was 2.26 grams.

State's Exhibit No. 27, which is item MW-A -- excuse MW-2-AA is 1.58 grams.

State's Exhibit No. 28, laboratory item number MW-4-AA was 2.33 grams.

Q. And what did you do with these items after you completed your testing?

A. They were sealed and returned to the property and evidence room for storage.

MS. MONTS: Your Honor, the State would move Exhibits 25, 26, 27, and 28 into evidence.

THE COURT: Anything from the defense?

MR. CRANGLE: Mr. Cruz raises his prior objection, judge.

MR. ROBINSON: Mr. Ochoa concurs, Your Honor.

THE COURT: All right. Those are admitted into evidence.

(Whereupon, State's Exhibit No. 25 was entered into the record as evidence).

(Whereupon, State's Exhibit No. 26 was entered into the record as evidence).

(Whereupon, State's Exhibit No. 27 was entered into the record as evidence).

(Whereupon, State's Exhibit No. 28 was entered into the record as evidence)

BY MS. MONTS:

Q. Thank you.

MS. MONTS: I have no further questions.

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THE COURT: Anything from the defense?

CROSS EXAMINATION BY MR. CRANGLE:

Q. Mr. Cruz's fingerprints weren't on any of those bags, were they?

A. I have no information about that. I don't perform any fingerprint analysis.

MR. CRANGLE: All right.

THE COURT: Anything, Mr. Robinson?

MR. ROBINSON: No questions, Your Honor.

THE COURT: Thank you.

Anything else?

MS. MONTS: Nothing further, Your Honor.

THE COURT: All right. Mr. Collins, you can step down.

THE WITNESS: Thank you, sir.

MS. MONTS: Your Honor, we would ask that Mr. Collins and Ms. Dixon be excused.

THE COURT: Any objection?

MR. CRANGLE: None from Mr. Cruz.

MR. ROBINSON: None from Mr. Ochoa, Your Honor.

THE COURT: Then you are excused.

Ms. Monts, call your next witness.

MS. MONTS: Your Honor, that would be the State's case.

THE COURT: Ladies and gentlemen of the jury, we

are at the point where the State has rested. They have presented the evidence that they intend to in this case and so now there are some matters of law that we will need to take up outside of your presence, so, again, I'm going to ask you to go back to your jury room and we will have you back out here once we deal with these issues of law.

Again, I'll urge you and instruct you not to comment or talk about the case. So you can go back to your jury room.

(The following takes place outside the presence of the jury panel)

THE COURT: All right. Anything from the defense at this point?

MR. CRANGLE: Yes, Your Honor.

At this time Mr. Cruz moves for a directed verdict and renews all prior objections, judge.

The motion for the directed verdict would be that the State has not proven my client's constructive possession of the drugs. I know the court is only concerned with the existence of evidence, not the weight of the evidence. However, both Lewis and Ramirez testified that my client was not in the room when the drugs were brought out. According to Mr. Ramirez, he said that Mr. Ochoa-Tavera brought the drugs into the home, and that is according also to Mr. Lewis. Mere presence, as Your Honor knows, is not enough to

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convict someone.

The State has not proven also -- I think they may try to say the hand of one, hand of all, aiding and abetting. The State has not presented any evidence or any testimony that my client knew that drugs were going on in the house, that he participated in the sale of the drugs, and, therefore, I would move for a directed verdict of not guilty for my client Mr. Cruz.

THE COURT: All right. Ms. Monts?

MS. MONTS: Your Honor, the State believes there is enough evidence to take this to the jury; that circumstantial evidence proves that he was the sole owner and renter of the apartment where the drugs were being stored; that he was the only person there when the drugs were there when the other defendants, Mr. Ochoa and Mr. Ramirez, along with the confidential informant arrived; that he did allow them in; that he did lock the door behind them, look through the windows to make sure no one was out there; and we believe that there -- with all the circumstantial evidence, there was enough to send it. It's a question for the jury.

THE COURT: All right. As to the directed verdict motion in regards to defendant Cruz, the State (sic) denies the motion. There appears to be substantial circumstantial evidence. I believe it's the standard the court has to

evaluate on circumstantial evidence case.

Again, the position of the State is -- and there appears to be evidence and testimony that he was in the house, that he did let them in, that he did lock the door. Also testimony that the jury could believe that the drugs were in the house before the individuals arrived. At that point the house -- the apartment, there is evidence that it was under Mr. Cruz's dominion and control. And so based on that evidence, there is sufficient evidence -- there is substantial circumstantial evidence for which a jury could make a determination about the State's case, so I deny your motion.

Mr. Robinson?

MR. ROBINSON: May it please court, I would concur with Mr. Crangle. But, in addition, though, I think that in this case Mr. Ochoa did not own the residence. He was -- he went in there, but I don't think they have proven anything other than mere presence, which the court is aware is not enough to submit this case to the jury.

Of course, the existence of any evidence in this case, I can't submit to the court that there is not any evidence, but I would ask the court for a directed verdict for Mr. Ochoa.

THE COURT: All right. Ms. Monts?

MS. MONTS: Your Honor, the State believes there

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is enough evidence to take this to the grand jury (sic) for their decision. The defendant, Mr. Ochoa, per testimony from the stand, was the one who brought the drugs to that location. He was the one that arrived at the same time that the deal was to take place. He did enter into the apartment and lead the other two individuals into the bedroom. He did pull the drugs out from under the dresser, show them to the supposed buyer, and conduct discussions about the sale. Your Honor, we believe there is enough evidence for a jury's decision.

THE COURT: All right. The State (sic) is going to deny the motion for the -- I mean the court is going to deny the motion for a directed verdict on behalf of defendant Ochoa. There is sufficient direct and circumstantial evidence which a jury could make a determination of his guilt or innocence, so I deny your motion.

Anything else? Anything else from the defense?

MR. CRANGLE: No, judge.

THE COURT: Anything from the State?

MS. MONTS: No, Your Honor.

MR. ROBINSON: Your Honor, the only thing I would -- there are two things.

First, Your Honor, Mr. Crangle and I spoke before today -- before this morning, as far as the court's charges

in this case. We would like to know what the court is going to charge before we do our closings so we can make sure we are not going --

THE COURT: All right. We will talk about that in -- we will take about that.

MR. ROBINSON: And I have spoken to my client, Mr. Ochoa, this morning and he's not going to testify or present a case, but if the court --

THE COURT: Okay. I'll instruct him, Mr. Ochoa, on his rights in just a moment.

Mr. Crangle, do you intend to offer any evidence or a defense?

MR. CRANGLE: No, Your Honor, I don't intend to call any witnesses. I have discussed my client's right to remain silent and also his right to testify. My client does not wish to testify. However, if the court would like to review that for the record with my client.

THE COURT: Okay. I'm going to do that for both of them.

Let's bring them around where they are standing in front of the court.

Let's place the defendants under oath.

THE CLERK: Yes, sir.

(Whereupon, the following discussion was conducted through the interpreter)

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THE CLERK: Gentlemen, please raise your right hand. Right hand, please.

MANUEL CRUZ, having been first duly sworn, testified as follows:

ANTONIO OCHOA-TAVERA, having been first duly sworn, testified as follows:

THE CLERK: Mr. Ochoa? Do you swear?

DEFENDANT OCHAO-TAVERA: Yes.

THE COURT: Mr. Cruz?

DEFENDANT CRUZ: Yes.

THE COURT: We will take this a little slower than we usually would.

Mr. Manuel Cruz and Antonio Ochoa-Tavera, at this time I'm going to explain to you certain of your rights. If you don't understand anything that I say, please let me know.

If you want me to explain anything more in detail, please let me know.

Do you understand?

(No response).

THE COURT: You need to say yes or no.

DEFENDANT OCHOA-TAVERA: Yes.

DEFENDANT CRUZ: Yes.

THE COURT: We have reached the stage of the trial where you may present a defense. You have a right to claim

protections guaranteed by our Constitution and that's under what we call the Fifth Amendment.

One of those rights is that no person shall be compelled in a criminal case to be a witness against himself. This means that you cannot be required to testify in this case. You have a right, if you wish, to testify on your behalf. However, no one can make you testify. This is what we call a personal right and no one can waive or give up that right except you. Your lawyer doesn't do it for you. It has to be solely your decision.

If you decided to testify you would be subject to the same rules that govern every other witness. And if you testified, you would be examined by your lawyer. And a lawyer for the State can cross-examine you on any relevant issue.

In addition, if you have any convictions on your criminal record that involved dishonesty or false statement for crimes that carry more than one year, the court would have to determine whether those are admissible or not.

If you decide to testify, then your decision must be freely, voluntarily, and intelligently made with the full knowledge of all the protections under our Fifth Amendment and any consequences if you testified.

If you decide not to testify I will instruct the jurors that they cannot give the fact that you did not

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testify any consideration, and that I would instruct the jury that there is to be no prejudice to you because you did not testify.

It's left entirely up to you whether or not you testify. You can talk with your lawyer, your family, friends, anybody else, but the final decision about whether to testify or not testify is left entirely up to you.

Do you understand what I have explained to you?

DEFENDANT OCHOA-TAVERA: Yes.

DEFENDANT CRUZ: Yes.

THE COURT: Do you have any questions?

DEFENDANT OCHAO-TAVERA: No.

DEFENDANT CRUZ: No.

THE COURT: Have you discussed with your lawyers about whether to testify and present evidence?

DEFENDANT OCHOA-TAVERA: Yes.

DEFENDANT CRUZ: Yes.

THE COURT: Have you had plenty of time to talk to your lawyer about it?

DEFENDANT OCHOA-TAVERA: Yes.

DEFENDANT CRUZ: Yes.

THE COURT: Do you need any more time?

DEFENDANT OCHOA-TAVERA: No.

DEFENDANT CRUZ: No.

THE COURT: Do you wish to testify, Mr. Cruz?

DEFENDANT CRUZ: No.

THE COURT: Do you wish to testify, Mr. Ochoa-Tavera?

DEFENDANT OCHOA-TAVERA: No.

THE COURT: And I have been instructed by your lawyers that you have no evidence to present in the case. Is that correct, Mr. Cruz?

DEFENDANT CRUZ: No.

THE COURT: All right. Let me ask the question again. The question is do you have any -- that's probably what he understood.

Do you have any evidence that you want to present?

DEFENDANT CRUZ: What kind of evidence?

MR. CRANGLE: Would Your Honor like me to explain it to him?

THE COURT: Let me ask another question.

You have decided not to testify, is that correct?

DEFENDANT CRUZ: Yes.

THE COURT: Do you have any witnesses?

DEFENDANT CRUZ: Yes.

THE COURT: Have you told your lawyer who they are?

DEFENDANT CRUZ: No.

THE COURT: Okay. Let's do this. Let's let them step down and talk to their lawyers. You know, I just want

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to be sure they understand that clearly that they are not presenting a case. Y'all talk to your lawyers for a little bit.

Let's step down. The court would be at ease for just a moment or two.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT: All right. We are back on the record.

Mr. Cruz, have you had plenty of time to talk to your lawyer?

DEFENDANT CRUZ: Yes.

THE COURT: Do you intend to present any evidence?

DEFENDANT CRUZ: No.

THE COURT: And your lawyer has explained that to you?

DEFENDANT CRUZ: Yes.

THE COURT: And that's your decision?

DEFENDANT CRUZ: Yes.

THE COURT: Mr. Ochoa-Tavera, do you intend to present any evidence?

DEFENDANT OCHOA-TAVERA: No.

THE COURT: And your lawyer has explained that to you?

DEFENDANT OCHOA-TAVERA: Yes.

THE COURT: And that is your decision?

DEFENDANT OCHOA-TAVERA: Yes.

THE COURT: All right. Thank you. Y'all can return to your seats.

MR. ROBINSON: Thank you, judge.

THE COURT: All right. Let's do this. Let's take about another 15 minutes. If the lawyers would meet with me back in chambers, I will go over what my charge is. And if y'all have some requests, we will talk about those then, and then we will try to be back in here in about 15 minutes, or do y'all need more than that?

MS. MONTS: No, not from the State, Your Honor.

THE COURT: We will shoot for -- well, we will shoot for starting at 10:30 with closings and then charges after that.

If y'all would come back here to my office.

(Whereupon, proceedings were recessed)

(Whereupon, proceedings were reconvened)

THE COURT: Is the State ready to proceed?

MS. MONTS: We would like to see the accomplice.

THE COURT: Yes. My clerk is printing those off. As soon as he gets those, I'll -- he's making copies for y'all.

MS. MONTS: Besides that, yes, Your Honor, we are ready.

THE COURT: And defense?

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MR. CRANGLE: Yes, judge. All we need to do is rest on the record and renew our objections.

THE COURT: Okay. Well, let's do this. Let's bring the jury in. Well, let's do this. Let's do it twice. It's a little bit bifurcated, but you go ahead and rest outside the presence of the jury and then put your -- make your motions.

Make your motions and then we will bring the jury in and them I'm going to ask if you have got anything. I don't think we need to necessarily do -- those motions don't need to be done in front of the jury.

All right, so at this point is the defense resting?

MR. CRANGLE: Yes, Your Honor. On behalf of my client, Mr. Cruz, Mr. Cruz rests and is not presenting a case.

Mr. Cruz also renews all of his prior objections and renews his motion for a directed verdict.

THE COURT: And as the court notes, your objections are -- all prior objections are obviously part of the record and the same rulings the court previously issued on those, and I deny your new notion for a directed verdict.

Mr. Robinson?

MR. ROBINSON: May it please the court, Your Honor, at this point we would rest as well.

I would renew the same motions, the same objections we had before in this case for my client.

THE COURT: And I'm going to deny your motion for a directed verdict, and the court notes your prior objections and the rulings -- the court's rulings remain the same.

All right. What we will do then --

Anything else from the defense?

MR. CRANGLE: No, judge.

THE COURT: Anything else from the State?

MS. MONTS: No, Your Honor.

THE COURT: All right. We will bring the jury in. I'll allow you to -- I'll ask you if you have got any -- are you ready and then you can rest in front of the jury. And then once they -- once we do that -- and Ms. Monts -- I'll give them a little bit of instruction about closings and then we will do Ms. Monts.

And then again, Mr. Crangle, you are going last? Mr. Robinson, you are first, is that right?

MR. ROBINSON: Yes.

THE COURT: Okay. And then as soon as he -- hopefully by then my clerk will have the charges here and I will give you those.

I tell you what. Maybe we ought to rest for about two more minutes for him to get those charges done here.

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MS. MONTS: If we have could have just a quick minute to look at that one, it might save us --

THE COURT: Okay. Let's do that. We will just be at ease until he brings those back.

(Off the record)

(Back on the record)

THE COURT: Have y'all had an opportunity to look at those charges?

MS. MONTS: Yes, sir, Your Honor.

THE COURT: Is the State ready to proceed?

MS. MONTS: Yes, Your Honor.

THE COURT: Defense?

MR. CRANGLE: Yes, judge.

THE COURT: Mr. Robinson?

MR. ROBINSON: Yes, Your Honor.

THE COURT: All right. Let's bring the jury in.

THE BAILIFF: Yes, sir.

(The following takes place in the presence of the jury panel)

THE COURT: Thank you, ladies and gentlemen.

At this point is the defense ready to proceed, Mr. Crangle?

MR. CRANGLE: Yes, Your Honor.

On behalf of my client, Mr. Cruz, the defense rests.

THE COURT: All right. And Mr. Robinson?

MR. ROBINSON: On behalf of Mr. Ochoa, Your Honor, the defense rests.

THE COURT: All right. The court notes also for the record that any prior motions on behalf of the defendants have been noted and recorded and the State is ready -- the court will proceed further.

Ladies and gentlemen, we are at the point now where all the evidence in the case has been presented to you. There will be no other evidence presented to you and at this point in time in which I'm going -- or the attorneys are going to give their closing arguments.

I'll remind you, as I did at the beginning of the trial, this is their opportunity to advocate on their particular positions on the case. The closing arguments, I'll remind you again, are not evidence, but they are very important in this case, so listen very closely as these attorneys talk with you. Once they finish their closing arguments, then I will charge you and I will give you instructions on the law.

At this time we will hear from the State.

Ms. Monts?

MS. MONTS: May it please the court, Your Honor?

Mr. Foreman, ladies and gentlemen of the jury, this is the last time that you are going to hear from the

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State regarding these charges against the defendants. Each of them has a trafficking methamphetamine more than 200 grams pending against them.

You haven't heard about much about trafficking actually means. It's my job as the prosecutor to give you some of the law. If anything that I say is different from what His Honor tells you in a few minutes when he is giving you instructions, please remember what he says, because he is the judge of the law.

You are the judges of the facts. You are very important judges in this courtroom. You decide what happened on July 2nd, 2014, and do the facts of the cases meet the elements of the crime and should the defendants be convicted. The State believes the answer to that question is yes.

Let me start talking about the word trafficking. The defendants are charged with trafficking more than 200 grams. I'm going to do abbreviations. Trafficking has a lot in it. What does trafficking mean? It means to aid, abet, attempt, conspire, sell, manufacture, deliver, or be in actual or constructive possession. A lot of verbs in there. You can find that each of the defendants independently is guilty of one. You can find that each of the defendants independently is guilty of more than one of these different ways to be found guilty of trafficking. I'm

going to go ahead and write some of those words.

Aid, abet, which means to assist or encourage. Abet is a big word. Aid, abet, attempt, which means to try.

Conspire, which means to have an agreement, an agreement between two or more people to commit an unlawful okay. That does not have to be in writing. It does not even have to be verbal. It has to be a meeting of the mind to commit an unlawful act.

You can do any of these things.

You also can attempt, conspire to sell, deliver, or be in possession.

When His Honor reads the law, he may have a few more verbs in there, but these are the ones that pertain specifically to this case.

Possession is a big word. Possession, there are two different kinds, and His Honor will instruct you on that. Possession, there is actual and there is constructive.

Actual means you have direct control over it. It's in my pocket. It's in my hand.

Constructive means you have the knowledge that it's there and the right to execute control over it. Like my television set at home, or my car in the parking lot, something I know is there and I have the right to control it.

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Either one of those types of possession is the same value.

