

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY

Frank R. Addy, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

VERNON JACOB LIVINGTON,

APPELLANT

APPELLATE CASE NO. 2013-000541

RECORD ON APPEAL

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State of South Carolina)
County of Newberry) Court of General Sessions
 2012-GS-36-331

State of South Carolina)
 vs.) Transcript of Record
))
Vernon Jacob Livingston, Jr.)
 DEFENDANT)

February 11, 2013
Newberry, South Carolina

B E F O R E:

Honorable Frank R. Addy, Jr., Judge

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

David Stumbo, Solicitor
Dale Scott, Deputy Solicitor
Attorney for the State

Charles Verner, Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

Newberry County Courthouse

RANDOM STRIKE SHEET



JUDGE NAME :

Sorted by: Random Nbr

TRIAL TYPE : Criminal

PANEL ID : 2012GS3600331

DESCRIPTION : 2012GS3600331-Vernon Livingston, Jr. Trial

COURTROOM CTRM

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Griffin, Pamela D	66	W	F	(X)	(X)	()	—
2 Anderson, Karen J <i>for person</i>	163	W	F	(X)	(X)	()	(1)
3 Shaw, Jimmie L	222	W	M	(X)	(X)	()	(2)
4 Hargreaves, John E Jr. .	74	W	M	(X)	(X)	()	(3)
5 Frick, Aaron T	188	W	M	(X)	(X)	()	(4)
6 Boozer, Gary W	22	W	M	(X)	(X)	()	—
7 Pennie, Gussie Mae	215	B	F	(X)	(X)	()	(5)
8 Smith, Jonathan B	138	W	M	(X)	(X)	()	(6)
9 Hall, Edward D Jr.	70	W	M	(X)	(X)	()	(7)
10 Eichelberger, Kevin A	46	B	M	(X)	()	()	—
11 Bartley, Wanda P	8	W	F	(X)	(X)	()	(8)
12 Gursky, Linda L	68	W	F	(X)	(X)	()	(9)
13 Williams, Cynthia G	157	W	F	(X)	()	()	—
14 Ruff, Travis S	125	B	M	(X)	()	()	—
15 Holland, Michael Larry T	82	B	M	(X)	(X)	()	(10)
16 Ruff, Yoko S	126	B	F	(X)	(X)	()	(11)
17 Wadsworth, Maurice L	228	B	M	(X)	(X)	()	(12)
18 Fulmer, Carol P	52	W	M	(X)	(X)	()	(1) ALT
19 Taylor, Gregory B	144	W	M	()	()	()	—
20 Prince, Laura E	115	W	F	()	()	()	—
21 Bradfield, Darrell	25	W	M	()	()	()	—
22 Joslyn, Leonard F	93	W	M	()	()	()	—
23 Brown, Lori H	168	W	F	()	()	()	—
24 Davenport, R Alan	37	W	M	()	()	()	—

**Newberry County Courthouse
RANDOM STRIKE SHEET**

3

JUDGE NAME :

TRIAL TYPE : Criminal

PANEL ID : 2012GS3600331

COURTROOM CTRM

Sorted by: Random Nbr

DESCRIPTION : 2012GS3600331-Vernon Livingston, Jr. Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Anderson, Candace H	162	W	F	()	()	()	
26 Wilkes, Kinnon M	234	W	F	()	()	()	
27 Cromer, William L	177	W	M	()	()	()	
28 Robinson, Greta Q	120	B	F	()	()	()	
29 Glymph, Robert A	59	W	M	()	()	()	
30 Worthy, Brandy R	236	W	F	()	()	()	
31 Gary, Lucinda H	55	B	F	()	()	()	
32 Woodward, Jane W	159	W	F	()	()	()	
33 Cotney, Cindy A	29	W	F	()	()	()	
34 Johnson, Delois J	91	W	F	()	()	()	
35 Bonnette, Debra A	19	B	F	()	()	()	
36 Crumpton, Richard D	32	W	M	()	()	()	
37 Hollowell, Beverly M	201	W	F	()	()	()	
38 Hansel, Robert T	72	W	M	()	()	()	
39 Werts, Courtney V	152	B	F	()	()	()	
40 Cotney, Jason D	174	W	M	()	()	()	

Total Number of Jurors:

40

** END OF REPORT **

I N D E X O F W I T N E S S E S

1		
2	(IC) - Denotes In Camera	
3	(DW) - Denotes Defense Witness	
4	(SW) - Denotes State's Witness	
5	<u>(SW) Robert Dennis (JVD)</u>	
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10	Direct examination by Mr. Stumbo:	138
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14	Direct examination by Mr. Scott:	159
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19	Direct examination by Mr. Scott:	165
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21	Redirect examination by Mr. Scott:	186
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1		<u>E X H I B I T S</u>			
2	<u>State's</u>				
3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
4	1	Photograph		X	25
5	2	Photograph		X	25
6	3	Photograph		X	25
7	4	Photograph		X	25
8	5	Photograph		X	25
9	6	Photograph		X	25
10	7	Photograph		X	25
11	8	Photograph		X	25
12	9	Photograph		X	25
13	10	Photograph		X	25
14	11	Photograph		X	25
15	12	Photograph		X	25
16	13	Photograph		X	25
17	14	Photograph		X	25
18	15	Photograph		X	25
19	16	Photograph		X	25
20	17	Photograph		X	25
21	18	Photograph		X	25
22	19	Photograph		X	25
23	20	Photograph		X	25
24	21	Photograph		X	25
25	22	Photograph		X	25

1	<u>State's</u>				
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
3	23	Photograph		X	25
4	24	Photograph		X	113
5	25	Photograph		X	130
6	26	Photograph		X	130
7	27	Photograph		X	130
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1 THE COURT: Solicitor, call your case.

2 MR. STUMBO: Thank you, Your Honor, may it please the
3 Court. The State calls the State versus Vernon Jacob
4 Livingston, Jr. It is indictment number 2012-GS-36-0331.
5 It is an indictment for manufacturing methamphetamine.
6 This indictment has been true billed by the Grand Jury,
7 Your Honor.

8 MR. VERNER: Can you call and see if Mr. Livingston
9 is out in the hall.

10 THE COURT: Mr. Bailiff, would you call Vernon
11 Livingston and see if he is downstairs. Is it okay to go
12 ahead and proceed, sir?

13 MR. VERNER: Yes, sir.

14 THE COURT: Ladies and gentlemen of the jury panel,
15 we are about to begin the case of the State of South
16 Carolina versus Vernon Jacob Livingston, Jr., indictment
17 12-GS-36-331. This indictment charges Mr. Livingston with
18 the offense of manufacturing methamphetamine. At the get
19 go, ladies and gentlemen, I want to tell you that the fact
20 that an individual has been charged or indicted for an
21 offense is, of course, not evidence in any way, shape or
22 form of any kind. The way that we proceed with cases in
23 this court is that an individual has to be indicted before
24 a case can proceed to trial in this court. And an
25 indictment, therefore, is nothing more than a piece of

1 paper. It is the formal instrument which a charge is
2 brought to this court and it is not in any way, shape or
3 form evidence of any of the allegations contained in the
4 indictment. This indictment, ladies and gentlemen,
5 alleges that Vernon Jacob Livingston, Jr., did in Newberry
6 County on or about January 30th of 2012 willfully,
7 unlawfully and knowingly manufacture or otherwise aid,
8 abet, attempt or conspire to manufacture methamphetamine
9 in violation of the statutes so made and provided and
10 against the peace and dignity of this State. Now, this
11 indictment, ladies and gentlemen, again is not evidence of
12 any of the allegations contained in the indictment. And
13 the defendant in this case, Mr. Livingston, has plead not
14 guilty to this indictment. The State of South Carolina
15 will be represented by Solicitor Stumbo. Mr. Stumbo, if
16 you would care to stand and introduce yourself and
17 cocounsel to the jury panel, please.

18 MR. STUMBO: Thank you, Judge. My name is David
19 Stumbo, I am glad to be your elected Solicitor here in
20 Newberry County and also in Laurens and Abbeville and
21 Greenwood. I will be trying this case with Deputy
22 Solicitor Dale Scott who is Solicitor for the Newberry
23 County docket. Thank you.

24 THE COURT: Thank you, Mr. Stumbo. The defendant,
25 Mr. Livingston, is being represented by Charles Verner of

1 the Newberry Bar. Mr. Verner, if you would care to stand
2 and introduce yourself to the jury panel, sir.

3 MR. VERNER: Charles Verner.

4 THE COURT: Thank you, very much. I now have a few
5 questions I have to ask y'all to determine your
6 qualification or eligibility to serve on this particular
7 jury. First, is there any member of the jury panel who is
8 related by blood or marriage to any of the attorneys or
9 has previously been represented by any of the attorneys,
10 either Mr. Stumbo, Mr. Scott or Mr. Verner or is currently
11 being represented by the lawyers. So anyone related to
12 any of the lawyers, close personal friends with any of the
13 other lawyers or is being represented or has been
14 represented by any of the attorneys. If so please stand.
15 Yes sir, what is your name, please?

16 JUROR: Greg Glymph.

17 THE COURT: Juror number 191. And yes, sir. And who
18 has represented you?

19 JUROR: I am a friend of Mr. Stumbo.

20 THE COURT: Okay. You are a friend of his. Close
21 friend or how long have y'all known each other?

22 JUROR: About 10 years.

23 THE COURT: All right. The fact that you are friends
24 with Mr. Stumbo, would that affect your ability to be fair
25 and impartial to all parties concerned?

1 JUROR: I always wish him success.

2 THE COURT: You always wish him success. Mr. Glymph,
3 I am going to let you sit this one out. Thank you. Yes
4 sir, what is your name, please.

5 JUROR: John Mendenhall. Yes, sir. Mr. Verner
6 represented me in my divorce.

7 THE COURT: How long ago was that?

8 JUROR: Three years ago.

9 THE COURT: So he is not representing you any more?

10 JUROR: No, sir.

11 THE COURT: The fact that Mr. Verner represented you
12 in your divorce some years ago, Mr. Mendenhall, would that
13 affect your ability to be fair to both the State and the
14 defense?

15 JUROR: No.

16 THE COURT: Are you sure?

17 JUROR: Yes.

18 THE COURT: Juror number 102 is eligible to serve.
19 Thank you. Anyone else.

20 (No response.)

21 THE COURT: No one is standing. Any luck finding Mr.
22 Livingston yet?

23 MR. DENNIS: Lieutenant Johnson is checking but he
24 was not visible on the side or the front or the other
25 side.

1 MR. VERNER: Your Honor, we will go ahead and select
2 a jury.

3 THE COURT: Okay. Ladies and gentlemen, the
4 defendant in this case is Vernon Jacob Livingston. Is
5 there any member of the jury panel who is related by blood
6 or marriage to Mr. Livingston or has any close, business,
7 personal or social relationship with Mr. Livingston. If
8 so please stand.

9 (No response.)

10 THE COURT: The following individuals are potential
11 witnesses in this case. If they are present in the
12 courtroom I would ask that they stand up when their name
13 is called. Again, these are potential witnesses. I need
14 you to listen carefully to this list and I will ask you if
15 you are related by blood or marriage or have any close,
16 business, personal or social relationship with any of
17 these individuals. Here is the list of possible
18 witnesses. Sheila Jackson, Sergeant Shawn Carens,
19 C-A-R-N-E-S, Newberry County Sheriffs Office. Deputy
20 Michael Claytor with the Newberry Sheriffs Department,
21 Lieutenant Robert Dennis with the Newberry Sheriffs
22 Department, Investigator Nick Bouknight with the Newberry
23 County Sheriffs Department, Brent Munnerlyn, Jennifer
24 Shealy and Special Agent Douglas Robinson with SLED.
25 Again, Sheila Jackson, Shawn Carner, Deputy Michael

1 Claytor, Lieutenant Robert Dennis, Investigator Nick
2 Bouknight, Brent Munnerlyn, Jennifer Shealy and Douglas
3 Robinson. Are there any members of the jury panel who is
4 related by blood or marriage to any of those individuals
5 or has any close business, personal or social
6 relationships with them. Yes, sir.

7 JUROR: I was Chaplain of the Sheriffs Office for
8 several years volunteer and baptized Nick Bouknight's
9 baby.

10 THE COURT: The fact that you have this relationship
11 with these officers would that affect your ability to be
12 fair and impartial to both the State and the defendant in
13 this case?

14 JUROR: I hope not.

15 THE COURT: Are you sure?

16 JUROR: I can be fair.

17 THE COURT: Thank you, pastor. And the gentleman in
18 the green shirt. Yes, sir. What is your name?

19 JUROR: Jason Cotney.

20 THE COURT: Yes, sir. How does that question apply
21 to you.

22 JUROR: I am related to Shawn Carnes.

23 THE COURT: How are you related to Sergeant Carnes.

24 JUROR: Through adoption.

25 THE COURT: Through adoption. Is he your adopted

1 father?

2 JUROR: No. Just, my great-uncle adopted and his
3 wife.

4 THE COURT: Okay. The fact that you have this
5 relationship with Sergeant Carnes, would that affect your
6 ability to be fair and impartial to all concerned?

7 JUROR: No.

8 THE COURT: What is your name.

9 JUROR: Greg Taylor and I just have a business
10 relationship with Sheriffs Deputies.

11 THE COURT: And that is for your work at the fire
12 department?

13 JUROR: Yes, sir.

14 THE COURT: The fact that you have that business
15 relationship with the deputies, would that affect your
16 ability to be fair and impartial?

17 JUROR: No, sir.

18 THE COURT: Thank you. What is your name?

19 JUROR: Mary Richardson.

20 THE COURT: Yes, Ma'am.

21 JUROR: My husband and I have a social relationship
22 with Robert and a work relationship with Nick and Robert.

23 THE COURT: So you see them a good bit.

24 JUROR: Yes, Robert I do.

25 THE COURT: Would you rather sit this one out, Ma'am?

1 JUROR: I sure would.

2 THE COURT: Ms. Richardson, thank you very much, you
3 won't serve on this jury. That is juror number 118. What
4 is your name?

5 JUROR: My name is Andrea Griffith and I am related
6 to Robert.

7 THE COURT: How are you related?

8 JUROR: Cousins.

9 THE COURT: First cousins? Your grandparents were
10 siblings?

11 JUROR: Yes, sir.

12 THE COURT: The fact that you are related as second
13 cousins to him would that affect your ability to be fair
14 and impartial to everybody involved in this case?

15 JUROR: Possibly.

16 THE COURT: Possibly. I will let you sit this one
17 out. What was your name?

18 JUROR: Andrea Griffith.

19 THE COURT: Thank you, Ms. Griffith. Juror number
20 141. Yes, Ma'am.

21 JUROR: Laura, I am friends with Michael Claytor.

22 THE COURT: Are y'all close friends?

23 JUROR: No, sir.

24 THE COURT: You see him occasionally and y'all are
25 acquaintances?

1 JUROR: Yes, sir.

2 THE COURT: The fact that you know Deputy Claytor
3 would that affect your ability to be fair and impartial to
4 everybody?

5 JUROR: No, sir.

6 THE COURT: You can have a seat. Yes, sir.

7 JUROR: William Cromer. I am second cousins with
8 Nick Bouknight.

9 THE COURT: The fact that you are second cousins with
10 Nick Bouknight would that affect your ability to be fair
11 and impartial?

12 JUROR: No, sir.

13 THE COURT: Thank you. Ladies and gentlemen, again
14 the State alleges that this incident took place on or
15 about January the 30th of last year and I am told that
16 this took place on Cypress Lane which is on the Whitmire
17 side of 126, kind of close to the Citgo or not too far
18 from the Citgo on 126 as you are heading towards Whitmire
19 on Cypress Lane. Is there any member of the jury panel
20 who has any prior knowledge of this incident or things
21 that they might know anything about the allegations
22 contained in the indictment. If so please stand.

23 (No response.)

24 THE COURT: No one is standing. Is there any member
25 of the jury panel who is a member of any organization

1 which his a contributor to an organization like Mothers
2 Against Drunk Driving or Students Against Drunk Driving or
3 a member of any organization that takes any position
4 concerning victim's rights. If so, please stand.

5 (No response.)

6 THE COURT: No one is standing. Is there any member
7 of the jury panel who is a member of any organization
8 which advances the legalization or advances as a cause of
9 the legalization of drugs or narcotics. If so please
10 stand.

11 (No response.)

12 THE COURT: No one is standing. Is there any member
13 of the jury panel who has close family members or close
14 personal friends who are employed law enforcement. If you
15 previously stood and told me you don't have to tell me
16 again. But any member of the jury panel who has a family
17 member or any close personal friends who are employed with
18 law enforcement. What is your name.

19 JUROR: Candace Anderson.

20 THE COURT: How does that question apply to you?

21 JUROR: My brother is a U.S. Marshall.

22 THE COURT: He is a U.S. Marshall. Okay. Would that
23 affect your ability to be fair and impartial?

24 JUROR: No, sir.

25 THE COURT: Thank you. Yes, sir.

1 JUROR: I have got one son who is a former deputy and
2 I have got a son-n-law that is currently a deputy.

3 THE COURT: What is your name?

4 JUROR: Hitt Crider.

5 THE COURT: The fact that you have these relatives
6 who work in law enforcement or have worked in law
7 enforcement, that wouldn't affect your ability to be fair
8 to all concerned, would it, sir?

9 JUROR: It probably would.

10 THE COURT: It probably would. Okay. Mr. Crider, I
11 am going to let you sit out, I will excuse you, we are
12 probably going to have law enforcement involved in all
13 cases. So I will excuse you. Yes, sir.

14 JUROR: Ray Counts. My son is a deputy with the
15 Newberry Count Sheriffs Department.

16 THE COURT: So your son works with the sheriffs
17 department but he is not a witness on this first case?

18 JUROR: No, sir.

19 THE COURT: The fact that he works with the sheriffs
20 department, would that affect your ability to be fair and
21 impartial?

22 JUROR: No, sir.

23 THE COURT: Thank you. Is there any member of the
24 jury panel who knows of any reason whatsoever why you
25 cannot be fair to both the State of South Carolina and the

1 defendant in this case, Mr. Vernon Livingston, Jr. If so
2 please stand. Any concerns whatsoever on any reason why
3 you feel you could not be fair and impartial, if so please
4 stand.

5 (No response.)

6 THE COURT: No one is standing. Is there any member
7 of the jury panel who has any strongly held religious or
8 moral beliefs which would prevent you from serving as a
9 juror or for sitting in judgment or otherwise acting as a
10 juror. If so please stand.

11 (No response.)

12 THE COURT: No one is standing. Additional voir dire
13 from the State?

14 MR. STUMBO: None from the State, Your Honor.

15 THE COURT: From the defense?

16 MR. VERNER: No, Your Honor.

17 THE COURT: Strikes will be five and five and we will
18 pick one alternate. Strikes will be one and two. Ladies
19 and gentlemen, the way we do this in general sessions
20 court, it is a little different than if you served on a
21 jury in civil court. If your name is called what I need
22 you to do is come forward and bring with you any items you
23 have with you and just come forward and stand here in
24 front of the Clerk of Court and turn around and face the
25 back of the courtroom. At that point and time the State

1 will have an opportunity to either seat you or to excuse
2 you. The defendant will have a similar opportunity. I
3 will tell you folks what I tell every jury. If you are
4 excused from jury service don't take it personal. Every
5 lawyer has a different way of picking a jury. Madam
6 Clerk, please give me a jury.

7 CLERK OF COURT: Juror number 66, Pamela Griffin.
8 What says the State?

9 MR. STUMBO: Please present Ms. Griffin.

10 THE COURT: What says the defense?

11 MR. VERNER: In this case I am going to excuse Ms.
12 Griffin.

13 CLERK OF COURT: Number 163, Karen Anderson. What
14 says the State?

15 MR. STUMBO: Please present Ms. Anderson.

16 CLERK OF COURT: The defendant?

17 MR. VERNER: Please seat Ms. Griffin.

18 CLERK OF COURT: You can have a seat in the jury box.
19 Number 222, Jimmie Shaw. What says the State?

20 MR. STUMBO: Please present Mr. Shaw.

21 CLERK OF COURT: The defense?

22 MR. VERNER: Have a seat in the box.

23 CLERK OF COURT: Number 74, John E. Hargreaves, Jr.
24 What says the State.

25 MR. STUMBO: Please present Mr. Hargreaves.

1 CLERK OF COURT: The defense?

2 MR. VERNER: Have a seat.

3 CLERK OF COURT: Number 188, Aaron Frick. What says
4 the State.

5 MR. STUMBO: Please presnet Mr. Frick.

6 CLERK OF COURT: The defense.

7 MR. VERNER: Please have a seat.

8 CLERK OF COURT: Number 22, Gary Boozer. What says
9 the State.

10 MR. STUMBO: Please present Mr. Boozer.

11 CLERK OF COURT: The defense.

12 MR. VERNER: From this case I am going to excuse Mr.
13 Boozer.

14 CLERK OF COURT: Number 215, Gussie Mae Pennie. What
15 says the State.

16 MR. STUMBO: Please present Ms. Pennie.

17 CLERK OF COURT: The defense?

18 MR. VERNER: Please have a seat in the jury box.

19 CLERK OF COURT: Number 138, Jonathan Smith. What
20 says the State.

21 MR. STUMBO: Please present Mr. Smith.

22 CLERK OF COURT: The defense.

23 MR. VERNER: Please have a seat in the jury box.

24 CLERK OF COURT: Number 70, Edward D. Hall, Jr. What
25 says the State.

1 MR. STUMBO: Please present Mr. Hall.

2 CLERK OF COURT: The defense.

3 MR. VERNER: Please have a seat in the jury box.

4 CLERK OF COURT: Number 46, Kevin Eichelberger. What
5 says the State.

6 MR. STUMBO: Please excuse this juror.

7 CLERK OF COURT: Number 8, Wanda Bartley. What says
8 the State.

9 MR. STUMBO: Please present Ms. Bartley.

10 CLERK OF COURT: The defense.

11 MR. VERNER: Please have a seat in the jury box.

12 CLERK OF COURT: Number 68, Linda Gursky. What says
13 the State.

14 MR. STUMBO: Please present Ms. Gursky.

15 CLERK OF COURT: The defense.

16 MR. VERNER: Please have a seat.

17 CLERK OF COURT: Number 157, Cynthia Williams. What
18 says the State.

19 MR. STUMBO: Please excuse Ms. Williams from this
20 trial.

21 CLERK OF COURT: Number 125, Travis Ruff. What says
22 the State.

23 MR. STUMBO: Please excuse Mr. Ruff from the trial of
24 this case.

25 CLERK OF COURT: Number 82, Michael Larry Holland.

1 What says the State.

2 MR. STUMBO: Please present Mr. Holland.

3 MR. VERNER: Please have a seat in the box.

4 CLERK OF COURT: Number 126, Yoko Ruff. What says
5 the State.

6 MR. STUMBO: Please present Ms. Ruff.

7 CLERK OF COURT: The defense?

8 MR. VERNER: Please seat the juror.

9 CLERK OF COURT: Number 228, Maurice Wadsworth. What
10 says the State.

11 MR. STUMBO: Please present Mr. Wadsworth.

12 CLERK OF COURT: The defense.

13 MR. VERNER: Please seat the juror.

14 THE COURT: One alternate.

15 CLERK OF COURT: Number 52, Carol Fulmer. What says
16 the State.

17 MR. STUMBO: Please present Ms. Fulmer.

18 CLERK OF COURT: What says the defense.

19 MR. VERNER: Seat the juror.

20 THE COURT: Any issues concerning the composition or
21 the selection of the jury from the State?

22 MR. STUMBO: Nothing from the State.

23 THE COURT: From the defense?

24 MR. VERNER: No, Your Honor.

25 THE COURT: Ladies and gentlemen of the jury, y'all

1 have been selected as the jury on the case of the State
2 versus Vernon Livingston. I am going to ask that you
3 adjourn for just a few moments into the jury room. We
4 will select the second jury and then hopefully we will be
5 in the position to start the trial in the first case. You
6 are excused. Thank you.

7 (Whereupon, the jury was excused from open court for
8 a break while the second jury was picked for another
9 trial.)

10 THE COURT: Let's go back on the record on case
11 number 12-GS-36-331. The defendant is present with his
12 attorney and counsel has premarked a number of exhibits.
13 I overheard essentially, Mr. Verner, I think there was one
14 that you were objecting that there are several exhibits
15 which are already in evidence that the Court Reporter has
16 already premarked.

17 MR. STUMBO: That's correct, Your Honor, State's 1
18 through 23 have been offered in without objection with Mr.
19 Verner. State's 24 at this point is just marked for ID.

20 THE COURT: All right. Is that correct, Mr. Verner?

21 MR. VERNER: Yes, sir. In limine, Your Honor, I
22 would ask that the Court, order the Solicitor to not go,
23 there are a number of Sudafed purchases, over the counter
24 Sudafed purchases that I understand the State intends to
25 introduce as evidence against Mr. Livingston, that he had

1 been purchasing Sudafed. Until those actually come into
2 evidence I do not intend to object to the admissibility of
3 those, Your Honor. But until they are admitted in I would
4 ask the State to being precluded from mentioning the
5 Sudafed purchases. Depending on the statement, I guess
6 the Court will hear the Jackson v. Denno. If that
7 statement comes in then I think the State would be allowed
8 to mention buying Sudafed but not through the supermarket.
9 They are going to offer that he admitted buying Sudafed
10 with the lady. If the Court allows the statement under
11 Jackson v. Denno then I think that can properly be talked
12 about.

13 THE COURT: Well, I was wanting to at least begin
14 with the opening instructions and opening arguments,
15 break, eat lunch and then go into the trial. Solicitor,
16 would you be okay with just reframing from mentioning the
17 statement and the Sudafed purchases and then just kind of
18 keep it general in your opening at this point?

19 MR. STUMBO: Yes, sir.

20 MR. VERNER: The State wants to go ahead and argue,
21 the two opening arguments now and then do the Jackson v.
22 Denno. Okay.

23 THE COURT: We won't mention anything about the
24 statement or the Sudafed purchases in opening.

25 MR. VERNER: I understand.

1 THE COURT: Just so the record is clear, State's 1
2 through 23 will be in evidence without objection.

3 (Whereupon, State's Exhibits 1 through 23 were
4 admitted into evidence.)

5 THE COURT: Let's get the jury in.

6 (Whereupon, the jury came into open court at
7 approximately 12:32 p.m.)

8 THE COURT: Let the record reflect that the jury is
9 back and seated. Who is Ms. Anderson, Karen Anderson. I
10 am going to appoint you the foreperson of the jury. Ms.
11 Anderson, when we come back after lunch if you will have a
12 seat in the seat closet to the jury room. The alternate,
13 where ever the bailiff needs you to sit you will sit at
14 that place. The rest of you can feel free to move about
15 as you want. If at any time during this trial you have
16 difficulty hearing the testimony what I want you to do is
17 simply raise your hand and that will be my cue to ask the
18 lawyers and the witnesses to speak up. Now, ladies and
19 gentlemen, we are about to begin the trial of the case of
20 the State of South Carolina versus Vernon Jacob
21 Livingston, Jr. And before we begin this trial, ladies
22 and gentlemen, I will tell you that this trial is probably
23 going to be a little bit different what you have come to
24 expect from reading about trials and watching them on TV.
25 You might have come to expect that trials are filled with

1 drama and intense action and everything is neatly tied up
2 in an hour. Sometimes that is the case, more often than
3 not however trials take a lot longer than that. That is
4 because what we are engaged in here, ladies and gentlemen,
5 is a search for the truth. And searching for the truth
6 can be a very time consuming and deliberative process,
7 quite the opposite of what you may come to expect from
8 reading about trials and seeing them depicted on TV or the
9 movies. And I love watching those types of programs and I
10 love watching movies but obviously that is for
11 entertainment, this is for real. And this trial, although
12 hopefully it will be educational and beneficial for you,
13 it is a very serious case for both the State and the
14 defendant in this case. I want to begin for thanking you
15 to accept the role as jurors. I will tell you there is no
16 greater service than you give to your country with the
17 exception of donning a uniform during the time of war.
18 There is probably no greater service than you give than to
19 serve on a jury. You have my appreciation and my thanks.
20 Now, ladies and gentlemen, what I am about to say is
21 intended to serve as an introduction to the trial of this
22 case and these remarks are not to be considered a charge
23 on the law that applies. I will instruct you on the law
24 that applies at the conclusion of the trial before you
25 retire to deliberate and consider your verdict. Again,

1 these remarks are merely an introduction to the process
2 that we will use that you can better understand what is
3 going on during the course of the trial. Now, the
4 defendant in this case, Mr. Livingston, has been charged
5 by an indictment filed with this court with the offense of
6 manufacturing methamphetamine. I will explain to you the
7 elements of that offense later before you retire to
8 deliberate. Again, the indictment in this case, ladies
9 and gentlemen, is simply the charge or the method by which
10 this charge is brought to court and the indictment is not
11 in any sense of the word evidence of any of the
12 allegations contained in the indictment. The defendant in
13 this case, Mr. Livingston, has plead not guilty to this
14 charge and that plea puts the burden on the State to prove
15 each and every elements of the indictment beyond a
16 reasonable doubt. It will be your duty, ladies and
17 gentlemen, to determine whether the State has met this
18 burden. Your purpose as jurors is to find and determine
19 the facts in a case. You are the sole judges of the facts
20 of this case so if at any time I make any comment
21 concerning the facts you must disregard that comment
22 because the law does not permit me to have any opinion
23 about the facts in a case. You are to determine the facts
24 from the testimony you hear and the other evidence and
25 exhibits which are introduced into evidence in this court.

1 It is up to you to determine the inferences which you feel
2 may properly be drawn from the evidence presented. It is
3 especially important that you perform your duty in
4 determining the facts in this case in a diligent and a
5 conscientious manner, ladies and gentlemen, because
6 normally there is no way to correct an erroneous
7 determination of facts by a trial jury. Now on the other
8 end and with equal emphasis the same law that makes you
9 the judge of the facts of this case makes me the Judge of
10 the law of the case. The law that is given by the Court
11 is the only law which you may consider. You have to
12 accept it and apply it even though you may disagree with
13 it. Again, I cannot tell you what the facts are and you
14 are not permitted to disagree with me about what the law
15 is or what the law ought to be. Your job would be to take
16 the law as I give it to you, apply it to the facts as you
17 find them to be from the testimony and the evidence
18 presented and thus render a true and just verdict under
19 the oath that you are going to take in a few moments.
20 Now, until I advise you to begin your deliberations please
21 don't discuss this case with anyone, that includes
22 friends, family members, even your fellow jurors. Once
23 the case is submitted to you you can discuss it only in
24 the jury room in the presence of all twelve jurors.
25 Again, the parties have been told not to have any contact

1 with you while the case is going on. So if you see one of
2 the lawyers or one of the parties' coming or going from the
3 courthouse and they don't say hey to you, it is not that
4 they are being rude, they are simply following my
5 instructions to have no contact with you while the trial
6 progresses. And the reason for this, ladies and
7 gentlemen, is that very often an innocent hello or an
8 innocent waive or high, how are you doing, if it is seen
9 by the other side it can be interpreted as an effort at
10 jury tampering. So the easiest thing for me to do is
11 simply have a blanket rule that says jurors are off limits
12 while the trial is going on. Now, ladies and gentlemen,
13 it is important that you keep an open mind in this case
14 and not decide any issue in this case until all the
15 evidence has been presented, you have heard the argument
16 of counsel and you have received my instructions on the
17 law that applies. It will be your solemn responsibility
18 to determine the guilt or the innocence of the defendant
19 and your verdict must be based solely upon the evidence as
20 presented to you during the course of the trial and on the
21 law as I instruct you at the close of the trial. In a
22 moment, ladies and gentlemen, the Solicitor will make his
23 opening statement to you. I instruct you that an opening
24 statement in this or any other case is not evidence, it is
25 merely the Solicitor's contention as to what will be

1 proven in this particular matter. The attorney for the
2 defendant may also give an opening statement although he
3 is not required to do so. Again, these opening statements
4 are not evidence, it is simply the lawyer's contention as
5 to what will be shown to you or what will be proven to you
6 as the trial progresses. The evidence will be presented
7 to you by sworn witnesses from this witness stand as well
8 as any exhibits which are introduced into evidence. Now,
9 ladies and gentlemen, from time to time during the trial
10 you might hear one of the lawyers say, Your Honor, we have
11 a matter for the Court or Your Honor, can we approach the
12 bench and sometimes it might be necessary for me to ask
13 that you leave the courtroom while we take up an issue of
14 law. The reason that I ask that you leave the courtroom,
15 ladies and gentlemen, is that sometimes in ruling on an
16 issue of law it is necessary for me to comment on or
17 discuss with the lawyers what facts have been proven or
18 have not been proven. And in discussing those issues of
19 law I don't want anything that I saw about the facts in a
20 case to have any influence or bearing upon what you
21 ultimately determine those facts to be. So during those
22 times when I ask you to leave the courtroom I have to take
23 up those issues of law and I just don't want you to hear
24 what I have to say. Please, during those times don't
25 speculate as to what we are discussing out here. So if we

1 are out here talking about an issue of law and you have to
2 be in the jury room please don't speculate what we are
3 talking about because it is purely a matter of law for the
4 Court and it should have no bearing upon what the ultimate
5 determination of facts are by you, the jury. Now, ladies
6 and gentlemen, in determining what the true facts are in
7 this case you must decide whether or not the testimony of
8 witnesses is believable or not. It will be my
9 responsibility to rule as a matter of law as to whether
10 certain testimony is admissible at all. Once the
11 testimony is admitted, however, whether or not you choose
12 to believe it is solely for you to determine. In deciding
13 whether to believe a witness, ladies and gentlemen, you
14 have the right to consider the interest of any witness,
15 the biased of any witness, the prejudiced of any witness,
16 the opportunity for the witness to have seen the matters
17 and things about which the witness may testify and the way
18 the witness acts on the witness stand. You have the right
19 to consider anything which is in the record in this case
20 that will help you evaluate the testimony of those
21 witnesses. That means it is important for you to pay
22 attention to the witnesses, to their testimony and try to
23 keep your thoughts from wondering so at the close of the
24 case when you retire to deliberate the verdict you will be
25 in a position to render is a true and just verdict under

1 the oath that you will take in a few moments. Now, Madam
2 Forelady, it will be your added responsibility to preside
3 over the jury deliberations in the jury room. Your vote
4 counts no more or no less than any other juror and your
5 primary responsibility is to make sure that everyone has
6 an opportunity to have their fair say. So you are
7 basically first among equals when it comes to the jury.
8 And once the case is concluded you will also write the
9 jury verdict on the actual indictment itself. Now, in
10 order to preserve everybody's rights before your oath is
11 administered to you I will give the attorneys an
12 opportunity to object to anything that I have said during
13 these opening remarks. Any objection from the State?

14 MR. STUMBO: None from the State.

15 THE COURT: From the defense?

16 MR. VERNER: No, Your Honor.

17 THE COURT: At this point, ladies and gentlemen, if
18 you would simply rise and raise your right hand and the
19 Clerk will administer your oath.

20 (WHEREUPON, the jury was sworn at 12:45 p.m.)

21 THE COURT: Solicitor, you are recognized for your
22 opening, sir.

23 MR. SCOTT: Thank you, Your Honor. May it please the
24 Court?

25 THE COURT: Yes, sir.

1 MR. SCOTT: Ladies and gentlemen of the jury, this
2 case is about poison.

3 MR. VERNER: Your Honor, I object to that. This case
4 is about poison. If that is not an appeals, this case is
5 about drugs.

6 THE COURT: All right. I will give him a little
7 latitude. Again, ladies and gentlemen, what the lawyers
8 say during their opening remarks is not evidence in this
9 case and ultimately you will have to judge this case based
10 solely upon the evidence, free of any passion, prejudice
11 or any sort of biased. So with that said, Solicitor, you
12 may continue.

13 MR. SCOTT: This case is about a homemade drug. 'All
14 right. A drug is poisonous to your body, you can make it
15 in your bathroom, make it in the trunk of your car, you
16 can make it in a shed. I said poison because what else
17 would you call something that has ingredients like
18 Sudafed, coal and fuel, Drano, ammonium nitrate, that is
19 why I call it poison. What I am talking about is
20 methamphetamine. And meth is a nasty drug--

21 MR. VERNER: Your Honor, again that is not proper in
22 opening.

23 THE COURT: I will allow him a little bit of
24 latitude. Go ahead, Solicitor.

25 MR. SCOTT: We are here today, there is a man seated

1 over here, Vernon Livingston, is a meth cook. Now, meth
2 is relatively easy to make, it is extremely volatile, very
3 dangerous, often explosive but relatively easy. As I
4 said, you can make it in a shed if you have the right
5 ingredients. It is particularly dangerous because of
6 this, there is labs that often take up a whole room to
7 little more than a two liter bottle and common ingredients
8 that you might find under your sink in the kitchen. As we
9 introduced ourselves earlier, my name is Dale Scott. I am
10 a Deputy Solicitor here in this circuit. David Stumbo is
11 your elected Solicitor. And we represent the State, we
12 are going to introduce a handful of evidence and we are
13 going to introduce some witnesses who are going to testify
14 from that stand. And we are going to attempt to show you
15 beyond a reasonable doubt that Mr. Livingston is on meth
16 and he is guilty of what he is charged with, manufacturing
17 methamphetamine. You are going to hear about the night of
18 January the 30th of 2012 when law enforcement was called
19 out to Mr. Livingston's home on Highway 121 over by I-26.
20 A woman by the name of Sheila Jackson, the mother of one
21 of his children were called upon to go out there and she
22 informed them that Mr. Livingston had been cooking meth in
23 his shed. Right before they got there he had packed it
24 all up in a black bag and had taken off in his white
25 pickup truck. She watched him turn down Cypress lane

1 right over there near their home. Law enforcement
2 responded pretty quickly and were able to catch up with
3 him on that road we were describing, he was in the black
4 truck. In that general area they did find a black bag
5 full of materials that we named earlier. Ladies and
6 gentlemen, they arrested him for manufacturing
7 methamphetamine. Now, it is our job to represent the
8 State and we are going to prove this case and we are
9 required to meet a certain burden of proof and that is
10 beyond a reasonable doubt. You are going to hear a lot
11 about that later. That simply means we are going to have
12 to prove this case to you in such a way that you are
13 firmly convinced of Mr. Livingston's guilt. Now, beyond a
14 reasonable doubt does not mean that you can't have any
15 doubt once you have heard all of the evidence. It means
16 you can't have a reasonable doubt. The Judge is going to
17 tell you that a reasonable doubt is the kind of doubt that
18 would cause a reasonable person to hesitate to act. To
19 put it simply, if you use your common sense and you apply
20 it to the evidence that comes from that stand, physical
21 evidence that we introduce and all of the facts that
22 surround this case and use your common sense and be firmly
23 convinced that he is guilty of being a meth cook, you all
24 have the evidence you need to find him guilty. At the end
25 of this trial that is exactly what we are going to ask you

1 to do, to find Mr. Livingston guilty of manufacturing
2 methamphetamine. Thank you.