In this case, for instance, the testimony was that Mr. Ochoa-Tavera was pulling the drugs out from under the dresser. At that point he was in actual possession of the methamphetamine under the dresser.

While Mr. Cruz was in the living room, or in the doorway, it's his apartment, he's the only one who is supposed to be living there, he has a key to the apartment. If he gives the key to someone else, that's him allowing someone else to do something in his apartment and he is giving that key with consent. He is in constructive possession, because he's not in the room. It's not in his hands, but he knows it's there, circumstantial evidence, which I will explain, and he has the right to control it. It's his apartment. It's in his apartment. He has the right to do anything with the items inside his apartment.

Now, the two types of evidence that His Honor is going to tell you about are circumstantial and direct.

Direct is testimony from the stand. If someone says "I saw this, I did this," that's direct.

Circumstantial is a chain of events that leads you to a conclusion.

So what do we know about Mr. Cruz? It's his apartment. We know he's the only one that's supposed to be

living there. We know he was there when Mr. Ochoa, Mr. Ramirez, and Phillip Lewis arrived. We know he opened the door. We know he closed the door and locked it behind them. We know he looked out the window as being a lookout. That's a chain of events that you can use as evidence to make the conclusion that he has knowledge of what is taking place.

Both types, circumstantial evidence and direct evidence, carry the same weight.

The elements for trafficking. We must show -- the State must show what the drug was. In this case it's methamphetamine.

We must show you that it was more than 200 grams.

We must show that it occurred in Greenville County.

We must show the identity of the two defendants.

We must show you that it occurred on the date that is alleged.

And we must show you that one of the events on the other page - the conspiracy, the possession, the manufacturing, any one of those has occurred. So one additional element. Any of those from the previous page.

What do we know about this case and what evidence do you have? And you will have all this evidence in the back. You will be able to look at. You will be able to look at the pictures more closely and see what they have.

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You know from the chemists. Both chemists testified that the items that they analyzed from this case were methamphetamine. You are going to have eight bags back there; the original four and then the four additional that Investigator Garrett found later when he went back, and you will see from the pictures that the drugs looked very wet as if they had just been recently -- recently cooked? You will see -- you will see the -- it appears to be moisture inside the bags. John Garrett went back at a later time, scraped the inside of the bag and got more out. But, ladies and gentlemen, if you even don't count these small four bags, you have over 200 grams from the original. Kelly Dixon said it was approximately 260 grams with all four bags, and Sean Collins said it was approximately 273 grams. Either way you have got over 260 grams.

You know it's methamphetamine from the chemists testimony.

You know the weight from the chemists testimony.

You know it was in Greenville County from John Garrett telling you that this location on Lily Street was in Greenville County.

You know the identity of the two defendants. Several people testified about who they were and their names and that they were the actual people at the location on July 2nd, 2014, that were involved in this trafficking.

The date was July 2nd, 2014.

And one of the elements as to each one, could be more, have been accomplished.

Ladies and gentlemen, I am going to say to you and I believe several of these apply to both defendants.

MR. ROBINSON: Your Honor, objection. Personal opinion.

THE COURT: Overruled.

MS. MONTS: The first one, conspire, a conspiracy.

Conspiracy is a meeting of the minds between two or more people. You have three people in this case. Mr. Ramirez has already pled guilty. He's already accepted responsibility for his actions. He was the person who set up the buy.

Mr. Ochoa, from the testimony, was the person delivering the dope. He was there to collect the money. Mr. Ramirez was to make $800 for setting up the buy. Mr. Ochoa was to get the remaining $7,600.

And Mr. Cruz -- Mr. Cruz provided the location for the drug deal to take place. He provided the location for the drugs to be stored, and he provided security for those drugs.

Ladies and gentlemen, Mr. Cruz was the only person in that apartment when Mr. Ochoa, Mr. Ramirez and the confidential source. Phillip Lewis, returned to that

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apartment to make the drug deal. He opened the door, allowed them in. When they came in, he locked the door. He was the only one in control of those drugs. He gave the location. If that wasn't available, they weren't going to -- the defendants were not going to do the deal in the Wal-Mart parking lot. Law enforcement thought originally they were. They weren't. They wanted a more secure location. Secure location was provided by Mr. Cruz. Security provided by Mr. Cruz. If someone was going to break on in once behind the confidential source and try to steal the drugs, because they at that point knew that the drugs were in there, he was going to alert them.

We know what happened and you have heard it several times. A lot of different pieces of the puzzle, as I mentioned in my opening statement. You did hear from a lot of different witnesses to make sure we had every piece to this puzzle go in. You heard that there was a deal set up between the confidential source, Phillip Lewis, and Ramirez to purchase eight ounces of methamphetamine, which alone was over 200 grams. 28.35 gram in an ounce. Just the eight ounces was over the 200 grams. But you also had the testimony that there was Phillip Lewis saying and the chemist shows it was more than eight ounces. That there was more drugs in there. There was nine to ten ounces at that time. There was more drugs than just the eight ounces. The

deal was set up for eight ounces for $8,400. It was supposed to have occurred in the Wal-Mart parking lot. Things changed because the defendant Ramirez did not want to have it done there, so he moved it to Mr. Cruz's apartment.

The audiotape and the videotape from the Wal-Mart -- the video was from the Wal-Mart parking lot. The audio was the entire way, from the Wal-Mart parking lot all the way through the apartment and the encounter at the apartment. On there you hear everything that Mr. Ramirez said and everything that Mr. Lewis said. It's hard to hear, but if you need to rehear anything, you can ask the judge and he will let you rehear anything.

Mr. Ramirez asked to move it to the apartment. On the way there, I believe it was right when they didn't have the car or walking in they met Mr. Cruz. He said "it's not my house. It's my friend's house." I know at the Wal-Mart he originally said "let's go to my house." Ladies and gentlemen, the credibility if the witness on the stand, you use your judgment to decide what is the truth, and you could tell that Mr. Ramirez does not speak very, very good English. He speaks fairly good English, but one or two it's hard to hear. When he said "my house," ladies and gentlemen, he -- I don't know if that was a correct word for him to use, but he corrects that on the way there when he is trying to convince the informant to go to the apartment with

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him and says well -- and why he doesn't want the extra cars down there. He said "we can't have too many cars down there." That's why they stopped at the gas station and they combined and both get in the informant's car.

What do we know about Manuel Cruz? I'm trying to piece these elements together for each of the defendants. How do we know Manuel Cruz was involved and not just merely there? Ladies and gentlemen, use your common sense, your backgrounds, your experiences. What do you believe really happened? Mr. Cruz gets there and all of the sudden people show up at his door?

Now, he knows Mr. Ochoa and he knows Mr. Ramirez, but who's this third stranger who he opens the door for, allows him in without any questions, follows them back to the bedroom where this deal is taking place. One bedroom apartment. Mr. Cruz' apartment. You know that again because of the ledger from the manager. Mr. Cruz paid the rent each month. The manager said that he saw Mr. Cruz a few times besides that, but Mr. Cruz was the -- and I asked the manager "is anyone else supposed to be living there?

"No," and it's a one bedroom apartment.

Mr. Cruz is in control of that apartment. He lived there. He was the renter. He was the only one who is supposed to be in there. He paid the rent. The manager actually identified him.

What else? He had personal items inside there to show that he actually lived there. He had -- and you will see, he had his passports, both of them under the name Manuel Najera Cruz. Also there is a picture of a prescription bottle. The name on here is Carlos Najera. Mr. Ramirez testified that Mr. Cruz sometimes goes by that name, and that actually was the original name he was booked under at the law enforcement center, but law enforcement came back had to reissue the -- Investigator Pletcher told you they had to reissue the warrants because his name wasn't Carlos, as they originally thought. It was just a name he was using. The correct name that he was booked under was Manuel Cruz. So the personal items also show you that he was living in that apartment.

What else do you know? Personal items being the prescription and the identification, passport.

Mr. Ramirez testified that it was Cruz' house. On the audio you hear him saying "it's my friend's house." So you have that testimony.

How do you now Mr. Cruz was involved? He provided the location. He guarded the drugs that were there. He was the only person present before the other three men came in to do the deal. Did he ask them to leave? Three people walk into your apartment and go back to the bedroom. No.

Look at the pictures, the size of the apartment.

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It's a very, very small apartment. Basically you walk into the living room and you are there. The testimony was that there is a tiny kitchen off to the right. The bedroom and bathroom were off to the left. Very small. If you are standing in the living room, as one officer testified to, you can see back into the bedroom from there. So anything going on in the bedroom, and I believe it was Phillip Lewis that testified that Manuel went back to -- he was at the back. He followed the other three, and there were two people. Ramirez and Phillip Lewis had testified Ochoa was the first one through the door. Ramirez followed him and Phillip Lewis was the third one in a trail and went straight back to the bedroom where the drugs were.

What do we know about whether Manuel was talking? Phillip says that -- Phillip Lewis testified that Lewis -- Phillip Lewis testified that Cruz was talking in Spanish to Ramirez and Ochoa. So he was a part of the conversation. Phillip didn't know what he was saying and the audio is a little hard to hear at that point. You do hear other voices. And you are welcome to listen to that and see if you can discern, because we had no one who could discern the voices officially.

What do we now when the officers arrived, and this is direct facts from testimony. When the officers arrived where is Mr. Cruz? He and Mr. Ramirez were coming out of

the bedroom. Where was Mr. Ochoa? He was cowering in the back. He had gone back into the corner of the bedroom and they arrested him in there, but Officer Maltby testified that Ramirez and Cruz were just starting to come out of the bedroom. So we know that Cruz was in the bedroom when officers arrived.

What's on the counter when the officers arrived and go into the bedroom? The methamphetamine, in plain view, corner of the dresser. Obvious to anyone there.

What else do we know? We know that the credit card that Phillip said is commonly used to cut up and divide the methamphetamine was in the bag. And the scale to weigh out the methamphetamine, right there. It was originally in the Bi-Lo bag when Ochoa pulled out the Bi-Lo bag and pulled out the four individual bags of the methamphetamine.

We know that Mr. Cruz went by several names. The reason I went into that a little bit is I want to make sure that it's been proven that these names all belong to the same person. Manuel Najera is what the apartment ledger says. Manuel Najera -- the passport says Manuel Najera Cruz. He was booked under Carlos Najera. All the same person. Mr. Cruz, Manuel Cruz, is in this courtroom on trial, was identified as the person in the room, who rented the room, rented the apartment.

What do we know about Mr. Ochoa? Mr. Ramirez

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testified that he called Ochoa to deliver the drugs.

What else do we know? The deal was set up the prior day. Phillip Lewis called and set up a deal for eight ounces for $8,400. That's $1,050 per ounce. So the drugs were placed in Mr. Cruz's apartment the prior day, the testimony is by Mr. Ochoa.

What else do you know? Mr. Ochoa arrives in his car at the exact same time as Mr. Ramirez and Phillip Lewis. Coincidence? Use your common sense, background, experiences. Not coincidence. He's there to pick up the money. $8,400 is about to be handed over to him, he believes. He's there to get the money. How much money did Mr. Ramirez say he was supposed to get for setting up the deal? He said he was to get $800. Ochoa was to get the rest of that. He wants to make sure the deal goes down and he gets his money.

They arrive at the same time. They get out, they walk into the apartment. Mr. Cruz is opening the door. Ochoa leads the way to the back. What does that tell you? He leads the way. That means he knows that the drugs are there. He goes immediately under the dresser and pulls out the drugs, the scale, and he sets them on the bed and eventually they get set on the dresser, and you will have a picture of the layout of the room. They look at the drugs. You will hear some talking saying "it's good. It's good,"

and Phillip Lewis saying "I'm going to go get the money. I'll be back in a minute." You hear several voices in there. There is a TV on, but it's in the living room and I believe you can tell it's a woman's voice, but you can definitely a TV voice separately from the people that are conducting this drug transaction.

You hear -- I know at one point, at 32 minutes and 50 seconds in, you hear somebody say "you need eight." The deal is for eight ounces. I don't believe it's the same as Ramirez' voice, but if you want to listen to it, I believe it was Ochoa's. He is speaking at that point.

We know when the police arrived, where did they find Mr. Ochoa? Cowering, as Maltby said, in the corner of the bedroom. He has stepped back, I believe Maltby said that four to five feet from the drugs, and he is back. There is no other exit from that room. You pass the dresser where the drugs are and then you found Ochoa in there. So he is actually in the room where the drugs are. What does that tell you? It corroborates what Ramirez and Phillip Lewis tell you.

Now, you are going get an instruction on the credibility of the witnesses, their believability. Yes, both Mr. Cruz, as well as Mr. Lewis and Mr. Ramirez, have drug issues. Mr. Ramirez had pled guilty and Mr. Lewis has pending charges in another county, but, ladies and

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gentlemen, use your common sense. You saw them on the witness stand. Who else is going to be able to buy drugs from drug dealers except someone who is experienced, who knows how to do it, who can talk the talk and walk the walk? It's got to be a drug dealer. You can't go and pick someone off the street and say go buy drugs from these people. It's got to be someone who knows how to do it and can fit in.

What else do you know about Ochoa? You know that Phillip Lewis told you he met him at least two prior times; once at Ochoa's house and once at a Mexican club. And you remember when Mr. Ramirez first arrived at the Wal-Mart, where did he want to do the deal? He is saying on the audio "let's go to the Mexican club." He said Mexican something and Phillip said "you mean the club," and he said "yes." No, they don't want to do the deal -- the law enforcement doesn't want to do the deal at the Mexican club because it's not a controlled situation. Those are the two places that Mr. Lewis has seen Mr. Ochoa.

What else do we know? It's actually Mr. Ochoa's car at the apartment. He drove up the exact same time, which means there was communication between Ramirez and Ochoa about what time the deal was going down. He arrives at the same time. And what does Phillip Lewis tell you on the audio when he is leaving? He's talking to law enforcement after he pulls out and he says at 36:52 in the

audio, "remember that other male gray car is there. Make sure they don't try to leave," because you remember law enforcement confirmed by going in and securing the location was that when Phillip didn't come back -- he was just supposed to go up to the corner store and get the $8,400 and come back, and he didn't come back within a few minutes, they were going to know that he wasn't coming back and it was either going to be police coming or someone coming in to rip them off.

What else did Mr. Ramirez tell you? I asked him about the relationship with Mr. Cruz. He didn't say too much about Mr. Cruz. Why was that? He said he has known Mr. Cruz for 15 years. They were good friends. They knew each other from Mexico. He didn't want to tell on him. He did talk about Mr. Ochoa more. He hadn't known him as long and he didn't have much of a relationship with him.

What else did Mr. Ramirez tell you? He says "it's not my house" on the audio. And right after that he says "we don't play." Why is it important that he's saying "it's not my house and we don't play"? Because I'm looking for factors, as you will be when you are deliberating, to show that conspiracy, the agreement, the agreement to conduct an unlawful activity. Saying "we don't play" means there is more than Mr. Ramirez.

And, ladies and gentlemen, in a drug transaction

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there is more than one person. There is someone who creates the drugs. There is someone who delivers the drugs. There is someone who stores the drugs. There is someone who makes the contacts to sell the drugs. There is someone who packages the drugs. And there is someone who collects the money, the money man. Now, there can be more than one person for some of those jobs, but one person, I would say to you, cannot do all of them. And in this case you have three people participating in this conspiracy, and there may have been more, but in this case we have three people that are charged and are guilty of this.

What else do you consider when you are trying to decide the credibility of Mr. Lewis and Mr. Ramirez? That a lot of their things that they said were very similar. Very similar about the time that Ochoa drove up; about the fact that Ochoa led them back into the back room; the fact that Ochoa was the big fish. Why does that matter? Because Mr. Ramirez and Mr. Lewis are not friends. They didn't even know each other's name. They called each other "Amigo", if you remember. They never even knew each other's first name. They are not here concerting and coming up with a similar story to tell the court. Mr. Ramirez, as you saw, was in jail here in Greenville, and Mr. Lewis is not in jail. They did not come up with those stories together. They came up with the truth individually. And the fact that they both

said the same thing corroborates what took place.

What else do you have? Corroboration from law enforcement because of the audio and the video. You have got a lot of evidence right here in these two items; corroboration of what Phillip Lewis and Mr. Ramirez said on the video and audio.

You have got the fact that officers followed them, surveilled them, listened to them, and everything. That's what you need, all the pieces. Nothing -- one person can't make a case. You have got to have all the different pieces of this puzzle.

What did John Garrett tell you? He told you that he was the lead agent, along with Randy Smith, and told you a lot of the facts about that day, and I won't go back into it. The deal is set up. One important thing he talked about, and I believe defense is going to hit on this, is the fingerprints. What did Investigator Garrett tell you? He asked for them to be tested and the result back was non-comparable prints. They couldn't compare them because they weren't -- as he said, there wasn't enough ridge detail. Somebody's prints were on there. We don't know. Just because we don't know whose prints they are doesn't mean either Mr. Cruz or Mr. Ochoa's prints aren't on there. We just can't tell you. We don't know whose prints are on there. But because we can't tell you that they are on there

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doesn't mean they are not. But, in addition, they don't have to have touched the drugs, because they have all the other ways; the conspiracy, the manufacture, the aid and abet; by providing the location that the drugs were stored; the guarding of the drugs, watching over them when no one is there. Do you think they are going to leave $8,400 sitting in a home? No one is going to leave that there, whoever the true owner is. No one is going to leave that with Mr. Cruz if he is not involved. He is guarding $8,400. Ladies and gentlemen, that's the bulk rate. Once you cut it down and sell it on the street, the increments, you make a whole lot more off of that. So the fact that Mr. Cruz and Mr. Ochoa's prints weren't on there, no one's prints were on there that could be recovered.

His Honor is going to say that the burden on the State is beyond a reasonable doubt. Listen carefully to his charge. Beyond a reasonable doubt does not mean beyond all doubt. There are very few things in this world that can be proven to a 100 percent certainty. Beyond a reasonable doubt is not all doubt.

What do we know about this case? There were three defendants who were charged in this case.

Mr. Ramirez, what was his role in this case? He set up the deal. He was the middle man. He made the contacts with someone.

Who else? Mr. Ochoa. He brought the drugs. He was the supplier. He was waiting to collect the money. He led the way into the apartment. He knew where the drugs were.