3 THE COURT: Mr. Verner.

4 MR. VERNER: May it please the Court, Your Honor,
5 Solicitor. I represent Vernon Livingston, he is a
6 lifelong resident of Newberry County, Vernon Livingston,
7 and he is entitled to be believed when he says he is not
8 guilty unless the State can produce all of the evidence
9 and all the witnesses you need to hear. If I object, if
10 this was a marijuana case it is still against the law, if
11 it is cocaine it is still against the law.
12 Methamphetamine is against the law, I think you can decide
13 this case without hearing this rah-ha about nasty drugs or
14 emotional appeals to you is beyond the facts of the case.
15 That is just, rah-ha, let's do something for the team.
16 Whatever the legislature says that is against the law he
17 hasn't got the right to do anything here. So it doesn't
18 really matter what the charge is or what the contraband
19 is, if the State proves their facts they are entitled to a
20 conviction, if they don't Mr. Livingston is entitled to an
21 acquittal. It takes all twelve of you on either side to
22 lead the way and we are just asking for a judgment that
23 can disregard the emotional appeals to it and just, is a
24 fact question. Reasonable doubt means that if there is
25 any possible doubt that could be true, even if it not more

1 likely than not to be true but it is reasonable possible
2 that it could be true you are entitled to give Mr.
3 Livingston the benefit of the doubt. And that is the
4 case. I submit to you that it is not going to be the
5 central focus of the case on whether this is a meth lab or
6 this is meth ingredients, it is going to be on whose was
7 it. We have got a lady named Sheila Jackson that we
8 submit to you who is it in the proximity of the drug but
9 she says, no, it is Vernon Livingston's. And why is that,
10 why is that. I submit to you that you see that she has a
11 reason to be biased, there is custody issues between them.
12 There is, where is his child going to, right off the bat
13 there is an issue that could affect whether a person gives
14 a truthful allegation. There are going to be more issues
15 and the testimony is going to come just, today's news was
16 driving in was the Pope in Rome has resigned or he is
17 stepping down. There hasn't been a Pope done that for 600
18 years, a Pope has always died in office. This Pope is
19 stepping down, the last Pope that did that was in the
20 1400's. The jury trial which you are a member of, there
21 has been a written right to a jury trial, even 200 years
22 before the last Pope in 1215 is when they wrote down the
23 rules that a citizen is entitled to a trial. At that
24 point is the King couldn't take the liberty of one of his
25 subjects appear who actually owned land at that time. But

1 by law American has picked up, he can be any citizen of
2 the country. The State cannot deprive a citizen of his
3 liberty or his property without going through a jury of
4 the man's peers. Twelve who live in the community with
5 him. We are not and I dispute a little bit of Judge Addy
6 in this regard, it is not a search for the truth, I don't
7 know what happened on January the 30th of 2012, it is all
8 after the fact, everybody in this jury. What your job is
9 to decide is has the State produced the evidence to prove
10 beyond any doubt and when I say any doubt I am not talking
11 about crazy imaginary doubt, I am talking about a
12 legitimate doubt, that is his meth. And if he has it and
13 even if it is close Vernon Livingston is entitled to a not
14 guilty verdict. And that is all we are asking of you.
15 Thank you.

16 THE COURT: Thank you, Mr. Verner. Ladies and
17 gentlemen, we are going to go ahead and take a break for
18 lunch and when we resume we will go straight into the
19 testimony in this case. What I am going to ask you to do
20 is be back in the jury room at 2:00. There is a couple of
21 matters I need to take up before we bring you back in
22 here. So we will see you at 2:00 and please don't discuss
23 the case with anyone. Have a pleasant lunch.

24 (Whereupon, the jury was excused from open court for
25 a lunch break.)

1 THE COURT: We will take our lunch break and be back
2 at 2:00. If we could, I assume that the Jackson v. Denno
3 would only be one witness, a one witness situation so we
4 will kick off with that first.

5 MR. VERNER: If he is likely to testify, I don't
6 anticipate that it will take very long, Your Honor. But I
7 think he indicates to me he will testify at the Denno
8 hearing.

9 THE COURT: You have reviewed with him his right to
10 testify or not to testify? That applies even for a
11 Jackson v. Denno so I just want to make sure you have
12 covered those basis with him.

13 MR. VERNER: Yes, sir. If the Court wants to
14 admonish on his rights.

15 THE COURT: Mr. Livingston, you can stay seated.
16 Raise your right hand.

17 VERNON LIVINGSTON, being
18 first duly sworn, testified as follows:

19 THE COURT: You are Vernon Livingston, correct?

20 MR. LIVINGSTON: Yes, sir.

21 THE COURT: When we come back from lunch we are going
22 to have a Jackson v. Denno hearing which I imagine Mr.
23 Verner has already explained to you what that entails.
24 Basically it is a hearing to determine whether or not your
25 rights were read to you at the time that you gave a

1 statement that I am told that you gave to the police and
2 to determine whether or not there is sufficient evidence
3 to allow that jury to hear it. Do you understand, Mr.
4 Livingston, and under the constitution of our State and of
5 the United States any person that is accused of a crime
6 does not have to be a witness against himself. Do you
7 understand that. And that includes even for purposes of a
8 Jackson v. Denno hearing. You don't have to testify if
9 you don't want to. Do you understand that, Mr.
10 Livingston.

11 MR. LIVINGSTON: Yes, sir.

12 THE COURT: And obviously, if you testify even at a
13 Jackson V. Denno hearing or during the course of your
14 case-in-chief, once it is your turn to present evidence
15 you realize this is a right that can only be waived by
16 you. Mr. Verner cannot force you to testify, I can't
17 force you to testify, the Solicitor cannot force you to
18 testify. So if at any point and time you area called to
19 the stand by Mr. Verner I will assume that you and he have
20 agreed that your testimony is beneficial and you are
21 voluntarily waiving your Fifth Amendment rights against
22 self-incrimination. Is that satisfactory, sir?

23 MR. LIVINGSTON: Yes, sir.

24 THE COURT: We will be at ease until 2:00.

25 MR. VERNER: Your Honor, Mr. Livingston is in the

1 Court's custody now that the case has been sworn.

2 THE COURT: If he hasn't had any issue with showing
3 up and he has responded when you wanted him to show up I
4 will let him stay out.

5 MR. VERNER: Thank you, Your Honor.

6 THE COURT: We will be at ease.

7 (Whereupon, a lunch break was taken.)

8 THE COURT: Solicitor, are you ready for the Jackson
9 v. Denno?

10 MR. SCOTT: We are, Your Honor.

11 MR. VERNER: Yes, sir.

12 THE COURT: Solicitor, call your witness.

13 MR. SCOTT: The State calls Robert Dennis.

14 ROBERT DENNIS, being
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 By Mr. Scott:

18 Q State your name, please.

19 A Robert Dennis, Newberry County Sheriffs Office,
20 Lieutenant over investigations.

21 Q How long have you been with the sheriffs department?

22 A Been with the sheriffs office since 1999, May.

23 Q So you were working on January the 3rd of 2012?

24 A I was.

25 Q Did you have an occasion to respond to a complaint, a

1 meth lab at Highway 121 in Newberry?

2 A I did.

3 Q And what was your involvement that night?

4 A That night I was the on call supervisor for
5 investigations. The acting lieutenant, Lieutenant Odell
6 Schumpert and Sergeant Shawn Carnes called me and notified
7 of the possible location of a meth lab. I also had them
8 to notify Investigator Nick Bouknight who was over our
9 drug narcotics unit to respond to that location as well.

10 Q Were there items seized as part of the meth lab?

11 A There were. There were actually two separate,
12 actually three separate locations that we dealt with. The
13 first location was that of where the traffic stop occurred
14 which was on Cypress Lakes Road right down from Maple Lane
15 going toward Whitener Road. That is where the actual
16 traffic stop of Mr. Livingston took place by the road
17 deputies. The second location was on Maple Lane just off
18 Highway 121 in an area that was not really grewed up with
19 underbrush but kind of an open area within the wood line.
20 And then the third location would have been the residence
21 of Mr. Livingston which was South Carolina Highway
22 121 in Newberry.

23 Q Was Mr. Livingston placed under arrest that night?

24 A Mr. Livingston was detained that night at the first
25 location where the traffic stop occurred and that was

1 based off of a domestic violence complaint.

2 Q He was taken to the Newberry County jail?

3 A That's correct.

4 Q That was on the night of January 30th, is that
5 correct?

6 A That's correct.

7 Q When did you next speak to Mr. Livingston?

8 A It was not until the next afternoon. I believe it
9 was after lunch and I would have to look at the rights
10 form to see exactly what time it was. But myself and
11 Investigator Nick Bouknight rode out to the Newberry
12 County Detention Center and spoke with Mr. Livingston
13 there at the jail.

14 Q So he was under arrest when you spoke to him the next
15 day?

16 A Yes, he was.

17 Q What room did you do the interview in?

18 A We basically stood there at the booking desk within
19 the jail. Off to the side which was out of sound, because
20 we could whisper. So anyone on the other side of the wall
21 or the petition would not be able to hear or know what we
22 were talking about.

23 Q Was Mr. Livingston advised of the nature of the
24 investigation, was he advised while you were there?

25 A It was kind of two parts of the investigation. The

1 first part was dealing with domestic violence case in
2 which he was being charged and then the second was the
3 investigation of the methamphetamine possible lab.

4 Q Was he advised of his Miranda rights?

5 A He was. We do it twofold. We use a form from the
6 Newberry County Sheriffs Office, a rights form which lists
7 all of his information to include his name, date of birth,
8 social security number, home address, phone numbers that
9 he could be made contact with. We also asked for his
10 level of education and if they can read and write. Once
11 that is filled out then the next part is the actual waiver
12 or his rights that we give him. Once those rights are
13 read to him he is asked if he understands those rights.
14 He does two ways, one verbally acknowledging the question
15 that I have asked. And then secondly by signing the form
16 that we have indicating he understands those rights. And
17 then the last part of it is is what we classify a waiver
18 asking him number one, understanding his rights and having
19 those rights in mind is he willing to speak with us
20 without the presence of an attorney. You know,
21 understanding he is not being threatened or coerced or
22 promised any reward for giving his statement. Once again,
23 he indicated verbally as well as in writing on that form.
24 And then that form was witnessed by myself.

25 Q Let me show you State's 28 for ID purposes. Do you

1 recognize that?

2 A I do, Mr. Scott. This is the form we use at Newberry
3 Sheriffs Office which is the rights. And it is a copy of
4 that.

5 Q What is the time that identifies those rights were
6 given?

7 A The time is at 2:20 p.m.

8 Q That would be January the 31st, the day after the
9 arrest?

10 A That is correct and it is dated as such next to the
11 time.

12 Q How old was Mr. Livingston at the time these rights
13 were given?

14 A 56 years old.

15 Q Did he appear to understand the rights as you went
16 over them with him?

17 A Yes, sir.

18 Q What other information is listed on the top portion
19 of the advisement of rights?

20 A The top part of the advisement indicates his name,
21 social security number, date of birth, the address in
22 which he lives then it would ask for contact information
23 if he wanted to give that. The next part is, I, Vernon
24 Jacob Livingston, Jr. am 56 years old, my address is
25 South Carolina Highway 121, Newberry, South Carolina,

1 29108. And then the next line is, I have finished the
2 11th grade in school and can read and write.

3 Q So did he appear to have any trouble at all
4 understanding his rights?

5 A No sir, he did not.

6 Q Would you read the rights as you, you said you read
7 these rights to him or he reads them himself?

8 A That's correct, Mr. Scott. What we try to do is
9 present a copy so that the defendant or an individual we
10 are talking to can read along with us. This was in front
11 of him and those rights were highlighted by myself reading
12 them. Once I completed the reading of all of the rights
13 there is a question that I ask. I have read this
14 statement of my rights and understand what my rights are.
15 The following question is, do you understand those rights
16 as I have read them to you. He indicated yes and then he
17 signed his name and dated it, 1/31/2012 as understanding
18 those rights.

19 Q Would you go over each one of those rights as you
20 would have explained to him on January the 31st of 2012?

21 A I will. Before we can ask any questions you must
22 understand your rights. You have the right to remain
23 silent, anything you say can and will be used against you
24 in a court of law, you have the right to a lawyer for
25 advice before we ask you any questions and to have him or

1 her present with you during any questioning. If you have
2 no money for lawyer fees the Court will appoint one to
3 represent you without cost if you wish. If you decide to
4 answer questions now without a lawyer present you will
5 still have the right to stop the questions at any time.
6 You also have the right to stop answering questions at any
7 time until you talk with your lawyer.

8 Q And how did he indicate to that last question,
9 whether or not he wanted a lawyer?

10 A The last question was, I have read this statement of
11 my rights and I understand what my rights are. So he
12 acknowledged that he understood those rights by signing.
13 And the last portion of the rights form is what we
14 classify as the waiver. It says I am willing to make a
15 statement and answer questions. I do not want a lawyer at
16 this time. I understand and know what I am doing. No
17 promises or threats have been made to me and no pressure
18 or coercion has been used against me. If you will note,
19 the waiver has three highlighted words within that waiver.
20 Am is highlighted in bold black as well as, do not. Under
21 the question, I do not want a lawyer. He indicated that
22 he understood those rights and was willing to talk without
23 the presence of an attorney verbally as well as signing
24 his signature.

25 Q Did he ever change his mind and ask to stop

1 questioning because he wanted an attorney?

2 A No, sir.

3 Q Did you or anyone in your presence threaten or coerce
4 Mr. Livingston in any fashion or offer him any promise or
5 hope or reward?

6 A No, we did not.

7 Q Did he give a statement?

8 A He did make a verbal statement.

9 Q Not a written?

10 A Not a written.

11 Q Was anyone else in the room with you when he made
12 this statement?

13 A Investigator Bouknight was standing next to me.

14 Q All right. What did Mr. Livingston say?

15 A One of the things that Mr. Livingston started off, we
16 started talking about was the incident involving Sheila
17 Jackson which he has a child by. He indicated that he in
18 no way, shape or form--

19 MR. VERNER: Your Honor, I don't mean, just for the
20 purpose of this hearing I would ask that Investigator
21 Bouknight be sequestered in the courtroom. Is he intended
22 to testify in your Jackson v. Denno hearing?

23 MR. SCOTT: Yes, probably so.

24 MR. VERNER: I would ask that he be sequestered.

25 THE COURT: If you don't mind step outside for a

1 little bit.

2 MR. VERNER: Thank you.

3 A We were talking about Sheila Jackson. Mr. Livingston
4 indicated that he had not touched her, that one of the
5 reasons that she had marks on her was from a fight a
6 couple of days before or a day before that occurred over
7 in West End section of Newberry County. They had gotten
8 into an argument over Jackson leaving and getting out of
9 the house, kind of staying away so to speak. And
10 Livingston was out in the yard when the argument started
11 and he said, you know, she started making threats of
12 calling the police and getting him in trouble. And so he
13 was in the process of leaving because he knew we, law
14 enforcement would take her side. I asked him if she had a
15 key to the house. He said he didn't know but she had
16 stayed out in the camper which he has a mobile camper that
17 he is able to kind of drive around whenever he goes and
18 does any work or his hunting camper as he classifies it.
19 And that she had stayed out on the camper the night
20 before. I asked if she had any clothes there at the house
21 and he indicated no, that she hadn't been staying there
22 full-time with him. I asked him about the items that we
23 had found on Maple Lane as well as the items we had found
24 at his house that were items I regularly saw in the use of
25 meth and I knew he had a problem and why were they there.

1 And one of the things that he mentioned was is that
2 because Ms. Jackson had made the comment that she was
3 going to call the police he wanted to get rid of the
4 stuff. And he loaded the stuff in his pickup truck and
5 took it out and threw it out on Maple Lane. Within him
6 telling me that he also indicated that nothing was in the
7 bag that he threw away was of any type of hazardous
8 substance that could harm anyone.

9 Q Did he say anything else?

10 A During the conversation we talked about purchasing
11 Sudafed. Mr. Livingston not only confirmed that he made
12 purchases of Sudafed but also Ms. Jackson had made those
13 purchases for Sudafed for them to use in the meth that
14 they were using. One of the other questions that was
15 asked of Mr. Livingston was what type of meth that he was
16 using to make the meth and he indicated the shake and
17 bake. During that time he was able to list the items that
18 he used to make meth and I believe that Investigator
19 Bouknight asked, are you sure it wasn't the red heat type
20 method and he said, no, that is a more dangerous method,
21 that he utilized the shake and bake.

22 Q So he indicated the way he made it, what if anything
23 did he describe in the shake and bake method and how he
24 manufactured methamphetamine?

25 A And I would feel more comfortable if an investigator

1 over narcotics explaining the actual process. But the
2 ingredients that are used are--

3 Q Let me interrupt. I am trying to think of a good way
4 to ask this question. Did he indicate items he used in
5 his method of manufacturing methamphetamine?

6 A Yes, he did.

7 Q What were those items?

8 A Those items are, Sudafed pills, Coleman fuel, ammonia
9 nitrate, lye and lithium and then salt and acid in another
10 bottle.

11 Q Were these items consistent with the items you
12 located in the black bag on Maple?

13 A Those items were consistent, yes.

14 Q As far as you know was this statement freely and
15 voluntarily made?

16 A Yes, it was.

17 Q That he was clearheaded at the time of your
18 questions, the time that he was advised of his rights?

19 A I believe so, yes sir.

20 Q You didn't threatened him or coerce him or offer him
21 any promise or reward?

22 A No sir, we did not.

23 Q Please answer any questions Mr. Verner may have for
24 you.

25 CROSS-EXAMINATION

1 By Mr. Verner:

2 Q Investigator Dennis, did you prepare a written
3 investigative report in this case?

4 A We prepared--

5 Q Did you personally prepare a report?

6 A Other than what is typed on our incident report, that
7 is the only thing.

8 Q Was that report, I don't see a report in the file
9 that indicates that it was by Investigator Robert Dennis.
10 Is there one in there?

11 A It says, Lieutenant Dennis and reporting officer went
12 to the jail.

13 Q Would that be Bouknight's report. I am sorry, I
14 don't mean to interpret but that is actually Nick
15 Bouknight's report?

16 A That is actually the main report that we use to
17 indicate what was said and it is done with both myself and
18 Nick present as far as typing and putting the verbiage in.

19 Q Does your name appear on the report other than you
20 were mentioned by name by Officer Bouknight?

21 A My name appears within the second page of the report
22 and as well as on the Miranda rights.

23 Q It appears in the body of the report but not, you
24 would agree with me that all reports have a section on the
25 bottom where the reporting officer puts his name?

1 A That's correct.

2 Q And sometimes there are more than one officer which
3 puts their name on the report?

4 A That's correct.

5 Q Would you agree that this report only has
6 Investigator Nick Bouknight's name?

7 A It does.

8 Q And sometimes these reports are given to an approving
9 officer or a different officer before they are finalized
10 and then his name would also be on the report as kind of a
11 supervising officer?

12 A It could be, yes.

13 Q Are you a supervising officer over Nick Bouknight?

14 A I am.

15 Q If you had an authorized report, ordinarily your name
16 would appear in the approving officer?

17 A Not necessarily.

18 Q But you are testifying, your understanding he was
19 preparing a joint report for basically the two of you?

20 A With me present, yes.

21 Q So you are indicating he was on the computer doing
22 the report while you were there?

23 A That's correct.

24 Q Were you at the scene of the home or the arrest?

25 A I was actually at all three locations.

1 Q The prior night?

2 A No.

3 Q On the night of the arrest, you were not involved in
4 the arrest or to stop of the car or the search of the
5 home?

6 A I was present and I understand what you are asking
7 now. I was present once they called about the possibility
8 of a meth lab so I was able to make it to where they had
9 Mr. Livingston stopped on Cypress Lane there between Maple
10 Lane and Whitener Road. I stopped at that site first just
11 to see Mr. Livingston, look at the vehicle to see if there
12 was any indications within that vehicle if we needed to
13 take any appropriate action for items that would be
14 consistent with making meth. Then I went to the actual
15 residence where there were officers standing by there
16 maintaining security.

17 Q So you were at both scenes prior to the interview?

18 A That's correct.

19 Q Was Mr. Livingston still at the scene on Maple Lane,
20 Cypress Road at the time you arrived?

21 A He was, he was in handcuffs being detained by Deputy
22 Carnes and Claytor.

23 Q That was the location where the traffic stop was?

24 A That's correct.

25 Q Are you aware that they did bring him back to the

1 Maple Lane site where the contraband was located?

2 A No, sir.

3 Q Is it fair to say that when you interviewed Mr.
4 Livingston the following day were you, how did you get him
5 from the detention center to your office again?

6 A He did not come from the detention center. We
7 actually did the interview within the booking area of the
8 detention center so he was brought from one of the holding
9 cells, probably the distance from here to the jury box to
10 where we interviewed him and advised him of his rights.

11 Q So he was interviewed in the booking area of the
12 Newberry County jail?

13 A That's correct, yes, sir.

14 Q And he had been in the holding cell for the night?

15 A The holding cell, yes sir.

16 Q And did you tell him you were investigating the
17 domestic violence, the fight with he and Sheila Jackson?

18 A I told him we were investigating the whole deal
19 involving the domestic violence as well as the possibility
20 of a meth lab.

21 Q My question is, was he under the impression that you
22 were only there to interview him about the fight with
23 Sheila Jackson or did he know that he was--

24 A No, sir. He knew and I had indicated that we were
25 going to talk about the meth.

1 Q The waiver of rights form, does that indicate in any
2 written fashion the charge you were investigating him for?

3 A No sir, it does not.

4 Q Does the form sometimes list the charge that you are
5 interviewing?

6 A None of our forms of the Newberry Sheriffs office
7 indicate any type of charge.

8 Q Okay. And that is a report generated by your office
9 with the Sheriffs Department?

10 A That's correct.

11 Q So there is nothing on the wavier of rights form that
12 specifically notified him that he is being investigated
13 for the methamphetamines or either charge?

14 A No sir, not in writing.

15 Q So he relied on what you told him?

16 A That's correct.

17 Q Had he already been served any kind of warrant or
18 ticket to the best of your knowledge prior to that time?

19 A I am not sure if he had or not, no.

20 Q The CDV first offense would typically be a blue
21 ticket type charge as opposed to getting an arrest warrant
22 from a magistrate?

23 A Back during that time it probably would have been a
24 blue ticket but I do believe a warrant was issued on him.

25 Q So it is possible at the time, the only paperwork he

1 would have had would have been the blue ticket on the CDV?

2 A That's correct.

3 Q He certainly wouldn't have had the arrest warrant on
4 the meth until after you had completed your report?

5 A Yes.

6 Q You testified for the Deputy Solicitor that he said
7 that law enforcement would take his side and you would be
8 arrested is one of the reasons he left?

9 A They would take her side.

10 Q Her side?

11 A That's correct.

12 Q Why is that not in the report?

13 A I can't answer that one.

14 Q But you participated in--

15 A In the verbal interview, yes.

16 Q About how long was the total interview?

17 A I would probably say less than thirty minutes.

18 Q And how much of that time do you think is devoted on
19 the fight, the incident itself other than what was
20 reported on that.

21 A Ask that again, Mr. Verner.

22 Q How much of time do you think you spent on the meth
23 investigation as opposed to the domestic violence?

24 A I would probably say the remainder of the interview
25 was dealing with the meth and I would probably estimate a

1 good fifteen.

2 Q Thank you.

3 MR. SCOTT: The State calls Nick Bouknight.

4 NICK BOUKNIGHT, being

5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Scott:

8 Q Mr. Bouknight, where are you employed?

9 A Newberry County Sheriffs Office.

10 Q What is your rank?

11 A Sergeant.

12 Q And how long have you been with the sheriffs
13 department?

14 A Since 2001.

15 Q How long have you been a sergeant?

16 A Approximately nine years.

17 Q Were you working the night of January the 30th of
18 2012?

19 A I was.

20 Q Did you have occasion to go out to 121, Highway 121
21 in Newberry County?

22 A Yes sir, I did.

23 Q And what was the nature, what was your involvement
24 with that call, what was the call in regards to?

25 A I responded to a meth lab.

1 Q And were you involved with the collection of evidence
2 in that case?

3 A I was.

4 Q Was anybody arrested that night for the meth lab?

5 A Yes, sir.

6 Q Who was that?

7 A The defendant, Vernon Jacob Livingston sitting in the
8 courtroom.

9 Q Was he taken to the jail that night?

10 A Yes, sir.

11 Q What was he arrested for?

12 A I believe initially criminal domestic violence.

13 Q Was he interviewed?

14 A Not that night.

15 Q When was he interviewed?

16 A I believe it was the following day.

17 Q Were you involved with that interview?

18 A I was.

19 Q Who else was involved with that interview?

20 A Lieutenant Dennis who is sitting right there.

21 Q Was Mr. Livingston the form of the nature of y'all's
22 investigation. Did y'all tell him why y'all were there?

23 A Yes, sir. Lieutenant Dennis did all of the speaking,
24 read him his rights and he agreed to talk and waive his
25 rights.

1 Q Was he told, was he questioned before these rights
2 were given?

3 A No, sir.

4 Q How were these rights communicated to him?

5 A Lieutenant Dennis read them to him off of a piece of
6 paper.

7 Q I will show you State's number 28, do you recognize
8 that?

9 A Yes sir, that is the common rights form that the
10 sheriffs office uses and it appears to be signed by Vernon
11 Jacob Livingston two times and Robert Dennis one time.

12 Q Did you personally observe Robert Dennis give that
13 form to Mr. Livingston?

14 A Yes, I did.

15 Q Did you personally observe Mr. Dennis go over each
16 one of those rights with Mr. Livingston?

17 A Yes, sir.

18 Q And did Mr. Livingston freely and voluntarily waive
19 his rights?

20 A He did.

21 Q Did he give a statement to you guys?

22 A Yes, sir.

23 Q What did he say?

24 A He kind of went into the domestic situation with his
25 girlfriend, I am not really sure what that was but he also

1 went into the manufacturing meth process and kind of gave
2 the way he makes methamphetamine.

3 Q Did you tell him, you said he was arrested for CDV,
4 did y'all tell him that methamphetamine items involved
5 with the production of methamphetamine had been
6 discovered?

7 A Yes sir, he knew that.

8 Q Did you discuss with him that you were investigating
9 a possible methamphetamine lab?

10 A Yes, sir.

11 Q Tell me what else he said, you said he mentioned
12 something about the CDV, you said you didn't know about
13 that, what do you mean?

14 A I don't remember what all he said during his
15 statement, verbatim about, you know, he blamed her for
16 part of the CDV and said that she had stayed in the camper
17 or something like that. But the main part was the
18 methamphetamine.

19 Q Tell me what he said about the methamphetamine?

20 A He gave his process with his chemicals using a cold
21 pack, Coleman fuel, Sudafed in a bottle for his, to take
22 off the Sudafed he would use heat to extract the Sudafed.
23 He didn't go very detailed into it, step by step but at
24 the end process he said he used liquid fire with the salt,
25 that would finish off the process which would commonly be

1 known as making or manufacturing methamphetamine.

2 Q These items that he mentioned that he used, were
3 those consistent with items you had found in your
4 investigation?

5 A Yes, sir.

6 Q What method of meth manufacturing did he use?

7 A The one pot method.

8 Q The one pot, is that called any other name?

9 A Shake and bake.

10 Q What if anything did he say about the bag you all
11 discovered on Maple?

12 A The bag I don't remember, the bag right off the top
13 of my head, about what he discussed about that, but I did
14 tell him what was found in the shed. And he said, I just
15 need help, I have messed up.

16 Q What did that mean or what did you take that to mean?

17 A Meaning he knows that he was making meth and he needs
18 help because he is addicted to methamphetamine.

19 Q What if anything did he say about purchasing Sudafed
20 in order to cook meth?

21 A I don't remember that being brought up.

22 Q Did you generate a report?

23 A Yes, sir.

24 Q Would it help to refresh your memory if I showed you
25 the report?

1 A Yes, it would.

2 Q Do you recognize this?

3 A Yes sir, that is the incident report that I wrote.

4 Q Take a minute to refresh your memory with it.

5 A Okay. Yes, there are some things that I remember
6 now.

7 Q What if anything did he say about the bag y'all found
8 on Maple?

9 A He stated he had threw the bag out.

10 Q Did he say anything about the items that y'all found
11 in the bag?

12 A That they were used to make methamphetamine.

13 Q As far as you know was his statement freely and
14 voluntarily given?

15 A Yes sir, he was advised of his rights.

16 Q Was this statement given before or after his Miranda
17 rights were given?

18 A The statement was given after Miranda was given and
19 he signed that he understood the rights.

20 Q Did he say what method he used to manufacture meth?

21 A The shake and bake.

22 Q That is what he said to you?

23 A Yes, sir.

24 Q You witnessed him sign the advisement of rights form?

25 A Correct.

1 Q Thank you.

2 CROSS-EXAMINATION

3 By Mr. Verner:

4 Q Investigator, where did you interview Mr. Livingston?

5 A At the jail, Newberry County Detention Center.

6 Q At the booking area?

7 A Correct.

8 Q Prior to the shake and bake method you indicated that
9 he said a different, like a one pot method?

10 A It is the same thing, one pot shake and bake method.

11 Q One pot like cooking pot, P-O-T?

12 A One pot is usually like a bottle.

13 Q Okay. But P-O-P or P-O-T?

14 A P-O-T.

15 Q Okay. And that is one method of making meth?

16 A Correct.

17 Q Do you remember how you phrased your question when
18 you are talking about the shake and bake method. Is it
19 possible, did you ask him whether he was using the shake
20 and bake method or did you ask him what method are you
21 using, ask him what method?

22 A I don't remember how it was phrased but either way it
23 would be the same question.

24 Q And when he gave this statement you tried to
25 accurately record the statement. Your report is your best

1 attempt?

2 A Yes, sir.

3 Q Your report does not say that he used the contents of
4 the bag to make meth, does it?

5 A I think it did at the top, look at my report.

6 Q But would you stand by what your report says?

7 A Let me see the report again.

8 Q Okay.

9 A It says that he put the stuff in his truck, (stuff),
10 meaning items used in the meth production. Put the stuff
11 in the bag, when we were interviewing Mr. Livingston, that
12 stuff in the bag, he knew what we was talking about. That
13 was methamphetamine items.

14 Q The more specific statement, I think you answered to
15 the extent that Vernon Livingston said, the stuff in the
16 bag I had been using to make meth. That is not in the
17 report, is that correct?

18 A I don't see it in there but like I said, that is what
19 I mean by that. The stuff in the bag would be used for
20 methamphetamine purposes. He fully understood the whole
21 time we were interviewing him.

22 Q And you were there from the beginning to the end of
23 the investigation?

24 A I was.

25 Q Thank you.

1 MR. VERNER: Your Honor, my motion, now that they
2 have testified I don't have a continuing motion to
3 sequester the witnesses.

4 THE COURT: Do you intend to offer reply testimony?

5 MR. VERNER: I do, Your Honor. Your Honor, Vernon
6 Livingston. My understanding, the Court has already
7 admonished him on his Fifth Amendment Right.

8 THE COURT: I have. Mr. Livingston, for the purposes
9 of this hearing, this is a limited purpose of determining
10 whether the statement had taken by the police from you was
11 freely and voluntarily given. Do you understand that you
12 are having to waive your Fifth Amendment rights to testify
13 at this point and time. Do you understand that, sir?

14 MR. LIVINGSTON: Yes, sir.

15 THE COURT: You are okay with that?

16 MR. LIVINGSTON: Yes, sir.

17 VERNON LIVINGSTON, being
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Verner:

21 Q Mr. Livingston, do you remember your interviewing
22 with the sheriffs deputy, Dennis and Bouknight on a
23 warrant on January the 31st?

24 A Yes sir, I did.

25 Q Where were you when you were interviewed by the law

1 enforcement officers?

2 A They took me out of the holding cell and we went over
3 to the booking gates.

4 Q Had you been served any arrest papers or papers prior
5 to your interview with either of the investigators?

6 A No, sir.

7 Q On the CDV charge were you given a blue ticket or
8 were you given an arrest warrant the next day?

9 A I got, I wind up with a blue ticket.

10 Q Do you remember when you got your blue ticket?

11 A No, sir. That was from the magistrate, I got the
12 ticket afterwards.

13 Q The bonding magistrate?

14 A Yes, sir.

15 Q Do you remember when you were bonded?

16 A Yes sir, that morning.

17 Q Prior to--

18 A Yes, sir.

19 Q Were you bonded on the meth charge or the CDV charge?

20 A Just the CDV charge because I didn't, I really didn't
21 know, that was the only charge that I had at that time.

22 Q Had you been interviewed by any of the law
23 enforcement officers prior, the night prior?

24 A I don't know, at the traffic stop where they stopped
25 me at, about, I don't know, eight or nine of them I guess,

1 I don't know, questions, you know.

2 Q What was the understanding that Lieutenant Dennis was
3 coming to interview you, what charge was he coming to talk
4 to you about?

5 A Well, when we started with the CDV charge and then
6 that is when I was asked the questions about the paper and
7 I signed the paper and everything. And, you know, we
8 discussed the CDV charge. I made a full statement about
9 it.

10 Q Mr. Dennis pulled you out of the holding cell or had
11 you received release from the holding cell?

12 A Yes, sir.

13 Q Do you recall what he said he wanted to talk to you
14 about?

15 A No sir, I didn't hear him say to anyone else. He
16 started with the CDV. He was talking about the CDV charge
17 and to my knowledge the papers that I signed, that is
18 what, the only charge that was mentioned at that time was
19 the CDV charge.

20 Q So your understanding was that he had just come and
21 talked to you about the domestic violence charge?

22 A Well, as far as I knew, yes sir. I did have a
23 understanding of it but that is what he said we were
24 talking about when I waived my rights and everything and
25 signed the papers. It was the only, the only charge that

1 was mentioned was the CDV.

2 Q When did you become aware you had become a suspect on
3 the meth charge?

4 A After we talked about the CDV charge he wanted me to
5 make a statement, you know, about methamphetamines,
6 manufacturing methamphetamines. I said, I don't want to
7 make, I am not going to make no kind of statement about
8 it, you know, I just, you know.

9 Q Were you aware that you were going to be arrested on
10 the meth charge at the time you were interviewed by the
11 investigators?

12 A Well, I was on the hold, I had been, I hadn't got the
13 warrant yet, I hadn't got the warrant for it but I was on
14 hold after they had PR'd me I was on a hold. And I
15 assumed that was probably what it was for. I wasn't sure
16 but I figured that was it.

17 Q And that was prior to your interview with the sheriff
18 deputy?

19 A Yes, sir.

20 Q You were told about the holding prior to the
21 interview?

22 A Yes sir, because when I got PR'd on the CDV that
23 morning, they kept me, yes sir.

24 Q Answer any questions that the Solicitor has for you.

25 CROSS-EXAMINATION

- 1 By Mr. Stumbo:
- 2 Q Mr. Livingston, you were out there at your house that
- 3 night when these officers came out there, right?
- 4 A No sir, I wasn't at the house.
- 5 Q They took you back to your house?
- 6 A No, sir.
- 7 Q But you were there with them when they were
- 8 investigating your case, right?
- 9 A At my house?
- 10 Q No, out on the side of the road out there, at Cypress
- 11 Lane?
- 12 A Yes sir, I was standing in front of the Deputy's car.
- 13 Q And there was a black bag out there, is that right?
- 14 A No, sir.
- 15 Q They didn't ask you anything about the black bag?
- 16 A No, sir.
- 17 Q You just indicated to your attorney, Mr. Verner, that
- 18 you went to bond court on the CDV, right?
- 19 A Yes, sir.
- 20 Q But then they kept you detained?
- 21 A They had a hold on me, yes sir.
- 22 Q A hold on you for what?
- 23 A They just said they had a hold on me.
- 24 Q So you had already bonded out on the CDV charge or
- 25 the Judge had given you a bond on the CDV?

1 A Yes, sir.

2 Q You had a hold so they were keeping you detained, is
3 that correct?

4 A Yes, sir.

5 Q So you knew they were keeping you for some other
6 reason than that CDV, right?

7 A Well, naturally one would assume that, yes sir. I
8 didn't get out so.

9 Q Your testimony is that Lieutenant Dennis or Sergeant
10 Bouknight said nothing to you when they brought you in
11 that interview room about the meth?

12 A Yes sir, they did after we discussed the CDV, after I
13 had signed the papers about the, you know, we were
14 discussing the CDV and ask me if I would make a statement
15 about it. That is when they went over my rights and read
16 me the papers and I signed the papers and everything.
17 Then we discussed the CDV and then the meth come up.

18 Q You were still in holding at that time, but not the
19 CDV charge but something else, correct?

20 A Yes, sir. I hadn't received the warrant yet for
21 another charge.

22 Q I am going to show you State's 28 and take a look at
23 that. Is that your signature at the bottom of that page?

24 A Yes, sir.

25 Q And you signed here below all of these rights and it

1 says you have the right to remain silent and anything you
2 said could be used against you in court, correct?

3 A Yes, sir.

4 Q And you had the right to a lawyer if you wanted on?

5 A Yes, sir.

6 Q And you waived those rights, correct?

7 A Yes, sir. At that time the only charge that had been
8 mentioned to me was CDV and that is what we were going to
9 talk about was the CDV.

10 Q They didn't threaten you in any way to get you to
11 sign that wavier of rights form to talk to them, correct?

12 A No.

13 Q And after you signed that waiver of rights form you
14 talked to them about this incident with Ms. Jackson and
15 you talked to them about the meth stuff?

16 A I talked to them about the incident with Ms. Jackson,
17 exactly what had happened with that, full detail of
18 everything that expired.

19 Q But you also talked to them about the methamphetamine
20 charge after you signed this form, is that correct?

21 A No, not really, it wasn't really a charge. It was
22 just a procedure and so asked me about, you know, if I was
23 going to do, I would do such and such a way, if I was
24 going to do it that is the way I would do it.

25 Q Nothing further of this witness.

1 MR. VERNER: That is it from our side, Your Honor.
2 Our position, Your Honor, we would ask the Court to
3 suppress the statements in the Jackson v. Denno. My
4 understanding is a preponderance of the evidence type
5 standard. However, the Courts have said there has to be
6 scrupulous appearance by law enforcement because it is a
7 constitutional right even though it is at a lower,
8 standard. The issue of Jackson v. Denno, I would raise,
9 is that there has been a knowing waiver of his
10 constitutional rights, Your Honor. By knowing that the
11 acting time of the waiver, not at the time of the
12 interview, at the time the statement is given, the
13 defendant would have to know and I understand that that is
14 a broad term. But I will submit that he would have the
15 right to know the charges that he was being interviewed
16 for, Your Honor. The waiver form is blank, there is no
17 written notice to him of it, unlike some waiver forms
18 would specifically, we are interviewing you for X charge.
19 This form does not include that or any other description
20 for the reason for the interview. Obviously the defendant
21 generally would know what he got arrested for. In this
22 case he was given the CDV paper, he had a hold on him
23 which is some evidence, Your Honor, but not specifically
24 for the meth charge. The defendant puts it at the time of
25 the interview that he only understood that he was being

1 investigated for the domestic violence charge. That is
2 the reason he waived his constitutional rights to testify.
3 There is no evidence from the State prior to the interview
4 that he knowingly waived his rights to testify about this
5 particular charge other than the hold that was put on him
6 which was realistically for this charge but it is just a
7 generic hold. That is all the State has really to rely on
8 the fact that at the time he was interviewed and executed
9 his waiver that he knew he was talking about these
10 charges.

11 THE COURT: Solicitor, anything that you want to say.

12 MR. STUMBO: Just briefly, Your Honor. Mr. Verner
13 said there was no evidence from the State. I think the
14 officers testified that they informed the defendant the
15 nature of the interview beforehand. Of course, he denies
16 it and we have two officers that did testify here under
17 oath that they did talk to him about that and they
18 recollected that. So I find it hard to believe that he
19 didn't know that he was there for something else after he
20 already had a bond on the CDV charge.