Third player. Mr. Cruz, what was his role? He provided the location to store the drugs. He provided the location to sell the drugs. He provided the security, and I believe the term was the lookout.

Each piece of this pie doesn't have to be the same size. One person's role can be larger than another, but they are all three guilty of a conspiracy, of an agreement between a meeting of the minds to commit an unlawful act, which was trafficking over 200 grams of methamphetamine.

Manufacturing, as His Honor will tell, that's one of the things. Aid, abet, conspire, manufacture, deliver, bring into this state. There is a whole lot there. The manufacture means, and I'm going to abbreviate that, that you can cut it up. You can grow it. It's not marijuana. You can grow it. You can create it. You can package it or re-package it. And I would submit to you that when the deal was for eight ounces and there was nine ounces, or so, in the room, that the reason that this card was in there with the meth was to cut it up, cut the eight ounces out and give it to the person buying it, and that qualifies as manufacturing.

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So, ladies and gentlemen, when you hear the charge, you have got possession, actual or constructive. In my pocket, or in my hands, or I'm in the other room, but I know it's there because I have been guarding it, that's possession. Both Mr. Ochoa, Mr. Cruz, guilty.

What do you know? Conspiracy. An agreement between two or more people to commit an unlawful act. Who is involved with this unlawful act? Mr. Ochoa and Mr. Cruz. Conspiracy, guilty.

Aid, abet, assist. They aided, abetted and assisted each other to traffic methamphetamine.

Ladies and gentlemen, you are the fact finders. You decide with your common sense, your background, your education what happened on that day. Were both Mr. Cruz and Mr. Ochoa involved at any degree in this? Yes.

Once you have gone back and deliberated, once His Honor gives you the charge and tells you to deliberate, look at the evidence. Look at how Mr. Cruz is locked into his apartment, how he's allowing this to take place; how Mr. Ochoa is the one who brought the drugs there, knew where they were. They each had possession. They are each part of the conspiracy. They both aided, abetted and assisted in this endeavor. And all we need is one of those, ladies and gentlemen. Only one of these things and the defendants are guilty of trafficking more than 200 grams of

methamphetamine.

We believe when you come back and render your verdict after you have deliberated, that that verdict will be for both defendants guilty.

THE COURT: Thank you, Ms. Monts.

Mr. Robinson?

MR. ROBINSON: If it please the court, Mr. Crangle, Ms. Monts.

You know, I was listening to the prosecutor give her closing statement and I was kind of struck by it, the fact that she kind of considered that none of you all can spell, that you don't know what words mean. Well, we all know what the words mean. It's common sense. You have been to school. You know what these words mean.

I'm not going to try to make anything up or try to make you feel any way. I'm just going to go after this case, what has been proven, what's not been proven, but I want you to -- when you go back to the jury room, I want you to -- if you have a watch --

THE COURT: I'm sorry, you may need to speak a little louder. If you want to take a microphone. The interpreter is not able to hear.

MR. ROBINSON: Sure.

But I want you to go back, and this is -- when you go back, if you have a watch or you see a clock on the wall,

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count out and look at less than 60 seconds. That's important. Why is it important? Because the officer that testified -- one of the first officers was a DEA agent. And I went back and I looked at the transcript of this, and here is what the question was. Here is the question by I believe Ms. Monts, the prosecutor. She asked him "do you recall how long they were inside or how long Phillip Lewis, the informant, was inside the apartment? His answer was this. "It was a very short period of time. Probably less than 60 seconds. Probably less than 60 seconds." Now, this is a detective, the officer that actually watched the whole thing. Less than 60 seconds, and he said "it seemed to be very rushed."

Now, think to yourselves for a second. If you do that, think about the State's case, as far as what they are saying. They are saying all this stuff happened supposedly now. There is no video of this happening. There is no video of Mr. Ochoa bringing a bunch of drugs out of his car and so forth. Nothing that would indicate that he had anything, but unfortunately he arrives at the worst possible time, at the same time.

Now, think about your own experiences. Is it really unusual to arrive at the same time as someone else, sometimes by accident it just happened? Is it so unusual that you arrive at a friend's house or arrive someplace and

someone else that you know arrives at the same time? Is that so unusual? Think about that. I would submit to you that it's not. It may be a coincidence. It may be bad luck for Mr. Ochoa to be there at that time, but that's all it shows. It just shows a coincidence, because, you see, the State for all their -- all the stuff that they have here, all the exhibits and so forth here, what they don't have is a video of Mr. Ochoa doing anything. It happened in the apartment, but that's all they have. They have him in a room near this methamphetamine, but that's it. They don't have him -- and just imagine, less than 60 seconds all this was supposed to go down. All of it is supposed to go down. Less than 60 seconds. How many things can we do in our lives in less than 60 seconds? Going in, coming out, less than 60 seconds you do all these things? I submit to you that you can't. It's not plausible and it doesn't make sense.

So here is what they have. They have two -- the crux and the foundation of the State's case are two interested parties. You have Phillip Lewis, the confidential informant. Now, the State tries to try to minimize his past and minimize the number of things, but he has some interests in it. And I think the DEA agent said yes, they have an interest in this. They have an interest in the outcome. They have an interest. It's not like it's

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an even playing field. It's not like they are just disinterested parties, they just happened to be going along and they just find out this information, they are being good citizens. That's not what was going on. They are not normal. He is not a disinterested neutral party. He is an interested party. He is going to get a better deal. He's going to get time off. Think about it. If you are facing X, Y, Z time and you can help yourself, are you willing to say anything? Are you willing to lie? Think about it. Think about the credibility of that person. Think about your past lives. Think about what you dealt with as far as persons and so forth that have a reason to lie. If someone knows that in order to get one thing, they have to do something to get that, if they are threatened with their life, with time away from their family, would they, in your experiences -- now, this is not -- this is -- we are not operating here in a vacuum. It's your own experiences. Do you believe a person has motivation to lie? That's what you have to think about.

We all see in the news, if we get on Google and so forth, we all see the big controversy with the New England Patriots and Deflategate, as far as -- look at what they have to lose. They say yeah, okay, we did it. We deflated these footballs, a couple, whatever they did. They have an interest in that. They have an interest in the outcome.

But think about your own experiences. Do people that have an interest lie? I would submit to you that they do.

Now, let's look at Mr. Ramirez. He's the co-defendant to Mr. Ochoa and Mr. Cruz. He has a big self-interest, because, you see, he is getting his time cut for testifying. He's the guy. Again, does he have an interest in lying? Of course he does. Of course he does.

Now, I found it very interesting. I would submit to you that the State, Ms. Monts, has said that they had no one that could discern exactly what was said on that tape in Spanish. Well, that's great. That's fantastic, but for you, you don't have this information. You don't know what they say. They had the opportunity in this case, and you listened to all the witnesses they had up here, to put someone up there and say, okay, this is what these folks say, but there is no one here. The State has no one that can say this is what was said in this tape; this is such and such talking about a drug deal. No one could say that.

Now, in a few moments the judge is going to give you an instruction, and these are the two big concepts. They are called jury charges. You are the trier of the facts. As the trier of the law, the judge is going to charge you the law in this case. The two concepts that are important to Mr. Ochoa; one, mere presence; and two, the credibility of witnesses.

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Mere presence basically means this, and the judge is going to tell you what it means. Just because you are someplace at the wrong time or wrong place, merely present does not mean that you are guilty. It does not mean that you are part of something. Merely being present, that's what that means.

To give you an example. You come some place and there is something going on at that place and you go in and so forth and oh, my God, something is going on. They are doing something. Does that mean that you're guilty? No, it doesn't. Just because you are merely present does not mean that you are guilty of a crime.

Now, the reason for that is this. If that wasn't the law, everybody would be in danger. Every time that you went someplace you would have to make sure that every person out there, everyone that you associated with, any place that you went to, that there was nothing going on. If you didn't do that, the police could bust in and say you are guilty. That's not the law. Just because you are there, merely present, does not mean that you are guilty of something. I mean, if you think about it and use your common sense, that makes sense. All these laws make sense, but they are there to protect everyone; black, white, brown, yellow, everyone, and that's the problem with the State's case, because they tried to put together a big conspiracy is going on with

somebody, but being merely present at the scene, you drive up, unfortunately, if you are there, that does not mean that you are guilty of anything. It just means that you are merely present.

The second concept the judge is going to talk to you about is this idea of the credibility of witnesses. You have the time back there to look and see who is credible, who is not. Can you believe the credibility of a witness that has interests in the outcome? That's what credibility means. Credibility of a witness.

If you look in the beginning of this case, I told you, that all of us, all of you, need to look at things that happened to you and use your common sense.

Going to the beginning of my closing statement, think again about what the State has here. No fingerprints. No nothing. And think about the two concepts that I said, mere presence and credibility of witnesses, and think about Agent Smith, less than 60 seconds. Less than 60 seconds. And if you could, I just ask you, if you could take your watch and look at the clock and say okay, count 60 seconds. Less than 60 seconds. See how much you can get done in 60 seconds.

Ladies and gentlemen, the law in this country was set up a long, long time ago. Centuries ago. And in criminal court, as I said at the beginning, the State has

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the burden of proof. And she is right, the prosecution is right, it's not any doubt. However, that does not lessen the standard. It's beyond a reasonable doubt. Has the State proven to you all beyond a reasonable doubt every element of their case, every part? If they haven't -- you don't have to like a person. You don't have to like it. You may not like the fact that we have gotten interpreters and so forth. That doesn't matter. What matters is has the State proven to you all beyond a reasonable doubt that Mr. Ochoa is guilty of trafficking? I would submit to you that if you apply the law of this state and listen to the judge's instructions here, that they have not done that.

And I really want to thank y'all for taking the time. I'm sure not in your own -- not by free will, I would say that, but I appreciate y'all being here and listening and thank you very much.

THE COURT: Mr. Crangle?

MR. CRANGLE: "Follow the money," whereas Lewis said "everybody gets paid."

They put Ramirez up on the stand and they asked him "who is going to get paid?" And the answer, "Ochoa-Tavera, he was going to get 7,600 to 8,000." Ramirez, "I was going to get 800." And Lewis, if he would have been, he would have made money too later on selling the drugs. Who is not on that list? Who is not getting money?

My client, Mr. Cruz. Drug dealers don't work for free. It's a dirty business, it's a hard business and it's an illegal business. It has risks. No one does that for free. No one opens up their house and does that for free. If you sell something on E-Bay, E-Bay takes a cut. That's how things work. If you go to the flea market, you got to pay to be there. No one lets people do things in their house for free. If you are part of the drug dealing conspiracy, if you are possessing it, if you are controlling it, then you are making money. And they asked Ramirez, their witness, who is making money. My client was not making money.

The State has the burden of proving beyond a reasonable doubt that my client was trafficking methamphetamine. Trafficking means a lot of things. It means conspiracy.

Let's talk about conspiracy. Did they ask Ramirez "hey, did Cruz know what's going on?" No, they didn't. They had him on the stand as their witness and they didn't. Ramirez never told you that Mr. Cruz was involved. They have could have. They didn't.

The State says, well, Mr. Ramirez, you need to believe him on some things, but not other things, because he's known my client for 15 years. Well, which is it? If Mr. Ramirez, who is facing 25 years originally and pled to

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reduce charges of seven to 25 is willing to cooperate, he's already sold his principles. He's not trying to sell them halfway. There is no halfway crooks here. He sold it all. If he could put my client under the bus or in the room at the time, he would, because he would be getting less of a sentence.

Mr. Lewis would be doing the same thing. Mr. Lewis is looking at 56 years in jail. He called the DEA. He told them "hey, I have got people to talk to." Did he mention Mr. Cruz? No, he never seen Mr. Cruz before. The first time he saw him was when my client opened the door and that's it. That's the first time. Ramirez saw Ochoa-Tavera before -- or, excuse me, Lewis saw Ochoa-Tavera before, and Lewis had been with Ramirez multiple times buying drugs. Mr. Cruz was never there.

Mr. Ramirez told you who is making money. My client isn't making money. And Mr. Ramirez told you what happened in the house. He said "we went in." He said "Ochoa-Tavera brought the drugs in the back and we got them out." He said "where is Mr. Cruz?

"He's in the front.

"What's Mr. Cruz doing?

"He's going to work."

He doesn't know what's going on. He's there, yeah, it's his house, but if your friend comes over to your

house, do you pat them down and say "what are you doing here?" No, you just let them in. Maybe they need to use the restroom. It's back there.

Beyond a reasonable doubt means that you hesitate to act, that you got to think and say "no, all these considerations, that I feel that gut feeling that we all get sometimes of doing the wrong thing. Maybe I'm not sure." That's the feeling and the State's two witnesses who were drowning and will be going to prison at some point are trying to grab anything that they can, and they are trying to grab my client, Mr. Cruz, and the best they can come up with was he opened the door.

Mr. Lewis says he peeked around those blinds. He's doing that. Mr. Lewis is just trying to save his skin and I don't blame him. If I have three kids and I was doing drugs, I would try to stay on the streets too. I certainly would, but the best he can do, the most he can say for himself, the only thing that he can grab onto is a shoestring. The door opened.

And then the State says "we have this recording of audio. You know who was in the room and who speaks Spanish and who can interpret and who was there and he can tell you was is on that audio? Mr. Ramirez. He came out. He sat right there and they could have played the audio and they could have gone line by line and said "who is this speaking?

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What are they saying?" The interpreter could have told you. You knpw what? They didn't. That's not enough.

Reasonable doubt. Hesitate to act. You can listen to the tape. I have listened to it. I have no idea what it's saying. I don't speak Spanish. That's not enough to convict someone. You have got to have more.

My client is innocent until proven guilty and it's not enough to say we don't know. We don't know whose fingerprints on are on the bag. That's not enough. You have got to have more.

If I took all these drugs and I walked over and put it on their table, they would be in constructive possession, is their theory. That would mean that's your table. They know what's going on, but that's not it. We all recognize that you guys don't have the drugs, they are not yours. But I put them on their table, it doesn't mean that they have constructive possession of the drugs. You have got to know and affirmatively act.

Here is what happened, according to the State's witnesses, if you believe them. Even if you are going on their assumption, and they have got a lot to lie about, but even if you accept their statements as true, here is what happened. They go in the house. They get the drugs out of a single bag, or a couple of bags right here. Ochoa gets them out. They start weighing it out and they say "yeah,

it's good stuff. We need the money." My client is not in that room. My client is not being paid. My client is going to work. When the police come, my client is, one, either in the living room, as the first deputy said, or the second deputy said, or two, in the area between the kitchen and the living room. He's not in the bedroom, and Lewis and Ramirez told you that. They told you he wasn't involved. Yet the State says there is a conspiracy here. Well, then prove it. That is what your job is as the State, to prove beyond a reasonable doubt a conspiracy exists. We don't know. It's not good enough. You are innocent until proven guilty in this court. That doesn't work.

Lewis and Ramirez are looking at a significant amount of time. As I told you in the beginning that they are drowning. And you saw them in the orange, in chains, coming out. Ramirez, originally charged with trafficking 200, or more, 200 to 400. I asked him how much it carried. It carries 25 years. Flat. No if's, and's, or but's. He came forward two weeks ago when he realized that he was on audio and they got him. They got him dead to rights. He has no choice, so he does what any sensible person would do. He pleaded out. He takes the State's offer. Now he's looking at seven to 25, and after this trial he will be sentenced. He will receive somewhere in between there. I don't know where it will be, but I suspect that he is going

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to ask for less than 25 because he cooperated. He's got everything to play for. And the best he can do is say my client is not in the room, my client is going to work, and Mr. Cruz is there.

You may think, well, it's probably more likely than not that Mr. Cruz is involved or knew what was going on. That's what we call preponderance of the evidence, 50/50. 50/50 isn't good enough in a criminal system. His life and liberty is at stake. The Constitution provides reasonable doubt. Beyond a reasonable doubt. That means that you have that gut feeling, you check it and you say "you know what? I'm so confident that I can go on and go past it." I have that feeling in this case. I feel the doubt. I don't know, and I don't know is not enough to come back with a verdict of guilty. You have got to have more. You have got to have firm -- you have got to be firmly convinced that it happened. The State's response is we don't know. We don't know what's on the tape. We don't know whose fingerprints there are. That's not enough. You have got to have more, because you heard what the charges are. You heard what Lewis is looking at. He's looking at 56 years. Ramirez was looking at 25. The best that Lewis can come up with is he opens the door and peeks out the blinds. Peeks out the blinds. If opening the door and locking it is a crime, then I'm guilty every night. If my

friends come over to my house and I open up the door and I lock it behind them, I might as well be guilty. What if my friend comes to my house and he's got a little bit of drugs on him and I open the door and he says "I need to go use the bathroom," and he takes it and he hides it in my bathroom? Bad friend, one, but does that mean that I know about it? Of course not.

Ramirez told you how the drug deal went down. He said Ochoa-Tavera comes into the house with the drugs and he pulls it out and they all start doing the deal in the back. My client is not there. And Lewis, with his cool teeth and gold teeth, he told you when the money come out -- when the money comes out, the big guys come out. Well, he says that Ochoa-Tavera is a big guy and he knows what's going on. When the money comes out, follow the money. My client is not being paid. He doesn't know what's going on.

At some point six months from now, five years from now, 25 years from now, 56 years from now you are going to talk to someone and they are going to say hey, have you ever done jury service? You are going to say yeah. Maybe you have done it before, or you will certainly say you have done it at least once. And you will tell them about it. You say yeah, trafficking methamphetamine, 200 to 400 grams. It sounded like something out of Breaking Bad. It's kind of exciting. What that person is going to ask you is did you

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do the right thing? And at that time you can have no doubt. 25 years from now that doubt, it can't be there. If you have that doubt, have it today. Have it in that room when you discuss this case.

Each client is individually separate. The judge will instruct you on that.

Mere presence in the household, the fact that you own a house isn't enough. It's got to show beyond a reasonable doubt that he attempted to do something. And to do that, what they could have done is they could have asked Ramirez who was involved, but they didn't. They never asked Ramirez was Cruz there. No. They said Ramirez, they could have him walk you line by line through that audio and said here is Mr. Cruz, here is Mr. Ochoa-Tavera, here is me, and here is Lewis. They could have done that. They could have said here is the TV, but they didn't, and that has consequences.