21 THE COURT: Can I see State's 28. All right, I have
22 reviewed State's 28. And it is clear to me that Mr.
23 Livingston was read his rights and had an understanding of
24 his rights the day after he was taken into custody. I
25 don't know that it is terribly substantial that the waiver

1 form or even Mr. Livingston made under this apprehension
2 that they were only talking about the CDV. Clearly the
3 officers did speak to the defendant about the criminal
4 domestic violence charge. The fact that they went into
5 another crime, I don't know that it is of any significance
6 under the Miranda analysis. But clearly those rights were
7 afforded to Mr. Livingston to the extent that the defense
8 would care to argue that the statement that was given in
9 regard to these charges wasn't voluntary, even not made.
10 That is, of course, a jury issue. It is clear to me that
11 the rights were given so the statement is admissible. Mr.
12 Verner, if you want an instruction on the way the jury
13 would have to, what they would have to do in order to
14 consider that statement I will be more than happy to give
15 them that.

16 MR. VERNER: I think that may end up in the Judge's
17 charge but I don't need it in the body of the case. And I
18 assume the State is going forward, Your Honor. Subject to
19 the Court's ruling my objection. I don't have any problem
20 of bringing that into evidence now. And I think we have
21 also agreed on number 29 is a map. We have no problem in
22 introducing number 29 and subject to my objection
23 introducing number 28.

24 THE COURT: 28 is in and 29 is in.

25

1 (Whereupon, State's Exhibit 28 and 29 were admitted
2 into evidence.)

3 MR. VERNER: The only other issue I make take at the
4 appropriate time, Your Honor, is that when the State
5 intends to offer the evidence from the Sudafed purchases.
6 I would ask to be heard prior to the State submitting that
7 testimony.

8 THE COURT: Which witness were y'all wanting to get
9 into that with because I have kept that jury waiting for
10 an hour.

11 MR. STUMBO: All of this is from Walmart in Newberry.

12 THE COURT: Let's do this, let us take five minutes
13 for ourselves and then we will keep rolling.

14 (Whereupon, a short break was taken.)

15 THE COURT: Let's go back on the record. The bailiff
16 approached me and told me that one of the jurors just
17 after the lunch had asked her about note taking. I am
18 going to allow them to take notes. So I will give the
19 standard admonition, not to allow note taking to distract
20 from the testimony but that they are free to take notes if
21 they choose to do so. And the bailiff has already
22 provided them with tablets. Let's get the jury out,
23 please.

24 (Whereupon, the jury came into open court at
25 approximately 3:20 p.m.)

1 THE COURT: Let the record reflect the jury is back
2 and seated. Madam Forelady and ladies and gentlemen of
3 the jury, first I apologize for keeping y'all back there
4 for an hour and fifteen minutes. I know that you were
5 here at 2:00 and I told you it was going to be fifteen
6 minutes or so. Unfortunately, as my wife will tell you, I
7 am lousy at estimating time, how long things take and I
8 suppose this instance was no exception. We have been
9 working and the lawyers have stipulated to a number of
10 exhibits during the interim which I hope will help speed
11 this process along to you. So it is not like we have been
12 wasting time while y'all have been back in there. At this
13 point and time we are beginning the State's case-in-chief.
14 Solicitor, call your first witness.

15 MR. SCOTT: The State calls Sergeant Shawn Carnes.

16 MR. VERNER: Your Honor, is the Court going to
17 instruct the jury about note taking.

18 THE COURT: Yes. Ladies and gentlemen, the bailiff
19 approached me after lunch and told me that some of you had
20 requested to be able to take notes. That is perfectly
21 fine if you take notes. I think that anyone who wants to
22 be able to take notes should be able to do so. If you
23 would though just make a point, whatever tablet you have,
24 make sure if there is more than one of you taking notes
25 make sure you put your name on the notes so that tonight

1 the bailiff can secure those this evening. I can't let
2 you take those home. Don't let note taking distract you
3 from the testimony of the witnesses. So please be very
4 cautious about allowing any note taking to distract you
5 from what the witnesses have to say. You are welcome to
6 take notes if you want, you are welcome not to take notes
7 if you want to. It is your choice. Thank you very much.

8 SHAWN CARNES, being
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Scott:

12 Q Mr. Carnes, where are you employed?

13 A Newberry County Sheriffs Office.

14 Q How long have you been employed there?

15 A I want to say it is going on 11 years this June.

16 Q What are your duties there?

17 A Assigned to the road patrol division, assistant shift
18 supervisor.

19 Q And when complaints come in, when calls come into
20 dispatch, do you respond to those calls, is that part of
21 your duties?

22 A Yes sir, it is.

23 Q Were you working on the night of January the 30th of
24 2012?

25 A Yes sir, I was.

1 Q Did you have an occasion to respond to Highway
2 121?

3 A I did, sir.

4 Q Is that Newberry County?

5 A It is in Newberry County.

6 Q What was the understanding and nature of that call?

7 A It came in as a domestic call where the complainant
8 called in, Ms. Sheila Jackson called in stating that she
9 had been assaulted by one Vernon Livingston.

10 Q What time were you dispatched to that location?

11 A The approximate dispatch time is showing at 20:57
12 hours.

13 Q That is military time?

14 A Yes sir, that is 8:57 if I am thinking right, P.M.

15 Q What time did you arrive there?

16 A It is showing my arrival time at about 9:04 p.m.

17 Q What did you observe when you arrived at
18 Highway 121?

19 A Observed Ms. Sheila Jackson, the defendant in the
20 case, she was distraught, observed that she had injuries
21 to her head area, hands and stomach which she indicated to
22 me that she received from Vernon Livingston.

23 Q Who did you understand lived at that location?

24 A At the time I knew that Mr. Vernon Livingston lived
25 there. Ms. Jackson indicated to me that she lived there

1 also at the time of the report filing.

2 Q Was Mr. Livingston there when you arrived?

3 A No sir, he was not. While we were in route to the
4 call Ms. Jackson informed us that he had fled from the
5 scene in a truck.

6 Q What was your understanding of the reason he had
7 left?

8 A She indicated in her communications to us that he had
9 fled from the scene, came into some stuff that she
10 indicated that he was using to make meth and he was going
11 to try to dispose of it. And she indicated, she said that
12 he had turned down Cypress Lakes which we later determined
13 he had turned actually, had turned down Maple Lane Road
14 which is a road right off 121 near his house.

15 Q Maple and Cypress is right near his house?

16 A Maple Lane is a little dirt drive that comes off of
17 121 and intersects on Cypress Lakes which is another
18 gravel drive.

19 Q What did you do after you received that information?

20 A Once I received the information I relayed that to my
21 Lieutenant, Odell Schumpert and also one of my deputies
22 which is on my shift, Michael Claytor, that he had left in
23 a truck.

24 Q Okay. Did you have a description of the truck he was
25 in?

1 A It is not in the report. I can't recall honestly, I
2 mean we were given a truck, we were familiar with Mr.
3 Livingston so we knew who he was.

4 Q How long have you worked in Newberry?

5 A Like I said, almost 11 years.

6 Q Did you understand that they were able to locate Mr.
7 Livingston?

8 A They were able to locate him and stop him on Cypress
9 Lakes Road.

10 Q Please answer any questions that Mr. Verner has for
11 you.

12 CROSS-EXAMINATION

13 By Mr. Verner:

14 Q You responded directly to Vernon Livingston's home,
15 Officer Carnes?

16 A Yes, sir.

17 Q And the only person other than law enforcement was
18 Sheila Jackson?

19 A Yes, sir. I mean later on down the line the cleanup
20 crew came.

21 Q But at the time you arrived was just Sheila Jackson?

22 A Yes, sir.

23 Q And you were the first to respond?

24 A Yes, sir.

25 Q You recall seeing nails at the scene, spread out all

1 across the driveway?

2 A Very much recall, because I stepped on one.

3 Q There was an unusual number of nails spread out over
4 the driveway area when you responded?

5 A I don't recall how many but I mean, two or three
6 nails spread out would be an unusual amount for me in a
7 driveway area.

8 Q And were you the one that took the photographs?

9 A I know I took photographs of her injuries, I don't
10 believe I took photographs of actual stuff that was
11 recovered.

12 Q Okay. You can step down if you want to, Officer,
13 just so we have got a clear understanding. That is
14 highway 121 and the intersections of Maple Lane and
15 Cypress?

16 A Yes, sir.

17 Q Where would Vernon Livingston's home be?

18 A From the ariel map I honestly can't tell you, it is
19 not a good indication. But in relation to this, I say in
20 this area but without being able to see the house well I
21 can't tell from here.

22 Q Maple Lane is a dirt road?

23 A Gravel, yes sir.

24 Q And then Cypress would be a more concrete type?

25 A It is gravel also.

1 Q They are both dirt roads, basically gravel or dirt
2 roads?

3 A Yes, sir.

4 Q And Vernon Livingston lives in a mobile home, is that
5 right, the main road was a mobile home?

6 A Yes, sir.

7 Q And in general it is a fairly wooded area out there,
8 it is more rural.

9 A Cypress Lakes is more populated but it is rural, they
10 have trees.

11 Q Here is a photograph that somebody in law enforcement
12 took. Is that an example of some of the nails that were,
13 I guess you can see some more here too. Is that the kind
14 of nails that you are talking about that you stepped on
15 that you injured yourself?

16 A That appears to be similar nails, yes sir.

17 Q There are a lot of nails were spread out in the
18 general area?

19 A Yes, sir.

20 Q I have nothing further.

21 THE COURT: You can step down. Call your next
22 witness.

23 MR. STUMBO: The State calls Sheila Jackson to the
24 stand.

25 SHEILA JACKSON, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Stumbo:

4 Q Ms. Jackson, are you here on my subpoena today?

5 A Yes, sir.

6 Q You want to be here?

7 A Not really.

8 Q Where are you living?

9 A Just moved back from Sumter, staying at a friends
10 house in Waterloo.

11 Q You said you moved back, so you are back in Newberry
12 County?

13 A I am in Waterloo.

14 Q In Waterloo?

15 A I am in Newberry because of this.

16 Q You are living in Waterloo right now?

17 A Yes.

18 Q You were in Sumter?

19 A Yes, sir.

20 Q Now, were you born and raised in Newberry?

21 A I was not.

22 Q And when did you move to Newberry?

23 A When I was 15.

24 Q What brought you to Newberry?

25 A My dad's company transferred him up here.

- 1 Q Mr. Livingston sitting over here, do you know him?
- 2 A Yes, sir.
- 3 Q How do you know him?
- 4 A He is the father to my little girl.
- 5 Q How old is your little girl?
- 6 A She will be March .
- 7 Q Have you and Mr. Livingston lived together in the
- 8 past?
- 9 A Yes, we have.
- 10 Q How long did you live together?
- 11 A Off and on for 11 years.
- 12 Q How old were you when you first got together with Mr.
- 13 Livingston?
- 14 A 26.
- 15 Q Just for the record, I apologize for having to ask
- 16 this, but how old are you?
- 17 A 43.
- 18 Q So you were on for 11 years, is that what you are
- 19 telling me?
- 20 A We were off and on for 14 years. We weren't together
- 21 when I got pregnant with my little girl.
- 22 Q You said you have a daughter with Mr. Livingston.
- 23 Who is she in custody with right now?
- 24 A His sister and his brother-in-law.
- 25 Q How long have they had custody of your daughter?

- 1 A They have had her six years.
- 2 Q She is seven now?
- 3 A She was one and a half when they got her.
- 4 Q And now are you currently in any kind of custody
5 battle with Mr. Livingston over y'all's daughter?
- 6 A No sir, I am not. April will be four years since I
7 have seen my little girl. I call and they won't let me
8 see her.
- 9 Q She is not, your daughter is not in his custody?
- 10 A No, sir.
- 11 Q Is she in the custody of your sister-in-law, excuse
12 me, Mr. Livingston's sister-in-law on the night of this
13 incident?
- 14 A Yes, sir.
- 15 Q Let's go to the night of this incident. Do you
16 recall the night of January the 30th of last year, 2012?
- 17 A Yes, sir.
- 18 Q Was there an altercation between you and Mr.
19 Livingston?
- 20 A Yes, sir.
- 21 Q What did you do in the reaction to that?
- 22 A I called 911.
- 23 Q After you called 911 did someone come out?
- 24 A Yes, sir.
- 25 Q Who came out?

1 A Officer Carnes.

2 Q Is this Officer Carnes sitting here behind me?

3 A Yes, sir.

4 Q You spoke with him that night?

5 A Yes, sir.

6 Q Did you tell Officer Carnes about the altercation?

7 A I did.

8 Q Did you tell him about anything else?

9 A Yes, sir.

10 Q What else did you tell him?

11 A I told him that Mr. Livingston was making meth in his

12 shed.

13 Q Was there any equipment he had at the time?

14 A When I called 911 he went in the shed and took a

15 coffee pot with clear liquid and poured it on the ground

16 and then he took a black trash bag and started putting all

17 kind of items in it. And he threwed it on the back of his

18 truck and he took off up the road and turned down the

19 gravel road up above his house.

20 Q Ms. Jackson, I am going to show you what is in

21 evidence as State's exhibit 2. Just take your time to

22 review that. Have you had time to look at this?

23 A Yes.

24 Q If you can step down and keep your voice up for the

25 Court Reporter. What the jury is looking here is State's

1 exhibit 2. What is that in this picture?

2 A It looks like garbage to me.

3 Q What color is the bag?

4 A Black.

5 Q Does that resemble the black bag that he put stuff in
6 that night?

7 A Yes, sir.

8 Q You can return to the witness stand. Thank you. I
9 am going to show you what is in evidence as State's
10 exhibit number 13. Do you recognize what is in State's
11 13?

12 A That is the shed in his yard.

13 Q That is the shed behind his place?

14 A Yes, sir.

15 Q Is that where he was cooking meth?

16 A It is in front of his trailer actually, yes sir.

17 Q What did he pour out on the ground?

18 A A clear liquid out of a coffee pot.

19 Q Was that before or after he filled the black bag?

20 A Before.

21 Q What did he do with the black bag at that point?

22 A Put it on the back of the truck.

23 Q Where did he go after that?

24 A He went up the road and turned on the gravel road up
25 above his house.

1 Q Did you tell Officer Carnes about that?

2 A I did. I told the 911 operator that he had turned on

3 the gravel road.

4 Q Ms. Jackson, have you used methamphetamine before?

5 A I have.

6 Q Who did you use it with?

7 A With Mr. Livingston.

8 Q Have you ever bought pseudoephedrine?

9 A Yes, sir.

10 Q Why did you buy pseudoephedrine?

11 A For Mr. Livingston. He would give me pictures of my

12 little girl if I go get him a box because his

13 sister-in-law, his sister and brother-in-law would not

14 take any calls and wouldn't let me come and see her, I

15 wasn't allowed any pictures of her.

16 Q Now when you bought the Sudafed for Mr. Livingston,

17 what was the purpose for that?

18 A I guess so he could make dope.

19 Q Are you today under the influence of methamphetamine?

20 A No, sir.

21 Q When was the last time you used meth, this week?

22 A No, sir.

23 Q When your daughter, you said has been with Mr.

24 Livingston's family, their custody since she was one and a

25 half years old?

1 A Yes, sir. She was two when she got with them. Her
2 second, she had her second birthday at the DSS and then
3 got her after that.

4 Q The night of this incident or since then had any
5 action in family court to try and get custody of your
6 daughter?

7 A We went to court about child support. Minor , they
8 are good to Minor and they can take care of Minor , I
9 can't at the moment. And Minor deserves the best, she is
10 an awesome little girl and she deserves the best and they
11 are very good to her, they love her. The only problem I
12 have is I don't get to see her and he did, you know.

13 Q On the night of this incident you called law
14 enforcement, you didn't have any kind of custody battle
15 over Minor with this man?

16 A No, sir. It was about a girl he was seeing from
17 Whitmire, Becky Ellison, that is what it started over.

18 MR. STUMBO: Nothing further at this time.

19 CROSS-EXAMINATION

20 By Mr. Verner:

21 Q Ms. Jackson, you and Vernon had a child together?

22 A Yes, sir.

23 Q And I think, how old is she?

24 A She will be March the

25 Q And currently living with Vernon's sister and her

1 husband?

2 A Yes, sir.

3 Q And is that the husband back in the courtroom?

4 A Yes, sir.

5 Q But they won't let you see the child?

6 A No sir, I call and I don't get any answers. I
7 messaged her on textbook, no answer.

8 Q Is that because they still believe you have got a
9 substance drug problem?

10 A I don't know, they don't talk to me. I hadn't talked
11 to them in four years almost.

12 Q When Minor was removed from your custody by DSS you
13 weren't with Vernon, right?

14 A No, sir.

15 Q That was in 2007?

16 A Yes, sir.

17 Q And you also have some other children?

18 A I have a son.

19 Q Is that Minor Child ?

20 A Yes, sir.

21 Q What happened with Minor Child in 2001, he was also
22 removed from your custody, wasn't he?

23 A Yes. Minor Child got shot in the eye at seven years old
24 and lost his eye and he became, had very bad behavioral
25 problems.

1 Q Part of the reason you lost Minor Child was a drug
2 problem?

3 A No, it wasn't.

4 Q You deny that is part of the reason?

5 A Yes.

6 Q Why did you lose custody of Minor Child?

7 A Because I left him at home by himself.

8 Q While you were doing what?

9 A When I went to Prosperity to see Jake, I went to
10 Prosperity to see Mr. Livingston and left him at home.

11 Q On just one occasion. They would have removed
12 custody because of one time leaving him?

13 A Yes. He was eleven years old.

14 Q You didn't have a problem with drugs and leaving him
15 at home?

16 A No.

17 Q On many occasions?

18 A No.

19 Q How did you arrive here to court today?

20 A A deputy picked me up.

21 Q And I believe you testified you had been staying
22 recently with a friend in what county?

23 A Waterloo.

24 Q Is that in Greenville?

25 A Laurens County.

1 Q And your testimony is that you only would associate
2 or use meth or buy materials for meth so you could get
3 photographs of your kid?

4 A And to be with Jake.

5 Q And it wasn't because you have got a problem getting
6 off of the stuff?

7 A No, I don't have a problem. My problem is I was
8 addicted to Mr. Livingston.

9 Q Have you discussed your testimony today with anyone
10 prior?

11 A The solicitor.

12 Q Okay. Was that today or when was that?

13 A Today.

14 Q Prior to meeting with the Solicitor have you
15 discussed your testimony before?

16 A Over the phone. I think that is who I spoke with on
17 the phone.

18 Q One of the prosecutors. On January the 30th of last
19 year there was an altercation between you and Vernon
20 Livingston?

21 A Yes, sir.

22 Q What was that about?

23 A I came to Jake's house to clean it up, he was gone
24 for the two days I was there.

25 Q By Jake you mean Vernon?

1 A Yes, sir. And he was going to give me a ride to my
2 dad's in Sumter.

3 Q How did you get to Vernon's, his house is out, it is
4 not close to anything is it, it is kind of in between here
5 and Whitmire?

6 A It is right, it is like a half a mile from the red
7 light there at Buddy's, a half of a mile from Buddy's on
8 Wilson Road.

9 Q Okay. The old Buddy's Open Air Market on the corner
10 where College Street crosses over Wilson Road?

11 A That's right.

12 Q And you are saying about a half a mile?

13 A Yes.

14 Q It is not on the other side of I-26?

15 A It is not.

16 Q It is on the Newberry side?

17 A Yes, sir.

18 Q And your testimony you don't know about what any of
19 the stuff was that was in the black bag or at the house?

20 A He just started putting stuff in the black bag, I
21 didn't see anything, everything happened so fast.

22 Q And what the clear liquid was you don't know because
23 you are naive or you don't have much involvement in that
24 area?

25 A I imagine it was dope.

- 1 Q How long had you been at Vernon's house prior to the
- 2 police being called?
- 3 A Two days.
- 4 Q You had stayed there for two days?
- 5 A I came to clean it, he wasn't there, he was in
- 6 Whitmire at Becky's house and I was there cleaning up and
- 7 he was going to take me to my dad's and trade for me
- 8 cleaning his house.
- 9 Q You didn't have a fight with Becky?
- 10 A No, I didn't.
- 11 Q No fist fight at all?
- 12 A No.
- 13 Q Where were you staying at Vernon's house?
- 14 A Inside the trailer.
- 15 Q Inside the trailer?
- 16 A Yes.
- 17 Q Is there also a camper there?
- 18 A A motor home.
- 19 Q A motor home and then there is also a utility shed?
- 20 A A couple of them.
- 21 Q And your testimony is that you were staying with
- 22 Vernon?
- 23 A I was staying at his house, he wasn't there while I
- 24 was there.
- 25 Q And he didn't know you were there until he came home,

1 did he?

2 A No, he came and picked me up from my friend's Sandy's
3 house and brought me there. On many occasions he would
4 come over to my friend's Sandy's and pick me up.

5 Q So you had a pretty good relationship with Vernon?

6 A No, we didn't. It was just, it was sexual mostly.

7 Q Most of the time you and Vernon are together law
8 enforcement comes, don't they?

9 A No, it has been a few times.

10 Q Just a few times?

11 A Yes.

12 Q And it is a relationship that Vernon hasn't asked for
13 in a long time, is it. Where were you living full-time
14 prior to coming to Vernon's house?

15 A He has come to Dillon and Sumter to see me on his
16 own. I had no vehicle, he came to me.

17 Q On January the 30th or the two days prior you were
18 living in Dillon or Sumter?

19 A I was at my friend's Sandy's house and I was wanting
20 to go to my dad's because it wasn't working at my friend's
21 Sandy's.

22 Q You didn't get in a fight on January the 30th because
23 Vernon asked you to leave his property?

24 A Yes, he come up, because I said I was going to call
25 Becky and he got very upset and he pushed me out on his

1 porch and threw my bag out on his porch and told me he
2 wasn't going to take me anywhere. And I told him, I said,
3 you can't just throw me out in the cold, you made a
4 promise.

5 Q What promise is that?

6 A If I clean his house he would take me to my dad's
7 because I didn't have the money for gas.

8 Q Who did Vernon live with at that time?

9 A Himself.

10 Q He was living by himself?

11 A Yes.

12 Q And that is why he would need you to come clean up?

13 A Yes. Because I need a ride and I didn't have gas
14 money.

15 Q Prior to Vernon getting in a confrontation with you
16 where had he been?

17 A Whitmire, as far as my knowledge that is where he
18 was.

19 Q Is that where his parent's live?

20 A No.

21 Q Are you aware of where his parent's live?

22 A Sir?

23 Q Do you know his parents?

24 A Yes, sir. I use to clean their house also.

25 Q Do you recall throwing any nails at Vernon?

1 A No, sir.

2 Q You didn't do that?

3 A No, sir.

4 Q What happened to you involving this night in
5 question, January the 30th of last year. What did you do,
6 were you arrested for anything?

7 A I was not.

8 Q Did you stay at Vernon's house?

9 A I did not.

10 Q Where did you go after January the 30th?

11 A I went to the hospital that night and then the next
12 day I went to my friend's, Sandy's.

13 Q Can you recall the last time you had been living with
14 Vernon prior?

15 A Living with him, no sir.

16 Q Thank you.

17 REDIRECT EXAMINATION

18 By Mr. Stumbo:

19 Q Ms. Jackson, were you treated for any injuries at the
20 hospital that night?

21 A Yes, sir.

22 Q All of these things that you saw in State's 2 in that
23 black bag, did you bring any of that with you to Mr.
24 Livingston's house?

25 A No sir, I didn't.

1 Q Did you bring the stuff he poured out on the ground
2 that night?

3 A No, sir. The only thing that I know is it takes
4 Sudafed to make it, that is the only thing, I have no clue
5 on how the stuff is made.

6 Q And you were in love with Mr. Livingston?

7 A I was, for a very long time.

8 Q Nothing further.

9 RECROSS-EXAMINATION

10 By Mr. Verner:

11 Q How long were you in the hospital for these injuries?

12 A Just a couple of hours and released.

13 Q Were you prescribed any medication?

14 A No, sir.

15 Q And you didn't have any kind of surgical type--

16 A I had a broke tooth, my partial, I had to go to the
17 dentist and get fixed.

18 Q And is that not the tooth you broke getting in a
19 fight with Becky?

20 A No, sir.

21 Q Are you still in love with Vernon Livingston?

22 A I am not in love with him but I love him, he is my
23 little girl's dad and she loves him very much.

24 Q Thank you.

25 THE COURT: You can step down. Call your next

1 witness.

2 MR. SCOTT: The State calls Michael Claytor.

3 MICHAEL CLAYTOR, being

4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 By Mr. Scott:

7 Q Where are you employed, Mr. Claytor?

8 A Newberry County Sheriff's office.

9 Q How long have you been employed with that agency?

10 A I have been employed with the County for about four
11 years. I have actually been with the road patrol, I
12 worked at the jail for two years prior from that.

13 Q Were you working on the day or the night of January
14 the 30th of 2012?

15 A Yes sir, I was.

16 Q And did you respond out to a call originating on
17 Highway 121?

18 A That's correct, I did. I didn't respond directly to
19 that address but I responded to the result of that call,
20 yes sir.

21 Q You responded to the result of that call?

22 A Yes sir, the traffic stop that my Lieutenant
23 performed on Mr. Livingston here.

24 Q Now 121, does College Street turn into 121?

25 A It does.

1 Q And is this location, Highway 121, is that
2 between this Court House and I-26?

3 A It is between this Court House and I-26.

4 Q You said you responded to a traffic stop that came
5 from the call for this address that we just named?

6 A Yes, sir.

7 Q Who was the traffic stop performed on?

8 A Mr. Livingston.

9 Q Where was he stopped?

10 A It was on Cypress Lakes Road, it was down a good
11 little ways there closer to the bottom side of it.

12 Q Did you ever get to go to the address?

13 A I went there after I transported Mr. Livingston to
14 the detention center.

15 Q Whose residence was that?

16 A Mr. Livingston's.

17 Q And where in relation to that residence was he found?

18 A It wasn't very far, Cypress Lakes is maybe a quarter
19 of a mile from his residence.

20 Q Did you find anything else?

21 A Yes, sir. We found a black trash bag that Mr.
22 Livingston was believed to be carrying in his vehicle. It
23 was right over on Maple Lane which intersects Cypress
24 Lakes Road.

25 Q Is it fair to say that the bag was found in between

1 his residence and where he was located?

2 A Yes sir, very much so.

3 Q I am going to show you what is already into evidence
4 as State's number 29. Do you see the residence at
5 Highway 121?

6 A Yes, sir.

7 Q Where is that?

8 A It is right here.

9 Q Do you see Maple Lane on this map?

10 A I do, right here.

11 Q Do you see the approximate location where the black
12 bag was found?

13 A Yes, right here in the road beside--

14 MR. VERNER: Your Honor, I would prefer that the
15 officer actually mark the exhibit instead of the
16 prosecutor.

17 THE COURT: If you could, mark the one--

18 MR. VERNER: It is 29.

19 Q Do you see Cypress Lakes Road here?

20 A I do.

21 Q Would you show with your finger on the map where that
22 is?

23 A Right here.

24 Q Do you see the approximate location where Mr.
25 Livingston was stopped?

1 A Yes sir, it is actually off the end of the map here,
2 it would be on down there.

3 Q So approximately it would be here?

4 A Yes sir, on down, right to the end of that, yes sir.

5 Q How far would you say his residence was where he was
6 stopped?

7 A Maybe a few, down the roadway, I would say maybe a
8 half of a mile at the most, if you go straight it is not
9 far at all.

10 Q Okay. State's number 2. Do you recognize that?

11 A Yes, I do.

12 Q What is that?

13 A That is the black trash bag with the contents that
14 was located on the side of Maple Lane.

15 Q Did you see what was inside of it?

16 A I did, we walked over to it to make sure what was in
17 it and to make sure that was the bag we were looking for.
18 And once we did that, not knowing what was in it.

19 Q Who did you call after you found the bag?

20 A I notified my Lieutenant and Investigator Bouknight.

21 Q Lieutenant Robert Dennis and Investigator Nick
22 Bouknight?

23 A Yes, sir.

24 Q Did you go to the residence?

25 A I did go to the residence, it was after all of this

1 was over and taken care of.

2 Q Who was in the residence when you were there?

3 A When I went there it was just the sheriffs office
4 people. It was Sergeant Carnes, my Lieutenant was there,
5 I am trying to recall. I know it ended up being me,
6 Sergeant Carner, my Lieutenant, Lieutenant Dennis, Nick
7 and SLED ended up coming.

8 Q Was Sheila Jackson at the residence?

9 A Not at the time, no sir.

10 Q Whenever you saw Mr. Livingston he was out on Cypress
11 Lakes Road?

12 A That's correct.

13 Q Thank you.

14 CROSS-EXAMINATION

15 By Mr. Verner:

16 Q When you are talking about my Lieutenant, which
17 officer are you talking about?

18 A Lieutenant Schumpert.

19 Q Schumpert?

20 A Yes, sir.

21 Q And he would be the shift supervisor at the
22 nighttime?

23 A That's correct, on my rotation.

24 Q Did you actually perform the traffic stop yourself?

25 A No sir, I didn't perform the traffic stop but I was

1 directly behind him backing him up. Mr. Livingston was
2 still inside the vehicle.

3 Q At the time you arrived?

4 A Yes sir, that's correct.

5 Q You weren't the car that made the stop but you were
6 very shortly--

7 A Yes sir, that's correct, within seconds I would say.

8 Q And deputies drive singular, one deputy per car?

9 A That's correct, yes sir.

10 Q And Lieutenant Schumpert I think indicated made the
11 actual traffic stop?

12 A Correct.

13 Q You indicated that we were looking for a black bag?

14 A That's correct.

15 Q Who told you to look for a black bag?

16 A Communications had advised us, that the complainant,
17 the victim had said that Mr. Livingston put a black bag in
18 his truck.

19 Q Ms. Jackson had told law enforcement to look for the
20 black bag?

21 A Yes, sir. Dispatch had told, had radioed it to us.

22 Q It came from different sources to you but that is
23 your understanding of who?

24 A Yes, sir.

25 Q Did you actually find the black bag yourself or was

1 that a separate deputy?

2 A No sir, I found the bag.

3 Q Okay. And just by tracing the road?

4 A Yes sir, that is what we did. I turned my alley
5 lights on, rode down the road and was able to locate the
6 bag, yes sir.

7 Q Did you speak to Mr. Livingston at the traffic stop?

8 A I did speak to Mr. Livingston.

9 Q Was that just in reference to this case or just, what
10 did you speak to him about?

11 A We basically spoke to him about what went on up at
12 his house with Ms. Jackson. He denied all of it and from
13 Sergeant Carnes findings he was placed under arrest for
14 domestic violence.

15 Q And you went up to the house later on just to help
16 secure the scene?

17 A That's correct, yes sir.

18 Q Did you blue ticket or cite him for a domestic
19 violence?

20 A No sir, I did not.

21 Q And you never met Ms. Jackson?

22 A No ma'am, I mean, no sir, I never saw her.

23 Q But you did briefly talk to him about the
24 confrontation?

25 A I did.

1 Q Do you recall what he said happened?

2 A Not directly. I don't, I just remember him saying
3 that he hadn't done anything to her. I do remember that.

4 Q And where he was actually stopped by law enforcement
5 was it a considerable difference from where you actually
6 found the black bag?

7 A Depending on what you call considerable.

8 Q Not within walking distance or certainly not within
9 the distance that you could walk to quickly. How far do
10 you estimate the distance was?

11 A Maybe a tenth or so of a mile, it wasn't very far,
12 maybe two-tenths of a mile, it wasn't far.

13 Q 500 to 1000 feet, I guess?

14 A Yes sir, somewhere right in there.

15 Q Thank you.

16 MR. SCOTT: Nothing further from the State, Your
17 Honor.

18 THE COURT: You may step down. Call your next
19 witness.

20 MR. SCOTT: The State calls Nick Bouknight.

21 NICK BOUKNIGHT, being
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Scott:

25 Q Mr. Bouknight, where are you employed?

1 A Newberry County Sheriffs Office.

2 Q How long have you been employed there?

3 A Since 2001.

4 Q What is your rank?

5 A I am a sergeant in narcotics.

6 Q What do you do as a sergeant in narcotics?

7 A Work narcotic investigations to include meth labs,
8 any other kind of narcotics, also help in criminal
9 investigations.

10 Q How many meth labs have you been called out to?

11 A In excess of 50, somewhere around 50, probably more
12 than 50 but I have investigated in excess of 50 cases that
13 involve methamphetamine.

14 Q What kind of training have you undergone to be in
15 your position?

16 A For meth lab training I went through DEA class which
17 certified me to clean up meth labs.

18 Q What did that class involve with DEA?

19 A They go over what is involved in a meth lab, show you
20 the chemicals, everything that is included in a meth lab,
21 show you how to clean it up, what to do if you do find a
22 meth lab.

23 Q So you are qualified to break down a meth lab?

24 A I am.

25 Q What are some of the dangers in breaking down a meth

1 lab?

2 MR. VERNER: I object on the issue of relevance.

3 THE COURT: Where are we going on that particular
4 question.

5 MR. SCOTT: Well, show a little familiarity.

6 THE COURT: Do you intend to offer this witness as an
7 expert in some particular field?

8 MR. SCOTT: I would like to, we do intend to do that.

9 THE COURT: All right. I will let you explore his
10 background, training and experience and understanding. So
11 go ahead. Repeat the question if you would.

12 Q Would you explain some of the difficulty of the
13 dangers when you are dealing with meth labs?

14 A You could have explosion, the gases that a meth lab--

15 MR. VERNER: Objection. My understanding was the
16 Court said that he could establish to testify in this
17 area. I may have misheard.

18 THE COURT: That is what I was going after. Mr.
19 Scott, why don't you back up and go through his
20 credentials.

21 MR. VERNER: I will stipulate, he is probably more
22 than qualified to testify in this area. I just don't see
23 the relevance of it, to whether or not it is meth and
24 under the 403. Whether it is dangerous is not really an
25 issue for the jury.

1 THE COURT: Ladies and gentlemen, I want to take up
2 an issue of law involved in this particular case. If you
3 would adjourn for just a few moments. I hope to have you
4 back here in a few moments. Don't talk about the case.

5 (Whereupon, the jury was excused from open court.)

6 THE COURT: Solicitor, if I could, what testimony,
7 let's just cut to the chase, what testimony do you
8 anticipate eliciting from this particular witness.

9 MR. SCOTT: Your Honor, I believe he can assist the
10 jury in identifying these items. He can explain to them
11 the significance of these and building a meth lab however
12 small it may be. He can explain why Sudafed is important,
13 why these coffee filters are important and all of these
14 items we found in this black bag, why they are important.
15 He is familiar with meth labs and through his training and
16 through his experience. It is our belief it could help
17 the jury in determining their ultimate, the outcome in
18 this case.

19 THE COURT: I would agree with you. I think Mr.
20 Verner's, objection and correct me if I'm wrong, Mr.
21 Verner, went to more of an issue with the characterization
22 of meth labs as dangerous which one could argue that that
23 is a matter of common knowledge in this day and age.

24 MR. VERNER: Obviously, his argument, if that was his
25 question I wouldn't have objected in the first place, what

1 are the ingredients. When you start going down and this
2 is dangerous and this is why we enforce the law I would
3 object.

4 THE COURT: Why don't we do it this way, Mr. Scott.
5 You are completely legitimate going where you are going.
6 You might be jumping ahead a little bit of yourself, you
7 know, clearly with this officer's training and knowledge
8 and experience he can say it is coffee filters, lithium
9 batteries, pseudoephedrine, Coleman camp fuel and whatever
10 else. And those are the items we found in the black bag,
11 we went back to the house and we found X, Y and Z in the
12 shed. So I don't see an issue with him testifying to
13 that. I don't know and just going forward I assume that
14 at some point and time he is going to testify the cleanup
15 crew had to be called in from somewhere to clean it up.
16 And, you know, Mr. Verner I assume you are not going to
17 object to that but obviously that raises the inference
18 that meth isn't the most healthy substance on the planet.

19 MR. VERNER: If it is briefly that a crew has to be
20 special licensed to come in and clean it up.

21 THE COURT: I will allow the question along the lines
22 of or something that elicits why, what did you do after
23 you finished processing the scene, we called in the
24 cleanup crew. Everybody knows this stuff is dangerous. I
25 think we need to let it go at that.

1 MR. VERNER: I don't know if the State is going to
2 introduce it, the only photograph that I have objected to
3 pretrial is the photograph of the cleanup crew in action.

4 THE COURT: May I see that photo if y'all intend to
5 offer it.

6 MR. VERNER: Given the number of photographs, Your
7 Honor, and it is really cumulative in terms of the
8 probative value of that photograph. My concern is that
9 the white suits just leads the jury into, it is just a
10 simple question--

11 THE COURT: For what purpose would the State seek
12 introduction of State's 24 and again I haven't seen one
13 through 23, or whatever the photos are. Is there
14 something that is special.

15 MR. SCOTT: Judge, that is just Nick, that is him in
16 a protective suit cleaning up the shed.

17 THE COURT: All right.

18 MR. VERNER: It is not majorly prejudicial but I
19 think it is not really probative given 23 other
20 photographs at the same scene.

21 THE COURT: May I see the other photographs briefly.
22 I have reviewed the State's other photographs. I will
23 allow State's 24 into evidence if for no other reason that
24 the photographs depict component parts of, well the
25 component parts that one might use to manufacture

1 methamphetamine. State's 24 gives a, kind of ties them
2 all together and kind of gives an overview of where
3 apparently many of these component parts were located,
4 kind of an overall. A picture is worth a thousand words.
5 Here is where, I am assuming this is where, I assume the
6 State is going to proffer evidence that this is where the
7 stuff was actually being made, the location inside the
8 shed where this desk is is where the lab was or where
9 someone engaged in making the meth. So I will let 24 in
10 subject to your objection. I think the probative effect
11 is outweighed by any prejudice. We will take five
12 minutes.

13 (Whereupon, State's Exhibit 24 was admitted into
14 evidence.)

15 (Whereupon, a short break was taken.)

16 THE COURT: Let's bring the jury back in.

17 (Whereupon, the jury came into open court at
18 approximately 4:27 p.m.)

19 THE COURT: Let the record reflect the jury is back
20 and seated. Ladies and gentlemen of the jury, we are
21 continuing with direct examination of Mr. Bouknight. One
22 thing that I did forget to mention to you, for those of
23 you who are taking notes. When you are deliberating, when
24 it comes times to deliberate and while this case is going
25 on while you are still taking notes don't share your notes

1 with other members of the jury panel. Certainly you are
2 free to refer to your notes individually while you are
3 deliberating and while the case is going on. But those
4 notes are your private notes, your private property and it
5 would not be appropriate for you to actually, physically
6 show those notes to another juror once the deliberations
7 begin. With that Mr. Scott, you may begin.

8 CONTINUE DIRECT EXAMINATION

9 BY MR. SCOTT:

10 Q So how many labs have you responded to?

11 A Around 50 or probably in excess of 50.

12 Q And in order to do your job what training do you
13 undergo?

14 A Go to different classes. Originally went to the drug
15 enforcement administration class to get certified to go
16 into labs, break down labs to know what you are looking
17 at.

18 Q Is there any ongoing training that you do annually?

19 A Yes, once a year at least.

20 Q What is that?

21 A It is called a recertification course.

22 MR. SCOTT: Your Honor, the State would offer
23 Investigator Nick Bouknight as an expert in clandestine
24 meth lab.

25 THE COURT: Any objection?

1 MR. VERNER: Meth labs, no sir.

2 THE COURT: Ladies and gentlemen of the jury,
3 normally in cases a witness has to testify to something
4 that they observed with one of their five senses, saw,
5 smell, touch. An exception for this rule exists for
6 individuals who are qualified as experts in a particular
7 field or area, individuals who have gained certain
8 knowledge because of education or experience can testify
9 as expert witnesses in that particular field if the Court
10 finds they are qualified in that area. In this case both
11 the State and the defense agree that this officer is an
12 expert in the field of meth labs and the operation of meth
13 labs. So he can give his opinion testimony in that area.
14 It does not mean you have to accept his opinion but it is
15 testimony for you to use in any way you deem appropriate.
16 Solicitor, you can continue.

17 Q Were you working in that capacity January the 30th of
18 2012?

19 A Yes sir, I was.

20 Q And did you respond to a complaint of a meth lab that
21 night?

22 A I did.

23 Q Where did you go?

24 A Maple Lane in Newberry County and Highway 121
25 in Newberry Country which was Mr. Livingston's residence,

1 the defendant sitting right there.

2 Q So you went to Maple Lane first?

3 A Correct.

4 Q I want to show you State's 29. Do you see where you
5 responded on Maple Lane on January 30th?

6 A Yes sir, right around that area right there.

7 Q Is it marked in any way on that exhibit?

8 A It appears there is a little X there.

9 Q What did you see when you responded to Maple Lane,
10 more specifically where the X is shown on exhibit number
11 29, State's exhibit number 29?

12 A It was a black trash bag.

13 Q I think the easier way to do this. I am going to ask
14 Mr. Bouknight to step down and keep his voice up. Let me
15 show you State's exhibit number 2. What is this?

16 A That appears to be liquid fire, drain cleaner and a
17 black trash bag.

18 Q Is that the same black trash bag that is shown in
19 State's exhibit 1?

20 A Yes, sir.

21 Q And do you see, that is on Maple Lane?

22 A Yes, sir.

23 Q Where in relation, point to the bag if you would.

24 A (Witness points to diagram.)

25 Q And where in relation to the road is that bag?

1 A Maybe ten yards off. That was probably taken from
2 the road or close.

3 Q Let me show you State's exhibit number 3, what is
4 that, what is the significance of that?

5 A That is a green funnel commonly seen in a meth lab.
6 You can see the white substance there, that is a substance
7 consistent with a meth lab.

8 Q How were those funnels typically used?

9 A Once the process is made they will funnel off into a
10 coffee filter to catch the meth.

11 Q Let me show you State's exhibit number 4. What is
12 that?

13 A It is a plastic container that appears to have like a
14 Coleman fuel in it.

15 Q Where was that seen?

16 A That was on Maple Lane also.

17 Q Now this bottle and this funnel, were these taken out
18 of the plastic bag?

19 A They were either in the bag or right there beside the
20 bag, a couple of items may have fell out of the bag.

21 Q Did you take the items out of the bag once you got
22 there?

23 A I did.

24 Q State's number 5?

25 A Strain opener.

1 Q How is that significant?

2 A It is in the finishing process of meth labs, they
3 combine that with salt to finish off the meth, to
4 crystalize the meth.

5 Q And is this something you commonly see when you
6 respond to a meth lab?

7 A Yes sir, in nearly every meth lab.

8 Q Was this found inside of the black plastic bag?

9 A Yes, it was.

10 Q State's exhibit 6. What is in this picture and why
11 is it submitted?

12 A This right here where my pointer is a plastic
13 container, it appears to have like a cold pack ammonium
14 nitrate in the bottom. That is a coffee mug or coffee pot
15 and salt.

16 Q Why is the salt significant?

17 A Mix it with liquid fire to crystalize the meth.

18 Q Why is the coffee pot significant?

19 A Generally you can mix your chemicals, maybe pull off
20 your Sudafed with heat that would pull the ephedrine off
21 of Sudafed. That would be one pot that would handle the
22 chemicals. You pour some of these chemicals in a plastic
23 container to melt the plastic container.

24 Q Are all of these items significant to what you see in
25 a meth lab?

1 A Yes, sir. With the plastic container dumping
2 ammonium nitrate out of a cold pack where you can give a
3 measurement of how much you wanted the ammonium nitrate.
4 That is easier to do in a little plastic container with
5 the little valve at the top.

6 Q And in the coffee pot, did anybody mention anything
7 about a coffee pot when you responded to Maple Lane?

8 A Yes, sir. I was advised that the complainant said he
9 had dumped a liquid out of a coffee pot.

10 Q State's exhibit number 7?

11 A That is crystal drain opener, very consistent with a
12 meth lab. You see it at every meth lab I think I have
13 ever worked.

14 Q Is that an ingredient that is a necessary part of
15 manufacturing meth?

16 A Yes, sir.

17 Q State's exhibit number 8, what is this and why is it
18 significant?

19 A Muriatic acid, it is an acid that is mixed in the
20 methamphetamine process.

21 Q It is part of the chemical reaction to make
22 methamphetamine?

23 A Yes, sir.

24 Q State's exhibit number 9?

25 A It is Coleman fuel, it is a very necessary ingredient

1 for methamphetamine process.

2 Q You mentioned in one of the prior exhibits about
3 seeing that in a plastic bottle?

4 A Correct.

5 Q What is this other stuff we see in the top left
6 corner of this picture?

7 A It looks like the black trash bag. This right here
8 was a hose, these two hoses coming out of a, actually cut
9 a sample off and sent it to SLED to be tested.

10 Q What is an acid generator?

11 A A acid generator is what I was talking about, the
12 liquid fire and salt mixed together just to finish the
13 process of the methamphetamine.

14 Q Is that cap and the tubing coming off. Is that
15 consistent with an acid generator?

16 A A lot of times what will happen, they may hook one
17 hose to an aquarium pump and pump it into a bottle where
18 it speeds up the process or maybe put a hose coming on an
19 acid generator and put it in your bottle which has your
20 methamphetamine to make the meth it.

21 Q State's 11. What is this item right here below the
22 black trash bag?

23 A Right there is a bottle cap with two hoses coming
24 off, it is close pinned pinched, very common for them to
25 stop the hose for air or whatever to put a close pin on

1 it.

2 Q What is this white object here?

3 A It is an aquarium pump to pump the air.

4 Q Consistent with what you were mentioning in the last
5 frame?

6 A Correct.

7 Q What is heat, I see a yellow container that says
8 heat?

9 A Heat is like an antifreeze. You use that in the
10 methamphetamine process to mix with pseudoephedrine to
11 pull the ephedrine out of the Sudafed tablets.

12 Q Pseudoephedrine, what is pseudoephedrine and why is
13 it, why is it significant when you are talking about a
14 meth lab?

15 A That is the necessary ingredient. If you don't have
16 pseudoephedrine you cannot make methamphetamine.

17 Q I have got State's exhibit number 12 on the screen.
18 What do you see in this picture?

19 A A box of Sudafed, an empty box it appears.

20 Q And that was located within the black trash bag?

21 A Correct.

22 Q State's number 10, are those batteries?

23 A Yes sir, that is lithium batteries consistent with
24 methamphetamine. What they do is they cut around this
25 battery, pull your lithium strip out, that makes a

1 reaction in the methamphetamine process. Only lithium
2 batteries would have lithium for the reaction.

3 Q Are those lithium batteries?

4 A They are.

5 Q And coffee filters, why are coffee filters
6 significant?

7 A Because you have to, once you do your initial process
8 of getting it to react you have to strain it off to clean
9 your methamphetamine up. Like pour it out of a bottle and
10 have something to catch your meth and separate your meth
11 from your trash that is in your bottle.

12 Q So you are describing pouring a liquid substance
13 through the filter and there is a solid substance behind
14 it?

15 A Correct, that would be your Sudafed tablet. You
16 don't want that, that is kind of trash.

17 Q State's number 26?

18 A That is a hose again, off of an aquarium.

19 Q Is that what you found outside on Maple Lane?

20 A Correct.

21 Q What did you do with that plastic tubing?

22 A The plastic tubing, cut off the end here and the end
23 there and sent it to SLED to be tested.

24 Q Let me show you what has been marked as State's
25 exhibit 30. Do you recognize that?

- 1 A Yes, sir.
- 2 Q What is it?
- 3 A The hose that I cut off right there.
- 4 Q What did you do with this hose?
- 5 A Sent it to SLED, I took it to SLED personally.
- 6 Q You collected it?
- 7 A Yes, sir.
- 8 Q And you took it to SLED?
- 9 A Yes, sir.
- 10 Q All of this was found in a black bag on the side of
- 11 Maple Lane. Where did you go after Maple Lane?
- 12 A Mr. Livingston's residence.
- 13 Q And that was the address of Highway 121?
- 14 A Yes, sir.
- 15 Q Specifically when you get to that residence where did
- 16 you go?
- 17 A To the shed that was described by Ms. Jackson.
- 18 Q Let me show you State's 13, what is that?
- 19 A That is the shed.
- 20 Q Okay. Let me show you State's 24. Who is that?
- 21 A Me.
- 22 Q Okay.
- 23 MR. VERNER: Subject to my objection, Your Honor.
- 24 THE COURT: Overruled.
- 25 Q And collecting evidence here?

1 A Yes, sir.

2 Q State's 22, what is this?

3 A That is an apparatus that makes, usually to run a
4 hose for methamphetamine process, maybe to run a hose out
5 of a bottle or something like that.

6 Q State's 14, is there anything in this that was
7 collected that was significant?

8 A Yes, sir. It appears on that Sunkist bottle would be
9 like a liquid that they had strained off of the
10 pseudoephedrine, it has a red tint to it.

11 Q Is that what we are seeing in State's 23?

12 A Yes, sir.

13 Q And then State's 21, what is this and where is that
14 located?

15 A Coffee filter and a desk, right where I was standing
16 in that picture.

17 Q Inside the shed?

18 A Yes, sir.

19 Q State's 20, why did you take this picture. What is
20 significant in this picture?

21 A The funnels, how many funnels it is. That is very
22 uncommon seeing in a shed, usually it is related to
23 methamphetamine when you see that many funnels. Those are
24 actually tops of heat bottles, when we talk about the
25 antifreeze where he was cutting heat bottles in half.

1 Q Let me show you State's exhibit number 17, is that
2 what you are talking about?

3 A Yes, sir.

4 Q What again is heat?

5 A It is an antifreeze but they mix it with the
6 pseudoephedrine tablets to pull the ephedrine off of the
7 tablets.

8 Q What is the blue liquid in the other container?

9 A It appears to be Coleman fuel, it is very consistent
10 with that.

11 Q This is all in the shed right now we are talking
12 about, correct?

13 A Correct.

14 Q State's 16?

15 A It is a mason jar, it had like a liquid in the mason
16 jar.

17 Q State's 15?

18 A Four pack of heat and the Coleman fuel we showed a
19 while ago.

20 Q State's 18?

21 A That was the coffee filters.

22 Q Can you take your seat at the witness chair there.
23 Was it illegal to have heat?

24 A No, sir.

25 Q Is it illegal to have coffee filters?

- 1 A No, sir.
- 2 Q What about Coleman fuel?
- 3 A No, sir.
- 4 Q What about muriatic acid?
- 5 A No, sir.
- 6 Q Sea salt?
- 7 A No, sir.
- 8 Q Empty coffee pot?
- 9 A No, sir.
- 10 Q What about ammonium nitrate?
- 11 A No, sir.
- 12 Q Fish pump?
- 13 A No, sir.
- 14 Q In your experience, in your position, through all of
15 your training when you see all of these items what does
16 that consist of?
- 17 A There is only one thing it could be is a meth lab.
- 18 Q When you see all of these items together you said it
19 was indicative of a meth lab. What method of producing
20 methamphetamine is that known as?
- 21 A It is either the shake and bake or the one pot
22 method. Usually on the street you hear the shake and
23 bake.
- 24 Q Can you describe why it is called the shake and bake?
- 25 A It is easy. You put all of your ingredients in a

1 bottle such as the one I have here. And once they are in
2 there they kind of react, you shake it, causes a reaction,
3 you take off the top a little bit to bleed the air, close
4 it and shake it some more.

5 Q You are shaking a bottle to make meth?

6 A That's correct.

7 Q The next day were you present when Lieutenant Dennis,
8 when he spoke to Vernon Jacob Livingston?

9 A I was.

10 Q And where was that?

11 A At the jail.

12 Q And in your presence was he read his Miranda rights?

13 A He was.

14 Q And your presence, did he waive his rights to a
15 lawyer and waive his rights--

16 MR. VERNER: Subject to my earlier objection.

17 THE COURT: Subject to the earlier ruling, it is
18 noted, Mr. Verner. Go ahead, repeat the question or
19 answer the question..

20 A He was read his rights.

21 Q Did he indicate that he waived those rights and
22 wished to speak with you all?

23 A He did.

24 Q And how did he do that?

25 A He signed the form saying he didn't want a lawyer and

1 waived his rights and the rights were explained to him.

2 Q Let me show you State's 28. What is that?

3 A That is where he was read his rights and he signed
4 the form waiving his rights.

5 Q What are those rights known as?

6 A Miranda rights.

7 Q You have a right to remain silent.

8 A Anything you say can or will be used against you in a
9 court of law.

10 Q What else?

11 A You have the right to a lawyer for advise before we
12 ask you any questions, have him or her present during
13 questioning. If you have no money for lawyer fees the
14 Court will appoint one to represent you without cost to
15 you if you wish. If you decide to answer questions now
16 without a lawyer present you will have the, you will still
17 have the right to stop the questions at any time. You
18 will also have the right to stop answering questions at
19 any time until you talk with a lawyer.

20 Q Okay. Did he sign there stating that he understood
21 those rights?

22 A Yes sir, he did.

23 Q And in your presence?

24 A Yes, sir.

25 Q Did he appear to understand them?

1 A He did understand them.

2 Q Was he threatened or coerced in your presence into
3 giving that statement?

4 A No, sir.

5 Q Did he give a statement?

6 A Yes sir, he gave a verbal statement, he did not give
7 a written statement.

8 Q What did he say?

9 A We talked with him. First of all, on the domestic.
10 He was questioned on the night of the incident. He stated
11 that Jackson had called the police. Mr. Livingston did
12 admit to putting the stuff in his truck, the stuff being
13 referred to as this trash bag found on Maple Lane near
14 where he was located. He left the house, Livingston
15 stated that he threw the stuff out on Maple Lane.

16 MR. VERNER: Respectfully the investigator is not
17 allowed to read the report as a substitute.

18 THE COURT: Sustained.

19 Q Just using your own recollection of the event, what
20 do you recall him saying?

21 A He admitted to taking the stuff away from the
22 residence and throwing it out on the dirt road.

23 Q What else can you say?

24 A He gave us this process of cooking methamphetamine.

25 Q What process did he use?

1 A The shake and bake method.

2 Q Did he indicate certain ingredients that he used in
3 his shake and bake method?

4 A Yes, sir. He admitted to using heat and Sudafed and
5 then lithium, Coleman fuel, ammonium nitrate to another
6 bottle and then salt, and like a drain opener.

7 Q Were there items consistent with items you found in
8 the bag he told you had thrown out on the side of the
9 road?

10 A Yes sir, very consistent.

11 Q Let me ask you this. You said that bag, you went to
12 there, that bag was found on Maple Lane, correct?

13 A I did.

14 Q And you said it was marked with an X?

15 A Yes, sir.

16 Q On State's exhibit number 29?

17 A Yes, sir.

18 Q Is that in Newberry County?

19 A Yes sir, it is.

20 Q That is all I have.

21 (Whereupon, State's Exhibits 25, 26, 27 and 30 were
22 admitted into evidence.)

23 CROSS-EXAMINATION

24 By Mr. Verner:

25 Q Is it fair to say most of the pictures are the items,

1 there are some that overlap or some of the photographs
2 tend to be of the same item, just taken in different
3 positions?

4 A Yes sir, there were several photographs that had the
5 same items in there.

6 Q Several of these pages would be the same items, just
7 photographed at different times?

8 A Correct.

9 Q In the shed itself, there were funnels, I think you
10 testified that there were some kind of jar that had a top
11 cut off but there were some funnels in it?

12 A I testified that there were some heat bottles that
13 had the tops cut off that was made as funnels.

14 Q What else was found and then there was the drawer of
15 the coffee filters?

16 A And heat.

17 Q Was that the same drawer or was that a separate
18 drawer?

19 A I will have to look back at the picture. I am really
20 not sure. I mean the drawer was one over the top of the
21 other. It was in the same desk.

22 Q Okay. All of the items you looked at were either
23 taken out of the black bag or in the shed?

24 A That's correct.

25 Q Here was the box of heat in this drawer, is that

1 correct?

2 A I will have to look--

3 THE COURT: If you need to step down.

4 Q This is the drawer that had the box of heat?

5 A Yes, sir.

6 Q And in that jar is what?

7 A It is consistent with Coleman fuel.

8 Q Did you test it for Coleman fuel?

9 A We sent it to SLED for test, no controlled substance
10 is what is detected in that.

11 Q Just out of curiosity, what are these, these are a
12 bunch of nails on the floor?

13 A Yes, but that is a shop and I think it was like a bag
14 beside the door that had turned over and there was nails
15 all over the shop floor.

16 Q Could that item be fingerprinted, the busted jar?

17 A This right here?

18 Q Yes, sir. The plastic jar.

19 A You could put fingerprint powder on there but you
20 probably wouldn't get anything because it is a rough
21 texture. We did fingerprint a bunch of items. But when
22 you fingerprint stuff that doesn't mean you are going to
23 get a fingerprint.

24 Q I understand that but did you personally do
25 fingerprinting or did somebody else do that?

1 A Myself and Lieutenant Dennis processed and
2 fingerprinted the scene.

3 Q And this jar, do you recall, being one of the things
4 that you fingerprinted?

5 A I don't know if we did that jar. If we were able to
6 we did. With it being wet or any kind of moisture you
7 would not be able to.

8 Q This picture shows the funnels I think you were
9 talking about. What else does it show?

10 A That picture just shows one funnel right there.

11 Q This yellow thing right here is not a funnel on the
12 corner?

13 A It may be.

14 Q But this is certainly the larger plastic funnel?

15 A Yes.

16 Q Was that item fingerprinted?

17 A You can put fingerprint dust on there but it looks
18 like a rough texture item which is not going to reveal a
19 fingerprint if it is really rough.

20 Q Coffee filters?

21 A Correct.

22 Q And that appears to be the item taken from the
23 drawer?

24 A Yes.

25 Q Just set out separately and that was taken from some

1 location, just set out separately to photograph?

2 A Yes.

3 Q That is another picture of the filter?

4 A No, this right here is those heat funnels where he
5 was cutting the heat bottle off to make the funnel.

6 Q This is also another funnel that we talked about
7 earlier?

8 A Yes.

9 Q And that is the coffee filters again?

10 A Correct.

11 Q That is the Sunkist bottle we talked about before?

12 A That is the Sunny-D that appears to have--

13 Q It is this picture too, isn't it?

14 A Liquid that is a reddish tint where it would be like
15 a heat diluted with the Sudafed to turn the liquid red.

16 Q But that is two pictures basically of the same?

17 A Correct. When you are doing a meth cook, what we run
18 into, instead of dumping it right on the ground because it
19 is a very minute liquid, they will pour it in a bottle
20 like that and just keep pouring it until they fill up the
21 bottle and then they will throw the bottle away or dump it
22 on the ground.

23 Q Respectfully that is not my question. What is this
24 again?

25 A That is a hose that has got a valve system typically

1 known with a meth lab.

2 Q Do you ever see those behind a refrigerator?

3 A Do I?

4 Q Is that a device that can be, do you ever see those

5 hooked up with your refrigerator?

6 A That line right there maybe but not that big hose,

7 no.

8 Q How big is that physically?

9 A This right here appears to be three-quarters to an

10 inch line, that right there is maybe a quarter.

11 Q How long or length, is that more than a foot long?

12 A I would say the end plastic tube is about a foot.

13 Q The skinny piece right here is about how long?

14 A I would say six inches.

15 Q And that is PVC pipe?

16 A That is what it appears.

17 Q And that is a picture of you cleaning up?

18 A Yes, sir.

19 Q And that is the shed itself?

20 A Correct.

21 Q You can sit down. When you interviewed Mr.

22 Livingston he had only been informed he was under arrest

23 for the incident involved with Sheila Jackson, right?

24 A I am really not sure. He wanted to speak to

25 Lieutenant Dennis more than he wanted to speak to me. He

1 didn't really want to speak to me. I was just there as a
2 witness and heard what he said.

3 Q He was probably talking to Lieutenant Dennis?

4 A Correct.

5 Q Did you broach the subject to talk to him or did
6 Lieutenant Dennis do most of the talking?

7 A Lieutenant Dennis did most of the talking.

8 Q Do you recall what the first subject that they talked
9 about was?

10 A Like I said, the domestic from that previous night.

11 Q The fight between he and Sheila, right?

12 A Correct.

13 Q Okay. Do you recall him ever mentioning that Sheila
14 was trespassing on the property?

15 A Not to my knowledge of recalling it. I can look back
16 through the report and see if it is on there that he may
17 have said that but I don't recall him saying that.

18 Q In your report you mentioned that the fight was over
19 her having to leave and I will hand up the report. This
20 would be the bottom paragraph in your report.

21 A It does say that Livingston told her she had to leave
22 but it also refers that he admitted she has stayed there
23 the night before in the camper.

24 Q Did she stay with his permission or without?

25 A Well, he did not call law enforcement saying that she

1 was trespassing the night before so I would assume that it
2 was with his permission.

3 Q Do you know when he found out?

4 A I do not. I mean he knew she had stayed the night
5 before.

6 Q How do you know that?

7 A He told me.

8 Q He told you, I was aware that she stayed the night
9 before?

10 A In the camper, that's correct.

11 Q And the, and that is in your report?

12 A Yes, sir.

13 Q Do you have a copy of your report yourself?

14 A I sure do. I can tell you where it is. It is right
15 below where you were talking about.

16 Q Read it.

17 A It said Jackson had stayed in the camper the night
18 before. And then in "the above incident meaning the
19 incident we are talking about today."

20 Q So he had told you that she had stayed the night
21 before?

22 A That's correct.

23 Q Did she have permission or was that because he had
24 found her there. You are saying that it is with his
25 permission. And I am asking you how you know that.

1 A Like I told you, I would assume it is with his
2 permission because he did not call and say she was
3 trespassing. And he had told me that she had stayed there
4 the night before.

5 Q Did he tell you when you interviewed him that the
6 drugs belonged to Sheila Jackson?

7 A No, sir.

8 Q Thank you.

9 MR. SCOTT: Nothing from the State, Your Honor.

10 THE COURT: You may step down. Call your next
11 witness.

12 MR. STUMBO: The State calls Douglas Robinson to the
13 stand.

14 DOUGLAS ROBINSON, being
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION :

17 By Mr. Stumbo:

18 Q Where do you work?

19 A South Carolina Law Enforcement Division commonly
20 known as SLED.

21 Q What is your role over there at SLED?

22 A I am a forensic chemist assigned to the drug analysis
23 department.

24 Q Drug and analysis department down at Broad River
25 Road?

1 A The forensics complex where headquarters is, yes sir.

2 Q Do you live in the Columbia area?

3 A Yes, sir.

4 Q What is your education, background in regards to, in
5 relation to what you do?

6 A I received my Bachelors of Science in chemistry from
7 the University of South Carolina. After graduating I
8 spent approximately three years doing 'environmental
9 chemical analysis. Upon being hired at SLED I completed
10 law legal training with the South Carolina Criminal
11 Justice Academy. Also an intensive training for the
12 analysis and controlled substances through SLED and I have
13 also completed the Forensic Chemist Seminar given by the
14 Drug Enforcement Administration, DEA.

15 Q How long have you been a chemist at SLED?

16 A Approximately five years.

17 Q How many cases involving narcotics have you analyzed?

18 A Literally thousands of submission items.

19 Q And have you ever been qualified as an expert?

20 A Yes, sir.

21 Q To this State?

22 A Yes.

23 Q About how many times?

24 A Eleven.

25 MR. STUMBO: Your Honor, at this time the State would

1 offer Mr. Robinson as an expert in the field of forensic
2 or as a forensic chemist.

3 THE COURT: Any objection?

4 MR. VERNER: This probably makes it twelve, Your
5 Honor.

6 THE COURT: Ladies and gentlemen, again normally when
7 a witness testifies they have to tell you about something
8 that they observed personally with their own senses. An
9 exception to this exists for expert witnesses. In this
10 case the State and defense have agreed that Mr. Robinson
11 is an expert in the field of forensic chemistry so he can
12 give his opinion in that particular area. It does not
13 mean that you have to accept it but it is evidence for you
14 to use in the way that you see fit. Go ahead.

15 Q Mr. Robinson, did you have an occasion to analyze
16 evidence in regards to this case, Vernon Livingston?

17 A Yes, sir.

18 Q What day did you do the analysis?

19 A May I refer to my notes?

20 Q Absolutely.

21 A The actual analysis was performed on February the
22 22nd of 2012.

23 Q Did you generate a report from that analysis?

24 A Yes sir, based on the results of the analysis the
25 report was issued February the 24th of 2012.

1 Q Do you have that in your file today?

2 A I do have a copy, yes sir.

3 Q Now who brought the evidence in this case, what
4 agency submitted the evidence in this case to you?

5 A According to the documents that I have, Investigator
6 Nick Bouknight of the Newberry County Sheriffs Office was
7 the person to bring it in.

8 Q When the evidence comes into SLED are you the one who
9 actually takes it in yourself?

10 A No, sir. The first point of contact for officers is
11 our evidence control department. They receive any
12 incoming evidence, keep it in a secured location for every
13 department until the analyst is ready to pick it up and do
14 the analysis on it. And then they also give the evidence
15 back to the submitting agency whenever the analysis is
16 finished.

17 Q Does the package remain sealed or taped when they are
18 given to the intake folks at SLED?

19 A Correct. On drug cases the drug evidence is sealed
20 by the submitting agency at the submitting agency before
21 it comes to SLED. And that seal is not broken until
22 myself or another analyst performs the analysis.

23 Q This item is not in evidence but just for
24 demonstrative purpose this yellow tape on this box, does
25 that look familiar?

1 A Yes, sir. The yellow tape is what is called evidence
2 tape, it is actually usually breakable but it is a good
3 way to ensure that there, the seal that has been placed
4 hasn't been tampered with. So if someone would try to
5 pull it the tape would break easily and you can't put it
6 back together. I know at least on the top there that SLED
7 evidence tape, I can't really see from here. The bottom
8 of the box is also sealed with evidence tape, I assume it
9 is. Yes, across the bottom, this tape actually bears SLED
10 on it so it is SLED evidence tape.

11 Q And when you break open a box of evidence tape, are
12 you the one that breaks the seal on that?

13 A Correct.

14 Q And in this case when you receive evidence that comes
15 in from Newberry County Sheriffs Department, had it been
16 tampered with in any way?

17 A No, sir.

18 Q What would happen if you received evidence from your
19 techs at SLED that looks like it had been tampered with or
20 changed since it had come in from the agency?

21 A Well, the evidence is initially inspected by our log
22 in department, our evidence control department. If
23 something happened to get past them, the very first thing
24 any analyst does is inspect it to make sure that seal is
25 intact. And if the seal is tampered with or appears to be

1 tampered with in any way it is returned to the agency, it
2 is not analyzed.

3 Q Did you check that in this case to see if it was
4 sealed?

5 A Yes, sir. It was intact and it is noted on my
6 worksheet that the evidence was sealed.

7 Q And what items did you analyze that were brought to
8 SLED in this case?

9 A In this particular case--

10 Q You can refer to your report.

11 MR. VERNER: Well, technically he can't read from the
12 report, he has to testify to what he remembers testing.

13 THE COURT: Are you referencing the actual formal
14 reprot that he submitted back to law enforcement?

15 MR. STUMBO: That's correct.

16 THE COURT: You can go ahead, sir.

17 A Based on the report that was issued for this case,
18 the evidence that was submitting is as follows. Item 1
19 was the cardboard box that was just brought up to me and
20 that box contained Item 1.1, a ziplock bag containing
21 plastic tube containing residue. The results of that were
22 no controlled substance detected.

23 Item 1.2 was a ziplock bag containing the following.
24 Item 1.2.1, a plastic tube containing residue. No
25 controlled substance detected.

1 Item 1.2.2, plastic tube containing residue.
2 Results, methamphetamine C2 found, no weight obtained.

3 Item 1.3, glass jar with residue. No controlled
4 substance detected.

5 Item 1.4, plastic bottle containing glass vile
6 containing liquid substance to the amount of 3
7 milliliters. No controlled substance detected.

8 Q You mentioned Item 1.2.2. I am going to hand you
9 what has been marked for ID purpose as State's exhibit 30.
10 It is in evidence. I believe that is in evidence.

11 THE COURT: It is in evidence without objection. It
12 is State's 30. Correct me if I am wrong but we agreed on
13 that during the break.

14 MR. VERNER: That's correct.

15 Q Does that have an item number on the bag there, Mr.
16 Robinson?

17 A It does.

18 Q What is that item number?

19 A The item number, the full marking on the bag is
20 L12-01782. That is the SLED lab number that was issued to
21 it. Below that is 1.2.2, that is the subitem number and
22 it also has my initials and the statement bag added.

23 Q And that is your writing and initials on there that
24 you have added to it?

25 A Correct. By policy we initial any evidence that we

1 come in contact with. The bag added statement is a
2 reference to the fact that initially when it was submitted
3 this bag was not in the case. In an effort to make sure
4 there is no cross-contamination after analysis and just to
5 keep evidence straight for court we separate things out.
6 And so this bag was added from my supplies to the case.

7 Q Is that the item, 1.2.2 that you analyzed in regards
8 to this case?

9 A It is. It is marked on the ziplock and actually it
10 is also has the lab number and the item number and my
11 initials on the actual tubing as well.

12 Q And what were the results of what is found here,
13 State's exhibit 30, what did you find in there?

14 A Methamphatamine C2 found, no weight obtained.

15 Q Did you package all of these things up in these new
16 bags I guess to send it back to the agency?

17 A Depending on how it came in it would either be
18 repackaged in the original packaging or added to a new bag
19 and it would be marked as such. After the analysis is
20 completed it is repacked and a new piece of evidence tape,
21 it is taped shut with regular packing tape and then a
22 fresh piece of evidence tape over the top of that to show
23 any possible tampering after the fact.

24 Q Did you have a chance to observe this box earlier?

25 A I did.

1 Q And did it have your initials on it?

2 A Yes. The piece of evidence tape that was on the top
3 was the evidence tape that I placed with my initials and
4 the date.

5 Q What is in State's 30 was placed in the box and
6 initialed by you and sealed to be sent back to the
7 Newberry County Sheriffs Department?

8 A Correct. After the analysis was done on that item it
9 would have been placed back in the box and sealed at that
10 time and then placed in a secure location until it could
11 be returned to the submitting agency.

12 Q No further questions.

13 CROSS-EXAMINATION

14 By Mr. Verner:

15 Q Mr. Robinson, you are an agent with the State Law
16 Enforcement Division?

17 A Yes, sir.

18 Q Do you have arrest powers?

19 A Yes.

20 Q Just out of curiosity what does the C2 stand for.

21 You said it was Methamphatamine C2?

22 A Correct. A C2 is a reference to State law, the
23 controlled status of the item. Elicit drugs are
24 characterized between C1 and C5 and then the next step
25 down would be RX or prescription. And then an over the

1 counter like a general aspirin or something like that.

2 Q A class two?

3 A It is a class two illegal drug. It has three
4 qualifications to fit in that category. It has a
5 potential for abuse, a potential for psychological and
6 physical dependence and it also has a current medical use
7 or medical use with severe restrictions and it would fall
8 under that category.

9 Q And what you received from Newberry County is
10 everything that was in the little box on the Solicitor's
11 desk?

12 A All of the tested items were package in that box,
13 yes.

14 Q That was three plastic tubes, a glass jar and a
15 plastic bottle?

16 A Yes. Three plastic tubes, a glass jar and also glass
17 vile that had a liquid substance in it.

18 Q Are you aware if any of the items that you received
19 had been tested for fingerprints?

20 A I am not aware of any analysis that would have been
21 done prior or any knowledge of the crime scene. I just
22 test what was submitted.

23 Q If a glass jar had been tested for fingerprints would
24 that affect your analysis?

25 A No, it shouldn't.

1 Q Thank you.

2 THE COURT: Ladies and gentlemen of the jury, we are
3 done for the day. If you will be back in the jury room
4 tomorrow morning at 9:15. I hope to have you out shortly
5 after you get here but there might be a brief delay.
6 Please don't discuss this case with anyone that you might
7 see tonight, anyone that you stay with or share a room
8 with. Understand that the reasons for this abomination is
9 that when it is time to start deliberating in this case
10 this will be your decision to make, not your spouse's,
11 your kids decision, anyone else's decision. It would be
12 improper to allow that decision that you have to make
13 after you have viewed the witnesses and the evidence, it
14 would be improper to allow that decision to be influenced
15 in any way by something that somebody might say to you no
16 matter how well the intention is. Feel free to tell them
17 you have been picked on a jury but don't discuss with them
18 the actual merits of the case because it wouldn't be fair
19 to all concerned. With that I hope you have a lovely
20 evening. See you back in the morning around 9:30.

21 (Whereupon, the jury was excused from open court for
22 the day.)

23 FEBRUARY 12, 2013.

24 THE COURT: We will go back on the record in the case
25 of the State versus Vernon Livingston. I am told that all

1 jurors are present. And before we left yesterday I think
2 there was going to be some discussion concerning testimony
3 from the pharmacist. We can address that at this point
4 and time and hopefully we can move in a little bit more
5 seamlessly once the jury is out here. Exactly what
6 evidence is there that the State intends to introduce, Mr.
7 Scott.

8 MR. SCOTT: Judge, essentially it is a summary of
9 pseudoephedrine purchases by Mr. Livingston. We have a
10 range that goes from January the 18th for 2011 up to
11 November the 28th of 2012. Of course, our incident date
12 is January the 30th of 2012. So we can redact some of
13 these items. We have Brent Munnerlyn who testifies as the
14 custodian of records from Walmart. These are records kept
15 in the ordinary course of business. They have these both
16 in-house and provide a National Data Base of these
17 records. Of course, we are prepared to show that these
18 are recorded at the time, right at the time the Sudafed is
19 purchased, again, since 2010. Pharmacies and other
20 retailers across the nation are required to do this.

21 THE COURT: If you could let me see the document that
22 you are referring to, please. Mr. Verner, what is the
23 defense's position concerning this?

24 MR. VERNER: We would obviously ask the Court to
25 exclude. One position is that we think SLED, a

1 representative of SLED would be the proper person to
2 introduce this evidence. There are required on section
3 44-53-398 is the statute that requires the pharmacies to
4 turn over this information to SLED. SECTION 23-3-1200
5 sets out the rules that SLED can provide this information
6 to law enforcement or prosecutors, Your Honor.

7 THE COURT: Give me that section again.

8 MR. VERNER: 23-3-1200. That statute is the statutes
9 that authorizes SLED to turn the documents to law
10 enforcement for trials. I think that is subsection (1),
11 maybe (e)(1) but it is 23-3-1200. And it is also that
12 section that prescribes the rules for SLED to turn this
13 information over to law enforcement. I would also, on a
14 403 issue, Your Honor, prior to trial the State had given
15 me the individual printouts that showed the required
16 information. The printout doesn't have the required
17 information that SLED requires to be in there. The
18 signature of the man, his address, the drivers license
19 number, the date, the Solicitor prior to trial did give me
20 some of these individual printouts that have that. Not
21 all of the electronic signature pads have his signature in
22 them that would correspond to the SLED purchases are to
23 the printout from the pharmacy. And there is at least one
24 of them that has entirely somebody else's signature. We
25 think by statute, by law the proper person to introduce

1 this information is SLED.

2 THE COURT: In the specific rule statute it says,
3 SLED is the one that has to or a custodian from SLED is
4 the one that has to present this evidence because it is
5 more of an independent source type of rule in this
6 situation.

7 MR. VERNER: Quite frankly, it is a fairly new
8 statute, Your Honor, with the Sudafed law. I haven't, I
9 did do a law search of it and I haven't found any cases
10 that address it. Now I understand he is introducing it as
11 a business record. By statute and both statutes states
12 these type of records are clearly identified as
13 confidential and not public records.

14 THE COURT: That is the provision I think I was
15 looking at is 44-53-398(e)(3).

16 MR. VERNER: That statute is basically the statute
17 that requires the pharmacies to turn that information over
18 to SLED and limits their liability if they inadvertently
19 releases it.

20 THE COURT: Correct but it also seems to contemplate
21 that the pharmacies would also be responsible for
22 maintaining a log.

23 MR. VERNER: In that same section, I think you can
24 make a fair inference that they are not suppose to be
25 turning it over of a retailer or employee or retailer who

1 in good faith releases information in a log to federal,
2 state or local enforcement used for civil liability.
3 Really the only fair inference is, possibly improper to
4 turn it over to law enforcement or to these agencies but
5 if they did in good faith. The fair inference in that
6 provision is that they shouldn't turn it over except by
7 the statute. The statute in (g) says it preempts all
8 regulations. 44-53-398 is more of a requirement to keep
9 it. The second statute is more of the, is when SLED has a
10 copy of it, how SLED can turn it over. I hadn't seen any
11 appellate court of record that addresses that issue.

12 THE COURT: For purposes of the evidentiary hurdle of
13 who is a proper witness to allow this information in,
14 because 398 clearly contemplates the pharmacies retaining
15 information along these lines as well as contemplating
16 perhaps SLED under title 23. I think that the
17 representative of the pharmacy would be a proper
18 individual to present this.

19 MR. VERNER: Under the basic rules I agree, Your
20 Honor, I just point out that subsection (e) of the
21 23-3-1200, SLED only shall provide accessed information
22 maintained to a local, state or federal law enforcement
23 official, a state attorney or a United States attorney. I
24 guess the question is whether that only means that SLED
25 only can turn over the information or SLED can only turn

1 over the--

2 THE COURT: -- I read subsection (e) as being more of
3 a confidentiality provision preventing for the information
4 being disclosed pursuant to a FOIA request. Explain who
5 the information can specifically be turned over to and
6 clearly indicating that it is not a public record.

7 MR. VERNER: Yes sir, but because a state agency
8 would file a FOIA, that second sentence wouldn't really
9 apply to a state agency who traditionally would not use a
10 FOIA type claim to get information.

11 THE COURT: I understand your position. Again, this
12 applies to SLED data base, not a private data base. A
13 private data base which is being operated independent of
14 SLED. If the State had perhaps had accessed the SLED data
15 base would be substances in determining how many times the
16 defendant requested or purchased the pseudoephedrine.
17 Now, let's go to your 403 argument.

18 MR. VERNER: And I am going to tie in the 403, Your
19 Honor, that the printout, first of all, in my opinion goes
20 way beyond what would be required. He is charged with
21 manufacturing methamphetamine on January the 30th of 2012.
22 The CVS pharmacy record goes back to January 18th of 2011
23 which he is not indicted for prior to January 30th. Part
24 of my problem that the purchases on this CVS report are
25 decongestants purchases. A decongestant may not be

1 ephedrine but it certainly could.

2 THE COURT: Solicitor, if you want to speak to that.
3 I am assuming that because and perhaps the records
4 custodian from the pharmacy will be better to address
5 this. But I am assuming that because this is a log that
6 was reported to SLED, that any substance even if it was
7 labeled decongestant still contains pseudoephedrine if it
8 was on this report. Can you speak to that.