We can't fly by the seat of our pants here. We can't make decisions based on gut instincts. It's got to be beyond a reasonable doubt, folks. And the fact is in this case there is just not enough evidence. You may think he's probably involved, but probably involved does not mean he's guilty beyond a reasonable doubt. My client is innocent until proven guilty by the State, and that hasn't happened yet. You haven't heard enough evidence. You listened

carefully. You heard all the witnesses and seen all of the evidence.

The simple explanation is this. My client was going to work. He let his friend into the house. His friend, Ramirez, went in with Lewis and Ochoa-Tavera in the back and they dealt drugs. My client didn't make a penny off of it. He wasn't going to be paid. Ramirez didn't say that he was involved. Lewis told you he wasn't in the room. His fingerprints aren't on the drugs. That's not enough to speculate as to whether conspiracy happened.

It happened in his house, yes. That is not a crime. Mere presence alone is not a crime. They have to show that you knew about the drugs and that you intended to control them. If I take these drugs and I put it under this and you walked in, you would never know about it. You would have no idea that they were there, and that's a fact.

Ladies and gentlemen, when you talk to that friend, whenever that day comes, whether it's five years from now, or tomorrow, whenever, they are going to ask you that question, did you do the right thing? Did you do your job? Did you follow the law, and you are going to answer yes. You are. It is what I suspect that you will say is that yes, I followed the law. I listened. I remembered the United States Constitution requires more than likely, more than I don't know, more than I don't know whose fingerprints

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are on this. More than I don't know what the audio says. It requires proof beyond a reasonable doubt that my client trafficked in methamphetamine and my client wasn't going to be paid a dime. No drug dealer works for free, period. No drug stays in here for a long period of time. He told you drugs move. No one sits on $8,000 worth of drugs for any period of time, because they are afraid they are going to be robbed And when your friend asks you and says did you do the right thing, you will look to them and say yes, and you will smile, and you will say yes, I did, because there was a man named Mr. Manuel Cruz and he was charged with trafficking in methamphetamine and the State did not meet their burden, as the Constitution requires, and, therefore, we found him not guilty. Thank you.

THE COURT: Thank you, Mr. Crangle.

(Whereupon, at 12:02 p.m., the Court charged the jury panel with the Court's instructions)

THE COURT: Members of the jury, now that you have heard all the evidence and the arguments of the lawyers, it's my duty to instruct you on the law which applies in this case.

It's your duty to find from the facts -- to find the facts from all the evidence in the case. Those facts you must apply the law as I give it to you. You must follow the law as I give it to you. You shall not be concerned

with what the law should be, but what it is, and you must not be influenced by any personal likes or dislikes, opinions, prejudice, or undue sympathy. That means you must decide this case solely on the evidence before you and according to the law, and you took an oath at the beginning of the trial to do just that.

In following my instructions, you must follow all of them and not single out some and ignore others. They are all equally important. You must not read into the instructions that I give you or anything into them that I may have said or done any suggestion as to what the verdict should return. That matter is entirely for you to decide, because under our Constitution I am not allowed to have an opinion on the facts.

You, and you alone, are the judges of the facts. You decide on what the facts are by evaluating or weighing the evidence you have heard during this trial. That weighing -- there is no way for you to weigh in a literal sense, because I can't give you a set of scales. It is entirely a mental process and you weigh and evaluate the evidence by simply using your good common sense and sound judgment.

I charge you that there are two defendants in this case, each of whom is charged with trafficking in methamphetamine. The case of each defendant and the

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evidence and the law concerning that defendant should be considered separately and individually. Your verdict does not have to be the same for both defendants. The fact that you may find one defendant guilty or not guilty should not control your verdict as to the other defendant. Where more than one person is charged with a crime, if the evidence warrants it, you may convict one and acquit the other, or you may acquit both, or you may convict both. It will depend on your view of the testimony and evidence. You must take each defendant and consider the evidence as to that defendant separately. In doing so, you must decide what evidence shows about each defendant without considering any evidence that may have been received solely against some or other defendant or defendants. Because of this right to separate individual consideration of each defendant, whatever verdict that you find does not have to be the same as to all the defendants. You take each defendant, consider the evidence to that defendant alone, and write a separate verdict of guilty or not guilty for each individual in conformity with the evidence in the case and the instructions that I have given you.

Once again, the indictments charged the defendants with trafficking in methamphetamine. I remind you the fact that the defendants were arrested, charged and indicted in this case is not evidence in this case and cannot be

considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt. This document is simply the formal written instrument which contains the charge made against the defendants. It's the formal document by which the case is brought into court.

The defendants have pled not guilty to the indictments, and that plea puts the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina in never required to prove himself innocent.

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

The presumption of innocence is like a robe of righteousness placed around the shoulders of the defendant which remains with the defendant until it has been stripped of the defendant by evidence satisfying you of the

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defendants guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory. It is not just a legal phrase. It is a substantial right to which every defendant is entitled, unless you, the jury, are satisfied from the evidence of the defendants guilt beyond a reasonable doubt.

Ladies and gentlemen, I will instruct you now, and emphasize to you, that the fact that the defendant did not testify must not be considered by you in any way in your deliberations. Both defendants have a Constitutional Right to remain silent, and the exercise of that Constitutional Right cannot and must not be held against the defendants. Under the oath that you have taken as jurors, you are to draw no inference and draw no conclusion whatsoever from the fact that the defendants did not testify. Don't even discuss this fact in the jury room. The defendants are not required to prove anything. The burden of proof remains upon the State to prove the defendants guilt beyond a reasonable doubt.

Some of you may have served as jurors in civil cases where you have been told that it's only necessary to prove the fact is more likely true than not, such as by a greater weight or preponderance of the evidence. However, in criminal cases the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Ladies and gentlemen, proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

A reasonable doubt may also be described as the kind of doubt that would cause a reasonable person to hesitate to act. If you have such a doubt as to the guilt of the defendant, then he would be entitled to a verdict of not guilty. Reasonable doubt may arise from the evidence which is in the case, or from the absence or lack of evidence in the case.

If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

You alone must make the determination of whether or not reasonable doubt exists as to the guilt of the defendant.

I remind you that during this trial you and I have certain duties to perform. As the trial judge, it's my responsibility to preside over the trial of this case, and I

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also have the duty to rule on the admissibility of the evidence offered during this trial. You are to consider only the competent evidence before you. If there is any testimony ordered stricken from the record or during this trial, you must disregard that defendant. You are to consider only the testimony that's been presented from this witness stand, any exhibits which have been made a part of the record in this case, and any stipulations of counsel.

I have the additional charge to charge you the law applicable to this case. As the presiding judge I am the sole judge of the law of the case, and it is your duty as jurors to accept and apply the law as I now state it to you. If you already have an idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon that idea because you are sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this court before a jury the jury becomes the sole and exclusive judge of the facts in a case. A trial judge cannot intimate, state, comment on, or make any statement to a trial jury about the facts in the case. Since you, the jury, are the sole judge of the facts in this case, you are not to infer from what I have said during the progress of this trial in ruling upon the admissibility of evidence, or motions, or otherwise, or

anything that I say now during the course of this instruction to you that I have an opinion about the facts in the case. The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine. As jurors, it is your duty to determine the effect, value, weight, and truth of the evidence presented at trial.

There are two types of evidence which are generally presented during a trial: Direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a grater degree of certainty required of circumstantial evidence than that of direct evidence.

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You should weigh all of the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

As the sole judges of the facts in this case you are also necessarily the sole judges of the credibility or the believability of each of the witnesses that have testified during the course of the trial. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

There are a number of factors which you may consider in arriving at your assessment as to a particular witness' credibility or believability. Some of the factors I'm going to list for you, and should you think of other factors you believe also ought to be considered when you go back to your jury room on the question of credibility, then you shcould consider those factors as well.

But you may consider the demeanor of the witness from the witness stand; what that witness' manner of appearance. Was the witness straightforward or hesitant in answering questions? Simply put, do you believe the witness was telling the truth or not telling the truth? Do you believe the witness knew of what that witness testified? You may consider whether or not the testimony of a witness is consistent or inconsistent with that witness' own

testimony or the other testimony or evidence presented during the course of a trial. You may also consider how the witness came to know the facts which he or she has testified. You may consider the opportunity that a witness had to observe or hear, that is, to perceive the existence of a fact by means of their senses. You also may consider whether or not a witness is biased or prejudiced. That simply means do you find that a particular witness had some reason to come into court and testify one way or another, to help one side or the other. You may also consider whether or not the testimony of a witness was strengthened or weakened by other testimony or other evidence presented during the course of the trial.

In determining believability of witnesses who have testified in this case, you may believe one witness over several witnesses, or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety, or you may reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice, or other motive in this case. You may also consider the appearance and manner of a witness while on the witness stand.

The rules of evidence ordinarily do not permit

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witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who, by education and experience, has become an expert in some art, science, profession, or calling may state an opinion as to relevant and material matters in which the witness claims to be an expert, and may also state the reasons for the opinion.

You should consider any expert opinion received in evidence in this case, and like any other evidence, give it the weight that you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound, or the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to except an expert's opinion, even though it is not contradicted.

A person who has a past criminal record is competent to testify during a trial. A past record does not affect the ability of that witness to testify. The past record may only be considered by you, if at all, in determining the witness' believability.

You have heard testimony relative to prior convictions of witnesses. I instruct you that such testimony is not evidence of guilt of any of the matters contained in the indictment, and that testimony is only allowed for the purpose of attempting to possibly reflect upon the credibility of the witness.

Remember, you are the sole judges of the facts in the case and the believability of any and all of the witnesses.

You have heard testimony concerning the penalty a person can serve for the crime alleged in the indictment. In determining the guilt or innocence of the defendant, you cannot consider any possible penalty for any particular crime. The punishment for the crime is a matter for me to determine and should never be considered by you in any way whatsoever in arriving at an impartial verdict as to the guilt or innocence of the defendant.

A statement alleged to have been made by the defendant or defendants have been admitted into evidence in this case. While the court has determined that the statement is admissible, I instruct you that you make the ultimate decision of whether or not the defendant made the statement. If the defendant did make the statement, you must determine whether the statements were made by the defendant voluntarily and of their own free will. This

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means the statements were not caused by pressure, force, fear, threats, coercion, or intimidation, or by hope or a promise of leniency or reward of any kind. In determining whether the statement was voluntary, you should consider both the characteristics of the defendant and the details of the questioning. Some of the factors you must consider are the age of the defendant; the defendant's education, or lack of education; the defendant's mental ability or capacity; the defendant's IQ or intelligence; the defendant's background and environment; the place and length of the detention; the nature of the questioning, the advice or lack thereof to the defendant of his or her Constitutional Rights, including, but not limited to, the right to remain silent, that the statement could be used against him in a court of law; the right to have a lawyer present; that he could not afford a lawyer, the lawyer would be appointed to represent him without any costs; and that he could stop making a statement at any time. You must carefully consider all of the surrounding circumstances before you give any weight to an alleged statement.

The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine it was, you may give the statement any further consideration that you deem proper. You must decide what weight, if any, should be given to the alleged

statement. If you determine that the alleged statement was not a free and voluntary statement of the defendant, you should not consider the statement at all.

To prove possession, the State must prove beyond a reasonable doubt that the defendant had both the power and the intent to control the disposition or use, in this case, methamphetamine.

Possession may be either actual or constructive.

Actual possession means that the methamphetamine was in the actual custody of the defendant.

Constructive possession means that the defendant had dominion and control, or the right to exercise dominion or control, over either the methamphetamine itself or the property on which the methamphetamine was found.

Mere presence at the scene where the drugs were found is not enough to prove possession.

The defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control. However, this inference is simply an evidentiary factor to be taken into consideration by you alone with the other evidence in the case and to be given the weight you decide it should have.

Two, or more, persons may have joint possession of a drug.

Next, the State does not necessarily have to prove

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that the defendant --

As part of constructive possession, for example, if you left something with a friend intending to come back later to pick it up, or intending to send someone else to pick it up for you, you would have constructive possession of it while it was in actual possession of your friend. But to understand that just being present where something is located does not equal -- but understand that that does not equal possession.

The State must prove the defendant had actual or constructive possession of the methamphetamine and knew that he did for you to find him guilty of this crime. This, of course, is for all of you to decide.

Another thing about possession. The State does not have to prove that the defendant was the only one who had possession of the drugs. Two, or more, people can together share actual or constructive possession over the property. And if they do, both are considered to have possession, as far as the law is concerned. But, remember, that just being present with others who have had possession is not enough to convict. The Government must prove that the defendant had either actual or constructive possession of the methamphetamine, and that he did, for you to find him guilty of this crime. Again, it's for you to decide.

The mere knowledge that another person is going to

commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal. Guilt is shown by active or constructive presence at the scene, and the State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.

A principal in a crime is one who either actually commits the crime, or who is present aiding, abetting, or assisting in the commission of the crime.

When a person does an act in the presence of and with the assistance of another, the act is done by both, whether two, or more, are acting with a common plan or intent or present at the commission of a crime. It does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all.

Present means to be sufficiently near to aid and abet and assist in the commission of the crime.

Intent is also a necessary element, but there must have been a common design or intent to commit the crime, and the crime must have been committed pursuant to that plan of the person aiding, abetting by some overt act.

A person who is present at the scene of a crime and intentionally or through a common plan aided, abetted, or assisted in the commission of that crime through some overt act is guilty as an accomplice. To be liable as an

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accomplice, the defendant must have had knowledge -- must have knowledge of the principal's criminal conduct. Mere presence at the scene of the crime is not sufficient to establish guilt as an accomplice.

Intentionally means willfully intending the result which actually occurs, not accidentally or involuntarily.

The defendants Antonio Ochoa-Tavera and Manuel Cruz are charged with possession, manufacture, and/or trafficking in methamphetamine.

The State must prove beyond a reasonable doubt that the defendant knowingly sold, manufactured, delivered, purchased, brought into this state, provided financial assistance, or otherwise aided, abetted, attempted, or conspired to sell, manufacture, cultivate, deliver, purchase, or bring into this state; was actually in actual or constructive possession, knowingly attempting to become in actual or constructive possession of 10 grams, or more, of methamphetamine.

To manufacture means to produce, prepare, convert, process, plant, cultivate, grow or harvest a drug naturally or chemically.

Manufacturing includes any packaging or re-packaging of the drug, or labeling or re-labeling of a drug's container.

Methamphetamine includes any salt, isomer, or salt

of an isomer, or any mixture or compound containing amphetamine or methamphetamine.

The State must also prove beyond a reasonable doubt the amount of methamphetamine was 200 grams, or more, but less than 400 grams.

Now, let me go over a few points with you before you begin to deliberate, and I'll remind that you don't serve as jurors to be partisans or advocates for either side. You were chosen because both sides believed that you could be fair and impartial and decide the case solely on the evidence and without bias or prejudice. That means that you are to use your experiences in life, your good common sense and your sense of logic and reason. You bring those things to bear on what you have heard in the courtroom. Once you do that, you will be able to determine the truth of this case. Once you have decided the truth, you take it and apply the law as I have given it to you. When you have done that, you will be able to reach a verdict that will speak the truth in this case.

Deliberation is defined as the careful consideration and weighing up with a view to a decision. The genius of our jury system, it allows twelve good men and women from twelve different backgrounds, life experiences and perspectives to consider the evidence, talk about it and ultimately reach a verdict.

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We call them deliberations for a reason. You are to consider the evidence in this case carefully and deliberately and discuss it in a calm, thorough, and courteous manner.

Remember, you are not partisans or advocates for either side favoring one side or the other. You are judges, judges of the facts. Your sole interest is to find the truth in the evidence you have heard in this courtroom. Listen to the views of your fellow jurors. Consider other people's points and points of view and talk through and discuss the evidence.

Remember, if you are doing something deliberately, you are not in a big hurry. You shouldn't be in a hurry. The case is very important to both sides.

When you retire to the jury room, you should discuss the case with your fellow jurors to reach an agreement, if you can do so. Your verdict must be unanimous.

If you need to take a break or someone needs to go to the bathroom while you are deliberating, you must stop deliberations. You can only deliberate when all twelve jurors are present in the jury room.

Each of you must decide the case for yourself, and you should only do so after you have impartially considered all the evidence, discussed it fully with the other jurors

and listened to the views of your fellow jurors.

It's important that you attempt to reach a unanimous verdict, but that's, of course, only if each of you can do so after having made your own decision. Do not change an honest belief about the weight, the effect of the evidence simply to reach a verdict. In other words, don't change your opinion solely for the sake of reaching a unanimous verdict.

After you have deliberated and you have reached a unanimous verdict, Mr. Foreman, you are authorized -- you will have a verdict form for each defendant in the courtroom. You are authorized to fill out that verdict form, sign it and date it, and then notify the bailiff that you are ready to return to the courtroom.

The verdict form has two possible verdicts:

One, we, the jury, find the defendant not guilty;

Or, two, we, the jury, find the defendant guilty of trafficking methamphetamine in an amount greater than 200 grams, but less than 400 grams. And it would be signed by the foreperson and then dated.

Just because I have said the verdict in any particular order does not place any importance on the order in which I have stated them. We have to say one first, tell you what it is, so don't give that any weight about the order in which I have told you or the options on the verdict

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form.

If during your deliberations it becomes necessary to talk or ask a question of the court, you do so, Mr. Foreperson, by writing that out, and then I think in your jury room here there is a buzzer or something on the wall. The bailiff will show you where that is. You buzz that and then he'll stick his head in the door and you hand him the note, and then the note will come out here and we will attempt to answer your question. So if you want to communicate to the court, you need to do that in writing.

I'm going to release you to go to your jury room. I charge you do not start deliberating until the bailiff brings in the verdict forms and anything that was introduced into evidence. Once that is in there, you can start deliberating.

I also have been informed that Greenville County has provided lunches for you, and I think you have had an opportunity to request what you want. You can deliberate while you are eating; just that if somebody gets up and leaves, you must stop deliberation. But while you have your food there, if you want to start deliberating, you can, certainly however y'all see fit to do that, or you can wait until everybody finishes eating. That's left up to your preferences.

I'm going to ask the two alternates to remain

seated, and at this point we will -- the twelve jurors, if you will follow the bailiff, he will take you to the jury room.

(Whereupon, at 12:33 p.m., the jury panel went to the jury room, awaiting instructions to begin deliberations)

THE COURT: Anything further from the State?

MS. MONTS: Your Honor --

THE COURT: Well, let's do this. Let me ask the two alternates if -- Madam Bailiff, if you would just take them just right outside the door there in the hall.

(Whereupon, the two alternates left the courtroom)

THE COURT: The two alternates are now in the hall behind the courtroom. The door is closed.

Yes, Ms. Monts?

MS. MONTS: Your Honor, I was under the impression you were going to quote -- and maybe you did, quote the trafficking statute as is, and maybe you weren't going to quote the exact number, but my understanding what you said is that the defendants are charged with possession, manufacturing, and/or trafficking. Is that --

THE COURT: Yeah, I said the defendants, I read their names, are charged with possession, manufacturing, and or trafficking methamphetamine. That's what I charged the jury.

MS. MONTS: Yes, sir. I mean, is that -- I just

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thought you would charge them with trafficking.

THE COURT: Well, we had that discussion about the definition of manufacturing and the State's position in chambers was that they wanted me to instruct the jury on the definition of manufacture.

MS. MONTS: Yes, sir.

THE COURT: And so then -- you know, it's charged with possession, manufacture, and/or trafficking. What is the -- if I'm going to define manufacture, do you believe it's improper for me to read that part of the statute?

MS. MONTS: Your Honor, I just thought that you would say they were charged with trafficking, and trafficking consists of, you know, manufacturing, but if you believe it's correct, I just wanted to make sure.

THE COURT: I followed the statute.

MS. MONTS: And I wanted to make sure as I was trying to make sure, did you include the word conspiracy in the definition?

THE COURT: I did.

MS. MONTS: Okay.

THE COURT: Attempted or conspires to sell, cultivate, yes, the word conspiracy --

MS. MONTS: Thank you, Your Honor.

THE COURT: -- is in there.

Anything from -- anything from the defense?

MR. CRANGLE: None from Mr. Cruz.

MR. ROBINSON: None from Mr. Ochoa, Your Honor.

THE COURT: All right. Let's bring the alternates.

(Whereupon, the alternates were brought back into the courtroom)

THE COURT: Y'all don't have to sit down. Y'all are through. Thank you for being here. Obviously nobody got sick or unable to serve, so you will not have to stay any longer. We didn't order you lunch in anticipation that you would be released. You do not have to go back downstairs. The bailiff will show you how to get out. Your services will not be needed for jury the rest of the week. If you need any of -- the clerk informs me that if you need anything for work purposes, they will take you down to Ms. Olson downstairs, who will give you a form, whatever you need. You can stay, if you wish, but you would need to be out there in the audience, but you are free to go. All right. Thank y'all.

(Whereupon, at 12:36 p.m., the alternates were discharged from the jury panel)

THE COURT: If the lawyers could come up and look at the verdict forms and determine which pieces of -- what exhibits were entered into evidence and let them go back.

MS. MONTS: And, Your Honor, would you be sending

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a computer or something back then if they want to see the audio and video; or do you tell them if they want to see it, to come into the courtroom?

THE COURT: We will tell them to come in -- I will have the bailiff just to tell them if they need to see or hear those, they will need to come into the courtroom.

(Off the record)

(Back on the record)

THE COURT: I don't recall the scales being admitted into evidence, but I may be wrong.

MS. MONTS: Yes, Your Honor, I did it through Mr. Garrett.

(Off the record)

(Back on the record)

THE COURT: Are y'all in agreement with what all there is to go back to the jury? Mr. Crangle?

MR. CRANGLE: Yes, judge, I mean everything can go back there.

THE COURT: Mr. Robinson?

MR. ROBINSON: Hold on one second, Your Honor.

THE COURT: Okay.

(Off the record)

(Back on the record)

MR. ROBINSON: We are still on the record? Let's --

MS. MONTS: Yes, Your Honor.

THE COURT: All right. If the bailiff would come in and get everything off the table and the verdict forms.

THE CLERK: All right. May we put them in this box?

THE COURT: That would be great.

And take those back to the jury and just -- are you going to take them back?

THE BAILIFF: I'll take them back to the jury room.

THE COURT: Tell the jury if they want to watch or hear the audio or the video, they would need to come back in the courtroom.

THE BAILIFF: Okay.

THE COURT: Anything else from the State?

MS. MONTS: No, Your Honor.

THE COURT: Anything from the defense?

MR. CRANGLE: Just for the record, Mr. Cruz renews all of his prior objections and his motions.

THE COURT: All right. Your motions are noted.

Anything else?

MR. ROBINSON: No.

THE COURT: We will be at ease while the jury deliberates.

(Whereupon, at 12:40 p.m., the jury panel was

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instructed to begin deliberations)

(Whereupon, at 12:41 p.m., proceedings were recessed, pending the verdict of the jury panel)

(Whereupon, at 2:35 p.m., proceedings were reconvened)

THE COURT: Well, let's go back on the record.

The jury has sent out a note to the court. The note says "we would like the transcript from Lewis and Ramirez on the time when they entered the apartment."

The court has shown this to all the attorneys in the case. We have agreed that the court will instruct the jury when they come back in that we do not provide a transcript, but they can rehear testimony, and we have the testimony provided by the court reporter where Mr. Ramirez and Mr. Lewis at the point where they enter the parking lot of the apartment, and we will ask the foreman to raise his hand when he believes that they have heard enough.

All right. Anything from the State?

MS. MONTS: No, Your Honor.

THE COURT: Anything from the defense?

MR. ROBINSON: No, sir.

MR. CRANGLE: Nothing from Mr. Cruz, no, sir.

THE COURT: All right. Bring the jury in.

(Jury Note marked as Court's Exhibit No. 2 for identification)

(Whereupon, at 2:37 p.m., the jury returned to open court)

THE COURT: Thank you, ladies and gentlemen.

The court was handed a note by the bailiff from the jury. The note is marked Court's Exhibit 2. It states "we would like the transcript from Lewis and Ramirez on the time when they entered the apartment."

The court does not -- we don't have a transcript -- we are not permitted to provide you with a transcript. However, we have cued up our recording and the court intends to have the court reporter play back the testimony of when Mr. Lewis entered the parking lot of the apartment and the testimony of Mr. Ramirez when he entered the parking lot. And if at the appropriate time, Mr. Foreman, when you have heard enough to satisfy the jury's question on this, then raise your hand and we will stop.

We will start with Mr. Lewis'. We will stop it when you raise your hand. Then we will play Ramirez' testimony, and then at the appropriate time if you would raise your hand, we would stop. Okay.

JURY FOREMAN: Okay.

THE COURT: Would that satisfy the request of the jury in the note that was sent out?

JURY FOREMAN: Yes.

THE COURT: Okay. Thank you.

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All right.

COURT REPORTER: This is Mr. Lewis.

(Whereupon, the requested testimony of Mr. Lewis was played back to the jury panel)

COURT REPORTER: This is Mr. Ramirez.

(Whereupon, the requested testimony of Mr. Ramirez was played back to the jury panel)

THE COURT: Thank you.

That's the testimony that we had played back for you.

I would tell the jury if there is other testimony that you would like to hear, if you could identify when you are allowed to hear testimony just in the same form we did.

You are also provided with an audio and video. If you would like to see or hear those videos, put that on a note and we would bring you back out here and play those here in the courtroom.

All right. Thank you.

(Whereupon, at 2:50 p.m., the jury panel returned to the jury room to continued deliberations)

THE COURT: Anything from the State?

MS. MONTS: No, Your Honor.

THE COURT: Anything from the defense?

MR. CRANGLE: No, judge.

MR. ROBINSON: No, judge.

THE COURT: All right. We will be at ease.

(Whereupon, at 2:52 p.m., proceedings were recessed. pending the verdict of the jury panel)

(Whereupon, at 2:55 p.m., proceedings were reconvened)

(Jury Note marked as Court's Exhibit No. 3 for identification)

THE COURT: We have another note from the jury. It's been marked Court's Exhibit 2.

The jury said "we would like to hear the audio." So we are going to bring the jury out.

Ask them to bring the audio with them and we will play it in its entirety.

MS. MONTS: Your Honor, if you want to ask them if there is a part, or, you know, if they want us to fast forward through the part that has no sound?

THE COURT: Okay.

MS. MONTS: The entire thing with us fast forwarding through is 26 minutes.

THE COURT: All right. Is the defense comfortable with them fast forwarding?

MR. CRANGLE: Yeah, they are not going to try to pull anything.

THE COURT: All right. We will -- you can go ahead and bring them in.

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(Whereupon, at 3:00 p.m., the jury panel returned to the courtroom)

THE COURT: Thank you, ladies and gentlemen.

The court did receive your request to listen to the audio. We would play the audio that was introduced into evidence, State's Exhibit No -- what is the exhibit number?

MS. MONTS: 15, sir.

THE COURT: State's Exhibit 15.

And there may be some fast forwarding through some down time on it. All right.

Well, let me do this. If there is -- if at some point, Mr. Foreman, if the video -- if the audio where you have listened to it satisfies what you have heard and you don't need to hear any more, just raise your hand. If not, we will play it in its entirety.

THE WITNESS: Okay.

(Whereupon, State's Exhibit No. 15 was played to the jury panel)

THE COURT: All right. Ladies and gentlemen, you can return to your jury room.

(Whereupon, at 3:20 p.m., the jury panel returned to the jury room to continue deliberations)

THE COURT: Anything from the State?

MS. MONTS: No, Your Honor.

THE COURT: Anything from the defense?

MR. CRANGLE: No.

MR. ROBINSON: No.

THE COURT: We will be at ease.

(Whereupon, at 3:21 p.m., proceedings were recessed, pending the verdict of the jury panel)

(Whereupon, at 5:38 p.m., proceedings were reconvened)

THE COURT: Let's go back on the record.

(Jury Note marked as Court's Exhibit No. 4 for identification)

THE COURT: We have a note from the jury. I have marked it Court's Exhibit 4.

The note says "we have a verdict on Ochoa. We are not decided on Cruz. From what I can tell, a decision will not be reached soon if at all."

And y'all help me sort of figure out where we go from here.

I think that the proper thing to do would be to have the jury come back in. We will ask Mr. Cruz to be taken back to the holding cells. We will then read the verdict on Ochoa. And I think we can take the --

If the lawyers would come up?

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: All right. After consulting with the

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lawyers for the parties --

Again, the jury sent out a note saying "we have a verdict on Ochoa. We are not decided on Cruz. From what I can tell a decision will not be reached soon, if at all."

I am going to hand write on the note "continue deliberating. We will order supper, if the jury desires." Does that make sense?

MR. CRANGLE: Sounds good to me.

THE COURT: All right. The court hand wrote at the bottom of the note "continue deliberating. The court will order Chic-Fil-A, if desired." I signed my name. Okay?

MS. MONTS: Thank you.

MR. CRANGLE: Thank you.

No, don't go very far. I anticipate that the next thing is going to be somebody is going to need to call home and tell family where they are and that kind of thing. I mean, even though we instructed them yesterday to make sure that they had made all arrangements, I anticipate somebody is probably going to want to request to call home, so just hang around close.

MR. CRANGLE: All right. I just want to talk to Mr. Cruz.

THE COURT: That's fine.

(Off the record).

(Back on the record)

THE COURT: Why don't we have Mr. Ochoa on back. Take him on back there.

(Whereupon, at 5:44 proceedings were recessed, pending the verdict of the jury panel)

(Whereupon, at 6:05 p.m., proceedings were reconvened).

THE COURT: The lawyers want to come up?

(Whereupon, the lawyers approached the bench for an off-the-record discussion).

(Jury Note marked as Court's Exhibit No. 5 for identification)

(Jury Note marked as Court's Exhibit No. 6 for identification)

THE COURT: We have two notes from the jurors. One, a handwritten note from juror 171 marked Court's Exhibit 5 that talks about some dietary issues. The bailiff has solved those.

Then Court's Exhibit 6 is a handwritten note from the jury, "we need a detailed definition of trafficking, as well as sub-term definitions. Also a definition of reasonable doubt."

So the court is going to have them brought in. I will recharge on what I charged on trafficking methamphetamine, and I will recharge on reasonable doubt.

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Anything else from the State?

MS. MONTS: Your Honor, in your original trafficking charge did it include -- it included the definition of manufacturing, but did it include one for conspiracy?

THE COURT: No, and I'm limited to what I charged.

MS. MONTS: All right. Thank you.

THE COURT: All right, let's bring the jury in.

Anything from the defense?

MR. CRANGLE: None from Mr. Cruz, judge.

MR. ROBINSON: No, sir.

THE COURT: All right, let's bring the jury in.

One question, Ms. Monts. Under the accomplice liability and the hand of one, the hand of all, I believe there was conspiracy language in that, but they have not asked for it. No, there is no -- I did not have a specific definition of conspiracy.

MS. MONTS: Thank you.

(Whereupon, at 6:16 p.m., the jury panel returned back to the courtroom)

THE COURT: Thank you, ladies and gentlemen.

I did receive a note from the jury. We are having food brought in.

At this time I will read the charges that I gave you earlier on manufacturing and trafficking

methamphetamine, and I will read my charge that I gave you earlier on reasonable doubt.

The defendants, Antonio Ochoa-Tavera and Manuel Cruz, are charged with possession, manufacture, and/or trafficking in methamphetamine. The State must prove beyond a reasonable doubt that the defendant knowingly sold, manufactured, delivered, purchased, brought into this state, provided financial assistance, or otherwise aided, abetted, attempted, or conspired to sell, manufacture, cultivate, deliver, purchase, or bring into this state, was knowingly in actual or constructive possession, knowingly attempted to become in actual or constructive possession of ten grams or more of methamphetamine.

To manufacture means to produce, prepare, convert, process, plant, cultivate, grow, or harvest a drug naturally or chemically. Manufacturing includes any packaging or repackaging of a drug or labeling or relabeling of the drug's container.

Methamphetamine includes any salt isomer, or salt of an isomer, or any mixture or compound containing amphetamine or methamphetamine.

The State must also prove beyond a reasonable doubt that the amount of methamphetamine was 200 grams or more, but less than 400 grams.

The Code Section is Section 44-53-375(C)(4) of the

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South Carolina state law.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove the fact is more likely true than not, such as by the greater weight or preponderance of the evidence. However, in criminal cases the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Ladies and gentlemen, proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

A reasonable doubt may also be described as the kind of doubt that would cause a reasonable person to hesitate to act. If you have such a doubt as to the guilt of the defendant, then he or she would be entitled to a verdict of not guilty. Reasonable doubt may arise from the evidence which is in the case, or from the absence or lack of evidence in the case.

If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other

hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

You alone must make the determination of whether or not reasonable doubt exists as to the guilt of the defendant.

Thank you. Y'all can return to your jury room and continue deliberating.

(Whereupon, at 6:21 p.m., the jury panel returned the jury room to continue deliberations)

THE COURT: Anything additional from the State?

MS. MONTS: No, Your Honor.

THE COURT: Anything from the defense?

MR. CRANGLE: Nothing, judge.

MR. ROBINSON: No judge.

THE COURT: Thank you. We will be at ease.

(Whereupon, at 6:22 p.m. proceedings were recessed, pending the verdict of the jury panel)

(Whereupon, at 8:18 p.m., proceedings were reconvened)

(Jury Note marked as Court's Exhibit No. 7 for identification)

THE COURT: All right. We are back on the record.

The court has been handed another written note from the jury and we have now marked it Court's Exhibit 7.

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The handwritten note "we need a definition of aiding and abetting. We would like that in written form. May we have a written definition of trafficking? We cannot remember all the details that define trafficking. We as a group do not want to overlook any details. Our vote is the same as it was three hours ago."

Y'all lawyers come on up.

(Whereupon, the lawyers approached the bench for an off-the-record discussion)

THE COURT: All right, bring the jury in.

(Whereupon, at 8:23 p.m., the jury panel returned to the courtroom)

THE COURT: Thank you, ladies and gentlemen.

The court has received your note. The court -- we don't send the written charges back to you. What the court is going to do, I will read the statute again on manufacturing, trafficking methamphetamine.

I will also read what I charged you on accomplice liability, and then I have another charge that I will read to you as well.

The note that was sent out indicated that the jury is still not unanimous on one of the defendants. Is that correct, Mr. Foreman?

JURY FOREMAN: Yes, sir.

THE COURT: All right. I'm going to charge you on

manufacturing and trafficking methamphetamine.

The defendants, Antonio Ochoa-Tavera and Manuel Cruz, are charged with possession, manufacture, and/or trafficking in methamphetamine. The State must prove beyond a reasonable doubt that the defendant knowingly sold, manufactured, delivered, purchased, brought into this state, provided financial assistance, or otherwise aided, abetted, attempted or conspired to sell, manufacture, cultivate, deliver, purchase, or bring into this state, was knowingly in actual or constructive possession, knowingly attempted to become in actual or constructive possession of ten grams or more of methamphetamine.

To manufacture means to produce, prepare, convert, process, plant, cultivate, grow, or harvest a drug naturally or chemically.

Manufacturing includes any packaging or repackaging of the drug or labeling or relabeling of the drug's container.

Methamphetamine includes any salt isomer or salt of an isomer, or any mixture or compound containing amphetamine or methamphetamine.

The State must also prove beyond a reasonable doubt that the amount of methamphetamine was 200 grams or more, but less than 400 grams.

A person who was present at the scene of the crime

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and intentionally or through a common plan aided, abetted or assisted in the commission of that crime through some overt act is guilty as an accomplice.

To be liable as an accomplice the defendant must have knowledge of the principal's criminal conduct.

Mere presence at the scene of the crime is not sufficient to establish guilt as an accomplice.

Intentionally means willfully, intending the result which actually occurs, not accidentally or involuntary.