9 MR. SCOTT: That is my understanding, Your Honor,
10 this would equate at least in so far as, it is my
11 understanding that is pseudoephedrine, a decongestant. My
12 understanding is that everything on this log is a summary
13 of pseudoephedrine purchases. I understand what Mr.
14 Verner is talking about, just the decongestant 12-hour
15 tab. If you look at the title of it, it is a summary, it
16 is Walmart Pharmacy, 10-624 pseudoephedrine summary by
17 patient. That is my understanding from the pharmacy.

18 THE COURT: With regard to Mr. Verner's 403 argument,
19 the prejudicial effect of the log from January the 18th of
20 2011 to November the 28th of last year, that that is
21 unduly prejudicial when he is on trial from an incident
22 that took place on or about January the 30th. What is the
23 State's position on that and how do y'all intend to
24 address that.

25 MR. SCOTT: Your Honor, I see no reason why we can't

1 redact February 8th of 2012 on into November 28th of 2012,
2 these are after the incident. However, the defense in the
3 opening and the defense through cross seems to be that
4 this is somebody's else's lab, somebody's else's
5 manufacturing lab. Testimony has been that
6 pseudoephedrine is a necessary ingredient in order to
7 manufacture methamphetamine. This is highly probative
8 circumstantial evidence that Mr. Livingston is involved in
9 the manufacturing of methamphetamine. What we have here
10 is a log of building up this supply of pseudoephedrine.
11 We hope our pharmacist will testify to the limits of
12 pseudoephedrine purchases by day. I believe there are
13 Federal regulations that restrict how much pseudoephedrine
14 you can purchase within a timeframe. What we have here is
15 a clear log that Mr. Livingston purchasing on a very
16 regular basis three times a month leading up to the date
17 in question. I think it is highly probative, I think it
18 is what he is charged with.

19 THE COURT: I don't necessarily disagree, Solicitor.
20 The concern that I have is that and I would agree that
21 everything after February the 8th is not relevant for
22 purposes of this trial. Mr. Verner, do you want to speak
23 to the one year that precedes this incident.

24 MR. VERNER: If it comes in, Your Honor, in candor I
25 would ask the Court just to decide a reasonable, I mean

1 clearly I don't think the State is going to argue that the
2 purchases from January and a year prior were used in this
3 particular case. It is just a question of at what point
4 does the fair prejudice can become the unfair prejudice.

5 THE COURT: What would you suggest, Mr. Verner?

6 MR. VERNER: 90 days, Your Honor.

7 MR. STUMBO: Your Honor, if I may interject here, I
8 think one importance to remember and I agree that this is
9 a reasonable summary, reasonable time. None of these
10 purchases in and of themselves are illegal acts, they are
11 all legal purchases. So we are not suggesting that any of
12 these acts had broke the law or did something wrong
13 individually. I think it is the cumulative effect of
14 regular purchases which is probative evidence, probative
15 towards the manufacture. It is highly prejudicial, it is
16 extremely probative, it is prejudicial.

17 THE COURT: I do tend to agree in that the purchases
18 indicate, under the State's theory of the case, a
19 continuing conduct indicating that the defendant
20 manufactured meth on this occasion. Certainly these are
21 probative instances that is probative to the issue of his
22 manufacturing on this occasion.

23 MR. STUMBO: Your Honor, we would agree to a
24 reasonable redaction here. I think 90 days would put us a
25 little bit closer. 90 to 120 days leads to October of

1 2011 through January 25th which the 25th was five days
2 before the incident. That is the last log in.

3 MR. VERNER: Your Honor, short of our argument, I
4 don't think that is an unreasonable compromise. I would
5 ask in lieu of the report that the proffering witness
6 would just read them into, the purchases, that the report
7 wouldn't come in but that the 'custodian of the records
8 could read the actual dates and describe the purchases at
9 that time.

10 THE COURT: I understand. I am going to allow from
11 October the 21st forward. That shows a sufficient course
12 of conduct, it does not seem too remote. I don't know
13 that the defense, if the defense intends to offer a case,
14 I don't know what is going to come out if he were to
15 testify, if the defendant were to testify. But for
16 purposes of the State's case-in-chief I am going to limit
17 the State to October 21st, 2011 to January the 25th of
18 2012 which provides the State ample instances indicating
19 the repetitive course of conduct without going back so far
20 as to imply that he has been manufacturing over his
21 extended period of time. I think that is, clearly it is
22 very prejudicial implication that he is continuing to
23 obtain these pseudoephedrine tablets afterwards. That is
24 clearly, the prejudicial effect could outweigh the
25 probative value because it indicates that after his arrest

1 he just kept on doing it. And the stuff prior to October
2 the 21st, my feeling is that that is unduly prejudicial
3 and the prejudicial effect of that evidence outweighs the
4 probative value of whether he was manufacturing of this
5 particular incident date which is what we are trying here.
6 So that will be my ruling. As far as how this is
7 presented I would suggest that you just have the
8 pharmacist read out the purchase on such and such date
9 because if we redact this it is going to leave a clear
10 indication that there are other instances that he was
11 purchasing. So I think the proper way to present the
12 evidence is just have the pharmacist, the custodian
13 testify. Why don't you lead him, Mr. Verner is not going
14 to object that way we can be sure we get the right dates.
15 If we can, let's do this, the copy that was handed to me,
16 I have already marked on it. Let's make that a Court's 1.
17 And that way any subsequent reviewing authority will have
18 an opportunity to look at exactly what it is.

19 (Whereupon, Court's Exhibit 1 was marked for
20 identification only.)

21 THE COURT: Let's take a short break and then we will
22 be back out.

23 (Whereupon, a short break was taken.)

24 THE COURT: Let's bring the jury in, please.

25 (Whereupon, the jury came into open court at

1 approximately 10:15 a.m.)

2 THE COURT: Let the record reflect that the jury is
3 present. Ladies and gentlemen, hope you had a great
4 evening. We are still in the State's case-in-chief in the
5 State versus Vernon Livingston. At this point, Solicitor,
6 call your next witness.

7 MR. SCOTT: The State calls Brent Munnerlyn to the
8 stand.

9 BRENT MUNNERLYN, being
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Scott:

13 Q Dr. Munnerlyn, what is your profession?

14 A Pharmacy.

15 Q Who are you employed with?

16 A I am employed by Walmart.

17 Q How long have you been with Walmart?

18 A Since April of 2006.

19 Q What is your title there?

20 A I am the Market Director for the Health and Wellness
21 Division.

22 Q Do your duties include any record keeping
23 responsibilities?

24 A They do.

25 Q Please explain.

1 A I am in charge of all record keeping to be in
2 compliance with all state and federal laws.

3 Q Part of your duties or part of Walmart duties with
4 the pharmacy keeping up with pseudoephedrine purchases?

5 A We are responsible for keeping up with
6 pseudoephedrine purchase, correct.

7 Q Why is that?

8 A In January of 2011 we were required to start
9 maintaining all pseudoephedrine purchases in accordance
10 with a state law that was passed.

11 Q What is pseudoephedrine?

12 A Pseudoephedrine is a nasal decongestant used for
13 nasal congestion.

14 Q Some of the brand names is Sudafed?

15 A Sudafed is a brand name for pseudoephedrine, yes.

16 Q Does Walmart have a brand of pseudoephedrine?

17 A We do, it is called Equate pseudoephedrine.

18 Q And you said in January of 2011 you were required to
19 record purchases of pseudoephedrine?

20 A That's correct.

21 Q If I was to go into Walmart and get some Sudafed how
22 would I have to go about doing that?

23 A If you were to come into one of our pharmacies you
24 would have to request Sudafed at the pharmacy, it is not
25 available over the counter. You would have to provide

1 your ID and we would then use a computer system and we
2 would enter in your information, your name, your address
3 and your drivers license number or state ID number. And
4 then there is, it is an online data base in which we would
5 then be able to determine whether you had purchased the
6 max amount of Sudafed or not.

7 Q So you are required to purchase a valid picture ID?

8 A You are, correct, yes.

9 Q And I think you stated, you are provided with a
10 database?

11 A We do. Our systems are integrated with the Inflex
12 System.

13 Q The pharmacy, itself, are they required to maintain
14 records of the pseudoephedrine purchases?

15 A We are, yes.

16 Q And did you bring a log of these purchases from your
17 Walmart here in Newberry?

18 A I do have a log of records.

19 Q And who purchases pseudoephedrine, are those on this
20 log?

21 A This log at the top left reflects a gentleman by the
22 name of Vernon Livingston.

23 Q And whenever these, when are these recorded?

24 A At the time of purchase.

25 Q Do you have a date of October the 21st of 2011?

1 A I do.

2 Q Let me show you Court's exhibit number 1 here. Is
3 that a duplicate of the log you have?

4 A It is a duplicate.

5 Q Would you start with October the 21st there on your
6 log and read the purchases of pseudoephedrine by Mr.
7 Livingston going up to January the 25th of 2012?

8 A Through January the 25th of 2012?

9 Q Yes, sir.

10 A October the 21st, 2011 at 8:05 p.m. Equate
11 Pseudoephedrine, 12-hour, 120 milligrams was purchased.

12 November the 3rd of 2011 at 9:03 p.m. Equate
13 Pseudoephedrine, 12-hour, 120 milligrams was purchased.

14 November the 14th of 2011 at 8:18 p.m. Decongestant
15 12-hour was purchased.

16 11/20/2011 at 5:33 p.m. Equate Pseudoephedrine, 30
17 milligrams was purchased.

18 11/23/2011 at 5:51 p.m. Decongestant, 12-hour was
19 purchased.

20 December the 4th of 2011 at 5:49 p.m. Decongestant
21 12-hour was purchased.

22 December the 16th at 12:10 p.m. Decongestant 12-hour
23 was purchased.

24 December the 24th of 2011 at 1:20 p.m. Decongestant
25 12-hour was purchased.

1 January the 4th of 2012 at 5:12 p.m. a Decongestant
2 12-hour was purchased.

3 11/16/2012 decongestant 12-hour was purchased.

4 January the 25th of 2012 at 8:23 Decongestant 12-hour
5 was purchased.

6 Q And all of these were purchased as pseudoephedrine
7 by Vernon Livingston?

8 A There were all purchases of pseudoephedrine by Vernon
9 Livingston with a ID number as 004744765.

10 Q Thank you. Please answer any questions Mr. Verner
11 may have for you.

12 CROSS-EXAMINATION

13 By Mr. Verner:

14 Q My understanding is that the law in 2011 put strict
15 limits on how much decongestant a person can buy?

16 A That's correct.

17 Q The limits are fairly small, very restricted on how
18 much a person can buy of pseudoephedrine during a period?

19 A The limits are nine grams per month.

20 Q And the computer will reject a purchaser from buying
21 excessive amounts?

22 A That's correct.

23 Q Did you bring the printout of Sheila Jackson for
24 buying ephedrine or pseudoephedrine or decongestants?

25 A I do not have a printout.

1 Q Were you asked to bring out a printout for Sheila
2 Jackson?

3 A I was not.

4 Q Thank you.

5 REDIRECT EXAMINATION

6 By Mr. Scott:

7 Q Dr. Munnerlyn, an ounce of pseudoephedrine purchased
8 in any given month during that range significant to you in
9 any way?

10 A The amounts that were purchased are within the nine
11 gram limits. I think it is worth to note that in the
12 month of November that the, that there was a purchase of
13 30 milligram Sudafed, to obtain the max amount with the
14 quantifies, packaged quantities that are available.

15 Q What happens if you bump up against the nine gram
16 limit?

17 A If you bump against the nine gram limit that doesn't
18 mean you still can't purchase because pseudoephedrine
19 doesn't come in packages that allow for three milligrams,
20 I mean, three gram, three gram, three gram. They come in
21 2.4 and 1.44. So 2.4 would, essentially if you bought
22 that three times wouldn't be at the nine gram limit but if
23 you bought it four times it would be above the nine gram
24 limit. In order to maximize the amount of Sudafed that
25 one could purchase they would have to purchase three

1 packages of 2.4 grams and one package of 1.44 grams.

2 Q What if an individual attempted to go in and buy
3 Sudafed that surpassed the nine gram limits within a
4 month?

5 A They would be denied.

6 Q Do your records, these particular records that you
7 brought with you, are these, do these show being blocked?

8 A We are not required to capture denials, the system
9 doesn't do that.

10 Q Within this range do those Sudafed purchases that you
11 just named, are those significant to you in any way?

12 MR. VERNER: I think he has already asked and
13 answered that question.

14 THE COURT: I sustain. If you have a different sort
15 of, I will sustain the objection.

16 Q Nothing further.

17 THE COURT: You are free to go, appreciate you
18 coming. Call your next witness, please.

19 MR. SCOTT: The State calls Robert Dennis.

20 ROBERT DENNIS, being
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Scott:

24 Q Lieutenant Dennis, how long have you been with the
25 sheriffs office?

1 A I have been with the sheriffs office since May of
2 1999. However my law enforcement career started in '91
3 with the City of Newberry.

4 Q Were you acting as a Lieutenant January the 30th of
5 2012?

6 A I was.

7 Q Did you respond to a complaint of a meth lab at 10752
8 Highway 121?

9 A I did.

10 Q Whose residence was that?

11 A That residence is Vernon Jacob Livingston who is the
12 defendant here today sitting next to Mr. Verner.

13 Q What did you do when you got there or where did you
14 respond first?

15 A The response was kind of a three-fold, if you have.
16 I was first notified by the deputy that was supervising
17 that night which was Lieutenant Odell Schumpert. He told
18 me that they were responding to a domestic that could turn
19 into to be a possible meth lab. That they had the
20 individual, Mr. Livingston, stopped on Cypress Lake Road.
21 So I went ahead and responded as well as ask for our
22 narcotics investigator to come out, Sergeant Nick
23 Bouknight. My first location was to go to Cypress Lakes
24 Road where Lieutenant Schumpert and Deputy Claytor had Mr.
25 Livingston in handcuffs. That first initial visit there

1 was to look at Mr. Livingston, to get just a brief
2 oversight of what was going on as well as to look in his
3 truck and see if there were any items that could be
4 connected to a either working, active meth lab. After not
5 seeing that and being advised that there was potential
6 items that had been thrown out because he had been seen by
7 Ms. Jackson packaging stuff up from the shed, putting in
8 his truck and then leaving, once we kind of secured both
9 areas being Mr. Livingston's truck where he was at I then
10 went to the residence which is located at Highway
11 121. That is where Sergeant Carnes was at, pretty much
12 advised him, don't do anything, don't go in any buildings
13 or anywhere. And then we had two other road units that
14 were actively searching Highway 121, Cypress Lakes Road as
15 well as Maple Knoll or Maple Lane. Probably within about
16 fifteen minutes of being there in that area Mr. Claytor
17 called me and, Deputy Claytor and advised that they had
18 found a trash bag, black, that was throwed out just off of
19 the Maple Lane into kind of an open area that was not
20 grown up by any type of underbrush or anything like that.
21 And there was a black bag, I responded to that location to
22 see that there were ingredients within the bag that were
23 consistent with a meth lab.

24 Q Was Mr. Livingston arrested that night?

25 A Mr. Livingston was arrested based off of the initial

1 call of criminal domestic violence and was taken into
2 custody and transported to the Newberry County Detention
3 Center.

4 Q Did you speak with him on the side of Cypress Lakes
5 Road that night?

6 A I believe we exchanged pleasantries and, you know,
7 didn't go into full detail of what was going on because
8 the deputies were there maintaining their communication
9 back and forth of what the victim, Ms. Jackson, was
10 telling. And then trying to get his side of the story as
11 well.

12 Q At that time would it be safe to say that you were
13 investigating a domestic dispute?

14 A I would say twofold, both the domestic dispute as
15 well as the meth lab.

16 Q You saw him on the side of Cypress Lakes Road, had
17 you been given information about the black bag found on
18 the side of Maple Lane?

19 A Not at that time. It was not until I left his
20 location and other units arrived. I believe I had already
21 had made it to his residence where Sergeant Carnes was at
22 whenever we received the information they had found the
23 black bag.

24 Q Did you get another opportunity to speak to Mr.
25 Livingston?

1 A I did. This incident occurred on the 30th. And on
2 the 31st myself and Investigator Nick Bouknight responded
3 out to the Newberry County Detention Center to talk to Mr.
4 Livingston.

5 Q He was in custody at that time?

6 A He was.

7 Q Do you know what time you got out to the jail?

8 A It was after lunch sometime. I would have to review
9 the Miranda rights to see the exact time.

10 Q Let me show you what has been marked as State's 28.

11 A This is the Newberry County Sheriffs Office rights
12 form that we utilize. The date and time is indicated,
13 January the 31st of 2012 at 2:20 p.m.

14 Q What other information is on the top of that sheet?

15 A Any time that we are going to go and speak with an
16 individual about criminal activity we take those rights
17 form with us. At the top of the rights form is personal
18 information. We place the individual's name, their social
19 security number, date of birth, as well as their home
20 address, any work phone numbers, any home phone numbers or
21 other phone numbers such as cell phone that we could
22 document that in case we need to get in touch with the
23 individual, have a conversation with them. So the first
24 block up here is no more than identifying the individual
25 that we are talking to. The second part of the rights

1 form kind of gives the same information but goes into
2 depth in two more areas. It states that, I, Vernon Jacob
3 Livingston, Jr. am 56 years old. My address is
4 South Carolina Highway 121, Newberry, South Carolina. I
5 have finished the 11th grade and I can read, pretty much
6 questions that we asked to make sure they understand
7 exactly what is going on within the case. As far as the
8 questions, knowing who I am and that we are here to
9 question you about any, pretty much criminal activity.
10 This in particular being the CDV and then meth lab.

11 Q So you did advise him of the nature of your
12 investigation?

13 A When we frist started off, pretty much told him we
14 were there to talk about the CDV which then we started
15 talking about the meth lab. So that was an advisement to
16 Mr. Livingston.

17 Q The advisement of rights, let me back up to that
18 again. Do you allow him to read his rights or do you
19 orally give them to him?

20 A What we have is a standard of doing is one of two
21 ways. Either letting the individual stand next to us
22 whenever we read the form or we have two forms. One that
23 the individual can follow along as I read from the other
24 side. So that way if they are able to comprehend and
25 understand what is going on they are able to follow along

1 with us. So the next part of this block is, before we,
2 whether it was me by myself or I had someone else with us,
3 before we ask you any questions you must understand your
4 rights. You have the right to remain silent. Anything
5 you say can and will be used against you in a court of
6 law. You have the right to a lawyer for advise before we
7 ask you any questions and to have him or her present with
8 you during any questioning. If you have no money for
9 lawyer fees the Court will appoint one to represent you
10 without cost if you wish. If you decide to answer
11 questions now without a lawyer present you will still have
12 the right to stop the questions at any time. You also
13 have the right to stop answering questions at any time
14 until you talk with your lawyer. There is a understanding
15 statement at the end of this. I have read this statement
16 of my rights and I understand what my rights are. There
17 are two ways I ask an individual if they understand their
18 rights. The first is, I ask for a verbal response. Do
19 you understand those rights. And Mr. Livingston
20 indicated, yes, he did. The second part is is to sign
21 that he understands. And he signed here below those
22 rights and dated it 1/31/2012. The final part of the
23 wavier or the rights form is the waiver. And it reads, I
24 am willing to make a statement and answer questions. I do
25 now want a lawyer at this time. I understand and know

1 what I am doing. No promises or threats have been made to
2 you and no pressure or coercion has been used against me.
3 There are three words that are highlighted within that
4 statement as in bold print. The first one is, I am,
5 meaning the individual that we are talking to. And then
6 the next two words are, do not which indicates that he
7 does not want an attorney. He did once again indicate
8 both verbally that he was willing to talk and make a
9 statement as well as signing his name and putting the
10 day's date. And because I am the one that read the
11 statement I sign as a witness and place also the date
12 there at the end.

13 Q Who was the other person who was in there when you
14 were advising him of his rights?

15 A The other individual was Sergeant Nick Bouknight who
16 is the narcotics officer for the sheriffs office.

17 Q Did Mr. Livingston appear clearheaded to you?

18 A He did.

19 Q Did he appear to have any trouble understanding his
20 rights as you went over them with him?

21 A No sir, he did not.

22 Q Did he give a statement?

23 A He did. He gave, he did not give a written statement
24 but he did verbally talk with us and make statements.

25 MR. VERNER: Your Honor, I would reserve our

1 objection.

2 THE COURT: Noted, overruled.

3 Q What did he say?

4 A One of the things that we started because it was the
5 domestic violence issue, that was the first thing that we
6 started talking about. Once we started the conversation
7 Mr. Livingston was basically telling that he didn't touch
8 Ms. Jackson, that she had been staying there a couple of
9 days prior in the camper that was in the yard and that she
10 had discussed with him that she had been involved in a
11 fight over in the Westend section of Newberry County which
12 if you are familiar Westend is just to the rear or the
13 front of the court house over toward Drayton Street area.
14 He really didn't give any indication, you know, as to who
15 it was or what was going on. The second part of that was
16 is that they began the argument, it was time for her to
17 leave and most of their argument took place out there in
18 the yard. And that he decided that, you know, that he
19 needed to leave due to the fact that any time law
20 enforcement is summoned they always seem to take the side
21 of the female. And that was his reasoning for leaving.
22 Once he made that comment we began to talk about the meth
23 lab. Mr. Livingston, after asking about the, we asked
24 about the black bag that had been thrown out. He admitted
25 that he had packaged that up and throwed it out. The other

1 part that really homed into that form of questioning was,
2 he told us it wasn't dangerous. The stuff that was in
3 that bag and that he was going to go back and pick it up
4 after all of this kind of cleared the air so to speak.

5 Q Did he say anything about cooking meth?

6 A He indicated to us that he did cook meth. Sergeant
7 Bouknight asked the question of, what method did he use.
8 And his reply was the shake and bake. Once he made that
9 reply we always try to get an individual to kind of
10 explain to us their process. And Mr. Livingston was able
11 to tell us that, what he does is that he uses heat and
12 Sudafed pills together to heat up the two to break the
13 pills down. He puts the pills in a bottle and once they
14 are cooked adding Coleman fuel, ammonium nitrate, lye and
15 lithium in the bottle and then he would use salt and acid
16 in another bottle which is another, probably form and
17 method of breaking down to get to the actual, the meth.

18 Q Are those items consistent with what you found in the
19 black bag on Maple Lane and in his shed at his residence?

20 A Those items were consistent, yes.

21 Q Did you force him in any way or coerce him or
22 intimidate him into giving that statement?

23 A No, I did not.

24 Q Did you offer him any promise or reward?

25 A No, we did not.

1 Q He stated to you that he had attempted to throw Ms.
2 Jackson out of his house?

3 A Yes sir, he was ready for her to leave and to get
4 out, you know, couldn't stay there any more and I think
5 the argument and what I remember that night as well as the
6 recall from what we have heard here from the witness stand
7 is, he was ready for her to leave and she had no where to
8 go basically and had no means of travel. That he promised
9 her to take her and at that point he was refusing to give
10 her that ride. So that was the argument.

11 Q So he indicated that the home on Highway 121 was his
12 residence?

13 A That's correct.

14 Q And the shed that you described, that was on that
15 property?

16 A It was, yes sir.

17 Q Who was at the residence at Highway 121 when you
18 arrived?

19 A The only person at the residence at that time was
20 Sergeant Shawn Carnes of the sheriffs office.

21 Q Ms. Jackson, she was not there?

22 A No, she had already left. She was at the hospital.

23 Q Where was Mr. Livingston when you first came into
24 contact with him?

25 A Mr. Livingston was in custody on Cypress Lakes Road.

1 Q Did he indicate to you why he had left the residence?

2 A Not at that time, no.

3 Q Thank you. Please answer any questions Mr. Verner
4 has.

5 CROSS-EXAMINATION

6 By Mr. Verner:

7 Q Investigator, did you have a chance to observe Sheila
8 Jackson on January the 30th?

9 A No, I never saw Ms. Jackson on that night.

10 Q She was claiming attack of domestic abuse. She was
11 complaining of being beat up?

12 A She was claiming criminal domestic violence.

13 Q And criminal domestic violence, just so we know, it
14 is basically when people who have a child in common get in
15 a fight with each other?

16 A Not only a child in common but married, cohabiting
17 together, living under that roof and criminal domestic
18 violence could mean many things. It could mean threats,
19 manifestation of physical abuse, battery and things along
20 that line that could be physically observed by the officer
21 that is investigating the case.

22 Q She was claiming that he knocked one of her teeth
23 out, right?

24 A Yes, sir.

25 Q Typically law enforcement takes cameras to these

1 scenes to photograph the injuries?

2 A That is correct.

3 Q When I have seen people losing teeth there is a
4 tremendous amount of blood, did law enforcement take any
5 photographs of Ms. Jackson?

6 A There were photographs taken of Ms. Jackson that are
7 attached to the report for the criminal domestic violence
8 issue. However I did not visibly see any blood there at
9 the scene while we were there.

10 Q Now, you heard the testimony earlier, Mr. Carnes'
11 testimony, there were minor injuries?

12 A That's correct, minor injuries.

13 Q Would you agree, have you seen people who have had
14 teeth knocked out before after fights?

15 A It depends on what part of the tooth was knocked out.
16 If it was knocked out to the root then basically, yes, you
17 are going to see blood. But if it is chipped then you are
18 not going to have any blood. You are just going to have
19 the pain.

20 Q But you agree that often you expect to see blood, may
21 not but you usually do?

22 A If it is knocked out to the root or broke loose in the
23 gum.

24 Q Have you interacted before with people who have been
25 longtime substance abuse users of methamphetamine?

1 A I have.

2 Q Is there a concern about their teeth, these chemicals
3 are not really good for the teeth, are they?

4 A These chemicals are not good for the entire body.

5 Q But I am asking you specifically about teeth?

6 A It does tend to discolor their teeth as well as
7 deteriorate their gums within.

8 Q It makes the teeth brittle?

9 A I would say it makes the whole mouth area brittle.

10 Q And that is not, that doesn't apply to everybody but
11 just, as a general rule the broken teeth can be associated
12 with longtime meth use?

13 A I wouldn't go as far as saying that. I would have to
14 know the individual, know their background.

15 Q Do you know Ms. Jackson?

16 A I do know Ms. Jackson.

17 Q Part of your duties are sometimes to intervene in
18 social service cases, is it not?

19 A That's correct.

20 Q And by social services that means when the child's
21 welfare agency for our State removes children from unfit
22 parents?

23 A That's correct.

24 Q Have you ever attended one of those hearings
25 involving Ms. Jackson?

1 A Mr. Verner, I cannot remember any interaction with
2 Ms. Jackson or Mr. Livingston on the child custody issue,

3 Q You don't recall being at a hearing in 2001?

4 MR. SCOTT: Judge, I am going to object to this line
5 of questioning just on the basis of relevance.

6 THE COURT: Overruled. You can continue.

7 Q Do you recall as far as back ten years ago being
8 involved with Ms. Jackson?

9 A Without having to do some research, I know I have
10 interacted with Ms. Jackson and Mr. Livingston but without
11 looking to see exactly what that was back in 2001 I cannot
12 recall at this point and time.

13 Q So you don't recall ever being involved with any
14 social services actions where her children were removed?

15 A I can't say that right now, Mr. Verner.

16 Q Now you had a chance to look in Mr. Livingston's
17 truck that was stopped on the side of the road?

18 A That's correct.

19 Q And there was nothing in the cab of the truck that
20 was introduced in this case as evidence of a meth lab?

21 A No, sir. I didn't see anything that alerted me that
22 we needed to take any evidence out of the truck.

23 Q What about the back part of the truck?

24 A No sir, did not see anything in the back either.

25 Q So everything that incriminates Mr. Livingston at the

1 scene was in the black bag that was discarded?

2 A Not only the black bag but the evidence that was
3 located at his residence in the shed.

4 Q I am asking prior, other than the evidence at his
5 home--

6 A That's correct, I am sorry.

7 Q I would think, what is a better substance to take
8 fingerprints from than glass?

9 A You can pretty much take fingerprints or attempt to
10 take fingerprints from any surface. Some of the problems
11 that you run into is what has been introduced to that
12 surface, whether it was wet. If you have any type of oily
13 type area. That is something that we don't typically
14 fingerprint because once you put dust to an oily type
15 surface all you get is just a big black area. You don't
16 get any type of actual latent print or ridges or anything
17 like that. Obviously a smooth surface would be what you
18 would want. Any time that we deal with areas like this to
19 include the shed that we were at as well as some of the
20 items from the black bag, those items had moisture on them
21 from whatever was liquid that had been whatever bottle
22 leaked. They also had a white substance on them which
23 also obstructed any of our abilities to put dust on there.

24 Q What did you try to take fingerprints on?

25 A We pretty much, if I could look at the pictures.

1 Q You can step down.

2 A I am going to pick the ones out. This is one of the
3 items that was taken out of there. We did put some dust
4 on it and I had to throw my brush away because there was
5 liquid that destroyed my brush. No fingerprints were
6 obtained off of that.

7 Q That is State's number 4, that is a plastic jug?

8 A That's correct.

9 Q Does it appear to you wet on the outside?

10 A It is liquid on the inside but there was wet on the
11 outside.

12 Q Okay.

13 A Because I had to throw my brush away. This is marked
14 as State's exhibit 6 which is the salt, the coffee pot and
15 then another bottle. This area of the coffee pot had
16 moisture on it. That was not fingerprinted. The sea salt
17 container was and no ridge detail was noted on that for us
18 to take prints from.

19 Q And there were several other items that you
20 fingerprinted?

21 A Yes, sir. A couple of more.

22 Q Did you encounter Sheila Jackson's fingerprints. Is
23 it safe to say that there were other items that you
24 fingerprinted?

25 A There were other items, yes sir.

1 Q Did Sheila Jackson's fingerprints turn up?

2 A As I stated earlier, Mr. Verner, none of the items
3 that we looked at, dusted for fingerprints indicated any
4 latent prints that were of detail for identification.

5 Q And based on what you found and Ms. Jackson's
6 statement to you are you the officer who secured the
7 search warrant?

8 A No. Nick Bouknight is the officer that got the
9 search warrant. I am just the one that executed it.

10 Q By executing it you mean you are the one that took
11 the search warrant to the premises?

12 A That's correct. We have to have someone that
13 actually that scribes the information of what we take so I
14 would actually be the main person of writing that down and
15 scribing it as well as affixing my signature as the one
16 serving it and giving it to or leaving it either with the
17 homeowner or leaving it at the residence if the individual
18 is in custody.

19 Q I am going to show you that is marked the affidavit
20 that Nick Bouknight prepared. That is the search warrant
21 for the home? What is the address of the property?

22 A Highway 121.

23 Q You didn't go to the Magistrate to get a search
24 warrant but you performed the search?

25 A That's correct.

1 Q Okay. I will mark this as defendant's 1. And is it
2 fair to say that this is a search warrant, this at least
3 the affidavit for the search of the house and the shed?

4 A That's correct.

5 MR. STUMBO: Judge, we don't have a problem with that
6 coming into evidence.

7 THE COURT: Defendant's 1 is in evidence.

8 (Whereupon, Defendant's Exhibit 1 was admitted into
9 evidence.)

10 Q And is it fair to say there would be more pages
11 attached to it, that is just part of a search warrant off
12 of many pages and has returns and other parts to it?

13 A That's correct.

14 Q And did you, you spoke to Mr. Livingston the next day
15 at the jail?

16 A That's correct.

17 Q Is it fair to say, at that point he thought he had
18 only been arrested for the domestic violence charge?

19 A That is what he had been arrested for that night and
20 ticketed with at the jail, yes.

21 Q The only thing he would actually have been, dealing
22 with at that time was the blue ticket for the magistrate
23 on the charge of domestic violence?

24 A That's correct.

25 Q In fairness though you also had issued a hold where

1 he could not be released from the jail prior to more
2 warrants coming from this investigation?

3 A That's correct.

4 Q And he agreed to speak to you when he came to the
5 jail?

6 A Yes sir, he did.

7 Q And he denied there was any fight between he and Ms.
8 Jackson?

9 A That's correct.

10 Q Now you said that he didn't want her to stay there
11 anymore. Where does the phrase, anymore, come from if it
12 is not in the report?

13 A It is not outlined in the report.

14 Q He said he didn't want her there at all, she was
15 trespassing on the property, she shouldn't have been there
16 and he told her to go and that is what caused the fight.
17 Is that a fair characterization of his statement?

18 A I don't remember him saying that she was trespassing,
19 no.

20 Q They had clearly gotten into a fight, this all
21 happened because he was asking her to leave. Do you agree
22 with that statement of facts?

23 A I would agree with asking to leave, yes.

24 Q She didn't want to leave, she didn't have any other
25 place to go?

1 A You left out, she did not have any means of leaving
2 that place other than walking.

3 Q Do you know how she got there?

4 A No, I do not, no.

5 Q Did you know if he picked her up and brought her
6 there or any other source?

7 A I can't testify to how she got there or brought
8 there, no.

9 Q You testified for the jury, I believe earlier, that
10 Mr. Livingston, you said packaged the bag?

11 A That's correct.

12 Q That is not what he said, is it. He said he threw,
13 he put the bag in the truck and put it in the woods?

14 A Actually, he, his comment was, I put the stuff in the
15 truck and then left the house. And he threw the stuff out
16 on Maple Lane but Livingston stated that nothing was
17 hazardous within that bag and that he was going to go back
18 and pick it up.

19 Q My question is, he admitted that I put the bag in my
20 truck?

21 A That's correct.

22 Q You testified that he admitted to actually putting
23 the individual items in the bag, is that your
24 understanding?

25 A That would be my understanding. If he put the items

1 in the bag, or what was in the bag in the truck then he
2 obviously could have packaged it up from the house in the
3 bag to go into the truck.

4 Q But he also could have, he could have also, she could
5 have also packaged the stuff in the bag?

6 A She could have.

7 Q I think it is fair to say, you are assuming he is the
8 one who packaged up the trash bag? That is not quite what
9 he actually said.

10 A I believe the statement was is that he put the stuff
11 in the truck that was in the bag, whatever, and thrown
12 out.

13 Q And he said to you, that there had no point in
14 talking because you are going to take her side. Right?

15 A That was dealing with the domestic issue.

16 Q Thank you.

17 REDIRECT EXAMINATION

18 By Mr. Scott:

19 Q Lieutenant Dennis, let me show you State's 31, what
20 is that?

21 A This is the search warrant that was obtained by
22 Investigator Nick Bouknight for the night of January 30th
23 of 2012.

24 Q And that is the complete search warrant?

25 A That's correct. It is four pages to include what I

1 call a cover sheet, description of the property and
2 premises to be searched. The affidavit of the officer's
3 belief of what would be at that or about that residence
4 and then the return which was executed that night.

5 Q Defendant's exhibit 1, that was just a single page of
6 the affidavit that Mr. Verner showed you, is that correct?

7 A I would classify that, according to the attachment,
8 that is the third page of the search warrant.

9 Q State's number 31, that is the search warrant?

10 A That's correct.

11 Q State offers 31.

12 MR. VERNER: No objection.

13 THE COURT: Without objection 31 is in evidence.

14 (Whereupon, State's Exhibit 31 was admitted into
15 evidence.)

16 Q I want to cover a few things that Mr. Verner went
17 over with you. You mentioned that there were pictures
18 taken of Ms. Sheila Jackson that night at the hospital?

19 A That's correct.

20 Q And did you get to view those pictures?

21 A I did look at those pictures the following morning.

22 Q Did you note any injuries in those pictures?

23 A She did have a red mark around her neck and then I
24 believe one of the pictures indicated, it has been a while
25 since I looked at those, where she was smiling and talking

1 about her tooth.

2 Q Did you note any bruises in the picture?

3 A The red injury, the red mark on her neck, yes.

4 Q Mr. Verner was asking you about the custody issues
5 involved with Ms. Jackson and Mr. Livingston. Were you in
6 here when she testified?

7 A I was.

8 Q So you are aware that they had custody issues that
9 she admitted to. Are you aware of who their child in
10 common is with?

11 A Just out of knowledge I knew it was with Mr. Vernon's
12 family and they had been providing for her.

13 Q But the custody of the child lies either with Ms.
14 Jackson nor Mr. Livingston?

15 A That's correct.

16 Q He asked you about the cab in Mr. Livingston's truck
17 and there was nothing in it. Why was there nothing in the
18 cab of his truck?

19 A Well, I don't know if I can answer that.

20 Q What did he say he did with the black bag?

21 A The black bag, it was not indicated that he put it in
22 the cab of the truck, that he had put it in the back of
23 the truck. So there wouldn't be anything in the cab if he
24 placed it in the back.

25 Q What did he say he did with the black bag?

1 A That he had throwed it out on Maple Lane.

2 Q Fingerprints, on TV they always get fingerprints on
3 everything. Do you always get fingerprints on everything
4 that you dust for?

5 A No sir, we do not.

6 Q Why not?

7 A You know, it goes to a lot of factors. It could be
8 the surface, it could be other elements that affect the
9 surface. It could even an individual wearing gloves,
10 whether they are latex, whether they are cloth, whether
11 there are socks over their hands. So that would restrict
12 us from getting prints.

13 Q Who told you they threw that black bag out on Maple
14 Lane?

15 A Vernon Livingston.

16 Q What was in that black bag.

17 MR. VERNER: Your Honor, this has been asked and
18 answered.

19 THE COURT: I will let him have some latitude of
20 this, go ahead.

21 Q Was there instruments used to manufacture meth in
22 that black bag?

23 A There were instruments as well as available
24 ingredients as well as used or being discarded items that
25 were obviously seen to be used in the manufacturing of

1 methamphetamine.

2 Q Who told you they used the shake and bake method to
3 produce methamphetamine?

4 A Vernon Livingston.

5 Q Thank you.

6 THE COURT: Any cross?

7 MR. VERNER: No, Your Honor.

8 THE COURT: You may step down. Solicitor, call your
9 next witness.

10 MR. STUMBO: Your Honor, that is the State's case.

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, I need to take up a few issues of law with the
13 attorneys involved in this case. I will ask you to
14 adjourn to your jury room for about ten minutes. Don't
15 talk about the case. Thank you.

16 (Whereupon, the jury was excused from open court.)

17 THE COURT: Mr. Verner, motions, sir?

18 MR. VERNER: Your Honor, I would move for a directed
19 verdict.

20 THE COURT: In the light most favorable to the State
21 I will deny your motion at this time.

22 MR. VERNER: I would ask, I am going to confer with
23 my client briefly.

24 THE COURT: Do you, I reviewed with him yesterday his
25 Fifth Amendment right not to testify or his corresponding

1 right to testify. I have been told by the Solicitor he
2 has a prior manufacturing meth. Obviously I have not
3 ruled at this point and time whether or not the
4 prejudicial effect of that prior conviction would outweigh
5 the probative value for impeachment purposes. Certainly
6 there is case law on point on that particular issue. Do
7 you anticipate your client testifying, Mr. Verner, or have
8 y'all made that decision yet?

9 MR. VERNER: He hasn't made the final decision, Your
10 Honor. I would anticipate him probably testifying.

11 THE COURT: You are satisfied with my colloquy with
12 him yesterday, covered all basis?

13 MR. VERNER: I believe it did with the exception of
14 the ruling on the prejudicial effect of the conviction.

15 THE COURT: What convictions does Mr. Livingston have
16 that the State would impeach him on.

17 MR. VERNER: I don't think he was ever arrested until
18 and unfortunately got the manufacturing methamphetamines.
19 That is his only prior arrest and conviction.