Ladies and gentlemen of the jury, you have stated that you have been unable to agree on the verdicts in this case. As I instructed you earlier, the verdict of the jury must be unanimous. When a matter is in dispute, it isn't always easy for even two people to agree, so when twelve people must agree, it becomes even more difficult. In most cases absolute certainty cannot be reached or expected. However, you have a duty to make every reasonable effort to reach a unanimous verdict. In doing this you should consult with one another, express your own views and listen to the opinions of your fellow jurors. Tell each other how you feel and why you feel that way. Discuss your differences with open minds.

Although the verdict of the jury must be unanimous, every one of you has the right to your own

opinion. The verdict you agree to must be your own verdict, a result of your own convictions, and you shall not give up your firmly held beliefs merely to be in agreement with your fellow jurors. The majority should consider the minority's position, and the minority should consider the majority's position. You should carefully consider and respect the opinions of each other and re-evaluate your position for reasonableness, correctness and impartiality. You must lay aside all outside matters and re-examine the questions before you based on the law and evidence in this case.

If you do not agree on the verdict in this case, I must declare a mistrial. In that case it does not mean anybody wins. It just means that at some future time I will try this case with some other jury sitting where you now sit. The same participants will come and the same lawyers will ask basically the same questions and get basically the same answers and we will go through the whole process again. You were selected in the same manner and from the same source as any future jury will be. There is no reason for me to suppose that the case will ever be submitted to twelve more intelligent, impartial, conscientious and competent jurors than you or that more or clearer evidence would be produced on one side or the other.

At this point I ask that you return to your deliberations.

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(Whereupon, at 8:28 p.m., the jury panel returned to the jury room to continue deliberations)

THE COURT: Let me put on the record that the court not only answered the questions on the last handwritten note, but after seven and a half hours of deliberation the court did read the standard Allen Charge to the jury.

Anything further from the State?

MS. MONTS: No, Your Honor.

THE COURT: Anything from the defense?

MR. CRANGLE: No judge.

MR. ROBINSON: No, Your Honor.

THE COURT: We can be at ease.

(Whereupon, at 8:29 p.m., proceedings were recessed, pending the verdict of the jury panel)

(Whereupon, at 9:45 p.m., proceedings were reconvened)

(Jury Note marked as Court's Exhibit No. 8 for identification).

THE COURT: All right. The court has been handed a note from the jury, Court's Exhibit 8, "we still have a 5 to 7 vote. No one has changed their vote on Mr. Cruz. We had a verdict on Mr. Ochoa."

So we need to bring them in. I'll declare a mistrial on Mr. Cruz, and then we will see what the verdict

is on Mr. Ochoa.

I think as a matter of logistics, what I would like do is ask them have they reached a verdict on Mr. Ochoa, and then ask are they unable to reach a verdict on Mr. Cruz. And assuming the answer is that they are not, deadlocked, then I'm going to ask Mr. Cruz to be taken out and then we will do the verdict on Mr. Ochoa.

(Whereupon, at 9:50 p.m., the jury panel returned to the courtroom to render its verdict).

THE COURT: All right, ladies and gentlemen, thank you for your hard work all afternoon.

I understand that on the case of the State versus Antonio Ochoa-Tavera you were unable to reach a verdict, is that right, Mr. Foreman? You are unable to reach --

JURY FOREMAN: No.

THE COURT: I'm sorry, on Mr. Manuel Cruz you are unable to reach a verdict, is that correct?

JURY FOREMAN: That's correct.

THE COURT: And would additional time deliberating make any difference?

JURY FOREMAN: I do not believe so at this time.

THE COURT: All right. Then I'm going to declare a mistrial as to State versus Manuel Cruz, and so that concludes our need for Mr. Cruz.

(Whereupon, Defendant Manuel Cruz left the

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courtroom)

THE COURT: Now, has the jury reached a unanimous verdict on Antonio Ochoa-Tavera, Mr. Foreman?

JURY FOREMAN: Yes.

THE COURT: And is that verdict unanimous?

JURY FOREMAN: Yes.

THE COURT: All right. Would you hand the verdict form up to the bailiff?

THE CLERK: Your Honor, in the case of 2014-GS-23-9505, the State of South Carolina versus Antonio Ochoa-Tavera, we, the jury, find the defendant guilty of trafficking in methamphetamine in an amount of greater than 200 grams, but less than 400 grams.

This is signed by Mr. Anderson, our foreperson.

Ladies and gentlemen, if you agree this is the verdict you reached in your deliberation room, would you please raise your right hand?

(Whereupon, all the jurors raised their right hand)

THE CLERK: I thank you.

THE COURT: Thank you.

Anything before we release the jury, from the defense?

MR. ROBINSON: No, sir, Your Honor.

THE COURT: All right. And from the State?

MS. MONTS: No, Your Honor.

THE COURT: All right. Ladies and gentlemen, thank you for your hard work. You have certainly paid attention, close attention, the last three days. The bailiff will show you how to get out. I think that they will have someone -- there should be courtroom security that will walk you to your cars. I thank you for your service. We appreciate your being here.

We will hear from Mr. Ochoa-Tavera in just, or his lawyer, in just a few moments. If you want to stay for that, you can. You are not -- you know, you are free to go.

At this point you can talk to anybody you want to about your jury service and about the case. You are not required to talk to anybody. If somebody asks you about the case, you don't have to talk to them. Sometimes lawyers like to talk to -- call jurors or talk to them and it may help them understand their case, but if they do call, you do not have to talk to them. But if you want to, you are free to do that. If somebody started badgering you about it or anything, then you let the court know that, but, again, you are free to talk about the case with whomever you would like.

Thank you for your service and the bailiff will show you all how to get out. Thank you.

(Whereupon, at 9:54 p.m., the jury panel was

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discharged)

THE COURT: All right. Do we have a sentencing sheet?

MR. CRANGLE: Judge, did you need anything else for me?

THE COURT: No, your services are complete.

MR. CRANGLE: Thank you, judge.

THE COURT: All right. Mr. Ochoa-Tavera, if you would stand, please.

Anything that you want to say on behalf of your client, Mr. Robinson?

MR. ROBINSON: Your Honor, I would respect the jury's decision in this case. It was a hard fought case, deliberated for a long period of time. We would ask the court in this case -- he has no record to speak of, I don't believe. We would ask the court for the minimum sentence in this case. Unfortunately it is a mandatory sentence, but we ask the court to give that consideration, as far as no prior record.

THE COURT: All right. Thank you.

Anything from the State?

MS. MONTS: Your Honor, the only prior record of the defendant is in 2010, a no driver's license and driving a vehicle with a wrong tag.

THE COURT: Obviously the legislature has seen fit

on this particular charge to legislate a 25 year sentence, no more, no less, and so I am bound by the law.

MR. ROBINSON: Thank you, judge.

THE COURT: Hold on just a minute and let me --

Do y'all know how much time he has spent in the county detention center?

MS. MONTS: Your Honor, he has been in since July 2nd of 2014, but I don't know the exact days. I can have that in the morning, or if you could just --

THE COURT: I'll put credit for time served since July the 2nd.

All right. Indictment 2014-GS-23-9505, the State of South Carolina versus Antonio Ochoa-Tavera, having been convicted by a jury of trafficking in methamphetamine more than 200 grams, but less than 400 grams, the defendant is committed to the State Department of Corrections for a determinate term of 25 years.

Give him credit for time served since July the 2nd of 2014. Thank you.

(END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for GREENVILLE County, South Carolina, on the 9th, 10th and 11th day of February, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

DECEMBER 20, 2015

Michael R. Watts
Circuit Court Reporter

# Greenville County Courthouse
## RANDOM STRIKE SHEET

**JUDGE NAME :**
**TRIAL TYPE :** Criminal
**PANEL ID :** HALL 2/9/2015
**COURTROOM** CRT4

**DESCRIPTION :** HALL 2/9/2015

**Sorted by:** Random I
Trial

| | NAME | JUROR NBR | RACE | SEX | ST/PLTFF | DEF | CRT (Seated) | REMARKS |
|---|---|---|---|---|---|---|---|---|
| 1 | Brown, Jason D | 18 | W | M | ( ) | ( ) | (✓) | (1) |
| ~~2~~ | ~~Guerrant, Deborah E~~ | ~~55~~ | ~~W~~ | ~~F~~ | ~~( )~~ | ~~( )~~ | ~~( )~~ | |
| 3 | Jones, Maurice C | 77 | B | M | (✓) | ( ) | ( ) | S-1 |
| ~~4~~ | ~~Woodward, Carrie C~~ | ~~182~~ | ~~W~~ | ~~F~~ | ~~( )~~ | ~~( )~~ | ~~( )~~ | |
| 5 | Selby, Harriet E | 144 | W | F | ( ) | (✓) | ( ) | D-1 |
| 6 | Davenport, Amy Gilmer | 28 | W | F | ( ) | ( ) | (✓) | (2) |
| 7 | Reim, Shirley L | 133 | W | F | (✓) | ( ) | ( ) | S-2 |
| ~~8~~ | ~~Thornton, Mary B~~ | ~~160~~ | ~~W~~ | ~~F~~ | ~~( )~~ | ~~( )~~ | ~~( )~~ | |
| 9 | Spadafora, Patrick D | 153 | W | M | ( ) | (✓) | ( ) | D-2 |
| 10 | Burch, Claire L | 21 | W | F | ( ) | (✓) | ( ) | D-3 |
| 11 | Amyx, Audra C | 3 | W | F | ( ) | (✓) | ( ) | D-4 |
| 12 | Underwood, Phoebe T | 164 | W | F | ( ) | ( ) | (✓) | (3) |
| 13 | Jennings, Stephen P | 75 | W | M | ( ) | ( ) | (✓) | (4) |
| 14 | Bunting, Tommy J | 20 | W | M | ( ) | ( ) | (✓) | (5) |
| 15 | Holmesley, Tracy H | 68 | W | F | ( ) | (✓) | ( ) | D-5 |
| 16 | Perkins, Beatrice S | 126 | W | F | ( ) | ( ) | (✓) | (6) |
| 17 | Robertson, Kayla | 135 | W | F | ( ) | ( ) | (✓) | (7) |
| 18 | Watts, Frank B | 171 | W | M | ( ) | ( ) | (✓) | (8) |
| 19 | Mazzarell, Richard James | 107 | W | M | ( ) | (✓) | ( ) | D-6 |
| 20 | Matheny, Lorraine E | 104 | W | F | ( ) | (✓) | ( ) | D-7 |
| 21 | Gordon, James F | 50 | W | M | ( ) | ( ) | (✓) | (9) |
| 22 | Kilgore, Daniel W | 83 | B | M | (✓) | ( ) | ( ) | S-3 |
| 23 | Pittman, David W | 127 | W | M | ( ) | (✓) | ( ) | D-8 |
| 24 | Anderson, Eric W | 4 | W | M | ( ) | ( ) | (✓) | (10) |

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# Greenville County Courthouse
## RANDOM STRIKE SHEET

**JUDGE NAME :**
**TRIAL TYPE** Criminal
**PANEL ID :** HALL 2/9/2015
**COURTROOM** CRT4

**DESCRIPTION :** HALL 2/9/2015

**Sorted by:** Random
Trial

| | NAME | JUROR NBR | RACE | SEX | ST/PLTFF | DEF | CRT Seated | REMARKS |
|---|---|---|---|---|---|---|---|---|
| 25 | Daniel, Shana C | 27 | W | F | ( ) | ( ) | (✓) | (16) |
| 26 | Jones, David D | 76 | W | M | ( ) | (✓) | ( ) | D-9 |
| 27 | Jenkins, Judy D | 74 | W | F | ( ) | ( ) | (✓) | (12) |
| 28 | Davis, Travis C | 30 | W | M | (✓) | ( ) | ( ) | S-1 alternate |
| 29 | Stegall, Stacie B | 157 | W | F | ( ) | ( ) | (✓) | (13) Alternate |
| 30 | Berger, Orinda P | 8 | W | F | ( ) | ( ) | (✓) | (14) Alternate |
| 31 | Mattison, Jimmy J | 106 | B | M | ( ) | ( ) | ( ) | |
| 32 | Douglas, Jeffrey J | 34 | W | M | ( ) | ( ) | ( ) | |
| 33 | Bozeman, Shana C | 11 | B | F | ( ) | ( ) | ( ) | |
| 34 | Werling, Patricia A | 172 | W | F | ( ) | ( ) | ( ) | |
| 35 | Mapes, Betty A | 100 | W | F | ( ) | ( ) | ( ) | |
| 36 | Sprogis, Kylie A | 155 | W | F | ( ) | ( ) | ( ) | |
| 37 | Gray, James D | 52 | B | M | ( ) | ( ) | ( ) | |
| 38 | Bluhm, Alvin A | 185 | W | M | ( ) | ( ) | ( ) | |
| 39 | Toro, Emma D | 162 | H | F | ( ) | ( ) | ( ) | |
| 40 | Materna, Angela G | 103 | W | F | ( ) | ( ) | ( ) | |

**Total Number of Jurors:** 40

** END OF REPORT **

# STATE OF SOUTH CAROLINA
# COUNTY OF CHEROKEE

Case No. 2014-GS-23-249 05
2014-GS-23-9513

Plaintiff(s) South Carolina

vs.

Defendant(s) Manuel Cruz, Antonio Ochoa-Tavera

| PLAINTIFF'S EXHIBITS | DEFENDANT'S EXHIBITS | COURT'S EXHIBITS |
|---|---|---|
| 1 Photo | 1 | 1 Search Warrant |
| 2 photo | 2 | 2 Jury Note |
| 3 photo | 3 | 3 Jury Note |
| 4 Photo | 4 | 4 Jury note |
| 5 Photo | 5 | 5 Jury Note |
| 6 Photo | 6 | 6 Jury Note |
| 7 Photo | 7 | 7 Jury note |
| 8 Photo | 8 | 8 Jury note |
| 9 Photo | 9 | 9 |
| 10 Photo | 10 | 10 |
| 11 photo | 11 | 11 |
| 12 photo | 12 | 12 |
| 13 Photo (10) | 13 | 13 |
| 14 Photo | 14 | 14 |
| 15 ~~Video~~ audio | 15 | 15 |
| 16 Video | 16 | 16 |
| 17 Rent LEDger | 17 | 17 |
| 18 Drugs | 18 | 18 |
| 19 Drugs | 19 | 19 |
| 20 Drugs | 20 | 20 |

Court Reporter Michael Watts

Clerk of Court Mary Thorp

# STATE OF SOUTH CAROLINA
# COUNTY OF CHEROKEE

Case No. 2014-GS-23-951
2014-GS-23-9513

Plaintiff(s) South Carolina

vs.

Defendant(s) Manuel Cruz, Antonio Ochoa-Tavera

| PLAINTIFF'S EXHIBITS | DEFENDANT'S EXHIBITS | COURT'S EXHIBITS |
|---|---|---|
| 1 Drugs | 1 | 1 |
| 2 Digital Scale | 2 | 2 |
| 3 Passport | 3 | 3 |
| 4 passport | 4 | 4 |
| 5 Drugs | 5 | 5 |
| 6 Drugs | 6 | 6 |
| 7 Drugs | 7 | 7 |
| 8 Drugs | 8 | 8 |
| 9 | 9 | 9 |
| 10 | 10 | 10 |
| 11 | 11 | 11 |
| 12 | 12 | 12 |
| 13 | 13 | 13 |
| 14 | 14 | 14 |
| 15 | 15 | 15 |
| 16 | 16 | 16 |
| 17 | 17 | 17 |
| 18 | 18 | 18 |
| 19 | 19 | 19 |
| 20 | 20 | 20 |

Court Reporter Michael M. Watts

Clerk of Court Mary Tilroy

**FORM 5**

STATE OF SOUTH CAROLINA )
)
County of Greenville )

IN THE COURT OF COMMON PLEAS

Antonio Ochoa Tavera 363134 )
Full name and prison number (if any) of Applicant )

v.

State of South Carolina )

2015-CP-23- 0444

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MCGINNIS, CLERK
2015 JUL 16 PM 4:11

**APPLICATION FOR POST-CONVICTION RELIEF**

## 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 LEE Correctional insitution

2. Name and location of Court which imposed sentence Greenville County Courthouse, 305 East North St, Greenville, S.C. 29601

3. Name(s) of co-defendant(s) (if any) Maurice Ramirez, Manuel Cruz

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2014-GS-23-9505, Trafficking Methamphetamine

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) February 13, 2015, 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?

No

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. N/A

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. N/A

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) Counsel fail to file notice of appeal

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) _____

(b) SEE ATTACHMENTS

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) _____

(b) SEE ATTACHMENTS

(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? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. N/A

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. N/A

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. N/A

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. N/A

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. N/A

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?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. N/A

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. N/A

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) Counsel failed to file appeal, PCR matter

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(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? no

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Scott D. Robinson, 9 East Avenue, Greenville, S.C. 29603

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Arraignment

ii. Trial

iii. Sentencing

19. State clearly the relief you seek in filing this application:

Reverse and Remand my Sentence and Conviction and Grant a New Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )
) VERIFICATION
County of Greenville )

I, Antonio Ochoa Tavera 363134, 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 ochoa Tavera A-07

SWORN to and subscribed before me this 25TH day of JUNE, 2015.

Janet D Driggers (L.S.)
*Notary Public*

My Commission Expires: 11-05-2019

**APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF**

I, Antonio Ochoa Tavera 363134, 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 ochoa tavera A.o.t
*Applicant*

SWORN or affirmed to and subscribed before me this 25th day of June, 2015.

David J Driggers
*Notary Public*

My Commission Expires: 11-05-2019

# ATTACHMENTS

10(A) Applicant was denied the right to effective assistance of Counsel, guaranteed by the Sixth and Fourteenth Amendments to the united States Constitution and the Corresponding provisions of the South Carolina Constitution

11(A) Applicant right to effective assistance of Counsel as guaranteed by the Sixth Amendment to the united states Constitution and South Carolina law was violated as a result of trial Counsel failure to advised applicant to testify in his defense united states vi stevens, 129 F. 3d. 1261 (4th C.r. 1997). Trial Counsel's deficiency deprived applicant of his right and ability to Communicate his story to the jury. This lack of personal Communication surely made it less likely for the jury to believe applicant's claims

10(B) Applicant was denied the right to effective assistance of Counsel, guaranteed by the Sixth and Fourtheenth Amendments to the united States Consitution and the corresponding provisions of the South Carolina Constitution

11(B) Applicant was denied the right to effective assistance of Counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States and South ~~Carolina~~ Carolina law when trial Counsel failed to perfect the direct appeal, when the applicant did not knowingly and voluntarily waive my right to a direct appeal from conviction and subsequently seek review of issues which arose at trial. Frasier v. State, 410 S.E2d 572 (S.C. 1991)., Davis v. State, 342 S.E2d 60 (S.C. 1986).