20 THE COURT: Is that--

21 MR. SCOTT: That is accurate, Your Honor. He has a
22 manufacturing methamphetamine conviction, court date was
23 October 29th of 2008. He has nothing before that, Your
24 Honor.

25 THE COURT: Nothing prior to that?

1 MR. SCOTT: No, sir.

2 THE COURT: Does the State, is the State seeking to
3 impeach him with that or do y'all agree that under case
4 law that, I think it is a Rule 609, crime of dishonesty,
5 that the prejudicial effect of that prior conviction would
6 outweigh the probative value or do y'all want to speak to
7 that?

8 MR. STUMBO: I think the case law speaks to that.

9 THE COURT: Y'all can't go into that then, please.
10 Very good, Mr. Verner, anything else?

11 MR. VERNER: No, Your Honor. I just had, maybe a ten
12 minute break.

13 THE COURT: We will take a break while Mr. Livingston
14 decides how he wants to proceed at this point. Again, Mr.
15 Livingston, you understood everything that I told you
16 yesterday. You have the right to testify if you want to
17 but if you don't want to testify I will tell that jury
18 they can't hold that against you. Do you understand, sir?

19 MR. LIVINGSTON: Yes, sir.

20 THE COURT: I will tell them they can't discuss it,
21 can't even consider it, if you decide not to testify they
22 can't consider that while they deliberate on your guilt.
23 Of course, if you testify you will be subject to the same
24 rules of cross-examination as any other witness. I have
25 told the State that they cannot make illusion to that

1 prior conviction in 2008. That certainly, other rules of
2 cross-examination would be separate. Do you understand
3 that, sir?

4 MR. LIVINGSTON: Yes, sir.

5 THE COURT: We will take a break.

6 (Whereupon, a short break was taken.)

7 THE COURT: Mr. Verner, have you had a chance to
8 discuss with Mr. Livingston whether he will testify or
9 not?

10 MR. VERNER: Your Honor, he does intend to testify.

11 THE COURT: Let's have the jury back.

12 (Whereupon, the jury came into open court at
13 approximately 11:40 a.m.)

14 THE COURT: Let the record reflect that the jury is
15 back and seated. At this point, Mr. Verner, call your
16 first witness.

17 MR. VERNER: Your Honor, I would call Vernon
18 Livingston.

19 DIRECT EXAMINATION

20 By Mr. Verner:

21 Q Mr. Livingston, where do you live?

22 A On Highway 121.

23 Q The house that we have been talking about for the
24 last two days?

25 A Yes, sir.

- 1 Q How long have you lived there?
- 2 A About six years.
- 3 Q Where are you from?
- 4 A Well, I was born in Prosperity at Mills Clinic.
- 5 Q Are you from Newberry County?
- 6 A Yes, sir.
- 7 Q How long have you lived here in Newberry?
- 8 A Well, we moved away from, let's see, I was age five
- 9 when we moved away and we come back when I was a sophomore
- 10 in high school.
- 11 Q You have been back to Newberry since?
- 12 A Yes, sir.
- 13 Q Where did you go to high school?
- 14 A Newberry.
- 15 Q Do you remember January the 30th of last year?
- 16 A Yes, sir.
- 17 Q We want to know what happened.
- 18 A Well, I come home, I had been at the wood shop
- 19 working. It is about two miles up the road from the
- 20 house, at my mom and dad's house. I had been up there
- 21 working and went down and seen my little girl, she stays
- 22 with my sister, they are neighbors. I just walked down
- 23 and seen her and toted her in. And I come home and it was
- 24 probably around 8:00 as well as I can remember.
- 25 Q Morning or at night?

1 A Night, in the evening. And the first thing I noticed
2 when I turned in the driveway was my street light was not
3 on, my night light. I have got one, I don't have the
4 coop, I put it up myself trying to save a little money.
5 So when I got out of the truck I was right there close to
6 where it was at, I went to check to make sure the wire
7 ain't got nothing. Well, at that time I noticed my shed
8 there--

9 Q The street light, is it connected to the city lines
10 or the plug in?

11 A No, it just plugs in right there, as a matter of fact
12 it is mounted on my shed, the pole is mounted on my shed
13 that it is on.

14 Q Is this the shed we have been talking about?

15 A Yes, sir.

16 Q All right.

17 A And so I went over to check it--

18 Q How many cars do you have?

19 A At that time just one truck.

20 Q What kind of pickup truck was that?

21 A Chevrolet, 1998 Chevrolet, three quarter tone, quad.

22 Q Okay. And how many buildings are at your house?

23 A The trailer that I live in and the pump house and I
24 guess you consider that as one, it is two different, it
25 has got a petition wall in it but it is only one shed so

- 1 it would be three.
- 2 Q Was there a camper, an RV there too?
- 3 A Yes, sir.
- 4 Q Whose was that?
- 5 A It is mine.
- 6 Q Go ahead. You said you were checking on the street
- 7 light.
- 8 A Yeah, to see whether it was working. I thought
- 9 maybe, I just wanted to see because it is real dark on the
- 10 hill without the street light. And I noticed when I was
- 11 walking toward it that the lights was on inside of my shed
- 12 and then I could hear the TV. There is a TV in there, a
- 13 TV playing. So I didn't know exactly what to think at the
- 14 time so I just went over there and I was going to pull the
- 15 door open. Well, it was locked from the inside.
- 16 Q Is a padlock to keep people out of it?
- 17 A Yes, sir. I have a chain running through it and put
- 18 a padlock in it, the chain runs inside and I have just,
- 19 you know, it was an honest man's lock. You can take
- 20 something behind it and pull it, you are going to pull it
- 21 out. But anyhow, the door, the latch on the inside was
- 22 tripped. So I just asked who was in there and the reply
- 23 was, it was Sheila Jackson.
- 24 Q Had Sheila been staying there for the last couple of
- 25 days?

- 1 A At that time I didn't know that she had.
- 2 Q You and Sheila have a child together?
- 3 A Yes, sir.
- 4 Q What is that child's name?
- 5 A Minor .
- 6 Q How old is Minor ?
- 7 A She will be the of March.
- 8 Q You heard Sheila say that y'all have an eleven year
- 9 relationship?
- 10 A Yes, sir. I didn't really hear her well but I think
- 11 what I heard was, we were together for eleven years but
- 12 out of the eleven years you might could make a year out of
- 13 it.
- 14 Q Of the actual time?
- 15 A Yes, sir.
- 16 Q Have you ever lived together?
- 17 A No more than usually, three or four days at a time.
- 18 Q Did you have a good relationship with Sheila at that
- 19 time as of January the 30th of last year?
- 20 A We had no relationship. I mean there was no
- 21 relationship. The relationship had been over before
- 22 Minor were born. We were just, you know.
- 23 Q Well, characterize your relationship with Sheila
- 24 since Minor was born?
- 25 A Really there is no relationship because she blames

1 me, she takes out, she puts a lot of, spite or whatever
2 you want to call it toward me because of where Minor is,
3 you know, with my sister. And she doesn't have her which
4 it is none of my doings.

5 Q Have y'all stayed together at times, you and Sheila
6 Jackson?

7 A What do you mean.

8 Q Have y'all at times lived together as a couple?

9 A Well, we tried to.

10 Q How long ago was that?

11 A I am trying to think of what year it was, I was
12 living at the lake, when I was still down there. So it
13 was about two years before Minor was born so that was
14 about a year and a half before Minor was born. Let's
15 just say, eight years, eight and a half years ago.

16 Q Okay. And that is the last time you have lived with
17 Sheila Jackson?

18 A Yes, sir.

19 Q How does it end, have you continued to see her
20 romantically since you separated before Minor was born?

21 A Not on a regular basis. There for a while.

22 Q When was the last time--

23 A You mean since Minor was born?

24 Q Since Minor was born.

25 A No, sir.

1 Q When is the last time you had like a boyfriend,
2 girlfriend relationship with Sheila Jackson?

3 A Like I said, eight or eight and a half years ago.

4 Q Do you two get along?

5 A No, sir. Not no more than two or three hours at a
6 time.

7 Q Why is that?

8 A I don't know. She just, well since ^{Minor} come
9 along, you know, I think that is where she gets a lot of,
10 she blames it on me but it is not my fault.

11 Q Do you know where she was living prior to you seeing
12 her on January the 30th of last year?

13 A No, sir. I don't have any idea.

14 Q Has she had a particular address that she stayed in
15 for a long time?

16 A No, 'sir. Not to my knowledge.

17 Q What happened on January the 30th. What happened
18 when you saw Sheila in your shed?

19 A Well, you know, she said she didn't have no where to
20 go or no where to stay. I said, I am sorry, just unlock
21 the door and come on and I will take you anywhere you want
22 to go in Newberry because we don't need to associate.

23 Q Why is that?

24 A Because we don't get along. And it is always winds
25 up with me on the losing end.

1 Q What happened when you told her she had to leave?

2 A She started showing out and foul language and calling
3 me names and just, you know, she is still in the shed at
4 that time, locked in the shed at that time.

5 Q Then what happened?

6 A Well I told her to come on out, that I would take her
7 anywhere she wanted to go, just come out and get in the
8 truck, we don't need no trouble. Pretty much as easy as I
9 could, she stomped around in there and throwing my stuff
10 around. And she finally settled down a little bit and
11 come out the door. And when she come out she had a bucket
12 of nails, tacks that Deputy Carnes stepped on, that was
13 where that tack come from. I had a bucket, it was a
14 plastic bucket, like a two gallon bucket of roofing tacks.

15 Q What did she do with them?

16 A When the door come open it was right behind the door,
17 in other words, after the door swung all the way open that
18 is when the bucket was coming out.

19 Q Thrown at you?

20 A Yes sir, it hit me, not really in the stomach but in
21 the chest, right about in the middle of the abdomen I
22 guess is what you call it.

23 Q Is there a reason you didn't call the police to have
24 her removed?

25 A Well, yes, sir. I couldn't really see no reason to

1 call the police because I didn't have a chance after the
2 bucket. She was right behind the bucket.

3 Q What do you mean by that?

4 A She come out the door right behind the bucket and
5 swinging and going on and all I did was stuck my hands out
6 to try to keep her off of me. I guess that is how my
7 finger got bit all the way through the fingernail which
8 nobody seems to remember except me. If I had of been
9 swinging at her and hitting her and everything she would
10 have never bit my finger because I, it would have been
11 moving. I was just like that.

12 Q How long did the scuffle between you two last?

13 A It wasn't just, maybe thirty seconds, forty-five
14 seconds, I don't know.

15 Q Was there anybody else at the house?

16 A No sir, I don't guess.

17 Q Well how did it end with the interaction with Sheila,
18 how did it end?

19 A Well, she just, she wouldn't have much luck hitting
20 me because I was keeping her away from me. And I, she
21 just, she quit and went toward my motor home and I didn't
22 know, I figured she would quit. And she said, I will get
23 you, I got you. And she opened the door to the motor home
24 which I had no idea that it was, I thought it was locked.
25 And she started pulling bags and stuff, I figured her

1 clothes and her pocketbook, she had a pocketbook, got her
2 pocketbook out of there. And she said you didn't even
3 know I stayed in here last night, I was here. And I
4 didn't, that was the first I had heard of her being there
5 was then. And that is when she got on the telephone.

6 Q Is she allowed to come and use the motor home?

7 A No, sir.

8 Q Is she allowed to come over?

9 A No, sir. As far as her cleaning up, if she would
10 have been cleaning up she wouldn't be staying in the shed
11 or the motor home, she would have been staying at the
12 house.

13 Q If she had permission to stay in she would have been
14 staying in the house, not the outbuildings?

15 A Sure. I mean, I had no idea, I didn't even know she
16 was there.

17 Q Did you get in a fight because you have another
18 girlfriend she was jealous?

19 A No, sir. I mean we are not no couple or nothing.
20 Even if I had five more girlfriends it wouldn't been a
21 fight, there is no fighting thing about it. All I wanted
22 her to do is leave.

23 Q Have you had prior physical problems with her before?

24 A Yes, sir.

25 Q Had she ever called the police on you before?

1 A Yes, sir.

2 Q That was just kind of the constant of being in your
3 company?

4 A Yes sir, that and getting skint up.

5 Q Mr. Livingston, you understand that there seems to be
6 a meth lab, as the State calls it, in your shed. You
7 understand that, don't you?

8 A Yes, sir. Again, I really didn't know, after she was
9 in there I didn't know what was in there because I hadn't
10 been in there. It probably had been a couple of days
11 since I had been inside the shed. Two, maybe three days
12 since I had been inside the shed.

13 Q Well, the shed is fairly close to the house, isn't
14 it?

15 A Yea but I don't just go in the shed. I mean I just,
16 you know, it is real close to the house. It is probably
17 thirty yards, come down the steps and it is probably
18 thirty yards over to the door.

19 Q Did she have a car there?

20 A No, sir.

21 Q Do you know how she came to your property?

22 A I don't have any idea, I don't know how or when or
23 nothing else, just what she told me.

24 Q Why do you think she called the police on you on
25 January the 30th?

- 1 A I guess because I wouldn't let her stay or she was
2 just mad, that is what she does. She has had about three
3 different reasons.
- 4 Q Were you cooking meth together?
- 5 A No, sir. I guess if we would have been we wouldn't
6 have been fighting.
- 7 Q Were you helping her make meth?
- 8 A No, sir?
- 9 Q Was she helping you make meth?
- 10 A No, sir.
- 11 Q What about the black trash bag?
- 12 A Well, you know, when she first,--
- 13 Q Did you throw the trash bag into the edge of the wood
14 line?
- 15 A Excuse me, sir?
- 16 Q Do you admit you are the one who threw the bag?
- 17 A Yes, sir.
- 18 Q You don't dispute that at all?
- 19 A No, sir.
- 20 Q How did you come into contact or how did you come
21 into possession, did you pack it up?
- 22 A No, sir.
- 23 Q Did you put the individual contents in the trash bag?
- 24 A No, sir.
- 25 Q Where was the trash bag in the--

1 A It was in the yard. It was in the motor home and she
2 had it in the yard. And she said, yeah, I got you right
3 here. When they get here they got you. That is the
4 reason I left, I grabbed the bag and I throwed it in the
5 back of the truck and I left and the first road I come to,
6 I got off the main road and I throwed it out because I
7 knew, I didn't know what was in it. I didn't know what
8 she was talking about but I wasn't taking, I didn't know.
9 I know I can't come out ahead when it comes to dealing
10 with her.

11 Q Did you know what the exact contents were in that
12 trash bag?

13 A No, sir.

14 Q Did you think it was clothes?

15 A No sir, I knew it was clothes because when I threw it
16 stuff moved around. I mean I knew it wasn't clothes.

17 Q Why did you throw it in the woods?

18 A Well because I didn't figure there was going to be no
19 good going to come from me having it in the truck with me.
20 About as much, that would have been worse than the yard, I
21 guess, I don't know. I was just trying to get rid of it
22 because I didn't want no trouble.

23 Q At some point why didn't you call the police
24 yourself?

25 A Well, I just, I didn't have no reason to call the

1 police except her trespassing.

2 Q When you got in your truck where were you going?

3 A I was going to go back up to the shop.

4 Q And for how long?

5 A I don't know but that, probably would have stayed at
6 mom and dad's that night.

7 Q Were you planning on going back to the house with
8 Sheila there?

9 A No, sir.

10 Q How long had you been gone from the house before you
11 were stopped by a law enforcement officer?

12 A Probably maybe eight to ten minutes, something like
13 that question.

14 Q Okay. While you were stopped out there on Cypress
15 Lakes Road did anybody ever talk to you about the trash
16 bag?

17 A Not right at first. When, well I met the officer, I
18 was going out of the road and he was coming in. It was
19 sort of, it is a gravel road and he turned his blue light
20 on. Before he got turned around I just went ahead and
21 pulled over and waited on him to come back. I don't know
22 how many was there but I think about, maybe the second or
23 the third one, when they got there that is when the bag
24 was, questions about a bag started.

25 Q Then you spoke to Investigator Bouknight and

1 Investigator Dennis the next day at the jail?

2 A Yes, sir.

3 Q Did you tell them that you were using the shake and
4 bake method?

5 A No, sir.

6 Q What did you say about the shake and bake method or
7 how did that come into--

8 A Well, my understanding, what I said, I mean, it
9 didn't, I really didn't think I was making a statement
10 about that. I just said, they asked me about the shake
11 and bake method. And I said, well, I guess if I was going
12 to do it that is the way I would do it. I didn't say that
13 is the way I did it.

14 Q Who was the first one to say the shake and bake
15 method, you or Officer Bouknight?

16 A Officer Bouknight. He is the one that asked me.

17 Q When they both spoke to you, were you aware that you
18 were going to be arrested for these drugs, this meth?

19 A No sir, not really.

20 Q When was the first you realized that they were
21 investigating you for the meth?

22 A Investigating me. I just, I knew they had a hold on
23 me because I got PR'd on the CDV so and it was a hold on
24 me. That was the reason that there was a hold on me,
25 while they were doing whatever they do. During the course

1 of the investigation is what I meant.

2 Q You agree you had possession of the black trash bag?

3 A Yes, sir. From my yard to the Maple Road I guess.

4 Q Were any of those contents in that trash bag yours?

5 A No, sir.

6 Q Did you purchase any of them?

7 A No, sir. Not to my knowledge. I really didn't see
8 what was in there. I seen the pictures and everything but
9 I don't think I purchased none of it, no.

10 Q What about the items in the shed that we have been
11 talking about?

12 A What was it, some salt in the shed, I don't even know
13 what they found in the shed. I know it was some red
14 liquid and a Sunny Delight bottle, that was cherry
15 Koolaid, I can tell you what that was, it was sitting on
16 top of the desk. I assume they didn't have that tested
17 because they would have found out it was Cherry Koolaide.

18 Q Were these items that were used to make meth yours?

19 A That were in the shed?

20 Q Yes, sir.

21 A Well the items that were in the shed were so vague
22 that I really, I really don't think there was a charge
23 there on the items that was in the shed.

24 Q Let me make a real simple question for you. Were you
25 making meth on January the 30th with Sheila Jackson?

1 A No, sir.

2 Q Were you making it on your own?

3 A No, sir.

4 Q Did she come upon, as she testified, and then find
5 you making meth and then get angry and call the police?

6 A No, sir.

7 Q Why does that sound credible to you?

8 A Because I wasn't even there. I was working and I
9 wasn't there.

10 Q If you had been making meth and Sheila came upon you
11 making meth would she have gotten offended and call the
12 police or would she have--

13 A I don't know, I came back in. She is so, I don't
14 know how to answer that to tell you the truth because I
15 don't know from one minute to the next, never have.

16 Q Were you giving Sheila photographs of your daughter
17 in exchange of her making meth or buying meth products for
18 you?

19 A No, sir. She used to come in my yard before I used
20 to keep the smaller pictures, the wallet size in my, you
21 know, like your odometer, you fold them and put them up in
22 there of Minor Child And she used to come in my yard before
23 and took those and she has also took pictures of the
24 pictures that I have with her camera. And I did give her,
25 I think two pictures but I have never traded her pictures

1 of my child.

2 Q She accused you of her knocking her tooth out?

3 A That is what they said, I knocked her teeth out but
4 her tooth was already knocked out. I found out that she
5 got into a fight with a lady that was a good bit larger
6 than her, it was sometimes two or three nights before this
7 happened. And that is where her tooth had gotten knocked
8 out at. I didn't knock nothing out.

9 Q Did you hit her?

10 A No, sir.

11 Q Did you beat her up?

12 A No, sir.

13 Q Did you try to tell the police that she had been
14 trespassing on your property and the fight happened while
15 you were trying to make her leave?

16 A How many of them was at the traffic stop, I told
17 everyone of them because everyone of them questioned me.

18 Q Did you tell that to Investigator Dennis?

19 A Yes, sir.

20 Q Did you tell that to Investigator Bouknight?

21 A I didn't see Investigator Bouknight that night. I
22 didn't see him until the next afternoon.

23 Q You have bought Sudafed before?

24 A Yes, sir.

25 Q You are not disputing those are your purchases of

1 Sudafed that the Solicitor brought up?

2 A No, sir.

3 Q Did you use any of those purchases to make meth on
4 January the 30th?

5 A No, sir.

6 Q And that is your truthful testimony?

7 A Yes, sir.

8 Q That is all I have.

9 CROSS-EXAMINATION

10 By Mr. Stumbo:

11 Q Mr. Livingston, you talked a little bit about the
12 shed at your house. It is your testimony that Sheila
13 Jackson stayed in the shed, is that what you are saying?

14 A No, sir. She wasn't actually staying in the shed but
15 sometimes from that morning that I left to go to work and
16 I returned she had broken into the shed and was in the
17 shed when I got there, when I got back home, when I got
18 home. If I said staying, I didn't mean, you know.

19 Q You said she was watching TV in there?

20 A I have got a little TV set that sits up on the shelf.

21 Q I am going to hand you State's 20 through 25. Is the
22 TV you are talking about anywhere in those two?

23 A Well, if they didn't take the other end of the shed
24 where the shelf is at and I keep my tools stacked up, no
25 sir, they didn't see the TV. They was, it looked like to

1 me they were taking pictures of the desk and that is on
2 the opposite end from the TV.

3 Q Did you have a chance to look at all of those?

4 A That is the desk here, the TV would actually be
5 behind the fellow there cleaning up, on the other end of
6 the shelf.

7 Q She was in there watching TV?

8 A It was on.

9 Q She was staying in this shed?

10 A No sir, I didn't say she was staying, that is where
11 she was at when I come in.

12 Q Somehow the telephone was used, right. There was a
13 call by Ms. Jackson, she called the cops after y'all got
14 into the altercation, right?

15 A Yes, sir.

16 Q You got a telephone in the shed too?

17 A No, sir. She has got a mobile phone.

18 Q She didn't have a car though at the time and didn't
19 have anywhere to go?

20 A I know she didn't have a car, at least I didn't see
21 no car. And she said she didn't have anywhere to go.

22 Q She didn't have any way to get from point A to point
23 B.

24 A Yes, sir. I would have took her anywhere in Newberry
25 just to have--

1 Q But she had a cell phone, right?

2 A She had a cell phone, yes sir.

3 Q Now you said you were up at your mama and daddy's the
4 whole time while she was at your house?

5 A I don't know exactly how long she was at my house. I
6 was told, she told me that she spent the night in my
7 camper the night before and I don't have any idea what
8 time she got in the shed because I wasn't there all day.

9 Q And where were you the night before?

10 A I was at home but I don't go look in the camper every
11 night when I come home, every evening when I come home, I
12 go in the house. The camper just sits out there in the
13 yard, I don't go look in it.

14 Q So she just snuck in the camper and used the shed and
15 you didn't know anything about that?

16 A Well, she got in the camper, she told me she stayed
17 in the camper. Now, this is what she told me. I guess it
18 is hearsay but she told me she stayed in the camper the
19 night before that, before the 30th that she had stayed in
20 the camper. And I didn't even know she was there because
21 I come home, I think I come home about 9:00 o'clock, the
22 previous night. And I went on in the house and fixed me
23 some supper and went to bed.

24 Q Let's talk about the altercation. You said you got
25 bit on the finger, is that right?

- 1 A Yes sir, I sure did.
- 2 Q Did you ask the police if they could get you some
- 3 medical treatment?
- 4 A A number of times, I sure did, right in front of the
- 5 Deputy's car, if he, he had this video on. I had blood
- 6 all down my arm because it was bleeding.
- 7 Q Blood all down your arm?
- 8 A You get bit and like the end of your finger. She bit
- 9 me pretty good.
- 10 Q What about Ms. Jackson, she ended up in the hospital
- 11 that night too, didn't she?
- 12 A That is what they tell me, yes sir.
- 13 Q She had injuries, right?
- 14 A I believe I heard Mr. Dennis say minor injuries but
- 15 those were all from her altercation with the other lady
- 16 that somewhat larger than her. I know her tooth got
- 17 knocked out in that.
- 18 Q You know her tooth got knocked out, were you there
- 19 and saw the fight?
- 20 A Well, no. Excuse me, let me rephrase that. She
- 21 didn't have her tooth when she come out of the barn.
- 22 Q When she came out where?
- 23 A The shed, the barn, the shed, whatever you want to
- 24 call it, the building.
- 25 Q So she comes flying out at you for no reason at the

1 time, is that what your testimony is?

2 A I guess the reason being, well, you can pick one of
3 the first three reasons I guess is to why it started. I
4 don't know why it started. I guess because I told her
5 that she couldn't stay, she had to go.

6 Q Let's talk about the black bag. Your testimony is
7 that all of these things that can be used for cooking meth
8 are in this black bag, right. I want you to look at
9 State's 1 and State's 2. Do you use those?

10 A Yes, I see. I see a black bag behind a tree right
11 there. I guess that is the top of the bag open and I see
12 another plastic bag in it.

13 Q That is the black bag that you rolled out from your
14 house that night, right?

15 A I really don't know, it was a black bag, it was black
16 bag that I took out of my yard and it was a black bag that
17 I threw out of the truck. Now, whether that is it or
18 not I don't know, I don't have any idea of what was in it.

19 Q So, you just happened to take a black bag that is
20 full to stuff that is used to make meth--

21 A I don't know what was in it.

22 Q But you took it from the property, right, you put it
23 in your truck?

24 A Yes, sir.

25 Q And you threw it out on the side of the road, right?

1 A Yes, sir.

2 Q It was Sheila Jackson's stuff, is that what you are
3 telling this jury?

4 A She got it out of the motor home, she got it out of
5 the motor home with the rest of her stuff, yes.

6 Q But you took it, right?

7 A Yes, because that is what she said, that is what.
8 Because that is what she said, I got you, just right here.
9 They are on the way, this was after she had done talked to
10 them. This is after she had done spoke with the law
11 enforcement and she says right here, she throwed it down.
12 And that is when I said it is time to go and I grabbed the
13 bag and throwed it in the truck and left.

14 Q Well, if it is her meth lab why did you take it?

15 A Well, I didn't know what was in the bag and it was,
16 it would have been at my house. And in the past I have
17 not had much luck with, you know, with dealing with Ms.
18 Jackson.

19 Q You heard the pharmacist testimony earlier, you did
20 go buy Sudafed at Walmart on January 25th right, several
21 days before the cops came out?

22 A As far as me knowing it was the 24th I can't say.

23 Q But you did go and buy Sudafed, correct?

24 A If he says, if that is when they got me down for a
25 purchase, yes sir.

1 Q And you went on January the 16th, didn't you?

2 A There again I can't sit here and say I don't have,
3 you know, a way to keep up with no days or nothing. I
4 guess that is the reason they do it.

5 Q January the 4th?

6 A There again if that is what they say.

7 Q You must have had a lot of colds in January, didn't
8 you, Mr. Livingston?

9 A I don't think Sudafed is for colds. I think it is
10 mostly for congestion in your sinuses.

11 Q So you had a lot of sinus problem. How about in
12 December, did you go on the 24th and 16th and December 4th
13 and buy Sudafed at Walmart?

14 A I guess if that is when they got, you know, buying it
15 I guess, yes sir. I don't have, I don't keep up, I don't
16 know no dates like that.

17 Q But you are telling this jury that you did go by
18 Walmart to buy Sudafed on a regular basis, right?

19 A That is usually the cheapest place, yes sir. If I
20 need it.

21 Q Four more times in November you went to Walmart and
22 bought Sudafed?

23 A There again, I don't--

24 Q October the 21st. I think--

25 A Those dates, is that unlawful.

1 Q Eleven times you went and bought Sudafed from October
2 the 21st to January the 25th. Is that correct?

3 A I don't know.

4 Q Is that normal for you to have that many sinus colds
5 and head colds to get Sudafed?

6 A Well, I don't have sinuses because they were crushed,
7 you see the scar across there. They were crushed 35 years
8 ago. The cavities are up there and you know.

9 Q Now, clarify one more thing and I will sit down. You
10 did tell the officers that you were using shake and bake
11 method to cook meth, didn't you?

12 A No, sir. I didn't say I use, this is what I used to
13 cook meth. This is the method I use. I said, if I was
14 going to do it.

15 Q If you were going to do it I would just use shake and
16 bake method?

17 A No, I said if I was going to do it that is what I
18 would use after Mr. Bouknight had asked me.

19 Q Lieutenant Dennis and Sergeant Bouknight, they are
20 lying when they said you told them that you use shake and
21 bake?

22 MR. VERNER: Your Honor, objection.

23 THE COURT: Sustained.

24 Q Your testimony to this jury and I will sit down after
25 this, is that you told them that if you were going to cook

1 methamphetamine that you would use the shake and bake
2 method?

3 A Yes, sir.

4 Q You don't deny going and buying a whole lot of
5 Sudafed from Walmart between October and January, October
6 2011 and January of 2012, right?

7 A Excuse me?

8 Q You don't deny that you went down to Walmart here in
9 Newberry and bought Sudafed?

10 A No, sir.

11 Q That is all I have.

12 REDIRECT EXAMINATION

13 By Mr. Verner:

14 Q You are not trying to say you are a perfect man, are
15 you, Mr. Vernon?

16 A No sir, far from it.

17 Q The question is, was the meth found in the shed your
18 operation, your stuff, your hands on it at all on January
19 the 30th of last year?

20 A No, sir.

21 Q That's all.

22 THE COURT: You can step down. Mr. Verner, call your
23 next witness.

24 MR. VERNER: Your Honor, we are ready to argue and
25 charge.

1 THE COURT: Very good, ladies and gentlemen of the
2 jury, well is there anything in reply from the State?

3 MR. STUMBO: No, sir.

4 THE COURT: Ladies and gentlemen of the jury, I am
5 going to ask you to adjourn to your jury room for just a
6 few moments. There is something that I need to take up.
7 Don't talk about the case.

8 (Whereupon, the jury was excused from open court.)

9 THE COURT: We are bumping up against lunch at this
10 point. The Clerk informed me it would take about 45
11 minutes to get lunch here. So our options as follows. We
12 can either proceed with arguments and charge and have the
13 pizza coming or we can argue and charge and then go to
14 lunch.

15 MR. STUMBO: I think we can get it done while the
16 pizza is on its way.

17 MR. VERNER: I agree with the Solicitor.

18 THE COURT: Madam Clerk, ask them if they want to
19 order pizza or if they want to take a break.

20 MR. VERNER: I am going to ask the Solicitor to open
21 on the law and then close on the facts.

22 THE COURT: You are requesting the Solicitor to do
23 so?

24 MR. VERNER: No, sir. I would like to know just for
25 planning purposes.

1 THE COURT: You want to wrap it all in one?

2 MR. STUMBO: I will do just all at one time.

3 THE COURT: All right. I have given y'all copies of
4 the proposed jury instructions. Have y'all had an
5 opportunity to review those, Mr. Verner?

6 MR. VERNER: I will, Your Honor, I assume they are
7 going to argue the standard charges.

8 THE COURT: Yes. The charge of manufacturing is just
9 not a great deal on there and the only portion that I did
10 not charge from the bench book had to do with relabeling
11 or breaking items down into smaller containers which does
12 not apply in this case.

13 MR. VERNER: And it is kind of standardly in charges
14 but the only thing I would specifically is the mere
15 suspicion.

16 CLERK OF COURT: They want pizza.

17 THE COURT: They want pizza. Go ahead and order them
18 some.

19 MR. VERNER: Your Honor, I am moving for a directed
20 verdict at the end of my case.

21 THE COURT: Your motion is noted and is denied. I
22 have given you a mere presence instruction, Mr. Verner.
23 That is based upon his testimony. Anything the State has
24 an issue with?

25 MR. STUMBO: Well, Judge, the primary thing would be

1 as to the manufacturing. I think there is a subsection
2 (d) to the statute which is 44-53-375(d). Essentially it
3 addresses manufacturing specifically as to and I am sorry
4 I don't have the statute right in front of me or I would
5 point it out. It is prima facia evidence of
6 manufacturing. And I think that is an important
7 instruction with the facts being of what they are in this
8 particular case. Considering we do have positive
9 methamphetamine results but the case has primarily based
10 on cumulative effect of the culmination of the, of all the
11 tools used to manufacture meth and using the shake and
12 bake method.

13 THE COURT: The portion that you are eluding to says,
14 possession of equipment or paraphernalia used to
15 manufacture of cocaine, cocaine based or methamphetamine
16 is prima facia evidence of intent to manufacture.

17 MR. STUMBO: That's correct, Your Honor, I do think
18 that is appropriate to be charged to the jury.

19 THE COURT: Mr. Verner.

20 MR. VERNER: I am looking at it right now. I do
21 think that is the law, Your Honor, I would ask the Court
22 to define prima facia.

23 THE COURT: How would you like for me to define?

24 MR. VERNER: The prima facia means in a first
25 showing. It is my best argument that it would be the

1 inference that can be drawn from possession more than an
2 ounce.

3 THE COURT: That it creates an inference and this is
4 merely just an evidentiary fact.

5 MR. VERNER: Yes, sir. I think the best definition
6 is that prima facia does not mean beyond a certain point
7 but it is, you can, the inference, you can make the
8 inference from the showing of it.

9 THE COURT: Survives a directed verdict.

10 MR. VERNER: Yes, sir.

11 THE COURT: I will allow that.

12 MR. VERNER: The Court is going to charge about
13 voluntariness?

14 THE COURT: I used the standard charge. I am not
15 entirely convinced that it is warranted but out of an
16 abundance of caution I will give that instruction. They
17 have to find, the jury's role is to find that it was
18 voluntary made. Mr. Verner, there is no request for a
19 lessor included here because he denies any knowledge or
20 any manufacturing whatsoever.

21 MR. VERNER: I don't think possession would be
22 supported by the charge but the residual no weight found
23 finding, Your Honor, I think in his defense. Not dispute
24 what it is but not mine.

25 THE COURT: Mr. Verner, are you ready to proceed?

1 MR. VERNER: Yes, sir.

2 THE COURT: Let's have the jury out, please.

3 (Whereupon, the jury came into open court at
4 approximately 12:30 p.m.)

5 THE COURT: Let the record reflect that the jury is
6 back. Ladies and gentlemen of the jury, the Clerk is
7 going to order your lunch. And while we are waiting for
8 that to arrive we are going to continue with the trial of
9 this case. We are now at that point at the trial where
10 the attorneys, State and the defendant will be given an
11 opportunity to give you your closing argument, their
12 closing summation. And understand, ladies and gentlemen,
13 that what the lawyers tell you during their closing
14 argument is not evidence in this case. It is simply their
15 contention to what has been proven or what has not been
16 proven. And it is normal for lawyers to reference or
17 elude to the facts that have been presented through the
18 witness stand or through the exhibits but I will tell you
19 if your recollection of the facts differs in any way from
20 what they tell you the facts are you should go with your
21 recollection of the facts as opposed to what the attorneys
22 say the facts are because ultimately you are the judges of
23 the facts in this case. For example, if one of the
24 lawyers were to have said that yesterday it was bright and
25 sunny and 85 degrees outside and your recollection was

1 that it was cold and wet and rainy and dreary you would go
2 with your recollection. The way we will proceed is that
3 Mr. Verner will go first and then he will be followed by
4 Mr. Stumbo or Mr. Scott. At this point, Mr. Verner.

5 MR. VERNER: May it please the Court, Solicitor.
6 Madam Forelady and members of the jury. What we are here
7 for is whether on January the 30th was Vernon Livingston
8 manufacturing or making methamphetamine. We heard in
9 depth about what meth is, how you make it, not whether he
10 was doing anything on October 25th but the State is
11 limited by January the 30th. I think any reasonable
12 person would think that there is smoke here is there is
13 fire and that is what we need is the fire. If there is
14 not fire and the State, here is the burden they teach you.
15 The burden of proof, it is two things. It is the burden
16 of persuasion, it is the burden of production. The State
17 has a lot of means to produce witnesses in court and a lot
18 of resources to do it. It is their entirely, their
19 responsibility to bring everything into court today to
20 prove for a fact, for a fact, it is not an academic
21 argument today. We are in a general sessions criminal
22 court. They better prove their facts, the burden of
23 production means if they have evidence that is persuasive
24 they need to bring it, they need to find it, they need to
25 bring it and persuade, is when they do have the witnesses

1 or the testimony it better persuade all twelve of you for
2 a fact, for a fact that Vernon Livingston was
3 manufacturing meth. I am not disputing, nobody is
4 disputing, I would submit to you, I personally wouldn't
5 immediately recognize a meth making process. That is just
6 not what I do. Nobody has really disputed Investigator
7 Bouknight's testimony. The sole issue we are here for
8 today did Vernon Livingston have a hand in it. Did Vernon
9 Livingston have a hand in it. What is the evidence that
10 you have. You have got Sheila Jackson's testimony. Does
11 she have a reason and we saw her today, did she seem
12 credible to you, does she have any reason to be less than
13 credible to you. Would somebody, would a mother be
14 vindictive in a custody situation. The lady said herself,
15 they have got my kid, I want to see my kid, they won't let
16 me. I understand it is a lot more mild mannered here. I
17 mean we are all a little bit after the fact and it is easy
18 to be nice and calm here. Do you think that she would be
19 hot, do you think that has led to any fights along the
20 way. You think that could have led to any false
21 allegations, would somebody likely hesitate at all to use
22 the police. If you have been in that system before would
23 anybody at all hesitate to using dirty tactics to try to
24 get him at advantage. Do you think that lady doesn't have
25 a drug habit. You think for a fact she doesn't have a

1 drug habit. Where did she come from before. Law
2 enforcement brought her here staying at a friend's Sumter
3 and her dad's house. You know for a fact she is bouncing
4 around because she is a drug addict, she is a
5 methamphetamine addict. You can look at her all day long
6 but there is just nothing that doesn't say. The two prior
7 incidences where DSS has taken her children. She
8 testified in 2001, I left them alone a day and DSS took my
9 child away because I wasn't there for a day because I went
10 to see my friend. Do you think for a second that social
11 services, away from somebody for a short absence away from
12 the child. Do you think for a second, I went out to run
13 an errand, left my child, social services sweeps in and
14 takes that child. As Ms. Jackson testified, she pointed
15 to the gentleman in the audience and said, they won't let
16 me see my child. Do you think that could affect her
17 ability, her biased in the case. I certainly think it is
18 a fair inference. That is the sole testimony you have,
19 that it was Vernon Livingston's stuff. I understand he
20 threw the bag in the woods. And I submit to you a fair
21 inference from that is because he knew the contents were
22 no good, somebody is going to get in trouble. You have
23 got the common sense, the Judge is going to charge you
24 with your common sense. Do people do that, instead of
25 calling the police on my ex-girlfriend or my friend that I

1 just leave and throw stuff in the woods and try not to get
2 the police involved in a family situation or a friend's
3 situation. I submit to you common sense, you know people
4 do that all of the time. I am out of here, I am getting
5 rid of this stuff. You have to basically base your
6 decision entirely on Sheila Jackson, that he was involved
7 in it. They testified her statement to the police, I just
8 happened upon Vernon and he was making meth and I got
9 angry so I called the police. Do you think for a second
10 that is true, that he was making meth, that offended her
11 and she called the police. They were fighting because he
12 was telling her to go, you have got to go. The police get
13 involved when we are together. They are just not a good
14 track record. That is exactly, you are fighting about,
15 she says we are fighting about me leaving. You get in a
16 fight, a guy and a girl gets into a fight for two reasons
17 for that. She wants to go but he is saying, no, you have
18 got to stay. Or he is saying you have got to go and she
19 is saying, no, I am not going. She testified, she had no
20 place to go. Why is that. Because she has got a meth
21 problem. Do you think for a second she might call the
22 police and blame somebody else for it. The drugs are in
23 the black plastic bag, he has testified about that and
24 then you have got the drugs at the shed which is a fairly
25 small amount. When you look at the pictures, that is not

1 heavy equipment. Those are some plastic bottles, some
2 plastic pipes, that is not stuff that cannot be easily
3 carried around. We are not talking generators, the most
4 complicated thing we were talking was that aquarium pump.
5 Do you think that that is something that somebody could
6 carry around. You look at all the pictures and you look
7 and see if there is anything in there that would take more
8 than one trash bag to fill up, there is just not. I
9 understand it is a lot of separate items. One fingerprint
10 would have absolutely resolved, any other evidence other
11 than Sheila saying that is his stuff would absolutely
12 resolve any doubts. What I submit is hard to understand
13 is he is making meth, the inference the Solicitor is
14 trying to make is it goes back to October and Sudafed
15 purchase, Sudafed purchase, Sudafed purchase. It is just
16 astounding that he is a neat freak. There is no other
17 incriminating evidence in his pickup truck, nothing in the
18 car, nothing in the back of the truck. I own an old
19 pickup truck, I have got junk in there from five years ago
20 under the seats and in the back of the truck and yet
21 Vernon is just a neat freak where he has got nothing else
22 incriminating in an old pickup truck. Here is the search
23 warrants, here is the reason I introduce the body of the
24 search warrant. Search warrant for the shed and the
25 house. Do you think if the man is making meth that he

1 keeps it all in the shed, wouldn't there be some
2 incriminating items somewhere else in the yard. Could
3 there possibly be some stuff in the house, in the kitchen,
4 in the camper, in another shed, in the pickup truck. I
5 find it a little bit hard, he is a neat freak because he
6 is making meth but yet he is not getting it in the house.
7 There is no other evidence that pends it on Vernon
8 Livingston other than Sheila Jackson and that he threw the
9 bag in the woods. And you have to find for a fact we know
10 he was making it and that is why he threw the bag in the
11 woods and it wasn't for other possible reasons. It
12 doesn't have to be the most likely reason but it has to be
13 realistically possibly that it could happened that way.
14 And that is what we are asking for. The statement of
15 rights form. It is clear he denies that he says he was
16 using the shake and bake method. Again, nobody is arguing
17 that Vernon is a perfect guy. We are arguing that he was
18 making it on January the 30th. We think there is a
19 reasonable chance that Sheila Jackson came on his property
20 unwanted, do you think that could have happened, do you
21 think that somebody who has lost their child to DSS has a
22 hate relationship with a man, the police get involved.
23 She says I am a welcomed guest there but just all of a
24 sudden he starts making drugs, I get angry and I say I
25 can't live here so I call the police. Do you think it is

1 just even possible that she may have slipped onto his
2 property why he wasn't, uninvited. Do you think it is
3 just slightly possible that she might not know how to use
4 the shake and bake method herself. Then we had the doctor
5 come from Walmart, probably not local Walmart but don't
6 know where he came from but the Doctor came from Walmart
7 and he brought in the pseudoephedrine purchases by Mr.
8 Livingston. Didn't bring in Ms. Jackson. Well, maybe
9 that is because she hasn't been buying pseudoephedrine.
10 But wouldn't it be fairly simple to say, well, by the way,
11 did you look at hers and can you find hers. No, she
12 didn't make any purchases. Do you think they could have
13 done that. Do you think the State could have in one
14 question, by the way, just take five more minutes and run
15 this lady's drivers license too. We just want to make
16 sure that it is possible that she wasn't buying ephedrine.
17 He could have said I could not find her name in the system
18 but he could have said the exact same thing. I submit to
19 you the reason you didn't get that is because that is just
20 a conflicting fact to their story that just makes it
21 slightly less plausible that this could be Mr. Livingston.
22 We know she is on meth, we know she is on meth. Is it
23 just slightly possible on January 30th she was on his
24 property uninvited and she was making meth on his
25 property. Would somebody do that on somebody else's

1 property. If it is reasonable I submit that, I am going
2 to say this at this point. Once a week for almost every
3 month, at the end of the day it is your verdict. I
4 respect your verdict, good, bad or ugly. They respect
5 your verdict, good, bag or ugly. We move on and we have
6 got other cases to move through the court system, a lot of
7 cases. We just want you to vote your conscious. If you
8 think there is a slight chance he might be not guilty then
9 under our constitution he is entitled to that verdict. As
10 I mentioned at the beginning of the case, when the Pope
11 stepped down after 600 years, no Pope has ever done that
12 before. Even 200 years before that there was a written
13 right to a jury trial and they just didn't make it up 800
14 years ago, 2,000 years ago there has been a right. There
15 is a man in the Bible named Barabbas. You remember
16 Pontius Pilate putting him up in front of the citizens and
17 they voted on his guilt or not. That is a jury trial and
18 it goes back even before then. Socrates, the Greek, 500
19 years before Paratus. That is a jury trial. When the
20 State puts the innocence or guilt of a citizen to other
21 citizens, that is a jury trial. It changes forms, we have
22 had 12 people since the founding of the Country. Your job
23 is not to, we are not working together here, we are not
24 working together here. Your job is to protect the
25 citizens until the State has proven that they should strip

1 his right from him and that is what we are asking you to
2 do.

3 THE COURT: Mr. Stumbo.

4 MR. STUMBO: Thank you, Your Honor. May it please
5 the Court, Mr. Verner, Madam Forelady and members of the
6 jury. I am going to start something a little bit
7 different but listening to Mr. Verner just now reminded me
8 of a story I have heard many times. A story about a man
9 standing by the side of the road, standing beside a
10 puddle. On the bottom of that puddle is a little gold
11 coin sitting at the bottom of the puddle. Another man
12 comes again, one of his buddies and comes up to him and
13 they are talking about the gold coin at the bottom of the
14 puddle. The other man says, let me try something. I bet
15 you \$20.00 dollars that the value of that gold coin, that
16 I can make that gold coin disappear right here. His buddy
17 says, sure, I will take that bet. You don't look like a
18 magician to me. I have known you all of my life and I
19 will take that bet. His buddy walks over, picks up a
20 stick, scribbles the mud around that coin. All of a
21 sudden the puddle gets dark and the gold coin disappears.
22 The reason I tell you that story, ladies and gentlemen, is
23 that is exactly what we heard from Mr. Verner. What he
24 did, is he scrabbled the mud around that coin, covered up
25 that coin at the bottom of the puddle. That is the truth,

1 ladies and gentlemen, that is what really happened in this
2 case, he covered it, he has obscured it from your view.
3 He doesn't want you to see the truth. That is what we are
4 here for, that is what the twelve citizens of Newberry
5 County, is to come in here and determine what the truth is
6 in this case. Did Vernon Livingston do what we allege he
7 did to make meth, be a meth cook. And standard is beyond
8 a reasonable doubt, that is the burden of proof that Mr.
9 Scott and I had in this case. Not slight possibilities,
10 not a slight chance, I heard that come out of Mr. Verner's
11 mouth several times. If there is a slight chance that
12 Sheila Jackson snuck on this property, there is a slight
13 chance that he just happened to come home and grab that
14 black bag full of a meth lab to carry it off with him.
15 There is a slight chance. This isn't about slight chance,
16 ladies and gentlemen, this is about discovering the truth
17 and what you are firmly convinced of after you have heard
18 the State's case and after you have heard the testimony
19 from the defendant himself. Now, let's clear the waters
20 here and let's find out the truth. Beyond a reasonable
21 doubt, the Judge is going to instruct you right after I
22 sit down on the law. If the Judge says something
23 different than what I say you go with what the Judge says
24 because he is the Judge of the law in this case. But I
25 will submit to you you are going to hear him talk about

1 the burden is on us, the burden is on the State to prove
2 each and every element beyond a reasonable doubt. Now,
3 when he talks about reasonable doubt I want you to listen
4 to two words, firmly convinced. He is going to say that
5 twice in his instructions. Are you firmly convinced,
6 after you have heard all the evidence in this case that
7 Vernon Livingston is guilty of manufacturing
8 methamphetamine. What is a firm conviction. After you
9 have heard the evidence do you think he did it. Do you
10 have a firm conviction. If he did then we have met our
11 burden, firmly convinced, that's it. It is not a magical
12 formula, it is not this scientific, it is not a
13 mathematical equation or a scientific experiment in a lab.
14 That is not what it is, ladies and gentlemen, it is just
15 simply are you firmly convinced that he is guilty. That
16 is our burden of proof. I submit to you in this case all
17 the evidence that you have seen come in, the picture, the
18 physical evidence, the testimony from the stand. Is there
19 any doubt that that man is guilty. Let's start talking
20 about the specifics here. Let's clear the waters here.
21 Now, the Judge is going to instruct you on manufacturing
22 methamphetamine. It is very simple, there is other
23 language involved in the statute but it is not necessarily
24 applicable to this case. But if an individual, if he is
25 caught in the process of manufacturing methamphetamine or

1 aids, abets, attempts or conspires to manufacture. That
2 is it. Manufacturer, what does that mean. To make
3 something. It is just like down at Lewis Rich or one of
4 the other manufacturing plants here in Newberry, they make
5 things for sale. Manufacturing methamphetamine, is he
6 making the methamphetamine, very simple elements here to
7 this case. Now, this is important too and the Judge is
8 going to instruct you on another part of the statute. But
9 it talks about possession of equipment or paraphernalia
10 used in the manufacturing of methamphetamine if prima
11 facia evidence of intent to manufacture. What have we
12 found here in this case. You heard the testimony, you saw
13 the pictures, I am not going to belabor this point. There
14 is a bunch of pictures here, you are going to have these
15 back in the jury room to look at. Coleman fuel, Sudafed
16 packs, heat, tubes, all of those things are not illegal to
17 have. But you heard testimony from Detective Bouknight
18 who investigates all kinds of meth lab cases. What did he
19 say. So all of these things together, there is no
20 question that this is a meth lab. And that is what this
21 statute is getting at. The Judge is going to instruct you
22 is that when you have all of these items together, the
23 black trash bag that he carried out of the house, not
24 Sheila Jackson, Vernon Livingston. It is his meth lab,
25 not hers. If that wasn't enough, what you have in the

1 pictures that came into evidence, this was part of what
2 was in that trash bag that he had, sent it off to SLED and
3 what did the SLED chemist tell you yesterday, positive for
4 methamphetamine. Another piece of evidence. Did he have
5 eleven sinus colds between October and January. You know
6 why he went to buy that Sudafed there at Walmart, to make
7 the meth. Ladies and gentlemen, I know it is about lunch
8 time and I don't want to stay up here all day and beat a
9 dead horse but I think this is important and I will sit
10 down after this. Mr. Verner said in his opening that he
11 disagreed with the Judge on something he said, he said in
12 his opening, this is not a search for the truth. And if I
13 agree with anything that he said it is the fact that that
14 is what they are trying to do, they are trying to scare
15 the truth from you. If they can get you to look at Sheila
16 Jackson, Sheila Jackson is not on trial today, Vernon
17 Livingston is. Let's just assume for a minute that she
18 had something and was making meth. And she told you on
19 the stand that she went out and bought Sudafed from time
20 to time for him. We are not hiding that, we could have
21 put those records in from Walmart too. She had already
22 told you, there is no need to. Let's just assume for a
23 second that Sheila Jackson was part of this. Does that
24 solve his guilt. All of the circumstantial evidence
25 points strongly to firmly convince you of his guilt. I

1 haven't even mentioned yet what he said. If you had any
2 doubt before what did he tell the officers. We had two
3 officers here in Newberry County that were in that room.
4 Detective Dennis and Sergeant Bouknight. He told them, I
5 used the shake and bake method to cook meth and then he
6 told them how he did it, he even specifically mentioned
7 that he used Sudafed, Coleman fuel, all of those things we
8 see in these pictures that were found in the bag that he
9 had. Ladies and gentlemen, the truth is staring at
10 everybody in this courtroom directly in the fact right now
11 that this man is guilty of manufacturing meth. I hope I
12 have done a decent of clearing the mud here, clearing the
13 waters and you can see that truth clearly if you didn't
14 already see it. Mr. Scott and I have presented this case,
15 it has been our job to present the case, it is the
16 officers job that night to go out and shut down a meth
17 lab, a shake and bake meth lab. That is a recipe that he
18 had, that man had a recipe for disaster that night, shake
19 and bake. These members of the sheriffs department and
20 they shut it down, they did their job. Mr. Scott and I
21 have come into this courtroom this week and presents the
22 evidence to you and now it is in your hands. You get to
23 go to the jury room and talk about this case and it is
24 twelve minds here of ordinary citizens, good and solid
25 citizens of Newberry County. You can put those twelve

1 common sense minds together and I believe there is only
2 one verdict here, ladies and gentlemen, that speak the
3 truth. The word, verdict, means to speak the truth. And
4 I want you to see the truth and I think y'all have seen it
5 over the last couple of days. The truth is is that Vernon
6 Livingston is guilty of manufacturing methamphetamine.
7 Thank you for your time and your attention, the time away
8 from your families and your jobs for the last few days.
9 Thank you for your deliberations that you are about to do
10 in that jury room.

11 THE COURT: Thank you, Mr. Stumbo. Ladies and
12 gentlemen, it now becomes my obligation to charge you on
13 the law that applies in this case. And I will tell you
14 that the way that this has historically been done is that
15 the Judge simply sits up here and reads off about 14 or 15
16 pages of the law that applies and you are suppose to
17 absorb all of that information like some sponge and take
18 it back there and apply it. I have always found it is
19 unreasonable that lawyers have to go to law school for
20 three years and it takes us three years to get something
21 concerning the law and you are suppose to get it in
22 fifteen minutes. So what I am telling you is I will give
23 you a copy of these instructions that you can refer to
24 during the course of your deliberations. Once your
25 deliberations are completed please be sure to return these

1 instructions to me and obviously don't simply follow some
2 part of the instructions and ignore the other but follow
3 the instruction as a whole. If at any time you have any
4 questions about these instructions, Madam Forelady, simply
5 send me a note and let me know what your question is and I
6 will try to help you whatever question you have about the
7 law. At this point because the evidence is closed and all
8 evidence is in at that point and time, I am not able to
9 answer any additional questions concerning facts or any of
10 the evidence that is in evidence. So I can help you with
11 the law, I cannot help you with any sort of facts
12 relations that you have to decide.

13 Now, ladies and gentlemen, the indictment in this
14 case charges the defendant with the offense of
15 manufacturing methamphetamine. I remind you that the fact
16 Mr. Livingston was arrested, charged and indicted in this
17 case is not evidence in this case and cannot be considered
18 by you as evidence of guilt in this case. Nor does the
19 indictment create any presumption or inference of guilt.
20 This document, this indictment is simply the formal
21 written instrument by which a charge is brought into this
22 court, it is the formal document by which a charge is made
23 against the defendant.

24 The defendant in this case has pled not guilty to
25 this charge and that plea puts the burden on the state to

1 prove the defendant guilty beyond a reasonable doubt. A
2 person charged with committing a criminal offense in South
3 Carolina is never required to prove himself innocent.

4 I charge you that it is an important rule of the law
5 that the defendant in a criminal case, no matter what the
6 seriousness of the charge may be, will always be presumed
7 to be innocent of the crime to which the indictment was
8 issued unless guilt has been proven by evidence satisfying
9 you of that guilt beyond a reasonable doubt. This
10 presumption of innocence does not end when you begin your
11 deliberations, but it accompanies the defendant throughout
12 the trial until you reach a verdict of guilt based on
13 evidence satisfying you of that guilt beyond a reasonable
14 doubt.

15 Ladies and gentlemen, the presumption of innocence is
16 like a robe of righteousness placed about the shoulders of
17 the defendant and stays with him until it has been
18 stripped from him by evidence satisfying you of this guilt
19 beyond a reasonable doubt.

20 The presumption of innocence is not merely a legal
21 phrase or a legal theory. It is a substantial right to
22 which every citizen is entitled unless you, the jury, are
23 satisfied from the evidence of the defendant's guilt
24 beyond a reasonable doubt.

25 What is a reasonable doubt in the eyes of the law. A

1 reasonable doubt is the kind of doubt that would cause a
2 reasonable person to hesitate to act.

3 The State has the burden of proving the defendant
4 guilty beyond a reasonable doubt. Some of you may have
5 served as jurors in civil cases, where you were told that
6 it is only necessary to prove that a fact is more likely
7 true than not true. Such as by the preponderance or the
8 greater weight of the evidence. In criminal cases, the
9 State's proof must be more powerful than that. It must be
10 proof beyond a reasonable doubt.

11 Proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of the defendant's guilt. Now, there
13 are very few things in this world that we know with
14 absolute certainty, and in criminal cases the law does not
15 require proof that overcomes every possible doubt. If
16 based upon your consideration of the evidence you are
17 firmly convinced that the defendant is guilty of the crime
18 charged you must find the defendant guilty. If on the
19 other hand, you think there is a real possibility that the
20 defendant is not guilty you must give him the benefit of
21 the doubt and find the defendant not guilty.

22 Now, ladies and gentlemen, I remind you that during
23 this trial you and I have certain duties to perform. As
24 the trial Judge it is my responsibility to preside over
25 the trial of this case. And I also have the duty to rule

1 on the admissibility of the evidence offered during this
2 trial. You are to consider only the competent evidence
3 before you. If there was any testimony stricken from the
4 record during the trial you must disregard that testimony.
5 You are to consider only the testimony which has been
6 presented from this witness stand as well as any exhibits
7 which have been made a part of the record in this case.

8 I have the additional duty to charge you the law
9 applicable to this case. As the presiding Judge I am the
10 sole Judge of the law and it is your duty as jurors to
11 accept and apply the law as I now state it to you. If you
12 already have any idea as to what the law is or what the
13 law ought to be and it does not agree with what I now tell
14 you the law is you should abandon this idea because you
15 are sworn to accept and apply the law exactly as I now
16 state it to you.

17 In every case tried in this court before a jury the
18 jury becomes the sole and exclusive Judge of the facts in
19 a case. A trial Judge cannot intimate, state, comment on
20 or make any statement to a trial jury about the facts in a
21 case. Since you, the jury, are the sole judge of the
22 facts in this case you are not to infer from what I have
23 said during the progress of this trial or otherwise or
24 anything that I say now during the course of these
25 instructions to you that I have any opinion about the

1 facts in this case. Ladies and gentlemen, the law does
2 not permit me to have an opinion about the facts. This is
3 a matter solely for you, the jury, to determine. As
4 jurors, it is your duty to determine the effect, value,
5 weight and truth of the evidence presented during this
6 trial.

7 There are typically two types of evidence which are
8 generally presented during a trial, direct evidence and
9 circumstantial evidence.

10 Direct evidence is the testimony of a person who
11 claims to have actual knowledge of a fact such as an
12 eyewitness. It is evidence which immediately establishes
13 the main fact to be proven. Circumstantial evidence is
14 proof of a chain of facts and circumstances indicating the
15 existence of a fact. It is evidence which immediately
16 establishes collateral facts from which the main fact may
17 be inferred. Circumstantial evidence is based on
18 inference and not on personal knowledge or observation.
19 The law makes absolutely no distinction between the weight
20 or value to be given to either direct or circumstantial
21 evidence. Nor is a greater degree of certainty required
22 of circumstantial evidence than of direct evidence. You
23 should weigh all of the evidence in this case. After
24 weighing all the evidence if you are not convinced of the
25 guilt of the defendant beyond a reasonable doubt you must

1 find him not guilty.

2 Necessarily, ladies and gentlemen, you must determine
3 the credibility of witnesses who have testified in this
4 case. Credibility simply means believability. It becomes
5 your duty as jurors to analyze and to evaluate the
6 evidence and determine which evidence convinces you of its
7 truth. In determining the believability of witnesses who
8 have testified in this case you may believe one witness
9 over several witnesses or several witnesses over one
10 witness. You may believe a part of the testimony of a
11 witness and reject the remaining part of the testimony of
12 that same witness. You may believe the testimony of a
13 witness in its entirety or reject the testimony of a
14 witness in its entirety. You may consider whether any
15 witness has exhibited to you any interest, bias, prejudice
16 or other motive in this case. You may also consider the
17 appearance and manner of a witness while on the witness
18 stand.

19 Now, as I have explained during the trial, ladies and
20 gentlemen, normally the rules of evidence don't permit
21 witnesses to testify to opinions or conclusions. But an
22 exception to this rule exists for witnesses known as
23 expert witnesses. A witness who by education and
24 experience has become expert in some art, science,
25 profession or calling may state an opinion as to relevant

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

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

11 Now, ladies and gentlemen, I instruct you that mere
12 presence at the scene of a crime is not sufficient to
13 prove someone guilty of a crime. A defendant's presence
14 where a crime is being committed or mere association with
15 a person who commits a crime does not make a defendant an
16 accomplice or an aider and abettor of the person
17 committing the crime.

18 The burden is on the State to prove every element of
19 the crime charged. If you find, after reviewing all the
20 evidence that the State has proved that the defendant was
21 only present at the scene of a crime and that they have
22 not proved beyond a reasonable doubt any other
23 participation in the crime then you must find the
24 defendant not guilty. The law is that proof of being at
25 the scene of the crime is not sufficient to find someone

1 guilty.

2 A statement alleged to have been made by the
3 defendant has also been admitted into evidence in this
4 case. While the Court has determined that the statement
5 is admissible I instruct you that you make the ultimate
6 decision of whether or not the defendant made the
7 statement. If the defendant did make the statement you
8 must determine whether the statement was made by the
9 defendant voluntarily and of his own free will. This
10 means that the statement was not caused by pressure,
11 force, fear, threats, coercion, or intimidation or by hope
12 or a promise of leniency or a reward of any kind. In
13 determining whether the statement was voluntary you should
14 consider both the characteristics of the defendant and the
15 details of the questioning. Some of the factors that you
16 must consider are the age of the defendant, the
17 defendant's education or lack of education, the
18 defendant's mental ability or capacity, his I.Q. or
19 intelligence, his background and environment, the place
20 and length of the detention, the nature of the questioning
21 and the advice or lack thereof to the defendant of his
22 constitutional rights including but not limited to his
23 right to remain silent, any statement could be used
24 against him in a court of law, the right to have a lawyer
25 present, that if he could not afford a lawyer a lawyer

1 would be appointed to represent him without any cost and
2 that he could stop making a statement at any time. You
3 must carefully consider all of the surrounding
4 circumstances before you give any weight to an alleged
5 statement. The State has the burden of proving beyond a
6 reasonable doubt that the alleged statement was voluntary.
7 If you determine that the statement was voluntary you may
8 give the statement any further consideration you deem
9 proper. You must decide what weight, if any, should be
10 given to the alleged statement. If you determine the
11 alleged statement was not the free and voluntary statement
12 of the defendant you should not consider it at all.

13 The defendant in this case, ladies and gentlemen, is
14 charged with manufacturing methamphetamine. State law
15 prohibits an individual from knowingly manufacturing
16 methamphetamine or otherwise aiding, abetting, attempting
17 or conspiring to manufacture methamphetamine. I instruct
18 you that manufacturing means to produce, prepare,
19 propagate, compound, convert or process a drug naturally
20 or chemically. I further instruct you that possession of
21 equipment or paraphernalia used in the manufacturing of
22 methamphetamine gives rise to an inference of intent to
23 manufacture methamphetamine. However, this inference is
24 simply an evidentiary fact to be taken into consideration
25 by you along with the other evidence in this case and to

1 be given the weight you decide it should have.

2 Now, ladies and gentlemen, there are two possible
3 verdicts which you may render in this case, guilty or not
4 guilty of manufacturing meth. There is absolutely no
5 significance whatsoever in the order to which I state
6 these possible verdicts, it is simply that one has to be
7 stated first. Ladies and gentlemen, your verdict must be
8 a unanimous one. Madam Forelady, when the jury agrees on
9 the verdict you will write your verdict on this verdict
10 form and sign your name as the forelady. Then knock on
11 the jury room door and inform the bailiff that you have
12 reached a decision and we will receive you back here in
13 the courtroom.

14 Madam Forelady, ladies and gentlemen, I remind you
15 that you have no friends to reward in this case, you have
16 no enemies to punish. Your verdict must be based solely
17 upon the evidence represented and the law as I have
18 instructed you and your verdict cannot be the result of
19 passion, caprice, prejudice or based upon any
20 consideration which is not in the record in this case. I
21 ask that you now return to the jury room but do not begin
22 your deliberations. Your cue to begin your deliberations
23 will be receipt of these jury instructions, the jury form
24 as well as all the evidence that has been presented in
25 this case. I want to make sure the lawyers are satisfied

1 with my instructions to you and that they have had an
2 opportunity to review the exhibits and make sure that
3 everything in evidence is going back to you. Your cue to
4 begin our deliberations will be receipt, this and the
5 evidence and my asking the alternate to step out. If at
6 any time during the course of your deliberations one of
7 the jurors needs to take a smoke break or absent
8 themselves from the jury room that is fine but just your
9 deliberations have to take place with all twelve people
10 there. So if anybody takes a brief break just stop your
11 deliberations for about five or ten minutes and resume
12 when they return. If you will return to the jury room you
13 will have this case and your pizza soon.

14 (Whereupon, the jury was excused from open court.)

15 THE COURT: Any exceptions or additions from the
16 State?

17 MR. STUMBO: No, Your Honor.

18 THE COURT: From the defense?

19 MR. VERNER: No, Your Honor.

20 THE COURT: If you will ask the alternate to step out
21 and make sure you are satisfied with the verdict form and
22 the exhibits we will get those back to them.

23 (Whereupon, the alternate was excused from the trial
24 of the case.)

25 (Whereupon, the jury started deliberations at

1 approximately 1:15 p.m.)

2 THE COURT: Let's go back on the record in Mr.
3 Livingston's case. The record should reflect that the
4 defendant is present with counsel, the State is present.
5 I have been informed that the jury has reached a verdict.
6 Anything before we receive the jury back in from the
7 State?

8 MR. STUMBO: Nothing from the State.

9 THE COURT: From the defense?

10 MR. VERNER: No, Your Honor.

11 THE COURT: Let's have the jury, please.

12 (Whereupon, the jury came into open court with the
13 verdict at approximately 2:15 p.m.)

14 THE COURT: If we may, let's go back on the record.
15 The Forelady is present along with all members of the
16 jury. Madam Forelady, I am told that the jury has reached
17 a verdict, is that correct?

18 MADAM FORELADY: Yes, sir.

19 THE COURT: All twelve of you agree on the verdict?

20 MADAM FORELADY: Yes, sir.

21 THE COURT: If you would hand the verdict form to the
22 bailiff, please. Madam Clerk, if you will publish,
23 please.

24 CLERK OF COURT: The State versus Vernon Jacob
25 Livingston, Jr. We, the jury, in the above captioned case

1 on the charge of manufacturing methamphetamine unanimously
2 find Vernon J. Livingston, Jr. guilty. Signed Karen J.
3 Anderson, Forelady. Ladies and gentlemen, if this is your
4 verdict please indicate by raising your right hand.

5 (Whereupon, all jurors raised their hand.)

6 THE COURT: Let the record reflect that all twelve
7 jurors did in fact raise their right hand. Anything
8 further for the jury from the State?

9 MR. STUMBO: Nothing from the State.

10 THE COURT: From the defense?

11 MR. VERNER: No, Your Honor.

12 THE COURT: Ladies and gentlemen, this will conclude
13 your jury service this week. I want to thank you for your
14 efforts and your patience with us. I will tell you what I
15 told the alternate when I dismissed him, you will receive
16 a letter from me thanking you again for your jury service.
17 One of the reasons for sending that letter is to solicit
18 your feedback on what your experience was like this week.
19 This court doesn't belong to me, it doesn't belong to the
20 solicitor, it doesn't belong to the defense, it belongs to
21 the people of South Carolina and I am a big believer of
22 letting this be the people's court. So if there was
23 anything that you liked or more importantly if there was
24 anything that you did not like you will have an address, a
25 phone number and an email address to contact me. Let me

1 know whatever it is, good, bad or ugly. The Clerk does
2 have your checks and she will give those to you outside.
3 I want to thank you for your service. So have a great
4 week. Thank you.

5 (Whereupon, the jury was excused from the trial of
6 the case.)

7 THE COURT: Solicitor, do we have the sentencing
8 sheet?

9 MR. STUMBO: We have got it coming right now, Judge.

10 THE COURT: While we are waiting on the sentencing
11 sheet, Solicitor, you were referencing Mr. Livingston's
12 prior criminal history, am I correct. The only conviction
13 he has in 2008, manufacturing.

14 MR. STUMBO: There was a petty larceny but other than
15 that that was the only felony conviction. I do have a
16 certified copy of the prior for purposes of sentencing.
17 It is a 2008 conviction, Your Honor, for manufacturing.

18 THE COURT: All right, Mr. Verner, I will be happy to
19 hear from you.

20 MR. VERNER: May it please the Court, Your Honor.
21 Vernon is 57 years old, Your Honor. Looking on his record
22 I don't see where he ever got even arrested. It may be in
23 there but I didn't see any arrest until after the age of
24 50 when he picked up the General Sessions record.
25 Certainly it was the prior meth charge. He does have

1 three children, one is a 7 year old girl and the other two
2 are adults. Your Honor, the girl is in the custody of his
3 sister and brother-in-law. He is a lifelong from here in
4 Newberry, he is a carpenter by trade. He did the one day
5 in jail on this charge, Your Honor. He did January the
6 30th through the 31st I believe is when he bonded out. I
7 would say on his behalf he has been faithfully coming to
8 court since March of last year. Obviously, he does have
9 an indication of a substance abuse problem that has gone
10 back for at least to 2008, he does appear to have picked
11 up later on in his life, Your Honor. It is an eighty-five
12 percent offense, he has never been sentenced with any kind
13 of incarceration before in his life. I think he might
14 have gotten some county time in the last charge, Your
15 Honor, but never been sentenced before. He understands he
16 is going to be sentenced. I will ask the court to
17 consider a five year sentence which at the eighty-five
18 percent level, he has got no record beyond this. He does
19 ask me to ask the Court, Your Honor, he knows he is going
20 to get sentenced today but he would ask the Court to
21 Friday morning perhaps. He has got clothes in his house.
22 I will leave that up to the Court. I understand with an
23 active sentence there is a risk there if the Court granted
24 that. He assures me he will show up. Do you want to say
25 anything.

1 MR. LIVINGSTON: I need to move the furniture and
2 stuff out of my house if I can. I have got to keep things
3 going and without me there I--

4 MR. VERNER: Your Honor, his brother-n-law is here.
5 Lawson, do you want to say anything.

6 MR. LAWSON: Your Honor, my brother-n-law, I want to
7 let you know it is what it is with the verdict. We all
8 accept that. Unfortunatley his sister, my wife, because
9 of her type of work could not be here but he does have
10 family support. Wherever he might be for the next five
11 years or whatever he does have family support. He loves
12 his daughter very much and she loves him very much. That
13 is all, Your Honor.

14 THE COURT: Solicitor, do you have the sentencing
15 sheet yet?

16 MR. STUMBO: I do, Your Honor.

17 THE COURT: Mr. Livingston, anything else?

18 MR. LIVINGSTON: No, sir.

19 THE COURT: Reading the statute and I do think I have
20 to give him a mandatory/minimum of five years. But the
21 following paragraph indicates that perhaps there could be
22 the option of a suspended sentence such as 10 on 5 or 15
23 on 5. I know that this says, it talks about possession of
24 one or more grams of meth is a prima facia evidence in
25 violation of subsection, notwithstanding any other

1 provision of law, and sentence of a first or second
2 offense may have a sentence that says probation granted
3 but, supervised and community supervision, et cetera. I
4 know that this paragraph has caused other Judges problems
5 in interrupting exactly what that means. Does the State
6 have any position on that, does it have to be a straight
7 time?

8 MR. STUMBO: I think there is ambiguity there, Judge.
9 I agree, I think that based on 2010 some changes were made
10 that have created some holes and maybe more problems than
11 what we had before. Judge, our position on this is that
12 there needs to be a significant incarceration. I think
13 the sheriffs department feels the same way about that,
14 Your Honor. There is a pretty large range on what you can
15 sentence him to here. With that being said, Your Honor,
16 we don't have a problem with having something suspended to
17 a significant amount of jail time, just to have some
18 supervision on Mr. Livingston, he needs imprisonment. And
19 the reason I say that, Your Honor, is there seems to be a
20 pattern here where if he walks out this door today, the
21 sheriffs department feels this way, we feel this way based
22 on his history, he would probably be back in Walmart
23 buying Sudafed and cooking meth again. For him to have
24 some period of supervision after he does his prison time
25 certainly we are not opposed to that. But we do feel like

1 substantial prison time is also warranted in this case
2 based on his prior conviction for the same thing and the
3 fact that meth is absolutely has destroyed our
4 communities, Judge. And I think this man here before you
5 today is an example A of the meth problem we have and we
6 need to start fighting back and not just here in Newberry
7 but throughout the circuit and throughout the State. So
8 we would ask based on that, Judge, for you to sentence him
9 to a significant amount of prison time. But as far as
10 suspending part of an overall sentence and attach a
11 probationary sentence we will leave that to your sound
12 discretion. I think the law allows for it.

13 THE COURT: Do you have anything, Mr. Verner?

14 MR. VERNER: I think the Court, it is pretty clear
15 when the Court read it it does talk more of a suspended
16 sentence. Even if he got a suspended sentence he would
17 have to do 2 years of community supervision. It is
18 possible a probationary term would add more benefits to
19 him.

20 THE COURT: I have to take a number of things into
21 consideration. Certainly I follow the Solicitor's
22 sentiments that meth is a substantial problem in the
23 community. At the same time I am trying to, he has never
24 really had any prior contact with law enforcement until he
25 got hooked up on this stuff sometime around 2008. At the

1 understand?

2 MR. LIVINGSTON: Yes, sir.

3 THE COURT: Pursuant to South Carolina law you will
4 have to pay \$500.00 dollars to the public defender fund.
5 Mr. Livingston, you got basically, before you get released
6 you will have to do about, at least 4 years time somewhere
7 in that range before you are eligible for parole. Good
8 luck.

9 MR. VERNER: The Court is denying for him--

10 THE COURT: I had bad luck with that. Your
11 brother-n-law here is a good man and he can take your
12 stuff out and take care of it. I can't help you with
13 that, Mr. Livingston. I wish you luck.

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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25

1 CERTIFICATE OF REPORTER

2

3

4 State of South Carolina)

)

5 County of Newberry)

6

7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Newberry, South
14 Carolina on the 11th day of February, 2013.

15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.

17

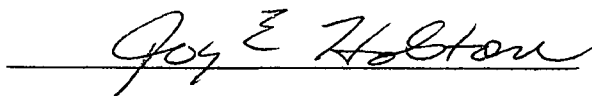
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November 10, 2013

19

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21



22

Joy E. Holston, Court Reporter

23

My Commission expires: March 13, 2016

24

25

WITNESSES

Nick Boulknight
Newberry County Sheriff

WARRANT NUMBER

M481295

TRUE BILL

Maime M. Hickman

Foreman of the Grand Jury

Date: 4-20-12

VERDICT

Guilty

Henry Anderson 2-12-13

Foreman lady

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

April Term, 2012

Indictment # 12GS36-0331

THE STATE

vs.

Vernon Jacob Livingston Jr.

INDICTMENT FOR

MANUFACTURING METHAMPHETAMINE
44-53-375

THE STATE OF SOUTH CAROLINA

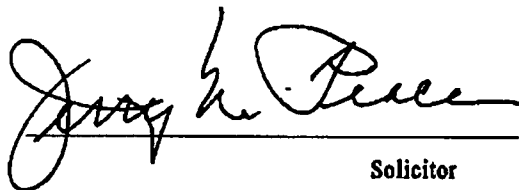
COUNTY OF NEWBERRY

**INDICTMENT FOR
MANUFACTURING METHAMPHETAMINE
44-53-375**

At a Court of General Sessions, convened on the 20th day of April, 2012 the Grand Jurors of Newberry County present upon their oath:

That Vernon Jacob Livingston Jr., did in Newberry County, state aforesaid, on or about the 30th day of January, 2012 willfully, unlawfully and knowingly manufacture or otherwise aid, abet, attempt or conspire to manufacture Methamphetamine, in violation of Section 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 cases made and provided.



Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Newberry

VS

Vernon Jacob Livingston Jr

AKA:

Race: CAU

Sex: M

Age: 57

DOB: 5

SS#:

Address: SC Hwy 121

City, State, Zip: Newberry, SC 29108

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
I/O. Drugs / Manufacture, distribution, etc of methamphetamine, 2ndin violation of § 3199 §44-53-375(B) of the S.C. Code of Laws, bearing CDR Code # 3199☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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

D. H. S. S.

72105

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 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 6 (six) days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 3months/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 Credit 1 day - 0.01.☐ 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:

*Fine.