His Counsel's representation was not within the range and scope of Competence demanded by Strickland and its progeny.

A Convicted defendant's claim that Counsel's assistance was so defective as to require reversal of a conviction requires that the ~~defendant~~ applicant show first, that the deficient performance prejudiced the defense so as to deprive the applicant of a fair trial. Strickland v. Washington. 466 U.S. 668 (1984).

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | C.A. No. 2015-CP-23-4441 |
| COUNTY OF GREENVILLE | ) | |
| | ) | |
| Antonio Ochoa-Tavera, | ) | |
| S.C.D.C. No. 363134, | ) | |
| | ) | |
| Applicant, | ) | |
| | ) | **RETURN** |
| v. | ) | |
| | ) | |
| State of South Carolina, | ) | |
| | ) | |
| Respondent. | ) | |
| | ) | |

In response to the post-conviction relief application filed July 16, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2014 term of General Sessions for Trafficking Methamphetamine (2014-GS-23-9505). Scott D. Robinson, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On February 11, 2015 the Honorable Daniel D. Hall sentenced the Applicant to twenty-five (25) years imprisonment for trafficking methamphetamine, 200-400 grams. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
   a. Failure to advise to testify in his defense.
   b. Failure to file an appeal.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney

performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: _____
**Attorneys for Respondent**

January 29, 2016

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | |
| | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GREENVILLE | ) | |
| | ) | |
| | ) | 2015-CP-23-4441 |
| | ) | |
| ANTONIO OCHOA-TAVERA, 363134 | ) | |
| | ) | |
| 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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Antonio Ochoa-Tavera, 363134**
**Lee Correctional Institution**
**990 Wisacky Highway**
**Bishopville SC 29010**

DATED this 29th day of January, 2016.

Judy A. C. Carey, Legal Assistant
For Respondent

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | |
| | ) | COURT OF COMMON PLEAS |
| COUNTY OF GREENVILLE | ) | 2015-CP-23-4441 |
| | ) | |
| | ) | ORIGINAL |
| | ) | |
| ANTONIO OCHOA-TAVERA | ) | |
| APPLICANT | ) | |
| vs. | ) | TRANSCRIPT OF RECORD |
| | ) | |
| THE STATE OF SOUTH CAROLINA | ) | |
| RESPONDENT | ) | |

April 16, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR., Judge.

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

R. MILLS ARIAIL, JR., ESQ.
Attorney for the Applicant

DESHAWN H. MITCHELL, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

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There were no exhibits.

» > o < «

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THE COURT: Okay, yes, sir.

MR. MITCHELL: May it please the Court, Your Honor, this is 2015-CP-23-4441, Antonio Ochoa-Tavera vs. State of South Carolina. The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court orders of commitment. The Greenville County Grand Jury indicted The Applicant at the November 2014 term of General Sessions with trafficking methamphetamine. Mr. Scott G. Robinson represented The Applicant. After The State called the case to trial, The Applicant was found guilty.

On February 11th 2015, the Honorable Daniel B. Hall sentenced The Applicant to 25 years imprisonment for trafficking in methamphetamine, 200 to 400 grams. The Applicant did not appeal. He filed a Post-Conviction Relief Application on July 16th, 2015. He's present in the courtroom today represented by Mr. Mills Ariail.

THE COURT: Yes, sir.

MR. ARIAIL: Yes, sir, Your Honor, just one point, I wanted to make sure in talking with Mr. Mitchell in regards to it. I think there was one ground that he alleged that Mr. Robinson didn't file a direct appeal on his behalf. I think that we've

agreed--

MR. MITCHELL: Based on my talking to Mr. Robinson, it's my understanding that he did not file one so The State would concede that he's entitled to a belated appeal in this case.

THE COURT: Okay.

MR. ARIAIL: So, I can go ahead, I guess, that's stipulated so I don't have to put any evidence in in regards to that?

MR. MITCHELL: No.

THE COURT: All right, y'all are agreeing that he has a belated appeal on that issue?

MR. MITCHELL: Yes, sir.

THE COURT: Okay. But the rest of it would be withdrawn?

MR. ARIAIL: No, he's actually going forward on the other, I didn't want to have to put up --

THE COURT: I got you. I got you.

MR. ARIAIL: I still got additional grounds he wants to bring up.

THE COURT: Okay.

MR. ARIAIL: We're ready to proceed, Your Honor.

THE COURT: Ma'am, we're not going to swear you in again but we do need to swear him in.

(WHEREUPON, The Interpreter was previously sworn

in another hearing.)

(WHEREUPON, the following testimony was translated through The Interpreter.)

THE CLERK: Please raise your right hand.

Antonio Ochoa-Tavera, after being duly sworn, testified as follows:

THE CLERK: Thank you. You may come up to the witness stand. Please state your full name for the record.

THE WITNESS: Antonio Ochoa-Tavera.

DIRECT EXAMINATION

BY MR. ARIAIL:

Q Thank you, Mr. Ochoa-Tavera, am I pronouncing that correct?

A Yes, sir.

Q All right. Okay, now you filed a PCR that we're here today on?

A Yes.

Q And it involves allegations in regards to Mr. Robinson; is that correct?

A Yes.

Q Okay. And did you retain him to represent you on these charges?

A Yes.

Q Okay. And from my understanding it was a

tracking methamphetamine 200 to 400 grams?

A Yes.

Q Okay. And do you remember the timeframe that you retained him to represent you?

A I don't remember the exact month.

Q Okay. It would have been -- you were indicted sometime in November 2014, it would have been before that, correct?

A Yes.

Q Okay. When you were arrested for these charges did you ever get out on bond?

A No.

Q Okay. Now, when you retained Mr. Robinson, did he come to the law enforcement center to discuss the case with you?

A Yes.

Q Okay. How many times do you think you met with him?

A Two occasions.

Q Two times?

A Yes.

Q Okay. And that was at the law enforcement center?

A Yes.

Q Okay. And what did y'all discuss during those

meetings?

A He would tell me about the time that I could get. That Louis had called him and that he was blaming me for everything. And that if I plead guilty I think I would get around 18 to 28 years, something like that.

Q Okay. So, the discussion was what the co-defendant, Mr. Ramirez, was going to say about you at trial; is that correct?

A Yes, yes most of the time.

Q Okay. And from my understanding of the case, it was a confidential informant and another co-defendant, Mr. Ramirez, who were presenting evidence against you; is that correct?

A They didn't have any evidence against me, they had evidence against themselves.

Q Okay.

A Those were only statements made by them. Like Louis said I was guilty but I never met him I never knew who he was.

Q Did you discuss with Mr. Robinson--

A Yes, the whole time I would tell him that. I would tell him he's lying, I don't know why he's saying that. And that's what I was alleging. I don't know why he was blaming me when I didn't have anything to do with it. And the date of trial they were saying a lot of

things about me and I wanted to defend myself but Mr. Robinson told me that it was better that I not say anything.

Q Okay. And we'll get back to that in a second. In regards to your discussions with Mr. Robinson, did you discuss with him what could happen if the jury believed the co-defendant's testimony?

A Yes, I think so. I think we talked about it.

Q Okay. Did he tell you that if they believed the co-defendant, that you could go to jail?

A What happened was that we had these witnesses come at the end of the trial so we really didn't have time to talk about it.

Q Okay. And do you feel that he explained to you the evidence that could be presented against you at trial?

A No. And he didn't request it either.

Q Did he provide you any discovery?

A The only evidence that he had was the drugs found at the apartment.

Q Okay. And did you and him discuss, I guess, any evidence that you wanted to present?

A I told him there was more evidence like what they have. Small things that they had but they didn't want to present them during trial. But it's evidence that I would want to present at the trial.

Q Okay. And tell me what that evidence is.

A They found a pipe to smoke. They found some marijuana. And the drugs, there's fingerprints on the drugs but they're not mine.

Q Okay. How is the pipe and the marijuana, how does that help you?

A It can be used as evidence they can fingerprint or I'm sure they can fingerprint them and they can find something.

Q Okay. You're saying that the drugs that were found, the methamphetamine, was not fingerprinted?

A No, no I never touched that. That was not mine.

Q Did you also ask him to present information showing you weren't living there?

A Yes.

Q Okay. And also that your, I guess, you wanted him to present evidence showing that your truck was filled with items you were moving?

A Yes. I wanted him to do all of that. I wanted him to understand that I was moving that day from my trailer. I really didn't have time to talk to anyone except to that one person.

Q Who was the one person you're saying you spoke to?

A It was a friend of mine that lived there. And

he was going to help me move a mattress at home.

Q Okay. Did you discuss with Mr. Robinson about being able to testify at trial?

A Yes, I did tell him all of that.

Q Did you make a decision about, I guess, why you didn't -- maybe I can say it this way. Why did you not testify at trial?

A He told me not to.

Q Did you understand that if you did not testify, a lot of this information was not going to come in?

A Yes.

Q Okay. And did you make that discussion freely and voluntarily not to testify?

A Well, yes. When I was sentenced because I took his advice.

Q Okay. The things we have discussed I've gone through and tried to lay out exactly what you wanted me to discuss. Are they're other items that you're saying Mr. Robinson didn't do or was ineffective during his representation of you?

A No, that's it. I just had a lot of questions that we could have asked Louis. Like where did we meet, why did he say that we had done two or three transactions? How much he paid me for what I sold him according to him? How is it that I had his phone number, how did we

communicate? A lot of questions. A lot of questions that I wanted to ask him.

Q Okay. So, there would have been a lot of questions in cross-examination that you wanted asked that were not asked by Mr. Robinson?

A Yes. There were a lot of questions that I wanted to ask Louis that day.

Q Okay.

I think that's all the questions I have, Your Honor.

If you'll answer any questions from Mr. Mitchell.

MR. MITCHELL: May it please the Court, Your Honor?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Good morning, how are you?

A Good, thank you.

Q Good. Let me ask you again, just for the record sake, how many times did you meet with Mr. Robinson in preparing for trial?

A That I remember it was two times.

Q Okay. And whose decision was it to go to trial? Was it your decision or Mr. Robinson's decision?

A He told me what could happen and I thought to myself, Well, I'm not guilty, I'll go to trial.

Q Okay. Did Mr. Robinson go over the discovery in the case with you?

A Well, like I said, the only evidence that was found at the apartment was drugs, there wasn't anything else.

Q But the question I have for you, the discovery that was sent by The State, did he go over that with you?

A Yes.

Q Okay. Do you recall talking about any possible defenses with Mr. Robinson?

A A defense like what?

Q A defense saying that you weren't guilty or some way to prove that you weren't guilty?

A Yes but the only thing we discussed was that the time that I could get was 18 -- around 18 or 14 years or if I wanted to go to trial. And if I lost then I would get what I got. But I went to trial because I considered myself innocent.

Q Were you living at the house?

A No.

Q So, where were you living at the time?

A At a trailer.

Q So, your car was. . .

A H Mont [verbatim] Avenue.

Q So, your car was packed and moved in?

A Yes, I had -- yes, I had items in my truck. I had different things like pots and things like that. I was actually on my way to pick my friend up. And in my truck I had a bed and other items. And then when my wife called me and I never answered, then she went to look for me and she took everything out. But the DA agents know all of this because they went to my house and checked everything.

Q Okay. Concerning the issue about not testifying at trial, do you recall The Judge asking you or going over your rights and your ability to be able to testify at trial?

A Yes.

Q Okay. And when The Judge asked you if you wanted to testify, what was your response?

A No.

Q Okay. And you said there were plea offers in this case, correct?

A Yes. Yes, they gave me an offer and he explained to it me.

Q Okay.

A But I didn't want to take it.

Q So, you rejected it, Mr. Robinson didn't reject

it for you?

A He offered it to me. But I told him I didn't want to take the offer because I wasn't going to admit to something that I didn't do.

Q Did Robinson go over with you about your co-defendant testifying against you, how impactful this would be against your case?

A Well, we talked about that.

Q What was the substance of the conversation?

A He told me about all the people that were involved. And he told me what could happen.

Q So, knowing that Mr. Robinson told you what could happen if your co-defendant testified, you still wanted to go to trial?

A I was never going to plead guilty because I wasn't guilty.

MR. MITCHELL: That's all the questions I have, thank you.

THE COURT: Anything on redirect?

MR. ARIAIL: No, Your Honor.

THE COURT: Okay, thank you, sir. You can step down.

MR. ARIAIL: Your Honor, that is our case.

THE COURT: Okay.

MR. MITCHELL: Your Honor, The State would call

Mr. Scott Robinson to the stand.

THE COURT: All right.

THE CLERK: Mr. Robinson, can you please place your left hand on the Bible, raise your right hand?

Scott Robinson, after being duly sworn, testified as follows:

THE CLERK: Thank you, please state your full name for the record.

THE WITNESS: Scott David Robinson.

THE CLERK: Thank you.

THE COURT: Come on up, you got it?

MR. ROBINSON: Yeah, not running a marathon but appreciate you asking me.

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Good morning, Mr. Robinson, you are you?

A Good.

Q How long have you practiced law here in South Carolina?

A A long time. It be 22 years, I think.

Q Twenty-two years?

A Yeah.

Q How much of that time has been devoted to criminal law?

A Probably 90 percent.

Q About 90 percent? Okay. I think we heard testimony already but you were retained on this case, correct?

A I was.

Q Okay. Do you recall the charge -- or the allegations underlining the charges in this case?

A I do.

Q Can you give me a brief synopsis of them?

A Well, they had been monitoring the situation, the different drug enforcement agencies and so forth. They went into this residence without a warrant and they found Mr. Ochoa-Tavera in the room with this large amount of methamphetamine or drugs right beside him. It was in a dresser drawer or something like that. That was their case. They had a co-defendant in this case as well. And that's pretty much the case in this matter.

We had been, I don't mean to jump ahead of your thinking, but that's basically what the case was about. They basically came in without a warrant into the residence, they found Mr. Ochoa in the residence in the room with the drugs. That was their whole case.

Q Okay. And we'll get to some of the other types of things in a minute here.

A Sure.

Q How many times do you recall meeting with

Mr. Ochoa-Tavera?

A It was a decent number of times. I can't tell you it was like a -- but at least three to four times, I believe. I have an assistant who is bilingual, she's from Colombia and she would go with me to visit with him so she understood everything.

Q Okay. And during these meetings did you go over the charges, the potential sentences that he would face if he was convicted or if he pled guilty?

A Yes, he actually signed for the discovery, I think, at least twice. And we went over any discovery we had, any witnesses, the charges, penalties, defenses, all that kind of information. Explained to him the law regarding trafficking, regarding actual and constructive possession, mere presence, conspiracy, aiding and abetting, the hand of one is the hand of all, that kind of stuff.

Q Okay. Did he ever indicate to you at all that he didn't understand your conversations with you?

A No, I think he's a pretty articulate, intelligent man. I have no question about him understanding.

Q Okay. Let me ask you, I know we touched on briefly about this case involving drugs being found in a home where The Defendant was. During your conversations

or, I guess, during any type of investigation, was there ever any issue about whether he lived there at all?

A He didn't live there.

Q He did not live there?

A He did not live there.

Q Okay.

A Huh-uh.

Q Okay. So, let me ask you this, what was the connection between the drugs and him? Were there information about the CI or?

A The CI, that's how the whole thing got put together, I believe. It was a bunch of -- my trial notebook consisted of, I think, they had 20, 25 witnesses in the case at trial. It was a classic case of being in the wrong place at the wrong time. No question about it.

Q Okay. So, you said a case of being in the wrong place at the wrong time?

A Yes.

Q Okay. Did any of the other co-defendants testify or make statements that the drugs belonged to him or that he was involved in the drug transaction or drug trade?

A I believe the co-defendant may have said something. And it's kind of ironic because Mr. Ariail discussed plea offers and so forth. We actually met with

the DEA or the ATF down at the detention center. We had been offered a certain amount of time. I'm not sure if he's right about the amount exactly, but if he would corroborate against the co-defendant. It's ironic because at the trial of the case, the co-defendant turned on him in the matter. And actually, I think, kind of put the blame on him.

Q So, he got the DEA or drug agency down there and he didn't want to go through with it?

A No, he didn't. It's interesting because I went over, at least, twice or three times, starting with conspiracy and different facets of it in South Carolina. Went over mere presence which was a big issue in this case. Because he's in the room when they bust in. And he's right next to this huge amount of drugs. And that was the big issue in this case. Because when The Judge did the whole -- he did every charge you could imagine in a drug case, including mere presence and including conspiracy. And, you know, we went over that a lot. And I wanted to make sure he understood that. Because it's very difficult in a drug case when the person is right next to the drugs, to allege that, well, I was there by accident, I had no idea about these drugs. Because The State is going to come forward.

Then they say, wait a second, you had

either actual or constructive possession of these drugs. I thought it was a very difficult case. I just did. And that's why we had discussions about entering a plea in this matter. We could have even done this as an Alford plea, basically a no contest in this matter. But he would have none of it in this case.

Q And if I correct, the record reflects a suppression hearing where you -- this is a trial where two co-defendants are being tried at the same time?

A Yes.

Q Where both parties try to suppress the drugs in this case; is that correct?

A What it came down to was there's some exceptions when you have a warrantless search of a home. One of the exceptions is extrinsic circumstances. This case, we didn't think it was extrinsic circumstances because they could have easily gone down the road, I think it was less than half a mile, a little over a half a mile and gotten a warrant. But The State argued that, well, if we had done that, he could have destroyed or he or the two of them could have destroyed the evidence in this case. A lot of different things. The Judge, Judge Hall, went with the State in this case. As far as believing that the extrinsic circumstance exception existed in this case. And the suppression motion was denied.