Application 40

§ 14-1-206 (Assessments 107.5 %)

\$

00

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

100

§ 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

500

§ 14-1-212 (Law Enforce Funding)

\$25

25

§ 14-1-213 (Drug Court Surcharge)

\$150

150

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCA Surcharge)

\$5

5

3% to County (if paid in installments)

\$

23.40

TOTAL

\$

843.40

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (03/2011)

Elizabeth P. Hall
Jay Halston

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 12GS36-0331

A/W#: M481295

Date of Offense: 1/30/2012

S.C. Code § : 3199 §44-53-375(B)

CDR Code #: 3199

SENTENCE SHEET

5-30 yrs
\$0 - \$50,000☒ CONVICTED OF or ☐ PLEADSD. H. S. S.
Solicitor

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: * ATV while - SCDC *☒ Appointed PD or appointed other counsel,
47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

Fulbright, J.
2157
2/12/2013

STATE'S
EXHIBIT

#1 EVO

STATE'S
EXHIBIT

#2 ELD

STATE'S
EXHIBIT

QV0 #3



STATE'S
EXHIBIT

#4 EMD



STATE'S
EXHIBIT

#5 E99

CAUTION

BLEAK
DREL
OPEN

STATE'S
EXHIBIT

#6 EJD



STATE'S
EXHIBIT

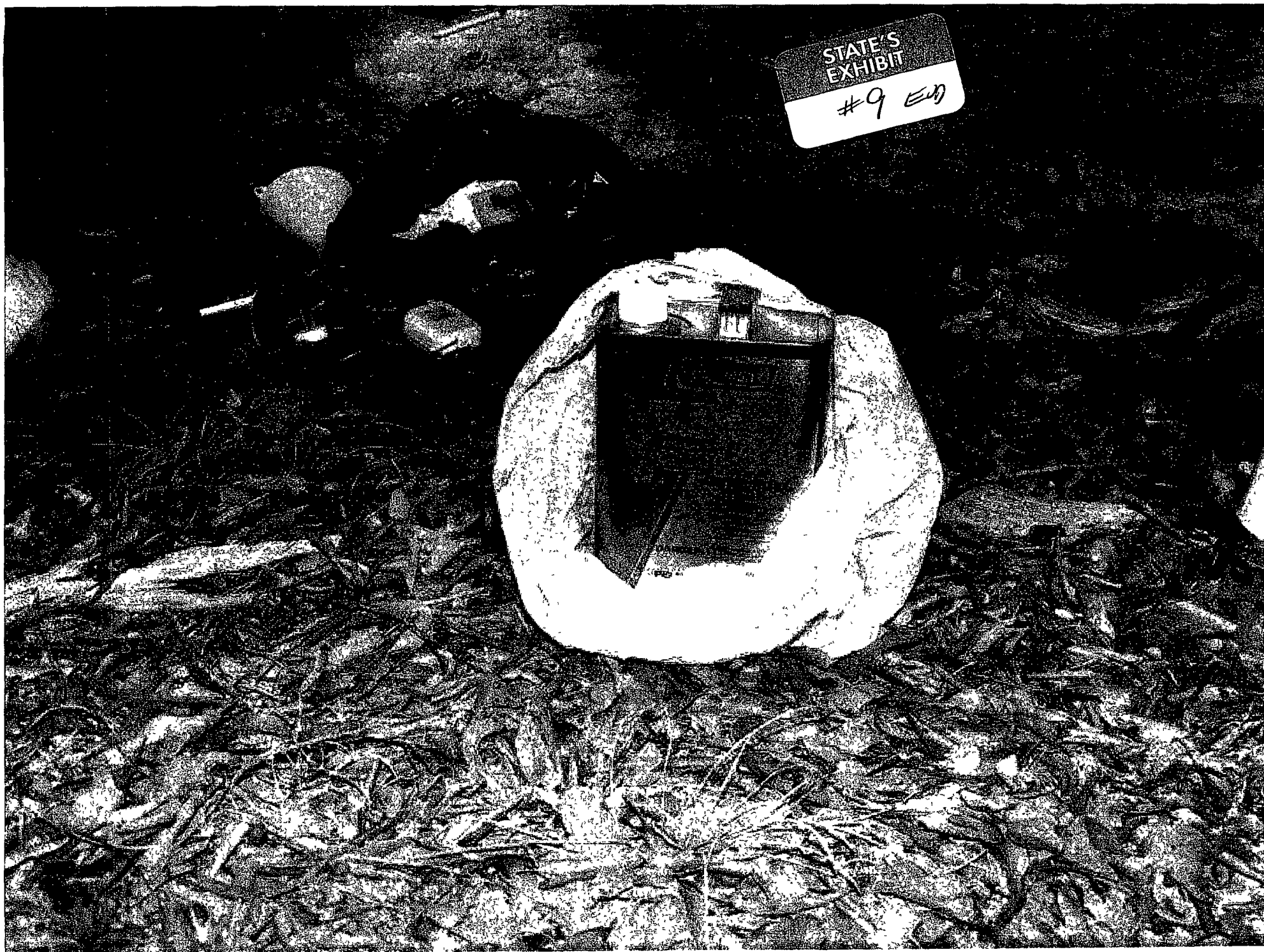
#7 EVD



STATE'S
EXHIBIT

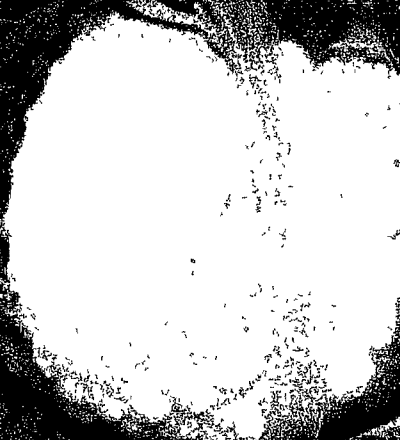
#8 EVD

CRACKER
Sulfuric Acid ↑



STATE'S
EXHIBIT

#10 EUN



STATE'S
EXHIBIT

#11 EVN

STATE'S
EXHIBIT

STATE'S
EXHIBIT

STATE'S
EXHIBIT

EVD #12

12 Hour Decongestant

Exchanges

...

[illegible]

STATE'S
EXHIBIT

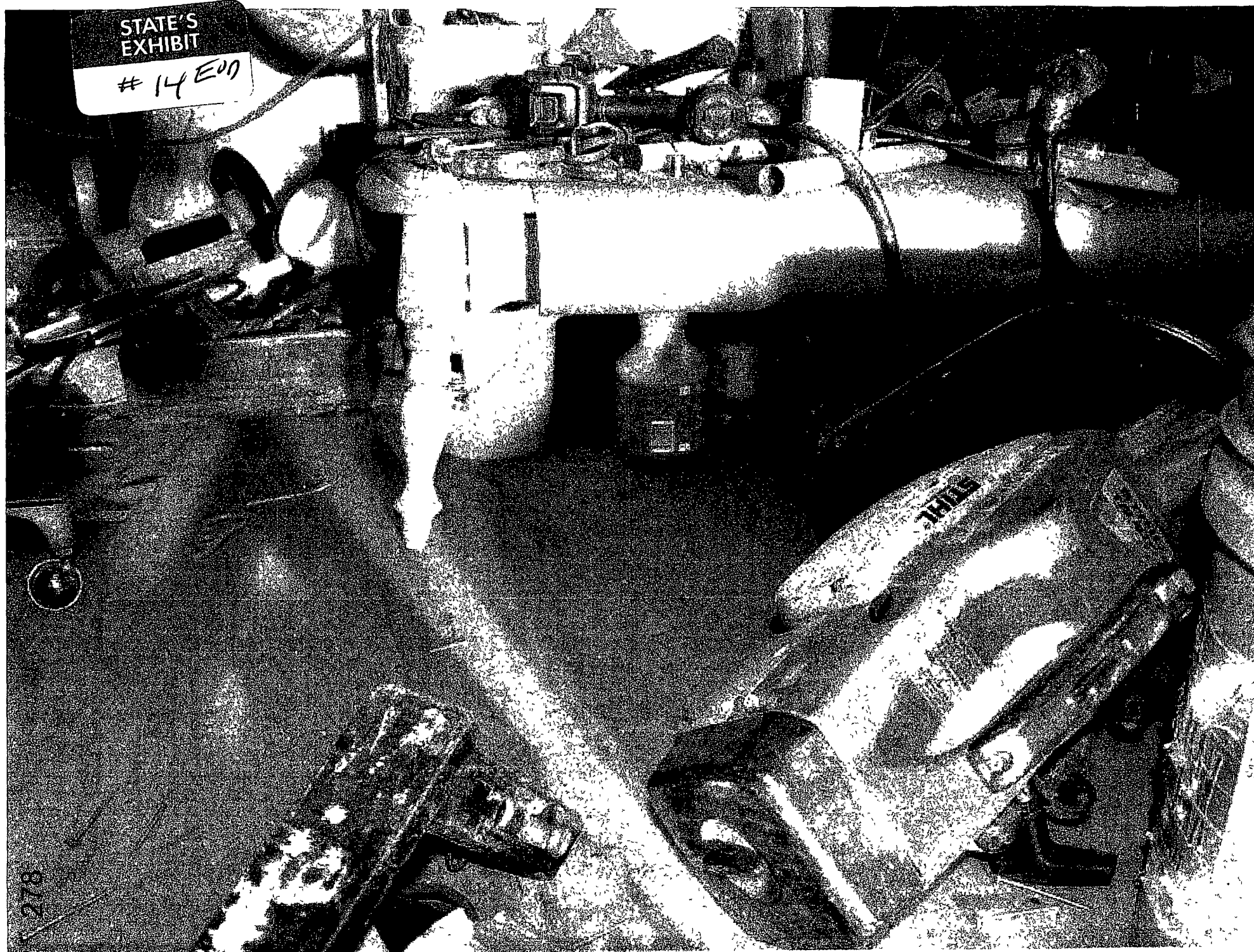
13 EVD



STATE'S
EXHIBIT

14 E00

278



STATE'S
EXHIBIT

#15 EVID

FOR THE
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20535

15-00000

15-00000

STATE'S
EXHIBIT

#16 EVO

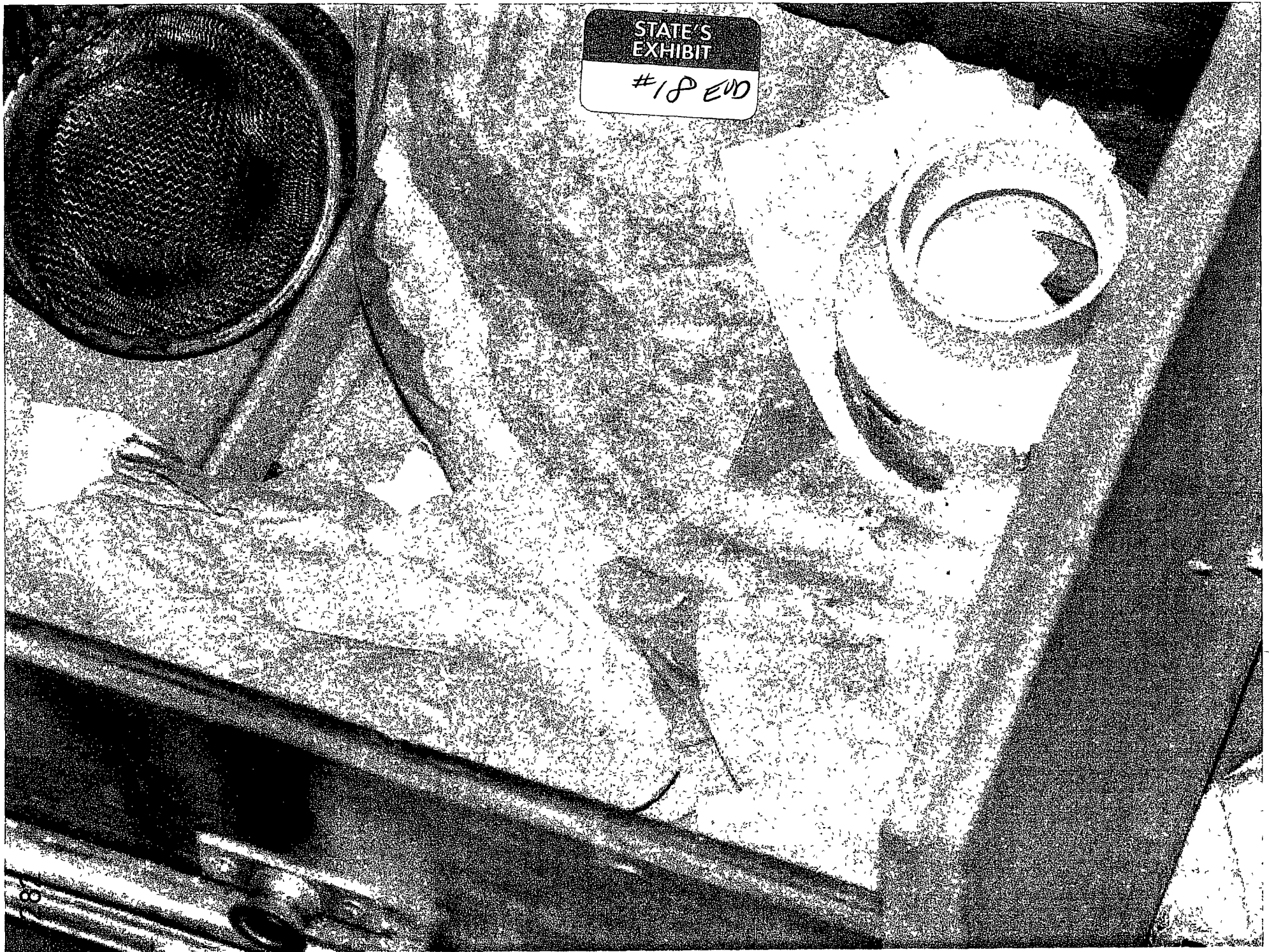
STATE'S
EXHIBIT

END #17

MEET
1963

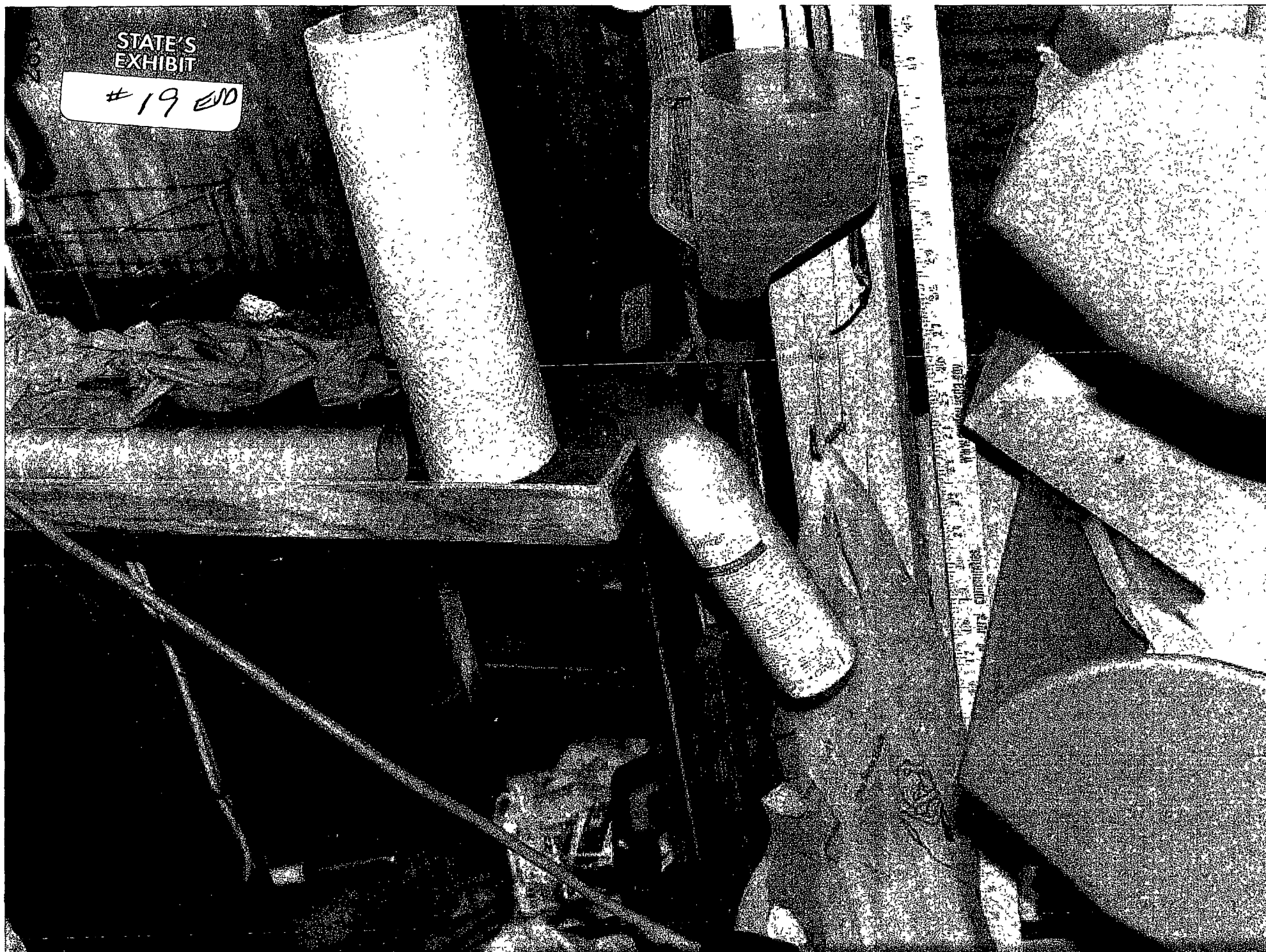
STATE'S
EXHIBIT

#18 EMD



STATE'S
EXHIBIT

#19 EMD



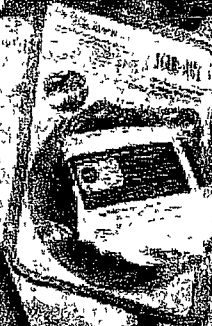
STATE'S
EXHIBIT

#20 EVD



STATE'S
EXHIBIT

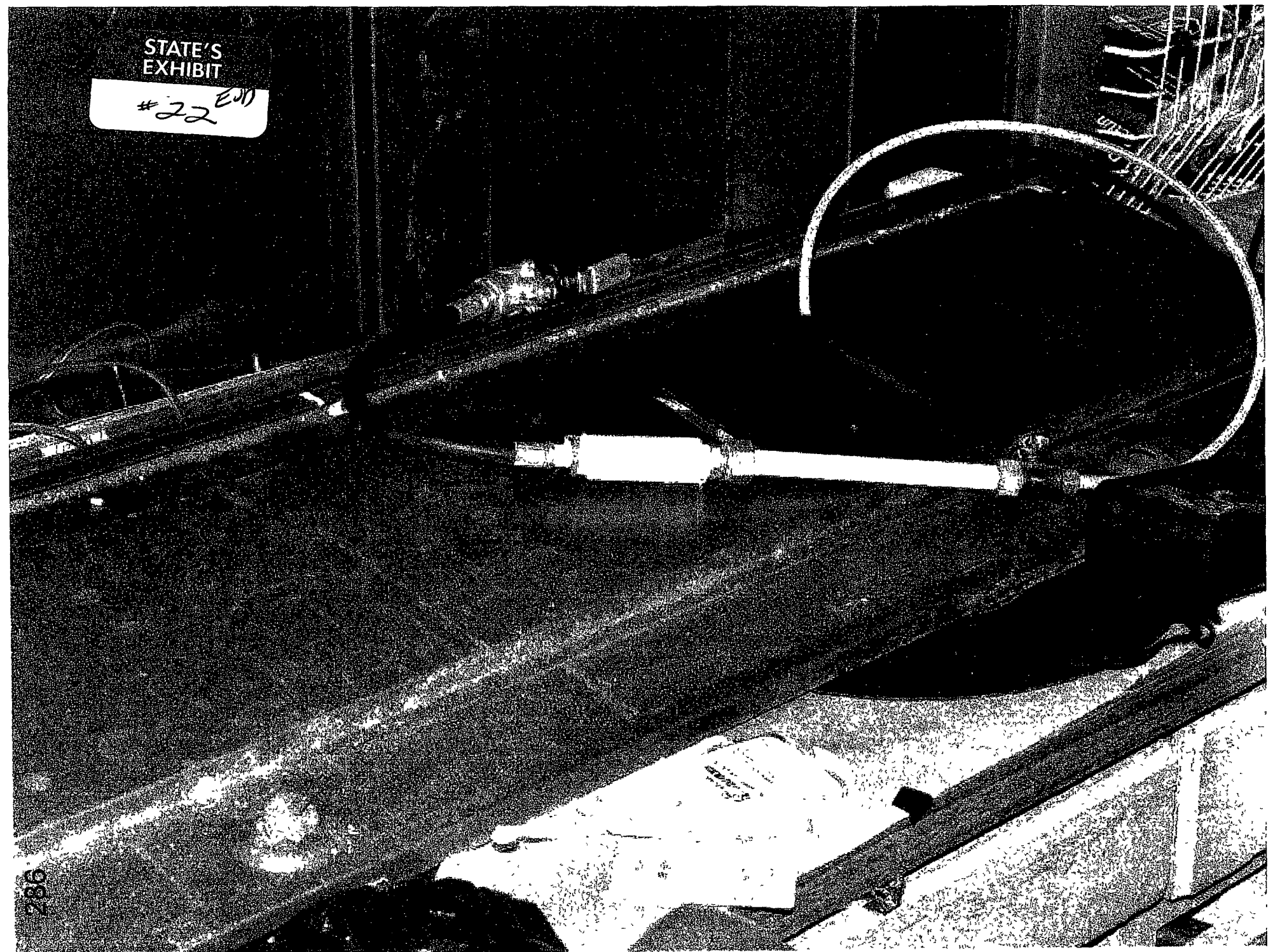
#21 EUP



STATE'S
EXHIBIT

#22 EON

286



STATE'S
EXHIBIT

#23 EVD



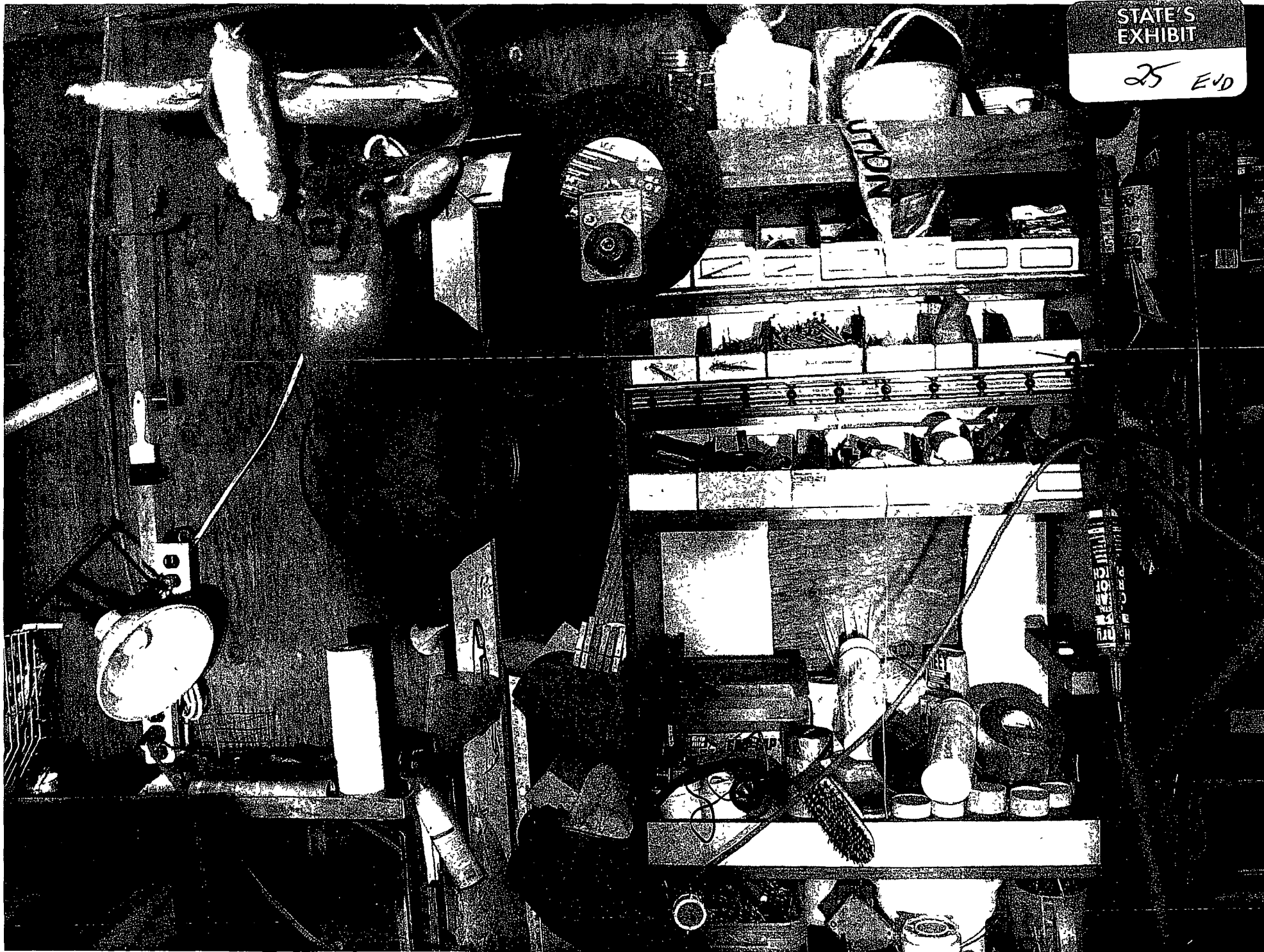
STATE'S
EXHIBIT

#24



STATE'S
EXHIBIT

25 EVD



STATE'S
EXHIBIT

26 EVD



STATE'S
EXHIBIT
27 E10





NEWBERRY COUNTY SHERIFF'S OFFICE

YOUR RIGHTS

DATE <u>01/31/2012</u>		TIME <u>2:20PM</u>	
NAME <u>Vernon Jacob Livingston</u>		SS # <u>-</u>	DOB. <u>-</u>
ADDRESS <u>GC Hwy 121</u>	CITY <u>Newberry</u>	STATE <u>SC</u>	ZIP <u>29108</u>
HOME PHONE: <u>-</u>	WORK PHONE <u>-</u>	OTHER PHONE <u>-</u>	

I, Vernon Jacob Livingston Jr (please print), am 56 years old. My address is
SC Hwy 121 (street address) Newberry SC 29108 (city, state)
 I have finished the 11th grade in school and Can ☒ I Cannot ☐ read

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can and will be used against you in a court of law.

You have the right to a lawyer for advice before we ask you any questions, and to have him or her present with you during any questioning.

If you have no money for lawyer's fees, the court will appoint one to represent you without cost to you if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop the questions at any time. You also have the right to stop answering questions at anytime until you talk with a lawyer.

I have read this statement of my rights and I understand what my rights are.

Vernon J. Livingston Jr
Signature

01/31/2012
Date

Waiver

I **am** willing to make a statement and answer questions. I **do not** want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me, and no pressure or coercion has been used against me.

Vernon J. Livingston Jr
Signature

01/31/12
Date

Witnessed By

[Signature]
Witness Signature

01/31/12
Date

Witness Signature

Date

STATE'S
EXHIBIT

29 EVD



STATE OF SOUTH CAROLINA

STATE'S
EXHIBIT

31 EVD

County/Municipality of NEWBERRY

SEARCH WARRANT

Date 01/30/2012

Officer INV NICK BOUKNIGHT

294 000000000332

Date Printed: 01/30/2012 10.18.06 PM

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

SEARCH WARRANT

295
Form Approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF NEWBERRY

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

which
THE SHED IS LOCATED AT OR ABOUT HIGHWAY 121 IN NEWBERRY COUNTY. THE RESIDENCE THAT IS BESIDE THE SHED IS A
SINGLE WIDE TRAILER THAT IS TWO TONE OFF TAN IN COLOR. THE RESIDENCE SITS PERPENDICULAR TO HIGHWAY 121 AND IS TO THE
RIGHT OF A OFF WHITE IN COLOR SINGLE WIDE TRAILER THAT SITS PARALLEL TO HIGHWAY 121. THE RESIDENCE HAS SHRUBS AT THE
END OF IT TOWARDS HIGHWAY 121. THERE ARE OUTBUILDINGS THAT ARE IN FRONT OF THE RESIDENCE. THE TRAILER HAS A WOODEN
FRONT PORCH ATTACHED. THE RESIDENCE SITS ON THE RIGHT HAND OF HIGHWAY 121 IF COMING FROM HIGHWAY 76.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

THIS SEARCH SHALL INCLUDE METHAMPHETAMINE OR ANY ITEMS USED IN THE MANUFACTURING METHAMPHETAMINE PROCESS TO INCLUDE BUT NOT LIMITED TO LITHIUM BATTERIES, TIN FOIL, COLEMAN FUEL, ACETONE, BOTTLES, JARS, ICE PACKS, COFFEE FILTERS, OR ETHER.

This Search Warrant shall not be valid for more than ten days from the date of issuance

A written inventory of all property seized pursuant to this Search Warrant shall be made to

MAGISTRATE JAYROE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises

Little Mountain S.C.

1/30/2012

[Signature] (L.S.)
Signature of Judge

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

AFFIDAVIT

Personally appeared before me, one INVESTIGATOR NICK BOUKNIGHT
 who, being duly sworn, says that there is probably cause to believe that certain property subject to seizure under provisions
 of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

THIS SEARCH SHALL INCLUDE METHAMPHETAMINE OR ANY ITEMS USED IN THE MANUFACTURING METHAMPHETAMINE PROCESS TO INCLUDE
 BUT NOT LIMITED TO LITHIUM BATTERIES, TIN FOIL, COLEMAN FUEL, ACETONE, BOTTLES, JARS, ICE PACKS, COFFEE FILTERS, OR
 ETHER.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
 TO BE SEARCHED

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END OF IT TOWARDS HIGHWAY 121. THERE ARE OUTBUILDINGS THAT ARE IN FRONT OF THE RESIDENCE. THE TRAILER HAS A WOODEN
FRONT PORCH ATTACHED. THE RESIDENCE SITS ON THE RIGHT HAND OF HIGHWAY 121 IF COMING FROM HIGHWAY 76.

REASON FOR AFFIANT'S BELIEF THAT THE
 PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

1.) THAT THE AFFIANT IS A POLICE OFFICER CERTIFIED IN SOUTH CAROLINA, EMPLOYED BY THE NEWBERRY COUNTY SHERIFF'S
 OFFICE, AND IS AUTHORIZED TO MAKE SEARCHES AND SEIZURES; 2.) THAT THE AFFIANT HAS NUMEROUS HOURS OF TRAINING AND
 EXPERIENCE IN THE AREA OF NARCOTICS AND NARCOTIC INVESTIGATIONS; 3.) THAT ON 01/30/2012 OFFICERS WITH THE NEWBERRY
 COUNTY SHERIFF'S OFFICE RESPONDED TO THE LISTED LOCATION OF WHAT IS BELIEVED TO BE HIGHWAY 121 NEWBERRY, SC
 FOR A DOMESTIC BETWEEN VERNON JACOB LIVINGSTON AND SHELIA JACKSON; 4.) THAT ONCE ARRIVING LIVINGSTON HAD ALREADY
 LEFT THE SCENE AND WAS LOCATED ON CYPRESS LAKES ROAD. 5.) LIVINGSTON HAS BEEN PLACED UNDER ARREST FOR CRIMINAL
 DOMESTIC VIOLENCE; 6.) DEPUTIES SPOKE WITH JACKSON WHO STATED LIVINGSTON ASSAULTED HER BECAUSE SHE TOLD HIM SHE WAS
 CALLING LAW ENFORCEMENT TO ADVISE THEM HE WAS COOKING METHAMPHETAMINE, 7) JACKSON STATED ONCE LAW ENFORCEMENT WAS
 CALLED LIVINGSTON BAGGED UP UNKNOWN ITEMS, *in a* BLACK TRASH BAG FROM THE DESCRIBED SHED AND POURED OUT A LIQUID FROM A
 COFFEE POT; 8.) JACKSON FURTHER STATED THAT LIVINGSTON HAS BEEN COOKING METH IN THE DESCRIBED SHED FOR THE LAST FEW
 DAYS; 9.) THAT THE AFFIANT HAS USED A DATABASE AVAILABLE TO LAW ENFORCEMENT AND OBSERVED THAT LIVINGSTON HAS MADE
 MANY PURCHASES OF PSEUDOEPHEDRINE IN THE PAST; 10.) THAT LIVINGSTON HAS PURCHASED APPROXIMATELY 8.9 GRAMS OF
 PSEUDOEPHEDRINE SINCE JANUARY, 4 2012.

Sworn to and Subscribed before me

this 30th day of January, 2012

Signature of Judge

(L.S.)

[Signature]
 Affiant

Address P.O. BOX 247NEWBERRY SC 29108Phone 321-2211

Date Printed: 01/30/2012 10:18:06 PM

RETURN

I received the attached Search Warrant 1-31-12, and have executed it as follows:

On 1-31-12 at 1250 o'clock AM, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with Shed

Name of person searched or "at the place of search" with

Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- Red and Clear Plastic Container with a quantity of liquid
- quantity of hose
- motor oil bottle containing a quantity of liquid
- Sunny delight bottle containing a quantity of Red Liquid
- glass jar

This inventory was made in the presence of Nick Boulenger

AND Shawn Lewis

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 31st

day of JANUARY, 2012

AJJ

Signature of Judge

(L.S.)

[Signature]
(Signature of Officer Executing Warrant)

Date Printed: 01/30/2012 10:18:06 PM

1 EJO

Personally appeared before me, one INVESTIGATOR NICK BOURNIGHT
who, being duly sworn, says that there is probably cause to believe that certain property subject to seizure under provisions
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PSEUDOEPHEDRINE SINCE JANUARY, 4 2012

Sworn to and Subscribed before me

this 30th day of January, 2012

Signature of Judge

(L.S.)

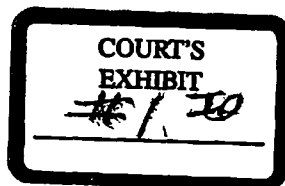

AffiantAddress P.O. BOX 247NEWBERRY SC 29108Phone 321-2211

Date Printed: 01/30/2012 10:18:06 PM

Store #: 624
Report Date: 02/08/2013

LIVINGSTON, VERNON

NEWBERRY, SC 29108



Connexus Pharmacy System
Wal-Mart Pharmacy 10-624
Pseudoephedrine Summary
By Patient

From : 01/01/2011 To 02/08/2013
2812 MAIN ST
NEWBERRY SC - 29108

Sold Date	Trans Id	Drug	Qty Packs Sold	Qty Grams Sold	Pack Size	DL# OR StateID# /State	Associate Name	Associate Initials
1/18/2011 3:39:19 PM	17889	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	KAREN A JONES	KAJONES
2/22/2011 6:03:57 PM	18363	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	PRESTON A JONES	PAJONES
3/5/2011 3:09:59 PM	18506	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	HEATHER N KREIGHBAUM	HNKREIG
3/15/2011 1:09:37 PM	18635	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	HEATHER N KREIGHBAUM	HNKREIG
3/25/2011 9:15:09 AM	18794	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	HEATHER N KREIGHBAUM	HNKREIG
4/14/2011 6:31:15 PM	19091	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	BRIAN E HOPKINS	BEHOPKI
5/14/2011 11:42:47 AM	19461	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	STACEY C RICE	SCRICE
5/26/2011 8:36:15 PM	19609	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	JUDY F GABLE	JFGABLE
6/5/2011 5:43:36 PM	19720	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	JUDY F GABLE	JFGABLE
7/5/2011 5:24:09 PM	20044	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	HEATHER N KREIGHBAUM	HNKREIG
7/19/2011 1:08:57 PM	20142	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	HEATHER N KREIGHBAUM	HNKREIG
8/12/2011 5:47:07 PM	20420	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	HEATHER N KREIGHBAUM	HNKREIG
8/23/2011 2:30:01 PM	20545	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	MARY DICKERT	MDICKER
9/7/2011 11:52:22 AM	20684	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	HEATHER N KREIGHBAUM	HNKREIG
9/17/2011 4:57:57 PM	20810	EQ SUPHEDRINE 30MG TAB	1	1.44	48	004744765 SC	STACEY C RICE	SCRICE
9/19/2011 4:44:39 PM	20843	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	HEATHER N KREIGHBAUM	HNKREIG
10/8/2011 5:48:51 PM	21100	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	TOSHA M GARY	TMGARY
10/18/2011 1:20:58 PM	21198	EQ SUPHEDRINE 30MG TAB	1	1.44	48	004744765 SC	SHEENA SENN	SSENN
10/21/2011 8:05:11 PM	21229	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	BRIAN E HOPKINS	BEHOPKI
11/3/2011 9:03:12 PM	21376	EQ SUPHED 12HR 120MG TAB	1	2.4	20	004744765 SC	VIVIAN C ESSOI	VCESSOI
11/14/2011 8:18:22 PM	21541	DECONGESTANT12HOUR TAB	1	2.4	20	004744765 SC	SALLY A CRUMPTON	SACRUMP
11/20/2011 5:33:26 PM	21622	EQ SUPHEDRINE 30MG TAB	1	1.44	48	004744765 SC	HEATHER N KREIGHBAUM	HNKREIG
11/23/2011 5:51:45 PM	21660	DECONGESTANT12HOUR TAB	1	2.4	20	004744765 SC	PRISCILLA A KIRKLAND	PAKIRKL
12/4/2011 5:49:18 PM	21807	DECONGESTANT12HOUR TAB	1	2.4	20	004744765 SC	TOSHA M GARY	TMGARY
12/16/2011 12:10:15 PM	21982	DECONGESTANT12HOUR TAB	1	2.4	20	004744765 SC	SALLY A CRUMPTON	SACRUMP
12/24/2011 1:20:21 PM	22095	DECONGESTANT12HOUR TAB	1	2.4	20	004744765 SC	JEFFREY S WHITENER	JSWHITE
1/4/2012 5:12:44 PM	22269	DECONGESTANT12HOUR TAB	1	2.4	20	004744765 SC	PRISCILLA A KIRKLAND	PAKIRKL
1/16/2012 8:47:05 PM	22445	DECONGESTANT12HOUR TAB	1	2.4	20	004744765 SC	HEATHER N	HNKREIG

****PRIVATE-IF YOU RECEIVE THIS REPORT IN ERROR, PLEASE RETURN TO WAL*MART PHARMACY IMMEDIATELY.
WAL*MART STORES, INC.**

300

Store #: 624
Report Date: 02/08/2013

Connexus Pharmacy System
Wal-Mart Pharmacy10-624
Pseudoephedrine Summary
By Patient

From :01/01/2011 To 02/08/2013
2812 MAIN ST
NEWBERRY SC - 29108

LIVINGSTON, VERNON

NEWBERRY, SC 29108

Sold Date	Trans Id	Drug	Qty Packs Sold	Qty Grams Sold	Pack Size	DL# OR StateID# /State	Associate Name	Associate Initials
1/25/2012 8:23:48 PM	22555	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	KREIGHBAUM TOSHA M GARY	TMGARY
2/8/2012 8:56:01 PM	22746	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	TOSHA M GARY	TMGARY
2/19/2012 12:28:34 PM	22941	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	PRISCILLA A KIRKLAND	PAKIRKL
3/9/2012 8:33:42 PM	23271	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	VIVIAN C ESSOI	VCESSOI
3/20/2012 9:00:35 PM	23463	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	SALLY A CRUMPTON	SACRUMP
4/4/2012 8:58:24 PM	23676	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	BRIAN E HOPKINS	BEHOPKI
4/16/2012 10:42:07 AM	23852	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	SALLY A CRUMPTON	SACRUMP
5/14/2012 11:47:11 AM	24185	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	VIVIAN C ESSOI	VCESSOI
6/11/2012 6:50:18 PM	24520	EQ SUPHEDRINE 30MG TAB	1	1.44	48	SC 004744765	TOSHA M GARY	TMGARY
6/18/2012 8:32:04 PM	24598	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	TOSHA M GARY	TMGARY
7/2/2012 1:06:41 PM	24730	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	SALLY A CRUMPTON	SACRUMP
7/11/2012 3:29:19 PM	24830	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	SALLY A CRUMPTON	SACRUMP
7/14/2012 5:46:30 PM	24872	EQ SUPHEDRINE 30MG TAB	1	1.44	48	SC 004744765	MARY DICKERT	MDICKER
7/20/2012 8:37:35 PM	24939	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	SALLY A CRUMPTON	SACRUMP
8/21/2012 4:28:02 PM	25286	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	SALLY A CRUMPTON	SACRUMP
9/10/2012 8:08:11 PM	25549	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	VIVIAN C ESSOI	VCESSOI
9/24/2012 8:45:41 PM	25723	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	TOSHA M GARY	TMGARY
10/6/2012 12:46:19 PM	25879	DECONGESTANT12HOUR TAB	1	2.4	20	SC 004744765	PATRICIA M MARCUM	PMMARCU
11/28/2012 8:42:01 PM	26596	EQ SUPHEDRINE 30MG TAB	1	1.44	48	SC 004744765	PATRICIA M MARCUM	PMMARCU

****PRIVATE-IF YOU RECEIVE THIS REPORT IN ERROR, PLEASE RETURN TO WAL*MART PHARMACY IMMEDIATELY.
WAL*MART STORES, INC.**

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 16th, 2014



Carmen V. Ganjehsani
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Newberry County

Frank R. Addy, Circuit Court Judge

RECEIVED

APR 16 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

VERNON JACOB LIVINGTSON,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Vernon Livingston, #354355, at Campbell Work Center, 4530 Broad River Road, Columbia, SC 29210, this 16th day of April, 2014.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 16th day of April, 2014.

David M. [Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.