Q And did The Judge also rule that because Mr. Ochoa-Tavera didn't live there, he didn't have a valid Fourth Amendment --

A That's one of the things. Because he had really no standing to argue about the warrantless search.

Q Okay. Do you believe you had sufficient time to prepare for this case?

A Yes.

Q And there were never any competency issues at all with Mr. . . .

A As I said before, he's a very intelligent man. It's difficult to -- as an attorney, all you can do is explain the law and the effects of that law on the defendant. And that defendant has to decide himself or herself what they want to do. And he chose the root that I disagreed with. And went to trial on a case that was a difficult case to win.

Q Okay. Let me ask you this, The Applicant makes the allegation that you advised him not to testify in this case. Could you briefly discuss that conversation?

A Well, I take the position when it comes to testimony by clients, it's their decision. I can say, well my thoughts and so forth. As far as recommendations go, I'm not sure exactly what he could add to this whole defense in this case. I mean, he could say, well I was

moving, well, I was -- I didn't live there. But he can't get around the fact that when they busted in this house, that he was right next to the drugs. That's what he couldn't get around. If that -- this was before the Beatty case was decided.

At that time, if he had testified, we would have lost last argument in this case. And we felt, Mr. Crangle and I both thought that that was important in this case. In this matter. Unfortunately, Mr. Crangle put all the blame on my client. Unfortunately, that's kind of what happened in this matter in the end. Which itself, as I said before, is kind of ironic that he would not testify against his co-defendant.

Q Let me just ask you, I think you touched on the hurdles in this case where The Defendant was found by the drugs. One of the co-defendants testified at the trial, essentially, testifying that he was either supplied with drugs--

A I think he spoke about two different transactions that involved Ms. Ochoa. I don't believe -- I've always believed that he was innocent. To a certain extent. As I said in the beginning, this is a case of being in the wrong place at the wrong time in this matter.

Q Okay. Were there ever any issues or concerns about fingerprint evidence or anything like that?

A That was really -- the fact that his fingerprints were not on the bags of drugs really doesn't amount to a hill of beans as far as the defense goes. It just doesn't. Because you're talking about either plastic or some sort of material that's not really conducive to getting fingerprints. And really, in this case, it didn't matter because he's right there and the drugs are right next to him. It doesn't matter. Whether he's had his fingerprints all over it. He still had either actual or constructive possession of those drugs. And the defense of mere presence, the jury just didn't buy that. Because he was so close to the drugs in this case.

MR. MITCHELL: Thank you, Mr. Robinson, please answer any questions Mr. Ariail may have for you.

THE COURT: Yes, sir.

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

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. ARIAIL:

Q Mr. Robinson, you said you met with, I guess, Mr. Ochoa-Tavera four times or so; is that correct?

A You know, if I -- I can't independently sit here and tell you exactly the number of times. I know I met with him enough times to feel comfortable with -- I know

we met, at least, twice to go over the discovery, different times since the discovery. And we would meet with my assistant and go over all the discovery. The next time we would have met would have been with either the DEA or ATF agents to go over cooperation in this case.

Q Right. Were there any -- I'm sorry.

A And we would have spoken to them before they actually talked to us. He would have -- this was in the new jail.

Q Yeah.

A He would have sat outside -- the agents would have sat outside where we talked to him to make sure it was okay talking.

Q Okay. Now, was there -- I know he was in the house when the raid occurred. Was there any statements or any information provided to you by the solicitor's office, showing that the co-defendant was going to place the blame on him?

A I think we always knew. I don't think there was specifically a piece of paper or something like that that says the co-defendant says he did it.

Q Okay.

A But I think we had -- we had a notion or feeling after discussing with the solicitor's office that that's kind of the direction that he was going to go in this

case.

Q Okay. And so, it wasn't a surprise when you got in--

A It wasn't a surprise.

Q -- and he points the finger --

A It wasn't a surprise, no.

Q Okay. And he also new prior to this, that he had the opportunity to work out a plea deal to provide evidence against the co-defendant?

A That's what was kind of surprising about it. Because I think -- I can tell when we were at trial how disappointed he was that his co-defendant, who I think had been selling him a total line of crap pretty much, that he wasn't going to testify against him, we're in this together and so forth. I think that really was disheartening to him that this guy would testify against him and blame him for everything.

Q Okay. And I know we've talked a lot about he brought up some things that he believes would have helped in cross-examination with regards to his relationship with Mr. Ramirez. Do you remember bringing any of those items up or trying to paint the picture that he didn't really know this guy or didn't know the informant or hadn't been involved in this?

A Going back to what I testified on direct

examination, I think I would have discussed all this with him. But I also had a strategic view that I had to balance out benefits versus cost in this case. There may be certain benefits to saying, well I didn't really know the guy. Didn't really have a relationship with him and so forth. He's lying about the fact that we did any drug deals together. Okay. But on the other hand, I have this idea before the Beatty case, that I lose the argument last.

Q Okay.

A And in this type of case, I thought, and Mr. Crangle thought the same thing, that the last argument would have been important in the matter.

Q So, that dealt with, I guess, putting up him as a witness or putting up evidence that you had in regards to that. Do you remember going into -- and I guess what I was trying to get out was, cross-examination that potentially could destroy that argument that they were friends or in this together?

A I don't know if I went into anything on cross-examination about [indiscernible] not sure if I did or not. I kind of tailored my cross-examination to benefit him, obviously. And I would have thought I would have asked questions that would have gone towards that. But, you know, I don't think that they -- the fact that

the co-defendants said they did two different transactions, I didn't -- as far as saying, where did this happen or where did this take place, I mean, he could just as well not believe that. I mean, a jury could just as well not believe that.

Q Okay. And you didn't think it would have been helpful to provide any of the -- I mean, I know he talked about a pipe, marijuana, things of that nature, you didn't -- you didn't see how that would -- he was trying to say all this fingerprinting information, you didn't believe that would be helpful?

A As I stated once before, I've tried a lot of cases, a lot of drug cases and so forth. This arguing about fingerprints, goes about as far as -- it doesn't work. It like a lead ballon pretty much, it just does not work. Because you're going to either -- it's hard to put fingerprints on bags of drugs. And whether -- in this case when your client is standing next or hiding next to a giant bag of drugs, you're saying, well his fingerprints are on it. I just don't know how believable that would have been in this case. And I think, again, you have to strategize making a very superfluous argument that's going to go nowhere in this case versus the last argument.

Q Okay. The plea offer that you remember, and maybe you got it in your records, I mean, he says 18 to a

certain amount. I mean, normally it's a year amount. Do you remember -- or do you remember getting anything from the solicitor's office to the exact plea offer that he was presented with?

A I don't think so, let me see what I got. I think I may have something from the solicitor. I think we had an offer where he would -- they would -- they would drop down the charge to like something less than over 200 grams.

Q Okay.

A Okay. If he would testify and cooperate against the co-defendant.

Q Okay.

A That's what I remember. As far as them promising him, well, if you do this, we'll do that, I'm usually going to argue that they should go lower, typically. When I do a plea with cooperation. But he wouldn't, as he said on the stand a moment ago, he would have none of it.

Q Okay.

A You explained -- I explained at length, ad nauseam, constructive possession, actual possession, mere presence, conspiracy, all that stuff. And it just -- it went in one ear and out the other.

Q Do you remember the reason -- I mean, he's

pretty much said I don't want the plea offer. Was he -- I mean, just said he wasn't there -- or excuse me, they weren't his drugs and that was what he was saying was his defense?

A I think he always -- I think he always took the position that I didn't know about the drugs or I didn't know this. I think he basically took that position the whole way through. I don't think he listened to reason when it came to the probability of standing next to a bunch of drugs and having a jury believe that you had no knowledge of these drugs and you had nothing to do with it. I think that was his strategy.

MR. ARIAIL: Your Honor, I have no further questions.

THE COURT: All right, anything on redirect?

MR. MITCHELL: Nothing additional, Your Honor.

THE COURT: All right, thank you, sir. You can step down.

THE WITNESS: Thank you, Judge.

THE COURT: Okay, anything else from either party?

MR. MITCHELL: State has no additional witnesses, Your Honor.

MR. ARIAIL: Nothing further, Your Honor.

THE COURT: Okay. Well as I do, sir, just so

you understand, I get these when I get here this morning. I'll take it home and read through it, take the testimony into account. And get something back to you. I'm going to be out town for the next two weeks so don't worry if you don't hear from me in about three weeks, okay. All right, be safe.

(WHEREUPON, the proceedings were concluded.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 16th day of April, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 20, 2018

April P. Herron

APRIL P. HERRON, Court Reporter

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF GREENVILLE | ) | IN THE COURT OF COMMON PLEAS<br>IN THE THIRTEENTH JUDICIALCIRCUIT |
| Antonio Ochoa-Tavera, #363134,<br><br>Applicant,<br><br>v.<br><br>State of South Carolina,<br><br>Respondent. | ) | Case No.: 2015-CP-23-4441<br><br>**ORDER OF DISMISSAL AND GRANT OF APPEAL PURSUANT TO WHITE V. STATE**[1] |

Paul Wickensimer COC GUL SC
'18 MAY 31 PM2:49

This matter comes before the Court by way of an application for post-conviction relief filed on July 16, 2015 by Antonio Ochoa-Tavera (Applicant). Respondent made its Return on or about January 29, 2016. An evidentiary hearing into the matter was convened on April 16, 2018, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by R. Mills Ariail, Jr. Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Trial Counsel Scott D. Robinson, Esquire also testified. A translator, Yanet Chavez, was sworn in to interpret for Applicant. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return and Applicant's records from the Department of Corrections. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

## PROCEDURAL AND FACTUAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant

[1] White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).



mailed Copies to attorneys

to orders of commitment of the Greenville County Clerk of Court. In November 2014, the Greenville County Grand Jury indicted Applicant for Trafficking Methamphetamine (2014-GS-23-9505). Scott D. Robinson, Esquire represented the Applicant. Assistant Solicitor Joyce Monts, Esquire prosecuted the case. On February 9, 2015, Applicant to trial before the Honorable Daniel D. Hall and a jury. The jury found Applicant guilty. On February 11, 2015 Judge Hall sentenced Applicant to twenty-five years imprisonment for trafficking methamphetamine, 200-400 grams. Applicant did not appeal his conviction or sentence.

## ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
   a. Failure to advise to testify in his defense.
   b. Failure to file an appeal.

## SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

### Applicant's Testimony

Applicant testified he retained Trial Counsel for his charge. He testified he never got out of jail on bond and that Trial Counsel only came to see him twice. Applicant testified during those meetings Trial Counsel would tell him how much time he was facing for the charge if he was convicted and said if he pled guilty he would get eighteen to twenty years. He testified the State did not have any evidence against him and only had evidence against his co-defendants. Applicant testified he told Trial Counsel his co-defendants were guilty but not him and that he did not know his co-defendants. He testified Trial Counsel told him not to testify and that they discussed what would happen if the jury believed his testifying co-defendant. Applicant testified Trial Counsel did not provide information to him and that he told Trial Counsel he had evidence

he wanted to present at trial. He testified there were finger prints on the drugs but the police did not do a finger print analysis of the drugs. Applicant testified he told Trial Counsel he wanted him to show evidence that he was not living at the location where the drugs were found. He testified Trial Counsel told him not to testify. Applicant testified he had a lot of questions that needed to be answered that did not get answered by Trial Counsel.

On cross-examination, Applicant testified he met with Trial Counsel twice prior to trial. He testified it was his decision to go to trial and that Trial Counsel went over the discovery in his case with him. Applicant testified he was not living at the location where the drugs were found. He testified the trial judge did instruct him about whether he wanted to testify at trial. Applicant testified he rejected a plea offer.

Trial Counsel's Testimony

Trial Counsel testified he had been practicing law for twenty-two years and ninety percent of that time had been devoted to criminal law. He testified he was retained to represent Applicant. Trial Counsel testified concerning the facts of the case and that police found drugs in a house right next to where Applicant was located in that house. He testified during the course of his representation he met with Applicant at least three or four times and provided the discovery to him. Trial Counsel testified during those meetings he discussed the indictment, the elements of the offense, the possible punishment, Applicant's constitutional rights, and the State's burden of proof. He testified Applicant appeared to understand their conversations and that Applicant was pretty intelligent. Trial Counsel testified this case involved a confidential informant who was working with the police. He testified he went over legal theories of mere presence, constructive possession and conspiracy with Applicant. Trial Counsel testified he met with DEA or a drug unit about a potential offer but Applicant turned down the deal. He testified he had sufficient

time to prepare for trial. Trial Counsel testified he made a motion to suppress the drugs because he did not believe there were exigent circumstance in Applicant's case but that the motion was denied as Applicant did not have standing to challenge it. He testified Applicant did not have any competency issues. He said it was Applicant's decision to not testify at trial and that they talked about him having the last argument.

On cross-examination, Trial Counsel testified he met with Applicant a number of times. He testified it was not a surprise when Applicant's co-defendant testified at trial against Applicant and that Applicant was disheartened when his co-defendant testified. Trial Counsel testified he did not believe there were any issues with regard to fingerprinting. He testified there was an offer from the State that if Applicant testified against his co-defendant, he would get a reduced sentence but Applicant turned it down.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result."

Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (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 that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. This Court finds as follows on the following grounds presented by Applicant:

**Review of Appellate Issues**

Applicant alleges Trial Counsel failed to file a notice of appeal on his behalf. This Court finds Applicant did not knowingly and intelligently waive his right to a direct appeal. Counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). In the absence of an intelligent waiver by the

defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California, 386 U.S. 738 (1967). Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 243(i)(1), SCACR; Davis v. State, 288 S.C. 290, 291 n.1, 342 S.E.2d 60, 60 n.1 (1986) ("Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review.").

In the present case, the State consented to a review of Applicant's trial pursuant to White. Id. As such, this Court finds Applicant did not knowingly and voluntarily waive his appellate rights and is entitled to an appeal from his conviction. Applicant's lack of an appeal shall be remedied pursuant to White v. State. Id.

**Ineffective Assistance of Counsel**

*Advice not to testify*

Applicant alleged Trial Counsel was ineffective for failing to advise him regarding testifying in his defense. This Court finds Applicant has failed to show deficiency or prejudice with respect to this allegation. Trial Counsel testified it was Applicant's decision to decide to not testify. Notwithstanding, the trial judge fully advised Applicant of his right to testify at trial. The record indicates clearly that the Applicant made a choice, of his own free will and volition, not to testify after having been fully advised of his rights and ramifications of testifying or, in the alternative, not testifying. Applicant chose not to testify. Accordingly, he has also failed to show prejudice with respect to this allegation, and it is denied and dismissed.

Additionally, having reviewed the record, this Court finds that Trial Counsel was well-versed in the factual allegations, that Trial Counsel asked appropriate questions which were

relevant to Applicant's theory of the case, and that Trial Counsel's pretrial discussions with Applicant were sufficient and were not deficient in any respect. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test - that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland - that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Trial Counsel was ineffective. The allegation is denied and dismissed.

## CONCLUSION

Based on all the foregoing, this Court grants Applicant a belated review of his conviction pursuant to White v. State. With regard to all other claims, this Court finds Applicant has not established any violations that would require this Court to grant further relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that 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 THAT:**

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations.

2. Within **thirty (30) days** of service of this Order, counsel for Applicant must file a notice of appeal to secure the appropriate review of Applicant's conviction. Counsel and Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986), and Rule 243(i), SCACR, for the appropriate procedure for securing appellate review; and

3. Applicant must be remanded to the custody of South Carolina Department of Corrections.

**AND IT IS SO ORDERED** this 25 day of May, 2018.

J. CORDELL MADDOX. JR.
Presiding Judge
Thirteenth Judicial Circuit

Anderson, South Carolina

**WITNESSES**

C Maltby

Greenville County Sheriffs Office 11-25-14

7/2/2014

**ARREST WARRANT NUMBER**
2014A2330206132

**ACTION OF GRAND JURY**
**TRUE BILL**

FOREMAN GRAND JURY

*Foreperson of Grand Jury*

**VERDICT**
Guilty

*Foreperson of Petit Jury*
*Date:* 2/11/15

**DOCKET NO. 2014-GS-23-9505**
AMENDED JLK

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

November **TERM 2014**

**THE STATE**

**vs.**

**ANTONIO OCHOA-TAVERA**

✓ **Indictment for**
0369

**TRAFFICKING METHAMPHETAMINE**

VIOLATION §44-53-0375

ENTERED
ACCT.

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE )

INDICTMENT FOR
**TRAFFICKING METHAMPHETAMINE**

At a Court of General Sessions, convened on NOV 25 2014 the Grand Jurors of Greenville County present upon their oath:

That ANTONIO OCHOA-TAVERA did in Greenville County, on or about the 2nd day of July 2014, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than 200 grams of Methamphetamine (Crank). This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR BAR # 65331

506

STATE OF SOUTH CAROLINA )
COUNTY OF Greenville )
STATE VS. )
Antonio Ochoa-Tavera )
AKA: )
Race: HISPANIC Sex: M Age: 37 )
DOB: [redacted]-1977 SS#: )
Address: [redacted] )
City,State,Zip: Greenville, SC 29617 )
DL#: SID#: )
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS
1341773
INDICTMENT/CASE#: 2014GS2309505
A/W#: 2014A2330206132
Date of Offense: 7/2/2014
S.C. Code § : 44-53-0375(C)(4)
CDR Code #: 0369

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Trafficking Methamphetamine more than 200 grams less than 400 grams

in violation of § 44-53-0375(C)(4) of the S.C. Code of Laws, bearing CDR Code # 0369
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Joyce Watts

| Watts, Joyce K. | 65331 | | | |
|---|---|---|---|---|
| | SC Bar# | Defendant | Attorney for Defendant | SC Bar# |

WHEREFORE, the Defendant is commited 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. Since 7-2-14
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

**Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship,transport,possess,or receive a firearm or ammunition.**

**SPECIAL CONDITIONS:**

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

| | | |
|---|---|---|
| *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) | | $ 6.40 |
| TOTAL | | $ 286.40 LBH |

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Workman
Court Reporter: M. Watts
Presiding Judge _____
Judge Code: 2753
Sentence Date: 2-11-15

SCCA/217 (03/2011)